Sashi Mohan Debnath And Others vs The State Of West Bengal on 19 November, 1957

Equivalent citations: 1958 AIR 194, 1958 SCR 962, AIR 1958 SUPREME COURT 194, 1958 SCR 960, 1958 ALLCRIR 296, 1958 SCJ 445, 1958 MADLJ(CRI) 404

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Bench: Syed Jaffer Imam, Natwarlal H. Bhagwati, Bhuvneshwar P. Sinha, J.L. Kapur, P.B. Gajendragadkar

PETITIONER:
SASHI MOHAN DEBNATH AND OTHERS

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT:
19/11/1957

BENCH:
IMAM, SYED JAFFER
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IMAM, SYED JAFFER
BHAGWATI, NATWARLAL H.
SINHA, BHUVNESHWAR P.
KAPUR, J.L.
GAJENDRAGADKAR, P.B.

CITATION:
1958 AIR 194 1958 SCR 962

ACT:
Sessions Trial-Reference-Judge agreeing with jury's verdict of non-guilty on some of the charges but in disagreement with the verdict of guilty in respect of others-If must refer the whole case against the accused-Recording of judgment of acquittal in agreement with the jury's verdict-Legality-High Court, if can act on a Partial reference-Code of Criminal Procedure (Act V of 1898), ss. 307, 306.

HEADNOTE:
Sections 306 and 307 of the Code of Criminal Procedure, read

together clearly indicate that where the Sessions judge disagrees with the verdict of the jury and is of the opinion that the case should be submitted to the High Court, he must submit the whole case against the accused, not a part of it. If the jury returns a verdict of guilty in respect of some charges and notguilty in
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respect of others he cannot record his judgment of acquittal in respect of the latter charges in agreement with the jury in contravention of the mandatory provision Of s. 307(2) of the Code. Such recording must have the effect of preventing the High Court from considering the entire evidence against the accused and exercising its jurisdiction under S. 307(3). Hazari Lal's case, (1932) 1. L. R.//Pat. 395 and Ramjanam Tewari, (1935) I. L. R Pat. 7I7, approved.
Emperor v. jagmohan, 1. L. R. (1947) Allahabad 240, and Emperor v. Muktar, (1943) 48 C.W.N. 547, disapproved.
The Emperor v. Bishnu Chandra Das, (1933) 37 C.W.N. 1180, King Emperor v. Ananda Charan Ray, (1916) 21 C.W.N. 435, and Emperor v. Nawal Behari, (1930) I.L.R All. 881, considered.
Consequently, in a case where eight persons were put up for trial in the Court of Session charged under ss. I47 and 304/I49 Of the Indian Penal Code and four of them were further charged under s. 201 of the Indian Penal Code and the jury returned a unanimous verdict of not guilty under S. 304/I49 and guilty under ss. 147 and 201 and the Judge accepting the former recorded a judgment of acquittal in the case of each accused but disagreeing with the latter referred the matter to the High Court, the reference was incompetent and the High Court was in error in acting upon it and its judgment must be set aside.
Held further, that although the proper order in such a case should be to remit the case to the trial court for disposal according to law, in view of the long lapse of time and peculiar circumstances of this case the reference must be rejected.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 114 of 1954.

Appeal from the judgment and order dated July 21, 1954, of the Calcutta High Court in Reference No. 6 of 1954, under Section 307 of the Criminal Procedure Code made by the Additional Sessions Judge, 24 Parganas at Alipore on the June 7, 1954, in Sessions Trial No. 2 of May, 1954. S. C. Isaacs, and S. N. Mukherjee, for the appellants. A. C. Mitra, D. N. Mukherjee and P. K. Bose, for the respondent.

1957. November 19. The following Judgment of the Court was delivered by IMAM J.-In this appeal by special leave the substantial question for consideration is whether the reference made to the

Calcutta High Court by the Additional Sessions Judge of Alipur under s. 307 of the Code of Criminal Procedure (hereinafter referred to as the Code) was competent and, if not, whether the High Court acted with jurisdiction in convicting or acquitting any of the accused who were tried by the Additional sessions Judge and a jury. There were eight accused on trial in the Court of Session all of whom were charged under ss. 147 and 304/149 of the Indian Penal Code. Four of them, namely, accused No. 1, Sashi Mohan Debnath, accused No. 2, Rajendra Debnath, accused No. 3, Manindra Debnath and accused No. 6, Rohini Kumar Debnath were further charged under s. 201, Indian Penal Code. The trial Judge delivered a charge to the jury which was favourable to the accused. The jury returned a unanimous verdict of not guilty under s. 304/149 of the Indian Penal Code, which the learned Judge accepted. He, accordingly, acquitted all the accused charged with this offence. The jury, however, with respect to charges under ss. 147 and 201 of the Indian Penal Code returned a unanimous verdict of guilty against the accused charged with these offences. The trial Judge disagreed with this verdict and made a reference under s. 307 of the Code to the High Court, being of the opinion that the accused were not guilty of these offences. The High Court accepted the reference in part and in agreement with the jury's verdict of guilty under ss. 147 and 201 of the Indian Penal Code convicted the accused Sashi Mohan Debnath, Rajendra Debnath, Sudbanshu Kumar Debnath, Dinesh Chandra Debnath and Bonomali Das under

> s. 147 of the Indian Penal Code and sentenced each of them to undergo one year's rigorous imprisonment and the accused Sashi Mohan Debnath and Rajendra Debnath under s. 201 of the Indian Penal Code and sentenced each of them to undergo rigorous imprisonment for three years. The sentences with respect to the accused Sashi Mohan Debnath and Rajendra Debnath were ordered to run concurrently. The High Court did not accept the verdict of the jury with respect to the accused Manindra Debnath and Gouranga Debnath under s. 147 of the Indian Penal Code and under s. 201 against Manindra Debnath and Rohini Kumar Debnath and acquitted them.
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> The present appeal is by the accused Sashi Mohan, Debnath, Rajendra Debnath, Sudhanshu Kumar Debnath and Bonomali Das. When the appeal came on for hearing on September 12, 1956, it was found necessary by this Court to have the appeal heard in the presence of the accused No. 3, Manindra Debnath, accused No. 6, Rohini Kumar Debnath and accused No. 8, Gouranga Debnath. The reason for issuing notices upon them has been fully stated in the order passed that day. Accordingly, notices were issued to these accused and they were served upon Manindra Debnath and Gouranga Debnath. So far as Rohini Kumar Debnath was concerned, it was reported that he could not be traced and no one could say where he had gone after selling all his properties and that no relative of his could be found. None of these three accused have entered appearances in this Court.
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> It is unnecessary to refer either to the facts concerning the occurrence or the case of the prosecution and the defence, as the only question for decision before us is a question of law. Indeed, no submissions were made either on behalf of the appellants or on behalf of the respondent on the facts of the present case.

> In order to determine whether the reference made under s. 307 of the Code by the Additional Sessions Judge of Alipur was competent, it is necessary to examine the provisions of that section and consider some of the decisions of the High Courts in India in this connection. But before we do this, some general considerations concerning trials by jury and interference with their verdict by the High Court may be stated. The scheme of the Code clearly suggests that at a trial in the Court of Sessions the trial can be either with the aid of assessors or by a jury depending upon whether the offence for which the accused was,, being tried was triable with the aid of assessors or by a jury. The Code even contemplates a trial of the accused for certain offences which were triable with the aid of assessors and other offences which were triable by a jury at the same trial, in which case the jurors acted as assessors for the offences which were triable with the aid of assessors. Although a trial by a jury was provided for by the Code, it did not compel the judge to accept the verdict. It permitted him to disagree with it but did not permit him to record a judgment unlike the case of a trial with the aid of assessors where the Judge could disagree with their opinion and record a judgment. The purpose of the Code was to regard the jury's verdict as of sufficient importance to prevent the Judge in the Court of Session from recording a judgment if the Judge disagreed with it. It was considered that if the verdict of the jury was to be displaced, it must be displaced, if at all, by the High Court which must give due weight to the opinion of the jury and the Judge and after considering the entire evidence. In other words, the High Court could do what the jury did after giving due weight to the opinion of the Judge and considering the entire evidence. Ordinarily, a jury's verdict on questions of fact would not easily be disregarded by the High Court because the basic principle of a trial by jury is that the jury are masters of fact. The verdict of the jury would not be reversed by the High Court merely because it disagreed with it. If the High Court, after considering the entire evidence, came to the conclusion that no reasonable body of men could have reached the conclusion arrived at by the jury, then the High Court would be entitled to disregard the verdict.

At the time that the reference was made under s. 307 by the Additional Sessions Judge, the provisions of s. 307 were in the following terms:

> " 307. (1) If in any such case the Judge disagrees ,with the verdict of the jurors, or of a majority of the jurors, on all or any of the charges on which (any accused person) has been tried, and is clearly of the opinion that it is necessary for the ends of justice to submit the case (in respect of such accused person) 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 (and in such case, if the accused is further charged under the provisions of section 310, shall proceed to try him on such charge as if such verdict had been one of conviction). (2) Whenever the Judge submits a case under this section, he shall not record judgment of acquittal or of conviction on any of the charges on which (such accused) has been tried, but he may either remand (such accused) to custody or admit him to

bail.

> (3)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 (such 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 ". In construing s. 307 we must consider first the words "if in any such case" at the very commencement of the section. These words refer to the case mentioned in s. 306(1). That case is the case which is tried before the Court of Session by a jury and therefore obviously the whole case and not a part of it. When the jury have given their verdict in the case, then the Judge has to consider whether he agrees with it and, if he does, then he must give judgment accordingly. If, however, he disagrees and is clearly of the opinion that it was necessary for the ends of justice to submit the case to the High Court he must submit the case accordingly. In our opinion, the case to be submitted to the High Court is the whole case against the accused and not a part of it. This appears to us to be clearly the effect of the provisions of ss. 306 and 307 when read together. Section 307 (2) specifically prohibits the Judge, when be considers it necessary to submit the case by way of reference to the High Court, from recording any judgment of acquittal or of conviction on any of the charges on which the accused had been tried. This prohibition is mandatory and a Judge, who records a judgment of acquittal or of conviction on an of the charges on which the accused had been tried, contravenes the provisions of s. 307(2) and the judgment so recorded is illegal. We cannot accept the submission of the learned Counsel for the appellants that the action of the Judge in recording a judgment is a mere irregularity. Section 307(3) provides for the powers which the High Court may exercise in dealing with the case so submitted and it enjoins that although the High Court may exercise any of the powers conferred on it, when hearing an appeal, it should consider the entire evidence and after giving due weight to the opinion of the Sessions Judge and the jury, either convict or acquit the accused of any offence for which he was tried, and if it convicted him of an offence for which the jury should have convicted him, pass such sentence as might have been passed by the Court of Session. But before the High Court could exercise the powers conferred on it under s. 307(3) it was necessary that the reference under s. 307 should have been according to law. This was, in our opinion, a condition precedent to the exercise of such power by the High Court. The words "with the case so submitted" make it quite clear that a reference under s. 307(1) must be of the whole case against the accused and not a part of it. In order that the High Court may be in a position to properly exercise its powers under s. 307(3), it was necessary for it to consider the entire evidence in the case, which obviously it could not do if the trial judge had already recorded a judgment. By recording a judgment the trial Judge prevents the High Court from properly exercising its powers under s. 307(3) as the reference made thereafter is not of the entire case with respect to the accused. Indeed, in the present case the Judge having accepted the jury's verdict and having recorded a judgment of acquittal under s. 304/149, Indian Penal Code, in the case of each accused, took it out of the hands of the High Court to deal with the case of each accused with re- ference to the other charges framed against him. The effect of the amendments to s. 307 of the Code made in 1923 and 1955 lend further support to the view that it is the whole case which must be referred and not a part

of it, The provisions of s. 307(1) before the amendment of 1923 were so expressed as to make it possible to say that it was necessary for the trial Judge to refer the whole case concerning every accused on all the charges framed against them irrespective of the fact that the Judge was in agreement with the jury with respect to a particular accused on all the charges framed against him. The amendment of 1923 introduced the words " any accused person " in place of the words " the accused " and " in respect of such accused person " in a. 307(1). The amend- ment, accordingly, enabled the Judge to accept the verdict of the jury on all the charges framed against any accused person and to record a judgment with reference to him while referring the case of another accused to the High Court where he disagreed with the verdict on any of the charges framed against him. The amendment was made to remove the necessity of referring the whole case, including the case of an accused concerning whom the Judge was in agreement with the verdict on all the charges framed against him. The amendment would have been unnecessary if s. 307(1) contemplated a reference of only a part of the case and not the whole of it.

The amendment of 1955 completely recast s. 282 of the Code. This amendment provided for the continuance of the trial with the reduced number of jurors, in the circumstances mentioned in the section, instead of the trial re-commencing with a newly selected jury. Consequently, in s. 307 sub-section (1)A was introduced which directed that where the jurors were equally divided on all or any of the charges on which any accused person had been tried, the Judge must submit the case in respect of such accused to the High Court recording his opinion on such charge or charges and the grounds of his opinion. This direction, in our opinion, makes it clear that the whole case had to be submitted to the High Court. In our opinion, the amendments of 1923 and 1955 to s. 307 clearly indicate that Parliament itself thought that it was the whole case and not a part of it which was to be submitted to the High Court. Indeed, as already stated, s. 307, even before its amend-

ment in 1955, when properly construed, leads to no other reasonable conclusion.

It is now necessary to consider the cases decided by some of the High Courts in India in this connection. The Patna High Court in Hazari Lal'-s case (1) expressed the opinion that having regard to the provisions of s. 307 a reference made thereunder must be of the whole case against the accused and not a part of it. If only a part of it is referred then the reference made under s. 307 is incompetent. That High Court reaffirmed the view taken in Hazari Lal's case in the case of Ramjanam Tewari(2). This was the view also taken by the three Judges of the Calcutta High Court in the case of The Emperor v. Bishnu Chandra Das(3), two of whom, however, in rejecting the reference directed that the accused be acquitted. The third Judge, Mr. Justice McNair, however, confined himself to the observation that the Sessions Judge had disabled himself from making a valid reference under s. 307 of the Code by accepting the verdict of the jury against the accused on some of the charges. In our opinion, the view taken by the Patna High Court was correct and in accordance with the provisions of s. 307.

It was, however, submitted on behalf of the appellants that in view of certain decisions of the Calcutta High Court and the Allahabad High Court, when a reference had in fact been made, it was open to the High Court to deal with it and record a judgment. Reference was made to the case of King Emperor v. Ananda Charan Ray (4). It is true that in this case the learned Judges did consider

the evidence in order to ascertain whether the verdict of the jury was one which a body of reasonable men could have arrived at. The learned Judges, however, observed before considering the evidence in the case, " If the learned Officiating Additional Sessions Judge considered that the interests of justice required a reference to this Court, I should say that he would have been better advised if he had referred the whole case leaving it to this Court to consider the whole of the evidence that (1) (1932) I.L.R. Pat. 395.

(2) (1935) I.L.R. Pat. 717.

(3) (1933) 37 C. W. N. 1180.

(4) (1916) 21 C.W.N. 435, 437.

was placed before the jury. As it is, this Court is precluded from considering whether the accused mis- appropriated or had a hand in misappropriating any portion of these sums of Rs. 200 and Rs. 458." After referring to the evidence, the learned Judges expressed the following opinion: " The real truth of the matter is that, if the learned Judge considered that this was a case that ought to be referred under s. 307, Cr. P. C., he never ought to have sent up the case in this way by tying the hands of the Crown or of the Court or even the defence by agreeing with the verdict of the jury on the charges framed under sees. 406 and 477A of the Indian penal Code. As it is, he had precluded the Court from questioning or going behind that verdict and thus from considering the large body of evidence that was placed before the jury. In the result, we find it impossible in this case to accept the reference made by the learned Officiating Additional Sessions Judge and we think, having regard to the fact that the accused has been acquitted on the charges framed under secs. 406 and 477A, Indian Penal Code, we ought to accept the verdict of not guilty on the charges framed under sec. 467 read with see. 471 and sec. 474 1. P. C., and direct that the accused be acquitted." This decision, in substance, takes the same view as that expressed by the Patna High Court in the cases of Hazari Lal and Ramjanam Tewari. In the case of Emperor v. Nawal Behari(1), the learned Judges of the Allahabad High Court held that when a Sessions Judge refers a case under s. 307 of the Code, he must refer the whole case against the particular accused and not merely those charges on which there happens to be a finding by the jury with which lie disagrees. This view is substantially in keeping with the view taken by the Patna High Court in the cases mentioned above. It is true that the learned Judges them proceeded to consider the evidence and set aside the conviction and sentence under s. 193 passed by the Sessions Judge and substituted in its place a conviction by the High Court under s. 193. In our opinion, if the reference under s. 307 of the Code had to be of (I)(1930) I.L.R. All. 881.

the whole case against the accused and not merely those charges on which the trial Judge disagreed with the jury, then the reference was incompetent and the High Court could not proceed to exercise any of the powers conferred upon it under s. 307(3), because the very foundation for the exercise of that power was lacking, the reference being incompetent. In the case of Emperor v. Jagmohan(1), while the learned Judges held that the reference to the High Court only of a part of the case was irregular, the High Court could consider not Only the part of the case referred to it, but the whole case. We are unable to accept this view. Whatever support this decision may give to the submission

made by the learned Counsel for the appellant, we are clearly of the opinion that the decision of the Allahabad High Court in this case was erroneous in law. In Emperor v. Muktar(2) thelearned Judges were of the opinion that the reference was not in order when the trial Judge recorded a finding on some charges in respect of the very accused whose cases so far as other charges were concerned were referred, but the defect was not necessarily fatal to the reference and the High Court might entertain the same. This view cannot be sustained, having regard to the provisions of s.

307. In our opinion, a reference made in the circumstances of the present case, was incompetent and the High Court should have rejected it and not proceeded to record any judgment of acquittal or conviction.

We, accordingly, allow the appeal, set aside the judgment of the High Court and hold that the reference under s. 307 to the High Court was incompetent.

A question has arisen as to what consequential order should be passed by this Court as the result of our conclusion that the reference under s. 307 to the High Court was incompetent and the appeal succeeding. The High Court should have rejected the reference as incompetent and remitted the case to the Additional Sessions Judge for disposal according to law.

(1) I.L.R. (1947) All. 240.

(2) (1943) 48 C.W.N. 547.

We emphasise the absolute need for making a competent reference under s. 307 of the Code and the case being remitted to the Court making the reference as soon as possible if an incompetent reference is made in order to avoid legal complications, unnecessary waste of time and money and harassment to the accused. In this case the letter of reference is dated June 7, 1954, that is, more than three years ago. The occurrence took place on October 21, 1953. After such lapse of time we will not order that the case be returned to the Court of the Additional Sessions Judge of Alipur for disposal according to law, particularly as we are informed that the Judge who made the reference to the High Court has retired from service and it is doubtful whether, in law, his successor can at all deal with the case. In the circumstances of this particular case, therefore, the only order which we pass is that the reference being incompetent is rejected. Appeal allowed.