Jasimuddin Sarkar and Others Vs Emperor

Court: Calcutta High Court

Date of Decision: Aug. 19, 1930

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 162
Penal Code, 1860 (IPC) â€" Section 147, 149, 304, 325

Citation: AIR 1931 Cal 622

Hon'ble Judges: Rankin, C.J; C.C. Ghose, J

Bench: Full Bench

Judgement

C.C. Ghose, J.
The appellants before us were committed to take their trial in the Sessions Court on a charge u/s 147, I. P.C. There was a

further charge u/s 304, I. P.C., against appellants 1, 2 and 3 and a charge u/s 304 road with Section 149, I. P.C., against the rest, i.e., appellants 4

to 8. The jury by a majority of three to two returned a verdict of guilty against all the appellants u/s 147, I. P.C. They also by a majority in the

same proportion found appellants 1, 2 and 3 guilty u/s 325, I. P.C., and appellants 4 to 8 not guilty u/s 304 read with Section 149, I. P.C. The

learned Sessions Judge accepted the verdict of the majority of the jury and sentenced the appellants to various terms of imprisonment and in

addition thereto he also imposed fines of various amounts. Against this conviction and sentence, the present appeal has been preferred.

2. On behalf of the appellants, Mr. Talukdar has taken several points before us. One of the main points which Mr. Talukdar has argued relates to

the question of possession of the land, in respect of which the occurrence took place on the day of the occurrence. The land in dispute is said to be

chakran land of one Purna Mali held in burga by two persons named Darogali and Maniruddin. These latter are alleged to have hold the land under

a registered kabuliyat which is Ex. 4 in the case. It appears that, early on the morning of 15th March 1928, these two persons Darogali and

Maniruddin along with six other men went to plough the land in question. After they had ploughed about a quarter of the land, a crowd of about

150 to 200 persons came on with lathis and halangas from the west side. The leader of the crowd forbade the complainant and his men from

ploughing the land. The complainant''s party refused to comply with the demand of the crowd with the result that the complainant''s party were

attacked by several of the crowd and in course of the fight which ensued a person named Alamdi who belonged to the complainant''s party was

injured and another person named Mahmudali was also injured on the head. It is alleged that the injuries inflicted on Mahmudali were caused by

the accused Jasim, Foyez and Tomij and two other accused Atab and Moyez. The complainant''s party then ran away but Mahmudali-the man

who had been grievously wounded-was detained by the party of the accused. The first information was lodged at the Serajgunge Thana by the

complainant Darogali on the same day, namely 15th March 1928. The Sub-Inspector recorded the first information and reached the place of

occurrence at about 12 noon and it is said that, when he appeared on the scene, he saw some ghars or huts being erected on the land and at the

sight of him some 50 men ran away. The matter was further investigated by the police and ultimately a charge sheet was submitted. Before the

magisterial enquiry was taken up, a cross case was instituted by Jasim. Both the cases were heard by the same Deputy Magistrate, Mr. S. C. Dutt.

He convicted the complainant''s party in the cross case and dismissed the complainant''s case. Both the cases were then taken before the Sessions

Judge and the latter ordered a fresh enquiry to be made into both the cases. It appears that in the cross case the complainant''s party had been

convicted and, at the time when the present Sessions trial was going on, there was an appeal pending against the order of conviction. As regards

the case against the present accused, as indicated above, it was committed to the Sessions Court.

3. Mr. Talukdar''s first point relates to the question of possession of the land in question on the day of occurrence. It does appear from the

evidence on the record that, sometime before the date of the occurrence, there had been certain proceedings in connexion with the possession of

the land before the settlement officer. The land used to belong to the father of Purna Mali. It was let out in burga. It appears that the landlord

without reference to Purna Mali''s father settled the land in question with certain prodhans of the villages including Jumon, the father of the accused

Jasim. Thereafter there were certain proceedings in the criminal Court and in the end, Purna Mali got settlement of the lands in question from the

zamindars. Then there was a registered kabuliyat executed by Darogali and Maniruddin which is Ex. 4 in the case in favour of Purna Mali and the

land was given in burga to these people. Now the party of Jasim while the settlement operations were pending raised several questions before the

settlement officer as to whether or not they were entitled to be in possession. They produced what is called a pattani likhan whereas the other side

produced a document which according to the settlement officer showed that the landlord had agreed to lot out the chakran land in question in

burga to the party opposed to Jasim. The settlement officer after a detailed inquiry cams to the conclusion that the plot in question which was Purna

Mali''s chakran land should be recorded in the khatian as let out to the party opposed to Jasim by the landlord because Jasim could not produce

any convincing evidence other than what he has done before the kanungo, namely the pattani likhan. In this state of affairs the occurrence in

question hook place, as is stated above, on 15th March 1928.

4. The learned Sessions Judge has gone through the evidence relating to the question of possession at considerable length, and he has pointed out

to the jury what the material question was that had to be decided by them and on what evidence that question had to be decided. Mr. Talukdar

raises the question as to whether it is clear from Mahmud''s dying declaration that the land in question was in the possession of Purna Mali-being

the land which he was cultivating in burga. I have read in original the dying declaration of Mahmudali. It is by no means clear, as far as I can make

out, whether Mahmudali was on the date of the occurrence ploughing as bargadar in his own right the land which was known as the land of Purna

Mali, In this state of the record I am of opinion that the learned Judge has not introduced into his charge anything which is not borne out by the

evidence on the record. He has given a fair and impartial summary of the evidence on the question of possession and, in my opinion, there is

absolutely no misdirection whatsoever so far as this portion of the charge is concerned,

5. Mr. Talukdar complains that while discussing the question of possession of the land in question, the learned Sessions Judge has brought to the

notice of the jury certain statements alleged to have been made by the prosecution witnesses to the police when the police were investigating into

the occurrence. It is quite clear that there is a reference to the statements made to the police; but the paragraph in which this reference occurs has

got to be taken as a whole and it is abundantly clear from a perusal of the paragraph taken as a whole that the learned Judge has cautioned the jury

that they were not to take the statements made to the police as substantive evidence but that, inasmuch as they had . been introduced into the

record, they were free to look at them for the purpose of testing the evidence adduced by the prosecution witnesses. This is how I read, because

otherwise there is no sense or meaning'' in what was stated in the paragraph in question. Now these statements could not have been put on the

record at the instance of the prosecution. If they did at all get on the record; that must have been done at the instance of the defence; and if that

was so, then, although it is now clear from the record whether they were marked as exhibits, the defence must take the consequence of getting

things on the record from which they now at the appellate stage desire to run away. Therefore so far as that portion of the learned Judge''s charge

to the jury is concerned, I do not think that any serious complaint can be made or that there has been caused any prejudice whatsoever to the

accused which would entitle this Court to interfere with the'' verdict of the jury.

6. Mr. Talukdar''s third point is that very great prejudice to the accused has been caused because of the learned Judge''s refusal to allow certain

questions to be put to the investigating police officer. The matter stands thus: It appears that a petition was put in before the learned Sessions Judge

in which it was stated that the greater portion of the statements made by the prosecution witnesses in the Sessions Court had not been mentioned

to the police during the stage of investigation and that that being so, it was desirable that the Sub-Inspector of Police who was at the moment giving

evidence in the Sessions Court should be asked whether or not the prosecution witnesses who had already deposed in the Sessions Court had

stated to him the matters which they had already deposed to. The case diary had not been made a part; of the record. Now, this is my translation

of the Bengali petition which was put in before the Sessions Judge. As may be seen from the petition itself, the petition was coached in the vaguest

language possible. No definite allegation was made with reference to any particular witness nor was the Court afforded any assistance: whatsoever

for the purpose of testing whether the defence had any grievance of a substantial character which required to be redressed. Upon this petition

being put in, the learned Judge refused to allow the investigation police officer to be cross-examined for the purpose of finding out whether the

statements made by the prosecution witnesses in Court had also been made to him during the investigation. Now Section 162, Criminal P.C.,

which is attracted to this question, is clear in its language. To put it in very simple words, the prosecution can-riot invoke in their aid Section 162.

The defence however can use the statements made to the police during the stage of investigation for the purpose of contradicting the witnesses who

come and give evidence in the Sessions Court and for the purpose of showing that the witnesses have made divergent statements at different times.

If however it is desired to clinch the matter before the Sessions Judge and the jury and to show in an affirmative manner that the witnesses for the

prosecution cannot be relied upon, it is obviously the duty of the defence to prove through the investigating police officer when he is in the witness

box the record of the statements made to the police by the witnesses for the prosecution during the stage of investigation and for that purpose, it is

necessary to get on the record a true copy of what is known as the case diary and there are well-known ways of proving the document and of

getting the document on the record. But instead of that course being followed the Sub-Inspector of Police who was in charge of the investigation

was apparently to be asked various questions-not with reference to what was recorded by him during the stage of investigation but with reference

to what was supposed to have been stated to him by the prosecution witnesses during such investigation.

7. I have attempted to indicate what ought to be the procedure to be followed when it is desired by the defence to invoke in aid the provisions of

Section 162, Criminal P.C., and when it is desired by the defence to show that the prosecution witnesses cannot be relied upon. It is sufficient to

observe that each case must depend upon its own facts; and while it may be necessary in very special circumstances to allow the investigating

officer to be cross-examined ordinarily the procedure which I have attempted to sketch is the one which should be adopted. Bearing in mind what

has been stated-above, I do not think that there could be a genuine and real grievance in the-matter of what happened in this case in the Sessions

Court during the trial. As I have shown in an earlier portion of this judgment, the objection was not to any specific question which had been ruled

out by the Court. The objection was taken on vague and general grounds to which no Sessions Judge in course of the trial can be expected to pay

any attention.

8. In this view of the matter, I am of opinion that there is really nothing in the order of the learned Sessions Judge-dated 13th January 1930, to

which any reasonable objection can be taken.

9. These are all the points taken by Mr. Talukdar; and, in my opinion, every one of these points fails and this appeal-must stand dismissed. The

appellants. Mafizuddin Sarkar (No. 4), Kanta Sheikh (No. 5), Misiluddin Sarkar (No. 6), Abedali Sarkar (No. 7), and Moyezuddin Sheikh (No.

8), who are on bail must forthwith surrender to their bail-bonds and serve-out the remainder of the sentences imposed on them.

Rankin, C.J.

10. I agree.