The Queen V. Sinnathamby

193[COURT OF CRIMINAL APPEAL]1965

Present: Sansoni, C.J. (President), T. S. Fernando, J., and Alles, J.

THE QUEEN v. V. SINNATHAMBY

APPEAL No. 68 of 1965, WITH APPLICATION No. 82

S. C. 52—M. C. Tissamaharama, 44404

Trial before Supreme Court—Publication by newspapers of prejudicial reports of an earlier abortive trial—Effect—Medical evidence as to mental condition of accused—Stage at which it should be given—Insanity—Plea not raised by the defence—Court may direct jury to consider the question of insanity even then.

(i) On the day before a trial before the Supreme Court began, newspapers published prejudicial reports of an earlier abortive trial of the accused. The Jury were, however, sufficiently directed, in the summing-up of the Judge, to keep the newspaper reports out of their consideration in arriving at their verdict.

Held, that the trial was not vitiated by the publication of the newspaper reports.

(ii) In a prosecution for murder, medical evidence as to the unsound mental condition of the accused was elicited by the Judge for the first time after the accused himself had given evidence and been closely questioned by the Judge in such a way as to lead the Jury into the belief that his evidence was totally unworthy of credit. The Crown suggested no motive of any kind for the alleged murder.

Held, that the medical evidence should have been given before the accused was called to give evidence.

Held further, that, even though the defence was a total denial of the acts which caused the death of the deceased, the Judge was

justified in putting the question of insanity to the Jury for them to consider in the event of their holding that it was the accused who struck the fatal blow.

APPEAL against a conviction at a trial before the Supreme Court.

G. E. Chitty, Q.C., with *V. Kumaraswamy, A. S. Vanigasooriyar, Kumar Amarasekera* and *B. Bodinagoda* (Assigned), for Accused-Appellant.

Cecil Goonewardene, Crown Counsel, for Attorney-General.

Cur. adv. vult.

October 18, 1965. SANSONI, C.J.—

At the close of the argument in this appeal, we quashed the conviction of the appellant and ordered that a new trial should be held. We now give our reasons.

The charge against the appellant was that on the 18th March 1964 at Kataragama he committed murder by causing the death of Spencer Rajaratnam and thereby committed an offence punishable under section 296 of the Penal Code. After a trial which lasted 8 days, he was found guilty of murder by the unanimous verdict of the Jury.

Before us Mr. Chitty raised four points. The first was that the trial should not have taken place when it did, because on the very day it was started the newspapers published certain statements alleged to have been made by the accused to a Doctor, and that would have caused prejudice if the members of the Jury read the newspapers in question. On the day before this trial began, an earlier trial had ended abortively when the Jury was discharged owing to the admission of certain inadmissible evidence. Another panel of jurors was then specially summoned and this trial was held before them. The trial Judge refused an application to postpone the trial, saying that he would adequately direct the Jury that they should arrive at their verdict only on the evidence led in Court. In the course of his

summing-up, he said "I must also tell you that you are required by our law to judge this case upon the evidence led before you at this trial and upon that evidence only. As a certain amount of public interest may have been created in this case, and newspapers may have published reports with regard to the proceedings in this case, and you may in private conversations have heard people talking about this case, you will keep in mind that you will keep all such information out of consideration when you retire to consider your verdict, because our law requires you to decide the case upon the evidence led at this trial and only upon that evidence." We consider that this direction was sufficient to prevent any prejudice to the appellant, for we must assume that the Jury bore this direction in mind and obeyed it in considering their verdict.

The second point was that the learned Judge's directions to the Jury on the alternative verdict of culpable homicide not amounting to murder were wrong. All we need say on this is that the nature of the injuries found by the Doctor on the deceased are so eloquent of a murderous intention that no reasonable Jury could have found a verdict of culpable homicide not amounting to murder. The directions on the alternative verdict were unnecessary, and we need not now consider their adequacy.

Mr. Chitty's third point was that when the appellant was giving evidence, he was questioned by the Judge in such a way as to lead the Jury into the belief that his evidence was false. He submitted that the Judge's questions showed that he doubted the truth of the appellant's story, and the Jury would have been led into forming the same opinion.

Before we deal with this point it is necessary to refer generally to the case put forward by each side. The deceased Spencer Rajaratnam appears to have been stabbed to death in a room he was occupying in the Kataragama Temple premises at about 7.30 p.m. on 18th March 1964. The prosecution led the evidence of three witnesses to show that the circumstances pointed to the appellant and the appellant alone as being the person who inflicted the fatal injuries. One witness called was Swami Jothi Mayananda. He said

that after he had attended the evening pooja at the Maha Dewale, he was returning past the room occupied by the deceased, when he heard cries coming from that room. He peeped through a window and he saw this appellant holding a knife in his upraised hand and standing opposite the bed on which the deceased was reclining. He ran to the door of the room and found it locked. He kicked it open and went in. The only occupants were the appellant and the deceased. He held the appellant, pressed him against the bed and shouted for help. The witness Urudrapathy, who was the servant of the deceased and of the temple, then came running into the room. Urudrapathy said that he came in and supported the deceased, and pulled out a knife which was stuck in his back. Another witness called was Rajanayagam, who entered the room soon after Urudrapathy. He tied the appellant's hands with a rope. The learned Judge told the Jury that it was of the utmost importance that they should decide whether they were going to accept the evidence of those witnesses or not, and if they had any reasonable doubt as to the truth of their evidence they should acquit the appellant.

The appellant, in the course of his evidence, said that on the 17th night he was at the Ramakrishna Madam. Certain incidents took place there, in consequence of which he had to leave the Madam that night and take shelter in a boutique. From there he went next morning to the Police Station where he met a Constable named Kandiah, to whom he related what had happened the previous night. He said that Kandiah refused to record his statement, though he gave him food to eat. A crowd of people gathered outside the Police Station and threatened him. Kandiah then sent him to the deceased, who treated him kindly. When he was alone in the deceased's room, some people started throwing stones at him through the window, and the deceased came back and sent them away. Later, another person had made signs as though he wanted to stab him. He and the deceased were in the latter's room from about 6 p.m. until he left it at about 6.30 p.m. and returned some time later. Before he entered the room, he saw the deceased lying on his bed with blood on the back of his chest. He felt as if somebody hit and pushed him. He fell down. Several persons then assaulted him. He was pushed into the room, and he said that

those who took part in the assault on him were the three prosecution witnesses already mentioned.

Now it was for the Jury to consider the two versions put forward by the prosecution and the defence respectively, and decide whether the prosecution had proved beyond reasonable doubt that it was the appellant who caused the death of the deceased. They have shown by their verdict that they were convinced of the truth of the prosecution story.

But there is one striking feature of this case to which we must now refer. It throws some light on the evidence given by the appellant, and it needed very careful consideration by the Jury before they arrived at their verdict. We refer to the evidence of a witness who was called for the defence, viz. Dr. Seneviratne. He is a psychiatrist at the Mental Hospital, Angoda. The appellant was sent to that Hospital for observation on the 20th March, and Dr. Seneviratne had him under observation from the 25th March. The purpose for which Dr. Seneviratne was called seems to have been merely to elicit from him the statements which the appellant made to him while he was under observation. No questions were put to him by the defence about the mental condition of the appellant, and it was left to the Judge to elicit from the Doctor what we think was the most important part of his evidence. In answer to the Judge he stated that the appellant was suffering from delusions, that he was experiencing a frightening situation, and that he felt he was the subject of persecution by various people. He believed things to exist which really did not exist, and this was due to his loss of reality. He had a bizarre state of mind. It was the Doctor's opinion that the appellant was not malingering, and that the delusions and experiences which he had spoken of were due to unsoundness of mind. Apart from those delusions he was capable of behaving in a rational manner and of making his defence. And in this connection it must be noted that there was no motive of any kind suggested by the prosecution.

It is unfortunate that when the appellant's counsel moved to call Dr. Seneviratne before he called the appellant, the only reason he gave

was that the Doctor had been waiting for a long time to give evidence. If it had been pointed out to the Judge that the Doctor could have given evidence as to the mental condition of the appellant—a fact, however, of which the appellant's counsel does not seem to have even been aware—we are sure that the Judge would have allowed his evidence to be taken first. It is not possible at this stage to speculate as to the verdict that might have been returned had the appellant given his evidence after Dr. Seneviratne. His evidence-in-chief seems to have struck the Judge as something totally untrue, and in consequence the Judge proceeded to question him closely, particularly with regard to the incidents surrounding the death of the deceased. He was questioned in detail as to what he told his lawyers at various times. He was closely questioned as to the alleged assault on him before he entered Mr. Rajaratnam's room. He was also asked why his counsel, while Rajanayagam was giving evidence, said that his evidence was not being challenged, to which the appellant replied that he could not understand that. The following are but a few of the questions and answers appearing in the record. They are all questions put by the Judge:—

"1790. Q. The point I am making is this. That apparently some others who had apparently committed this offence are trying to implicate you falsely. That is your defence? A. Yes.

1791.Q. Rajanayagam was one of the principal persons who did these various acts to you before the police came on the scene? A. Yes.

1792.Q. I am asking you why your Counsel, when Rajanayagam was giving evidence, said that his evidence is not being challenged, and he was being questioned about some collateral matters? A. I cannot understand that.

1793.Q. If you had given these instructions, that among the others Rajanayagam was one of the principal people who pushed you into the room, assaulted you and tied you up and so on, his evidence would have been very seriously challenged in this case? A. It is a matter for my Counsel.

1795.Q. Did you tell your lawyers that Rajanayagam was one of the persons who assaulted you? A. No.

1805.Q. He (Rajanayagam) also admits that he tied your hands, but his story is different. He said that he came into this room and found Swamy Jothi Mayananda pushing you down on the bed? A. I do not know about that.

1806.Q. You must have heard his evidence? A. I did not pay attention to that.

1807.Q. His evidence is different from your evidence, because your evidence is that he was one of the persons who pushed you from outside the room inside this room. That is the main difference in the two stories, and that he assaulted you outside the room, according to you, before you were pushed into the room. These are the main points in which the evidence differs? (No answer.)

1810.Q. He gave evidence in Tamil? A. Yes.

1811.Q. You understand Tamil well? A. Yes.

1813.Q. He also gave evidence in the Magistrate's Court before he gave evidence here? A. Yes.

1814.Q. Did you not pay attention as to what these witnesses are saying against you, and for this incident in which you are charged? A. I am innocent. Therefore I do not require the evidence of these people.

1815.Q. It is true that you are not relying on their evidence, but that evidence may be relied on against you. That is the evidence that you have to meet in this case. A. If these witnesses give false evidence they will be punished by God.

1816.Q. That is a different matter, but at present you are interested to see that you are not punished by human beings? A. I will welcome if persons mete out punishment to me.

1817.Q. The Courts of this country have to find out whether you have committed an offence or not? A. Yes.

1818.Q. Fortunately or unfortunately people are punished as a result of the decisions of the Court? A. Yes.

1819.Q. I am not saying for a moment that no innocent people are punished in our Courts, sometimes they may be convicted on false evidence? A. Yes.

1820.Q. But a trial is held so that the accused may have an opportunity of defending themselves? A. Yes.

1828.Q. If he was not an enemy of yours what was the reason for him to assault you, push you into the room and give false evidence? A. He must know why he is doing that.

1834.Q. The least your lawyers could have done would have been to ask you your story in regard to this incident. Then of course they could have asked questions on any further point that needed elucidation. A. When my lawyers come to meet me they asked me to narrate in brief what I have to say."

We feel sure that if Dr. Seneviratne had given his evidence before the appellant gave his, the latter's evidence would have been treated in an entirely different manner, and he would not have been subjected to such questioning by the Judge. We have not the slightest doubt that the Judge was seeking to test the truth of his story, but in doing so the Judge would have given the Jury the impression that he did not believe the appellant at all. As was said in *The King v. Dharmasena* [(1949) 50 N. L. R. 505.], if the Judge takes upon himself the burden of the cross-examination of the accused, and questions him in a manner hostile to the accused, and suggesting that he is satisfied of the guilt of the accused, the impression would probably be produced on the minds of the Jury

that the Judge was of the fixed opinion that the accused was guilty. The Judge in this trial would have had no intention of prejudicing the minds of the Jury, but the Jury may well have thought, by the time the accused finished giving evidence, that he was a witness who was totally unworthy of credit. When it came to summing up the case to the Jury, the Judge put to them the defence of unsoundness of mind and he said all that could possibly have been said in the appellant's favour on that subject. Dr. Seneviratne's evidence was put to them as strongly as possible. But the damage had been done when the appellant, while giving evidence, was treated as though he was a perfectly normal person who had either not given instructions to his lawyers in accordance with the evidence he gave, or had given instructions which his lawyers did not believe and therefore did not follow. We cannot discount the probability that the Jury might have failed to consider the proper bearing Dr. Seneviratne's evidence had on the case, because of the unfavourable impression that the appellant had made on them as a witness.

Mr. Chitty urged as a fourth point in his argument that, as the appellant's lawyers did not put forward the defence of unsoundness of mind, it was not open to the Judge to direct the Jury on that matter. We reject this submission. It is not the law that the question of unsoundness of mind should be put to the Jury only if the accused's counsel raises that defence. We need only refer to the speech of Lord Denning in the House of Lords in *Bratty v. Attorney-General for Northern Ireland* [(1963) A. C. 386]. Lord Denning referred there to *B. v. Kemp* [(1957) 1 Q. B. 399.] where Devlin J. had put the question of insanity to the Jury although no plea of insanity was raised by the defence. "The old notion that only the defence can raise the defence of insanity is now gone. The prosecution are entitled to raise it and it is their duty to do so rather than to allow a dangerous person to be at large," said Lord Denning. It seems to be another application of the principle so well-established since the case of *R. v. Hooper* [(1915) 2 K. B. 431.], where Lord Reading C. J. said "Whatever the line of defence adopted by counsel at the trial of a prisoner, we are of opinion that it is for the Judge to put such questions as appear to him properly to

arise upon the evidence even although counsel may not have raised some question himself."

Nor do we accept Mr. Chitty's argument that conflicting defences should not be put to the Jury. As Lord Beading said in the same judgment "We do not assent to the suggestion that as the defence throughout the trial was accident, the Judge was justified in not putting the question as to manslaughter." Thus, even though the defence was a total denial of the acts which caused the death of the deceased, the Judge was perfectly justified in putting the question of insanity to the Jury for them to consider in the event of their holding that it was the appellant who struck the fatal blows.

Case sent back for a new trial.