

## Emperor Vs Bishnu Chandra Das

**Court:** Calcutta High Court

**Date of Decision:** June 29, 1933

**Citation:** 145 Ind. Cas. 236

**Hon'ble Judges:** Williams, J; McNair, J; M.C. Ghose, J

**Bench:** Full Bench

### Judgement

M.C. Ghose, J.

In this case four men Dulapado, Purna, Charu and Bishnu were tried by the learned Additional Sessions Judge of Howrah

and a Jury of nine persons Each of them was charged under section. 364 (abduction with intent to murder), Section 394 (causing hurt in

committing robbery) and Section 302 (murder) and also criminal conspiracy to commit each of the above three offences. The Jury unanimously

found Dulapado Mal "not guilty" of all the six charges. They by a majority returned a verdict of "not guilty" as against Purna Chandra Kanrar and

Charu Chandra Palain in respect of all the charges. With regard to Bishnu Chandra Das, in respect of abduction and conspiracy for abduction they

unanimously found him "not guilty;" in respect of murder and conspiracy to murder they found him "not guilty" by a divided verdict of 6 against 3.

In respect of conspiracy for robbery, they found him "not guilty" by a divided verdict of 7 against 2. In respect of Section 394, they found him "not

guilty" by a divided verdict of 5 against 4. The learned Sessions Judge accepting the verdict of the Jury acquitted first three men of all the charges.

He also accepted the verdict of the Jury in respect of five of the charges against Bishnu and acquitted him of those charges. This was on the 28th

April, 1933. He did not then pass any order against Bishnu in respect of Section 391 of the Indian Penal Code. About ten days later on the 8th

May, he wrote the following order:

I have given very careful thought to the case against the accused Bishnu Chandra Das u/s 394, Indian Penal Code, and am unable to agree with the

Jury's majority verdict of "not guilty." I consider the verdict to be perverse and absolutely against the weight of evidence and in the interests of

justice. I decide to refer this part of the case u/s 207, Criminal Procedure Code, to the Hon(sic)bio High Court for orders

2. Before we consider the evidence, it should be noted that the learned Sessions Judge acted illegally in making this imperfect reference. He acted

under sub-Section (1) of Section 307, Criminal Procedure Code, which states:

When the Judge disagrees with the verdict of the Jurors or a majority of the Jurors on all or any of the charges on which any accused person has

been tried and is clearly of opinion that it is necessary for the ends of justice to submit the case in respect of such accused person to the High

Court, he shall submit the case accordingly.

3. The learned Judge apparently omitted to peruse sub-Section (2) of Section 307 which states:

Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which

such accused has been tried.

4. In this case, if it was his intention to refer the case of Bishnu to this Court, he should not have recorded an order of acquittal in respect of any of

the charges against him. If, on the other hand, he intended to accept the verdict of the Jury in respect of five of the charges, then he thereby

precluded himself from making a reference to this Court in respect of the sixth charge.

5. The case was that the deceased Pulin Chandra Santra was a young man of village Dulley, P. SECTION Sankrail in the District of Howrah.

Accused Bishnu and one other accused were men of the same village. Two other accused were men of the neighbouring villages. The case, - is that

the four men enticed the deceased on false pretences to a certain empty hut near the village Railway Station in the evening of Thursday, the 1st

September, 1932, and there they murdered and robbed him. Some witnesses were examined who saw the deceased between 4 and 6 p. m. at the

level crossing near the Railway Station. Some witnesses had also deposed as to seeing one or more of the accused in the same neighbourhood.

Pulin was not seen alive after that Thursday afternoon. On the following Saturday evening, the 3rd September, a dead body was seen floating in a

ditch. Information was given at the local thana on the same night. A Police Officer arrived on the morning of Sunday, the 4th September. The body

was recovered and an inquest was held and the relations recognised the body as that of Pulin. The post mortem examination showed that there

were two penetrating wounds on the neck, which had cut the jugular vein and carotid artery and the subclavian artery. The four accused men were

arrested on different dates in October. We are concerned only with Bishnu who was arrested on the 15th October. There appears to be no doubt

on the evidence that Pulin was murdered by some persons. His widow P. W. No. 3 and his father P. W, No. 31 deposed that he had been slightly

ailing and on Thursday he left home at 4-30 p.m. and was not seen by them afterwards. Prosecution Witness No. 29, a clerk and P. W, No. 30, a

neighbour, deposed that they saw Pulin that afternoon near the Railway Station. Some other witnesses deposed that they saw some or all of the

accused men at or about the same place. Against accused Dulapado there was no evidence at all, except that he was seen in the afternoon at or

about the Railway Station in company with one or more of the accused. In respect of him the learned Sessions Judge stated;

The question is whether the slender circumstances are at all sufficient to establish any of the six charges as against the accused Dulapado.

6. As stated above, the Jury unanimously acquitted him.

7. The most important evidence against the other three men was their confessions which they made before a Deputy Magistrate shortly after arrest

and which they afterwards retracted in the Court of the Committing Magistrate. These confessions differ in detail but are otherwise more or less of

the same kind and there appears to be no good reason to imagine that one was induced by any hopes of pardon and another was voluntary.

Against the accused Bishnu whose" case u/s 394 the learned Judge has referred, the most important evidence is his own retracted confession. The

Jury apparently by a majority declined to act upon that confession. Purna and Charu made confessions and the Jury did not also act upon those

confessions and the learned Sessions Judge acquitted him. There appears no more reason for accepting the confession made by Bishnu than for

accepting the confession of Purna and Charu. They all seem to stand on the same level. If the learned Judge thought that the confessions were

voluntary and true, then, in my opinion, he should have referred the case of all three accused and not the case of one man only, or in the alternative

he should have accepted the verdict of the Jury in respect of all of them. The learned Judge has pointed out that against Bishnu there was

independent corroboration of the statement in his confession that three gold studs with a chain and a piece of gold "which had been on the person

of the deceased and also Section 45 were his share of the robbery and with part of that money he bought a shirt, a cloth and a pair, of shoes. On

search of the house where he and his mother and his brother lived jointly, a Sub-Inspector of Police found three gold studs with a chain and a

piece of gold. These were identified by the widow and the brother of the deceased as his property. The Sub-Inspector also took into his custody,

a new cloth, shirt and pair of shoes which the accused had bought. The tailor who made the shirt and the shopkeeper who sold the pair of shoes

were examined in support of the prosecution. In respect of the gold studs, the goldsmith P. W. No. 17 who made them was examined. He stated

that he made the studs for the father of the deceased. In cross-examination he stated:

I have made many gold studs besides these, I made similar studs for other customers also.

8. It has been argued that the Jury were probably not quite unreasonable in rejecting the story of the identity of the studs. I am of opinion that it

would be futile to consider the evidence in detail, seeing that the reference itself is misconceived and illegal. The evidence against accused Bishnu is

mainly that of his confession which, if accepted, would make him guilty both of murder and robbery. The Sessions Judge has chosen to acquit him

of the charge of murder. Having done so, it was not proper to refer the case for conviction on the charge of robbery. In the circumstances I would

reject this Reference and acquit the accused.

Williams, J.

9. I agree.

10. Trial by Jury is the main foundation of the great system of freedom, of which the English people are so justly proud, which they won for

themselves after many centuries of bitter struggle and the benefit of which they have extended to far distant regions of the earth under their

administration or dominion. For good or evil the Indian Legislature has decided that in certain circumstances no man shall be criminally condemned,

except upon the verdict of a Jury of his fellow men. They have provided, however, u/s 307 of the Code of Criminal "Procedure, that if the Judge

disagrees with the verdict of the Jury and is clearly of opinion that it is necessary for the ends of justice to submit the case to the High Court, he

shall submit the case accordingly. Whenever the Judge submits a case under this section he shall not record judgment of acquittal or of conviction

on any of the charges on which such accused had been tried.

11. In this case the Judge agreed with the verdict of the Jury in favour of all the accused other than Bishnu and in favour of Bishnu on all the

charges but one, and acquitted them and him of all those offence On the single charge against Bishnu u/s 394 he says that he considers that it was

perverse and absolutely against the weight of evidence and that in his opinion, it was necessary to refer that part of the case against the accused

Bishnu in the interests of justice.

12. My learned brother has already pointed out the illegality of this procedure. Apart from the illegality of such an order, it places this Court in a

most inconvenient, if not an absurd position. All that is left to us to decide is whether Bishnu shall be convicted of an offence u/s 394. We have

either to do that or to reject the reference altogether. The learned Judge has successfully deprived us of any opportunity of remedying the bungling

of which he himself has been guilty. The Judge agreed with the Jury and thought that they were right and reasonable in rejecting two of the

confessions of the accused which had been retracted, but thought that they were wholly and absolutely wrong in rejecting the confession of Bishnu

which also had been retracted.

13. Having read the case and listened to the arguments with care, I am at a loss to understand what distinction the learned Judge was able to make

between the cases of the three principal accused. He gave the Jury a most elaborate warning about the danger of acting upon retracted confession

unless corroborated, yet he expresses himself to be surprised when they listened to what he said, took his advice and followed his direction. Some

distinction is sought to be drawn on the ground that there is corroborative evidence in Bishnu's case. It consists of the fact that there was some

evidence to show that the murdered man possessed some gold studs, and that some gold studs were found in a box in the house of Giri who was

Bishnu's brother and with whom Bishnu lived. The box was kept on a shelf in Giri's own room and there is no evidence to show that Bishnu had

access to it. It was said that in answer to a question by the Police Inspector, the mother of these youths produced the key of the box. There is no

evidence other than this to connect Bishnu with these articles. Further, the evidence of identification is not at all satisfactory. The studs belonging to

the deceased were said to be all of a common pattern without any distinguishing mark upon them other than an alleged dent.

14. As a further instance of the way in which the case has been mismanaged and bungled the question was never put to any witness whether the

studs discovered in Bishnu's house had any mark upon them corresponding to that which was said to be one of the studs belonging to the

deceased man. Weak as this corroboration is what is it corroboration of? The corroboration must be corroboration implicating the accused in the

offence with which he is charged. The most that can be said is that this was corroboration of the fact that somebody in Bishnu's house was in

possession of articles which probably had belonged to the deceased man. A more accurate statement of what the so-called corroborative evidence

consisted of is sufficient to show the absurdity of pretending that there was real distinction, to be drawn between the case of Bishnu and those of

the other prisoners.

15. In view of the charge of the learned Judge, overloaded as it was with warnings about the alleged danger of acting upon the kind of evidence

which was before the Jury in this case, I cannot conceive how any one can say that the verdict of the Jury was unreasonable or against the weight

of evidence. If this man, Bishnu, was guilty, all the accused were guilty and of murder. The evidence, broadly and practically speaking, is the same

against each. The differences are of minor importance. All have been acquitted by the Jury after a careful trial. Yet it is suggested that of these

three, one ought to be condemned by this Court. To my mind, such a result would be liable to bring the administration of justice into derision and

contempt. Moreover, speaking with the knowledge gained by nearly a quarter of a century of constant practice in criminal trials in England, I

consider that interference with the verdict of a Jury, except in the case of a flagrant and patent miscarriage of justice, is dangerous and liable to lead

to the condemnation of innocent people. This danger is greater in a country in which the administration of justice has not yet reached the highest

standard of efficiency.

16. I agree that this Reference must be rejected and the appellant acquitted, not only for the reasons stated but because it has not been made in

accordance with law.

McNair, J.

17. I agree that the learned Sessions Judge has disabled himself from making a valid reference u/s 307 of the Code of Criminal Procedure by

accepting the verdict of the Jury against the accused Bishnu on some of the charges, and I agree that the Reference should be rejected.