

Shibnath Shaw Vs. the State

Shibnath Shaw Vs. the State

SooperKanoon Citation : sooperkanoon.com/858951

Court : Kolkata

Decided On : Feb-07-1963

Reported in : AIR1964Cal345,1964CriLJ149

Judge : Debabrata Mookerjee and ;R.N. Dutt, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 300

Appeal No. : Criminal Appeal No. 780 of 1962

Appellant : Shibnath Shaw

Respondent : The State

Advocate for Def. : S.N. Banerjee, (D.L.R)

Advocate for Pet/Ap. : Chintaharan Roy and ;Arun Kishore Das Gupta, Advs.

Disposition : Appeal allowed

Judgement :

Debabrata Mookerjee, J.

1. This appeal must be allowed.
2. The appellant Shibrath Shaw has been convicted by the Chief Judga, City Sessions Court, Calcutta of kidnapping under Section 363, I. P. C. and sentenced

to five years' rigorous imprisonment. The trial was held with the aid of a jury.

3. The only question which falls to be determined in this appeal is whether the jury's verdict can be sustained in view of the Judge's proceedings dated 15th/16th November, 1962. It appears that after the close of the case and speeches of the Public Prosecutor and the defence counsel the learned Judge summed up the evidence. The order sheet of the day's proceeding of the 15th shows that after the summing up the jury retired to consider their verdict at 6-30 p.m. They returned to deliver their verdict at 6-45 p.m. when the learned Judge did not receive the verdict and record it on the ground that it was already too late. He observed as follows:

'As it was already late after nightfall -- the jury were instructed to reserve their verdict for further deliberation, if required, on the following day at 10-30 a.m. and to declare their verdict thereafter. Tomorrow for further deliberation by Jurors and for delivery of verdict. The accused to remain as before and be produced tomorrow at 10-30 a.m. for further trial. The Jurors do please reassemble tomorrow at 10-30 a.m.'

4. On the next day when the Court reassembled the jury were directed to retire 'for further deliberation'. Accordingly they deliberated again whereafter the foreman informed the Court of the verdict,

5. The order sheet makes painful reading. The learned Judge should have observed the procedure prescribed under Section 300, Cr. P. C. which directs that after the Judge has finished his charge, the jury may retire to consider the verdict and no person other than a juror shall, except with the leave of the Judge, speak to or hold any communication with any member of the jury. It is true that there is no allegation in this case that any outsider actually communicated with the jury after the trial Judge had finished his charge; but the section taken as a whole must mean and imply that after the Judge has summed up, there should be no opportunity for the jury to communicate with any outsider. The learned Judge seems to have rushed the matter. He closed his summing up at 6-30 p.m. on the 15th and then asked the jury to retire and consider their verdict. When thereafter at 6-45 p.m. the jury returned, presumably to declare their verdict, the trial Judge instructed them to keep their verdict to themselves and reserve it for further

deliberation, if required, on the day following. On the next day when the trial was resumed the jury were again directed to retire for further deliberation. After a while the jury returned and delivered their verdict,

6. It is not easy to defend the Judge's proceeding. It goes directly against the principle embodied in Section 300, Cr. P. C. If it was thought expedient that the trial should be conceded that very day, the learned Judge should have had patience with the jury; he should have taken the verdict, and recorded it in order to proceed thereafter, in accordance with law. Again, it is not easy to appreciate what the learned Judge meant by advising the jury to deliberate further. Obviously when the jury returned at 6-45 p.m. on the 15th they wanted to declare their verdict. That verdict was not taken, and instead further deliberation was advised. We have not been able to find any justification for the procedure followed. The advice to deliberate further was entirely gratuitous. It is only when the jury are not unanimous that the Judge may under Section 302 require them to retire for further consideration] and after such period as the Judge considers reasonable, the jury may deliver their verdict even though they are not unanimous. There is no indication in the proceedings that the jury were not unanimous, indeed the verdict was not taken and consequently not known whether it was divided or unanimous. It must, therefore, be said that the learned Judge devised his own procedure and preferred to follow it in disobedience of the one prescribed by the Code. The result of siren proceedings cannot be upheld.

7. If authority were at all needed for the view we take, it may be found in the case of *Frederick Arthur v. William Ketteridge*, (1915) 11 Cri App Rep 54, where it was ruled that if after the Judge has charged the jury, a juror separates himself from his fellows without being under the control of the Court, there is a mistrial. In the case of *Sarimait Ahir v. Emperor*, AIR 1925 Pat 595, it was held where after the Judge's charge, the jury were allowed to disperse for several hours and then to return to the Court to consider and deliver the verdict, the provisions of Section 300, Cr. P. C. were disregarded and the trial vitiated.

8. It seems to us that Section 300, Cr. P. C. does not contemplate that the jury should after the Judge has summed up the case, leave the precincts of the Court

or be at large. After the partisan speeches of counsel on both sides, the words of the Judge must always be the last words and their poise and balance and freedom from bias can never be allowed to be affected by exposing the jury to extraneous contact. The summing up and the verdict must be an uninterrupted process and between them nothing can supervene. The Section provides that after the Judge has delivered his charge, the jury must retire to consider their verdict and no outsider can thereafter, except with the leave of the Court, be allowed to speak to or hold any communication with any member of the jury. This provision means that there should be no scope for the jury being influenced in any manner by any outside agency. When in this case the jury dispersed for the night, surely there was every possibility of their coming into contact with outsiders and to be influenced by them. That possibility was clearly intended to be obviated by the provisions of Section 300, Cr. P. C.

9. In these circumstances, we think there has not been a proper trial and the result of such trial cannot possibly be upheld.

10. We accordingly set aside the conviction and sentence and direct the appellant to be retried in accordance with law by another Judge of the City Sessions Court.

11. Pending retrial the appellant will continue on the same bail.

R.N. Dutt, J.

12. I agree.

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