

# CALCUTTA HIGH COURT

Gokul Chandra Chatterjee

Vs.

State (Calcutta)

Criminal Revn. Appln. Nos. 598 and 1092 of 1949

(Harries, C.J. and Bachawat, J.)

01.03.1950

## JUDGMENT

### **Harries, C.J.**

1. This is an application for revision by one Gokul Chandra Chatterjee who was convicted of an offence under Section 306, Penal Code and sentenced to eighteen months' rigorous imprisonment.
2. The petitioner was tried by a learned Assistant Sessions Judge sitting with a jury upon a charge of abetment of suicide. His son Biswa Ranjan Chatterjee was also tried with him upon the same charge. The jury unanimously found Biswa Ranjan not guilty and the learned Judge accepted the verdict and acquitted him. The jury however by a majority of three to two found the petitioner guilty and accepting the verdict the learned Judge sentenced him, as I have indicated, to eighteen months' rigorous imprisonment. An appeal to the Sessions Judge was dismissed.
3. The charge was concerned with the death of a young woman called Swarnalata who, according to the prosecution committed suicide by standing between the rails in front of a moving train. There was some suggestion in the Court below that this was not a case of suicide, but obviously it was, and it has not been suggested before us that the death was accidental. The allegation against the petitioner was that he along with his son had instigated this young woman to commit suicide on the day previous to her death and on the day of her death shortly before she was killed by the train.
4. This young woman Swarnalata was married to Bankim, a son of the petitioner Gokul. She was the daughter of one Chandi Charan Ganguly of a village called Chaumashina which was not far away from the village in which Gokul lived. It is said that the marriage between Swarnalata and Bankim was an unhappy one and that practically from the outset the young girl who was only about fifteen years of age when she married was ill-treated and assaulted by her mother-in-law, by her husband and Biswa Ranjan, the husband's brother. A son was born to Swarnalata, but it is said that about a month after the child was born Swarnalata left the house of Gokul, her father-in-law, and went to her father's house at Chaumashina. According to the prosecution Swarnalata

was really driven away from her father-in-law's house and was deprived of all access to her small son. She wrote a number of letters to her father-in-law and her mother-in-law begging that the child should be sent to Chaumashina, but the petitioner was adamant.

5. On 13th March 1948, Swarnalata according to the prosecution accompanied by her two uncles Anadi (P. W. 1) and Abani (P. W. 3) went to the house of Gokul and there saw her young son. Gokul, it is said, abused Swarnalata and asked her to leave the house at once. Swarnalata who it is said had picked up the child was deprived of the child and Biswa Ranjan pushed her and she fell in the courtyard. She clung to the petitioner's feet and begged him to allow her to stay with her child, but it is said that both Gokul and Biswa Ranjan told her to go away and told her to kill herself by taking poison or by placing herself under a railway train.

6. It seems that this occurrence had brought a number of neighbours to the scene, who had assembled in front of the house. The two uncles after this occurrence made a report at the thana and it is significant to note that in the entry in the diary there is no reference whatsoever of any incitement to suicide by either the petitioner or Biswa Ranjan. It seems that after making this report the Head Constable came to Gokul and asked him to allow his daughter-in-law to spend the night at his house, but Gokul would not allow her to do so and Swarnalata and her two uncles had to spend the night elsewhere.

7. The following morning Swarnalata and her two uncles again went to the house of Gokul and found that Swarnalata's husband Bankim was also present Swarnalata. it is said, on entering the house asked her uncles to go home and Anadi and Abani went to Bankura Railway Station to catch the 10-30 A.M. Down Gomoh Passenger Train for Ramsagar Railway Station which was their destination.

8. According to the prosecution Gokul, Biswa Ranjan and Bankim together with Swarnalata arrived on the platform just when the train was about to start and the three of them pushed Swarnalata into a compartment reserved for females. It is said that on this occasion also Gokul and Biswa Ranjan incited Swarnalata to commit suicide by throwing herself under a train.

9. Two co-villagers of Anadi and Abani are said to have seen Swarnalata being pushed into a ladies' compartment though Anadi and Abani who were in the train saw nothing. These two villagers told the two uncles who went to the ladies' compartment when the train stopped at the next station and took Swarnalata back to their compartment. The train in due course arrived at Ramsagar when Abani went in search of a bullock cart while Swarnalata and Anadi stood waiting on the platform. Whilst they were waiting the Up Gomoh Passenger Train was seen about to enter Ramsagar Station. Swarnalata, it is said, ran from the platform and got on the railway line and stood between the tracks facing the engine of the approaching train and was knocked down and killed almost instantaneously. An Assistant Sub-Inspector of Police, Bankura, held an inquiry and came to the conclusion that it was a case of suicide.

10. Nothing appears to have been done by either of the uncles until March 17 when a complaint was sent to the Superintendent of Police of Bankura District. In this complaint, it is said that Swarnalata was unhappy in the house of her father-in-law and that she had been compelled to leave Gokul's house and return to her father's village. The cause of the unhappiness was stated to be certain debts which were said to be owing to Gokul. It is then stated that Swarnalata gave birth

to a son, but that the child was kept away from her and that as a result Swarnalata became most unhappy and very anxious to return to her husband's house in order to see the child. It is then stated that the informant Abani together with his brother Anadi and Swarnalata went on Falgun 28 last to Gokul's house. The report then proceeds to describe the hostile reception they received. Swarnalata begged for the child and these words appear :

"And she began to cry, saying that she would commit suicide, would place her head under a running train, and such other things, unless her son was given to her. Gokul Chattopadhyaya, Satyabala, Biswaranjan and Bankim abused her in indecent language and said, Come, let us get thee into a train; go, place thy head there go and die".

11. It will be observed that Abani suggests that Bankim was present on the first occasion though the evidence is that Bankim only returned and was present on the following day when the two uncles of the girl returned to the house. The report then refers to Swarnalata being brought to the train by Gokul and his sons and being pushed by force into a women's compartment. Swarnalata is said to have cried : "Give me my son. Allow me to stay in your house, otherwise I will commit suicide by laying my head under a running train" and such other things. Nothing is said as to any reply by Gokul, though it is now said that Gukul again instigated her to commit suicide.

12. The police took up the investigation and in due course the petitioner together with Biswa Ranjan and Bankim were charged. Bankim however was discharged by the Magistrate conducting the preliminary enquiry, but the petitioner and Biswa Ranjan were committed to stand their trial in the Court of Sessions. They were tried and dealt with as I have indicated.

13. A good deal of evidence was called at the Sessions trial with a view to showing in the first place the cruel conduct of the accused person. Letters were also put in evidence said to have been written by the deceased to Gokul and members of Gokul's family. The last of these letters was written about five months before the suicide and the first of them about eight months before that incident. I shall discuss at a later stage whether these letters were admissible. They were tendered to show the state of the woman's mind which it is alleged was the result of cruelty on the part of Gokul and members of his family. Evidence was also called concerning the incident at Gokul's house on 13th March and the incident at Bankura railway station on 14th March.

14. The learned Judge in his charge to the jury which in my view was far too long dealt with the evidence in detail.

15. On behalf of the petitioner, it has been urged that there was a grave misdirection in the charge in that the learned Judge did not make it clear to the jury that the charge related to instigation or abetment of suicide on two days, namely, 13th March and 14th March. As I have said there was a good deal of evidence tending to show cruelty on the part of Gokul and members of his family previous to 13th and 14th March. In fact the evidence tended to show that the accused acted cruelly towards the deceased for some years before the deceased took her life.

16. It was not the case of the prosecution that this sustained and continuous cruelty amounted to an instigation or abetment of suicide. The case for the prosecution was that Gokul and his co-accused had on 13th and 14th March instigated this woman to do away with herself. The learned

Judge should have made it clear to the jury that the success or failure of the prosecution depended entirely upon whether the jury accepted the evidence relating to the two incidents of 13th March and 14th March during which incidents it is alleged that Gokul and his co-accused actually by words instigated the deceased to commit suicide. The evidence as to cruelty was only relevant to explain how Swarnalata came to be at Gokul's house on 13th March and explained the conduct of Swarnalata and the conduct of Gokul and the members of his family. This evidence as to cruelty to the girl before 13th March 1948 though relevant was not evidence which established the charge and the evidence could never establish the charge unless the jury were satisfied that the words alleged to have been spoken by Gokul and his co-accused were spoken on 13th and 14th March 1948. In my view, the charge does not state with sufficient clearness the relevancy of the general evidence with regard to cruelty. The jury might well have come to the conclusion that the charge of abetment had been made out though they might not have been satisfied with the evidence relating to the two specific incidents relied on by the prosecution. The charge should have made it clearer that the evidence of cruelty though established would not prove a case of abetment and that the charges were bound to fail unless the jury were satisfied that the evidence relating to the two incidents of 13th and 14th March 1948 was true; his failure to direct the jury properly as to the relevancy of the evidence of cruelty does to my mind vitiate the charge. The jury might well have convicted because of this evidence of cruelty and that evidence alone.

17. As I have stated earlier, letters were admitted in evidence which were proved to have been written by the deceased woman during a period of three or four months the first letter being written about eight or nine months before her death and the last letter about five months before her death. These letters show that the deceased woman was suffering acutely from the fact that she was being refused access to her child. They are letters which show, that her state of mind was seriously affected by the cruel conduct of the accused.

18. These letters were admitted in evidence by the learned Judge in spite of objection by the defense. In the view of the learned Judge the letters were admissible under Section 32 (1), Evidence Act. That section in so far as it is relevant reads as follows :

"Statements, written or verbal, of relevant facts made by a person who is dead, or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the Court unreasonable, are themselves relevant facts in the following cases.

(1) When the statement is made by a person as to the cause of his death, or as to any of the circumstances of the transaction which resulted in his death in cases in which the cause of that person's death comes into question.

Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his death comes into question."

19. There can be no doubt that these letters were written statement made by a person who was dead at the time of the trial. The statement could only be admissible if they were statements made by the deceased as to the cause of her death or as to any of the circumstances of the transaction

which resulted in her death.

20. These are not statements as to the cause of her death but it is contended that these letters are statements as to some of the circumstances of the transaction which resulted in her death.

21. According to the prosecution the transaction which resulted in her death was the instigation of the petitioner Gokul and members of his family and the tragic act of the girl in standing before a moving train and thus being ran over and killed.

22. Mr. Debabrata Mookerjee on behalf of the State has contended that the previous cruelty referred to in these letters were part of the circumstances of the transaction which resulted in her death and as the letters related to such circumstances they were admissible.

23. The meaning of the phrase "the circumstances of the transaction which resulted in his death" was considered by their Lordships of the Privy Council in the case of *Pakala Naraya Swami v. King-Emperor*<sup>1</sup>. In that case the question arose whether a statement made by the deceased to his widow that he was going to Berhampur was admissible in evidence under Section 32 (1), Evidence Act. The deceased was killed at Berhampur and their Lordships held that the statement to the widow that he was going to Berhampur was a statement as to one of the circumstances of the transaction which resulted in his death. But for the fact that he went to Berhampur he would not have been killed there and his going to Berhampur was one of the circumstances of the transaction which resulted in his death. The statement that he was going to Berhampur therefore was a statement concerning one of the circumstances of the transaction relating to his death and therefore their Lordships of the Privy Council held the statement to be admissible.

24. At page 478 Lord Atkin who delivered the judgment of the Board dealing with these words observed as follows :

"The statement may be made before the cause of death has arisen, or before the deceased has any reason to anticipate being killed. The circumstances must be circumstances of the transaction, general expressions indicating fear or suspicion of a particular individual or otherwise and not directly related to the occasion of the death will not be admissible. But statements made by the deceased that he was proceeding to the spot where he was in fact killed, or as to his reasons for so proceeding, or that he was going to meet a particular person, or that he had been invited by such person to meet him would each of them be circumstances of the transaction, and would be so whether the person was unknown or was not the

<sup>1</sup>43 CWN 473 : (AIR 1939 PC 47 : 40 Cr LJ 364)

person accused. Such a statement might indeed be exculpatory of the person accused. 'Circumstances of the transaction' is a phrase no doubt that conveys some limitations. It is not as broad as the analogous use in 'circumstantial evidence' which includes evidence of all relevant facts. It is on the other hand narrower than 'res gestae.' Circumstances must have some proximate relation to the actual occurrence : though as for instance in a case of prolonged poisoning they may be related to dates at a considerable distance from the date of the actual fatal dose."

25. Learned advocate for the petitioner has contended that evidence of previous cruelty though such evidence might be relevant is not evidence relating to any circumstances of the transaction. As Lord Atkin has pointed out "the circumstances must be circumstances of the transaction" which resulted in death and evidence of previous cruelty, to my mind cannot be regarded as evidence of the circumstances of the transaction which resulted in death. For example, if one of the letters contained a statement that she was going to her father-in-law's house on the following day to try and obtain the child, it might be argued that such a statement would be a statement of the circumstances of the transaction resulting in her death, because but for the fact that she went to the house the alleged instigation by Gokul could never have taken place. However, as I have said, the last letter written was about five months before the death and it appears to me that the connection between the letters and the death is not sufficiently close to make the letters statements of circumstances of the transactions resulting in death. As Lord Atkin put it "the circumstances must have some proximate relation to the actual occurrence."

26. Lord Atkin gave as an example that a man might express the fear or suspicion that a particular individual might harm him or even kill him but if this was a general expression indicating fear it would not be admissible in evidence under Section 32, Evidence Act as it could not be said to have some proximate relation to the actual occurrence. In the present case, it cannot be said that statements in the letters have no relation to the cause of death. What drove her to kill herself was undoubtedly her unhappy state of mind, but the statements in my view have not that proximate relation to the actual occurrence as to make them admissible under Section 32 (1), Evidence Act. They cannot be said to be circumstances of the transaction which resulted in death. In other words, they are not sufficiently nor closely enough connected with the actual transaction and that being so the letters were not, in my view, admissible and were wrongly admitted by the learned Assistant Sessions Judge.

27. Section 167, Evidence Act, provides :

"The improper admission or rejection of evidence shall not be ground of itself for a new trial or reversal of any decision in any case, if it shall appear to the Court before which such objection is raised that, independently of the evidence objected to and admitted, there was sufficient evidence to justify the decision, or that, if the rejected evidence had been received, it ought not to have varied the decision."

28. If we were satisfied that apart from this inadmissible evidence there was sufficient good evidence on the record to justify the verdict of the jury and the conviction, we should not interfere in this case. On the other hand, if we are satisfied that the admission of this evidence might have seriously influenced the minds of the jury and made them return an erroneous verdict, then the Court must set aside the verdict and the conviction and either order a retrial or proceed to decide the case itself upon the evidence on the record in accordance with the decision of their Lordships of the Privy Council in the comparatively recent case of *Abdul Rahim v. Emperor*<sup>2</sup>,

29. A case of this kind is a very difficult case for a jury to try as they might well be swayed by sympathy for the deceased young woman and her relatives. The jury might come to the

conclusion that even though there was no verbal instigation by Gokul, nevertheless his conduct was the real cause of the suicide and that being so they might erroneously hold him guilty. Cases where the decision might be influenced by sympathy or sentiment are not cases which a Court would readily send back to the lower Court to be tried by a jury if this Court could lawfully decide the question itself. It appears to me that this is a case where this Court is more likely to arrive at a correct conclusion than a jury who are more likely to be swayed by sympathy and pity for the deceased young woman and her near relations. That being so, this Court should, following the decision of *Abdul Rahim v. Emperor*<sup>3</sup>, proceed to decide this case itself on the admissible evidence on the record.

30. As I have said the whole case turns on the view the Court takes of the evidence adduced by the prosecution concerning the first incident of 13th March 1948, which took place at or immediately outside Gokul's house and of the second incident which took place on 14th March at Bankura railway station. [His Lordship then discussed evidence and proceeded : ]

31. As a Judge of fact, I find it quite impossible to act upon the evidence of Anadi and Abani with any confidence and it appears to me that the jury were in the same difficulty. The evidence is that Gokul and Biswaranjan both incited this girl; yet the jury convicted Gokul and acquitted Biswaranjan. How they could do that upon the evidence it is quite impossible to say, yet they did so. If the evidence was unsatisfactory against Biswaranjan, it was equally unsatisfactory against Gokul and the jury admittedly thought the evidence unsatisfactory against Biswaranjan. That makes me suspect that the verdict of the jury was to a very large extent influenced by their sympathy for the deceased woman and their verdict is an expression of their abhorrence of the cruel conduct of Gokul in refusing Swarnalata access to her son.

32. It appears to me that it would be highly dangerous to convict Gokul upon this evidence and that being so he must be acquitted.

33. I, like my learned brother, have every sympathy with the relatives of this unhappy girl, and we have no sympathy whatsoever with the petitioner. He was guilty of what I think to be inhuman conduct in separating this poor girl from her baby son, but we cannot convict Gokul because we disapprove of his conduct and his attitude towards this young girl. Gokul can only be convicted if there is unimpeachable evidence, which we can rely upon, that he instigated or incited this young woman to throw herself under a train. There is in my view no such evidence and that being so the petition must be allowed; the conviction and sentence are set aside and the petitioner is acquitted. He need not

<sup>2</sup>73 IA 77 : (AIR 1946 PC 82 : 47 Cr LJ 616)

<sup>3</sup>73 IA 77 : (AIR 1946 PC 82 : 47 Cr LJ 616)

surrender to his bail and his bail bond is discharged.

34. When the Rule first came on for hearing a Bench issued a Rule for enhancement of sentence. That Rule apparently was issued to make it easier for the Court to consider the facts. However, it is not necessary to consider this Rule any further because we have acquitted the accused. The Rule for enhancement is accordingly discharged.

35. We are informed that a case under the same section is now pending against Satyabala,

Gokul's wife. Having regard to the view which we have expressed in this judgment the prosecuting authorities should consider whether that case should proceed in the absence of other evidence which was not considered in the present case.

**Bachawat, J.**

36. I agree.

Conviction set aside.