

KhijiruddIn and ors. Vs. Emperor

KhijiruddIn and ors. Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/887610

Court : Kolkata

Decided On : Aug-26-1925

Reported in : AIR1926Cal139

Appellant : KhijiruddIn and ors.

Respondent : Emperor

Judgement :

Mukerji, J.

1. The three appellants, that is to say, No. 1 Khijiruddin Sonar, No. 2, Nawabali Sheikh and No. 3, Qamruzzaman (alias Quamarulzaman.) were tried by the Sessions Judge of Rungpur with the aid of a jury. The jury were divided in the proportion of four to one. The majority convicted the appellants in respect of the charges on which they were tried, viz., Nos. 1 and 2 under Sections 364, 344 and 120-B and No. 3 under Sections 364 342 and 120-B. The learned Judge, accepting the verdict, convicted the appellants of the said offences and sentenced the Appellant No. 1 to rigorous imprisonment for 10 years under Section 366, Indian Penal Code, and to rigorous imprisonment for three years under Section 344, Indian Penal Code, the sentences to run consecutively: the Appellant No. 2 to rigorous imprisonment for three years under Section 366, Indian Penal Code, and to rigorous-imprisonment for one year under Section 345, Indian Penal Code, the sentences to run concurrently; and the Appellant No. 3 to rigorous imprisonment

for 5 years under Section 366, Indian Penal Code and, to rigorous imprisonment for one year under Section 342, Indian Penal Code, the sentences to run concurrently. No separate sentence was passed for the offence under Section 120-B, Indian Penal Code.

2. It is not necessary to set out in detail the case for the prosecution upon which the trial was held; for it is to be found narrated in sufficient detail in the learned Judge's charge to the jury. Shortly stated, the prosecution case was that a girl Suhasini was abducted by the first two appellants some time in February 1923 from Gaibandha, where she used to reside with her parents; that thereafter she managed to escape from the custody of the Appellant No. 1 some time in March 1923, when she was again abducted by the Appellant No. 1 from a railway station called Trimohini. After the second abduction, the case for the prosecution is the girl remained with the Appellant No. 1 for about a year, roughly 'speaking from March 1923 till March 1924. The prosecution case further is that after she had succeeded in escaping from the custody of the Appellant No. 1 in March 1924 she was again abducted at Gaibandha by the three appellants acting in conspiracy with each other. She was thereafter detained, according to the case for the prosecution, in the house of the Appellant No. 3 for about a day where-from she was removed to the house of the Appellant No. 1. where she was detained for a period over ten days' According to the prosecution case she was recovered from the house of Appellant No. 1 in execution of a warrant issued by the Sub-Divisional Officer of Gaibandha who 'had in the meantime received an anonymous letter informing him about the abduction. She is said to have been recovered as aforesaid on the 6th of April, 1924.

3. The defences of the three appellants are not exactly the same. But it is unnecessary to set out the defences here, because the learned Judge in his charge-to the jury has given a substantially correct synopsis of the different defences of the three appellants.

4. Various points have been argued before us on behalf of the appellants by Mr. Sen who has appeared on behalf of the Appellant No. 3 and by Mr. Wahed Hossain who has appeared on behalf of the first two appellants. Mr. Basu has

appeared on behalf of the Crown. It will not be possible within the short space of this judgment to deal with all the points that 'have been urged in this appeal. These points vary in the degree of their strength, some being, points of very great importance and substance, others apparently appear to be well founded but have been successfully met by Mr. Basu and others again rest upon very slender, basis or upon materials which when examined do not afford any real support. It would only be possible to refer to some of the salient features of the case and a few only of the grounds which to us appear to be of importance.

5. Before dealing with the points I desire to make a few observations as to the general character of the learned Judge's charge to the jury. Section 297, Criminal Procedure Code, enjoins that when the case for the defence and the prosecutor's reply, if any, are concluded the Court shall proceed to charge the jury, summing up the evidence for the prosecution and defence and laying down the law by which the jury are to be guided. The object of a summing up under that section is to enable the Judge to place before the jury the facts and circumstances of the case both for and against the prosecution so as to help them in arriving at a right decision upon the points which arise for their consideration. If that be the object with which Section 297 of the Criminal Procedure Code was enacted I must say that in this particular case that object has not been fulfilled but rather frustrated by the way in which the learned Judge charged the jury. The heads of charge recorded by the learned Judge read more like a judgment or a speech of a prosecuting counsel than a summing up of the case as required under the law. Even as a judgment it lacks in sobriety and there is in it a want of judicial equanimity which is the very essence of a judgment in a trial. As a speech of a prosecuting counsel it is open to the comment that it uses language which in some instances may be said to overstep the legitimate bounds of advocacy.

6. I refer to a few instances only. In dealing with the witnesses who are, said to have deposed in connexion with the occurrence that took place at the Trimohini railway station the learned Judge told the jury that those witnesses had acted selfishly and were morally and legally and on their own showing guilty of abetting a villainous crime and that in his experience he had never come across a more contemptible pair of cowards or one more selfishly deaf to the common claims of

humanity. This is not my language but the language of the learned Judge. The learned judge characterized Banamali and Biseswar while narrating what they did at the Gaibandha railway station as a precious pair of poltroons, the evidence of the Sub-Assistant Surgeon of Gaibandha as shilly-shallying evidence, and as the evidence of a witness who showed a more than usual tendency to hedge and play for safety in giving his opinion. When putting the evidence of the Sub-Assistant Surgeon in contrast with that of the Sub-Divisional Magistrate he exhorted them with an amount of vigour which is apparent on the face of the charge; he told them that it would not be difficult for them to decide which of the two opinions was the more entitled to respect. This is not all. The learned Judge presented too forcibly before the jury those aspects of the defence case which would appeal, to them as most revolting. The defence which the appellants had seriously put forward before the Court was unquestionably worthy of consideration whatever might have been its worth. The learned Judge told the jury that if they were to give effect to the defence put forward by Khijiruddin they would have to hold that the girl had done an act which was doubly bigamous and adulterous and which was in defiance of law, custom, religion and morality. A part of the defence of the Appellant No. 1 was characterized as having been rather mistily adumbrated. When referring to the fact that there was no evidence in support of the defence which the appellant No. 1. had taken to the effect that he had been married to the girl the learned Judge, instead of telling the jury that it is no part of the duty of the accused person to adduce any evidence in his defence if he does not wish to do so and that the jury were not entitled to draw any inference from this omission on the part of the accused, went on asking them to take into their serious consideration the fact that the defence had not suggested any answer to some of the prosecution arguments and that they had not given any evidence. He called the policemen who are said to have been with the Appellant No. 3 his henchmen and throughout the charge referred to the acts alleged to have been done by the appellants as partaking of the character of criminal acts. He asked the jury to consider whether the version given by the defence was one that a person of ordinary prudence and sanity could reasonably accept as true. It is unnecessary to refer to other passages of the learned Judge's charge to the jury; but, as I have already said, if the object of summing up is to assist the jury in arriving at their decision this charge instead of

helping them in forming their own decision impressed the Judge's conclusions indelibly on their minds and gave them no option but to arrive at a decision which the Judge himself had arrived at, namely, that the accused were guilty and that there was no substance in the defence put forward by them. The learned Judge found the facts for the jury and made a laboured attempt in order to persuade them to accept his conclusions as correct.

7. Turning now to the points which have been specifically taken on behalf of the appellants there are some which deserve special mention.

8. The first objection taken to the trial held is to the effect that evidence had been admitted which was not admissible in law. This objection relates to three different matters. The first item to which this objection relates is with regard to Exhibits 13 and 13-A. Exhibit 13 is the evidence of Prosecution Witness No. 11, Jogesh Chandra De, as given before the Assistant Sessions Judge in a previous trial of Appellants Nos. 1 and 2, the subject-matter of which trial was the two-earlier occurrences of abduction, namely, the one which took place at Gaibandha and the other which took place at the Trimohini railway station. Exhibit 13-A is the deposition of the same witness before the committing Magistrate in the course of the commitment enquiry preliminary to the said trial. The circumstances under which these two depositions came to be admitted in the present trial are these: in the course of his evidence in the present trial, the witness made a statement to the effect that at a time when Khijiruddin asserted that he had lawfully married Suhasini, the latter remained silent. This the witness said in his examination-in-chief. The accused declined to cross-examine him. Thereupon certain questions were put to this witness by the foreman of the jury. Thereafter the prosecution again-examined this witness in chief and in the course of this further examination questions were put to the witness by the prosecution in order to bring out the fact that in his depositions as given before the Assistant Sessions Judge in the previous trial as also before the Committing Magistrate in the commitment enquiry which preceded that trial, he had made statements which would go to show that the girl was trembling, obviously meaning that even if she had a desire to protest-it was not possible for her to do so in the circumstances in which she was at the time. The learned Judge allowed these questions, which were questions in the

nature of cross-examination, to be put to the witness. After these questions had been answered the prosecution was permitted to put in the depositions of this witness to which I have referred and they were marked as Exhibits 13 and 13-A in the case. The learned Counsel' appearing on behalf of the Crown urges that the reception of this evidence, even if it be held that it was inadmissible did not prejudice the accused persons. With this argument I am unable to agree, The accused undoubtedly must have been prejudiced and for two reasons. When a witness who has been called by the prosecution is permitted to be cross-examined on behalf of the prosecution under the provisions of Section 154 of the Evidence Act, the result of that course being permitted is to discredit that witness altogether and not merely to get rid of a part of his testimony: [Lord Campbell, C.J., in *Faulkner v. Brine* [1858] 1 F. & F. 254.] This has been held in a good number of cases in this country as well, amongst which reference may be made to two, namely, the case of *Luchiram Motilal v. Radha Charan Poddar* [1921] 34 Cri.L.J. 107 and the case of *Emperor v. Satyendra Kumar Butt Chowdhury* A.I.R. 1923 Cal. 463. The net result of allowing these questions to be put by the prosecution was to deprive the accused of the benefit which might accrue to them from any statement which the witness might have made in favour of the accused and which the defence could have availed of if the witness had not been allowed to be cross-examined by the prosecution. For this reason the law has enacted that the party desiring to cross-examine its own witness has to take the permission of the Court, implying thereby that there is a discretion in the Court whether it would permit the witness to be cross-examined or not. That discretion has always to be exercised with caution by the Court before which the matter comes up for consideration. In this instance it does not appear that any permission was sought for or was given. The result of the procedure adopted was to deprive the accused of the benefit of any statement which the witness may have made in their favour. That is one of the reasons why this procedure should not have been allowed. If, however, this was not the intention of the prosecution but their only object was to show that the witness had merely omitted to mention the fact in the present trial, but had spoken about it consistently before and should therefore be relied upon, then it amounts to this, that they wanted to get rid of a part of the testimony of the witness and were relying upon the earlier statements as a piece of substantive

evidence in the case which, however, they cannot be permitted to do. The earlier statements cannot be let in under Section 157 of the Evidence Act as there is nothing in the deposition of the witness in the present trial which may be corroborated by these earlier statements. Moreover, there is hardly any justification for the whole of the depositions being brought as evidence in the present record, and the jury were not directed as to how they were to deal with this evidence. It is true, as the learned Counsel for the Crown has urged that there is enough other evidence which, if believed, would indicate that there was no marriage between the Appellant No. 1 and the girl. But that is a matter as to the weight of evidence which does not concern us nor did, it concern the learned Judge, It was a matter entirely for the jury.

9. The next item to which this objection relates is Exhibit 14 which is the deposition of Suhasini given by her in the trial before the Assistant Sessions Judge. The learned Counsel appearing on behalf of the Crown urges that in view of the cross-examination of Suhasini it was necessary for the prosecution to put this, evidence in. While I can see that it was necessary for the prosecution to put in particular passages from out of this deposition, in order to rebut the suggestions which were being made on behalf of the defence that certain statements which were made in the present trial had not been made by the witness in the previous trial. I do not see why it would be necessary to put the whole of the deposition of the witness as given in the previous trial for the purpose of corroborating the witness in the evidence which she has given in the present trial. If it be that any suggestion was made in the course of the cross-examination to the effect that the witness had made a particular statement in the previous trial, which as a matter of fact the witness did not make in that trial, and the suggestion was not correct, the (sic) course for the learned Judge was to have disallowed the question. The whole of the deposition is sometimes admitted for the sake of convenience. But the whole of the deposition cannot be used for any purpose in connexion with a matter like this, and only particular passages which are relevant may be used by the jury. It does not, 'however appear, whether the whole of the deposition, as contained in Exhibit 14, was read out to the jury or not and I am therefore not in a position to say how far the reception of this deposition as evidence has prejudiced the accused persons.

10. The third objection under this head relate? to the statement recorded by the Sub-Divisional Magistrate in the course of the enquiry which he held on receipt of the anonymous letter. The point urged on behalf of the defence in this connexion is that exhibits 5 and 6 the statements made by Krishna Das Panik and Jogesh Chandra De recorded by the Sub-Divisional Magistrate were inadmissible in evidence in the present trial. The learned Counsel for the Crown has urged that these statements were recorded by an authority competent to investigate into the facts and they could be admitted under the provisions of Section 157 of the Indian Evidence Act. I do not see any particular objection to these statements, although I must say that the learned Judge should have either at the time when these statements were admitted or when charging the jury told them definitely the purpose for which these statements were admitted in the case.

11. The second ground urged on behalf of the appellants is to the effect that the statement of Suhasini made by her on the 7th of April 1914 before the Sub-Divisional Magistrate, and which has been marked in the present trial as Exhibit 4 in the case was not brought to the notice of the jury by the learned Judge in the course of this summing up. This, in my opinion, is a serious omission. In that statement is to be found the earliest version of the occurrence as given by Suhasini, and it was obligatory on the part of the learned Judge to draw the attention of the jury to that statement so that they might judge whether the case as against the Appellant No. 3 particularly and probably the case against the other appellants as well had not been developed gradually and whether facts and circumstances were subsequently alleged against them which had not been stated by the witness in her first statement before the Sub-Divisional Magistrate. The learned Counsel for the Crown has urged that even before the girl made her statement before the Sub-Divisional Magistrate there were other materials existing from before in which it was mentioned that all the accused persons were concerned in the offence, e.g., the anonymous letter Exhibit 1 which the Magistrate had received on 30th March 1924. He has also drawn our attention to the other pieces of evidence, for instance the evidence of the Sub-Divisional Officer, and the evidence of Bisseswar Prosecution Witness No. 7, and of the girl herself which, if believed, would go to show that the present story of the girl was the story given to the authorities before there was any chance of the girl being

tutored. That may be so, but then it was a matter entirely for the jury to consider and the accused had a right that this piece of evidence Exhibit 4 which was in their favour was properly placed before the jury in order that they might have given it a proper consideration. The earliest version of the occurrence as given by an informant or prosecutrix who is the principal witness to the occurrence, and on whose testimony practically the whole case depends, has always to be placed before the jury in order to judge of the truth or falsity of the prosecution case.

12. The third objection relates to a still more serious matter. The father of the girl Bonomali was examined as a witness in the case. His son-in-law P.W. 7 Bisweswar in the course of his examination-in-chief was allowed to state that he and his father-in-law Bonomali was in the station platform when the voice of the Accused Nos. 1 and 2 or rather of some persons was heard. Bonomali got up hurriedly and said Bisweswar, destruction has come about. Those ruffians who a year ago took away Suhasini have again come. Let us be off, caste and honour are at stake.' Although Bonomali was not examined as a witness, through the mouth of P.W. 7 this statement was brought on the record. The learned Counsel for the Crown says that this evidence is relevant under the provisions of Sections 6 and 8 of the Evidence Act under Section 6 of the Evidence Act as part of the *res gestae* and under Section 8 of the Evidence Act as explaining the conduct of Bisweswar in his leaving the place and running away with Bonomali. I am of opinion that the statement is wholly inadmissible and that neither Section 6 nor Section 8 of the Evidence Act would justify the reception of this evidence. What Bonomali told at the time of the occurrence in respect of the occurrence itself is *res gestae* under Section 6 of the Evidence Act. But his statement which was with regard to an event which took place a year ago and which was meant to convey that the accused persons who were there had taken away Suhasini by force a year ago would not be part of *res gestae* but related to an altogether different transaction separated by a sufficiently long interval of time and by no stretch of imagination would the area of events which may be taken as covering the *res gestae* of the present occurrence extend to what happened in the earlier occurrence. Section 6 of the Evidence Act therefore would not help the prosecution. As regards Section 8 of the Evidence Act I am exceedingly doubtful whether the conduct of Bisweswar was a relevant fact in the present trial, but

assuming that it was, any statement made by Bonomali which would affect the conduct of Bisweswar when Bonomali was not examined would be purely hearsay evidence and would not come under Section 8 of the Evidence Act. I am clearly of opinion that the reception of this evidence prejudiced the accused very seriously, for although Bonomali was not a witness, we have on the record a statement of Bonomali which contradicts and gives a direct denial to the main defence of the appellants which is to the effect that the girl had been made over by Bonomali to the Appellant No. 1 and had been married to him. Even if there was nothing else in the case and if this was the only objection taken on behalf of the appellants I should have been prepared to upset their convictions. The fourth objection relates also to a matter of similar importance It is to the effect that the personal diary of the Sub-Inspector the Appellant No. 3 which was proved by the prosecution and marked as Exhibit 10 in the case was not put before the jury at all by the learned Judge. This diary, it is said by the prosecution, contains an interpolation and therefore is a piece of evidence which if put before the jury, might have gone against the defence. Assuming for a moment that there is an interpolation in;that diary and that an inference adverse to the Appellant No. 3 may be drawn;from that interpolation, still according to the case for the defence the diary contains a statement recorded by the Sub-Inspector of his own movement and conduct in connexion with this case recorded at a time when there was not the slightest indication that any case would be started against him with regard to the occurrence. The Sub-Inspector might well say that this diary contains a true account of what he had done on that occasion. It was absolutely necessary for the learned Judge, if he wanted to put before the jury the facts and circumstances in favour of the defence, as he should have done, to place the personal diary of the Sub-Inspector Exhibit 10 before the jury. The fact that the prosecution challenged the authenticity of that diary as containing an interpolation and that they pointed out other circumstances which might indicate that it should not be relied upon did not justify the learned Judge in withholding it entirely from the jury. A verdict obtained from the jury without placing before them this important piece of evidence in favour of the defence, whatever may have been its real worth, cannot, in my opinion, possibly be sustained.

13. The next objection relates to the way in which the learned Judge has recorded in his charge to the jury as to how he had explained the law. The learned Judge states in his heads of charge that he explained certain sections of the Indian Penal Code. But there is nothing to indicate what he stated to the jury or how he explained the different elements constituting the offences. It is urged on behalf of the prosecution that in the heads of charge it is not necessary for the learned Judge to record in full what he actually told the jury and that furthermore the sections of the Indian Penal Code under which the accused persons were tried were not so complicated as to necessitate a record of what the learned Judge might have said to the jury in explaining the law. It is true that it is not in every case that the Judge is bound to state in his charge how he explained the law to the jury. But in a series of decisions of this Court it has been laid down that the charge must be recorded in such a way as would enable this Court sitting as a Court of appeal to judge whether the facts and circumstances of the case had been properly placed before the jury and also whether the law has been correctly explained. I shall refer to a few of such cases. One of them is the case of *Panchu Das v. Emperor* [1907] 34 Cal. 698 where it has been laid down that it is not only desirable but necessary that the charge should be recorded in an intelligible form and with sufficient fulness to satisfy the appellate Court that all points of law arising in the case were clearly and correctly explained to the jury. Reference may also be made to the case of *Abbas Peada v. Queen-Empress* [1898] 25 Cal. 736, and the case of *Hemanta Kumar Pathak v. Emperor* [1919] 47 Cal. 46. In the present case, where there was a charge under Section 120-13 of the Indian Penal Code, and there was a question as to the bona fides or otherwise on the part of the Appellant No. 3 as also various other questions of fact, it was absolutely necessary to record the charge in such a way as would have enabled this Court to ascertain whether the law has been properly explained to the jury or not in relation to the facts of this particular case and also whether the facts, in so far as they bear upon the elements necessary to constitute the offences, were properly explained to the jury or not.

14. The next objection relates to the procedure that was adopted by the learned Judge under the provisions of Section 73 of the Evidence Act. It appears that certain letters were produced on behalf of the defence and it was alleged on behalf

of the defence that these letters were written by the girl Suhasini. The letters were not proved as having been written or signed by Suhasini. The defence thereupon asked the learned Judge to proceed under the provisions of Section 73 of the Evidence Act and to have the handwriting of the girl taken in Court so that the writing in the letters might be compared with the handwriting of the girl taken in Court and also with her admitted or proved writings and signatures. This procedure was adopted by the learned Judge. But from the two orders which the learned Judge recorded, one on the 4th of March 1925 and the other on the 5th March 1925 it appears that all that was placed before the jury were the signatures of the girl as contained in those letters and some admitted signatures of hers. It does not at all appear whether the jury were asked to compare the handwriting of the girl as alleged to have been contained in the letters with what she had written in Court under the Court's direction. The learned Counsel appearing on behalf of the Crown urged that so long as the letters were not proved it would not have been proper for the learned Judge to have put these letters before the jury and the question whether the letters were admissible or not was a question for the Judge and not for the jury to decide, and inasmuch as the learned Judge thought that it had not been proved that the letters had been written by the girl it was not necessary) for him to place those letters before the i jury in order to get their opinion whether) the letters were written by the girl or not. With all deference to the arguments' of the learned Counsel in this respect I am not prepared to agree with this contention of his. The defence, in order to use these letters as evidence in their favour, had to prove that the letters had been written by the girl. For this purpose they could rely upon expert evidence under Section 45 of the Evidence Act or the opinion of a competent witness under Section 47 of the Act or direct comparison of the letters with proved or admitted documents under Section 73 of the Act. This comparison has to be made by the Court or by a witness called for the purpose. If the defence had succeeded in proving by other evidence that the letters had actually been written by the girl there was no point in making the comparison. It is only where such evidence is not available, and where although the handwriting in the letters had not been proved by independent evidence, to have been the i handwriting of the girl, that it is necessary to have recourse to the provisions of Section 73 of the Evidence Act to see whether by comparison it can

be determined whether the letters were written by the girl or not. The issue before the Court in a case like this is whether the girl had written the letters. Taylor in his Book on Evidence says: 'It further appears, that any person whose handwriting is in dispute, and who is present in Court, may be required by the Judge to write in his presence, and that such writing may be compared with the document in question. Moreover, in all cases of comparison of handwriting, the witnesses, the jury and the Court may respectively exercise their judgment on the resemblance of the writings produced, with respect to the general character of the handwriting, the form of the letters, the orthography of the words and the style of the composition and also on the fact of one or more of the documents being written in a feigned hand.' The result of this comparison is the determination of an issue arising in the case and is quite distinct from the determination of the question of admissibility or otherwise of evidence, which latter is within the province of the Judge alone. Therefore the learned Judge in not placing before the jury, and in not asking them to compare with the writing in the letters, the handwriting taken in Court omitted to give the accused persons an opportunity of getting an opinion of the jury on the question as to whether the letters were really written by the girl or not.

15. A further objection appears on the face of the charge and that is to the effect that, although there were three accused persons and the case as against all the three did not stand on the same footing the learned Judge nowhere asked the jury to consider the case as against each of the accused individually. This in my opinion is also a very serious omission and is likely to have prejudiced the accused persons, having regard to their defences which were not similar but different.

16. These are some of the more important objections which have been taken to the learned Judge's charge to the jury in this case, and in the face of these objections I am not prepared to hold either that the accused had a fair trial or that there was a proper summing up. In my opinion therefore the verdict of the jury should be set aside and the convictions of and the sentences passed upon the appellants on the basis of that verdict should also be quashed.

17. The question then arises as to whether there should be a re-trial of this case or not. The learned Counsel appearing on behalf of the Appellant No. 3 has strenuously urged that in view of certain facts which he has placed before us and also of certain circumstances which may lend support to his argument to the effect that the Appellant No. 3 acted bona fide it is not necessary for us to send the case back for re-trial at least so far as the Appellant No. 3 is concerned. We have carefully considered the matter. We do not express any opinion on the merits of the case, but in view of the evidence on the record we are not prepared to say that this is a case in which we can substitute our own opinion for the verdict of the jury and we accordingly order that the case against all the three accused should be tried again.

18. A further question then arises, and that is as to where the case should be tried...It is quite clear that in view of the nature of the case, the allegations made on behalf of the respective parties, the length of time that has elapsed since the case was instituted, the fact that the case has been widely talked about, and has been discussed in the columns of newspapers, and that there has been some agitation over the case in certain quarters, an atmosphere of prejudice has been created locally, and possibly in some of the neighbouring districts. It is therefore highly desirable that the case should be tried elsewhere than at Rangpur in order that the accused should have a fair and impartial trial. The accused persons desire that the case be tried at Dinajpur and we think that it would be right to accede to their prayer in this respect.... We accordingly direct that the re-trial ordered above do take place in the Court of Sessions at Dinajpur.

19. The accused will remain on bail pending their re-trial.

Cuming, J.

20. I agree.