CRIMINAL REFERENCE.

Before Sharfuddin and Richardson JJ.

EMPEROR

v.

HARKUMAR BARMAN ROY*

1913

March 11.

Jury, trial by—Verdict by casting lots—Admissibility of the evidence of jurors and of admissions by jurors as to the mode of arriving at the verdict—Evidence of other persons in proof of the same, admissibility of.

The sworn statements of jurors, and evidence of admissions by them, as to the mode in which their verdict had been arrived at, are inadmissible. But the evidence of other persons as to the same is receivable.

Owen v. *Warburton* (1), *Straker* v. *Graham* (2), *Burgess* v. *Langley* (3) and *Queen* v. *Murphy* (4) referred to.

The evidence of a witness that he saw one of the jurors put some pieces of crumpled up paper in his *alwan*, shake them up and take them out, is not sufficient to prove that the verdict was arrived at by casting lots.

THE accused was tried by the Additional Sessions Judge of Mymensingh, with a jury, on a charge under section 302 of the Penal Code, found guilty by their unanimous verdict and sentenced to death.

It appeared that one Ganga Moyi Dasya was a tenant and near neighbour of the appellant, and had been involved in dispute with him as to her occupation of a certain *bari*. On the 3rd September, 1912, she went to sleep on a mat on the floor of her south *ghar*, and it was alleged by the prosecution that the appellant entered the room and cut her neck with a *dāo*. Bagala Moyi Dasya, her daughter-in-law, came out of

* Criminal Reference, No. 33 of 1912, by M. C. Ghosh, Additional Sessions Judge of Mymensingh, dated Dec. 10, 1912.

(1) (1805) 1 B. & P. 326.
(2) (1839) 4 M. & W. 721.
(3) (1843) 5 M. & G. 722.
(4) (1869) L. R. 2 P. C. 535.

1913

EMPEROR v. HARKUMAR BARMAN ROY.

the kitchen, a few feet away, on hearing a noise, and witnessed the occurrence. She then went to the *uthan* and screamed out, whereupon the appellant escaped. Her cries attracted the attention of some neighbours who ran to the place and were informed by Bagala that the appellant had killed her mother-in-law.

On Saturday, the 7th December, 1912, after the delivery of the Judge's charge, the jury retired for about 50 minutes, and returned into Court and pronounced an unanimous verdict of guilty through the foreman. The Judge accepted the verdict, but deferred sentence till the 9th. On the 8th Syama Chandra Bose and Baijnath Barman, the pleaders for the appellant, appeared at the house of the Sessions Judge and informed him that the jurors had determined their verdict by casting lots. The Judge, thereupon, addressed a note to the trying Judge in the following terms:

"ADDITIONAL JUDGE—

The undersigned pleaders* inform me that in the last murder case tried by you, the jury arrived at their verdict by casting lots, and that they are prepared to produce witnesses to prove admissions by some of the jurors to this effect. I suggest that you inquire into this matter and refer it to the High Court if you consider the allegation proved.

8th December 1912. (Sd.) J. D. CARGILL,

Sessions Judge.

*SYAMA CHANDRA BOSE.

BAIJNATH BARMAN."

On the following day the Additional Judge, considering it his duty to act on the verdict as declared in open Court, convicted and sentenced the appellant to death. He then held an inquiry and examined witnesses on oath. Mohim Chandra Roy, the first witness, deposed that on Saturday evening, the 7th December, one of the jurors, Sarat Chundra Majumdar, stated at a dinner party that four jurors were for returning a verdict of guilty, while he, the fifth, was

of an opposite opinion, and that, after each side had tried to win the other over, the verdict was arrived at by casting lots. Sudhanya Kumar De, an orderly of the third Subordinate Judge of Mymensingh, deposed that he saw the young Hindu juror put some bits of crumpled up paper in his *alwan*, shake them up and draw them out again. The foreman of the jury stated that he and three other jurors were of opinion that the accused was guilty, but that the other juror, an old Hindu (Sarat Chandra Majumdar), did not at first make up his mind, but on being pressed for an opinion said that the accused was guilty, but that he knew a *dharma pariksha* and would try the matter first by that test, whereupon he wrote something on two bits of paper, crumpled them up in his wrapper, closed his eyes and after repeating a Sanskrit verse took out one of the bits and said that the accused was guilty. The witness added that he himself had not in any way been influenced by the above test. Sarat Chandra Majumdar, the juror referred to, denied that the jurors had arrived at their verdict by casting lots. He stated that, after they had decided unanimously on a verdict of guilty, he made a test in the name of God by writing the word "God" on a piece of paper and crumpling it up with another piece of blank paper and drawing one of them, which was the former, in the belief that God would thus direct him. He concluded by alleging that he alone had made the test and for his personal guidance. The remaining jurors deposed that the test made by Sarat was not accepted by the others, who arrived at the verdict on consideration of the evidence and not by casting lots.

The appellant preferred an appeal from his conviction and sentence to the High Court, and the Additional Judge also referred the proceedings under section 374 of the Criminal Procedur Code.

1913

EMPEROR v. HARKUMAR BARMAN ROY.

Mr K. N. Chaudhuri (with him *Mr. Surita*, *Babu Upendra Kumar Roy*, *Babu Gobinda Chandra Dey* and *Babu Birenda Kumar De*), for the appellant. The evidence of a juryman as to the grounds of the verdict has always been rejected on grounds of public policy, viz., the inconvenience and uncertainty that would arise if jurors were permitted to give evidence to defeat their verdicts and the possible conflict in their evidence: *Duke of Buccleuch* v. *Metropolitan Board of Works* (1). The evidence of the jurors, and of persons to whom admissions were made by them as to the manner in which they arrived at their verdict is, therefore, inadmissible. The Court must obtain its knowledge of the facts from other persons who had witnessed the same: *see* Taylor on Evidence, Vol. I (10th ed.), page 670; Russell on Crimes, Vol. I (7th ed.), page 604; *Vaise* v. *Delaval* (2), *Owen* v. *Warbarton* (3), *Straker* v. *Graham* (4), *Burgess* v. *Langley* (5) and *Queen* v. *Murphy* (6). The drawing of lots by the jury would vitiate their verdict: *Hale* v. *Cove* (7), and *see* Halsbury's Laws of England, Vol. XVIII, page 255. Putting aside the evidence of the juror and of Mohim Chandra Roy, there is the statement of the orderly that he saw the young Hindu juror, Abinash Chunder Sinha, take pieces of paper, crumple them up and draw them out of his *alwan*. Though the evidence of the jurors is not admissible, the Court having read it, cannot eliminate it altogether from its mind, and, taken with the story of the orderly, it would appear that the other jurors must also have taken part in the test. The law requires a juryman to exercise his own discretion, and to decide on the

(1) (1872) L. R. 5 E. & I. 418, 446, 449.
(2) (1785) 1 T. R. 11.
(3) (1805) 1 B. & P. 326.
(4) (1839) 4 M. & W. 721.
(5) (1843) 5 M. & G. 722.
(6) (1869) L. R. 2 P. C. 535.
(7) (1725) 1 Str. 642.

evidence and not follow blindly the opinion of his fellows: *Petamber Jugi* v. *Nasaruddy* (1). If there is any doubt as to whether the verdict was arrived at properly or not, it is a good ground for remand. The opinion of the jury, though generally valuable on the facts, should be treated here as negligible.

The Deputy Legal Remembrancer (Mr. Orr), for the Crown. The cases cited support the view that the evidence of jurors and of persons speaking to admissions by them is inadmissible. The statement of the Judge's orderly does not prove that the verdict was given by casting lots.

Cur. adv. vult.

SHARFUDDIN J. This is a Reference under section 374 of the Criminal Procedure Code made by the Additional Sessions Judge of Mymensingh. There is also an appeal against the sentence of death by the appellant.

The prosecution case is as follows. Ganga Moyi Dasya was a tenant and a near neighbour of the accused. Between these there had been a dispute, for some time before the present occurrence, with regard to the occupation of a certain *bari* which was in possession of Ganga Moyi, the deceased.

On the 3rd September 1912 Ganga Moyi, at about noon, is said to have been sleeping in the *bari* in question, while her daughter-in-law Bagala Moyi Dasya (P. W. 1) was in the kitchen, which is just to the west of that *bari*, at a distance of five or six cubits, when suddenly Bagala heard a sound as if something had fallen down, and going to the *bari* she saw the accused cutting Ganga Moyi on the neck with a *dāo*. She went to the *uthan* of the *bari* and began to scream; she is also said to have seen the accused

(1) (1875) 25 W. R. Cr. 5.

1913

EMPEROR v. HARKUMAR BARMAN ROY.

SHARFUDDIN J.

running away. It is said that her screams attracted people who happened to be present in the near neighbourhood. The first man to arrive was one Syed Ali Kari (P. W. 2). He questioned Bagala, who told him that Harkumar, the accused, was the murderer. Other people also are said to have come up, to whom also she made the same statements.

[His Lordship then dealt with the evidence in detail and continued:]

The jury returned a unanimous verdict of guilty under section 302 of the Indian Penal Code, and the learned Sessions Judge accepting that verdict has passed the present sentence. From the record it appears that the jury returned to the Court after fifty minutes. It is clear, therefore, that their verdict was not a hasty verdict. This verdict was given on a Saturday, and the learned Judge intimated that he would pass orders on the following Monday. On Sunday following the Sessions Judge was informed by two pleaders of his Court that the jury had arrived at their verdict by casting lots. The Sessions Judge thereupon asked the Additional Sessions Judge who had tried the case to make an inquiry.

The story of casting lots in the jury room is this: Babu Mohim Chandra Roy, a senior pleader of that district, had one of the jurors named Sarat Chandra Majumdar as a guest on the evening following the close of the trial. He says that Sarat Chandra Majumdar had told him in the evening of that Saturday that the verdict had been arrived at by casting lots. As four jurors were for returning a verdict of guilty and Sarat Babu was in favour of a verdict of not guilty, the four jurors tried to win him to their side, and he tried to persuade them to his side. Neither side being able to persuade the other, they decided to decide the matter by casting lots. He further says

that his impression was that all the five jurors had consented to abide by the result.

Before we decide whether a statement of a juror as to what happened in the jury room is admissible or not, we desire to observe that it is not likely that, when four jurors were for a verdict of guilty, they would consent to abide by the result of the method alleged. In the inquiry all the jurors have been examined, and Mohim Babu and a man named Sudhanya Kumar Dey, who is an orderly of one of Subordinate Judges of that district, have also been examined.

No authority of any of the High Courts of this country has been placed before us. We have, however, many authorities of the Courts in England on the question whether a sworn statement of a juror that the verdict was arrived at by casting lots is or is not admissible. Some of those authorities are the following :—

(i) The case of *Owen* v. *Warburton*, (1) where it was held that an affidavit of a juryman could not be received.

(ii) The case of *Straker* v. *Graham* (2), where it was held that, on a motion for a new trial, the Court will not receive an affidavit by an attorney of an admission made to him by one of the jurymen that the verdict was decided by lot.

(iii) The case of *Burgess* v. *Langley* (3). The Court refused to grant a rule *nisi* for a new trial upon an affidavit, stating that one of the jury had declared in open Court in the presence and hearing of the others that the verdict had been decided by casting lots.

(1) (1805) 1 B. & P. 326. (2) (1839) 4 M. & W. 721.
(3) (1843) 5 M. & G. 722.

1913

EMPEROR v. HARKUMAR BARMAN ROY.

SHARFUDDIN J.

(iv) In the case of *Queen* v. *Murphy* (1), which was an appeal from the Supreme Court of New South Wales, it was remarked by their Lordships at page 549: "the Courts here have at times expressed reluctance, which we consider salutary, against receiving the separate statements of any of the individuals who had in combination formed a jury, in order to impeach their verdict."

On the strength of the above authorities we exclude from our consideration not only the statement of Mohim Babu, which is mere hearsay, but also the statements of the five jurors. There remains, however, the statement of Sudhanya Kumar Dey, an orderly, on which we could act, but his evidence is not sufficient to disclose any misdemeanour on the part of the jury. What he says is this: "I could see the young Hindu juror (Sarat Babu) take some paper crumpled up in his *alwan*, and shake them up and take them out again." This does not show that the verdict was arrived at by casting lots. We, therefore, cannot act on this evidence.

On a careful consideration of the evidence we are of opinion that Bagala, Syed Ali Kari and others, who heard Bagala mentioning the name of the accused, have been rightly believed by the learned Sessions Judge and the jury. That being our opinion, we dismiss the appeal and confirm the sentence of death.

RICHARDSON J. I agree. The fact the panchayet arrested the accused shortly after the murder and before the arrival of the police is strong in confirmation of the story told by the witness Bagala. The evidence of Mahomed Syed Ali Kari seems to have impressed the Judge, and no doubt the jury also. The Judge refers to the frank and straightforward

(1) (1869) L. R. 2 P. C. 535, 549.

demeanour of the witness in the witness-box. There are other witnesses also who corroborate Bagala. As to motive, it is clear that the accused and the deceased were on bad terms. In the previous year the deceased had taken proceedings against the accused under section 107 of the Criminal Procedure Code. The allegation on behalf of the defence that Bagala was on terms of illicit intimacy with a brother of the panchayet is certainly not supported by the evidence adduced.

As to the suggestion that the verdict of the jury was arrived at by lot or ordeal, I agree that the statements of the individual jurors are inadmissible, and that the evidence of Sudhanya Kumar Dey is insufficient to justify us in coming to the conclusion that the jurors were guilty of any impropriety in the mode in which they arrived at their verdict.

E. H. M. *Appeal dismissed.*