(1954) 04 CAL CK 0020

Calcutta High Court

Case No: Criminal Appeal No. 139 of 1953

Anadi Kumar Chatterjee and Others		APPELLANT
	Vs	
The State		RESPONDENT

Date of Decision: April 12, 1954

Acts Referred:

- Constitution of India, 1950 - Article 14
- Explosive Substances Act, 1908 - Section 3, 5
- Penal Code, 1860 (IPC) - Section 302, 304, 307, 326, 363

Citation: 59 CWN 306

Hon'ble Judges: Debabrata Mookherjee, J; Das Gupta, J

Bench: Division Bench

Advocate: Alak Gupta, for the Appellant;J.M. Banerjee for the State, for the Respondent

Final Decision: Dismissed

Judgement

Das Gupta, J.

The four appellants were tried by a Special Tribunal constituted under the Tribunals of Criminal Jurisdiction Act, 1952, (West Bengal Act of 1952). All of them were convicted of offences u/s 395 of the Indian Penal Code and were sentenced of rigorous imprisonment for 3  years each. The appellant Nitai Chandra Mitra was further convicted of two offences u/s 19A read with Section 19(f) of the Indian Arms Act and was sentenced to rigorous imprisonment for two years for each of the offences. Sudhir Kumar De was convicted also of an offence u/s 3 of the Explosive Substances Act and sentenced to rigorous imprisonment for two years. All the sentences against Nitai Chandra Mitra and the two sentences against Sudhir Kumar De were directed to run concurrently.

2. The prosecution case is that on the 12th September, 1949, these persons along with several others committed a dacoity at the Shibpur Branch of the Imperial Bank.

It is said that while some of the party stood outside others entered the Pay office where the Cashier was and at the point of revolver more than Rs.5,000 in cash from the Bank. Some of them escaped in a motor car while others tried to escape on cycle or on foot. Some of them were, however, apprehended by the crowd that had gathered on hearing the sound of hand-grenades bursting and the hue and cry raised by the Bank employees. Two, namely, Nitai and Anadi are said to have been arrested later on the same day at Kailash Basu Lane where it is said a sten gun which has been said to have been used by Nitai during the dacoity as also the gun the dacoits had seized from the Darwan of the Bank along with other things were recovered. All the accused pleaded not guilty.

3. It is necessary to consider first of all the contention which Mr. Gupta has raised on behalf of the appellants that the trial of the appellants was not in accordance with law. The first argument on which the learned Advocate bases this contention is that the Tribunals of Criminal Jurisdiction Act, 1952, which will be later referred to as the Act does not apply to the trial of offences which had been committed before the 30th of July, 1952, on which date the Act came into force. In the absence of anything special in the Act to indicate that it will not so apply, the contention is obviously unacceptable as the settled law is that legislation as regards procedure is ordinarily retrospective. As Lrod Manton observed in Gardner v. Lucas [(1873) 3 AC 582]. "It is perfectly well settled that if the Legislature forms a new procedure that, instead of proceeding in this form or that, you should proceed in another and a different way clearly then bygone transactions are to be sued for and enforced according to the new form of procedure. Alteration in the form of procedure are always retrospective unless there is some good reason or other why they should not be." A series of decisions in this country including some of the decisions of the Judicial Committee of the Privy Council has well settled the position that the law as stated by Lord Waston above is the law in India and that in the absence of any special circumstance or indication in the Act, itself procedural legislation applies to all past transactions.

4. To convince us that there is a special circumstance here to justify the conclusion that the Act will not apply to the trial of offences committed before the date of the Act, Mr. Gupta has drawn our attention to Item No.2 of the Schedule. Item No.2 is in these words :-

"An offence punishable u/s 302, Section 304, Section 307, Section 326, Section 363, Section 364, Section 365, Section 366, Section 376, Section 395, Section 396, Section 397 or Section 436 of the Indian Penal Code, if committed in a disturbed area while the notification declaring such area to be a disturbed area has effect."

5. He points out that to be triable by the Special Tribunal as being within item No.2 of the Schedule the offences must be "committed in a disturbed area while the notification declaring such area to be a disturbed area has effect." As such notification can only be issued after the date of the Act, it is argued that offences to come within item No.2 of the schedule must have been committed after the date of

the Act. It is not necessary to consider if this last argument is correct; but assuming that it is correct, then to come within item No.2 of the schedule an offence must be one committed after the date of the Act, it does by no means follow that offences under either item No.1 or item No.3 of the Act must also be committed after the date of the Act. I can find nothing illogical or improper in a part of the schedule being limited to offences committed after the Act and other parts of the schedule not being so limited. I am unable to see any reason to exclude as regards the offences mentioned in item No.3 of the schedule the operation of the general rule that procedural legislation applies to past transactions. The argument that the Act applies only to offences committed after the date of the Act must, therefore, be rejected.

6. Mr. Gupta next contended that the proviso to sub-section 1 of Section 4 of the Act under which the Tribunal tried some of the appellants for offences under the Arms Act and the Explosive Substances Act which are admittedly not included in the schedule is void as offending against Article 14 of the Constitution. His argument as I have understood, is that though there is good classification as regards the offences mentioned in the schedule for special treatment, there is no such classification for non-scheduled offences. Section 4(1) is in these words:

"Scheduled offences shall be triable by Tribunals only :

Provided that when trying any case, a Tribunal may also try any offence other than a scheduled offence, with which the accused may under the Code be charged at the same trial."

7. It is to be noticed that not every non-scheduled offence can be tried by a Special Tribunal. It is only a particular class of non-scheduled offences namely, a class formed by the offences with which the accused undergoing a trial before the Tribunal for a scheduled offence can be charged under the Code of Criminal Procedure at the same trial. This is in my judgment a well defined class an the basis of classification is the very intelligible principle having a reasonable relation to the object which the Legislature seeks to obtain - the avoidance of the accused facing another trial for offences. There is thus in my judgment no discrimination which offends against the provision of Article 14 of the Constitution.

8. Mr. Gupta next argued that even if the proviso to sub-section 1 of Section 4 of the Act be valid, it provides only that after trial of a scheduled offence commenced that the trial of non-scheduled offence can be take up. He has pointed out that the Tribunal took cognizance of he case not only as regards the scheduled offences, but took cognizance of non-scheduled offence also even before the trial was commenced. Accordingly he says that the Tribunal acted without jurisdiction in taking cognizance of the non-scheduled offences at the stage. In my opinion, this contention is correct. The Tribunal could not in law take cognizance of non-scheduled offences. Certainly not before the trial for scheduled offences of

which it had taken cognizance had started. The fact, however, that the Tribunal acted without jurisdiction in taking cognizance of non-scheduled offences in this manner cannot, in my opinion, alter the position that the Tribunal had acted in accordance with law in taking cognizance of the scheduled offences and in proceeding to the trial thereof. The trial of the offences of which cognizance had been lawfully taken does not become illegal because some offences of which cognizance had not been taken in accordance with law were also tried at the same trial.

9. Lastly, Mr. Gupta, contended that the trial of the accused for an offence u/s 395 of the Indian Penal Code was itself without jurisdiction, as though the offence u/s 395 of the Act as alleged in the case was a scheduled offence falling under item No.3 of the schedule to the Act this offence was not allotted to the Tribunal for trial. Sub-section 2 of Section 4 provides that "the distribution amongst the Tribunals of cases involving scheduled offences to be tried by them shall be made by the State Government." Section 5 of the Act provides that: "A Tribunal may take cognizance of scheduled offences without the accused being committed to it for trial." The position, therefore, clearly is that before a Special Tribunal under the Act can assume jurisdiction to try a scheduled offence two things are necessary, first, that the case in which the scheduled offence is alleged to have been committed has been distributed to the Tribunal by the State Government and, secondly; that the Tribunal has taken cognizance of the scheduled offence - which, it may be observed, can be done either on a petition of complaint or a report in writing of such facts made by the police-officer. The distribution in this case was made by an order of the West Bengal Government, dated the 24th October, 1952, the relevant portion of which is in these words:-
"In exercise of the power conferred by sub-section (2) of Section 4 of the Tribunals of Criminal Jurisdiction Act, 1952 (West Bengal Act, XIV of 1952), the Governor is pleased to distribute to the Second Tribunal constituted by notification No.4633J, dated the 22nd August, 1952, u/s 3 of the said Act the following cases involving offences specified in the schedule to the said Act, to be tried by the said Tribunal."

10. The State versus (1) Amar Nath Kundu, son of Manmatha Nath Kundu of 37, Doctor Rajkumar Kundu Lane, P.S. Shibpore, Howrah and of Uttar Bantra Manshatala, P.S. Bally, Howrah.

(ii) Anadi Kumar Chatterji alias Gargara, son of Amrita Lal Chatterji, of 20, Akshoy Kumar Chatterji Lane, P.S. Malipanchghara, Howrah.

(iii) Asoke Kumar Biswas, son of late Manilal Biswwas, of 27-B, Anath Nath Deb Lane, Belgatchia, P.S. Chitpore, Calcutta.

(iv) Jayanta Kumar Chakrabarti alias Birendra Mukherji, son of Kalo Sashi Chakravarti, of Ballavpore, Thakurbari, P.S. Serampore, Hooghly.

(v) Lakshmi Kanta Das, alias Khoka, son of late Muktaram dAs, f Hatpu-Kurara, Ramrajatala, P.S. Jagacha, and of Uttar Bantra, Mansatala, P.S. Bally, Howrah.

(vi) Netai Chandra Mitra, son of late Kali Krishna Mitra, of 26, Kailash Bose Lane, Ramkrishnapore, P.S. Howarh, Howrah.

(vii) Sudhir Kumar De, son of Bishnupada De, of 38, Sri Krishna Bhakat Lane, P.S. Bantra, Howrah, and

(viii) Sushil Kumar Bose alias Rajendra, son of Sudhir Kumar Bose, of 34/C, Anath Nath Deb Lane, Belgachia, Calcutta and of Kumarkhara, P.S. Tangibari, Dacca (Eastern Pakistan).

11. Under Sections 397 and 412 of the Indian Penal Code, Sections 395 and 397 of the Indian Penal Code, read with Sections 19(e), 19(f) and 19A of the Indian Arma Act, 1878 (XI of 1878), Sections 3 and 5 of the Explosive Substances Act, 1908 (VI of 1908)."

12. Mr. Gupta rightly points out that there is no sense in the words "Sections 396 and 397 of the Indian Penal Code, read with Sections 19(e), 19(f) and 19A of the Indian Arms Act." We have tried in vain to understand why those responsible for the drawing up of this order used these words which certainly make no sense. I think it proper to point out that the order of the distribution is unsatisfactory in other ways also. Instead of giving any indication of the case of reference to the serial number of institution, the date of the occurrence, the place of the occurrence and the fact which purports to make it a scheduled offence, the order mentions only the names of the accused and certain offences. If the effect of this unsatisfactory order had been to raise any doubt as regards the actual case that was distributed, we would have no hesitation in holding that the entire trial was without jurisdiction. There can be no doubt, however that in fact the case that was intended to be indicated by the words used in the Government order was the case instituted in Shibpore Police Station on the 12th September, 1949, on information of a dacoity having been committed at the Imperial Bank, Shibpore, and in which case the police after investigation had alleged that the 8 per cent named had committed offences u/s 397 of the Indian Penal Code and certain other offences. There can be no doubt that this was the case which was distributed to the Tribunal and the Tribunal acquired jurisdiction over this case as a result of the order of distribution. Thereafter it certainly acted in accordance with law in taking cognizance of the scheduled offences mentioned in the petition of complaint. In my judgment it was wholly unnecessary to mention in the petition of complaint an offence u/s 395 of the Indian Penal Code in addition to the offence u/s 397 of the Indian Penal Code. Obviously on the facts alleged the allegation of the offence u/s 397 of the Indian Penal Code included therein an allegation of an offence u/s 395 of the Indian Penal Code. It is to be remembered that there was a clear allegation of an offence of dacoity having been committed. If an offence of dacoity punishable u/s 397 of the Indian Penal

Code was the only offence of which the Tribunal had taken cognizance, it would have jurisdiction to try not only offences u/s 397 of the Indian Penal Code, but also a minor offence u/s 395. In the present case the petition, though unnecessarily mentioned an offence u/s 395 in addition to the offence u/s 397. The trial by the Tribunal of the accused for an offence u/s 395 of the Indian Penal Code cannot, therefore, be considered to be without jurisdiction.

[The judgment then proceeded to discuss the evidence and concluded as follows:]

13. The sentence passed against Anadi, Netai and Sudhir for the different offences of which they had been convicted are not, in my opinion, too severe. I would, therefore, dismiss the appeal preferred by these three accused.

14. As in my judgment the case against Lakshmi Kanta Das has not been proved beyond reasonable doubt, I would allow the appeal preferred by him, set aside the order of conviction and sentence passed against him and order that he e acquitted.

Debabrata Mookerjee, J.

15. I agree.