

APPELLATE CRIMINAL.

Before Cuming and Lord-Williams JJ.

NAGENDRANATH NATH

v.

GOPAL SARDAR.*

1929

July 11, 12, 16.

Charge—Summing up to the jury—How to deal with facts and law—Language of the judge's charge—Judge's opinion—Mofussil judges—High Court's responsibility as appeal court, in murder cases especially.

LORT-WILLIAMS J. It is not sufficient for the Judge in his charge merely to recount and repeat chronologically the evidence as it has been given in court by the various witnesses. It is necessary to sift, and weigh and value the evidence. The Judge ought to see that all essential facts go into the scales of justice and on the proper side of the balance. Further, the facts must be marshalled by the judge under separate heads and in distinct compartments, as they affect each separate incident in the story.

It is worse than a waste of time to spread fine language and lofty homilies before a common jury. It should be addressed in simple language. Nor will long and abstruse dissertations upon law enlighten it. This should be stated in the shortest and simplest terms and without reference to the numbers of Acts and sections of which the members have never heard.

In a murder case in which the fact of murder is obvious and unquestioned, the whole attention of the jury should be directed to the question of the identity of the murderer, and not distracted by a lengthy direction upon the law relating to murder.

And when both the fact and the mode of death are beyond dispute it is not necessary to implore the jury to concentrate their minds on the solution of the puzzling enigma whether the deceased was dead or not and what he died of.

To advise a jury about the necessity of spending their virgin efforts in a critical analysis of the obvious was to bring the law into ridicule and disrepute and to divert their attention from matters which were essential.

A judge (if he has got an opinion on the facts at all) ought to tell a jury what it is, so long as he makes it clear that they are at liberty to regard or disregard it as they please. A charge which succeeds in avoiding any expression of opinion must generally amount to a most colourless and unhelpful direction.

Observations on the curious system prevailing in this country, under which the responsible and somewhat horrible power of life and death is given to judges in the *mofussil* who often are comparatively young, and generally without any practical experience of the profession of the law.

The responsibility which devolves upon the High Court, therefore, is far greater than that which rests upon other courts of criminal appeal. Consequently, it is imperative that the High Court should be satisfied in every case, and especially in murder cases, that the judge's charge was adequate.

*Criminal Appeal, No. 46 of 1929, against the order of E. S. Simpson, Additional Sessions Judge of Khulna, dated Dec. 7, 1928

CRIMINAL APPEAL, by the accused.

The accused was charged with murder of Sitanath Das before the Additional Sessions Judge at Khulna. He pleaded not guilty. The trial was with seven jurors, who unanimously found the accused guilty, but recommended him to the mercy of the court. The learned Judge sentenced the accused to transportation for life.

Mr. Prabodhchandra Chatterji and *Mr. Surendranath Basu* (II), for the appellant. The charge is defective. The evidence is not placed before the jury in such a way as to enable the jury to follow the same intelligently. The charge has many misdirections as well as non-directions.

Mr. Birbhusan Datta, for the Crown, admits that these are misdirections, but submits that the Judge's charge is, on the whole, substantially correct.

Cur. adv. vult.

LORT-WILLIAMS J. The appellant was tried at Khulna by Mr. Simpson, the Additional Sessions Judge, and a jury of 7, convicted, by their unanimous verdict, of murdering Sitanath Das, on the 15th June, 1928, and, on their plea for mercy, sentenced to transportation for life.

There is no doubt that Sitanath Das was murdered—the question is whether the appellant murdered him.

Sitanath and one Manindranath Nath were neighbouring shopkeepers at Kapilmuni. The appellant was Manindra's servant.

On the night of the 15th June, at about 9 p.m., Sitanath went to the shop of Kalibar Pramanik and there drank intoxicating liquor in the company of Manindra, Bansiram Pramanik, Mano Karmakar and Bhagaban Nath.

Sitanath was going to Calcutta the next morning and had left his son-in-law, Manimohan Das, and his nephew, Surendranath Das, aged about 14, in his shop, counting money, which he needed to take with him.

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He was not anxious to stay for drinking, but Bansiram overpersuaded him and they all went on to the house of a prostitute named Sushila, where further drinking took place. At length, Sitanath escaped and set out for his shop. While on his way, some one, coming out from underneath the thatch of a shop, attacked him with a dagger, and after a short struggle, in which Sita's left elbow and right wrist were injured, stabbed him in the abdomen, so severely, that his entrails were exposed.

He shouted for help. In his dying declaration, he says that he called for Upendra, Mojahar Gazi and others, held his hands to his wounded abdomen, and went to his shop. This was only a short distance away. Manimohan Das says that he heard Sitanath shouting out that Nagen was killing him. Surendranath Das says that he heard Sita shout out "Mani, Suren come at once. Nagen is killing me." They understood him to mean the appellant. They ran out, Surendra with a hurricane lantern was first and says that he saw Nagendra running, and called after him and saw him enter Manindra's shop. It was a dark night and there was no moon. Surendra, in cross-examination, said that he told these facts to Mojahar, the Union Board clerk, but he admits that he told the doctor only that his uncle had been stabbed without mentioning any name. Surendra also says that, immediately prior to hearing Sitanath's shouts, he had heard Nagendra reading aloud his part in a theatrical performance, he being a member of a theatrical troupe. Mani and Surendra say that they found Sitanath standing and holding his abdomen. He did not speak and they brought him to his shop, and, having laid him on a *taktaposh*, gave the alarm. Mojaharali Gazi, the clerk of the Kapilmuni Union Board, came with others. He asked Sitanath what had happened and he said that it was the doing of Manindra. He could not say any more. Surendra and Mani confirm this. The doctor was sent for and, when he came, he asked Sitanath how he had got into that condition. Sitanath then said that he had

been drinking with Manindra, Bhagaban, Bansiram and Mano Kamar and, on his return, had been stabbed at Manindra's shop. The doctor then asked him who had stabbed him, and he indicated that he was in too great pain to say any more. After attending to him and giving him a stimulating draught, the doctor and Mojahar left, the others, including a number of neighbours, remained. Then it is said that Sitanath, for the first time, named Nagendra as his assailant. Mojahar says this was 10 or 15 minutes after the doctor left, before he, Mojahar, returned. Mani says that this was after the doctor had gone—but seems to suggest that it was in the presence of Mojahar. Surendra does not make it clear when first the appellant's name was mentioned, but, in cross-examination, he said that the doctor was not present, and he suggests that Mojahar was. Mojahar says that on his return Sitanath said that Nagendra had struck him with a dagger—whether this was the first time the name had been mentioned is not clear, but it is evident from Mojahar's and the doctor's evidence that the doctor was not present and Mojahar, in his cross-examination, says that he was recalled by Mani, who told him that the wounded man named his assailant. He also says that the compounder told him that Sita had said to him (the compounder) that Naga had stabbed him, and immediately afterwards Sita himself mentioned Naga's name in the hearing of Mojahar. But Mani and Surendra, in cross-examination, said that Sitanath was unable to speak and, therefore, Mojahar asked him to write in the Union Board book. Mojahar says that he wrote the four names Manindra, Bhagaban, Bansiram, and Mano Kamar, and the words "Naga has stabbed me "with a dagger" and signed it in the presence of a number of witnesses who also signed their names. But Mani, in cross-examination, said that all that Sitanath could write at first was the four names and that, it was 45 minutes later, after being stimulated with medicine and upon further pressure by Mojahar to name his assailant, that he first mentioned Naga

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and wrote about him in the book and signed it. Surendra, in cross-examination, also agreed with this story. The doctor's evidence is that, having returned to his quarter, Banamali came and said that Sitanath was naming the person who stabbed him. He went, and Sitanath told him that Naga stabbed him—and Mojahar showed him the entries which had been made by Sita in the Union Board book. Mojahar's evidence is that Sitanath said that Naga, who lived with Manindra, had stabbed him.

During all this commotion, no one saw the appellant. But according to Mojahar, Manindra came to Sita's shop and stayed some time. The same night, the *chaukidar*, the president and the *daffadar* were called and the *daffadar* remained on guard over the house of Manindra, the south door of which was locked. But, after he had called Nagendra twice, the latter opened the door and sat at the door with the *daffadar*. The next morning, at dawn, Mani went to lodge the first information report at the *thana* which was 8 miles away.

In this report, Mani said that Manindranath and his servant had been quarrelling with Sitanath, that Nagendra, in collusion with Manindra, had tried to kill him and that Sitanath stated that Nagendra gave him hurt. No one else has suggested that any enmity existed between Nagendra and Sitanath. Later, in the morning, the *daffadar* arrested Nagendra, and found a dagger behind Manindra's shop, just below an opening in the spilt bamboo wall. No human blood was found upon it. At about 10 o'clock, Sitanath was on the point of death and very weak, and his dying declaration was recorded by Mojahar, in the presence of others. Sitanath was able to speak in whispers. The doctor asked questions and Mojahar wrote down what Sitanath said; then it was read over to him and he signed it. The *naib* and the doctor both asked him how he recognised the person who stabbed him, when the night was dark. This declaration contains a full and detailed story of the events leading up to

Sitanath's death. He states quite definitely that Nagendra stabbed him and that he had no difficulty in recognising him as the place was open. He also suggests that the motive was enmity between Manindra and himself over his foster-daughter Nani, whom Manindra was keeping as his mistress. The story told by Nanibala and confirmed to some extent by Mani is very confused—she said that Sitanath had been very kind to her and had brought her up as his foster-daughter in his mistress Mano's house. He had her married to one Sukhlal Das. The latter was sent to jail and Nani returned to Sitanath. Manindra enticed her away and concealed her. She lived with Manindra for some 5 months. Sita protested and this led to proceedings in court. Then she went to live in one of Sitanath's houses in the prostitute's quarter, but she was not in the keeping of Sitanath. Later, Manindra, Bansiram and Satya again enticed her away and concealed her. A month or so before Sitanath's death, Manindra entered her house. She refused to accede to his importunities and a scuffle ensued. Sitanath took her to Khulna to file a complaint—but Manindra met them on the way and the matter was compromised. A few days later, Manindra went to her house again and said that, if she did not obey him, he would kill both her and Sitanath.

Aswinikumar De says that, the night before his death, Sitanath was drinking at his shop with Manindra, Bijay, Mona Kamar, Kali Dasi, Nanibala and another prostitute. Mani says that Sitanath was in the habit of borrowing money from Manindra—and that he did so only a few days before his death. Sushila is another prostitute. She says that Sitanath and Manindra were on good terms and often drank together at her house and wandered about in company. That Nanibala was in Manindra's keeping, at the time of Sitanath's murder—but with his permission—she also says that Satyacharan Das enticed Nani away from Manindra and kept her in Sushila's house. That, in consequence, Sukhlal prosecuted Satya and

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herself and Nani was taken away and returned to Manindra. The president speaks of another prosecution, in which Sukhlal was complainant and Manindra, Ramesh Sikdar and Sitanath were defendants. This was just before Sitanath's death. Kalibar mentions a quarrel between Sitanath and Sukhlal over Nanibala. He says that he saw Sukhlal in the village 7 or 8 days before Sitanath's death. Champa, another prostitute, who has become a *sadhu*, was brought from Calcutta by Sitanath and lived as his mistress for a time. He came to her shop on the night of his death, at 7 o'clock, and again at 11 o'clock; according to her evidence, Sitanath said that, as a result of Manindra, Bashiram, Mona Kamar and Bhaja had been the cause of his wound and that Nagendra actually struck him. He did not say definitely that the other four had any hand in the stabbing. Sitanath had no ill feeling with any one except with Manindra, in connection with Nanibala. He mentioned 20 or 25 times that Nagendra had stabbed him. No one suggested Nagendra's name to him. Krishnadhan Sil, the compounder, said, in cross-examination, that at first Sitanath said that he was not able to say who had stabbed him, that it was in answer to his question that Sitanath said that Nagendra was of the shop of Manindra and that he mentioned Nagendra's name some 20 minutes before he mentioned the names of the four others. Bansiram says that both he and Sitanath were in an abnormal condition that night, as a result of drink—and could not walk steadily.

Abinash, Sub-Inspector of police, says that Mojahar told him that Sitanath cried out "I am being murdered, Mojahar come" and later said that he was not in a position to say who had stabbed him. Also that the doctor told him that, when he questioned Sitanath as to who had stabbed him, he said that he could not fix him well. That is the evidence. Manindra and Nagendra were brought before the magistrate—Manindra was discharged and Nagendra was committed to the Sessions on a charge of murder.

His defence was a simple denial and he refused to explain anything.

Seventeen grounds of appeal were filed on his behalf, of which the majority have been abandoned during the discussion. The truth being that the learned advocate who has argued them has been at a loss to indicate any specific instance of misdirection. Having carefully read the evidence and the charge of the learned Judge I am not surprised.

According to the strict letter of the Code of Criminal Procedure, and the decisions grafted upon it, the charge is eminently correct. The learned Judge has done all those things which he ought to have done and left undone all those things which he ought not to have done.

Nevertheless, I have no doubt that the result amounts to both misdirection and non-direction. The mere recital of the evidence, when properly marshalled, is sufficient to show that this was a case in which it was absolutely essential that every particle of the evidence should have been carefully scrutinised and compared or contrasted and that substantial help and guidance should have been given to the jury—to avoid any possibility of a miscarriage of justice. Something more is required than the strict letter of the law. The perfect Code is but a dull and lifeless treatise, without the enlivening and enlightening spirit with which it must be quickened by those imperfect human agents, whose duty it is to practice and expound it. It is not sufficient, as the learned Judge has done, merely to recount and repeat chronologically the evidence as it has been given in court by the various witnesses. It is necessary to sift, and weigh and value the evidence. The final weighing of course is for the jury, but the judge ought to see that all essential facts go into the scales of justice, and on the proper side of the balance. Further, the facts must be marshalled by the judge under separate heads and in distinct compartments, as they affect each separate incident in the story. Otherwise, the evidence is to the jury

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simply a confused mass of discrepant, disconnected, and contradictory details.

There must be some light and shade in every charge.

Such matters, for example, as the darkness of the night, the drunken condition of Sitanath, the uncertainty about the naming of his assailant, the inadequacy of any sufficient motive, the curious behaviour of Nagendra, if guilty of murder, should have been brought into especial prominence and the jury's attention drawn and directed to the crucial points in the case, and not obfuscated, to use the learned Judge's own expression, by a cloud of unnecessary detail, and exalted verbiage.

It is worse than a waste of time to spread fine language and lofty homilies before a common jury—because not only do they fail to understand, but it confuses them. Nor will long and abstruse dissertations upon law enlighten them. This should be stated in the shortest and simplest terms and without reference to the numbers of Acts and sections of which they have never heard.

The effect of a medical man's evidence about a simple fracture on the mind of a layman is comparable to a learned discussion of the law on the mind of a jury.

That the crime amounted to murder was obvious and unquestioned—and the law might have been disposed of in a very few words. The important issue in the case to and upon which the whole attention of the jury should have been directed and concentrated was the identity of the murderer. Yet, page after page has been devoted to explaining the law about murder and culpable homicide and the distinctions and difficulties which surround those sections of the Indian Penal Code and about the exact meaning of the word "intention", which is described in the words "we linger in the shadowy life and feed "on the silent images which no eye but our own can "gaze upon." * * * "These are the objective

“effects of the subjective processes, certain circumstances and certain lines of conduct.” Such language is out of place and useless for its purpose. Nor was it necessary to implore the jury to concentrate their attention—and address their minds to the solution of the puzzling enigma whether Sitanath was dead or not and what he died of. It was obvious that nothing could have been more dead than this unfortunate man. Quite a large assembly of witnesses had seen him die—others had taken his dying declaration and medical witnesses had spoken both as to his mode of death, and his condition *post mortem*.

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To advise a jury about the necessity of spending their virgin efforts in a critical analysis of the obvious was to bring the law into ridicule and disrepute and to divert their attention from matters which were essential.

The learned Judge's abjuration to disregard and his anxious care to avoid suggesting even the faintest suspicion of his own opinion about the facts to the jury was entirely misconceived. A judge (if he has got an opinion at all) ought to tell a jury what it is, so long as he makes it clear—that they are at liberty to regard or disregard it as they please. A charge which succeeds in avoiding any expression of opinion must generally amount to a most colourless and unhelpful direction.

Under the curious system which prevails in this country, the responsible and somewhat horrible power of life and death is given to judges in the *mofussil* who are often comparatively young, and generally without any practical experience of the profession of the law.

The responsibility, therefore, which devolves upon this Court is far greater than that upon other courts of criminal appeal.

It is imperative that we should be satisfied, in every case, and especially in murder cases that the judge's charge was adequate. We are of opinion,

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in this case, that it was inadequate. Therefore, the conviction must be set aside, and the case remitted for retrial.

CUMING J. I agree that the appeal should be allowed and the case should be retried.

Case remitted for retrial.

S. R.