

Ramkrishna Roy Vs. the State

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Court : Kolkata

Decided On : Nov-28-1951

Reported in : AIR1952Cal231

Judge : Harries, C.J. and ; Sinha, J.

Acts : [Evidence Act, 1872](#) - Sections 32, 60 and 133

Appeal No. : Criminal Revn. No. 1004 of 1951

Appellant : Ramkrishna Roy

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee, ; Arun Kumar Dutt and ; Chandra Narayan Laik, Adv.

Judgement :

Harries, C.J.

1. This is a petition preferred by one Ramkrishna Roy praying that his commit trial to stand his trial along with a number of other persons in the Court of Session upon charges of murder, rioting concealment of evidence of murder and causing hurt be quashed on the ground that there was no evidence at all before the learned Magistrate upon which this man could be committed to stand his trial.

2. The case for the prosecution was that eighteen persons including, the petitioner had attacked one Kazi Ali Hossain and had , murdered him and thrown this body down the shaft of a disused mine. It was said that on the day in question the deceased was going to the house of a zamindar of the village at about 6 p.m. He was waylaid and attacked and brutally assaulted by deadly weapons and as a result of his injuries he died very quickly. His body it is said, was taken to the air-shaft of an abandoned colliery and was thrown into the shaft.

3. There was direct evidence implicating a number of, the accused. But there was no direct evidence of any kind implicating the petitioner. The petitioner was charged along with his brother Bhudeb Roy and it is to be observed that the, latter was discharged. The evidence against both the brothers was very much the same except that as against the petitioner there was the fact that he had been implicated in a retraced confession by one of the co-accused.

4. Mr. Sudhansu Mukherjee has taken us through the evidence upon which the learned Magistrate relied in committing the petitioner. The first piece of evidence is that given by a witness Kazi Phirojuddin. He stated that the deceased had told him that Rs. 5000/- was offered for his head after a certain conviction in the High Court. It appears that the deceased had looked after a case of murder in which the brother of the petitioner was implicated. Who made this offer of Rs. 5000/- the witness did not say and in any event he merely stated that the deceased repeated to him a rumour that he had heard. That cannot possibly be evidence against the Roys. This witness later stated that about a week before his death the deceased told him that Rs. 5000/- was offered by the Roys for his head. All that this statement amounts to is that the deceased had told him of a rumour that Rs. 5000/- had been offered by the Roys for the deceased's head. That is hearsay of the very worst type. How can evidence of a rumour be substantive evidence implicating the Roys in this offence? It is suggested that it is admissible as a dying declaration. But it is not and cannot be a statement made by the person as to the cause of his death or as to any of the circumstances of the transaction which resulted in his death. All it amounts to is that the deceased said that he had heard a rumour that these people had offered money for his head.

5. Two other witnesses were called who gave the same sort of evidence. Kazi Siddiq Hossain, P W. 36, stated that the deceased had told him that he had heard that Ramkrishna Roy and Bhudeb Roy had offered Sankar and Sukdeo Rs. 5000/- for his head. Again, it is merely evidence of a rumour that he had heard. Kazi Abdul Hossain, P. W. 37, made much the same statement.

6. In my judgment this evidence cannot possibly be substantive evidence implicating the petitioner. Can a person say in order to implicate another person, that he has heard a rumour that that other person is guilty? Quite obviously he cannot and I do not think that it becomes admissible merely because the statements were made by the man who was killed. The statements are really worthless and cannot possibly found a conviction.

7. It will be observed that the learned Magistrate did not attach very much importance to these statements as against Bhudeb Roy because he was discharged. There is however one other piece of evidence against the petitioner and that may have turned the scales against him in the mind of the Magistrate.

8. One Kusha Bauri, one of the accused, made a confession on December 1, 1950 and in that confession he implicated the petitioner later however that confession was retracted. The confession of an accused person may be taken into consideration against a co-accused, but what is the value, if any, of a retracted confession of an accused person implicating a co-accused? This Court in the case of 'Haripada Gharami v. Emperor,' 49 Cal W N '719, went to the length of saying that it is a thoroughly useless and worthless piece of evidence: In that case it was held that where the jury were directed that the value of a retracted confession against a co-accused was practically nil that they should not convict him unless it was corroborated by independent evidence on material particulars, it was a misdirection. The Court held that the proper direction was that unless the other evidence against the co-accused could stand on its own legs and justify a conviction, the retracted confession should not be in any way used to support a conviction. In a more recent case 'Kanai Lal v. The State,' 51 Cri L J 1520 at p. 1520 (Cal) a Bench of this Court of which I was a member came to the conclusion that the value of a retracted confession as against a co-accused was very little, if

anything at all. It was held that merely telling the jury that the retracted confession of a co-accused was of little evidentiary value against a co-accused was not sufficient. The jury should be told that its evidentiary value was such that no conviction could be based upon it alone and that at most it could only be regarded as a weak corroboration of other evidence.

9. In this latter case the Bench did not perhaps go quite as far as the Bench did in the earlier case. But it is quite clear that at most a retracted confession could only be used as corroboration and its value as corroboration would be extremely little. If the earlier view is taken the value of the retracted confession is nothing at all.

10. Whichever view is taken it seems clear that there could not have been a committal here. At its highest the retracted confession might have some very slight corroborative value. But there is no other evidence which it could corroborate. I have already dealt with the other evidence and held that that evidence is not admissible. It is merely evidence of vague rumours and if that is not admissible then there is nothing to corroborate. It seems to me that no real distinction can be drawn between the case of these two brothers and as Bhudeb Roy was rightly discharged the petitioner also should in my view have been discharged and therefore the order of committal in so far as it affects him is quashed.

11. The petitioner is discharged and must be set at liberty forthwith. The bail bond is cancelled.

Sinha, J.

12. I agree.