CRIMINAL REFERENCE.

Before Suhrawardy and Page JJ.

EMPEROR
v.
JOGI KAR.*

1929
Dec. 12.

Jury trial—Reference to High Court—Code of Criminal Procedure (Act V of 1898), s. 307.

On a Reference to the High Court under section 307 of the Criminal Procedure Code, 1898, by the Additional Sessions Judge, disagreeing with the unanimous verdict of the jury, on the ground that the jury should not have accepted the uncorroborated statement of certain prosecution witness,

held that the High Court should be reluctant to interfere with the unanimous verdict of the jury unless it is manifestly wrong and unless it is necessary to do so in the interest of justice.

Queen v. *Sham Bagdi* (1) and other cases followed.

A letter of Reference ordinarily should state the case, the verdict of the jury and concisely the grounds upon which the judge differs from the verdict.

REFERENCE.

This was a Reference under section 307 of the Criminal Procedure Code by the Additional Sessions Judge of Midnapur, disagreeing with the unanimous verdict of the jury and recommending that the accused persons should be acquitted. The five accused persons in this case were tried on a charge of murder of one Mahesh Adak and the jury returned an unanimous verdict of guilty under sections 326 and 147 against Jogi Kar, Rupai Kar and Patit Kar and under section 147 against Hari Chakravarti and Shibu Maiti. The learned Judge, disagreeing with that verdict, referred the matter to the High Court.

Mr. Pannalal Chatterji, for the accused.
Mr. Asaduzzaman, for the Crown.

SUHRAWARDY J. This is a Reference by the Additional Sessions Judge of Midnapur, recommending that the accused persons in this case should be acquitted. The unanimous verdict of the jury

*Jury Reference, No. 64 of 1929, by B. L. Sarkar, Additional Sessions Judge, Midnapur, dated Aug. 17, 1919.

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convicted them of offences under sections 326 and 147, Indian Penal Code.

Before dealing with the merits of the case, I should like to say a few words about the letter of Reference submitted by the learned Judge. A letter of Reference ordinarily should state the case and the verdict of the jury and concisely the ground upon which the learned judge differs from that verdict and considers it necessary, in the ends of justice, to submit the case to this Court under section 307, Code of Criminal Procedure. What the learned Judge has done in this case is that he has given a detailed criticism of the evidence by the prosecution and by the defence and in the conclusion he expresses his agreement with the point of view urged on behalf of the accused. The recommendation made by the learned Judge that the accused should be acquitted has been based by him on the view that, on the evidence in this case, the accused should have been given the benefit of doubt and he could not agree with the verdict of the jury, because their appreciation of evidence seemed not to be proper. These are hardly grounds for a reference under section 307, Criminal Procedure Code. The duty of the referring judge is laid down in that section—that when he is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he shall submit the case accordingly recording the grounds of his opinion. The letter of Reference cannot be said to satisfy the requirements of the law.

Now, what we have to do in this case is to find whether the verdict of the jury is so perverse and unreasonable as to demand our interference with it. It is hardly necessary to say that the current of decisions since the case of *Queen* v. *Sham Bagdi* (1) had been that this Court should be reluctant to interfere with the unanimous verdict of the jury unless it is manifestly wrong and unless it is necessary to do so in the interest of justice. Of course, any crystalised rule of law cannot be laid down to guide

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

the courts in every case that comes before it, but it is now accepted that this Court will not interfere with the unanimous verdict of the jury, unless it is of opinion that it is unreasonable on the particular facts of the case. Keeping this principle in mind, I have to examine the merits of this case, not in the light of the verdict I myself might have returned, if I were sitting as a court of fact, but to consider whether the jury had any ground on which they could base their verdict.

The case rests mainly on the evidence of prosecution witness No. 1, Radhashyam, the son of the deceased, a boy of 12 years of age. He says that he was able to recognise the accused persons from under a wooden platform where he had hidden himself, and he named them to every one whom he met after the occurrence. This story has been corroborated by the witnesses examined in this case. There are no doubt some discrepancies in the evidence. The suggestion is that the boy was instructed by two enemies of the accused, Gopinath and Gobinda, to name the accused, whereas as a matter of fact the deceased was done to death by persons unknown. It is only a suggestion and nothing more. There is no explanation as to why the names of the real culprits have been suppressed. There can be no doubt on the evidence that the deceased was attacked in the room in which he was sleeping, as the dead body was found there and the clothes he was wearing and the mosquito-net within which he was sleeping bore blood marks and there was some blood marks also on the threshold and the wall. There cannot be much ground to disbelieve the prosecution story that the boy Radhashyam was also sleeping with him in the same room. Why should Radhashyam implicate these persons and not the persons who actually committed the murder? There does not seem to be any impossibility of Radhashyam recognising the assailants. It was a full moon night, and though some witnesses have said there was cloud in the sky, the room was a small one and the distance to which the deceased was carried was short; the

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light in all probability was enough to enable the boy to recognise the assailants if they happened to be his neighbours. It is not suggested that it was a case of dacoity. If the jury chose to believe this boy, and the other witnesses had said that he mentioned the names of the accused, it is difficult for us to say that the jury were unreasonable in the view they took. If we do, the result will be that we will be sitting on a question of fact over the verdict of the jury which, in my opinion, is against the policy of the legislature. The learned advocate for the accused has taken to the most important portions of the evidence, but I cannot say that it is such a clear case in which the jury ought not to have convicted the accused and should have given him the benefit of the doubt.

After considering the entire evidence and after giving due weight to the opinion of the Sessions Judge and of the jury, we are of opinion that the accused should be convicted of the offences of which they have been found to be guilty by the unanimous verdict of the jury. We reject the Reference and we convict the accused Jogi Kar, Rupai Kar and Patit Kar under section 326/34, Indian Penal Code, and sentence them to seven years' rigorous imprisonment each. We also convict them under section 147, Indian Penal Code, but pass no separate sentence. We convict Hari Chakravarti and Shibu Maiti under section 147, Indian Penal Code, and sentence them to two years' rigorous imprisonment each.

The accused must surrender to their bail and serve out the sentences passed on them.

PAGE J. I agree. In my opinion, this Reference is wholly misconceived. The learned Judge does not affect to say that the verdict of the jury was perverse or such as the jury could not reasonably have delivered. The ground of his disagreement with the verdict of the jury is that, inasmuch as the verdict of guilty must have mainly been founded upon the evidence of prosecution witness No. 1, and inasmuch as there was no corroboration of the testimony of that witness—

"at least they should have given the accused the "benefit of doubt." The trial in this case was by judge and jury, and the verdict on the issue of guilty or not guilty was to be the verdict of the jury. It may be that the judge, if he had been a member of the jury, might have been disposed to take a more lenient view of the facts than the jury took, but that in itself, in my opinion, would not justify him in referring the case under section 307. That section, which is drastic in its nature, was intended to provide against a clear miscarriage of justice which had occurred at the trial, and if, in the opinion of the judge, he thinks that it is necessary for the ends of justice to submit the case to the High Court, it is his duty to do so recording the grounds of his opinion. We are of opinion, however, that there was no ground in this case upon which a Reference could properly be based. I find myself unable to accept the view which induced the learned Judge to refer the case to the High Court for, in my opinion, the evidence of prosecution witness No. 1 was amply corroborated. This boy, who was the sole eye-witness of the terrible crime that was committed, immediately told a number of persons that the five accused who are now before the Court all took part in the commission of the offence. The fact that there were a number of witnesses who stated that he repeated this story to many people on numerous occasions, if believed, tends to corroborate and support the truth of this witness's testimony. In my opinion there was ample evidence to justify the verdict which the jury delivered.

It is urged, however, that if we should be disposed to give the accused the benefit of the doubt we ought to accept the Reference and acquit all the accused. The scope of section 307 was defined by Mr. Justice Macpherson in the case of *Queen* v. *Sham Bagdi* (1), in 1873 as follows:—"I think we ought not to "interfere with a verdict unless we can say decidedly "that we think that it is clearly wrong. If we are "to interfere in every case of doubt, in every case in

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

"which it may with propriety be said that the "evidence would have wanted a different verdict, then "we must hold that real trial by jury is absolutely at "an end, and that the verdict of a jury is of no more "weight than the opinion of assessors. I presume "that if this were the opinion of the legislature it "would have said so. But the legislature has not "said so." The view expressed by Mr. Justice Macpherson in 1873 has stood the test of more than 50 years, see *King-Emperor* v. *Pramatha Nath Bagchi* (1) and *Emperor* v. *Dhananjoy Raha* (2), and we think that the opinion of Macpherson and Morris JJ., in *Sham Bagdi's case* (3), as to the manner in which the Court should exercise its jurisdiction under section 307 is good sense and settled law in this province. We have been referred to certain observations of Cuming J. in *Emperor* v. *Ram Chandra Roy* (4). The learned Judges in that case did not refer to *Sham Bagdi's case* (3), nor indeed does it appear that reference was made to it in the argument. It must not be taken, as I read that judgment, that the learned Judges intended to throw any doubt upon the correctness of the view expressed by Macpherson and Morris JJ. in *Sham Bagdi's case* (3) which has become the basis of the settled practice of this Court. If, however, the learned Judges in the case of *Emperor* v. *Ram Chandra Roy* (4) intended to differ from, or impugn the correctness of, the decision in *Sham Bagdi's case* (3), with all due respect, I am bound to say that I do not agree with them.

Now, exercising the jurisdiction vested in us under section 307, we are of opinion that inasmuch as there was evidence upon which the jury might reasonably have come to the conclusion at which they arrived this Reference should be rejected.

Reference rejected.

N. G.

(1) (1919) 30 C. L. J. 503, 507.
(2) (1923) I. L. R. 51 Calc. 347, 352.
(3) (1873) 13 B. L. R. App. 19.
(4) (1927) I. L. R. 55 Calc. 879, 885.