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(1959) 09 GAU CK 0002

Gauhati High Court (Agartala Bench)

Case No: None

Ananta Kumar Deb Sarma and Others		APPELLANT
	Vs	
Priyotosh Nandy		RESPONDENT

Date of Decision: Sept. 11, 1959

Acts Referred:

- Penal Code, 1860 (IPC) - Section 253, 342, 354, 380, 454

Citation: AIR 1960 Guw 14 : (1960) CriLJ 408

Hon'ble Judges: T.N.R. Tirumalpad, J.C.

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.N.R. Tirumalpad, J.C.

1. The Petitioners were convicted Under Sections 380 and 454 IPC and sentenced to undergo R.I. for 3 months and to pay a fine of Rs. 100/- by the Munsiff Magistrate, Belonia. The conviction and sentence were upheld in appeal by the Sessions Judge, Tripura. Now they have come up in revision to this Court.

2. It is unnecessary to go into the facts in detail in this revision. The Petitioners were said to have wrongfully trespassed into a house belonging to the Complainant-respondent on 16-6-1955 and to have removed his furniture worth about Rs. 250/-. The respondent filed a complaint before the S.D.M. He transferred the case for enquiry to a second class Magistrate one Mr. H. Ghosh who framed the charges Under Sections 380 and 454 IPC and examined 8 prosecution witnesses and questioned the accused u/s 342 and examined 3 defence witnesses. Then on 23-5-1957 the Magistrate passed an order that as the charge u/s 354 IPC was triable by a Magistrate of the first and second class, the case was forwarded to the Court of the S.D.M. for orders.

It is not known why such an order was passed by this Magistrate as he was himself a Magistrate of the second class and he could have continued the trial. Any way the S.D.M. withdrew the cases to his own file and transferred it to the file of the Munsiff-Magistrate who is a Magistrate of the first class for disposal. The Munsiff-Magistrate posted the case for arguments as the evidence had alredy been recorded by the other Magistrate. The Petitioners claimed a de novo trial before the Munsiff-Magistrate and filed a petition on 11-6-1957 claiming such a trial. That was rejected by the Magistrate on the ground that there was no necessity.

Then they filed another petition stating that there was a Civil suit between one of the Petitioners Ananta Kumar Dev Sarma and the respondent which was tried by the Munsiff-Magistrate and in which a decision was given in favour of the respondent and that therefore the Criminal case should not be tried by the same Magistrate and they asked for time to move the High Court for a transfer of the case. But the Magistrate dismissed the application u/s 526(8) Cr.PC. as the evidence had already been recorded. Then the Petitioners refused to argue the case before the Magistrate and the Magistrate convicted and sentenced the Petitioners as stated above. The same was upheld in appeal also.

3. Now it is contended in revision that the Petitioners were entitled under the Criminal Procedure Code before the amendment in 1953 to demand a fresh trial and that the Magistrate should not have rejected the said demand acting under the amended Criminal Procedure Code. This point was urged before the appellate Court also. Bull the appellate Court rejected the said plea and held that it was the amended Criminal Procedure Code which applied and that the Magistrate had the discretion either to re-summon the witnesses or to act on the evidence already recorded.

On this point the learned appellate Judge is certainly correct as u/s 116 of Act XXVI of 1955 the amended Criminal Procedure Code 1 applied to all proceedings pending in any Criminal I Court on the date of the commencement of the amended Act. The amended Act came into force on 1-1-1956 and this case was clearly pending on that date. This Court cannot, therefore, interfere in the discretion exercised by the Magistrate to continue the proceedings from the stage at which the matter was when it was transferred to him.

4. Next it was contended that Sri H. Ghosh, the Magistrate who recorded the evidence in the case was a third class Magistrate who did not have - the jurisdiction to try the case u/s 454 I.P.C, and that therefore the entire, proceedings were vitiated. When this point was raised in revision for the first time, a report was called for from the District Magistrate as to whether Sri H. Ghosh was a second class or a third class Magistrate when he tried this case, The report of the District Magistrate shows that Sri H. Ghosh was vested with second class powers on 30-8-1955 and that he continued as second class Magistrate till 12-8-1958 when he was vested with first class powers. The evidence in this case has been recorded by Sri H. Ghosh after

30-8-1955. Hence there is no irregularity in the said trial,

5. Next it was pointed out that the Magistrate acted illegally in rejecting the petition for adjournment filed by the Petitioners u/s 526 Cr. P.C. to enable them to apply for transfer. The learned Magistrate acted u/s 526 (8) in rejecting the said application as the defence also had closed its case and he had only tq hear the arguments. But'' it was urged that Section 526(8) will not apply in the present case as the case was transferred to the Magistrate after the defence case was closed and the necessity for the application arose on account of the transfer to this Magistrate who had dealt with a Civil case between the Complainant and the. Petitioner and held in favour of the Complainant in the said Civil case.

It is no doubt true that the application for adjournment for the purpose of moving for transfer was necessitated only because the case was transferred at that stage to this particular Magistrate in whom the Petitioners did not have confidence on account of his having held against them in another Civil case. But I have perused the judgment of the Civil case and I find that there is no connection between the Civil case and the present Criminal case. The fact that the learned Munsiff-Magistrate in his capacity as Munsiff has tried and decided the Civil case on the evidence adduced before him is certainly no reason why he should not hear the Criminal case which was totally unconnected with Civil dispulte. I see no reason why the same Magistrate should not have heard the Criminal case. No application for transfer would have been entertained on such grounds. The learned Magistrate acted rightly in refusing the adjournment.

6. Lastly, it was contended that the examination of the Petitioners u/s 342 has been done iu a most perfunctory manner, that the details of the evidence adduced on behalf of the Complainant against the Petitioners were not put to them and they were not given an opportunity to explain the evidence adduced against them, that thereby injustice has been caused to them and hence the entire trial was vitiated. In support of the said argument the decisions in In re In Re: Narsiah and Others, and Abdul Ali Mia v. Abdulla AIR 1959 Man 26 were cited. The questions put to the accused persons in the present case u/s 342 were as follows:

Q, You have heard the deposition and cross-examination of the prosecution and P.Ws. The Complainant Has given evidence that you trespassed into the house of the Complainant on 16-6-55 A.D. last and had stolen his table and chair and thus you had caused a loss to him. What have you. got to say in this respect?

Ans: I have not committed any o,ffence. Q. Will you cite any defence witness? Ans: Yes, I shall.

7. It is no doubt true that the details of the evidence given against the Petitioners by the 8 prosecution witnesses were not put to them and their explanations for the evidence appearing against them and likely to be used as evidence against them in convicting and sentencing them were not put to them. It has been laid down by the

Supreme Court in Hate Singh v. State of Madhya Bharat, A. I. Rule 1953 SC 468 that the statement of an accused person recorded u/s 342 is among the most important matters to be considered at the trial. In the case in Tara Singh Vs. The State, the Importance of fairly examining the accused by questioning him separately about each material circumstance in the evidence intended to be used against him has been stressed.

But in the instant case, (be Magistrate had examined the accused u/s 253 atter the prosecution witnesses were examined but before charges were framed against the accused and before the prosecution witnesses were cross-examined. In the said examination of the accused persons they had totally denied the case against them and had said that they did not commit any offence thereby implying that the alleged occurrence ,of criminal trespass on 16-6-1955 and of that of furniture of the Complainant with which they were charged was false.

When thus the Magistrate knew even before the framing of the charge and the commencing of the regular trial that the defence of the accused was one of total denial it becomes unnecessary when questioning them again u/s 342 to put each material fact against them spoken to by the prosecution witnesses and get their explanation. It is sufficient if he gives an opportunity to the accused persons to state what they have got to say against; the prosecution evidence. Such an opportunity has been given to the Petitioners in the present case in the questions put u/s 342 and their explanation again was that they have not committed any offence. In this connection the Supreme Court; decision Bimbadhar Pradhan Vs. The State of Orissa, holds as follows;

It is not ordinarily necessary to put the evidence of each individual witness to the accused in his examination u/s 342. The appellant was put the question ''Have you got anything to say on the evidence of the witnesses?'' That, in our opinion, is. sufficient in the circumstances of this case to show-that the attention of the accused was called to the prosecution evidence. As to what is or is not a full compliance with the provisions of that Section of the Code must depend upon the facts and circumstances of each case. In our opinion, it cannot be said that the accused has been in any way prejudiced by the way he has been questioned under that lection.

8. The same observations apply to the present case. The gist of the evidence against the Petitioners namely, that they trespassed into the house of the Complainant on 16-6-1955 and committed theft of the furniture of the Complainant were put to them and they were asked what they had got to say in that respect. I fail to see in what way the accused have been prejudiced in their trial by the details of the said evidence not being put to them as their defence was a total denial of the entire occurrence. The Magistrate had only to decide whether he should believe the prosecution evidence which has been totally denied by the accused. The decision in In Re: Narsiah and Others, relates to an entirely different question as to whether by the introduction of Section 342A giving an option to the accused to Rive evidence on

oath made any difference in the examination of the accused as required u/s 342.

In the decision AIR 1959 guh 26 it was held by J. N. Datta, J. C. that the omission to examine the accused resulted in prejudice to the defence on the facts of that particular case. That decision has also no application to the present case. I am satisfied therefore that the omission to put all the points in the evidence of the prosecution witnesses appearing against the Petitioners did not result in any prejudice or injustice to them. This point raised in revision also fails.

9. In the result therefore the revision petition Is dismissed.