

CALCUTTA HIGH COURT

Emperor

Vs

Satyendra Kumar Dutt Chowdhury

(Walmsley and Pearson ,JJ.)

13.10.1922

JUDGMENT

Walmsley, J.

1. The accused Satyendra Kumar Dutt Choudhuri was placed on his trial upon a charge of murder. The Jury was unanimous in finding him not guilty of murder, and by a majority of four to one it found him not guilty of the lesser offence of culpable homicide. The learned Judge felt himself unable to accept this verdict, and, consequently, made a reference to this Court under the provisions of Section 307, Criminal Procedure Code.
2. The case has some remarkable features, not only in the bold facts of the occurrence as told by the prosecution but also in the conduct of the proceedings in the Court of Session.
3. The accused belongs to the village of Richi and he and his co-sharers are Zemindars of the village. The Zemindars are divided into two hostile groups, Nagendra and Dwijendra forming one group, and the accused and Khirood the other group. These two groups are frequently quarrelling, but they share the same bari. Immediately adjoining this bari is a bari occupied by Amar Kinkar Bhattacharjee and his brothers Prakash and Hara Kinkar.
4. Natabar Tarsa, the deceased, used to be employed as a servant by Satyendra, the accused, but on account of some difference he left his service and entered the service of Amar Kinkar and Prakash about six months before the occurrence.
5. The relations between the Bhattacharjee and the Dutts seem to have varied. Amar Kinkar says that he and Prakash have always been on friendly terms with Satyendra, in fact Amar Kinkar acted as his priest and his Pleader until just before the occurrence; Hara Kinkar, on the other hand, has been employed at different times by both Nagendra and Satyendra but Satyendra is said to have regarded him as a declared enemy.

6. On the day of occurrence the Bhattacharjee brothers were celebrating their mother's Sradh, and Satyendra wanted Amar Kinkar to keep up the old feud between himself (Amar Kinkar) and Hara Kinkar, and it is said that he tried to enforce his wishes by refusing to lend utensils for the ceremony, and by causing notice of execution proceedings in regard to a decree obtained by his aunt against Amar Kinkar and Prakash to be served when the courtyard was crowded with guests. These measures were useless and Amar Kinkar and Hara Kinkar did for a time at any rate patch up their quarrel. It does not seem to be suggested that Satyendra bore Amar Kinkar any grudge for taking Natabar into his service, but it is said that relations between Natabar and Satyendra continued to be strained.

7. To return to the occurrence, by the afternoon the hosts were entertaining their humbler guests, and there were sitting in the courtyard two lines of Naths and Dhobis, and at the North end of the line that ran North-South was Natabar, the deceased: all were partaking of chira and dahi when suddenly the accused entered the courtyard and thrust a spear into Natabar's left side with such force as almost to transfix him. The accused then disappeared, and no one tried to stay him.

8. Amar Kinkar shortly afterwards went to the Thana, three miles away: he told his story about 4-30 P.M. and it was recorded by the Senior Sub-Inspector, Satish Chandra Maitra, who sent the junior officer Purna Chandra Dutta to investigate. Purna Chandra found a considerable number of people present, and the first thing he did was to record the dying declaration of Natabar, and a few minutes after he had finished Natabar died. Before dawn he left the village with the dead body and then examined some witnesses at the Thana on the morning of the 24th. After that he was engaged on other work and nothing more was done until the 29th when the Senior Sub-Inspector went to the place accompanied by two superior officers. The accused was not found by either Sub-Inspector, and it was not until April 26th that he gave himself up to the Magistrate.

9. As to the time, place and cause of death, I do not think there can be any doubt. Amar Kinkar's evidence as to the time is preferable to that of another witness who is probably less familiar with time as measured by the clock. As to place, questions have been asked about the presence of blood stains but none of them amount to a suggestion even that the deed took place somewhere else. The cause of death is fully described by the Doctor who made the post mortem, and it is worth mentioning that he found undigested chira and dahi in the stomach.

10. The all important question is, whether it is proved that it was the accused who dealt the blow, closely connected is the subsidiary question of why a man of ordinary intelligence should have chosen such an occasion, time and place for the crime.

11. It is this second point which has caused so much trouble in the case. The Police appear to

have submitted the case as one in which the accused attacked Natabar without any quarrel immediately preceding the incident, that is to say, with nothing more fresh than a quarrel at the tank on the previous day. In the Magistrate's Court, however, several witnesses gave quite a different version; instead of a stealthy entrance to deal a premeditated blow, they described a violent quarrel in which Natabar used filthy language, and threatened Satyendra with a peice of wood, and Satyendra, happening to find a spear, flung it at Natabar. In consequence of this variation before the Court of Session, the Public Prosecutor obtained permission to cross-examine one of the prosecution witnesses as hostile, while others were called as Court witnesses and tendered to both sides for cross-examination. The witness who wag declared hostile is Padma Lochan (P.W. No. 3), while the witnesses called as Court witnesses and cross-examined or offered for cross-examination by both sides were Rameshwar Dhupi, Mukunda Nath, Bipin Namasut, Mathur Chandra De, Girija Mojun Deb, and Satish Chandra Maitra, the Senior Sub-Inspector. I have omitted Amar Kinkar's name because his case stands on a different footing.

12. It is urged on behalf of the accused that, in the circumstances stated, the whole of the evidence given by these witnesses must be rejected.

13. Padma Lochan is the only witness who was cross-examined by the Public Prosecutor under the provisions of Section 154 of the Evidence Act. The learned Judge gave two reasons for granting permission, namely, that the witness was a tenant of Khirod, cousin of the accused, and that his statement differed from the statement recorded by the Sub-Inspector shortly after the occurrence, and he expressed the hope that cross-examination would "help the Court to assess the exact value of different parts of the witness' testimony." The learned Judge's charge proceeds on the same footing, and the argument for the accused is that the Judge was wrong in thinking that the evidence as to identity might be accepted and the evidence as to a quarrel be rejected. It appears to me that the learned Judge was wrong in allowing the Public Prosecutor's request. The first reason which he gives has no force at all, and the second has been held to be inadequate in the cases of *Kalackand v. Queen-Empress*¹ *Surendra Krishna Mondal v. Rane Dassi*² The fact remains, however, that the witness was cross-examined by the prosecution and the question is whether the whole of his evidence must be rejected, or the Court can believe it in part and disbelieve it in part. In the case of *Faulkner v. Brine*³ defendants' Counsel asked for permission to question his own witness as to the statement which he had made to defendant's Attorney because it was much more favourable to the defendant than the version given in Court: and Lord Campbell, C.J., in allowing the question to be put, said: "It must be understood that it must be done to discredit the witness altogether, and not merely to get rid of part of his testimony. If that which is suggested shall be elicited it will show that he is not trustworthy at all." See also the case of *Surendra Krishna Mondal v. Rane Dassi*⁴ That is the principle to be applied to the evidence

of a witness who has been cross-examined by the party which called him. The result is that Padma Lochan's evidence must be excluded altogether. Then there are the so-called Court witnesses. I say so-called, because I do not think that they are really Court witness. The provisions of Section 540, Criminal Procedure Code, are very wide, and the learned Judge might have summoned these witnesses to the box, and if the position were that the Public Prosecutor declined to examine the witnesses and the Judge thereupon acting on his own initiative caused them to be produced, I should regard them as called under that section. But the order recorded on June 26th which covers all the witnesses except the Sub-Inspector, shows that the position was quite different: "The Public Prosecutor puts in a petition requesting the Court to examine witness Rameshwar as a Court witness, so that both parties may cross-examine him." The reason for the request appears to have been just the same as in the case of Padma Lochan that these witnesses had not mentioned any quarrel to the Sub-Inspector. The Public Prosecutor was, therefore, seeking to treat them in the same way as Padma Lochan without any preliminary questioning. That being so, I think their evidence should share the same fate as Padma Lochan. The case of the Sub-Inspector was dealt with in a separate order dated July 13. The Public Prosecutor urged that he was trying to shield the accused and was not worthy of confidence the Pleader for the accused made an objection to the proposal, but his suggestion that as a Court witness the Sub-Inspector should be cross-examined only by the accused was not helpful. I think that, in view of the order passed by the Judge, the evidence of the Sub-Inspector Satish must also be shut out.

14. The remaining evidence as to the identity of the assailant is to be found in the dying declaration recorded by Sub-Inspector Purna, and in the depositions of Amar Kinkar and Mahendra.

15. The dying declaration was discussed before us at considerable length with reference to the language in which it is couched, the capacity of the dying man to make such a statement, the possibility that the answers were prompted and so forth. As for the language it is difficult to know what to expect when an Assamese Officer records an Uriya Coolie's statement in Bengali. The medical evidence is indefinite and cannot override positive evidence that Natabar did make a statement. Hara Kinkar did undoubtedly help the Sub-Inspector but he is blind, and I cannot accept that contemptible witness, Uma Charan, as sufficient to show that it was Hara Kinkar and not Natabar who gave the name Satya Bakti. The really important point about the declaration, however, is independent of these criticisms. Uma Charan says that the statement was recorded in the presence of 25 or 30 persons, that on completion it was read out to them before they dispersed. Not a question was asked to suggest that any one protested. It seems incredible that if, as a fact, Natabar made no statement, or mentioned no name, or mentioned a name that was not Satya, such gross dishonesty could have passed unchallenged. I accept it, therefore, as proved

that Natabar did tell the Sub-Inspector that the accused was his assailant. With regard to the evidence of Amar Kinkar it is urged that it should be excluded altogether on the same principle as Padma Lochan's. The position, however, is quite different. Amar Kinkar went to the Thana and gave an extremely succinct account of what had happened. In the Magistrate's Court his statement about the actual occurrence was very brief. On neither occasion did he say that he actually saw the blow being struck. In fact, before the Magistrate he clearly suggested that what he first saw was Satya holding one end of the spear and Padma the other. The Police and the Public Prosecutor, however, assumed that Amar Kinkar had seen everything in spite of the suggestion just mentioned, and in spite of the distinction which the witness drew in examination-in-chief between sight and inference. When the defence afterwards elicited that the witness had not seen accused give the spear-thrust but had inferred from circumstances that it was the accused who must have done so, the Public Prosecutor jumped to the conclusion that the witness was trying to aid the accused and after a few questions in reexamination he sought and obtained permission to cross-examine the witness. This was an egregious blunder. The question is, what result follows. One possible way of looking at the matter is to say that the examination, of the witness was complete when this cross-examination began, and, therefore, the outcome of the Public Prosecutor's cross-examination could be expunged. Another way, and a more satisfactory one, is to say that this cross-examination did not shake the credit of the witness, and that, say all the facts are before us, we are in quite as good a position as the Public Prosecutor to decide whether the apparent divergence in the statements shows carelessness of the truth. If either at the Thana or in the Magistrate's Court Amar Kinkar had used language which could only mean that he had seen with his eyes certain things take place, and had afterwards said that he had only drawn inferences from other things, then I should think that he was snuffing and not reliable. But that is not the case, as I have shown. His case is very different, therefore, from Padma Lochan's; different too from the circumstances in *Faulkner v. Brine*⁵ My conclusion is that the principle laid down in the last mentioned authority has no application here, and that we may accept Amar Kinkar's evidence for what it is worth. As to its value, I regard it as the evidence of a man who is doing his best to give a faithful account of what happened in distressing circumstances. The inauspicious ending to the ceremony, and the duty of denouncing his next door neighbour cast upon him a burden which was very irksome: he went to the Thana at once, but after that left the Police to work without his help, and did, nothing but answer the questions put to him. The remaining witness is Mahendra: his account confirms Amar Kinkar's story. The main objection to his evidence is this. In examination-in-chief he said that he saw accused spear Natabar and that he raised an outcry. In cross-examination he said, apparently without any evasion, that he was in the Kacheri house, that the western door on to the courtyard was shut, and, therefore, the place where Natabar was eating was not visible. A little later he said that when he shouted he shouted loud enough for the others in the house to hear him. If the last sentence did not imply that he had

gone out, I should at any rate have expected the defence Pleader to try and ascertain what the witness meant by saying first that he had seen something happen and then that he was in a position where he could not see. Instead of doing so, he left the explanation to be obtained in re-examination and deprived himself, of the right to probe into the explanation. It is said now that the explanation is absurd, but I do not understand why. Unwise tactics have left it unchallenged and I think we should accept it. My conclusion is that Mahendra's evidence may be regarded as reliable. In addition to criticisms upon the whole evidence of the witnesses severally, the learned Vakil has urged that there are discrepancies in small details, such as whether Natabar was standing or sitting, facing North or facing South when he was struck, who it was that pulled out the spear and so forth. It does not appear to me that such discrepancies are of any moment in the circumstances.

16. Further, the ownership of the spear has been discussed, and it is asked how it could have come to be in the hands of the accused. The evidence available does not disclose an answer. But to this argument as to the argument based on the wild improbability of the story, the same reply may be given that the undoubted facts are that some one chose that time and place to spear the deceased.

17. In addition to the direct evidence or in corroboration of it, we may take into consideration the fact that if Satya's name has been falsely substituted for another name, such substitution must have been made to the knowledge of perhaps three hundred people without a protest from any one.

18. My conclusion is that the evidence of Amar Kinkar and Mahendra, supplemented by the naming of the accused by the deceased, do prove beyond reasonable doubt that it was the accused Satayendra who speared Natabar.

19. On the evidence given by Amar Kinkar and Mohendra the offence must have been murder and nothing less: but neither of them saw anything until the last moment and I think the accused ought to have the benefit of what is said by the other witnesses about a quarrel and provocation. That is the view apparently taken by the dissentient Juror, and although it may be straining the evidence, I think we should hold that the case falls within the first exception to Section 300, Indian Penal Code, and, accordingly, I find the accused guilty under Section 304, Indian Penal Code, and sentence him to transportation for life.

20. Before parting with the case I should like to add that, although I think the conduct of the case in the Sessions Court does credit to nobody, I quite recognize that the circumstances were very difficult.

Pearson, J.

21. I agree.

Cases Referred.

13 C. 53 : 6 Ind. Dec. (N.S.) 532

259 Ind. Cas. 814 : 24 C.W.N. 860 at p. 869 : 33 C.L.J. 34 : 47 C. 1043

3(1858) 1 F. & F. 254

459 Ind. Cas. 814 : 24 C.W.N. 860 at p. 869 : 33 C.L.J. 34 : 47 C. 1043

5(1858) 1 F. & F. 254