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Emperor Vs. Harkumar Barman Roy

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Court : Kolkata

Decided On : Mar-11-1913

Reported in : (1913)ILR40Cal693

Judge : Sharfuddin and ;Richardson, JJ.

Appellant : Emperor

Respondent : Harkumar Barman Roy

Judgement :

Sharfuddin, J.

1. This is a Reference under Section 374 of the Criminal Procedure Code made by the Additional Sessions Judge of Mymensingh. There is also an appeal against the sentence of death by the appellant.

2. The prosecution case is as follows. Ganga Moyi Dasya was a tenant and a near neighbour of the accused. Between these there had been a dispute, for some time before the present occurrence, with regard to the occupation of a certain bari which was in possession of Ganga Moyi, the deceased.

3. On the 3rd September 1912 Ganga Moyi, at about noon, is said to have been sleeping in the bari in question, while her daughter-in-law Bagala Moyi Dasya (P. W. 1) was in the kitchen, which is just to the west of that bari, at a distance of five

or six cubits, when suddenly Bagala heard a sound as if something had fallen down, and going to the bari she saw the accused cutting Ganga Moyi on the neck with a dao. She went to the uthan of the bari and began to scream; she id also said to have seen the accused running away. It is said that her screams attracted people who happened to be present in the near neighbourhood. The first man to arrive was one Syed Ali Kari (P. W. 2). He questioned Bagala, who told him that Harkumar, the accused, was the murderer. Other people also are said to have come up, to whom also she made the same statements.

4. [His Lordship then dealt with the evidence in detail and continued:]

5. The jury returned a unanimous verdict of guilty under Section 302 of the Indian Penal Code, and the learned Sessions Judge accepting that verdict has passed the present sentence. From the record it appears that the jury returned to the Court after fifty minutes. It is clear, therefore, that their verdict was not a hasty verdict. This verdict was given on a Saturday, and the learned Judge intimated that he would pass orders on the following Monday. On Sunday following the Sessions Judge was informed by two pleaders of his Court that the jury had arrived at their verdict by casting lots. The Sessions Judge thereupon asked the Additional Sessions Judge who had tried the case to make an inquiry.

6. The story of casting lots in the jury room is this: Babu Mohim Chandra Roy, a senior pleader of that district, had one of the jurors named Sarat Chandra Majumdar as a guest on the evening following the close of the trial. He says that Sarat Chandra Majumdar had told him in the evening of that Saturday that the verdict had been arrived at by casting lots. As four jurors were for returning a verdict of guilty arid Sarat Babu was in favour of a verdict of hot guilty, the four jurors tried to win him to their side, and lie tried to persuade them to his side. Neither side being able to persuade the other, they decided to decide the matter by casting lots. He further says that his impression was that all the five jurors had consented to abide by the result.

7. Before we decide whether a statement of a juror as to what happened in the jury room is admissible or not, we desire to observe that it is not likely that, when four jurors were for a verdict of guilty, they would consent to abide by the result of the

method alleged. In the inquiry all the jurors have been examined, and Mohim Babu and a man named Sudbanya Kumar Dey, who is an orderly of one of Subordinate Judges of that district, have also been examined.

8. No authority of any of the High Courts of this country has been placed before us. We have, however, many authorities of the Courts in England on the question whether a sworn statement of a juror that the verdict was arrived at by casting lots is or is not admissible. Some of those authorities are the following:

(i) The case of Owen v. Warburton (1805) 1 B. & P. 326 where it was held that an affidavit of a juryman could not be received.

(ii) The case of Straker v. Graham (1839) 4 M. & W. 721 where it was held that, on a motion for a new trial, the Court will not receive an affidavit by an attorney of an admission made to him by one of the jurymen that the verdict was decided by lot.

(iii) The case of Burgess v. Langley (1843) 5 M. & G. 722. The Court refused to grant a rule nisi for a new trial upon an affidavit, stating that one of the jury had declared in open Court in the presence and hearing of the others that the verdict had been decided by casting lots.

(iv) In the case of Queen v. Murphy (1869) L. R. 2 P. C. 535, 549 which was an appeal from the Supreme Court of New South Wales, it was remarked by their Lordships at page 549: 'the Courts here have at times expressed reluctance, which we consider salutary, against receiving the separate statements of any of the individuals who had in combination formed a jury, in order to impeach their verdict.

9. On the strength of the above authorities we exclude from our consideration not only the statement of Mohim Babu, which is mere hearsay, but also the statements of the five jurors. There remains, however, the statement of Sudhanya Kumar Dey, an orderly, on which we could act, but his evidence is not sufficient to disclose any misdemeanour on the part of the jury. What he says is this: 'I could see the young Hindu juror (Sarat Babu) take some paper crumpled up in his alwan, and shake them up and take them out again.' This does not show that the verdict was arrived

at by casting lots. We, therefore, cannot act on this evidence.

10. On a careful consideration of the evidence we are of opinion that Bagala, Syed Ali Kari and others, who heard Bagala mentioning the name of the accused, have been rightly believed by the learned Sessions Judge and the jury. That being our opinion, we dismiss the appeal and confirm the sentence of death.

Richardson, J.

11. I agree. The fact the panchayet arrested the accused shortly after the murder and before the arrival of the police is strong in confirmation of the story told by the witness Bagala. The evidence of Mahomed Syed Ali Kari seems to have impressed the Judge, and no doubt the jury also. The Judge refers to the frank and straightforward demeanour of the witness in the witness-box. There are other witnesses also who corroborate Bagala. As to motive, it is clear that the accused and the deceased were on bad terms. In the previous year the deceased had taken proceedings against the accused under Section 107 of the Criminal Procedure Code. The allegation on behalf of the defence that Bagala was on terms of illicit intimacy with a brother of the panchayet is certainly not supported by the evidence adduced.

12. As to the suggestion that the verdict of the jury was arrived at by lot or ordeal, I agree that the statements of the individual jurors are inadmissible, and that the evidence of Sudhanya Kumar Dey is insufficient to justify us in coming to the conclusion that the jurors were guilty of any impropriety in the mode in which they arrived at their verdict.

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