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Emperor Vs. Abdul Rahaman

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Court : Kolkata

Decided On : Dec-14-1908

Reported in : 2Ind.Cas.593

Judge : Holmwood and ;Ryves, JJ.

Appellant : Emperor

Respondent : Abdul Rahaman

Judgement :

1. Abdul Rahaman was tried by the Sessions Judge of Patna and a jury on a charge under Section 307 of the Indian Penal Code on the 22nd of September last, the Jury returned a unanimous verdict of not guilty. The learned Sessions Judge, however, disagreeing with the jury who, he thinks, were led away by the forcibly expressed arguments of counsel for the accused, has referred the case to us, under the provisions of Section 307 of the Criminal Procedure Code.

2. Before us it has been argued by the learned Counsel on behalf of the accused that this is not a case which should have been referred to us under that section, because the learned Judge himself in his charge to the jury, drew their attention, in particular to. one peculiar circumstance in the evidence for the prosecution and told them, that, having regard to that circumstance, they should certainly pause and consider it carefully before returning their verdict, and it was, therefore, fairly open to the jury, having regard to this weak link in the prosecution evidence, to

acquit the accused. We will refer more particularly to this feature of the case later. Reliance was placed on the case of King-Emperor v. Chidghan Gossain 7 C.W. 135. In that case this Court observed that the Sessions Judge should not have made a reference 'in a case in which the evidence for the prosecution was, on his own showing in his charge to the jury, so open to hostile criticism as to justify the jury in regarding it with suspicion.' There is no resemblance, whatever, between that case and this. It was next contended that as it was open to the jury, on their view of the evidence, to acquit the accused and that their verdict cannot fairly be called perverse, we should not set it aside. The provisions of Section 307 of the Criminal Procedure Code, however, are very clear. On a reference under that section, this Court has all the powers of an appellate Court and it is our duty, after considering the entire evidence and giving due weight to the opinions of the Sessions Judge and the jury, to form our own opinion. If authority is required for this proposition, vide the case of King-Emperor v. Lyall 29 C. 128. The evidence in this case seems to us very clear and convincing. Babu Harihardhari Singh died recently and his, estate was taken under the Court of Wards and Gopal Narain Singh a relative was associated in its management as Honorary Superintendent. Bubu Hari-hardhari Singh left surviving him two widows and one Musammat Gunna, a concubine, who was the mother of the accused. Those widows quarrelled about Musammat Gunna with result that Gopal Narain Singh reported to the District Magistrate against Musammat Gunna. This was in June last. In consequence a notice was served on the woman to quit the family residence at Bharatpore and her monthly allowance was stopped. On the 2nd or 3rd of July last, the woman and her son, the accused, left Bharatpore and went to reside as guest of the elder widow of Babu Harihardhari Singh who was staying at the residence of Babu Dhanukdhari Singh, a brother of the deceased, at Ular. On the morning of the 6th of July, Gopal Narain Singh went to Ular to pay a visit at the house of Babu Dhanukdhari Singh. He was shown into a kutri where Dhanukdhari Singh was lying down as he was indisposed. Gopal Narain seated himself in a chair and then began to converse. Soon after the accused came into the room, salamed, and very soon after went out through a door leading to the next room. Immediately afterwards, there was a report of a gun. Gopal Narain felt himself hit and, looking round through the door, saw the accused in the act of throwing down

a gun and running off. He then and there called out 'Abdul has shot me.' Dhanukdhari corroborates this evidence in every particular except that he does not say that he saw the accused after he had left the room immediately before the shot was fired. From the place where he was lying down it was impossible for him to have seen the accused. Two servants of Gopal Narain who had accompanied him were seated outside the dalan. They say that they saw the accused walk into the room next to that in which Gopal was seated. He had a gun in his hand and, as he entered, he removed his shoes. Very shortly after, there was the report of a gun and the accused ran out and away barefooted and empty handed. They rushed into the assistance of their master. Another witness, who is entirely independent of either party, Bhagaru, was that morning engaged in a piece of work in the Osara. He entirely corroborates the story told by the servants of Gopal Narain. From the charge to the jury it appears that a very strong point was made by the defence against the credibility of these two servants because, on their own showing, they made no attempt to arrest the accused. Before us, too, the same argument has been pressed. It seems to us only natural that the first instincts of the servants would have been to help their master rather than attempt to catch the accused, even if we assume that they had the opportunity to do so. Dhani, the chowkidar of another village, happened to stop at the house of Dhanukhdari on his way to the thana where he had business. He, too, heard the report of the gun and went with others into the room where Gopal Narain had been shot. He was at once informed of what had happened and was despatched to report the case at the thana which he did with all possible haste. We are asked to disbelieve this witness because it is said that it was unlikely that he should have been at Dhanukdhari's house that morning. The fact remains that he undoubtedly did lodge the first information in which the accused was named at the thana which is six miles away with such promptitude as to render it extremely probable that he must have been on the premises at the time. He states that, on his way to the thana, he told many people whom he met of the occurrence and, among others, Jugdis Koeri. Jugdis Koeri who is a boy, deposed that, soon after Dhani chowkidar had told him and gone on his way, at about 10 O'clock that morning, he met the accused walking in a mango grove. He asked him if he had shot Gopal Narain and the accused replied that Gopal Narain had indeed been shot but by Abu. (This Abu is a son of

Dhanukdhari). Jugdis then told him that the chowkidar had gone to the thana to report against him, whereupon the accused took to his heels. Two uncles of Jugdis, who were near by and who had been told by Jugdis what the chowkidar had said, gave chase and caught the accused and took him to Bharatpore where they had heard that the Baroga was. The spot, where they caught the accused was, about one mile distant from Ular. The Sub-Inspector who visited the spot has deposed to the finding of the gun and a pair of shoes in the room next to that in which Gopal was sitting. These shoes have been identified as the accused own. There is a very good evidence, if it is believed, that the gun found in the room was the property of the deceased Babu Harihardhari and that the accused had been in the habit of using it and had it in his hand when he entered the room that morning. As the only difficulty in the case arose with regard to the identity of this gun, we sent for it and have examined it. It is a gun of a very unusual pattern, being a single barelled breech loader with top lever action. When the Sub-Inspector found this gun, there was no cartridge in it and, strangely enough no one seems to have examined it to see whether it showed marks of having recently been discharged. The gun was rusty and, of course, it was impossible at the time of trial to come to any conclusion from its appearance. When the chowkidar was sent off hurriedly to the thana, no notice apparently was taken either of the gun or of the shoes. At any rate, they were not sent to the thana with the chowkidar. On this and some other circumstances relating to the evidence about this gun, a very elaborate defence was raised in the Court below and was also pressed upon us. As to whether this gun did or did not belong to the deceased Harihardhari, there is some confusion in the evidence. On the one hand, it is stated that he had, in all, three guns and that, on his death, they were taken charge of by the Court of Wards and it, therefore, follows, it is argued, that the accused could not have obtained possession of it. But this is not necessarily the case. Although the movable property of the deceased was, no doubt, formally taken charge of by the Court of Wards, there is nothing to show that the gun or any other of his movable property was removed from his house and placed in the separate custody of any official of the Court of Wards; or it may also be, that the evidence as to his possessing only three guns is mistaken. On the other hand, there is positive evidence that this gun, which is of a peculiar pattern, had been presented to the late Harihardhari and that it had been

frequently used by his son the accused, during his lifetime and the witness Imrit, who was a servant of Gopal and lived in the same village as the deceased, swears that he had often seen the accused, going out with this gun and saw it in his hand that morning. The theory of the defence is that in reality Gopal Narain was shot by Abu a son of Dhanukdhari, that the motive for this was that there was ill-feeling between Dhanukdhari and Gopal, because Dhanukdhari was fighting a case against the Court of Wards with reference to some of the deceased's estate and that Gopal was helping the Court of Wards; that in order to shield the real culprit Abu, a wholly false charge has been laid against Abdul Rahman and that the real gun with which the shot was fired has been spirited ' away and the gun in Court substituted for it. Great stress was laid in the Court below as well as here on the fact that no cartridge was found in the gun when it was taken charge of by the Daroga. The learned Sessions Judge seems to have been very much impressed by this circumstance and he told the jury that 'if it was the gun used it is clear that some one must have tampered with it. Either the cartridge was extracted or another and unused gun was substituted. The circumstance should certainly make you pause, and I hope you will consider it carefully. The prosecution are unable to offer any explanation whatever. The Sub-Inspector tells you the fact quite frankly and all that can be suggested is that the cartridge may conceivably have been removed by some one either advisedly or thoughtlessly. The story that the real gun was carried away by the criminal and that this gun was substituted means that a colossal blunder was made by those who connected a truly diabolical plot against the unfortunate prisoner.' This is the passage in the charge of the learned Sessions Judge to which we referred at the beginning of this judgment which, according to the learned Counsel, justified the jury in acquitting the accused. This seems to us, however, not to be so very important. It is a fact that no cartridge was found in the gun, but it is quite possible that the accused, if he was in the habit of using this gun, should have himself had removed the cartridge after firing and thrown it away when he got clear of the house. Had there been evidence to show that the gun, when found, had been examined and found to be quite clear, that would have been a very different thing; but there is no evidence of any examination having been made of the gun, much less, that the inside of the barrel was not foul. There are so many other circumstances that make it so highly

improbable, that we cannot give credence to the version suggested by the defence. In the first place, Dhanukdhari or his son had no adequate motive to do away with Gopal Narain and, if they had they would scarcely have chosen that occasion when suspicion would inevitably fall on themselves. Gopal Narain had come to their house accompanied by two servants who were seated outside. In the next place, it involves the necessity of Gopal instantly consenting to conspire with his enemy Dhanukdhari in shielding his guilty son and throwing the blame on the accused against whom he could have no personal animus, although the accused might well have motive for revenge against Gopal who had, only a few days before, succeeded in turning his mother out of her house. It is abundantly proved that Gopal Narain at once said that he saw the accused putting down the gun immediately after he was shot and it is also proved that be could have seen this if he had turned his face in the direction from which the shot was fired. The evidence may be shortly summed up as follows : Gopal Narain was undoubtedly shot as he was seated on a chair inside Dhanukdhari's room; fortunately, no very serious hurt was caused as the pellets with the exception of two which struck the abdomen only lodged in the outside of his thigh and no vital spot was reached. Immediately before the occurrence, the accused who happened to be staying at the time in Dhanukdhari's house was seen to enter the room, next to that in which Gopal was seated, with a gun in his hand. He removed his shoos and probably put down the gun before entering the room where Gopal and his brother were. He entered the room and left it soon after. A shot was fired, Gopal was hit and, turning round, he saw the accused in the act of throwing down a gun and making off. At least these witnesses, who had seen the accused enter the house with the gun in his hand, saw him running away barefooted and empty-handed immediately after. The information was very promptly laid against the accused who himself was caught a mile away in the course of the morning and taken to where the Daroga was. Then, there is positive evidence that the shoes and gun found just outside the door of the room in which Gopal was shot, had been in the possession of the accused that morning. The case seems to us to have been conclusively proved. We have now to consider what offence the accused committed. The learned Judge in his charge to the jury and in his letter of reference to us seems to think that he should be convicted not of an attempt to murder but under Section 324 of

the Indian Penal Code, of having voluntarily caused hurt by means of a dangerous weapon. He seems to think that the accused was accustomed to the use of fire-arms and, if he had wished to murder the accused, he would have aimed at some vital part. As the shot took effect chiefly on the thigh of Gopal Narain, he thinks that his intention was merely to cause hurt. It seems to us that this would be a very dangerous view to adopt. The accused is a young man of 25 years of age. He fired at a distance of some six paces, the cartidge containing shot about No. 6 in size. He must have known that to fire at the body of a man at such close range was very likely to cause his death and, had Gopal Narain died in consequence of being shot, there is no doubt the accused would have been guilty of murder. We entirely agree with the case of Queen-Empress v. Niddha 14 A. 38. Had the shot taken effect on or about the feet of Gopal Narain and caused no serious injury, we might have been able to infer that he intended nothing more than to cause hurt. As it is, Gopal Narain had a most providential escape, as it appears that the back of the chair intercepted a number of pellets which otherwise would have penetrated his body with possibly fatal result. As pointed out in the Allahabad case just referred to if a person who has an evil intent does an act which is the last possible act that he could do towards the accomplishment of a particular crime that he has in his mind, he is not entitled to pray in his aid an obstacle intervening not known to himself. If he did all that he could do and completed the only remaining proximate act in his power, I do not think he can escape criminal responsibility, and this because, his own set volition and purpose having been given effect to their full extent a fact unknown to him and at variance with his own belief intervened to prevent the consequences of that act which he expected to ensue, ensuing.'

3. We, therefore, convict Abdul Rahman under Section 307 and sentence him to 4 years' rigorous imprisonment.

4. We give this lenient sentence because we think it possible that the accused had not premediated the murder of Gopal Narain. He may not have known that he was there when he came into the room and he may then in a moment of sudden anger have recklessly used the gun which was fortuitously at hand against Gopal Narain who was no doubt he thought, his enemy, without positive and. deliberate intention of killing him.

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