APPELLATE CRIMINAL

Before Sir C. M. King, Knight, Chief Judge

1936 *March*, 20

BIDESHI *alias* GOVIND AND OTHERS (APPELLANT) *v.* KING-EMPEROR (COMPLAINANT-RESPONDENT)*

Criminal Procedure Code (Act V of 1898), sections 278(h) and 279—Trial by jury—Complaint of misconduct against jurors—Judge, whether has discretion to hold inquiry—Allegations vague unsupported by affidavit—Judge refusing inquiry—Discretion, whether wrongly exercised—Order of inquiry, if necessary—Juror expressing opinion before delivery of charge—Retrial with fresh jury, if necessary.

A Sessions Judge is not bound by any rule of procedure to hold an inquiry into alleged misconduct of a juror in a sessions case. The question whether he should or should not hold such inquiry is a matter within his discretion. Where an application making certain allegations against some jurors is extremely vague in its language and is not supported by any affidavit and contents thereof are not found to be true, it is quite unnecessary to order an inquiry into such complaint, and the Judge in refusing to hold an inquiry into the truth of such application does not exercise a wrong discretion.

If a juror expresses his opinion clearly regarding the guilt or innocence of an accused person before delivery of the charge to the jury, the Sessions Judge should discharge the jury and hold a fresh trial with a fresh jury. *King-Emperor* v. *Nazar Ali Beg* (1), relied on.

Dr. *J. N. Misra*, for the appellants.

The Government Advocate (Mr. *H. S. Gupta*), for the Crown.

KING, C.J.:—This is an appeal by 28 persons who have been convicted under section 401 of the Indian Penal Code. At the present stage the only question for consideration is whether an inquiry should be made into the conduct of the jurors with a view to setting aside the verdict of the jury and ordering a retrial if the allega-

*Criminal Appeal No. 660 of 1935, against the order of Babu Shiva Charan, Assistant Sessions Judge of Fyzabad, dated the 17th of September, 1935.

(1) (1920) 25 C.W.N., 240.

tions made about the conduct of the jurors are found to be established.'

This was a very lengthy case. About 107 days were spent in the proceedings in Court. The arguments for the prosecution and defence were concluded on the 2nd of September, 1935 and the 13th of September was fixed for delivering the charge to the jury. The date was subsequently adjourned to the 16th of September.

On the 16th of September, when the Judge was about to read out the charge to the jury, Pandit Ram Nath Shanglu, an Advocate for some of the accused persons, presented an application to the learned Sessions Judge making certain allegations against the conduct of certain jurors and suggesting that an inquiry should be made. The applicant stated that he had been informed on the 5th of September, that certain jurymen, who loitered about the Kutchery, had informed certain people of their opinion about the case and had showed a small list of names of the persons whom they had decided to acquit. The applicant however frankly admitted that he paid no serious attention to this information which he regarded as a mere rumour. The applicant goes on to state that after the 5th of September, right up to the 13th, various rumours were afloat regarding the convictions and acquittals. He further states that on the 15th of September one of the jurors had interviewed him at his office and had informed him that three jurors had decided to convict all the accused persons except five persons, whom he named. This juror, at the applicant's request, gave a writing setting forth the information which he had given and the applicant himself noted the names of the five persons on the back of the writing. The applicant submitted that as the jurymen had expressed their opinions regarding the guilt or innocence of accused persons before they had heard the charge by the Judge, and without holding any joint deliberation or discussion with the other jurors, the jury should be discharged and the Court should begin the trial afresh with the aid of fresh jurors.

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The learned Sessions Judge noted on the back of this application: "This application has been given just now when I was to read my charge to the jurors. I do not think I can postpone the case now and I do not postpone it. The application shall remain on the file. I do not want to make any inquiry from the jurors as suggested in the application."

It has been argued for the appellants that the Sessions Judge was wrong in refusing to make any inquiry, when serious allegations of misconduct had been made against certain jurors, and that this Court should now order an inquiry to be made.

The ruling in *King-Emperor* v. *Nazar Ali Beg* (1) has been referred to as an authority for the proposition that a fresh trial should be ordered if it is found that the jury had expressed their opinion regarding the guilt or innocence of certain accused persons before giving their verdict. In that case it appeared that in the course of the trial after the conclusion of the evidence, and after the conclusion of the address of the public prosecutor, and before the defence had been heard in full, and before the Judge had summed up the case to the jury, one of the jurors had (in answer to some questions put to him) made a fairly distinct intimation that he had formed the opinion that the accused was guilty of the charge against him. Both the public prosecutor and the pleader for the defence represented to the Judge that the juror concerned had precluded himself from continuing as juror and they applied to the Judge that there should be *de novo* trial before a fresh jury. The learned Judges of the High Court expressed the view that the Sessions Judge would have been very well advised if he had adopted the course suggested by both sides. As the Judge proceeded with the trial, and convicted the accused, the High Court set aside the verdict of the jury and directed a fresh trial before a fresh jury. This case therefore is no doubt an authority for the view that if a juror

(1) (1920) 25 C.W.N., 240.

expresses his opinion clearly regarding the guilt or innocence of an accused person before the charge to the jury has been delivered the Sessions Judge would be well advised in discharging the jury and holding a fresh trial with a fresh jury.

The point before me is not whether the verdict of the jury should be set aside in case the allegations contained in the application of the 16th of September are found to be true, but rather whether the Session Judge exercised a wrong discretion in refusing to hold an inquiry into the truth of the allegations. There is no provision in the Code of Criminal Procedure for holding an inquiry into the alleged misconduct of a juror. There is authority for the view that the Sessions Judge has jurisdiction to hold such an inquiry, and I have no hesitation in accepting that view, but it is clear that the question whether the Judge should or should not hold an inquiry is a matter within his discretion. He is not bound by any rule of procedure to hold the inquiry as prayed. In the present case I am unable to find that the learned Sessions Judge exercised a wrong discretion. The application submitted to him was vague in its language and was not supported by any affidavit. The applicant did not mention the name of the person who informed him about the conduct of the jurymen who were loitering about in the Kutchery. He did not mention the name of the juror who came to his office and who gave him the important information. He did not mention the names of the three jurors who were said to have decided to convict all the accused persons except the five specified individuals. The applicant moreover did not present to the Sessions Judge the writing which he obtained from the juror. The learned Advocate for the appellants has produced in this Court a writing which he received (as he states) from Mr. Shanglu personally I have had this writing translated. The writing goes to show that the police had taken an interest in persuading the jurors to form an opinion in the case. It is important to note however that this writing was not shown to the learned Sessions

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Judge and there is not a word in the application to suggest that the police had attempted to influence the opinion of any of the jurors. The gist of the application merely amounted to this; that a certain juror (whose name was not specified) had informed the applicant that three other jurymen (whose names were also unspecified) had decided to convict all the accused persons excepting five. This was extremely vague, and as I have already stated, the application was not supported by any affidavit. There is one very important point which shows that the contents of the application were not true. The application mentions five accused persons whom the three jurors had decided to acquit. Two of these five persons, namely Sundar Brahman and Sundar Bahelia, have as a matter of fact been convicted by the unanimous verdict of the jurors. It is clear therefore that the allegation that three jurors had decided to acquit these two persons was either completely false, or else the so-called "decision" was merely a tentative expression of opinion, and the jurors concerned were perfectly open to be influenced by the summing up of the learned Sessions Judge and by the opinions to be expressed by their fellow jurymen. It is quite clear that none of these jurors had finally made up his mind to acquit those two men, and to that extent at least the facts stated in the application were untrue. In the circumstances I think it is quite unnecessary to order an inquiry into the truth of the facts stated in the application. I am unable to hold that the learned Sessions Judge exercised a wrong discretion in refusing to hold an inquiry into the truth of the vague allegations, made at the eleventh hour and unsupported by affidavit.

Let an early date be fixed for the decision of the appeal.