

Emperor Vs. Ram Chandra Roy

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Court : Kolkata

Decided On : Dec-05-1927

Reported in : AIR1928Cal732

Appellant : Emperor

Respondent : Ram Chandra Roy

Judgement :

Cuming, J.

1. This is the case of three persons, Ram Chandra Roy, Kala Chand Roy and Maniruddin Mondal, which has been referred to us under Section 307 by the learned Sessions Judge of Murshidabad. These three persons were tried on three charges : one under Section 395, I.P.C., one under Section 147, I.P.C., and one under Section 342, I.P.C. The jury unanimously found them not guilty under all the three sections. The learned Sessions Judge accepted the verdict of the jury so far as Section 395, I.P.C., was concerned. He, however, disagreed with the jury so far as their verdict under Sections 147 and 342, I.P.C., was concerned. He was of opinion that all the three accused persons were guilty under Section 147, I.P.C., of rioting and that one of them, Ram Chandra Roy, was guilty under Section 342, I.P.C., of unlawful confinement. The facts of the case are briefly these : One Shashi Bhusan Chowdhury who was the proprietor of the Nadhai estate died some time in 1918 leaving as his heirs two minor sons, Ahi Bhusan and Bibhuti Bhusan,

under the guardianship of their mother Shailabala Chowdhurani and a grandson Phani Bhusan, the son of a predeceased son of his. This boy who was also a minor was under the guardianship of his mother Harimati Chowdhurani. The usual disputes appear to have arisen between these two ladies or more correctly between persons looking after their interests and on 28th April 1925 Sreemati Harimati Chowdhurani, the mother of Phani Bhusan, applied to the District Judge on behalf of her minor son for the appointment of a common manager under Section 93, Ben. Ten. Act.

2. At the time of making this application she asked that an ad interim receiver might be appointed for certain reasons which are not necessary to state here. This prayer for the appointment of an ad interim receiver was granted ex parte on the day that the application was filed and one Babu Jnanendra Chandra Chowdhury, a pleader of the District Judge's Court, was duly appointed as the ad interim receiver. This gentleman furnished the necessary security and received his letter of appointment on 9th May 1925 and on the following day left Rajshahi and reached Nadhai on 11th May 1925. He then proceeded to take over charge of the estate. On 15th May 1925, at about midnight when the receiver was sleeping in the toshakhana room which he apparently used as his bad-room, a number of persons, some seven or eight in number including the three accused persons, came to the house and called upon the zemindari officials to turn the receiver out. The receiver informed them that he was there under the orders of the District Judge. This only apparently served to further exasperate the accused persons. They came into the house, entered the receiver's room and pulled him out and took him to the Dewankhana where they surrounded him. He was there made to produce the keys which he had received from one of the zemindari officials and also any papers what he might have with him. He was then taken by these persons back to the toshakhana and the door of the room was bolted from outside so that he was unable to leave the room. The next morning he was escorted to the railway station by the accused persons and a number of others. He came back to Rajshahi and reported the matter to the District Judge. Under the learned Judge's order he went to Nawabganj and there laid a formal complaint before the police. An enquiry was instituted. After considerable delay, due to the fact that this Court was moved and the case was transferred to the Court of the Sessions Judge of

Murshidabad, the case was heard with the result that I have already noted.

3. The plea of the accused persons was a simple plea of not guilty. They neither denied nor did they admit their presence at the time of the occurrence; neither as far as I can see, do they admit or deny that any occurrence took place. Ram Chandra filed a written statement in the Magistrate's Court in which he seemed to have alleged that the receiver had no right or authority to go and take possession and suggested that the receiver's father owed the estate some money. What was really urged on behalf of the defence or what exactly was their case in the Sessions Judge's Court or what was the case made for them in the Sessions Court it is somewhat difficult to say, though it might appear from the cross-examination of the prosecution witnesses that Ram Chandra and Kala Chand would admit their presence at Nadhai at the time when the receiver was there. It was suggested to the prosecution witnesses that they were actually taking tea with the receiver. In this Court, as far as I can understand, the case would seem to be that the story of the receiver is false and that in anyway the facts alleged, even if found to be correct, are not sufficient to support a case of rioting or unlawful confinement so far as the present three accused persons are concerned.

4. Mr. Bose, who has appeared for the three accused persons, has first argued that before we can interfere with the jury's verdict, we must be convinced that this verdict is perverse or patently wrong and that we should not interfere with the jury's verdict unless it is manifestly or patently wrong. The point of view from which reference under Section 307 should be considered by the High Court has been the subject of numerous judicial decisions. They seemed to vary from the extreme view that the High Court should be very reluctant to interfere with a verdict of a jury to the view that the High Court in dealing with these references is to be guided by the plain words of the Code. Speaking for myself, I have always thought that I am upon far firmer ground if I adhere to the strict words of the Code and do not attempt to interpret the Code in the light of the practice in other countries where law and conditions are different. Here the Code is clearly explicit. The High Court shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and of the jury, acquit or convict the accused. The Code would not seem to put the opinion of the jury on any higher plane than the

opinion of the Judge; both should be given due weight. There is no suggestion that more weight should be given to the opinion of the jury than to that of the Judge. Speaking for myself, I should, as general rule, be inclined to attach more weight to the opinion of the learned Sessions Judge. He equally with the jury has heard the witnesses and has been able to observe their demeanour. He has been trained to weigh and appreciate evidence and further he must give reasons for his opinion. The jury are a body of laymen unaccustomed to weigh or appreciate evidence who give no reasons for their opinion. Obviously, an opinion supported by reasons is likely to carry more weight than an opinion entirely unsupported by reasons.

5. The next point Mr. Bose has argued is that the charge does not set out that there were five or more persons engaged in the riot and hence there can be no case of rioting. It was not necessary in a charge of rioting to 'set out the allegation that there were five or more persons actuated by a common object. Rioting is an offence with a specific name and it is sufficient to describe the offence by that name and that name only. Section 221, Clause (2), Criminal P.C., clearly contemplates a case of this description and was enacted to meet a case of this kind, Where a person is charged with rioting it means that prosecution alleges that all the necessary ingredients constituting the offence of rioting are present. It is not necessary for the prosecution to set out what these ingredients are.

6. Mr. Bose has next asked us to hold that the prosecution should have proved the report made by the receiver to the District Judge which admittedly he made on his return to Rajshahi and as they did not do so we should presume that this report would not, if put in evidence, support the prosecution story. Now the answer to this contention is that this report could have only been used by the prosecution to corroborate the witnesses, if it came within the provision of Section 157, Evidence Act. The report, however, was not made at or about the time of the occurrence but some 24 hours after. Neither does it come under the second part of the section for it was not made to a person who can legally investigate the fact. It was made to the District Judge who had no power to investigate the matter. Probably if any attempt had been made by the prosecution to use it, strong objection would have been taken to it. Obviously, it is open to the defence to have used it under Section 155, Evidence Act to impeach the credit of the receiver. No attempt was, however,

made by the defence to do so.

7. I will now deal very shortly with the evidence in the case. The most important witness is the receiver, Babu Jnanendra Chandra Chowdhury. This witness is a member of the Eajshahi Bar of some 5 or 6 years' standing. He gives at great length and in great details an account of the occurrence of 19th May. As far as I can see no serious attempt was made in the cross-examination to challenge the correctness of these details. There is a suggestion in the cross-examination that this gentleman had tea with two of the accused persons. He himself denies this and the accused persons did not themselves suggest that they did so. But the suggestion would, I think, seem to show that the accused were admitting their presence at the time of the occurrence. This witness is a respectable gentleman, a pleader, as I have already stated, of 5 years' standing of Rajshahi Bar. No good reason whatever has been given why this gentleman should invent the story. Admittedly he was appointed a receiver of the estate by the District Judge and went to the place on 11th May under the orders of the District Judge; admittedly also he came back to Rajshahi on 16th May having been forced to leave Nadhai. His story explains why he was obliged to leave Nadhai and no attempt is made to put forward any other explanation as to why the receiver appointed by the District Judge was obliged to leave his-charge. It has not been shown to our satisfaction that this gentleman had any reason whatever for inventing the story. It has not been suggested by the accused themselves that he had any enmity with any of them. A somewhat vague suggestion is put forward as is frequently done that the case has been engineered by one Lalit Mohan Chatterjee. No attempt, however, has been made to explain why the receiver should lend himself to support a false case for the benefit of Lalit Mohan, whoever this gentleman may be. The way in which the story was told and its details leave no doubt in my mind that it is a true story and represents faithfully the events of the night in question. The witness is corroborated by a number of other witnesses. I need not deal, in view of the opinion I have already expressed, in detail with the evidence of the witnesses who corroborate him; they are some 11 in number. No serious discrepancies have, as a matter of fact, been pointed out between their evidence.

8. Mr. Bose has then argued that even accepting the story as told by the receiver as true, it does not establish the charges against these three accused persons. He contends that it would not show that the three accused persons were actuated by any common object or that there were the necessary five persons to constitute an unlawful assembly actuated by the common object. So far as the charge-under Section 147, I.P.C., is concerned it runs as follows:

That you, on or about 15th day of May 1925 at Nadhai, police-station Nawabganj, committed riot, the common object of your unlawful assembly being to forcibly dispossess the complainant receiver Jnanendra Chandra Chowdhury from the Nadhai estate or by criminal force or show of criminal force to compel the Aid receiver to discontinue his work as such.

9. What are the facts proved? The receiver was duly in charge of the estate. At about midnight the three accused persons with some others, in all about 8 or 9, came armed with guns, spears and swords. Ram Chandra, one of the accused, called upon the estate officials to turn the receiver out of the house. Ram Chandra was informed by the receiver that he was there under orders of the District Judge. On this Earn Chandra merely continued to abuse the receiver and also apparently the District Judge. The party then entered the house. The receiver was pulled out of the room and was taken to the Dewankhana surrounded by the three accused persons and a number of other persons. The door was locked up under Earn Chandra's orders. Maniruddin, one of the accused now before us, is described as being one of those, who surrounded the receiver, with a lathi in his hand. Ram Chandra and Kala Chand then forced the receiver to give up the keys and papers and then Khokna and other persons took the receiver to the Toshakhana and locked him up during the night. Next day he was sent forth to the Dewankhana by Ram Chandra and Kala Chand and was finally escorted to the railway station by Ram Chandra, Kala Chand and Maniruddin together with a large number of other persons. What other inference is possible but that all these persons, certainly more than 5 in number, were acting with the common object, namely, to force the receiver to give up possession of the estate and to discontinue his work as receiver. There were at least five persons so engaged, Dhiren, Khokna, Ram Chandra, Kala Chand and Maniruddin, and there were others each committing a

different act or in some case the same act in furtherance of the common object. Certainly force was used, the receiver was pulled out of the room and he was afterwards locked up for the night; thus certainly criminal force was used and there was also a show of criminal force, for these men were armed with swords, guns and spears. The evidence, I think, shows beyond any doubt that these three accused persons Ram Chandra, Kala Chand and Maniruddin took part in this riot.

10. Ram Chandra and Kala Chand certainly took the leading part while Maniruddin who is obviously merely a servant a somewhat more minor part. I find that Ram Chandra, Kala Chand and Maniruddin are all guilty under Section 147, I.P.C. As to the charge of dacoity, it has not been pressed, and the three accused persons stand acquitted of the charge of dacoity. As to the charge of unlawful confinement, it has been, I think, clearly brought home to one of the accused persons, Ram Chandra. It was under his orders that the receiver was shut up in the Toshakhana. I am satisfied from the evidence that the receiver was so confined and that he was unable to leave the room. Ram Chandra is, therefore, guilty also under Section 342, I.P.C. With regard to the two others Kala Chand and Maniruddin, I am not convinced that there is evidence necessary to implicate them in the charge under Section 342, I.P.C., of unlawful confinement. They are, therefore, acquitted of the charge under Section 342, I.P.C.

11. It is now necessary to deal with the question of sentence. The charges against the accused persons and the facts which have been proved disclose a very serious offence. Jnanendra Chandra Chowdhury was an officer appointed by the Court. Ram Chandra and Kala Chand knew that he had been so appointed; they did not suggest for one moment that they did not. The receiver tells us that he himself informed Ram Chandra of his appointment before he left for Nadhai. Whether the appointment of the receiver was subsequently set aside by the High Court and another person was appointed a receiver or not is absolutely immaterial. At the time when the occurrence took place, he was a person duly appointed by the District Judge to take charge of the estate. So far as Ram Chandra and Kala Chand are concerned they are educated persons. Ram Chandra has been managing the zemindari for some time they must have been well aware that they could have their remedy in the Court itself or by way of appeal if they thought that

they were aggrieved by the order. The riot on the night of 15th May was obviously not the work of a moment. They had known for some days that the receiver had been appointed by the Judge and had gone to take charge. Obviously, therefore, this attack upon the receiver was thought out and planned after due consideration. None of them were inexperienced persons Ram Chandra is aged 44 years and Kala Chand is a man of 33 years. In view of the serious nature of the offence, we sentence them to undergo each one year's rigorous imprisonment under Section 147, I.P.C. No separate sentence is passed on Ram Chandra under Section 342, I.P.C. With regard to Manirurdin, he is apparently a servant acting under the influence of the other two. In his case, we inflict a sentence of six months' rigorous imprisonment under Section 147, I.P.C. The accused must surrender to their bail to serve out the sentences.

Gregory, J.

12. I agree.

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