

Sk. Alimuddin and ors. Vs. the State

Sk. Alimuddin and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/858442

Court : Kolkata

Decided On : Jan-05-1962

Reported in : AIR1962Cal251

Judge : P.B. Mukharji and ;N.K. Sen, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 307

Appeal No. : Jury Ref. No. 8 of 1961

Appellant : Sk. Alimuddin and ors.

Respondent : The State

Advocate for Def. : Jogesh Chandra Sinha, Adv.

Advocate for Pet/Ap. : Kalimohan Chakravarti, Adv.

Disposition : Reference rejected

Judgement :

P.B. Mukharji. J.

1. This is a Jury Reference by the Assistant Sessions Judge of 24 Parganas. There were five accused (1) Sk. Alimuddin, (2) Sk. Rustam, (3) Abdul Rashid, (4) Pato Bibi and (5) (sic) Bibi. The charge against each was under Section 360 read with Section 120-B of the Indian Penal Code. The Jury returned a unanimous

verdict of guilty against (1) Alimuddin and (2) Rustom. They returned a unanimous verdict of not guilty against the other three (1) Abdul Rashid (2) Pato Bibi and (3) Goljan Bibi.

2. The learned Judge disagreed with some of these verdicts. According to the Judge's opinion both Alimuddin and Pato Bibi were guilty under Section 366 and accused Abdul Rashid and Sk. Rustom under Section 366/120B of the Indian Penal Code while Goljan Bibi was not guilty under any of these sections.

3. In the letter of reference he begins by saying that

'I am unable to agree with the unanimous verdict of the jury in so far as two of the accused persons are concerned and consider it necessary for the ends of justice to submit the case in respect of them to the Hon'ble Court.'

4. But later on in the body of the reference the learned Judge appears to think that he was referring the case of all the accused persons to this Court. He says later in the letter of reference :

'I have recorded my disagreement with the verdict of the jury and I consider it necessary for the ends of justice to submit the case in respect of all the accused persons to the Hon'ble Court.'

5. It is, therefore, not clear at all from the letter of reference what case and in respect of which accused the learned Judge was making a reference. A reference under Section 307 of the Code of Criminal Procedure is possible only when the Judge disagrees with the verdict of the jury. If he agrees with the verdict of the jury there is no scope of a reference under Section 307. It is only when he disagrees with such verdict then he can make a reference. The reference, therefore in this case appears to be irregular and misleading, it being not clear what was being referred to. In fact if the learned Judge was agreeing with the verdict of jury in respect of some of the accused then under Section 366 Cri. P. C. he should have given judgment accordingly, but that he has not done in respect of any of the accused in this case. It is quite understandable that in the case of the verdict with which he was disagreeing he cannot record a judgment of acquittal or conviction

because of the express provision of Section 307 (2) Cri. P. C.

6. On this point I should like to guard myself against a possible misunderstanding and I should not be taken as laying down any law in respect of what is to happen when the crime and the verdicts are inseparable in respect of the different accused persons and when the offence or the nature of the crime is such that no difference or distinction can be made in the case of such different accused the case and the verdict against one or some of them being inextricably connected with the case and his verdict against the other or others. The reason for not deciding that point, is, as I shall presently show, that it does not arise on this reference.

7. The law on this point is discussed in some of the leading cases. The Privy Council in *Ramanugrah Singh v. Emperor* lays down the principle that Section 307 of the Code of Criminal Procedure was not intended to enable the Sessions Judge and the High Court to deprive jurors, acting properly within their powers, of the right, conferred on them by the Code to determine the facts. The governing words according to the Privy Council in this respect are : 'necessary for the ends of justice' to justify a reference. In explaining this expression the Privy Council says that the Judge must be of opinion that the verdict of the jury was one which no reasonable body of men could have reached on the evidence. If the evidence is such that it can properly support a verdict either of guilty or not guilty according to the view taken of it by the trial court, and if the jury take one view of the evidence and the Judge thinks that they should have taken the other, the view of the jury must prevail since they are the judges of fact and in such a case a reference under Section 307 is not justified- In other words where there is a possible scope for conflicting views to be taken Jury's choice of one or the other cannot be the ground of a reference. To justify a reference a still stricter test has to be satisfied and the Judge must be of the opinion that the verdict is not possible to be taken by any reasonable body of men. This principle so enunciated by the Privy Council has been approved by the Supreme Court in *Akhilakali Hayat Ali v. State of Bombay* : 1954 CriLJ451 and in *Moseb Kaka v. State of West Bengal* : 1956 CriLJ940 .

8. In the case of *Ramyed Rai v. State of Bihar* : AIR 1957 SC373 the Supreme Court considered the scope of a reference under Section 307 of the Code of

Criminal Procedure. There the appellants were charged under Sections 435 and 436 of the Indian Penal Code and were tried by a jury, who returned a majority verdict of guilty. The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court. At the hearing of the reference the counsel for the appellants only contended that the charge to the jury was defective and did not place the entire evidence before the judges, who in their turn only considered the objections urged and nothing more and thereupon came to the conclusion that the reference was incompetent and found the appellants guilty and convicted them. The Supreme Court condemned that procedure. The Supreme Court lays down that in a reference under Section 307 of the Code of Criminal Procedure it is the duty of counsel to place, and it is incumbent on the High Court to consider, the entire evidence and the charge as framed and placed before the jury and to come to its own conclusion after giving due weight to the opinion of the trial Judge and the verdict of the jury, and to acquit or convict the accused of the offences of which the jury could have convicted or acquitted him. The Supreme Court lays down that it was wrong of the High Court to pass judgment without considering the entire evidence. The gist of this decision is that the entire evidence and the charge as framed must be considered by the High Court under Section 307 of the Code of Criminal Procedure. The same principle is reiterated in *Sashi Mohan Debnath v. State of West Bengal* : 1958 CriLJ303 . There the principle emphasized by the Supreme Court was that having (sic) to the provisions of Section 307 of the Criminal Procedure Code, a reference made thereunder must be of the whole case and not a part of it. Therefore if only a part of it is referred then the reference made under Section 307 of the Criminal Procedure Code is incompetent. The Supreme Court says that in such a case the High Court cannot proceed to exercise any of the powers conferred upon it under Section 307 (3), because the very foundation for the exercise of that power was lacking, the reference being incompetent. In *Sashi Mohan Debnath's case*, : 1958 CriLJ303 Imam, J. Observed at page 205 (of SCA) : (at p. 197 of AIR) as follows:-

'The effect of the amendment to Section 307 of the Code made in 1923 and 1955 lends further support to the view that it is the wh (sic) which must be referred and not a part of it. The provisions of Section 307 (1) before the amendment of 1923 were so expressed as to make it possible to say that it was necessary for the trial

Judge to refer the whole case concerning every accused on all the charges framed against them, irrespective of the fact that the Judge was in agreement with the jury with respect to a particular accused on all the charges framed against him. The amendment of 1923 introduced the word 'any accused person' in place of the words 'the accused' and 'in respect of such accused person' in Section 307 (1). The amendment accordingly enabled the Judge to accept the verdict of the jury on all the charges framed against any accused person and to record a judgment with reference to him while referring the case of another accused to the High Court where he disagreed with the verdict on any of the charges framed against him. The amendment was made to remove the necessity of referring the whole case, including the case of an accused concerning whom the Judge was in agreement with the verdict on all the charges framed against him. The amendment would have been unnecessary if Section 307 (1) contemplated a reference of only a part of the case and not the whole of it."

9. It follows from this decision that the reference must be of the whole and not a part of the case in respect of the accused person the verdict in respect of whom, the Judge has not accepted. The language today of Section 307 (1) is clear enough on this point. The observation of the Supreme Court that the amendment was made to remove the necessity of referring the whole case including the case of an accused concerning whom the judge was in agreement with the verdict on all the charges framed against him, cannot of course extend to mean that where the Judge is disagreeing with the whole verdict against all the accused he cannot refer the whole case of all the accused. He certainly can, because the section expressly says 'on all the charges'.

10. A Division Bench of this Court in *Bepin Behari Mondal v. The State* : AIR1959 Cal659 , following the Supreme Court decision in : 1958 CriLJ303 took this view that the whole case meant the case of the particular accused. At page 1310 (of Cr. LJ) : (at p, 660 of AIR) of the decision it is stated:-

"Indeed when a Judge does not disagree with the verdict of the jury he is to act under Section 306 of the Code. The stage of reference is not reached at all. It is only when he disagrees with the verdict of the jury and considers it necessary that

the ends of justice require that a reference should be made, that the time comes for him to act under Section 307. In this case the learned Judge's own order would clearly show that he did not disagree with the verdict of the jury in respect of any of the charges against Chandra Kanta, Niranjan Nakul and Mantu Lal. As soon as that happened the curtain fell, and the proceedings should have concluded with an order made under Section 306 of the Code. We have taken note of the learned Judge's view that the jury's verdict of not guilty in respect of the charge of rioting in favour of the four accused imperils the charge of rioting as against the remaining two. That may be the position arising in law. If on the evidence only six persons are alleged to have been participants in the riot then, of course, the learned judge would be entitled to think that the verdict of the jury as respects the charge of rioting against Bepin and Brindaban would be perverse and not sustainable. He might then make a reference if he thought proper, to this Court keeping open all the charges in respect of the two accused Bepin and Brindaban, whereafter it would be the duty of this Court to deal with such reference in accordance with law.'

11. The same view was taken by another Division Bench of this Court in an unreported decision (*Badal Mondal v. The State*, Jury Ref. 3 of 1961 delivered on the 5th July, 1961) (Cal).

12. So far as the present Section 307 Cr. P. C. is concerned this much is clear that a reference can be made when the Judge disagrees with the verdict of the jury on all or any of the charges on which any accused person has been tried and when he is clearly of the opinion that it is necessary for the ends of justice to submit the case in respect of any such person to the High Court. His reference must, as the language of Section 307 Cr. P. C. insists, 'clearly' express the 'opinion' that it is necessary for the ends of justice to submit the case to the High Court. He cannot make Section 307 Cr. P. C. an excuse to pass on what he considers to be doubtful or dubious cases for determination by the High Court under the cover of a reference, nor except that this High Court will have to construe, interpret and dissect his doubtful reference to find out whether he was "clearly of the opinion" within the meaning of Section 307 Cr. P. C. Such a reference will be misconceived and not in accordance with the Statute. The language of the Section again expressly requires him to record the "grounds of his opinion" which again must be

'clear' opinion.

13. It is also settled on the authorities now that the whole case in respect of the accused has to be referred and not a part of it, the verdict with regard to whom the Judge is not accepting. Section 307 Cr. P. C. as it stands now certainly permits this course as laid down by the Supreme Court and as it clearly follows from the express language of the section. He can disagree with the entire verdict on all the charges on which the accused persons have been tried, and in that case he must refer the whole case of all the accused to the High Court. But where there is one crime inseparable in its part in which a number of accused persons participated it may be difficult in an appropriate case to differentiate the verdicts in respect of different accused. In such a case disagreement with the verdict of one or more accused persons might mean necessarily either acceptance or rejection of verdicts in respect of other accused persons. In such an inseparable crime if, for instance four accused persons are tried and a jury found by their verdict only two of them guilty and the other two not guilty then nice question may arise whether in such a case the reference is to be made only in respect of the two particular accused or with regard to the whole case. But that question does not arise for decision in this case for the simple reason that even in such a case the reference has to clearly express the Judge's opinion that the crime is such and the verdicts are inseparable and are inextricably connected with one another, and to disagree with some parts of the verdict necessarily affects the other parts of the verdict in respect of the other accused. That is not however, what the learned Judge says in his reference in the present case. Indeed far from saying that, as already pointed out he says in some portions of his letter of reference that he is referring the case only in respect of two accused while in other parts of his reference he seems to refer the whole case in respect of all the accused.

14. For these reasons, indicated above, we must hold that this Reference is irregular, misconceived and misleading. We therefore, reject the Reference and send the case back to the trial Court for its disposal in accordance with law laid down here.

N.K. Sen, J.

15. I agree.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com