The State Vs. Sovarani Ghose

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Court : Kolkata

Decided On : Aug-18-1959

Reported in : AIR1960Cal344,1960CriLJ815

Judge : N.K. Sen and ;D.N. Das Gupta, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 282 and 423

Appeal No. : Criminal Revn. No. 822 of 1958

Appellant : The State

Respondent : Sovarani Ghose

Advocate for Def. : S.S. Mookerjee, Adv.

Advocate for Pet/Ap. : S.N. Banerjee, Adv.

Judgement :

N.K. Sen, J.

1. This Rule has arisen in rather unusual circumstances and is directed upon the District Magistrate of Midnapore and on the accused opposite party Sovarani Ghose to show cause why the order of acquittal passed by the learned Additional Sessions Judge of Midnapore on 24-3-1958, in Sessions Trial Case No. 8 of November, 1957, should not be set aside and a retrial ordered.

2. Sovarani Ghose, the opposite party, was on her trial before the Judge and a Jury consisting of seven persons on a charge under Section 302 of the Indian Penal Code. The trial proceeded from day today from 10-3-1958, until 14-3-1958, when the examination of the accused under Section 342 of the Code of Criminal Procedure was concluded. At that stage on behalf of the defence a petition was filed in court praying for the discharge of the present Jury on the ground of misconduct. The alleged misconduct was that one Bepin Behary Dutt, said to be an elder brother of Bijan Behary De for whose alleged murder the trial against Sovarani was proceeding, met two of the gentlemen of the Jury, Sri Gopal Chandra Maity and Sri Bama Pada Sabud and commenced talking with them. This was seen by the lawyers of both sides who were then passing along in two separate rickshaws. They warned Bepin Behary Dutt not to speak with the Jurors in that way. Gopal Chandra Maity, who happened to be the Foreman, said that so far as the case was concerned Bepin Dutt told him (the Foreman) that the real culprits in the case were the two Prosecution witnesses Sankar and Motilal. Bepin asked Gopal Maity and the other Juror Bamapuda Sabud to see that justice was properly done. Bamapada however said that he could not quite catch as to what Bepin had said as he fell a little behind having been engaged in answering a call of nature. The learned Judge held an enquiry and came to the conclusion on the facts stated above that there was no justification for discharging the Jury under the inherent power of the court. The learned Public Prosecutor beyond drawing the attention of the Judge to what he had seen, did not pray for the discharge of the Jury. The defence also does not appear to have pressed for the discharge of the Jury. The learned Judge, in the order sheet of the case, observed that he would proceed with the trial with the present set of jurors but would give them the necessary caution in the context of the facts in his charge to the Jury. The trial then concluded with the acquittal of the accused Sovarani following a majority verdict of six to one of 'not guilty' with which the learned Judge agreed.

3. The learned Judge, however, made a reference to this Court for dealing with the aforesaid Bepin Behary Dutt under the provisions of the Contempt of Courts Act, 1956. While dealing with the matter arising out of the learned Judge's reference under the Contempt of Courts Act Mitter and Bhattacharyya JJ. issued the present Rule suo motu in the following terms :

'Let a Rule issue calling upon the said accused Sovarani Ghose as also upon the District Magistrate of Midnapore to show cause why the order of acquittal should not be set aside and a retrial ordered etc. The report of the learned Judge in Miscellaneous Case No. 56 of 1958 should be put up along with the present Rule when it is ready.'

4. On behalf of the opposite party Sovarani Ghose Mr. Sudhansu Sekhar Mukherji argued that no case for retrial on setting aside the verdict of the Jury has been made out on the allegations made to the Judge and as found by the Judge. Mr. Sambhu Nath Banerjee on behalf of the State has taken up the position that the State has not moved against the order of the learned Judge dated 14-3-1958, deciding that the Jury should not be discharged nor has the State taken any steps to file an appeal under Section 417 of the Code of Criminal Procedure against the order of acquittal dated 24-3-1958. Even no private party has moved this Court for setting aside the order of acquittal. In these circumstances. Mr, Banerjee has informed us that he has appeared on behalf of the State as a matter of routine work following the direction of this Court and the usual letter of the district authorities to appear in the case. He has informed us that there is no special instruction to him with regard to this case on behalf of the State. He has therefore very fairly stated that the duty of the State being to see that justice was administered in a fair way without any prejudice to any party, he would leave it to this Court to decide whether the entire trial was bad on account of the conduct of the Jury as found in course of the trial. Both the parties have liberally placed before us a number of decisions to show that except under the inherent powers of the Court the Jury could not be discharged and such inherent powers will not be exercised by the Court unless doing so would prevent a gross failure of justice.

5. The Code of Criminal Procedure provides for the discharge of the Jury in Sections 282 and 283 but none of these sections is applicable to the facts of the present case. In the case of Emperor v. Monmatha Nath Mitter : AIR1927 Cal199 Rankin and Duval JJ. had dealt with a question where one of the Jurors fell ill and was not expected to be able to attend shortly afterwards. The Jury was discharged in the case and the trial proceeded after resummoning some of the jurors who had been discharged. Rankin J. observed that it would be improper and inconvenient

for persons to be resummoned who have been released from their, oath by an order of discharge and who therefore have been perfectly entitled in the interim to discuss the matter either with their friends or with the accused or with anybody they liked. The case, therefore, is not of much help, as in the present case the jurors have not been discharged. The next case to be noticed is the case of Abdur Rashid v. Emperor decided by Suhrawardy and Graham JJ. : AIR1929 Cal343 . This case has followed the case of Rahim Sheikh v. Emperor, ILR 50 Cal 872 : (AIR 1923 Cal 724) decided by Buckland and Gumming JJ. One of the points in Abdur Rashid's case was that the order of discharge of the Jury and directing a fresh trial was wrong. The facts of that case were like this. While arguments were being addressed to the Judge and the Jury, the Public Prosecutor in an application mentioned that one of the Jurors had called at his house and that two others were seen talking to a person belonging to the accused party. The learned Judge did not institute a searching enquiry but after examination of some of the witnesses came to the conclusion that it was a case 'at least of suspicion' and as such he thought it necessary in the interest of justice to discharge the Jury. Their Lordships held, following the decision in ILR 50 Cal 872; (AIR 1923 Cal 724), that the Judge has a right to discharge the Jury under circumstances which, in his opinion, justify the-course. The Code of Criminal Procedure has not specifically conferred any right on the Judge to discharge a Jury on the ground of misconduct but every Judge has an inherent power to discharge a Jury when he is satisfied by such enquiry as in the circumstances he can adopt that reasonable grounds exist for exercising the discretion vested in him to discharge a Jury on suspicion. A similar view was taken in the case of Rebati Mohan v. Emperor : AIR1929 Cal57 which was decided by Gumming and Lort-Williams JJ. In that case after the Jury was empanelled and a Foreman appointed it appeared that the Foreman had been talking with the Court Inspector and the Judge, on that ground, discharged him and took another person who was present in Court, empanelled him and proceeded with the trial. Their Lordships held that the proceeding was not objectionable.

6. The case nearer to the point is that of Negen Kundu v. Emperor : AIR1934 Cal428 . In this case after the verdict was recorded by the Judge the Public Prosecutor filed a petition stating that after the charge to the Jury when the Jury

retired for deliberation of their verdict, one of the Jurors had, without leave of the Court, separated From the rest of the Jury and went to say Jumma prayers and was away from the retiring room of the jurors for about an hour. The Presiding Judge questioned the Juror and ultimately camp to the conclusion that the conduct of the juror was sufficient to vitiate the entire trial and the only course left to him in the circumstnces was to discharge the Jury and to commence the proceedings afresh. When the matter came up on appeal after the second trial, one of the points taken was that the discharge of the Jury was illegal and that the next trial was ultra vires, illegal and improper. The learned Judges held that without question it was entirely for the judge to determine,--and it is entirely within his discretion to determine -- whether there was such misconduct on the part of the Jury as necessitated a discharge of the Jury and the decision given by the Judge on the question was not open to review. The learned Judge cited the case of Reg. v. Ward. (1867) 10 Cox. C. C. 573. Their Lordships noticed with approval the case of Rahim Sk. mentioned above. It was pointed out that a Judge had the power to discharge the Jury if necessity arose before and after the verdict and in the absence of any provision to the contrary in the Indian Statute the recognised rule prevailing under the English Law may be looked at where the discharge of jury was considered to be not merely a rule of practice and procedure but a rule embodying a principle of justice. In the case of Supdt. and Remembrancer of Legal Affairs Bengal v. Ajit Munshi : AIR1932 Cal750 Rankin CJ. and C. C. Ghose J. considered a question placed before them that where a juror told his friend at an earlier stage of the trial in a conversation that he did not think the Prosecution case to be true in the particular case in which he has been serving as a juror, they held that that was not a mutter which at the end of the trial could be used as a reason for commencing the trial afresh.

7. On an examination of all these decisions, it appears to us, that whether or not a certain conduct of a juror amounts to a misconduct necessitating the discharge of the Jury is a question for the Judge to decide and that his decision is not open to review. The power granted to the Judge is an inherent power which it is for him to say should be exercised or not regard being had to securing justice which is the paramount consideration.

8. In the present case whether or not the order of acquittal should be set aside is dependent principally on the question whether the learned Judge should have discharged the Jury in the circumstances of the case. We have also considered the circumstances ourselves and we agree that they were not such which should have compelled the learned Judge to discharge the Jury and proceed afresh with the proceeding. We have also considered whether there are compelling reasons arising out of the learned Judge's summing up to the Jury as pointed out by Mr. Banerjee, such as would entitle us to set aside the order of acquittal passed so far back as the 24th of March, 1958. The learned Judge's summing up docs not suffer, in our view from any serious or gross misdirection and Mr. Banerjee has frankly conceded before us that be could not discover any misdirections which could have resulted in the return of an erroneous verdict by the Jury.

9. It may be repeated once again that the State has not appealed from the order of acquittal nor has any aggrieved private party thought it fit to move this Court in revision against the order of acquittal that has been passed in the case.

10. In these circumstances, we think that the Rule must be discharged.

D.N. Das Gupta, J.

11. I agree.