

Manik Gazi Vs. Emperor

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Court : Kolkata

Decided On : Mar-26-1941

Reported in : AIR1942Cal36

Appellant : Manik Gazi

Respondent : Emperor

Judgement :

Bartley, J.

1. The appellant in this case was placed upon his trial upon a charge of murder before a jury consisting of seven persons in the Court of the learned Additional Sessions Judge of Khulna. The jury by a verdict of 4 to 3 found him guilty and the learned Judge who records that though he does not agree with the verdict of the jury, he accepts it, convicted him under Section 302, Penal Code, and sentences him to transportation for life. The case for the prosecution was briefly that on the night of 10th June 1940 one Madar Gazi was returning home when he was suddenly attacked in a jute field by the appellant who stabbed him in the abdomen with a dagger. At the time of the occurrence he was accompanied by a man called Jasim Gazi who was examined in the case as a prosecution witness. This man was in front of him at the time of the actual assault. In the Court of Session his evidence was that he heard Madar saying that Manik had stabbed him but he did not see anybody there. His original statement which for some reason, not apparent

from the record, was recorded by a Magistrate under Section 164, Criminal P.C., was that he heard Madar saying that Manik had stabbed him and he turned back and saw two men running away, one towards the south and one towards the north. He could recognize Manik who was running towards the south. The injured man was brought home with a blood-stained knife in his hand. He told a number of people that Manik had stabbed him with the knife. He was attended by a doctor who recorded his dying declaration, according to him, at about 2 o' clock in the morning. The declaration was to the effect that Manik Gazi had stabbed him that evening a little after dusk in the jute field of Tara Gazi. The witness Jasim saw the occurrence and both men caught the assailant, snatched away the dagger from him and he ran away. There was another man with him. This dying declaration does not appear to be made over to the police at the time of the investigation although the doctor came back next day after the arrival of the investigating officer. The injured man died about 4 o'clock that day.

2. Information had been lodged to the thana about 7 o'clock in the morning of 11th June and it contained the story that after the stabbing there was a struggle between the assailant and the witness Jasim Gazi after which the assailant escaped. The information also contained the statement that the informant who was a brother of the deceased man had seen the dagger with which his brother was stabbed, in the hands of a man called Asiruddi. For that reason he believed that Asiruddi was also connected with the occurrence. In his charge to the jury the learned Judge pointed out, in the first place, that there was no evidence of any adequate motive though he added quite rightly that it was not obligatory for the prosecution to prove it. When dealing with the evidence, however, the charge delivered by the learned Judge was not entirely satisfactory in that there are important omissions with regard to certain very material aspects of the case as presented in the evidence. The only evidence beyond the dying declaration made by the deceased man is that of prosecution witness 19, Jasim Gazi. The record shows that this witness was examined under Section 164, Criminal P.C., a somewhat unusual feature of the present case. When examined before the Court of Session this witness was declared hostile and cross-examined on the statement which he had already made under Section 161, Criminal P.C. In connexion with this evidence, the learned Judge said that the prosecution was allowed to prove

this statement which was to the effect that the witness had recognized Manik. He then pointed out that even in his deposition before the committing Court, the witness refused to adhere to the statement and finally went on to say that in any case his statement under Section 164, Criminal P.C., is not evidence in the case and that the jury could not even consider whether the statement was true or not. This of course is not a correct direction of law. A statement made under Section 164, Criminal P.C., is not inadmissible in evidence and may be used to corroborate or contradict a statement made in the Court in the manner provided by Sections 145 and 157, Evidence Act. A further consideration of the present case is that the statement was actually used by the. prosecution to discredit their own witness in the manner provided by Section 155, Evidence Act.

3. In these circumstances we think it was incumbent upon the learned Judge to emphasise to the jury that they should exercise a very considerable amount of caution before making up their minds, to rely upon the statement of the witness upon whom even the prosecution did not rely to any considerable extent. We think the absence of any such direction in the charge of the learned Judge must be held to have prejudiced the case of the appellant. Again there is no reference in the charge to the details contained in the first information report and the name of the man Asiruddi who, as it appears from the evidence, was the only person actually connected with the ownership of the dagger with which the deceased was stabbed, is not to be found in the charge delivered by the learned Judge. A further point which is not mentioned is that although the recorded dying declaration was, according to the doctor, taken before the arrival of the investigating police officer and although the doctor himself came back to the house during the investigation, that dying declaration was not made over to the investigating officer, according to his own evidence, for four days after the date of occurrence. We are of opinion, therefore, that this point should certainly have been put to the jury in view of the position that the only direct evidence in the case besides the dying declaration was the evidence given by the witness Jasim Gazi. In view of these infirmities in the learned Judge's charge we are of opinion that the majority verdict of the jury finding the appellant guilty of murder cannot be sustained as, in our view, there was such non-direction on material points in the case as amounted to prejudice. We accordingly allow this appeal, set aside the majority verdict of the jury and the

conviction and the sentence based thereon and remand the case for retrial in accordance with law before some other Court.

Mohamad Akram, J.

4. I agree.

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