(1913) 08 CAL CK 0014

Calcutta High Court

Case No: Reference No. 17 of 1913

Emperor		APPELLANT
	Vs	
Tarapada Naskar		RESPONDENT

Date of Decision: Aug. 6, 1913

Judgement

1. This is a Reference under sec. 307 of the Code of Criminal Procedure. The accused, Tarapada Naskar, was charged with an offence punishable under sec. 302, I.P.C., in that he committed murder by intentionally causing the death of one Johor Ali. He was tried along with his brother, Mannoo Naskar, who was charged with an offence punishable under secs. 392 and 114, I.P.C. The Jury returned a unanimous verdict of not guilty. The Sessions Judge, with some hesitation, accepted the verdict in respect of Mannoo Naskar and acquitted him. But as regards Tarapada Naskar the Sessions Judge has made this reference, as he has not been able to agree with the verdict of the jury and as in his opinion the reference is necessary for the ends of justice. A preliminary objection has been taken on behalf of the accused, that the reference is not in order, inasmuch as the Sessions Judge did not ascertain the opinion of the jurors. In support of this contention reference has been made to the judgment of Mr. Justice Davies in the case of Emperor v. Chellan ILR 29 Mad. 91 (1905), and to the decision of this Court in the case of Emperor v. Annada Charan Thakur ILR 36 Cal. 629 (1909).

2. The first sub-section of sec. 307 lays down that if in a case tried before the Court of Sessions and a jury, the Judge disagrees with the verdict of the jurors or of a majority of them on all or any of the charges on which the accused has been tried, 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 recording the grounds of his opinion, and when the verdict is one of acquittal, stating the offence which he considers to have been committed. Sub-sec. (3) then provides that in dealing with the case so submitted, the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto, it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the

jury, acquit or convict the accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and if it convicts him, may pass such sentence as might have been passed by the Court of Sessions.

3. It has been argued on behalf of the accused that in order that the High Court may properly discharge its duties under sub-sec. (3) of sec. 307, the opinion of the jurors must be ascertained, and that such opinion is distinct from the verdict of the jurors or of a majority of the jurors as mentioned in sub-sec. (1) of sec. 307. The reasons in favour of this argument are put forward most strongly in the opinion of Mr. Justice Davies to which reference has been made. "The duty of the High Court under sub sec. (3) of sec. 307, Cr.P.C., is not only to consider the entire evidence but also to give weight to the opinions of the Sessions Judge and of the jury. The opinions of the jury cannot mean their verdict, for that is not a mere opinion nor is it styled as such, as the opinions of the assessors are. The verdict is a final judgment by the jury as to the guilt or otherwise of the persons charged before them, and it is binding on the Judge, while opinions are not so. Besides, it is obvious from the provisions of the Code that the opinions of the jury referred to in cl. (c) of sec. 307 are to be on the same par as those of the Judge, that is, opinions given after the verdict, for the jury are not enabled to pass opinions before their verdict. It is not until after the verdict is delivered and the Judge disapproves of it, that the jury''s opinions are required for submission to this Court to be considered along with the Judge''s opinions." With all respect we are not prepared to accept this view of sec. 307, and, in our opinion, the expression "opinion of the Sessions Judge and of the jury" is equivalent to "opinion of the Sessions Judge and verdict of the jury." No doubt, as pointed out by this Court in the case of Emperor v. Annada Charan Thakur ILR 38 Cal. 629 (1909), after the jury have returned their verdict, and after the Judge has stated that he will not accept the verdict, it may be desirable to ascertain the grounds of their verdict. But it must be remembered that there is no express provision in the Code for ascertaining the opinion of the jury. It is further worthy of note that in the case of Emperor v. Annada Charan Thakur ILR 38 Cal. 629 (1909), the learned Judge stated they were not prepared to hold that the omission to ascertain from the jurors the ground for their verdict could vitiate the reference. We may add that if the contention of the accused were accepted, practical difficulties of a grave character might arise. The Judge would have, in that view, to ascertain the opinion of each individual juror in respect of each of the various points which might arise in a case, and the result might be divergent reasons assigned by five different persons upon each of the points for consideration. Such a collection of diverse opinions can hardly be expected to be of any real assistance to this Court. We hold accordingly that the reference before us is in order.

4. As regards the merits of the case, we feel no doubt whatever that the accused Tarapada did cause the injuries to Johor Ali, of which he ultimately died. This view is amply supported by the testimony of eye witnesses as also by two statements made by the deceased, one immediately after the occurence, and, the other, on the day

following and a few hours before his death. The occurrence took place in broad daylight on the afternoon of the 13th April last; Witnesses, whom there is no reason to distrust, state that they saw the accused, Tarapada Naskar, stab the deceased Johor Ali with a knife. On his way to the hospital Johor Ali stated that he had been stabbed by Tarapada; and on the following day when his dying declaration was recorded, he repeated that statement. But it has been urged that the witnesses examined on the side of the prosecution have not disclosed the manner in which the occurrence happened, and that they have given an untrue account of the origin of the quarrel. It may be conceded that some of the statement made by witnesses examined on behalf of the prosecution are open to comment. Yet, in our opinion, there is a substratum of truth in that evidence; and as already stated we feel no doubt that the accused caused those injuries to Johor Ali which led to his death. At the same time, we are not prepared to hold that the accused should be convicted under sec. 302, I.P.C. Immediately after the occurrence the brother of the accused gave information to the Police and described what had happened. According to his statement, he saw one Alia Khan on the top of their cocoanut tree and Bakar Khan and Johor Ali, the deceased, standing under the tree. The result was that there was a quarrel and the present accused, as the evidence on the side of the prosecution shows, stabbed Johor Ali.

5. In view of this circumstance and also in view of the fact that the accused is only 17 years of age, we think that a comparatively light sentence may be passed. The result is that we set aside the verdict of the jury as regards the accused, Tarapada Naskar, convict him u/s 304, I.P.C., and sentence him to rigorous imprisonment for six years.