Emperor Vs Nani Mandal

Court: Calcutta High Court

Date of Decision: Sept. 11, 1924

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 342

Citation: (1925) ILR (Cal) 403

Hon'ble Judges: Suhrawardy, J; Mukerji, J

Bench: Division Bench

Judgement

Mukerji, J.
This is a reference made by the Additional District Judge of 24 Parganas, in a case in which four accused persons were tried

on a charge u/s 304 of the Indian Penal Code. The jury unanimously found the accused not guilty on that charge. The learned Judge, being unable

to agree with that verdict, has made the present reference to this Court under the provisions of Section 307 of the Criminal Procedure Code with

the recommendation that the accused may be convicted and sentenced for an offence u/s 325 of the Indian Penal Code.

2. It is unnecessary for me to go into the facts of the case which was put forward on behalf of the prosecution, and upon the basis of which the

accused were tried in the Court below; for there is one difficulty which to my mind seems to be insurmountable, and in consequence of which a re-

trial must, in my opinion, be ordered.

3. It appears that at the close of the evidence in the case the accused were asked by the learned Sessions Judge as to whether they would make

any statement or not, and they replied in the negative. This examination of the accused purported to have been one u/s 342 of the Criminal

Procedure Code. Of this examination, however, there was no record made, and the only indication of it is to be found in the order sheet wherein,

under date the 11th July, 1921, the learned Sessions Judge made the following remark: ""The accused declined to make any statement in this Court,

and on being asked whether they would adduce any evidence, they replied in the negative"". The provisions of Section 342 of the Criminal

Procedure Code are mandatory, and the object with which the accused were examined under that section was to enable the accused to explain

any circumstance appearing against them in the evidence. What the exact questions were that were put to the accused we are unable to ascertain

from the record, inasmuch as the remark in the order sheet, to which I have alluded, does not give us any indication on that point. Whether a

general question, as to whether they had anything to say or not, would be a sufficient compliance with the terms of Section 342 of the Criminal

Procedure Code is a matter with regard to which, in the present case, I would refrain from expressing any opinion. The law has prescribed the

mode in which the examination of the accused has got to be recorded. This is to be found in Section 364 of the Code. Under that section when an

accused is examined by a Court, the whole of such examination, including every question put to him and every answer given by him, shall be

recorded in full in the language in which he is examined, or, if that is not practicable, in the language of the Court or in English; and such record shall

be shown or read to him; or, if he does not understand the language in which it is written, shall be interpreted to him in a language which he

understands, and lie shall be at liberty to explain or add to his answers. It is not necessary to refer to the other clauses of Section 364 of the

Criminal Procedure Code for even the pro visions contained in the first clause do not appear to have been complied with in this case. It will be

seen that the law requires that ordinarily such a statement, should be recorded in the language of the person making it, the object being to represent

the very words and expressions used so as to ensure accuracy, and prevent misrepresentation or misconstruction of what was said. The more the

formalities are departed from the more remote becomes the chance of ensuring the accuracy of the record which the law aims at. The law also

requires that after the statement has been recorded the person should have an opportunity of explaining or adding to his answers. This gives the

accused a further opportunity of supplementing what he had already stated in answer to the questions first put to him. It may be that in the present

case, if such record was attempted to be made, the accused would have declined to make any statement, and would not have said anything again

by way of adding to or explaining their answers. By not conforming to the provisions of the law, however, the Court deprives the accused of a

valuable right, and also deprives itself and the jury of the opportunity of drawing such inference from such refusal or answers as they think just,

which they are entitled to do u/s 342, sub-Section (2) of the Criminal Procedure Code. I have, therefore, no option but to hold that the trial in the

present case has been vitiated, and I accordingly feel bound to set aside the verdict of the jury, and to direct that the accused be re-tried in

accordance with law.

Suhrawardy J.

4. I agree.