

(1880) 12 CAL CK 0002

Calcutta High Court

Case No: None

The Empress

APPELLANT

Vs

Nobo Gopal Bose

RESPONDENT

Date of Decision: Dec. 7, 1880

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 64

Citation: (1881) ILR (Cal) 491

Hon'ble Judges: Richard Garth, C.J; Field, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

I think that this rule should be discharged.

2. It was granted at the instance of the Legal Remembrancer calling upon Nobo Gopal Bose and the other prisoners to show cause why the case against them, which now stands for trial in the Sessions Court of Burdwan, should not be transferred to Hooghly or to the 24-Parganas, or to some other jury district, upon the ground that a fair trial is not likely to be obtained at Burdwan.

3. The affidavit in support of this rule was made by Mr. Stevens, the District Magistrate of Burdwan, and it is certainly couched in very general terms.

4. Mr. Stevens says that he has been credibly informed, and believes, that the case is causing considerable excitement in the district; that the prosecutor, and the prisoner Nobo Gopal Bose, are persons of influence in the locality; and that most of the inhabitants of the town of Burdwan and its neighbourhood have their sympathies enlisted on one side or the other. But he does not tell us from what sources his information is derived, nor, except in very general terms, the grounds of his belief.

5. But we were nevertheless induced to grant the rule, because having regard to the allegations in the affidavit, we thought it extremely probable that both sides might wish to have the case tried elsewhere, and that it would be at least as desirable for the prisoners as for the Crown that the trial should not take place at Burdwan.

6. It now appears, however, that all the prisoners, and especially Nobo Gopal Bose, object very strongly to the transfer, both upon the ground of expense and otherwise; and it therefore becomes our duty to determine whether, under the circumstances disclosed in the affidavits on either side, we are justified in removing the case from the Court where it is legally triable.

7. I am clearly of opinion that before we transfer a criminal case to another district against the wish of the accused party, we ought to require the very best evidence that a fair trial cannot be had, or, in other words, that the jury cannot be trusted to do their duty impartially.

8. Now, as I said before, Mr. Stevens' affidavit is very general in its language. It seems that he himself has only been in the district about three months. He does not tell us what are his sources of information or the grounds of his belief, and it may be, as Mr. Gasper has suggested, that he has acted upon the report of the Police, who may be desirous of having the case tried in another district.

9. On the other hand, we have an affidavit from the prisoner Nobo Gopal Bose, in which he says, in the first place, that he has made arrangements for the trial at Burdwan, and incurred considerable expense in so doing and in the next place he says that there are upwards of 290 jurymen in the district of Burdwan, that with at least 180 of those persons he is not acquainted, and that, to the best of his belief, he does not know any one who is acquainted with them; and lastly, he directly contradicts the statements of Mr. Stevens as to the case having caused any public excitement.

10. Then we must also bear in mind, in dealing with applications of this kind to transfer a case from one district to another, that there are many safeguards in this country against any undue bias on the part of the jury.

11. In the first place, there is the right to challenge any of the jurymen who are known to be partizans of either party, if there is any real ground for supposing that they are likely to be unduly biased. Then another safeguard, as Mr. Gasper very properly observes, is that the Judge may, if he pleases, disregard the verdict of the jury altogether, and there is also the High Court as a last resource in case of any miscarriage of justice. So that there is less reason here than there might be in England for transferring a case for trial to another district, upon the ground that an impartial jury is not likely to be obtained.

12. If, therefore, the Crown considers it desirable that the trial should take place elsewhere, the application should have been made upon much more cogent

grounds and better materials than those which we have now before us, and we cannot accede to the suggestion of the learned Government Pleader, that we should postpone our decision upon their rule, in order that some fresh materials may be obtained.

13. I should also add that, if I had more doubt about the matter than I have, I confess that what we have just now heard from my learned brother, and from the Government Pleader, would have influenced my mind very materially. We are informed by the latter (although he has had a large experience in this Court for many years) that he is unable at present to mention a single instance in which such a transfer in a criminal case has been made. And my learned brother, who, we all know, has had a very large experience in the mofussil both as a District Judge and a Magistrate, does not remember any case of such a transfer, although in many instances criminal trials have been held under circumstances which have caused considerable public excitement.

14. The rule must, therefore, be discharged.

Field, J.

15. I concur in thinking that this rule should be discharged.

2. This is an application, u/s 64 of the Code of Criminal Procedure, to have a criminal trial before the Court of Sessions transferred from the Burdwan District to the district of Hooghly, Howrah, or the 24-Parganas.

16. The grounds upon which such a transfer can be made u/s 64 are- (1) that it will promote the ends of justice, or (2) that it will tend to the general convenience of the parties or their witnesses.

17. Now the second ground may be disposed of at once, for in the present case it is not attempted to be shown that the transfer of the trial from Burdwan will tend to the convenience of the parties or witnesses, while on the part of the accused, it is strongly urged that the transfer, if allowed, will cause considerable inconvenience and expense to him in procuring the attendance of the witnesses whom he wishes to call for the defence. Then as to the first ground it appears to me that, in order to obtain such a transfer, there should be shown to this Court something more tangible and something more definite than is disclosed in the affidavit made by Mr. Stevens. It may be that this gentleman entirely believed what he has stated in his affidavit, and I have no doubt that he did believe it. But what he has stated is stated not upon his own personal knowledge, but upon his belief founded upon information received from third parties, who are not mentioned, and as to whose means of knowledge or good faith we have no means of forming an opinion.

18. I think that this affidavit, unsupported by other matter, even under the system of criminal law in force in England, would be considered insufficient; and I think that in this country it is *ex majore vi* insufficient, and for this reason. The system of criminal

law in force in India differs in three essential respects from that in force in England. In the first place, the jury must not necessarily be agreed in the verdict. The verdict of a majority is sufficient. In the second place, the accused must not necessarily be acquitted, if the jury or the majority of them find him not guilty. The Sessions Judge can, if he differs in opinion from the jury, refer the case for the consideration of the High Court, and it has been decided that upon such a reference the High Court can consider the case as well upon the facts as upon the law. In the third place, the Local Government, if dissatisfied with the verdict of acquittal, can appeal against it to the High Court.

19. Having regard to these essential points of difference between the law in India and the law in England, it appears to me that, in order to succeed in an application of this nature when opposed by the person committed for trial, at least as strong a case should be made out in this country as in England, and, speaking for myself, I should say a stronger case.

20. It may be observed that in the affidavit upon which this rule was granted, it was stated that Giridhari Mohunt, upon whose prosecution the accused have been committed, has a strong party in Burdwan opposed to Nobo Gopal, accused, while Nobo Gopal has influence with persons opposed to Giridhari. It, therefore, appeared quite possible that Nobo Gopal would himself wish to be tried in another district; but as he desires to be tried at Burdwan, and is willing to risk the influence of Giridhari being exerted against him, an order for the transfer of the trial can be made only if we are satisfied that Nobo Gopal may, or may be able to, exert his influence with the jury so as to defeat the ends of justice, and of this I am not satisfied on the affidavit, which is the only evidence before us. I concur in discharging the rule.