SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Reg. Vs. Maruti Dada and ors.

Reg. Vs. Maruti Dada and ors.

SooperKanoon Citation : sooperkanoon.com/327211

Court : Mumbai

Decided On : Oct-12-1875

Reported in : (1877)ILR1Bom15

Judge : West and ;Nanabhai Haridas, JJ.

Appellant : Reg.

Respondent : Maruti Dada and ors.

Judgement :

West, J.

1. After commenting on the evidence and expressing the opinion of the Court against the acquittal of Narayan and Sitabai and in favour of that of Maruti, proceeded thus:

2. The acquittal of this prisoner (Maruti) makes it necessary to consider a point of law arising from it, and urged by Mr. Pandurang Balibhadra for the prisoners Narayan and Sitabai. He contended that the principal offender having been acquitted, his clients could not be convicted of abetment, and referred us to the case of Reg. v. Chaman Bapaji, noted under Section 108 of the Indian Penal Code in West's Edition of the Acts and Regulations. It was there held by Sir Richard Couch, late Chief Justice of this Court, and another Judge, on the 22nd of January 1864, that the principal offender being acquitted, a second prisoner could not, in

the same trial, be convicted of abetment of the same offence. This ruling was in accordance with the state of the English law as it existed when an accessory could refuse to plead before the conviction of his principal. It is satisfactory, however, to find that a different state of things prevails now, and that we are not, therefore, bound, even according to the analogies of the English criminal law, to follow the decision cited. Recent English cases, founded on new legislation, have gone the other way. We shall refer to the case of Reg. v. Hughes (6 Jur. 177). The headnote of that case runs thus: 'An indictment in the first two counts charged the prisoner and H jointly with stealing. A third count charged the prisoner alone with receiving the stolen goods. At the trial no evidence was offered against H, and he was acquitted, in order that he might be called as a witness against the prisoner. By the evidence it appeared that the prisoner was an accessory before the fact to the stealing by H, and that he afterwards received the stolen goods. The jury returned a general verdict of guilty against the prisoner, which was entered upon all the counts: Held, that the prisoner was not entitled to an acquittal upon the first two counts by reason of the principal, H, having been acquitted, the 11 and 12 Vic., c. 46, Section 1, having made the crime of being an accessory before the fact a substantive felony.' Erle, C.J., in delivering judgment in that case, said: We consider the conviction may be sustained as a substantive absolute felony. Suppose the accessory is captured before the principal; under the Statute (11 and 12 Vic., c. 46) he may at once be tried and convicted. If afterwards the principal is taken, tried, and acquitted, has the accessory a right to be discharged? We are of opinion that he has no such right. His sentence may have expired; is any wrong done him? We think not. Whether he is tried before or at the same time as the principal, he may be guilty as an accessory, although the principal be acquitted, it being by no means certain that, although acquitted, the principal is not really guilty'. The offence of abetment under the Indian Penal Code is a substantive offence. Its punishment, when the culprit has been present at the commission of the principal offence, is the same as for that offence; and the trial of it is not, in any way, dependent on the conviction of the person charged with the principal offence. By the Indian as well as the recent English procedure, an abettor may be convicted before the principal is arrested. The principal may then be tried and acquitted, but in this case the abettor has not suffered any wrong. A rational doubt

may arise as to the identity or guilt of the principal through the legal exclusion as to him of particular portions of the evidence, and yet there may be no possible doubt as to the guilt of the abettor, in whose case the rules of exclusion do not happen to operate. It would be a perversion of the rules of evidence if because the operation of a rule is to exclude evidence against a principal, A, it should operate to the acquittal of an abettor, B, who may have fully confessed, as Malhar did in this case, and may, without doubt, be guilty. The mere circumstance that B is tried along with A, instead of at a different trial, cannot alter the real force of the case against him.

3. Taking the law to be as we have stated it, the acquittal of Maruti--as to which we agree with the Sessions Judge--does not necessarily involve the acquittal of Constancio and Malhar; nor again does it necessarily involve our upholding the Sessions Judge's decision with respect to Narayan and Sitabai.

4. We direct that the convictions of Narayan and Sitabai be restored, with the amendment of their extending only to abetment of theft in a dwelling, the prisoners not having been present at the commission of the theft, and also the sentences pissed on them respectively by the Magistrate, First Class.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com