

(1924) 03 CAL CK 0055

Calcutta High Court

Case No: None

Emperor

APPELLANT

Vs

Golam Kader and Others

RESPONDENT

Date of Decision: March 20, 1924

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 307
- Penal Code, 1860 (IPC) - Section 147

Citation: 82 Ind. Cas. 356

Hon'ble Judges: Ewart Greaves, J; Duval, J

Bench: Division Bench

Judgement

Ewart Greaves, J.

This is a Reference by the Sessions Judge of Chittagong. Twenty persons were charged with offences u/s 147 of the Indian Penal Code. Four of them 1,2, 17 and 18 were further charged with offences u/s 302 of the Indian Penal Code and there was a further charge u/s 149 read with Section 302 against all the 20 persons. The trial took place before a Jury between the 10th and the 19th of December last year, and the Jury by an unanimous verdict found the accused not guilty on the 19th December, giving them, so we understand, the benefit of the doubt. Under the circumstances the Sessions Judge who has disagreed with the unanimous verdict of the Jury has made this Reference to us under the provisions of Section 307 of the Code of Criminal Procedure. It is necessary, therefore, for us to consider the evidence that was before the Jury and the view of the Sessions Judge and also the view of the Jury and after having done so to arrive at our own conclusion upon the case. The facts of the case are succinctly set forth both in the second paragraph of the letter of Reference and also in the charge to the Jury under the heading "prosecution case." I need only deal very shortly with the facts. The prosecution case is that on the 8th of July last year, one Bangshi Dey, a tenant of Prasanna and two other persons, labourers of Prasanna, were transplanting paddy in a large char lying

to the west of the village Gahira which was in the possession of Prasanna, and his brother, Hara Kumar and Nishi, brothers of Prasanna, were watching the transplanting of the paddy. Then it is said that a large number of men armed with lathis came from the east and that the five men, Hara Kumar, Nishi, Bangshi and the two labourers ran away towards the west. It is said that near the darga of one Har Chandra Das, who was also a tenant of Prasanna, the five persons who were flying were intercepted by a party of men who were coming from the north-west, The two labourers effected their escape and it is said that the other three were surrounded and that Hara Kumar was struck on the head with a lathi by two of the accused, Azizur Rahman and Golam Kader. According to the prosecution case Hara Kumar fell down as the result of the blows and Bangshi tried to protect him by interposing his body and received a number of blows. The prosecution evidence states that despite this, various other blows were aimed by various members of the attacking party upon the prostrate body of Hara Kumar. Nishi is also said to have been beaten by the rioters and three other persons who arrived to see what was happening are said to have received injuries and another brother of Prasanna, Nabin, is said to have been struck by the rioters as they were dispersing. Hara Kumar was carried home. The occurrence took place in the evening and at about 9 o'clock in the night Hara Kumar and Nishi were taken in a sampan and information was sent to Prasanna who was in Chittagong where he was employed as a Pleader's clerk. Prasanna left Chittagong on the following morning, that is, on the 9th of July. On his way he met his brothers in the sampan and he took them to a ghat near the thana which is at a place called Anwara. At 2 P.M. next day, the 9th July, the first information was lodged by Prasanna. All the accused were named in that information. On Prasanna lodging the first information a Sub-Inspector went from the thana to the ghat and inspected the injuries of Hara Kumar and Nishi. After this was done Hara Kumar and Nishi were taken to Chittagong where Hara Kumar died of the injuries early in the morning of the 10th. The post mortem examination of Hara Kumar disclosed two wounds on the top of his head and a fracture of the frontal bone in five segments and the view of the Civil Surgeon was that the injuries on the head were sufficient by themselves to cause death. The dispute in respect of which the rioting is said to have taken place arose about the possession of this char Prasanna and his brothers claimed it and Prasanna had recently obtained a decree with regard to certain plots in the char in Section 145 proceedings to which Azizur Rahman, one of the accused, was a party. Azizur Rahman had started a title suit in respect of two of these plots and a kabuliyat had been executed by Azizur Rahman and his co-sharers in favour of one Umed Ali and ten others of the accused are said to have executed kabuliyats in favour of Umed Ali in respect of the disputed land. The prosecution's suggestion is that behind Umed Ali was one Khan Saheb Abdul Rahman Dovasha, a well-known merchant of Chittagong and this person is said to have instigated the attack. The defence story is not very clear and apparently the suggestion was that Nishi and Hara Kumar and others, when they were going to break down a hut which had been erected by Umed Ali or Abdul Rahman on the southern extremity of the char, were

driven off and beaten by Umed Ali's men. No evidence was called on behalf of the defence and the defence story can only be gathered from the line of cross-examination that was followed with regard to some of the witnesses. A very large body of witnesses were called on behalf of the prosecution, many of whom purported to be eye-witnesses of the occurrence. Amongst them are prosecution witness No. 2, Bacha Mia, prosecution witnesses Nos. 3, 4, 5, 6 and 7. The other eye-witnesses are prosecution witnesses Nos. 9, 10, 11, 13 and 16 and in addition to these there are other witnesses who speak to having seen some occurrence from a distance. Most, if not all, of the eye-witnesses identified all the accused though it is true that prosecution witness No. 8 says in the Sessions Court that Azizur Rahman and Golam were not present on the occasion although before the Magistrate he stated that Azizur Rahman and Golam gave the blows. Prosecution witness No. 7 also says that Azizur Rahman was not present. As the learned Judge pointed out to the Jury the majority of the prosecution witnesses were either relatives or tenants or labourers of Prasanna and his brothers. There are one or two or possibly more persons who may be said to be entirely independent but it is not unnatural that a greater number of the prosecution witnesses are connected with Prasanna in one or other of the ways I have mentioned. There is no doubt that reading the evidence as it has been read to us there does seem an almost overwhelming case made out on the part of the prosecution against these accused. What, therefore, we have got to consider is whether the Jury were entirely unreasonable in giving the benefit of the doubt, as they did, to the accused and whether it was impossible for the Jury to arrive at any other conclusion reasonable than that the guilt of the accused had been brought home to them. Various points were urged by the learned Counsel who appeared on behalf of the accused in support of the view that the verdict of the Jury was not an unreasonable verdict and that accordingly we should not interfere with it.

2. First, he refers to the fact that according to the evidence the assault on Hara Kumar was made by at least 15 people and that yet according to the medical evidence only two blows were found on Hara Kumar's head and one slight abrasion on another portion of his body. Certainly we think that this is a fair comment because on reading the evidence we find that many blows are said to have been rained upon Hara Kumar by some of the accused after he had fallen down as a result of the first two blows. The evidence is that Azizur Rahman and Golam struck him first and that after that no less than 13 persons struck him and yet according to the medical evidence as we have already stated there were only three actual blows, according to the Doctor's view, that can be traced on the person of Hara Kumar. Then again so far as Nishi is concerned it is stated in the evidence that he was struck by no less than 11 people. But if you consider the evidence of the Doctor, so far as Nishi is concerned, you will find that he says that Nishi had a bruise on the eye-lid of the right eye and a contusion on the left fore-arm and further injuries, all of which were slight except the one on the head.

3. Then it is further urged that there was evidence before the Jury that other persons, as I have already indicated, were injured in the affray and that yet the injuries of none of them were of sufficient gravity to demand examination by a Doctor.

4. Then it is urged that a certain number of witnesses, five I think it is said, went back to some extent in the Sessions Court upon the evidence that they had given before the Magistrate and emphasis was laid on the fact that prosecution witness No. 25, who had given a long and a coherent story as to the connection of Abdul Rahman Dovasha with the attack before the Magistrate, stated nothing whatsoever with regard to this in his evidence in the Sessions Court.

5. Then stress is laid on the fact that although there were other brothers of the two injured men who were at the place of the occurrence at the time it happened no information was given at the thana until nearly 24 hours after the occurrence although the thana was only 10 miles away and could be easily reached by a sampan by the river Sangu.

6. Then some point was made with regard to the exaggerations that are said to have appeared in the evidence with regard to the fact that the accused were armed with daos and kirchis. It is said that reference to this appears in the first information and that it is not borne out by the evidence of the witnesses and reference was also made to the picturesque figure who is said to have appeared with a lathi in one hand and a dao on the other.

7. Then some point was made with regard to the scene of the occurrence which was placed by the prosecution on Plot No. 2775 which is said to have been a plot which was not claimed by any of the accused.

8. Further stress is laid on the fact that I have already mentioned that the witnesses were tenants or labourers of Prasanna and that the Judge himself in his letter of reference says that the prosecution witnesses are not free from the charge that some of their evidence was tutored evidence.

9. Lastly, stress was laid on the point that a considerable number of witnesses were named in the first information including the names of the two chowkidars, none of whom were called at the trial of the case.

10. It is necessary to see in the light of these suggestions whether we can say that the verdict of the Jury was so unreasonable that seven reasonable men could not have arrived at that verdict, for it seems to us that that is the real test that we have got to apply. We are not able to say that it was not possible for the Jury to have arrived at the verdict at which they have arrived. We have read the evidence and considered it in the light of the criticisms that have been directed against it and we are of opinion that it is full of exaggerations and that it may well be that the Jury taking this view may have said to themselves that it was not safe to convict the

accused upon the evidence which was clearly exaggerated, and, therefore, untrustworthy. This being so, it seems to us that we should not be justified in accepting the Reference and interfering with the verdict of not guilty at which the Jury have arrived. The accused are acquitted.

Duval, J.

11. I agree.