
(1872) 04 CAL CK 0002

Calcutta High Court

Case No: Criminal Appeal, No. 143 of 1872

Queen

APPELLANT

Vs

Ceandha Jugi

RESPONDENT

Date of Decision: April 9, 1872

Judgement

Sir Richard Couch, Kt., C.J.

In this case the prisoner presented a petition of appeal to this Court from a conviction by the Sessions Judge which was disposed of on the 27th of January by Glover, J., sitting alone. The learned Judge rejected the petition. The petitioner has now his pleader presented another petition, which was filed on the 15th of February, within the time allowed by law; and therefore the question arises whether the first petition was properly disposed of. If it was, the Court will not allow the matter to be re-opened. Now the 13th section of the 24 & 25 Vict., c. 104, for constituting the High Court, enacted that the exercise of the original and appellate jurisdiction vested in the Court by one or more Judges, or by Division Courts constituted by two or more Judges, was to be provided for by rules of the Court. I have not found that any formal Rules under this section were passed until the 1st of January 1865; but the practice of disposing of some business by one Judge and of other business by a Division Court existed from the time of the institution of the High Court, which on the Appellate Side, for the most part adopted the practice of the Sadder Court. But, on the 1st of January 1865, a Rule was made by which it was declared that all Rules, which at the time of the abolition of the Sadder Court were in force in that Court, were to extend, so far as they were applicable, and as nearly as might be, to all proceedings of appellate jurisdiction in the High Court, not being cases of appeal from the ordinary original civil jurisdiction of the Court except so far as such Rules were contrary to the said 24, & 25 Vict., c. 104, or to the Letters Patent, or as the same might have been or should thereafter be altered or modified by the Court. Those words are very important; the Rules of the Sadder Court were to be in force, except so far as the same might have been altered or modified by the Court before that time. Now it appears that there was a Rule of the Sadder Court of the 27th of April 1854, which required that all criminal cases, whether appeals or referred cases, should be tried before a Bench of at

least two Judges. But on the 14th of June 1854, a modification of that Rule was made, and it was then provided that, "if, by accident or indisposition, one of the Judges, forming a double Bench for the trial of Nizamut cases, is prevented from attending the Court, it shall be competent to his colleague, sitting alone, to take up and dispose of any appeals or referred criminal trials, in which the opinion of the Sessions Judge agrees with the fatwa's of the Law Officer, or the verdict of the jury or assessors who tried the case, reserving for the consideration of his colleague any case in which he may entertain doubt, or may be inclined to differ from the Sessions Court."

2. In the Rules made on the 1st of January 1865, which were continued in force by a Rule made on the 2nd of January 1866, after the issuing of the Letters Patent now in force, there is another Rule (No. 30) which says that "appeal on the criminal side of the appellate branch of the Court, which are in the first instance heard before one Judge, may, if he think fit, be referred to such Division Court." And the previous Rule (No. 29) is that "a Division Court for the hearing of criminal appeals may consist of two or more Judges." This Rule, 30, shows that, either in the time of the Sudder Court or of the High Court, a practice had existed of criminal appeals being in the first instance heard before one Judge. The language of the Rule clearly shows this. It recognizes it as a practice, which was then in existence, and provides that the Judge may, if he think fit, refer the appeal to the Division Court. Therefore, whatever might have been the Rule of the Sudder Court, it had, before the passing of the Rules of the 1st of January 1865, been altered or modified so as to allow of criminal appeals being heard in the first instance before one Judge. Even if that were not so, this Rule, 30, might be considered as implied by allowing appeals so to be heard, although it does not in terms say that they shall be. By providing that the Judge may refer appeals to a Division Bench, it impliedly authorises him to hear them in the first instance.

3. There is really, then, a Rule of this Court made under the authority conferred upon it by the 13th section of the Act constituting the Court, allowing a single Judge in the first instance to hear criminal appeals; and the papers which we have got showing what took place in the matter when it came before Sir Barnes Peacock confirm the view of what was the practice of the High Court at the time the Rules of 1865 were made.

4. There is a minute of Sir Barnes Peacock dated the 8th of February 1869, in which, speaking of what the practice had been, he says:--"As criminal appeals were formerly heard and determined by one Judge of the Sudder Court, except in cases in which the order had to be signed by two Judges under s. 420 of the Code of Criminal Procedure, I have thought it right to appoint each of the Judges of the 3rd and 5th Benches, sitting alone, to hear and determine criminal appeals."

5. The appointment of four of the Judges to sit singly to hear criminal cases was made by an order of the same date. That appears to have been objected to as being an exercise of a power which did not belong to the Chief Justice under the Act of Parliament. The power of the Chief Justice was not to make a Rule that criminal appeals should be tried by a

single Judge; but that if there was Rule of the Court to that effect, he was to determine what Judges should sit to hear them. And his attention having been called to that, Sir Barnes Peacock, in a minute dated the 12th of February 1869, says:--"I find that there was a Rule of the late Sudder Court under which all appeals in criminal cases and oases for revision were required to be heard before two Judges. I do not find that that Rule was ever revoked. Under these circumstances, I doubt whether the Rule of this Court which provides that all snob business, as was formerly heard and determined by one Judge of the Sudder Court, may be heard and determined by one Judge of the High Court, authorises the appointment of one Judge to hear criminal appeals or revisions." And he revoked the order which he had made on the 8th of February. Now it is to be observed that the learned Chief Justice appears not to have had present to his mind the Rule 30 at all. He does not refer to it, and he assumes that the matter was governed by the Rule of the Sudder Court which required that criminal appeals should be heard before two Judges. And that Rule never having been revoked, he considered that every criminal appeal must be heard by two Judges. But there was the circumstance which appears in his own minute, that it had been the practice in the Sudder Court for one Judge to hear criminal appeals; and there was the Rule 30 showing that the High Court had adopted that practice. I think that Sir Barnes Peacock if he had his attention called to Rule 30, and the undoubted practice for one Judge to hear criminal appeals, would not have considered that a single Judge sitting alone had no power to try criminal appeals. He had exceeded the power of the Chief Justice in making the Rule that single Judges should sit alone to hear criminal appeals. But these papers do not show that the Rules of the Court did not and have not allowed criminal appeals to be disposed of by single Judges. And it appears that from November 1870, if not from the constitution of the Court, single Judges have constantly heard appeals in criminal cases, and disposed of them, as was done by Glover, J., in this case. I think the learned Judge had power to reject the former petition, and therefore we cannot allow the second petition to be considered.