
(1928) 05 CAL CK 0030
In the Calcutta High Court

Government of Bengal

APPELLANT

Vs

Nasar Darzi and Others

RESPONDENT

Date of Decision : 23-05-1928

Acts Referred:

Penal Code, 1860 (IPC) — Section 148, 149, 302

Citation : AIR 1929 Cal 62

Hon'ble Judges : Bartley, J

Bench : Division Bench

Judgement

1. This is an appeal by the Local Government against an order of the Additional Sessions Judge of Dacca dated 3rd September 1927, acquitting the accused who are five in number of charges under Sections 148 and 302 read with 149, I.P.C. From what is stated below it will be seen that this is a most extraordinary case and it requires the interference of this Court.

2. The accused were tried before Mr. Waight, the Additional Sessions Judge of Dacca and a jury of charges under the sections referred to above.

3. The case for the prosecution briefly stated was as follows:

That on 20th Chaitra last corresponding to 3rd April 1927 at about half an hour before sunset one Naibali was returning home from a hat accompanied by P.W. 3 Nazamali, P.W. 4. Reazali, P.W. 5. Mahi and P.W. 7. Jinnat; that when they arrived at a spot south of the house of the accused Nasar and Ansar, Naibali was attacked by these persons who were armed with lathis and a spear and also by the accused Gyasuddin and Khawajuddin and by one Shamsuddin who were armed with daos; that Naibali fled south-wards across a field but was intercepted and seized by the accused Kitabdi, that the five assailants aforesaid came up and surrounded him and that Shamsuddi" aforesaid struck him on the neck with a dao killing him instantaneously; that thereafter Gyasuddin, Khowasuddin, Kitabdi and Shamsuddin fled towards the south while Nasar and Ansar ran towards their house, that Reazali and Mohiuddin (P.W"s. 4 and 5) attempted to seize those two

accused but were struck with lathis and sustained severe injuries, that in support of its case, the prosecution examined 16 witnesses of whom P.W's. 1, 3, 4, 5, 7, 8, 11, 12, and 14 testified to having seen the occurrence and to having recognized all the assailants.

4. The prosecution contended and contends that the evidence on the record, both direct and circumstantial, supported the conclusion that the offence was committed before the darkness fell. It is further contended that there was evidence to the effect that the accused were well-known to the eye-witnesses and that at the time of the occurrence two of the accused named Nasar and Khawajuddin were heard calling out. It is also contended that the evidence disclosed the fact that the accused persons had reasons arising out of litigation for feeling inimically disposed towards the accused. The accused called no evidence on their behalf but contended that the murder had been committed after dark by persons who had not been recognized and that the accused had been implicated on mere suspicion. The learned Additional Sessions Judge without summing up the entire case and without charging the jury on all the issues involved drew their attention to the evidence relating to the time of the occurrence and directed them as follows:

If you believe that the evidence upon the record indicates that the occurrence took place after darkness had fallen, that belief would necessarily involve the complete failure of the prosecution story" and your complete disbelief in that story. I shall, therefore, ask you to retire to consider that one point, namely, whether you find the occurrence took place as alleged by the defence after darkness had fallen. If you find that fact to be established you will be obliged to return an immediate verdict of "Not guilty" against all the accused. On the other hand, if you are satisfied that the occurrence took place as alleged by the prosecution, during day-light, I shall proceed to charge you upon the circumstances of the occurrence. Gentlemen, you will please retire to consider your verdict upon the point which I have placed before you.

5. Then the jury returned after deliberation; the following communications passed between the Judge and the jury:

Are you unanimous ?" "Yes." "Do you find it proved whether the murder occurred after darkness or before ? We believe it to have been committed after darkness. In that case I must direct you to return a verdict of not guilty against all the accused persons. We find all the accused persons not guilty.

6. It appears that after the verdict of the jury had been returned the learned Judge, although he disagreed with the view that the occurrence took place after darkness, accepted the verdict and by his order dated 3rd September acquitted the accused. The learned Judge in the sessions statement which was sent into this Court observes with reference to this case as follows:

The jury were directed to return an intermediate verdict on the point whether the occurrence took place after darkness or before. They unanimously found that the

occurrence took place after darkness and hence they were directed to return a verdict of "Not guilty" against all the accused which they did.

7. The contentions put forward by the learned Deputy Legal Remembrancer before us are two in number : firstly, that there was in this case no proper summing up to the jury and that, therefore, the verdict ought not to be allowed to stand; and, secondly, that the law does not recognize intermediate verdicts of jurors and that the procedure adopted by the learned Additional Sessions Judge is in contravention of the specific provisions of the law relating to charges to the jury and to the ascertainment of their verdict.

8. We are satisfied on an examination of the record that these contentions are well-founded and must be given effect to. It seems that the learned Judge adopted a short cut which he was not entitled under the law to so adopt. The result has been that the whole trial has been imperfect or, to use the words of Mr. Taluqdar who appears for the accused, highly irregular. That being so, it is our bounden duty to interfere and to direct that the verdict of the jury in this case must be set aside and that the matter should go back to Mr. Bartley, the Sessions Judge of Dacca in order that he may re-try the case against the accused in accordance with law. The accused will be re-arrested and placed before.

Bartley

9. No separate orders are needed with reference to the connected revision case.