(1911) 02 CAL CK 0035

Calcutta High Court

Case No: Apps. Nos. 982 and 983 of 1910

Rashidazzaman, Alias Bara Kazi and others		APPELLANT
	Vs	
The King-Emperor		RESPONDENT

Date of Decision: Feb. 14, 1911

Final Decision: Dismissed

Judgement

1. These are appeals from the judgment and sentences passed by the learned Additional Sessions Judge of 24-Pergunnahs who, agreeing with the unanimous verdict of the jury in the case of Kachimuddin Mandal and accepting the verdict of the majority (3 to 2) in the case of Raziduzama alias Bara Kazi, Sukur Mandal and Sisir Ahmed, has sentenced Raziduzama to transportation for life and Sukur Mandal and Sisir Ahmed and Kachimuddin to transportation for 10 years under sec. 396, I. P. C. Four persons who were jointly charged have been acquitted and the point of law is taken that the charge of dacoity fails in consequence of this acquittal. A further point of law taken is that evidence which the prosecution were bound to produce has not been put forward, and, as to misdirection, while it is conceded that the learned Judge''s summing up is exceedingly fair and impartial, it is argued that the evidence as to the accused Raziduzama''s movements on the night of occurrence was not charged with sufficient precision and was not reviewed as a whole. Secondly, that the contradictions between the only witness who identified Raziduzama and other witnesses, viz., Yakub, Waris Ali, and the Sub-Inspector as to how she came to reveal what she knew were not sufficiently enforced; and, thiraly, that the case for the defence, which was started so early as the 7th of April 1910 in the statement of Raziduzama to the Police, was not put to the jury as a substantive case and they were not charged to consider his alibi. It was further contended that the contradictions between witnesses 11 and 12 should have been pointed out specifically and that attention should have been drawn to the fact that no one was mentioned in the first information.

2. One alleged misdirection of a positive nature is the passage in the charge where it is said that the Sub-Divisional Officer and the Sub-Inspector had both indicated that the Bara Kazi''s great influence in the locality had rendered the collection of evidence difficult.

3. In order to understand the bearing of these various points in the case we will briefly state the facts alleged by the prosecution.

4. At about 2 A.M. on the morning of Thursday, the 7th April 1910, there was a dacoity in the house of Kazi Waheduzzama alias Chota Kazi who is brother of the principal accused in this case. The occurrence began by the breaking open of the door of the house in which the Chota Kazi was sleeping with his two little daughters aged 8 and 10 years about. They escaped in the dark but the Chota Kazi was dragged out and seriously beaten and as far as the evidence goes this beating was continuous till it resulted in his death. The dacoits then lighted matches and torches and began to search for documents and property. A woman named Fatemunnissa, a widow and dependant of Chota Kazi, who had been the first to come on the scene was seized and beaten and she saw the almirahs and boxes ransacked and some boxes carried away. She now says she recognized Kachimuddin as the man who beat her and she picked him out at a subsequent identification before the Police. Another woman, Mokimunnessa, informed the authorities on the 30th April that she had seen the Bara Kazi slanding under the eaves in the yard during the dacoity and that Sukur and Saru had beaten her. She lives in a house close by the Chota Kazi''s and is said to be a dependant more or less of the Bara Kazi. It appears that suspicion fell on the Bara Kazi and his men because on the 3rd April possession of his house had been given to the Chota Kazi after hot and protracted litigation by cutting a piece of his thatch. The Bara Kazi therefore gave an account of his movements to the Police on the 9th April and one portion of the prosecution case is put forward to show that he was travelling about between Sealdah, Baraset and his home at Bhastara previous to the occurrence and thereafter but that he was at Bhastara from 11 P.M. on the Wednesday night till after the occurrence. If the evidence of the post master is believed it is clear that he was there. We are, therefore, confronted in this case with the fact that there is positive evidence that each of the Appellants was present at the dacoity. There is evidence that Razi-duzama had a strong motive for vengeance on his brother and that the other accused were his dependants.

5. The evidence is not perhaps such as would strongly commend itself to minds professionally trained to weigh testimony but for us to express any opinion upon its weight would be to usurp the functions of the jury. Rightly or wrongly the people of this country, as do the people of England, set a high value on trial by jury as a protection to the liberties of accused persons. We have only to see that there has been no error of law in the proceedings and no misdirection to the jury by the learned Judge. We have given our most anxious attention to this case because of its extreme importance and because of the rather slender basis of evidence upon

which the jury had to go.

6. We have listened with earnest attention to three distinguished Counsel and one of our most trusted advisers among the Vakils who practise in this Court, and we find ourselves unable to say that the jury were misled either by insufficient direction or by misdirection. The learned Judge''s charge is as exhaustive as it is impartial and in the written heads before us, we have not got even the whole of what was put, for we find a note at each important point that the evidence pro and con was put to the jury as each came up for consideration.

7. As regards the contention that when 8 persons are charged with dacoity and four are acquitted the charge of dacoity fails, or, to put it in another way, that the charge must specify that other persons besides the four convicted and the four acquitted must be referred to in the charge, we are unable to accede to any such doctrine.

8. The English cases of Queen v. Plummer [1902] 2 K. B. 339. Rex v. Sudbury Lord Raym. 484; 91 E. R. 1222; 12 Mod. 262 (1698). have nothing to do with the question. Plummer''s case [1902] 2 K. B. 339. was a conspiracy of 3 persons to obtain money by false pretences, and Sudbury''s case Lord Raym. 484; 91 E. R. 1222; 12 Mod. 262 (1698). was an alleged riot by three persons. Here the charge alleges dacoity and if each accused were charged separately the word dacoity would give him sufficient notice that he was charged with four or more persons and the conviction by the jury of dacoity would import a finding that there were four or more others engaged with each dacoit.

9. The mere fact that the evidence was not sufficient to convict four of those actually charged would not in any way affect the question of the number of persons engaged.

10. Here the jury had evidence before them that 10 or 12 persons were engaged. The question they had to consider was not whether or not there was a dacoity, but whether it was committed by an ordinary gang of dacoits of whose recent depredations evidence was given in cross-examination for the defence, or by the accused Raziduzama and his partisans out of revenge.

11. The fact sworn to in chief by more than one witness that there were 10 or 12 was not challenged in cross-examination and the Judge mentions the allegation that 10 or 11 men were seen with the Bara Kazi that night, and emphasizes the law, on page 290, that the question is purely academical as if there were less than five the common object to commit robbery would not fail and on proof of the murder each would be liable to transportation for life under sec. 394. But in this case the jury were clearly right, if they believed the evidence, in holding that there were more than five even if the four men who have been acquitted were not there. Then as to the omission to call certain witnesses, these are the two children aged 8 or 10, who admittedly were asked for by the dacoits and had managed to escape before any light was lighted and only came back after the dacoits had gone.

12. There would in our opinion be no justification for the prosecution to subject these two delicately nurtured little girls to examination in Court on a point upon which they could give no evidence, namely, the identity of the dacoits. Then there are the witnesses Rannak Ali and Kabir the neighbours whom Chota Kazi is said to have called and who did not come. The evidence of Fatemunnessa would go far to show that Rannak was an accomplice and the prosecution repudiated these witnesses.

13. The others are an Inspector of the C. I. D. and the Alipur pleader, Babu Jagadis, who were witnesses for the defence to whom the Bara Kazi referred the Police.

14. They certainly could not be called as witnesses for the prosecution and the Judge gave a full and complete warning to the jury as to the inferences they were entitled to draw from the keeping back of any witness by the prosecution. As, regards the alleged omissions to specifically direct the jury on the points we adverted to at the beginning of this judgment we fail to find any misdirection.

15. There was no evidence of alibi to go to the jury. The accused, Bara Kazi, elected to base his defence on the evidence of the prosecution and the learned Judge analysed this with the most minute and critical comment. Every thing which could tell in favour of the accused seems to have been put forward. The statements of the accused to the Police could not be used by the prosecution as evidence. It was elicited in cross-examination to throw doubt on the case for the prosecution traversing the alleged alibi.

16. This was the evidence that the jury had to consider both for and against the accused and it was the only evidence before them, and more explicit directions as to the contradictions and discrepancies it contained could not have been given. The complaint that the contradiction between witnesses 11 and 12 was not duly emphasized has no meaning. There is no contradiction in their evidence as given before the jury. Witness No. 12 contradicted himself as to his evidence before the committing Court and this was duly emphasized. The Judge could not say you must reject what he said before you, accept what he said before the committing Magistrate and consider the contradiction. This would be the evidence of witness No. 11. Witness No. 12 if disbelieved because he contradicts himself goes out altogether and the Judge left it to the jury, on his two statements, whether he could be believed. This in our opinion was the correct way of dealing with the matter.

17. The very minuteness of the Judge''s charge is urged against it. It is contended that the jury may have been confused and that the right way of dealing with the case would have been to point out that there were two views of the case either that it was a gang dacoity such as had taken place before in the neighborhood or an act of vengeance, and considering the weakness of the evidence the jury would be well advised to incline to the former view. As a matter of fact the Judge very carefully pointed out to the jury the evidence the defence had elicited as to previous dacoities

and that the nature of this dacoity was one of the points they had most carefully to consider and that the circumstantial evidence pointing to the Bara Kazi''s adherents as the perpetrators should only be relied upon if the jury considered that the conclusions to which it pointed were inconsistent with any other theory than that of the accused''s guilt (pages 292-4).

18. As regards the witness, Mokimunnessa, the jury had the duty of accepting or rejecting her evidence. Her statement of the way she came to give it was a secondary matter and would only arise if they had any doubt after seeing and hearing her whether she was speaking the truth. There might be many reasons to induce the witnesses, Yakub and Waris Ali, to conceal the fact that they had been told something by this old lady earlier than they now say.

19. But here again the Judge has set out the discrepancies and warned the jury to give them full consideration.

20. As regards the first information, it was given by a duffadar who knew nothing of the alleged perpetrators of the crime and it was nobody''s case that any of these accused were mentioned that night. The Judge was most careful to point out to the jury the dates and the persons whose statements eventually revealed the culprits.

21. We find that nothing was kept back from the jury and the defence was again and again laid before them in a ruthless analysis of the prosecution case.

22. Finally, we have to consider the alleged misdirection as to the influence of the Bara Kazi.

23. We think it would have been better if the Judge had not referred to the inference he made from the Sub-Divisional Officer''s and the Police Sub-Inspectors'' evidence in this connection.

24. Their evidence was that they had had difficulty in collecting evidence. They could not have been allowed to offer any opinion as to the cause. As a matter of fact the Sub-Divisional Officer drew no such inference. He stated in cross-examination that he knew there was great delay in the investigation and it was very difficult to secure evidence. So too the Sub-Inspector in cross-examination said ""I should add that I found the men in the village very unwilling to give evidence and I therefore considered it useless to approach the women direct."

25. Now reading the charge in the light of this evidence we find that what the Judge was dealing with was the allegation of Mokimunnesa that she was afraid to speak before because of the Bara Kazi. The Judge then says "The Sub-Divisional Officer and the Sub-Inspector had both indicated that the Bara Kazi''s great influence in the locality had rendered the collection of evidence difficult, and the jury (relying on their experience of the country) would consider whether the reason assigned by Mokimunnessa in this regard might not have considerable truth behind it."

26. The inference from the evidence of the Sub-Divisional Officer and the Sub-Inspector is clearly that of the Judge. The jury were only asked to draw what inference they pleased from Mokimunnessa''s statement and their knowledge of the country coupled with the indications in the other evidence referred to. He did not say the witnesses had deposed to the Kazi''s great influence. We do not think that this was a misdirection or that it could have misled the jury who had the evidence of the Sub-Inspector, the last witness but one, and the Sub-Divisional Officer the last but nine fresh in their memories.

27. We have now dealt in detail with the objections raised to the Judge''s charge and to the law points involved and we cannot see either that the Judge could have dealt with the matter more minutely than he has on the one hand or less exhaustively on the other.

28. The case was a difficult one and the jury, a special jury of intelligent, well educated men and they gave, the Judge tells us, the most careful consideration to the case. The verdict was certainly not perverse and we cannot say that the Judge had any reason to disagree with it. As to the charge, it seems to us, with the minute exception we have just referred to, to be all that a charge to a jury should be. We accordingly dismiss the appeals and uphold the convictions and sentences.