
(1932) 07 CAL CK 0005
In the Calcutta High Court

Emperor	Vs	APPELLANT
Mathuranath De and Others		RESPONDENT

Date of Decision : 19-07-1932

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195, 307, 551
Penal Code, 1860 (IPC) — Section 120(B), 193, 201, 217, 218

Citation : 139 Ind. Cas. 89

Hon'ble Judges : Remfry, J; Mallik, J

Bench : Division Bench

Judgement

Mallik, J.—This is a Reference u/s 307 of the Code of Criminal Procedure. Three men Mathuranath De, a Sub-Inspector of Police in-charge of the Bijni Thana in the District of Goalpara Syed Habibar Rahaman, an Inspector of Police and Manmathanath Ghose, the Officiating Superintendent of Police of Goalpara were put on their trial on charges under Sections 120(B). 193, 201, 217, 218 and 506 of the Indian Penal Code. The common charge against all the three accused persons was u/s 120 (B) read with Sections 193 201, 217, 218 and 506 of the Indian Penal Code, Over and above this common charge the special charges against Mathuranath De were under Sections 193, 201, 217 and 506 The special charge against Syed Habibar Rahaman was u/s 217 of the Indian Penal Code and the special charges against M.N. Ghose were under Sections 217, 218 and 201 of the Indian Penal Code. The trial was held with the aid of a Jury consisting of 5 Jurors. The Jury unanimously found all the three accused men not guilty of any of the charges. The learned Judge could not agree with this verdict and being clearly of opinion that the charges against the accused had been fully established referred the case to this Court u/s 307 of the Code of criminal Procedure.

2. Before I proceed to deal with the case and the evidence I should like to make one or two observations. The trial was a very protracted one. It began on the 27th July 1931 and ended on the 12th of October covering a period of nearly two months and a half. The record of the case naturally has been very big and voluminous. This, to my mind, was to a considerable extent due to the fact that

each and every one of the bid issues involved in the case was fought out with a tenacity which was out of all proportions in my opinion.

3. The facts of the case for the prosecution were briefly these: On the 26th of July 1930, Mr. M.N. Ghose, accused No. 3 received a telegram from one Amir Kabiraj asking him to come immediately that night. The allegation was that by this telegram the Superintendent of Police was requested to come immediately to Debargaon, a remote village within Bijni Thana for the purpose as previously arranged and understood of securing dacoits or their gangs which were about to commit a dacoity. This telegram Mr. Ghose received at about 3 in the afternoon. He started the same date late in the afternoon taking with him accused No. 2 Syed Habibar Rahaman, one armed reserved Sub-Inspector, two Head Constables and twenty Constables each of the latter being armed with a rifle, 0 rounds of buckshot cartridges and 5 rounds of ball cartridges, without however taking any previous sanction of the Deputy Commissioner although the latter happened to be present at the headquarters on that date. The party reached Bongaigaon Railway Station which was the Railway Station for village Debargaon at a distance of about 10 miles at 11-40 p. m. The accused Manmathanath Ghose stopped at the Bongaigaon Bungalow while the rest of the party went to Chapaguri Inspection Bungalow which was 3 or 4 miles away from Bongaigaon on the way to Debargaon and halted there for the night. The party had to wait for the whole of the next day as the Informer did not turn up. At about 6 in the afternoon a First Information Report u/s 399 of the Indian Penal Code was drawn up by Mathura, accused No. 1. The informer, having arrived the party started at 8 30 in the evening headed by the Superintendent of Police Mr. Ghose accompanied by Inspector Habibar Rahaman. Mathura remained behind as he was not quite well. On the way the Superintendent of Police told his men what, their mission was and gave them instructions that they were to fire one round of buckshot in the air before beginning the raid in order to cow down the dacoits and that in the case of any armed resistance they were to fire at the legs of the dacoits. In due course the party arrived at Debargaon which is a small village with three or four collections of huts. One of these collections in which there was a jumma ghar belonged to one Sajaraddin, the man who was killed during the Police raid, Sajaraddin that night was sleeping in his north-facing hut with his wife Sovaran and a little child in her arms and they were sleeping on a mashan in that hut. Sajaraddin's old father Gaza Bura with a cousin of Sovanm named Masimuddin was in the east facing hut of the bari while Sovaran's brother Aeirnuddin was sleeping in the outer house. According to the prosecution Sajaraddin and Sovaran woke up from sleep bearing the gun firing and sat upon the machan. Sajaraddin challenged the men and told them if they wanted anything they might come in the next morning. Thereupon an opening was made in the northern grass wall of the hut and Sajaraddin was shot at through that opening. There was a flash of torch-light inside the hut at the time. Sajaraddin fell down dead on the machan. Sovaran escaped unhurt as she had come down from the machan before and at the time was at a distance of 3 or 4 cubits to the

east thereof. Sovaran then called out and cried that her husband had been shot dead by the Police. Old Gaza Bura and Masimuddin came and found Sajaraddin lying dead on the machan with as many as 7 gunshot wounds on his body, three in the region of the chest, two in the abdominal region and two in the right thigh. Many of Sajaraddin's neighbours were arrested by the Police that night and among them was Shah Mahmud and Samiruddin who were taken to Sajaraddin's bari that very night and they too heard Sovaran crying that her husband was shot dead by the Police. The Police party then left the place with the men whom they arrested without taking any action whatsoever regarding the death of Sajaraddin. After their return to the Chapaguri Bungalow accused Ghose ordered the Sub Inspector Mathura to come to Bocorbari, a village near Debargaon, to seize Alamats and arrest other dacoits and accused No. 2, the Inspector, was directed to supervise the investigation. According to the prosecution the real object of this deputation of the Sub-Inspector and the Inspector Police made by the Superintendent of Police was to hush up the truth about the shooting of Sajaraddin. Mathura visited Biragaon in the evening of the 28th and after arresting one Nabaraddin took him to Sajaraddin's bari and there he saw the dead body of Sajaraddin with, gun-shot wounds on it inside the southern bhita hut and he took into his custody some used-up cartridges found in the ban of Sajaraddin. According to the prosecution the Sub-Inspector was told by Sajaraddin's widows Sovaran and Sajaraddin's father Gaza Bura that Sajaraddin had been shot dead by the Police on, the previous night. But the Daroga without taking any action in the matter directed them to bury the dead body saying that the deceased might have got injuries while going out to commit dacoity somewhere or that he must have died on account of illness. This was in the evening between 5 and 7 of the 28th The next morning at about 9 Mathura saw the Superintendent of Police and, according to the prosecution, must have told him what he had seen at Debargaon on the previous day and what the real state of affairs was. At the time when Mathura met the Superintendent of Police Inspector Habibar Rahman also was present there and although the three officers frequently met at Bongaigaon and other places during the period 28th to 31st of July and although the real facts of the Case as regards the death of Sajaraddin must have been known to them, no action appears to have been taken by any of them. In the meantime, although the Sub-Inspector Mathura, had directed Gaza Bum and Sovaran to bury the dead-body of Sajaraddin, there was no burial under the advice of the neighbours for fear of getting themselves into trouble-On the 30th Sovaran accompanied by her cousin Masimuddin and one Amiraddin went to Basugaon Railway Station and in the morning of the 31st sent a telegram from there to the Magistrate, Dhubri (Goalpara), stating therein that her husband had been shot by the Police on the night of the 27th and soliciting instructions as to whether the corpse should be disposed of or should be kept for inspection, Sovaran waited for sometime at Basugaon for a reply but no reply came she went back to Debargaon and on the next day, namely, the 1st of August buried the dead body of her husband Sajaraddin with the help of her father-in-law Gaza Bura and one Alimuddin. The telegram which. Sovaran sent

from Basugaon on the 31st was received by the Senior Extra Assistant Commissioner Mr. Haque who was then in charge of She station during the absence of the Deputy Commissioner on tour. Mr. Haque asked for a full report without delay from the Superintendent of Police Mr. Ghose and also directed that a post mortem examination of the dead body should beheld with the least possible delay and thereafter the body was to be made over to the relations of the deceased for disposal, if wanted. This order was communicated t3 the Super intendent of Police and reached him when he was at Golukunge on his way back to Dhubri. Along with this order was sent a copy of the telegram sent by Sovaran. The Superintendent of Police returned to head-quarters in the evening of the same day, namely, the 21st and sent a note saying that the allegation of Bhooting was maliciously false and demanding a magisterial enquiry. Mr. Haque deputed Mr. Sultan, another Extra Assistant Commissioner to hold a local enquiry as soon as possible and report, Mr. Sultan ordered on the 1st of August the Sub-Inspector Mathura who was in the locality at the time to meet him at the Railway Station and take charge of the dead body immediately and disinter it if already interred, and to send it up for postmortem examination and he told the Daroga also that he himself would also hold an enquiry on the 2nd August 1930. Mathura received the order at 5 in the afternoon and after sending a requisition to the Station Master, Bongaigaon, for a wagon and sweepers he himself went to Debargaon and to the ten of Sajaraddin the same afternoon According to the prosecution, he took the relations of Sajaraddin to task for having sent the telegram to the Deputy Commissioner and while informing them that a Magistrate would come there the next day to enquire into the death of Sajaraddin he threatened them that unless they would state that Sajaraddin had died of illness they would be beaten, challenged to the prosecution Mathura then forced them to put their thumb impressions to a statement written by an Assistant Sub Inspector Jainaddin and signed by himself in which the inmates of the bari, Sovaran, Gaza Bura and the deceased mother Gedi Bibi purported to have said that Sajaraddin had died of fever and that Sovaran had sent the telegram to the Deputy Commissioner at the instiga-turn of the Dewanias Jabaruddin and his son-in-law Amiraddin. The Sub-Inspector Mathura got this document attested by some local people and on the basis of that statement he sent a report to Mr. Sultan suppressing, the real facts of the case with the evident object of prejudicing him in advance and of suggesting that an enquiry or disinterment of the dead body was unnecessary. On the 2nd August, Mr. Sultan reached Debargaon with the accused Habibar Rahaman and examined some witnesses who out of fear of the Police stated before him what they had been tutored by Mathura to say Mr. Sultan returned to Dhubri without disinterring the dead body. In the meantime the Superintendent of Police submitted a report to the Deputy Commissioner as to what had taken place on the night of the 27th and in this report which was dated the 3rd of August 1930 as also-in another report of the same date which he submitted to the Special Super intendent of Police in charge of the Criminal Investigation Department, Assam, he maintained the position that Sajaraddin had died a natural death and that the allegation that

he had been shot dead by the Police was maliciously false. On the 3rd of August late in the evening Jabanuddin a man of the locality and father in law of Amiruddin who had accompanied Sovaran to the Basugaon Kilway Station on being informed that the Police wanted to arrest him saw the Deputy Commissioner and told him what the real facts of the case were. Thereupon the Deputy Commissioner ordered Mr. Sultan to go back to Debargaon again with an Assistant Surgeon for holding a local post mortem examination after disinterment of the dead body and to take fresh evidence for a full and complete report. The Deputy Commissioner also directed Mr. Haque to examine some of the dacoits who had been arrested on the 27th and who had been kept in jail custody to ascertain how, where and under what circumstances they had been arrested that night and also to take down any statement which they might choose to make of their own accord regarding the death of Sajaraddin. Mr. Sultan went to Debargaon accompanied by an Assistant Surgeon, had the grave opened and the dead body disinterred therefrom. The body had its left leg missing, its eyes were gone as also the hair of the head and the skin also partially gone. There was a lungi a considerable portion of which had been eaten up by maggots and there were two kanthas wrapped round. Some holes were found on the kanthas The relations of Sajaraddin identified the body to be that of Sajaraddin and the Assistant Surgeon on holding a post mortem examination found that there had been blackening of the skin where there were wounds on it. He found as many as 7 gun-shot wounds and on dissection he found 7 pellets embedded inside the gunshot wounds. According to the prosecution the pellets which were thus recovered were similar to those used in the buckshot cartridges supplied to the armed Police.

4. These were the facts on which the three accused persons were put on their trial. Before however, they were thus put on their trial Government sanction had been obtained for the prosecution of Mr. Ghose the Superintendent of Police and the consent of the Government had also been obtained u/s 196(A), sub Section 2 of the Code of Criminal Procedure in respect of the charge of conspiracy u/s 120 (B) of the Indian Penal Code.

5. The case of the defence mainly was that Sajaraddin had died a natural death and had not been shot dead, that neither the, Superintendent of Police nor the Inspector had before they left Debargaon on the night of the 27th any knowledge of the death of Sajaraddin and that the accused had never entered into any criminal conspiracy and never acted in concert to commit any of the offences with which they had been charged. [His Lordship referred to the evidence and continued].

6. From the evidence adduced by the prosecution in the present case the following facts emerge in my opinion, fully established:

(1) That during the Police raid on the night of 27th, Sajaraddin was shot dead inside his hut by some one of the Police Party;

8. (2) That it was not a case of deliberate murder but either an accident or the result of a rash or negligent act, the greater probability being that it was the latter;

9. (3) That neither the Superintendent of Police nor the Inspector was aware of this incident before they left the place that night;

10. (4) That when Sub Inspector Mathura went to the village again on the 28th he came to know what had really happened and he actually saw the dead body of Sajaraddin with gun-shot wounds on it and came away without taking any action u/s 154, 157 and 174 of the Criminal Procedure Code but directing the burial of the dead body.

11. (5) Sub Inspector Mathura in the morning of the 28th met the Superintendent of Police and the Inspector and told them what had happened;

12. (6) That none of the three officers took any action in the matter either u/s 157 or Section 174 of the Criminal Procedure Code;

13. (7) That for two or three days thereafter the three officers that many occasions to meet each other; and

14. (8) That on the 1st of August, Sub-Inspector Mathura on coming to know that a Magistrate was actually coming to the place to hold an enquiry and that a post mortem examination of the dead body was going to take place threatened the relations of the deceased Sajaraddin and tutored them to say that Sajaraddin had died a natural death.

15. To these established facts there must be added some others which are either-admitted or undeniable. These facts are: (1) that the Superintendent of Police made no mention whatsoever of the incident in the telegram which he sent to Shillong in the afternoon of the 29th and (2) that the Superintendent of Police in his note to the Magistrate, Ex. 38, and dated the 31st of July, 1930 as also in his report, Ex. 4, to the Special Superintendent of Police in charge of the Criminal Investigation Department, Assam, dated the 3rd of August, 1930 as also in his report, Ex. 30, to the Deputy Commissioner of the same date, namely, the 3rd of August all along maintained that the case was one of natural death, and not a death by gun-shot wounds.

16. Now the question is whether the facts enumerated above about which there cannot in my judgment, be any reasonable doubt, are sufficient to establish the charges brought against the accused persons. Having regard to the findings noted above there cannot in my opinion be any doubt that the charge of criminal intimidation u/s 506 of the Indian Penal Code against accused No. 1 has been fully established. As regards the charge against accused No. 1 u/s 193 of the Indian Penal Code, although the ingredients that are necessary for an offence under that section were in my opinion all established his prosecution under this section cannot in my judgment stand for the reason that if Mathura fabricated false evidence for the purpose of its being used in a proceeding before Mr. Sultan

no previous sanction for the prosecution of Mathura u/s 193 of the Indian Penal Code appears to have been obtained from Mr. Sultan a preliminary that was requisite u/s 195, Sub-section (1) of the Code of Criminal Procedure. The charge against Sub-Inspector Mathura u/s 193 must therefore, fail. Mathura has been charged under Sections 201 and 217 of the Indian Penal Code. It has been established it is true, that by directing and allowing the dead body of Sajaraddin to be buried without taking charge of the same he caused some evidence to disappear. But before there can be a conviction u/s 201 of the Indian Penal Code, it must be proved that an offence the evidence of which is caused to disappear has actually been committed: see in this connection the case of *Matuki Misser v. Queen Empress* 11 C. 619 : 10 Ind. Jur. 104. In the present case, although the Ajaruddin had been shot dead there was no certainty that an offence had actually been committed over that incident. The charge against Sub-Inspector Mathura u/s 201 of the Indian Penal Code, must therefore fail and for the same reasons the charge against the Superintendent of Police under that section must also fail.

17. The grounds on which the charge u/s 201 of the Indian Penal Code must fail cannot however apply to the charges under Sections 217 and 218 because for a conviction under either of these two sections:

18. It is not necessary as in the case of a charge u/s 201 of the Indian Penal Code to establish that an offence has actually been committed: see in this connection the case of *the Empress v. Amiruddeen* 3 C. 412. It would be sufficient if the circumstances are such that a reasonable inference can be drawn therefrom that the accused had a certain knowledge at the time he did the act, namely, a knowledge that he was likely by his act to save a person from legal punishment. There is no doubt that the Sub-Inspector, Mathura, when he failed to take any action under Sections 157 and 174 of the Criminal Procedure Code, knowingly disobeyed the directions of law and there is no doubt" that the Superintendent of Police, Mr. Ghose, submitted his reports, Exs. 38, 4 and 30, framing them in a manner which he knew to be incorrect. But before the Sub Inspector can be convicted u/s 217 and Mr. Ghose u/s 218 of the Indian Penal Code, it must be established that when they did that they knew it to be likely that they would thereby save some one from legal punishment. Whether they had this requisite knowledge or not can be inferred only from the circumstances of the case. In the present case, we have got the fact that they knew that Sajaraddin had died from gun-shot wounds during the Police raid on the night of the 27th. There is also the fact that although they had this knowledge they did not face it boldly, made no attempt to find out how the incident had happened but deliberately tried to show that Sajaraddin's death was only a natural death-the Superintendent of Police by submitting reports which were not correct and the Sub-Inspector going a good deal further and threatening people and tutoring them to say that Sajaraddin had died a natural death, a thing which to his knowledge was untrue. For the defence it maybe contended that the accused took the incident to be pure accident and, therefore, they could not be said to have known it to be likely that by their action they would pave somebody from

legal punishment. But this contention would be sustainable if the accused were absolutely certain that the incident was a pure accident and could not have been anything but an accident, but the inspection of the dead body by the Daroga and the report which reached the other two accused had nothing in them from which a reasonable man could have possibly thought that Sajaraddin's death could not have been anything, but a pure accident for which no one could be held legally punishable. That the accused could not have thought that the incident was only a pure accident and could not have been anything but an accident would appear pretty clear from their subsequent conduct, if they were certain that the incident was only a pure accident there would have been no necessity whatsoever for all those attempts at getting up a false story of natural death. The way in which the Sub-Inspector and the Superintendent of Police acted in the matter cannot, in my judgment, be explained in any other way than on the theory that they must have realised that some offence might have been committed and that, therefore knew it to be likely that by their act they would save somebody from legal punishment. The ingredients of an offence u/s 217 of the Indian Penal Code, against Sub-Inspector Mathura and of an offence u/s 218 of the Indian Penal Code against the Superintendent of Police Mr. Ghose were in my judgment, established in the case.

19. There is a charge against Inspector Habibar Rahaman and the Superintendent of Police u/s 217 of the Indian Penal Code for their having failed to take any action under Sections 154, 157 and 174 read with Section 551 of the Code of Criminal Procedure. I was said that u/s 551 of the Code of Criminal Procedure, the Inspector as also the Superintendent of Police, both of whom were Police Officers superior in rank to an officer in-charge of a Police Station were bound to take action under Sections 154, 157 and 174 read with Section 551 of the Code of Criminal Procedure. I was said that u/s 551 of the Code of Criminal Procedure, the Inspector as also the superintendent of Police, both the whom were Police Officers superior in rank to an officer in-charge of a Police Station were bound to take action under Sections 154, 157 and 174 of the Code of Criminal Procedure. Section 551 the aid of which has been invoked by the prosecution could apply to the present case only if the word "may" in that section is to be read as "must." but there is no authority for the proposition that the word "may" in Section 551 means "must". The charge u/s 217 of the Indian Penal Code against the Inspector as also against the Superintendent of Police must therefore, in my opinion, fail.

20. There remains then the conspiracy charge against all the three accused. Before I deal with this conspiracy charge, it is desirable that I should take up the case of Inspector Habibar Rahaman. According to the prosecution all the three accused were throughout acting in concert. If Habibar Rahman had no knowledge of the incident before he came away from Dabargaon on the night of the 27th and I have held that he had no such knowledge-practically the only thing that can be urged against the Inspector in respect of the charge is that he was present at the time when Sub. Inspector Mathura reported the matter to the

Superintendent of Police in the morning of the 29th and that he accompanied Mr. Sultan when he went to the solace on the 2nd August. The prosecution has not shown that Inspector Habibar Rahaman did any overt act of any kind in connection with the conspiracy. It is true that met the Superintendent of Police on some occasions between the 29th and 31st of July but it is quite possible that if he met him it was only in connection with the case u/s 399 of the, Indian Penal Code, that, had been started against some people of the locality. The evidence against Inspector Habibar Rahaman is, in my opinion, wholly insufficient to show that he acted in concert with the Daroga and the Superintendant of Police in the present matter.

21. The charge of conspiracy u/s 193 read with Section 120(B) of the Indian Penal Code, must in my opinion, fail for the same reason for which the charge u/s 193 of the Indian Penal Code against the Sub Inspector has failed. u/s 195, Sub-section (4) the previous sanction of the Magistrate Mr. Sultan was necessary for a prosecution u/s 193-120 (B) but no such sanction (appears to have been obtained. As the criminal intimidation done by the Sub-Inspector was evidently in pursuance of the conspiracy to suppress the real fact and to make out a false case of natural death and as the offences under Sections 217 and 218 of the Indian Penal Code, were also evidently done in pursuance of the same conspiracy the charges of conspiracy against the Superintendent of Police and the Sub-Inspector under Sections 217-120 (B), 218-120 (B) and 506-120 (B), 218-199 (B) have, in my opinion, been clearly established.

22. I have given my best consideration to the verdict of the Jury as also to the opinion of the learned Sessions Judge. But having regard to the clear evidence in the case I am of opinion that the verdict of the Jury was unreasonable and against the weight of evidence when they found none of the three accused guilty of any of the charges brought; against them.

23. I would, therefore, acquit accused No. 2 Inspector Habibar Rahaman of all the charges against him and would convict Sub-Inspector Mathura under Sections 217 and 506 and Sections 217, 218 and 505 120 (B) of the Indian Penal Code acquitting him of the charges under Sections 201 and 193 and Sections 193 and 201 read with Section 120 (B) of the Indian Penal Code and accused No. 3 the Superintendent of Police M.N. Ghose, on all the three counts u/s 218 and Sections 217, 218 and 506 read with Section 120 (B) of the Indian Penal Code, acquitting him of the charges under Sections 201 and 217 and Sections 193 and 201 read with Section 120 (B) of the Indian Penal Code.

24. I would sentence Mathura Nath De to 6 months" rigorous imprisonment u/s 506 Indian Penal Code, 6 months" rigorous imprisonment u/s 217, Indian Penal Code, and 6 months" rigorous imprisonment u/s 120 (B), Indian Penal Code and would sentence the Superintendent of Police M. N Ghose to 9 months" rigorous imprisonment on each of the three counts u/s 218 and 9 months" rigorous imprisonment under 120 (B) Indian Penal Code. The sentence in each case will run concurrently. In awarding sentence I have taken into consideration the other

consequences to the accused which may follow this conviction.

25. The reference made by the learned Sessions Judge is accepted in the above terms Mathura Nath De and Manmathanath Ghose, if they are on bail, will surrender to their bail and serve out the sentences inflicted on them. Habibar Rahaman is discharged from his bail bond.

Remfry, J.

26. I agree.