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Emperor Vs. Premananda Dutt

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Court : Kolkata

Decided On : Feb-12-1925

Reported in : AIR1925Cal876

Appellant : Emperor

Respondent : Premananda Dutt

Judgement :

Mukerji, J.

1. The accused Premananda Dutt was tried by the Sessions Judge of Chittagong with the aid of a jury on a charge under Section 302, I.P.C., for causing the death of one Prafulla Kumar Roy by shooting him on the paltan ground in the town of Chittagong on the evening of 25th May 1924 at about 8-30 P. m. The jury brought in a unanimous verdict of not guilty, and the learned Judge having disagreed with the same, has submitted the case to us under the provisions of Section 807, Cr. P.C.

2. In the course of an elaborate summing up, which is remarkable for its lucidity and its fairness, the learned Judge has set out all the facts and circumstances of the case and the various points that arise for consideration and his charge has been of immense assistance to us in dealing with the case.

3. The accused Premananda Dutt, according to his own statement, was a Preventive Officer in the Customs Department, which appointment), he says, he resigned and he became a congress volunteer. He appears to be a young man of about 24 years of age, and is what is ordinarily known as a political suspect.

4. The deceased Profulla Kumar Roy was a Sub-Inspector of the Criminal Investigation Department. The accused and the deceased appear to have been known to each other for some time past, and there is evidence to show that since February 1924, the deceased was in touch with the accused, presumably watching him as a political suspect, and had met him on several occasions-on some occasions by appointment.

5. The case for the prosecution is that on the day and at the hour mentioned before, the accused and the deceased met by appointment at about 7 P.M., talked together for some time and they had talks on political matters, that they were seated under a tree, and eventually the accused said to the deceased: 'Prafulla Babu, you are a very dangerous man, you caused the Maniktola case to be detected and Ananta Singh arrested,' that the deceased replied: 'What can 1 do? I am a paid servant.' It is said that the accused then stood up and asked the deceased whether he would not leave the place; to which the deceased replied in the negative and said that the accused might go. The prosecution case is that when in this position the accused fired 3 shots at the deceased. As far as can be made out the time, when the shots were tired was somewhere near 8-30 P.M. Immediately after this people came to the spot hearing the shots or cries, and carried the deceased or assisted him on to the road to the east of the field, put. him into gharry which they were able to secure and removed him to a bungalow at a short distance to the south, and there first aid was administered to him. Thence he was removed to the General Hospital. Next morning it was considered necessary to remove him to Dacca in order to localise and trace the bullets and for batter treatment. A journey by rail was unquestionably risky but it was decided to undertake the risk as it appeared to be the only means of saving his life. He was put into a train, but expired on the way.

6. That the occurrence took place at or about the time mentioned above and under circumstances, which clearly point to the offence as being one of murder are matters about which there can hardly be any doubt or dispute. Nine witnesses have deposed that they came to the spot immediately or shortly after the occurrence on hearing shots or cries from the place. They are P.W. No. 2 Rai Satish Chandra Sen Bahadur, P.W. No. 4, Nalini Kumar Chowdury, P.W. No. 5, Rajani Kanta De, P.W. No. 6, Biseswar Das, P.W. No. 7, Dhirendra Nath Moitra, P.W. No. 8, Rasik Chandra Bhattacharja, P.W. No. 9, H. L. Black, P.W. No. 10, D. W. N. Coulter and P.W. No. 12, Pramatha Kumar Das, P.W. No. 15, Dr. Chatterji, the Civil Surgeon, has deposed to the injuries revealed on post mortem examination on the body of the deceased and said that they were caused by revolver or pistol shots and pointed to three shots having been fired, and the shots having been fired at close quarters, that is to say, from a distance of not more than two feet. P.W. No. 23, Mr. Howe, an employee of Messrs. Rodda & Co., on examining the discolouring round the two holes made by the shots in the shirt of the deceased, deposed that the distance of the muzzle of the pistol that fired the shirt would be over 3 and less than 18 inches from the shirt). Firing shots at such a close range unmistakably indicates intention to cause death. Upon the evidence of P.W. No. 15, Dr. Chatterji, the Civil Surgeon, and also of P.W. No. 22, Dr. Lees, the Chief Medical Officer of the A.B. Railway, it is dear that the journey to Dacca was undertaken as it was considered to afford the only chance of saving the life of the deceased and there are absolutely no circumstances in the case suggesting that he would not have died, if he was not so removed.

7. The prosecution, in order to fix the guilt on the accused, have adduced evidence, which falls into three groups: (1) Circumstantial evidence by which a motive is sought to be established for the crime; (2) evidence of witnesses who depose to the hearing of the shots and cries and who say that they came and saw the deceased and that the deceased then and there gave out the name of the accused as his assailant; and (3) the dying declaration of the deceased made before a Magistrate in which the details of the occurrence are given and in which is to be found a declaration alleged to have been made by the accused himself of his motive in taking the step that he was about to take.

8. So far as the first of the aforesaid items of evidence is concerned, the position is this. By an order (Ex. 6) passed by the Deputy Superintendent of Police, Chittagong, on the 5th January 1924, Prafulla-Kumar Roy was deputed to Calcutta to assist in the arrest of four persons, amongst whom was the name of one Ananta Singh. From a Police Report [Ex. 7 (1)] it appears that he arrived at Calcutta on 7th January 1921 and two days later made a report to the affect that he had come to know that the accused Premananda Dutt associated with one Sachindra, a suspect. From entries in Police Diaries Exs. 7 (4), 7 (3) and 7 (2)] dating from 7th February 1924 to 29th February 1924 it appears that the deceased met, the accused during this time, and the latter made appointment with him to meet him which he did not keep and also gave a false address where the deceased was unable to find him. These entries show that the deceased was anxious to be in touch with the accused, but the accused was avoiding the deceased. From the evidence of P.W. No. 15, Upendra Chandra Ghose, a Sub-Inspector of Police and P.W. No. 16, Jinnatali, a constable, it) appears that the deceased, while in Calcutta, was watching premises No. 10, C Ward Institution Street, at Maniktola, along with other Police Officers, that they did so for the whole of February and up to the middle of March 1924 and two persons were arrested of whom one was the aforesaid Ananta Singh. It would seem that the object of the watch was to arrest absconders in a case which is described in the evidence as the Chittagong Robbery case in which Ananta Singh was an accused, and that in the course of the search of the aforesaid premises certain explosives were found which resulted in a case which is described as the Manikbola case. Apart from the dying declaration which I shall deal with hereafter and in which the accused is said to have declared that the deceased was a dangerous man for what be had done in the matter of the aforesaid two cases, the only other evidence as to the previous connection between the two is to be found in the deposition of P.W. No. 11, Shama Charan De, who states that on Saturday the 24th May 1924 at 7 or 8 a. M. in the morning the deceased bad asked him to tell the accused that be wanted the latter to meet him that afternoon. This request suggests that It was not an altogether unusual thing that the two would meet. There is also the statement of the deceased contained in his dying declaration that he bad met the accused twice or thrice before. The learned Judge pointed out to the jury that the name of the

accused was not amongst those the deceased had been sent to Calcutta to enquire about, that there was no connection of a criminal nature proved between Ananta Singh and the accused, and there was nothing else beyond this that they were both political suspects, that they were friends and neighbours and both had been seen exercising together in a gymnasium. The learned Judge rightly warned the jury that the evidence referred to above is of little or no value as indicating a motive strong enough to prompt the accused to take the life of the deceased. As the learned Judge put in to the jury the 'corner-stone of the prosecution case regarding motive' is the statement in the dying declaration, to which I have referred and for corroborating which the said evidence is only useful.

9. Turning now to the second group of evidence, it consists of the testimony of nine witnesses, namely, P.W. No. 2, Rai Bahadur Satis Chandra Sen, P.W. No. 4, Nalinl Kumar Chowdhury, P.W. No. 5, Rajani Kanta De, P.W. No. 6, Biseswar Das, P.W. No. 7, Dhirendra Nath Moitra, P.W. No. 8, Rasik Chandra Bhattacharya, P.W. No. 9, H. L. Black, P.W. No. 10, D. W. N. Coulter and P.W. No. 12, Pramatha Kumar Das. Of these so far as can be made out from the evidence the first to arrive on the scene were P.W. No. 5 and P.W. No. 6, the two excise peons, who came from the house of the Excise Superintendent just on the east of the field and separated from it by a road intervening. Their evidence is to the effect that on bearing shots, after a little delay sufficient to fetch a light they went to a group of trees, found the deceased lying on the ground there and carried him or assisted him on to the road. P.W. No. 5 says he asked the deceased what had happened and the deceased replied that Premananda had shot him, that he and P.W. No. 6 then raised him and asked him 'which Premananda?' and the deceased replied, 'son of Harish Dutt.' P.W. No. 6 gives practically similar evidence and says that the deceased said: 'Premananda has shot me, Premananda has shot me,' and that as he and P, W. No. 5 were bringing the deceased along and while still in the field, he, i.e., P.W. No. 6 asked him 'which Premananda?' and the deceased replied, 'Harish Dutt's son Premananda.' Next came to the spot three witnesses-the exact order of their arrival being not very clear-P. W. Nos. 4, 7 and 8. These witnesses came from the house of Babu Manaranjan Moitra, the Personal Assistant of the Commissioner, which lies in a south-westerly direction from the alleged place of occurrence. Of these P.W. No. 4 is a clerk in the Traffic Manager's Office of the

A.B. Railway, P.W. No. 7 is a gentleman who had then applied to be enrolled as a pleader and P.W. 8 is the Sadar Kanungoe of Chittagong. They came to the spot and saw the deceased being either raised or helped along towards the road. P.W. No. 4 says that when he was helping the deceased to go towards the road, when near some low-lying land, he said that Premananda had shot him, and that on the road some one asked him 'which Premananda?' and he said 'Premananda, son of Harish Dutt.' P.W. No. 7 says that when the deceased was being taken along he followed the deceased, that the deceased sat down near a gate and then said Premananda had shot him, that he himself did not ask any question, but some one asked the deceased ' who is Premananda?' and in answer the deceased said 'son of Harlsh Dutt.' P.W. No. 8 gives similar evidence. P.W. No. 2 appears to have arrived when the deceased was on the road. He is the Government Pleader of Chittagong and his house is to the east on the other side of the road, a little to the south of the Excise Superintendent's Bungalow. He says that he found the deceased lying on the road, bleeding and he was very amok upset and said 'what has happened?' and that the deceased replied that Premananda Dutt had shot him. P.W. No. 9 and P.W. No. 10 arrived almost together as appears upon the evidence of the former. P.W. No. 9 is an assistant of Messrs. Bulloch Brothers and came from his Bungalow which is at some distance to the south, and P.W. No. 10 is the Town Inspector of Police whose Bungalow is on the west of the field. When these witnesses came the deceased was lying on the road. P.W. No, 9 says that he as well as P.W. No. 10 asked the deceased the name of the assailant, that this they did before the carriage into which he was put for removal to his Bungalow moved on, and that the deceased gave a name which ho could not catch P.W. No. 10 says that the deceased, when ha was in P.W. No. 9's Bungalow gave the name as 'Premananda Dutt, son of Harish Chandra Dutt.' He said the de-ceased had told him before that he had recognised his assailant and he had then asked for the name but before the deceased had time to reply he was in conversation with P.W. No. 9. The last of the witnesses is P.W. No. 12 who is the Sanitary Inspector of Chittagong and lives in a house behind the house of the Government Pleader. He arrived when the deceased was being helped into the gharry in front of the Excise Superintendent's house. He says ha went up to the deceased and heard him say, 'How often must I repeat this,' and that he heard the name of Premananda only.

The meaning of this last mentioned statement is not very clear. He says be remained beside the carriage till it was taken away, that he did not hear any question put to the deceased as to who his assailant was or his father's name and he did not hear mention of the name of Harish Chandra. (sic. Dutt.)

10. I have set out the evidence somewhat in detail in view of the contention which was put forward in the Court below and which has also been repeated before us to the effect that in view of the discrepancies and conflicts that appear in the evidence as to the circumstances attending the mention of the names of Premanand and of his father, it should be held that the deceased did not give out the names or that at any rate it is very doubtful that he did. So far as this question is concerned the chief argument of the defence has been directed to show that there are discrepancies and contradictions as to the exact place or places where the deceased gave the name of the accused or his father. The evidence of these witnesses has also been criticised in respect of other matters as well that are to be found in their depositions, notably the contradictions between P.Ws. Nos. 4, 7 and 8 on the one hand and P.Ws. Nos 5 and 6 on the other, the latter apparently denying that the former came to the spot when they were helping the deceased to walk up to the road, the conflicts as to the persons who wore carrying the lights and the uncertainty suggested by some of them as to whether there were two excise peons or one. On the other hand the witnesses, judging from their position and character, are parsons to whom no suspicion of bias or prejudice can reasonably be attributed. Allowance must be made for the state of their mind, having regard to the suddenness and horror of the crime and the confusion that it naturally caused. On a consideration of all the circumstances and not forgetting at the same time the improbability of every single person coming up to the deceased and making him repeat the name and father's name of the assailant, I think, on the whole it may be safely held that the deceased did in fact give out the name of his assailant and his father's name as well.

11. It is convenient to deal here with some of the other arguments which appear to have been advanced on behalf of the defence in the Court below and some of which ware also put forward before us as to the naming of the assailant by the deceased at this time. It was argued that the deceased may have been inspired to

give out the name, and that it was Inspector Coulter of some other Police Officer who was responsible for the inspiration. As for Inspector Coulter what is suggested in effect is this: that the occurrence took place not at the place where the three trees grow but at a place under a mango tree which is somewhere to the south of the Inspector's Bungalow; what basis there is for such a suggestion. I propose to say later on; that he was then helped to go or taken to the place where the three trees grow, and Inspector Coulter's apathy his criticised as suggesting that he had a hand in such removal in the course of which he had an opportunity to put the name into the mouth of the deceased. Reference in this connection was made to the fact spoken to by him in his evidence that he did not come to the spot till sometime after the occurrence and that he spent ten minutes in getting his rifle out of a box; and comment has also been made on the fact that he did not display any anxiety to send the deceased to the hospital. The inference sought to be drawn is hardly justified and nothing appears on the record which would suggest that the charge levelled against the Inspector had the slightest foundation in fact. As regards the other Police Officers, the evidence is sufficiently clear to the effect that one of them, P.W. No. 21, Sub-Inspector Benlmadhub Chowdhury, was not at Chittagong at all on that night and the only two other officers stationed there, namely, P.W. No. 19, Sub-Inspector Sarafatulla and P.W. No. 20, Sub-Inspector Sachindra Kanta Bhowmik, were at the Thana when the telephone message gave them the firsts intimation of the occurrence. Taking into account the evidence of P.W. No. 22, Dr. Lees, and also the other evidence on the record bearing upon this point, there can be no room for doubt that the name had been given by the deceased before these Police Officers even came to know of the occurrence. Certain circumstances were pointed out on behalf of the defence to show that P.W. No. 19, Sarafatullah and P.W. No. 20, Sachindra Kanta Bhowmik, were not at the Thana at that hour; but to my mind, they do not lead to such a conclusion, Reading the evidence as a whole, there can be no doubt that the deceased did give out the name before any interested person could possibly have had any access to him.

12. This giving out of the name of the assailant, however, in the peculiar circumstances of the case and in the absence of anything further, would not necessarily show or conclusively prove that the shots were actually fired by the

person who was so named. It is an admitted feature of the prosecution case that the deceased and the accused were to meet by appointment. Whatever conflict, there is between the dying declaration on the one hand and the evidence of P.W. No. 11, Shama Charan Dey, on the other, as to the circumstances connected with this appointment-a conflict to which I shall refer when dealing with the dying declaration itself-there can be no question that the deceased was expecting to meet the accused at the pahtan field at about 7 P.M. that evening. P.W. No. 14, Srikanta Chakravarti, Inspector of Police, says in his evidence that on the date in question at about 6-30 P.M., he went to Police Club and met the deceased there, that he was with the deceased for 15 or 20 minutes and the deceased then went away after asking him if it was 7 P.M., and on his replying that it was nearly so, the deceased said he had to go and meet a gentleman. The deceased evidently came to the place at the hour appointed and If after waiting for some time he came to be shot it is only natural that regard being had to the character of the man he was; there to moat and for whom he was waiting-recognition or no recognition-he would name the man as his assailant. It was not, a moment when one shot thrice on vital parts of his body, could be expected to calculate and discriminate between what one has seen with his eyes and what one honestly believes as being what must have happened. The name of the accused was uppermost in his mind and it is not unreasonable to hold that situated as the deceased then was he would not find it necessary to make a distinction between the man who had shot and the man who was responsible for the shooting. The evidence of P.W. No. 2, Rai Bahadur Satish Chandra Sen, is to the effect that it was a very dark night, the moon would rise about six hours after sunset and it was a cloudy night, the first part of the night was very dark and one could not identify another person without a light within 2 or 3 feet. There is also a body of evidence on the record that many of the people that came to the spot did not start until they got their lanterns. To my mind therefore the mere fact that the deceased gave out the name and father's name of the accused does not carry the case very far, certainly not far enough to bring the offence home to the accused. The third item of evidence, to my mind, is the most material one. To that we must look, as affording an adequate motive for the offence, the details of the occurrence and the circumstances which would go to show that the deceased had opportunities to recognize and did in fact recognize

his assailant. If this dying declaration can be relied upon, the case becomes a clear one and no reasonable doubt can possibly arise as to the guilt of the accused. So far as the dying declaration is concerned the learned Judge has not clearly dissented from the opinion which the jury formed of it. The foreman of the jury stated: 'We find, that the statements in the dying declaration are vitiated by these haying been elicited as a, result of question and answer.' The, learned Judge in his letter of reference observed with regard to this matter as follows :-'The point has been fully discussed in the charge to the jury and it is a finding against which I am diffident) in expressing a contrary opinion.' He, makes his position quite clear in these words: " I consider it unnecessary to enlarge on this question as my position is that the statements of Prafulla Babu to the above-mentioned witnesses are sufficient to establish the guilt of the accused, and even if the evidentiary value of the statement recorded by the, Sub-Divisional Magistrate is impaired or even altogether destroyed, by a conviction that it was, mainly or entirely the result of leading questions, such a finding cannot alter the fact that those previous statements were made.' He thus relies for his recommendation not upon the dying decoration but upon the statements made previously by the deceased to or in the presence of the, witnesses. With this, I regret, I cannot agree. As I have said the dying declaration must be referred to for the solution of the difficulties as to, motive and as to recognition. The learned Standing Counsel has asked us to rely upon such portions of the dying declaration as may be taken to have been made not in pursuance of any leading question, or such portions of it as are corroborated by other evidence. In my opinion a dying declaration stands upon a widely different footing; from the testimony of a witness given In Court. In the case of the latter it is permissible and at times necessary under certain circumstances to accept a part which is unimpeachable and reject that which is obviously untrue, though to found a criminal conviction on such appraisement of evidence is very often unsafe. As regards a dying declaration, to accept a portion and reject the rest is entirely put of the question; there must be absolute guarantee of accuracy of the record, and the truth of the entire statement before it can be acted upon. In the case of a dying declaration which by the law of this country assumes a character very widely different from what it is under the English law, which is relevant under the Indian Evidence Act whether the person who made it was or was not at the time when it

was made, under expectation of death, and the weight to be attached to which depends not upon the expectation of death which Is a guarantee of its truth, but upon the circumstances and surroundings under which it was made and very much also upon the nature of the record that has been made of it, it becomes almost always a question of fact as to whether it should be relied upon or not. There is high authority for the proposition that 'where a statement is not the ipsissima verba of the person making it but is composed of a mixture of questions and answers, there are several objections open to its reception in evidence, which it is desirable should not be open In oases in which the person has no opportunity of cross-examination. In the first place 'the questions may be leading questions and in the condition of a person making a dying declaration there Is always very great danger of leading questions being answered without their force and effect being freely comprehended. In such circumstances the form of the declaration should be such that it would be possible to see what was the question and what was the answer, so as to discover how much was suggested by the examining Magistrate and how much was the production of the person 'making the statements. [Per Cave, J., in R. v. Mitchell 17 Cox. C.C. 608 (1892)]. The Sub-Divisional Officer Mr. Satish Chandra Majumdar was examined as a witness, being P.W. No. 3. He stated that such unimportant words or questions as 'go on' or 'and then,' 'what else,' 'on what topic,' may have been asked by him. He stated that very few questions and only the unimportant ones were left out. He stated that it was not necessary to put down all questions in recording a dying declaration, and he did not consider it necessary to put down a question 'do you know so and so' or 'have you met so and so.' As to certain specific statements he was positive that they were not made in answer to any question of his and he also said that before the deceased said that Shama Charan was a shop-keeper he may have put a question to him to elicit who this Shama Charan was. It is unnecessary to refer to other portions of his evidence. The jury heard him and they had also the record of the dying declaration before them and It was a matter entirely within the province of the jury as to what value they should attach to it. The matter could be left to the jury in no better words than those of the learned Judge: 'If you consider the statement was elicited as a result of leading questions, that Is to say, questions suggesting answers, if you believe this against the word of the Sub-Divisional

Officer then you are bound to regard the statement with the gravest suspicion, to the extent even of refusing to give it any credence at all, because unless such questions are recorded it is impossible for tribunal sitting in consideration of the evidentiary value of the statement, to assess how much, if any, of it is the voluntary outcome of the man's own mind and volition, and how much is the result of such suggestion.' The jury, as I have said, had the record of the declaration before them. They had also before them the fact proved in this case that before the deceased made the statement, outsiders and Police Officers had ample access to him. If therefore the jury were not prepared to rely upon the declaration it is hardly a matter upon which we can dissent from them when dealing with the case under Section 307, Cr. P.C.

13. There are also certain other arguments which have been advanced before us and to them I desire shortly to refer. It is urged on behalf of the defence that the dying declaration is at variance with the other evidence on the record, and it should not therefore deserve that sanctity which might otherwise attach to it as being the statement of a man who was about to die. In the first place it Is pointed out that the deceased spoke of a mango tree as being the tree under which the shots were fired and it is pointed out that the only mango tree there was the one on the south-east corner of Inspector Coulter's house, and it is pointed out that the deceased upon his own statement knew the place very well and was hardly likely to mistake the three jungly trees for a mango tree. In support of this point, reference, Is also made to a passage in the deposition of P.W. No. 5 who says as follows :--'I saw a man run and fall down and another man running away to the north-west. I saw a figure fall and a figure In white running. I did not see actually a man fall. It looked like something falling.' It is said that this lends support to the defence suggestion that the occurrence did not take place under the three trees. Next it is said that whereas the deceased said in his declaration that he was sitting under the tree and the accused shot him standing, P.W. No. 9, Black, in his evidence stated that the deceased had told him that the man who shot him was walking with him and talking with him on the golf maidan. It is next said that the statement of the deceased that he met the accused in front of Satish Babu's house at 7 P.M., is falsified by what has been spoken to by Satish Babu and the Excise peons. It is urged that the accused was not in the habit of wearing shoes and in

support of that reference is made to the evidence of P.W. No. 2 and P.W. No. 9. Comment is also made as to the non-examination of Mr. Kelly, Mr. Makean, Mr. Shallow, the coachman and some other witnesses. It is urged that the place is a much frequented one and also that the Rai Bahadur's horse is groomed there, so that it was not a likely spot to be used either for the crime or for the purpose of sitting on the ground. It is unnecessary to deal separately with these matters. Most of them to my mind present no real difficulty and are easily explicable.

14. There are, however, two matters which present some difficulty to my mind-I shall not say that it is altogether an insurmountable difficulty. The deceased said that the day before the accused sent information to him through Shama Charan he had business with him and had asked him to meet the accused at the spot. In answer to a question as to what Shama Charan told him, he stated: 'Babu Premananda wanted you to meet him in that place.' So there can be no mistake that the deceased meant to convey that the accused sought for an interview with the deceased through Shama Charan and requested him to be at the spot at that hour. P.W. No, 11. Shama Charan, is equally positive that no such thing took place. He is positive that he had no talk with the accused at any time on Sunday. He says that on Saturday the 24th May, he met the deceased about 7 or 8 A.M. in the morning and the deceased requested him to ask the accused to meet him that afternoon, i, e., on Saturday. There is therefore a conflict which it is hard to reconcile. It may be that a satisfactory explanation of it is obtainable; but there it is and it may have weighed with the jury. The next thing is this. If the accused sought for an interview with the deceased and came there fully prepared and armed to shoot him to death, would he wait in the way suggested and be conversing with him all the time on various matters and then tell the deceased why it was that he was about to kill him and think it necessary to acquaint him with the fact that he was a dangerous man, that he bad caused the Maniktola case to be detected and Ananta Singh arrested and then fire the shots. It is not altogether impossible that such a conversation took place but it is certainly somewhat improbable and may have seemed to be so to the jury.

15. There remains to notice one further point which the defence sought to make in this case. P.W. No. 11, Shama Charan, in his evidence stated that he met the

accused on the evening of the occurrence at the time of candle light just as the lights had been lit. He states that he then met him in front of his shop on the road, and there was a man, one Bimal Babu with him. Bimal Babu was pushing a bicycle and the accused was walking slowly beside him. He also states that be met the accused again shortly before or shortly after nine o'clock and that he came from his house towards his shop and stayed there a couple of minutes. He states further that before the accused came, Benoy had come to his shop and purchased some cigarettes and that the accused came and took one from him. It is sought to be shown from this evidence that the accused could not have been at the place of occurrence at the time suggested by the prosecution and that Benoy Babu, who was a witness on the charge-sheet, was withheld by the prosecution. In the absence of any further data it is not possible to appreciate the exact significance of this evidence.

16. On the whole therefore there were matters before the jury upon which they might have felt themselves unable to convict the accused and I am not prepared to hold that their verdict under the circumstances was an unreasonable one, such as would justify our refusal to accept the same. Most of the reasons given by the foreman in support of the verdict; may not commend themselves to us or may not be very convincing but the reasons that the foreman gave need not necessarily be taken as constituting all the grounds which he and the other jurors may have had for their verdict. It is well-known that even trained minds find it difficult when naked off-hand to formulate all the grounds which they may have in support of an opinion which they may have formed. After all what we have got to find before we can refuse to accept the verdict of the jury in a case under Section 307, Cr. P.C., is that the verdict is unreasonable. In the present case it is not possible to say that the verdict of the seven jurors who sat at the trial was an unreasonable one.

17. The result is that in my opinion the verdict of the jury should be accepted. The reference should be rejected and the accused should be released.

Greaves, J.

18. I agree.

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