

CRIMINAL REFERENCE.

Before Imam and Chapman JJ.

EMPEROR,

v.

SWARNAMOYEE BISWAS.*

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Nov. 24.

Verdict of Jury—Reference to High Court—Power to question the jury as to their reasons for the verdict—Grounds of reference—Mere disagreement with a verdict not perverse—Interference by High Court when the verdict is not in defiance of the probabilities of the case.

It is open to the Judge, when he disagrees with the verdict of the jury and intends to make a reference to the High Court, under s. 307 of the Criminal Procedure Code, to question the jury as to the reasons for their verdict.

Emperor v. Annada Charan Thakur (1) referred to.

It is not in every case of doubt, nor in every case in which a view different from that of the jury can be entertained on the evidence, that a reference under s. 307 of the Code is to be made to the High Court, but when the verdict is manifestly wrong. The High Court will not interfere under s. 307 in every case of doubt or in every case in which it may with propriety be said that the evidence would have warranted a different view.

Queen v. Sham Bagdi (2) approved.

The High Court refused to interfere where the facts, on a reasonable hypothesis, were not inconsistent with the innocence of the accused, and the verdict was not in defiance of the probabilities of the case.

THE accused, Swarnamoyee Biswas, and the deceased, Sampson, were native Christians brought up by missionaries. The former, a girl of 15, was educated in Calcutta and served as a school teacher in the Methodist Episcopalian School at Asansol. Sampson came from Mozufferpore to Burdwan, and was employed

* Criminal Reference No. 25 of 1913, by G. N. Roy, Sessions Judge of Burdwan, dated Aug. 29, 1913.

(1) (1909) 1 L. R. 36 Cal. 629.

(2) (1873) 13 B. L. R. Ap. 19.

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as a cook in the house of Mr. P. N. Sircar. On the 2nd November 1912 Swarna and Sampson were married, but shortly after he fell ill and had to be admitted to hospital. She went back to Asansol and resumed her post in the school. When Sampson had been for some time in the Burdwan hospital, she wrote to him to go up to Asansol and asked Mr. Byers, the head of the Vernacular Department of the Mission, to give him some appointment. Sampson went up to Asansol and stayed in the compound of Mr. Byers but grew worse. He refused to go to hospital but went to the Budhadanga Mission under the charge of Keshub Baboo. Swarna was called in to nurse her husband and lived in the same room with him. His diet was supplied by Keshub. It appeared that, on the 1st January 1913, she procured some *kuchla* seeds from which strychnine is prepared and requested some Mission girls to pound them, but that they refused whereupon she ground them herself on a stone. On the next day, at about 8 A.M., the accused brought, as usual, a cup of barley from Keshub's house for her husband which he drank. Two hours after he exhibited signs of great agony and died at about 11 A.M., exclaiming "God help me, Babu, I have sinned". Strychnine was found on *post mortem* in the stomach of the deceased and in the cup and spoon, but not on the stone.

The accused was tried, under s. 302 of the Penal Code, before the Sessions Judge of Burdwan with a jury who found her guilty by 3 to 2. The Judge thereupon sentenced her to transportation for life. On appeal, the conviction was set aside for misdirection and a re-trial ordered. The case was tried by the same Judge with a fresh jury who unanimously found her not guilty. The Judge dissented from the verdict and referred the case to the High Court under s. 307 of the Criminal Procedure Code.

The Letter of Reference was as follows:—

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"I have the honour to refer the case to the Hon'ble High Court under section 307 of the Criminal Procedure Code. The accused in this case was sent up for trial under sec. 302 of the Penal Code. She was found guilty by the jury by a majority of 3 to 2, and I accepted the verdict and sentenced her to transportation for life. On appeal, the conviction was quashed and the case directed to be retried. The accused has been retried. The jury have unanimously found the accused not guilty. Ordinarily this should mean a respite for the accused. It is a cruel and callous murder, however, and the evidence, though circumstantial, is so complete that I am of opinion that it is necessary for the ends of justice to submit the case to the High Court.

The facts of the case appear sufficiently in my charge to the jury. The accused Swarna and one Sampson were brought up by Missionaries. Swarna is educated and was a school teacher. Sampson was illiterate and a cook in the service of Rev. P. N. Sircar. The missionaries married them on the 2nd November 1912. On the day of the marriage, or soon after, Sampson fell ill and had to go to hospital at Burdwan. Swarna went back to Asansol and again became a teacher there in the Mission. She had nothing to do with her husband until the 27th or 28th December 1912 when she was brought to nurse her husband. On the 2nd January 1913, Swarna brought her husband's barley as usual. At about 10 A.M. Sampson was in agonies, and he died within an hour with all the symptoms of strychnine poisoning. It appears that Swarna procured *kuchla* seeds (from which strychnine is prepared) the day before the strychnine was found in the man's stomach—and in the barley in the cup and spoon in his room. On the previous day Swarna had written a passionate letter to a chum in Calcutta and had asked her to send her poison and expressed the hope that she would join her soon. Evidently she had changed her mind and got the poison herself. When Mr. Meik of the Mission arrived after Sampson's death she said that her husband had purged and vomited and then died—which was untrue. As to the letter, she stated that she wanted the poison for herself as she was unhappy. But there is a clear desire expressed in the letter to go to her friend after the poison was received. As to the *kuchla* seeds she stated that she had got them to kill the lice in her hair—an explanation which to my mind is absurd.

The above facts came from irreproachable sources, viz., from Mr. Meik a missionary of 35 years standing. There was some difference of opinion between Mr. Meik and Mr. Byers of the same Mission. It appears Mr. Byers wanted to hush up the matter. There can be no question that Mr. Meik acted rightly in the matter, and Mr. Meik's deposition is corroborated by numerous witnesses of the same Mission. I do not know

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the reason of the verdict of the jury. The accused is extremely young and her case calls for sympathy to some extent in that she was a fairly educated girl but was mated to a menial servant. But these considerations are out of place in coming to a finding as to the charge. I have studied the charges to the jury in some of the well-known poisoning cases, and to my mind the present case is much stronger than any which ended in conviction. The verdict of the jury, therefore, seems to be perverse. On the facts it does not appear to me that anybody but the accused could have poisoned Sampson. I would, therefore, hold the accused guilty of murder, though I do not consider that the extreme sentence of the law is called for in this case."

Mr. Avetoom, Babu Gour Chandra Pal and Babu Sailendra Nath Mookerjee, for the accused.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown.

Cur. adv. vult.

IMAM AND CHAPMAN JJ. This is a reference under section 307 of the Criminal Procedure Code by the Sessions Judge of Burdwan who, not agreeing with a unanimous verdict of "not guilty", of the Jury, has submitted the case to us for our consideration.

The accused Swarnamoyee Biswas is a young Indian Christian girl aged 15 years. She stands charged under section 302 of the Indian Penal Code with the murder of her husband, Sampson, to whom it is alleged she administered strychnine.

Swarnamoyee is an orphan brought up and educated by Missionaries in Calcutta. The deceased was also an orphan brought up by Missionaries. He came from Mozufferpore to Burdwan, and was in the employ of the Reverend Mr. P. N. Sirkar at Burdwan as cook. He was illiterate. The girl came from Calcutta to Asansol and took a teacher's post in the Methodist Episcopalian Mission School there. The Missionaries arranged to marry the two. They were married on the 2nd November 1912 and came to Burdwan. Within

a day or two of the marriage Sampson fell ill and had to go to hospital. Swarnamoyee then took up a teacher's post in a Mission School at Burdwan, but not liking the place she returned to Asansol where she again became a teacher in the Methodist School. Sampson had remained sometime in the hospital when Swarnamoyee wrote to him to come to Asansol, and asked Mr. Byers, the head of the Vernacular Department of the Mission, to give him some sort of an appointment. Sampson came to Asansol and stayed for a few days in the bungalow of Mr. Byers, but grew worse. He was then told to go to hospital but he preferred not to do so, and on the 27th or 28th December, came to Budhadanga Mission house under the charge of Keshab Baboo, a subordinate of Mr. Byers. Swarnamoyee, who was living in the Widow's Home near by, was sent for to nurse her husband, and she accordingly came to occupy the same room with him in the Budhadanga Mission compound. Swarnamoyee used to get her meals supplied to her from the Widow's Home, while Sampson's invalid diet used to be supplied from the house of Keshab Baboo.

On the 2nd January last Sampson appeared to be better and was seen walking about in the compound on the morning of that day. At about 8 A. M. Swarnamoyee fetched, as usual, from Keshab Baboo's house, a cup of barley for her husband and at about 10 A. M. he was found in great agony. Rajani Baboo, a teacher, and Profulla, a preacher, came up, and discovering him in a state of convulsive pain, the latter informed Mr. Meik, belonging to the same Mission but in charge of the English Department, as to the condition of Sampson. Mr. Meik and Mr. Byers it seems do not agree, and so the former suggested to Profulla that Dr. Mittra, who sometimes attended patients at the

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Mission, might be called in to see Sampson. Dr. Mitra was not found, and as Mr. Byers happened to be out at the time he could not be informed of Sampson's condition. At about 11 A. M. Sampson died and Profulla and Rajani Baboo returned to their rooms. Keshab Baboo's wife called Profulla and told him that there was a letter, which was then in Rajani Baboo's possession, that mentioned poison, and that he should take it to Mr. Meik and seek his advice. Mr. Meik was shown the letter and informed of Sampson's death. Suspecting that the deceased had not come by his death in a natural way, Mr. Meik sent a chit to the sub-inspector of police, and himself went to the Budhadanga Mission and saw the corpse. In the room were two cups and a spoon which he directed were not to be touched. The letter was shown to Swarnamoyee who admitted it as having been written by her, but she explained that the poison mentioned therein was wanted by her for herself as she had been unhappy owing to having been tricked into a marriage with a man who was illiterate and a menial. Presently Mr. Byers came and so did the sub-inspector. Between Mr. Byers and Mr. Meik there was difference of opinion as to the cause of death, the former holding that there was nothing suspicious while the latter insisting on his doubts. The sub-inspector took charge of the corpse the cups and spoon, and the letter. In the meantime Mr. Meik, while returning to his bungalow, was informed by some women on the way that two girls in the Mission were saying that Swarnamoyee, on the previous day, had asked them to pound three seeds, and on their not being able to do so she herself pounded the seeds. Mr. Meik called the sub-inspector to inform him of what he had heard. Just then Mr. Byers and Swarnamoyee also came up. She was

questioned and, according to Mr. Meik, she admitted having pounded *kuchla* seeds but explained that she had pounded the seeds to apply the same to her head for killing lice. To the girls, it is stated, she had said that she wanted the seeds to be pounded for application to her husband's forehead. Mr. Byers says that he did not understand her to say that she had got *kuchla* seeds but *kuchra* seeds. We are informed that *kuchra* is the seed of the *mahua* fruit which is quite harmless and contains no poison, while *kuchla* affords strychnine. The stone, on which the seeds were said to have been pounded, was taken charge of by the sub-inspector. The viscera of the deceased, the cups and spoon and the stone were sent to the Chemical Examiner whose reports show that the viscera and the cups and spoon bore traces of the strychnine, but no such trace was found on the stone. On these facts the accused was tried by the Sessions Court of Burdwan in May last, and convicted of the offence of murder on the verdict of the majority of the jury who were divided in the proportion of three to two. Against that conviction the accused appealed to this Court of which a Division Bench set aside the conviction and ordered a retrial on the ground of misdirection in the charge to the jury. She has again been tried and found not guilty by the jury who are unanimous in their verdict. The Sessions Judge, not agreeing with the unanimous verdict, has referred the case to us.

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It was open to the learned Judge, when he disagreed with the verdict and intended to make a reference to this Court, to ask the jury the reasons of their verdict: *Emperor v. Annada Charan Thakur* (1). That course, however, was not adopted and we

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are in ignorance of the reasons for the jury's view of the case.

The evidence against the accused is mainly of a circumstantial character, and there is nothing direct to implicate her in the crime. The rule that in cases of circumstantial evidence the facts found should be inconsistent on a reasonable hypothesis with the innocence of the accused, before a conviction is pronounced, has as much application to this case as to any other case of circumstantial evidence.

There can be no doubt that the deceased came to his death by strychnine poisoning. We may also accept that on the previous day the accused had pounded *kuchla* seeds. We may also for the purposes of this case concede that the strychnine found in the viscera and the cups was from the *kuchla* seeds.

In this case the evidence discloses that the deceased had been suffering from pulmonary phthisis, and Dr. Rajendra Chandra Barari, examined for the prosecution, states that strychnine is occasionally administered in phthisical cases to stimulate the heart.

Although Mr. Meik has stated that the accused had, in explanation of the reference to the poison in the letter, stated that she wanted the poison for herself as she was unhappy owing to having been tricked into an unequal marriage, we have it from several prosecution witnesses that she had married the man of her own free will with full knowledge of his position and had expressed no regret at her choice. The witnesses are agreed that between the deceased and the accused there had been no quarrel: on the contrary they were on good terms, and there appears on the evidence no motive on the part of the accused to kill her husband. Her conduct in writing to the deceased while he was at Burdwan to come to Asansol, and in asking Mr. Byers to provide him with

employment, is in favour of the supposition that between him and her the sympathy, that generally exists between man and wife in the common concerns of life, had not been disturbed.

The letter, on which the learned Judge so much relies, has been very carefully considered by us, and its contents compel us to regard it as an extravagant expression of hysterical love entertained by one girl towards another. The reference to poison, to which the learned Judge attaches so much importance, forms part of a long paragraph full of figurative language, ornate with incoherent similes and metaphors. We regard it as unsafe to interpret the passage relating to poison in its literal sense when the preceding and the succeeding passages are not susceptible of similar treatment.

The learned Judge has further relied on the statements of the accused said to have been made to Mr. Meik. Apart from any legal objection to their reception in evidence they were clearly not true and, at best, can be used to draw some inference from conduct. The question to our mind is whether the inability of the accused to explain the reference to poison warrants a conclusion that she asked for poison to administer it to her husband. We are unable to say that it does. We have to bear in mind that the accused, when confronted with one passage from a singularly absurd letter had to give, as she thought, some explanation, and she said what came uppermost in her mind. Allowance must also be made for her distraction due to the suspicion that Mr. Meik obviously had without reserve expressed. We are not prepared to attach much meaning to her statements made to Mr. Meik.

The fact that the deceased had been suffering from phthisis, and strychnine is administered in such cases,

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is not without its significance in considering the reasonableness or otherwise of the verdict of the jury. The deceased was an illiterate person, and from his having refused to go to hospital it would not be unreasonable to infer that his faith in hospitals was not as firm as that of the average man, and we know from common experience the tendency of the illiterate and the ignorant to treat themselves without the aid of trained medical advice. We cannot fix on the jury the charge of perversity or unreasonableness if they believed that the deceased dosed himself with *kuchla* powder in the hope of curing himself, and employed Swarnamoyee who was nursing him to get the *kuchla* seeds for him. This hypothesis derives support from these facts that cannot be ignored in considering the case of the accused: (i) that Swarnamoyee, after getting the seeds, made no secret of the fact that she had them and actually asked some girls of the Mission to pound them for her; (ii) that the barley, if mixed up with the powdered *kuchla* seeds, must have tasted bitter, the medical evidence being clear on the point, and yet he drank and drained out the cup of barley; and (iii) that when Sampson was writhing in pain he accused nobody, but said "God help me, Babu, I have sinned."

Had Swarnamoyee got the *kuchla* seeds for the purpose of killing her husband, her guilty mind would have dictated to her the prudence of keeping the seeds a secret to herself; but we see on the contrary a freedom from caution in her behaviour in asking the girls to pound the seeds for her.

As for the bitterness of the barley, it is difficult to believe how he took it without detecting its taste, and it may reasonably be urged by the accused that Sampson, while taking the barley, knew what he was consuming.

His dying statement that he had sinned is another indication that may properly be claimed as showing that he was answering for his own act.

We find, on the facts of this case, that on a reasonable hypothesis they are not inconsistent with the innocence of the accused.

We desire to point out to the learned Judge that it is not in every case of doubt, nor in every case in which a view different from that of the jury can be entertained on the evidence, that a reference under section 307 of the Criminal Procedure Code is to be made to this Court, but the verdict of the jury should be manifestly wrong before such a reference is made.

We wish to endorse and emphasize the remarks of Macpherson, J. in *Queen v. Sham Bagdi* (1) "If we are to interfere in every case of doubt, in every case in which it may with propriety be said that the evidence would have warranted a different verdict, then we must hold that real trial by jury is absolutely at an end, and that the verdict of a jury has no more weight than the opinion of assessors."

We are of opinion that in this case the verdict of the jury is not in defiance of the probabilities of the case, and we accordingly acquit the accused.

E. H. M.

(1) (1873) 13 B. L. R. App. 19.