

(1872) 07 CAL CK 0015

Calcutta High Court

Case No: Miscellaneous Criminal Case, No. 141 of 1872

In Re.: Udai Chand
Mukhopadhyaya

Vs

APPELLANT

RESPONDENT

Date of Decision: July 22, 1872

Judgement

Glover, J.

The Magistrate convicted the accused under s. 202, Penal code, holding that he knew of the commission of the dacoity in Mussamat Arjila's house, and, so knowing, intentionally omitted to give information to the authorities. The Sessions Judge on appeal found that a dacoity had taken place, and that the accused was well aware of the fact, but that there was no evidence on the record to prove the "omission." He, therefore, ordered the Magistrate, under s. 422, Code of Criminal Procedure, to supply the necessary evidence, and to return the case to his Court for final disposal. It is not quite clear to me, from the wording of the Sessions Judge's order, whether the evidence required was on the point of simple "omission" or of "intentional omission;" and if I were trying the case as a regular appeal, I am not sure that I should agree with the Sessions Judge as to there being no evidence as to the fact of "omission." I think that there is some evidence as to the "intention" also; but however that maybe, I do not, after much consideration, find anything illegal in the Sessions Judge's order, S. 422, Code of Criminal Procedure, gives the Appellate Court power to direct further enquiry to be made, and additional evidence to be taken, whenever it thinks such enquiry and evidence necessary "upon any point bearing upon the guilt or innocence of the appellant." The words are exceedingly large, and give an almost unlimited discretion. In the present case, the Sessions Judge, considered it proved that a person, who was bound by law to give certain information, was possessed of that information, but that there was not on the record evidence of his "omission" to supply the information in question to the Police. No doubt, proof of the omission was absolutely necessary, and without it there was no case against the accused. But s. 422 gave the Sessions Judge the power, as it seems to me, of ordering the deficiency to be supplied. If an Appellate Court is bound under all circumstances to decide on the guilt or

innocence of an accused person on the evidence taken in the Court of first instance, and has no power to supplement it in any way, then I cannot understand the object of s. 422, Code of Criminal Procedure. That object I take to be the prevention of a guilty person's escape through some careless or ignorant proceedings of a Magistrate, or the vindication of a wrongfully accused person's innocence, where the same carelessness or ignorance has omitted to record circumstances essential to the elucidation of truth. The words of the section are, as I said before, "any point bearing upon the guilt or innocence of the appellant," and the Judge's action appears to me to have been perfectly justified.

2. Kemp, J.--I regret that I am unable to concur with Glover, J. Apart from the fact that the Magistrate omitted in the case to record any finding, I am of opinion that, before a person can be convicted of an offence under s. 202 of the Indian Penal Code, there must be legal evidence, first, that he has knowledge or reason to believe that some offence has been committed; second, an "intentional" omission to give "any" information respecting that offence; and, third, that he is legally bound to give that information.

3. The petitioner Udai Chand Mukhopadhyaya, as the village gomasta, was legally bound to report crimes. An offence, in this case of dacoity, was committed of this there appears to be evidence, which, though discredited in the first instance by the Deputy Magistrate, was believed by the Magistrate and, on appeal, by the Sessions Judge. It may also, I think, be conceded that the petitioner had knowledge, though not immediate, of the offence; but the Sessions Judge finds, and I quote his own words, "there is no evidence as to the main point in the charge--the omission to give information. The case," says the Judge, "must accordingly be sent to the Magistrate to have evidence taken on this point under s. 422 of the Code of Criminal Procedure." The accused, be it remembered, remained in jail, and there he would have remained, but for the action of this Court which released him on bail, while the Police were bunting up evidence to convict him.

4. It appeals to me that the "main" point under s. 202 is whether the omission was intentional. There may be knowledge or a reason to believe that an offence has been committed; there may be an omission to give any information; but it is clear, at least to me, that the gist of the offence is the intention. How the Sessions Judge finds, not that the evidence is insufficient, though there may be some evidence, but that there is no evidence at all, S. 422, in my opinion, does not apply to such a state of things. Where there is some prima facie evidence bearing upon the guilt or innocence of the accused, the Appellate Court may, under s. 422 of the Code of Criminal Procedure, direct additional evidence to be taken; but in the case before us, the Sessions Judge finds that there is no evidence at all. What, then, was there to add to, and how does the necessity for additional evidence arise? I am of opinion that the accused ought to have been acquitted, as there is no evidence of an intentional omission, or, according to the Judge's finding, of any omission at all. I therefore quash the conviction and sentence, and direct the immediate release of the petitioner.

¹ See Act X of 1872, s. 282.