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Court : Privy Council

Decided On : Jun-18-1946

Judge : Lords Thankerton, Porter, Du Parcq, Sir Madhavan Nair &Amp; Sir John Beaumont

Appeal No. : Privy Council Appeal No 75 of 1945 (From Patna)

Appellant : Ramanugrah Singh

Respondent : Emperor

Advocate for Pet/Ap. : J.D. Casswell, A.G.P. Pullan and Khalil Ahmed, for Appellant; B.J.M. MacKenna for the Crown. Solicitors for Appellant, Douglas Grant and Dold, Solicitors for the Crown, Solicitor, India Office.

Judgement :

Sir John Beaumont:

This is an appeal by special leave from an order of the High Court of Judicature at Patna made on 21st February 1945, convicting the appellant upon a charge of murder under S. 302, Penal Code, and sentencing him to transportation for life. By the same order, the High Court convicted the appellant upon two charges under S. 324, Penal Code, of voluntarily causing hurt by shooting, and sentenced him upon each of these charges to three years' rigorous imprisonment. This appeal relates only to the conviction under S. 302. The judgment of the High Court was given upon a reference made by the Sessions Judge of Patna under S. 307, Criminal P.

C., and the matter to be determined in this appeal relates to the duties and powers of a High Court in India upon such a reference. The question has frequently been considered by High Courts in India, but has not been the subject-so far as their Lordships are aware - of a ruling by this Board.

[2] When the matter first came before the Court, the Sub-divisional Magistrate who dealt with it discharged the appellant and the other accused, being of opinion that the prosecution evidence was such that no Court would be likely to convict upon it. This order of discharge was upheld in appeal by Mr. Salisbury, the then Sessions Judge of Patna; but on an application in revision to the High Court at Patna, that Court took the view that the evidence disclosed a prima facie case, and ordered the commitment of the appellant under Ss. 302 and 324, Penal Code, and of the appellant and certain other persons under S. 201. Accordingly, the Magistrate framed charges against the appellant, first, of committing the murder of Nanku Mahton, being an offence under S. 302, Penal Code; secondly, of causing hurt to Rajinder Singh by shooting him, being an offence under S. 324; thirdly, of causing hurt to Sital Singh by shooting him, being an offence under S. 324. There was also a charge under S. 201 of causing evidence of the murder to disappear, but nothing turns upon this since the High Court recorded no conviction upon it.

[3] The case was tried before Mr. S. K. Das, the then Sessions Judge of Patna, and a jury. On 26th August 1944 the jury returned their verdict, and by a majority of 5 to 2 acquitted the appellant upon the charge of murder under S. 302, and by a majority of 4 to 3 convicted him upon the two charges under S. 324. The Sessions Judge was dissatisfied with the verdict of the jury upon the charge of murder brought against the appellant, and, being clearly of opinion that it was necessary for the ends of justice to do so, submitted the case of the appellant to the High Court under S. 307, Criminal P. C. It appears from the judgment delivered by the learned Sessions Judge and from his letter of reference, that he thought that the jury, in convicting the appellant under S. 324, had accepted in substance the case for the prosecution, and that the acquittal of the appellant under S. 302 rendered the verdict self-centradictory. But the case cannot be disposed of on so simple a basis. No doubt in convicting the appellant under S. 324, the jury muni be taken to have rejected the evidence of alibi set up by the appellant, and they may also be

taken to have rejected the version of the shooting suggested by the defence in cross-examination of the prosecution witnesses, though supported by no substantive evidence, that the killing of Nanku Mahton and the wounding of Rajinder Singh and Sital Singh were the work of Jodhi Singh, the father of the appellant, acting in self-defence and that the shooting took place in the dalan of Jodhi's bungalow. But there is no inherent contradiction in the jury holding that there was satisfactory evidence that the appellant founded two men in the circumstances alleged by the prosecution, but that there was no satisfactory evidence that he killed the third man, or alternatively, killed him in circumstances which rendered the killing culpable homicide. Any Court called upon to pronounce upon the correctness of the verdict would be bound to consider the evidence.

[4] The question whether the High Court disposed of the reference according to law must depend ultimately on the construction of S. 807, Criminal P.C., but before considering the terms of that section, it is desirable to notice other sections of the Code dealing with trials by jury, so as to see how S. 307 fits into the general picture. Section 297 provides that all trials under ch. 23, (which deals with trials before High Courts and Courts of Session) before a High Court shall be by jury. Under this section, all Sessions cases in the Presidency Towns of Madras, Bombay and Calcutta, where the High Courts possess original criminal jurisdiction, are tried with a jury, and the Code until very recently conferred no right in appeal or revision against the verdict of the jury, though the Judge need not accept a majority verdict with which he disagrees. Section 268 provides that all trials before a Court of Session shall be either by jury or with the aid of assessors, and S. 269 enables the Provincial Government to direct that the trial of all offences or of any particular class of offences before any Court of Session shall be by jury in any district. Section 297 requires the Judge to sum up the evidence to the jury and to lay down the law by which they are to be guided. Section 298 deals with the duties of the Judge, who has to decide all questions of law. Section 299 provides that it is the duty of the jury (a) to decide which view of the facts is true and then to return the verdict which under such view ought, according to the direction of the Judge, to be returned, (c) to decide all questions which according to law are to be deemed questions of fact. These provisions may be compared with those in S. 309 relating to trials with assessors. That section requires the Court to take the opinion of each

of the assessors orally and to record such opinion, but expressly provides that in giving judgment the Judge shall not be bound to conform to the opinions of the assessors. Section 410 gives to any person convicted on a trial held by a Sessions Judge or an additional Sessions Judge a right of appeal to the High Court. Section 418 provides that an appeal may lie on a matter of fact as well as a matter of law except where the trial was by jury, in which case the appeal shall lie on a matter of law only. Section 423, after conferring various powers on an appellate Court, directs in sub-s. (2) that nothing contained in the section shall authorise the Court to alter or reverse the verdict of a jury unless it is of opinion that such verdict is erroneous owing to a misdirection by the Judge, or to a misunderstanding on the part of the jury of the law as laid down by him.

[5] It is clear from these sections of the Code that the Legislature drew a sharp distinction between a trial by jury and a trial with the aid of assessors. A jury, aided by the Judge, is the final tribunal for deciding the facts; assessors merely aid the Judge who decides the facts as well as the law. It will now be convenient to set out the terms of section 307:

[6] "307. (1) If in any such case (viz., of trial by jury) the Judge disagrees with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which any accused person has been tried, and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High Court, he shall submit the case accordingly, recording the grounds of his opinion, and, when the verdict is one of acquittal, stating the offence which he considers to have been committed, and in such case, if the accused is further charged under the provisions of S. 310, shall proceed to try him on such charge as if such verdict had been one of conviction. (2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which such accused has been tried, but he may either remand such accused to custody or admit him to bail. (3) In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could

have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Session."

[7] Under sub-s. (1), two conditions are required to justify a reference. The first, that the Judge must disagree with the verdict of the jury, calls for no comment, since it is obviously the foundation for any reference. The second, that the Judge must be "clearly of opinion that it is necessary for the ends of justice to submit the case" is important, and in their Lordships' opinion provides a key to the interpretation of the section. The Legislature no doubt realised that the introduction of trial by jury in the Mofussil would be experimental, and might lead to miscarriages of justice through jurors, in their ignorance and inexperience, returning erroneous verdicts. Their Lordships think that the section was intended to guard against this danger, and not to enable the Sessions Judge and the High Court to deprive jurors, acting properly within their powers, of the right to determine the facts conferred upon them by the Code. If the jury have reached a conclusion upon the evidence which a reasonable body of men might reach, it is not necessary for the ends of justice that the Sessions Judge should refer the case to the High Court merely because he himself would have reached a different conclusion upon the facts, since he is not the tribunal to determine the facts. He must go further than that and be of opinion that the verdict is one which no reasonable body of men could have reached upon the evidence. The powers of the High Court in dealing with the reference are contained in sub-s. (3). It may exercise any of the powers which it might exercise upon an appeal, and this included the power to call fresh evidence conferred by S. 428. The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused. In their Lordships' view, the paramount consideration in the High Court must be whether the ends of justice require that the verdict of the jury should be set aside. In general, if the evidence is such that it can properly support a verdict either of guilty or not guilty, according to the view taken of it by the trial Court, and if the jury take one view of the evidence and the Judge thinks that they should have taken the other, the view of the jury must prevail, since they are the Judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due

weight to the opinion of the jury. If, however, the High Court considers that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice require that the verdict be disregarded.

[8] Their Lordships would, however, observe that the test of reasonableness on the part of the jury may not be conclusive in every case. It is possible to suppose a case in which the verdict was justified on the evidence placed before the jury, but in the light of further evidence placed before the High Court the verdict is shown to be wrong. In such a case the ends of justice would require the verdict to be set aside though the jury had not acted unreasonably.

[9] Their Lordships have been referred to many Indian cases on the construction of S. 807. In some of them the view has prevailed that in dealing with a reference under S. SOT, the High Court will only interfere with the verdict of the jury if it finds the verdict "perverse, in the sense of being unreasonable," "manifestly wrong" or "against the weight of evidence." In support of this view, their Lordships may refer to 13 Beng LR App 19, (1) 15 Bom 452,(2) 54 Cal 708, (3) 51 Mad 956 (4) and 34 Bom LR 896.(5) On the other hand, in other cases the view has been taken that the High Court on a reference must act upon its own view of the facts and is not bound to accept the opinion of the jury, even if not shown to be unreasonable. In support of this view, the cases in 55 cal 879,(6) 29 cal 128 (7) and 13 Lab, 573, (8) may be mentioned. For the reasons already given, their Lordships agree in substance with the reasoning in the former line of cases, but they would emphasise that the requirements of the ends of justice must be the determining factor both for the Sessions Judge in making a reference and for the High Court in disposing of it.

[10] It remains to consider whether in this case the High Court dealt with the reference in accordance with the principles enunciated above. It may be mentioned that the High Court examined two witnesses, the doctor who had given evidence in the Magistrate's Court but not in the Sessions Court, and a gunnery expert. But their evidence does not appear to have strengthened the prosecution case. The judgment of the Court was delivered by Imam J., Varma J. merely

expressing agreement. In para. 1 of his judgment, Imam J. observed that since the whole case was before the Court under S.307, Criminal PC, it was necessary to come to a definite conclusion on the evidence in the case as to whether the present appellant was guilty of the offences with which he had been charged. The learned Judge then discussed in detail various criticisms made by the defence on the prosecution case, and came to the conclusion that the prosecution case was proved. But he did not discuss whether the jury, acting reasonably within their powers, might not have been justified in taking a view more favourable to the defence. Indeed, throughout his judgment the learned Judge did not mention the jury, and he appears to have attached no weight whatever to their opinion. The judgment is appropriate to an appeal, rather than to a reference under S. 307.

[11] Mr. MacKenna for the Crown has, however, argued that even if the Judges of the High Court approached the case from the wrong angle, they would have been bound to reach the same conclusion had they considered the case from the right angle, and that the appeal should be dismissed. It is necessary therefore to refer to some of the material passages in the judgment. Imam J. noticed that all the prosecution witnesses were members of the party of Medhabarat, a pleader of Patna, between whom on the one side, and the appellant and his father on the other, bitter enmity existed. The learned Judge said that he had no doubt that having regard to the enmity existing, It was necessary to examine the evidence against the appellant with very great care, and that throughout the bearing of the reference he had had to keep in mind the possibility that the appellant might have been falsely implicated owing to the enmity. The charge that witnesses are biassed always affords a legitimate ground of criticism of their evidence, and often for rejecting it in the absence of corroboration. It was essentially a matter for the jury to decide whether they would accept the evidence of interested witnesses, but Imam J. ignores this.

[12] The learned Judge discussed a certain degree of improbability in the story of an incident said to have taken place in Medhabarat's dalan before the actual shooting, and as to this, the learned Judge said:

[13] "I am unable to say on the evidence on the record that the evidence of the prosecution that an incident took place in Medhabarat's dalan which resulted in his and his companions' flight towards Rikhi Singh's courtyard was so improbable as to be disbelieved. It is true that the evidence is of persons who are hostile to Jodhi Singh and Ramanugrah, but that by itself is not a sufficient reason for discarding the evidence.... I can find no sufficient justification for discarding the evidence of the witnesses and I would hold that the prosecution evidence is substantially true regarding the incident at Medhabarat's dalan."

[14] This passage illustrates the disregard, which appears throughout the judgment, of the views of the jury. The learned Judge then noticed a difficulty which had particularly impressed the Sub-divisional Magistrate and Sessions Judge who had thought in the first instance that no prima facie case was made out against the accused. The prosecution case was that the men were shot whilst running away, but the medical evidence showed that they had not been wounded in the back. Imam J., considered that the injured men might have been shot when looking round to see the man following them. Clearly the jury cannot be considered unreasonable if they were impressed with a point which a Magistrate and Sessions Judge had thought fatal to the prosecution case.

[15] The learned Judge then noticed the argument that, whilst there was corroboration of the shooting of Rajinder and Sital at the places alleged by the prosecution, in the finding at those places of cartridge caps, pellets, blood-stains and marks of shot on the surrounding walls, there was no corroboration as to the place where Nanku was alleged to have been killed. As to this the learned Judge thought that some corroboration was afforded by the evidence of the Inspecting Officer that he found that at the place where Nanku was supposed to have been shot, the earth had been freshly plastered with cowdung and that he saw faint marks of blood beyond the plastered space. In cross-examination the Sub-Inspector had said that he could not say that the cowdung was just fresh; an admission which really destroyed the suggestion that the place had been plastered in order to conceal traces of the murder, since the place was examined only a few hours after the shooting. Apart, however, from this, there is nothing to indicate that any of the samples of earth which the Sub-Inspector sent to the chemical analyst

to be tested for traces of human blood came from the place marked "D" on the plan where Nanku is supposed to have been shot, and there was no evidence before the jury of any traces of human blood found at "D." Imam J. then went on to consider the fact that no pellets were found at the place where Nanku was alleged to have been shot, and that there were no marks of shot on the wall behind that place. As to this Imam J. suggested that it was just possible that it did not occur to the Sub-Inspector to examine the wall behind the point "D" more carefully having secured sufficient other evidence. No such suggestion seems to have been put to the Sub-Inspector, and the jury can hardly be blamed if they did not accept the view that the Sub-Inspector omitted to examine the one wall really material on the charge of murder, though he had made a very careful examination of the other walls in the vicinity. The absence of any marks of shooting behind the place where Nanku is said to have been shot is difficult to reconcile with the prosecution case as to the line of shooting. The learned Judge summed up his conclusions in these words:

[16] "The conclusion therefore at which I have arrived is that the evidence that Ramanugragh fired the gun at village Bareya near the courtyard of Rikhi Singh which caused the death of Nanku Mahton and injured Rajinder Singh and Sital Singh as given by the prosecution is true."

[17] The Court, therefore, convicted the appellant under Ss. 302 and 324. The Sessions Judge had expressed the opinion that the offence fell under S. 304 and not 302, but the High Court was not bound by this opinion. In their Lordships' opinion, had the High Court approached the reference on the right lines and given due weight to the opinion of the jury they would have been bound to hold that the reference was not justified and that the ends of justice did not require any interference with the verdict of the jury. It is impossible to hold that the jury were unreasonable or perverse in taking the view, as they seem to have done, that for the shooting of Rajinder and Sital, who were relations of Madhabaret and working With him, and against whom, therefore, the appellant had some reason for enmity, the story of the eye-witnesses, corroborated as it was by some independent evidence, might be accepted; but that for the shooting of Nanku, a mere servant for whose murder by the appellant no motive was shown, the story of the eye-

witnesses, which was without any corroboration and indeed difficult to reconcile with some of the facts proved, was not one which could be safely accepted. There is nothing inconsistent in these two views.

[18] Mr. Mackenna further suggested that the case should be sent back to the High Court for reconsideration on the lines laid down in this judgment, but as their Lordships are satisfied that reconsideration of the case on such lines could only result in the verdict being upheld, they see no advantage in adopting this course. Their Lordships will, therefore, humbly advise His Majesty that this appeal be allowed and the conviction of the appellant under S. 302, Penal Code, and the sentence of transportation for life passed upon him under that section set aside. The conviction and sentences passed on the appellant under S. 324 are not the subject of appeal and are not affected by this judgment.

Appeal allowed.

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