

Sankar Kumar Dutta Vs. State

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Court : Kolkata

Decided On : Feb-08-1962

Reported in : AIR1962Cal449

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

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 174, 277, 278, 294 and 423

Appeal No. : Reference No. 6 of 1961 with Appeal No. 408 of 1961

Appellant : Sankar Kumar Dutta

Respondent : State

Advocate for Def. : S.N. Banerjee and ;Jitendra Kumar Bhattacharjee, Adv.

Advocate for Pet/Ap. : Mukti Prasanna Mukherjee, Adv.

Judgement :

P.B. Mukharji, J.

1. We have heard this Appeal and Reference together.

2. The appellant Sankar Kumar Dutta alias Haran Dutta, a police constable, was charged under Section 302 of the Indian Penal Code for committing four murders by causing the death of (1) his wife Pusparani Dutta, (2) his eldest son aged about

five years, (3) his second son aged about three years and (4) his youngest female child aged only a few months. He was unanimously found guilty by the jury. The learned Sessions Judge of Nadia in accepting that verdict and sentencing him to death said:

'The accused has committed a most heinous offence which was premeditated and preconceived one. He has most brutally murdered three of his children and his wife too. All of them must have been duped to leave their house and to go to that secluded place little knowing what was in store for them. This accused did not spare his own children who were so helpless nor he spared his own wife who so much depended on him. The acts of this accused will remain written in black in the history of criminology citing an example how brutal and knave a human being could be and to show how this accused could be-have more brutally than even the most ferocious beasts of the jungle. A culprit who acts in such a dastardly manner deserves no mercy and I think extreme penalty of law will be the only appropriate punishment'.

2a. Naturally, against this background and on the records before us we have given our most anxious time and consideration to the very important point raised on behalf of the appellant that the trial in this case was by a court, *coram non-judice*. The only argument advanced before us is that a juror out of nine jurors who tried this case, and whose name was Amarendra Nath Chatterjee and whose number was 69 was a signatory to the inquest report in this case. Therefore, it is contended that he was not a proper juror, that he was a biased and partial member of the jury and so his presence vitiated the whole constitution of the court which included the jury in this case.

3. This objection was never taken either when the jurors were empanelled or when objections to the individual jurors were allowed or even at any stage, during the whole course of trial, in fact this objection was never taken on behalf of the appellant until the matter came up before us in appeal and reference and that also at the very last moment when the matter was actually taken up for hearing. It is said that the learned Advocate for the appellant examining the records in the case which have been sent to this Court discovered the fact of this identity between a

witness to the inquest report Amarendra Nath Chatterjee and the juror Amarendra Nath Chatterjee.

4. Upon that we naturally felt that the point was of a grave nature and the facts must be properly known before taking up determination of the point. We, therefore, directed the District Authorities, both the District Magistrate and the Sessions Judge of Nadia to report on the identity of the person Amarendra Nath Chaterjee, signatory to the inquest report and a member of the jury of the same name being juror No. 69. Both the District Magistrate and the Sessions Judge sent a report. Both their reports establish the identity. Juror Amarendra Nath Chatterjee in his statement before the Sessions Judge admitted his signature to the inquest report, and also the fact that he acted as juror. This statement has been sent by the Sessions Judge to this Court and also contains the following admission :

'I came to court to act as juror after about 10 months since the date of my putting those signatures, as such, I had no recollections to the same. I had no knowledge as to the fact of the case when I was empanelled to act as one of the jurors. It did not strike me at all when I was empanelled as one of the jurors that my signing in the inquest report would be a bar to my sitting as a juror'.

5. It was contended on behalf of the State by the learned Deputy Legal Remembrancer that this objection was no longer open to the appellant as the stage for taking such objection was over so that it could not be taken up for the first time in this manner. The answer to this point on the merits is that it is a point which was not known to the appellant at any stage of the trial and therefore how could the appellant take it earlier. If anything, this fact that a juror was also a witness to the inquest was known to the juror himself who acted as such and to the prosecution itself which during the investigation carried on the inquest. The inquest report which is not evidence as such but which has to be printed under Rule 14 part II of the Chapter 9 of the Appellate Side Rules shows that it was made by Assistant Sub-Inspector of police, Pabitra Nath Sarkar, being P. W. 20. Therefore, P. W. 20 Pabitra Nath Sarkar, Assistant Sub-Inspector and the juror himself Amarenrda Nath Chatterjee of Kaligunj both knew the fact that this juror was a witness to the inquest and has signed as such the inquest report. Neither of

them disclosed that fact to the learned Sessions Judge when the jurors were being empanelled. So far as the juror Amarendra Nath Chatterjee is concerned he was clearly committing breach of Section 294 of the Code of Criminal Procedure in not disclosing this fact to the Judge, Section 294 of the Code of Criminal Procedure provides that if a juror or assessor is personally acquainted with 'any relevant fact', it is his duty to inform the Judge that such is the case, whereupon he may be sworn, examined, cross-examined and re-examined in the same manner as any other witness. It is undoubtedly true in this case that this juror was personally acquainted with a very 'relevant fact' in this case. That relevant fact is the finding of the four dead bodies, the place where they were lying and the nature of the injuries. In a jury trial for murder of four persons whose dead bodies have been viewed at the inquest by a juror, it cannot be disputed that the finding of the dead body, their position and the nature of the injuries on them are relevant facts. No doubt it is true that at that stage the accused was not in the picture and it was no part of that inquest inquiry report to find who murdered these individuals. But that is not the only relevant fact in the murder trial. The whole issue in a murder trial is whether the accused killed the victim. The death of the victim, his or her dead body and the nature of the injuries inflicted upon him or her, therefore, form part of extremely relevant facts in a murder trial. Hence juror Amarendra Nath Chatterjee did not fulfil the duty cast upon him by the law to inform the Judge that he was personally acquainted with these relevant facts. His explanation, therefore, that 'It did not strike me at all when I was empanelled as one of the jurors that my signing in the inquest report would be a bar to my sitting as a juror,' is only a plea of the ignorance of the law which in the circumstances, can be no excuse. This is the answer on the merits.

6. Procedurally also we find that such points or rather more accurately similar points have been allowed by courts during the appeal and naturally long after the trial and the verdict. In a Division Bench case of this Court in *Emperor v. Kishori Khanra* reported in : AIR1943 Cal515 , it is laid down that an accused person can take objection to the defective constitution of the jury even for the first time at the hearing of his appeal in the High Court although such objection has not been taken either in the lower court or in the grounds of appeal. It is observed there by Khundkar, J.: at p. 518 of the report:

'That objection is such that it could be taken at any time, for, it is an objection to something fundamental and affects the very constitution of the tribunal.'

Sen, J. : who delivered a concurring judgment also observed at p. 521:-

'The point now raised is not one of mere technicality. It goes to the very foundation of the trial. It is a point of law based on facts regarding which there is no dispute whatsoever and it has been taken by a person who has been convicted. This Court always has entertained and I have no doubt always shall continue to entertain a point of law of this description raised by a convicted person, even if it is raised for the first time and even if is not taken in the grounds of appeal.'

7. Lord Atkin lays down the law on this point in *Ras Behari Lal v. The King Emperor*, reported in in the following terms:-

'This duty has latter been held to be a continuous duty throughout the trial, if would be remarkable indeed, if what may be 'a scandal and perversion of justice' may be prevented during the trial, but after it has taken effect the Courts are poweriess to interfere. Finality is a good thing, but justice is better. According to ordinary procedure in criminal trials the accused has a right of challenge either peremptory, or for cause; and it may very well be that if knowing the alleged defect he stands by and takes his chance of a verdict he is precluded from thereafter taking the objection. But it the cause of objection is in fact unknown to him, there appears to be no reason why the Court in a proper case should not give effect to it.'

Lord Atkin describes the result of upholding Such objection to mean that the Court holds thereby that there has been a 'mis-trial' and compared it to the procedure in England where the ordinary order would be to award a 'venire de novo' witness' as in the case of *R. v. Wakefield*, (1918) 1 KB 216, when a person not qualified and not summoned, personated on the jury a man who was qualified and had been summoned. That seems to be also the tenor of the decision of the Supreme Court in *Kapil Peo Shukla v. State or Uttar Pradesh* : 1958 CriLJ262 and specially the observation made at p. 124 and the reference made there to the Privy Council decision reported in . Incidentally it must be pointed out that where this happens it

is not a question of arithmetic. Here it is said only 1 juror in the company of 9 (sic) and that it was a unanimous verdict and, therefore, it is contended that one bad vote does not vitiate the other votes. This in my opinion is an entirely wrong approach. In the Privy Council decision of Ras Behari Lal's case the verdict was one of six to one, but even then that could not stand on the way of the Privy Council setting aside the verdict. The influence of the minority of one, claiming special acquaintance with a relevant fact, may be incalculable with the majority of other jurors and may be the governing factor of the majority decision. The Court can never know the nature of such influence and therefore cannot permit it on the ground of minority of numbers.

8. It was contended on behalf of the State that the inquest report not being legal evidence, the juror Amarendra Nath Chatterjee's signature to it could not disqualify him from trying the case because the juror's oath is to try the case 'only on the evidence' before him and not on his personal knowledge. The form of the oath is 'I swear that I will justly and truly try and determine the questions submitted to the jury in this case, and will give a true verdict according to the evidence.' Mr. Banerjee, the learned Deputy Legal Remembrancer, appearing for the State also submitted that the learned Judge in his charge to the jury made it expressly clear that 'You should be guided only on the evidence recorded before you and on no other considerations. You should clearly forget if you have heard anything about this case outside the Court room; you keep your mind open.' we accept the proposition that ordinarily the inquest report is not legal evidence. See in this connection the observation of the Supreme Court in the case of Pandurang v. State of Hyderabad, reported in : 1955 CriLJ572 where it is said at p. 220:-

'It is questionable how far an inquest report is admissible except under Section 145 of the Evidence Act but we do not regard the difference as of value so far as the appellants are concerned.'

9. The inquest report itself may or may not be evidence. That is not the point of grievance. The inquest report only reports under Section 174 of the Criminal Procedure Code an investigation and a report of the apparent cause of death describing the wounds and other marks of injury as may be found on the body and

stating in what manner or by what weapon or instrument such marks appear to have been inflicted, and that should be made in the presence of two or more inhabitants of the neighbourhood who shall sign such report. The report, of course, is made and signed by the police officer. The facts stated in the inquest report are relevant facts at the trial of murder. Therefore, a member of the jury by being witness to the inquest during investigation at least becomes a possible witness of some relevant facts at the trial. It is then said that participation in the inquest is not sufficient to disqualify the juror in the sense of prejudicing him against the accused. Now whether it is so or not may depend on the facts of a particular case and what happens behind the closed doors when the jury discuss and consider their verdict. Whether again one juror can influence his remaining eight colleagues, as I have just said can never be known by the Court. They are all in the realms of conjecture. It is difficult to find out what actually happens or has happened in such a case. The warning is given, in the observation of Lord MacDermott in the Privy Council decision in *Tumahole Lereng v. The King*, reported in where the learned Lord observed:.

'It may be stated at once that Mr. Driver's good faith was not impugned by the appellants and that their Lordships have no reason to think that in acting he did he was moved by anything more than a desire to prepare himself for the duty he then anticipated. His action was none the less most unfortunate and his subsequent participation in the trial highly irregular. The burden of this complaint does not lie in the fact that Mr. Driver came to Court with a knowledge of the physical features of the terrain; it lies in the fact that before the trial, and in the absence of the appellants or their representatives, he had acquainted himself with certain material aspects of the Crown case in the company of a number of Crown witnesses and had interrogated Jan Gat regarding several important aspects of his evidence. As has been so often said, justice must not only be done but must manifestly be seen to be done. In their Lordships' Opinion, Mr. Driver's conduct was such as to cause doubt in the public mind as to the complete, impartiality of the proceedings in which he subsequently took part As counsel for the Crown said when dealing with this aspect of the case, it has not been shown that what Mr. Driver did before the trial prejudiced the appellants. But it might well have been, thought, when his activity became known, that he had come to Court with a biased mind in the sense

of having formed a definite view as to what had occurred or as to the credibility of the witnesses whom he had observed or questioned. It might also have been, thought that he had been told more, than could be legally proved, or that his interrogation of an accomplice might have had an effect upon the story as told by witness after wards at the trial. All this, of course, is in the realm of conjecture, but where the irregularity complained of may reasonably engender suspicions of this nature it cannot be left out of account, particularly when as here, the opinion of the officer could have been communicated to the Judge in private. In the case of *Mahlikili Dhalamini v. The King*, 1942 AC 583 : (AIR 1943 PC 4) to which reference has already been made, Lord Atkin delivering the judgment of the Board said: 'Prima facie, the failure to hold the whole of the proceedings in public must amount to such a disregard of the forms of justice as to lead to substantial and grave injustice within the rule adopted by this Board in dealing with criminal appeals.'

10. These observations are of grave Importance in determining the question before us. It may just well be that this particular juror had little or no influence on his other eight colleagues. It may also be, as he says, that he had forgotten all what he had seen at the inquest. It may be that no extraneous consideration entered his mind while trying the case as a juror and that he did try in fact on the legal evidence before the jury. But that is not the point The point is that what in fact happened with him cannot be known. The result is that justice may have been done but does not appear to have been done. Appearance of justice today is an overvalued concept which has acquired almost the character of a slogan or a cliché, repeated from platforms and press, legal and non-legal that justice must appear to be done. No doubt the rule on which it is based is a wholesome protection both for the litigants before the Court as well as for the Court itself and its administration of justice. But the danger was forcibly pointed out by Slade, J. In *R. v. Camborn Justices* reported in (1954) 2 All ER 850 at p. 855 as follows:-

'The frequency with which allegations of bias have come before the Courts in recent times seems to indicate that the reminder of Lord Hewart, C. J., in *R. v. Sussex JJ.*, ex parte McCarthy (1924) 1 KB 256, that it is 'of fundamental importance that justice Should not only be done, but should manifestly and

undoubtedly be seen to be done 'is being urged as a warrant for quashing convictions or invalidating orders on quite unsubstantial grounds and, indeed, in some cases, on the flimsiest pretexts of bias.'

Slade, J., while endorsing and fully maintaining the integrity of the principle reasserted by Lord Hewart, C. J., expresses the view in that case that 'this court feels that the continued citation of it in cases to which it is not applicable may lead to the erroneous impression that it is more important that justice should appear to be done than that it should in fact be done.' We need only add (hat we must not so overrate 'appearance' only as to displace or undermine 'substance' in the administration of Justice.

11. But we do not think that this is a flimsy ground. Nor do we think that it is a frivolous ground. It is a ground of substance in the case before us. Indeed it is not also a question of mere appearance or form of justice not being maintained but the danger of bias being formed in the mind of a juror before trial. Whether in fact such bias did so form or not is in the realm of conjecture and speculation because this Court has no means to find it out. We do not consider that this Court should enter into such conjecture and speculation whether in fact there was a bias induced in the mind of this juror for having been present at the inquest. We have no means of verifying it, and we cannot allow a man to be tried for his life on such conjecture.

12. In this connection it may not be inappropriate to remember and observe the caution given by Sir Barnes Peacock in the decision of the Privy Council in *Hurpurshad v. Sheo Dyal*, reported in 3 Ind App 259 at p. 286 where it is said:-

'It ought to be known and their Lordships wish it to be distinctly understood, that a Judge cannot, without giving evidence as a witness, import into a case his own knowledge of particular facts. If the means of knowledge of the Judicial Commissioner of the facts spoken to by him in his judgment, as depending upon, his own knowledge, were capable of being tested it would probably turn out that it depended upon mere rumour or hearsay, and that his evidence as to those facts would not have been admissible if he had been examined as a witness.'

13. The whole scheme of the Criminal Procedure Code is, to our minds, clear on this point. There is a three-fold safeguard to protect the interest of the accused and the prosecution alike and integrity of the jurors. The jurors have to satisfy certain tests and qualifications, for instance, a juror cannot be a foreigner or a minor. These tests must be observed and followed by the State and the administration in calling jurors. That is a duty cast upon the administration and the State. The second protection comes from the right of objection given to the accused under Section 277 of the Criminal Procedure Code. The accused can object to any juror as his name is called out and he makes his appearance on grounds to be stated by him. Section 278 of the Criminal Procedure Code states the grounds in the widest possible terms. It includes inter alia presumed or actual partiality of the juror or any circumstance which, in the opinion of the Court renders him improper as a juror. The third protection flows from Section 294 of the Criminal Procedure Code where duty is cast upon the juror to inform the Judge if he is personally acquainted with any relevant fact, in which event certain procedure has been laid down to which reference has already been made. It is the duty of the Court in this scheme to decide the objection to a juror as indicated in Section 278 of Criminal Procedure Code, and that Court shall allow such objection if it is made out to the satisfaction of the Court-But the Court must be satisfied about ground of objection before it allows it and it cannot allow any or every flimsy ground of objection. Our attention has also been drawn to section 556 of the Criminal Procedure Code which provides for the case in which a Judge or Magistrate is personally interested as an example, of the illustration of the principle that personal interest disqualifies such a Judge or Magistrate. These principles being not in doubt, the whole question here is whether presence at the inquest creates such a personal interest to disqualify the person so present from acting as a juror. On general principle we consider that a person who is a witness to a fact relevant to the trial of the case is not ordinarily a competent person to be a juror unless he satisfies the test laid down in Section 294 of the Criminal Procedure Code and is so found by the Judge.

14. It remains now for us to make a reference to the English and American principle followed by the courts in America and England on this point because reference to it has been made, in the arguments. It will not be necessary in our

view to discuss American judicial decisions on the point. It would be enough to state the principle followed there. In 35 Corpus Juris Article 363 at page 335 it is stated:-

'If a juror has formed no opinion as to the merits of the case or the guilt or innocence of accused, he is not incompetent merely because he has heard the case talked about, even in the form of a detailed statement, or because he has read about the case in the newspapers, or talked with the prosecuting witness, or one of the parties, or a witness, or with a person who has heard a witness testify, or because he has some personal knowledge of some of the facts involved, or has been told by a juryman on a former trial that accused was guilty; but if he has conversed with one of the parties with regard to the merits of the case it is not error to exclude him.'

15. In the same volume of Corpus Juris at page 347 in Article 381 the principle how far evidence adduced at trial on preliminary proceedings with which a juror is associated disqualifies him is discussed. There the statement of the law is as follows:-

'A juror is not incompetent to sit on the trial of a case because he heard the evidence on the trial of a plea in bar to the indictment, or on a preliminary investigation as to defendant's sanity. Nor is a juror incompetent, provided he has formed no opinion as to defendant's guilt or innocence, because he has heard the evidence given on a coroner's inquest, habeas corpus proceeding, or on the preliminary hearing before a magistrate; but he is incompetent if he has formed an opinion from hearing such evidence, even it has been held, though he states that he can, notwithstanding such opinion, render an impartial verdict. But there is authority to the contrary on the latter proposition.'

15a. The statement of the American law in Corpus Juris appears to proceed on the test whether the knowledge or opinion which reached the juror has the effect of determining his opinion. That is precisely what is intended to be found out by the procedure laid down in our Section 294 of the Criminal procedure Code. In this case the juror not having discharged his duty under Section 294, this fact whether his knowledge of the inquest determined or prejudged his opinion in the matter, is

not available to the Court. In some cases it may not also be possible to determine whether in fact previous knowledge had been available to determine the juror's opinion, in that case also it would be dangerous to allow such a juror to sit as a judge of fact.

16. In this connection, therefore, it is interesting to note the difference between the American law and English principle and practice. Reference in this connection for English law may be made to the third edition of Halsbury's Laws of England edited by Lord Simonds, Volume 10, Article 752 at pages 412-13. The law as briefly summarised there, is stated in the following terms:-

'The, causes for challenge are that the juror called is an alien or a minor or not qualified to serve as a juror, or has some personal defect which renders him incapable of discharging the duty of a member of the jury, or that he is not impartial, or that he has served on the coroner's jury in respect of the same matter or that he is a peer or Lord of Parliament sworn on a jury for the trial of a commoner, or on the ground that he has been convicted of an infamous crime, unless he has received a free pardon'.

Mr. Mukti Prosanna Mukherjee who has very ably argued the case of the appellant, naturally draws our attention and puts a good deal of reliance on this statement of the law in Halsbury's Laws of England that service on the coroner's jury is a cause for challenge in England. The cases given there in Halsbury's Laws of England in support of that proposition are two, (1) R. v. Snow, (1776) 1 Leach 151 at p. 152 and (2) R. v. Sullivan, (1838) 8 Ad and El. 831. These two cases are interesting because the English principle appears to be not to encourage such persons to act as jurors. But if such a thing happens, the English Courts apparently have not been too dogmatic in setting aside trials consequent upon the event. In Snow's case (1776) 1 Leach' 151 at p. 152 of the report a quotation appears from the note of the learned Judge who tried the case of manslaughter and which run as follows:-

'But it afterwards appeared, which I did not know at the trial, that several of the Jurymen who tried the prisoner had been on the Coroner's Inquest, which found him guilty of wilful murder'.

But looking at the ultimate result on appeal as reported in that case the whole conviction was not set aside but it was changed from the offence of wilful murder to one of manslaughter only and the prisoner was recommended to a pardon. In Sullivan's case a juror after being sworn had himself stated to have been one of the grand jury. But in spite of that statement there was no objection. Therefore it was held that it was not a mistrial. This case is; not again on the point but it is concerned more with the time for challenging and the effect of making an objection after such time was over. A distinction appears to have been made in England between the different types of the jury, specially jury of issue and assessment on the one hand and the jury of presentment and inquiry on the other and different standards appear to apply to them on this question of how far personal and previous knowledge acts as a bar in different cases. In 23 Halsbury's Laws of England (Third Edition), Article 4 at page 3 it is said:-

'Nevertheless a broad distinction may be drawn between juries summoned to inquire and make presentment, and juries of issue and assessment'.

17. In conclusion it is necessary to refer to the Privy Council decision in Alexander Kennedy v. The King , for it was argued before us that the previous decision of the Privy Council reported in has been questioned in this decision. The principle laid down in Alexander Kennedy's case by the Privy Council is it is not the law that in every case in which there was material for a Successful challenge of a juror and it was not made for excusable reasons, an adverse verdict should be set aside. In that case the accused was convicted under Sections 418 and 419 of the Ceylon Penal Code corresponding to sections 435 and 436 of the Indian Penal Code for having caused mischief by fire in respect of property on the land and in respect of the building which contained the shop. The stock 'whilst stored in the building' was insured with certain insurance companies. Among the jurors were persons who were employed under firms or companies which were agents of the insurance companies in the sense that they were not general agents doing insurance business but received commission or discount on insurance placed by them with insurance companies for themselves or their business connections. But the jurors concerned were themselves in departments of their respective businesses quite other than and distinct from any insurance agency and had no knowledge of or

concern with any matter of insurance. The Privy Council there held that these jurors could not have been successfully challenged, on the ground of any presumed or actual partiality, even if their position in regard to the insurance companies had been known at the trial and consequently no question arose as to whether the verdict should be set aside on, the fact coming to be subsequently known. Lord Roche at p. 7 of report in 42 Cal WN : (at p. 113 of AIR 1937 PC) discusses the previous decision of the Privy Council reported in and lays down the principle:-

'Their Lordships see nothing in that decision to warrant the wide proposition contended for that in, every case in which there was material for a successful challenge and it was not made for excusable reasons, an adverse verdict should be set aside. Their Lordships as at present advised are of the opinion that such a proposition is ill-founded and is contrary to the well-settled principles laid down by this Board with regard to its intervention in criminal matters.'

It will be recalled that in Ras Behari Lal's case a juror could not understand the language on which evidence was given. That case is clearly provided for under Section 278 (g) of the Criminal Procedure Code where it is distinctly stated as a ground that the juror is unable to understand the language in which evidence is given. The Supreme Court in Rameshwar Bhartia v. The State of Assam, reported in : 1953 CriLJ163 makes the observation at p. 165 (of Cri LJ) : (at p. 407 of AIR) that a sanction for prosecution does not stand on the same footing as a direction for prosecution and that where a Magistrate who had granted a sanction for prosecution of the case under Section 48 of the Assam Food Grains Control Order in his capacity as a Director under that order tried the case himself, that trial was not rendered illegal as it could not be said that by reason of granting such sanction he had become 'personally interested' in the case within the meaning of Section 556 of the Criminal Procedure Code. To our mind this case has no application to the facts of the present appeal and reference before us and the point that they raise. The present case before us is not a case of distinction between sanction to prosecution and direction to prosecution.

18. For these reasons we reject the reference. We allow the appeal and set aside the conviction and sentence. We direct re-trial of the appellant on the same charge according to law. The re-trial will take place before the learned Sessions Judge of Nadia provided he is not the same learned Judge who tried the case; we are told, that he is under orders of transfer. If he is not under orders of transfer as suggested by the learned Deputy Legal Remembrancer, then this re-trial will take place before the learned Sessions Judge of Murshidabad which is the next adjoining district.

N.K. Sen, J.

19. I agree and have nothing to add.

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