Emperor Vs. Akbar Badu

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Court : Mumbai

Decided On : Jul-11-1910

Reported in : (1910)12BOMLR663

Judge : N.G. Chandavarkar, Kt. and ;Heaton, JJ.

Appeal No. : Criminal Appeal No. 145 of 1910

Appellant : Emperor

Respondent : Akbar Badu

Disposition : Appeal allowed

Judgement :

Heaton, J.

1. In this case two accused persons, Akbar Badu and Anwar Abashi, were tried for house-breaking and theft by the Sessions Judge at Nadiad and both were convicted. Akbar has appealed and with his appeal we have to deal.

2. The Sessions Judge has admitted and considered, against the appellant, a good deal which is not evidence at all.

3. Statements made by the witness Chhagan to the Police implicating the appellant have been admitted and used.

4. The same witness Chhagan's statement to the Panch and his statement as an accused person made before a Magistrate were admitted and used.

5. They were inadmissible for reasons I will explain later.

6. Then statements made by the co-accused Anwar to the Police were admitted and used. They were altogether inadmissible as evidence of the appellant's guilt, for they could at most be regarded admissions by the co-accused which could possibly be used against himself but could not be proved and used against the appellant. (See Section 21 of the Evidence Act.)

7. Then there is the statement of a witness Ismail that the accused Anwar told him that he got certain things from the appellant. That statement was inadmissible against the appellant.

8. What remains of this part of the case after stripping it of irrelevant matter is this: Chhagan's statement to the Committing Magistrate is admissible in evidence (Criminal Procedure Code, Section 288). In it Chhagan stated that certain articles were given him by appellant Akbar Badu. Chhagan in the Sessions Court gave quite a different account of how he came by them and the Judge disbelieved that account and believed what was stated to the Committing Magistrate. But he used Chhagan's statement to the Police and his statement as an accused person and his statement to the Panch, by way of corroboration of what Chhagan had stated to the Committing Magistrate. In this he was entirely wrong. Only the statements of witnesses made to the trying Court can be corroborated in the manner comtemplated by Section 157 of the Indian Evidence Act. previous statements may be used to corroborate or contradict' statements made at the trial; not to corroborate statements made prior to the trial. The Judge did right to see the statement of Chhagan recorded by the Police if it was reduced to writing (See Section 162, Criminal Procedure Code). I also think he would have been right to look at the statement made by Chhagan as an accused person, because the appellant was undefended and consequently there was no pleader on his behalf to whom these statements could be shown. But the object of referring to such statements should have been to see whether they contained anything which could be used for the purpose of cross-examining, on behalf of the accused, the

witnesses examined for the prosecution. These statements, in this case, could not be used to corroborate what Chhagan said in the Sessions Court, for they were useless for that purpose. Therefore, they should not have been admitted.

9. The net result, had the law of Evidence been properly regarded, would have been this: There was Chhagan's statement to the Committing Magistrate which implicated the appellant. The Sessions Judge who heard the statement made by Chhagan in his own Court exculpating the appellant did not believe it and he found nothing favourable to the accused in the materials which could be used on his behalf, for the purpose of cross-examination.

10. In effect this is perhaps what the Sessions Judge really intended; but he actually adopted the illegal course of bringing irrelevant statements on to the record and using them against 1 prisoner under trial.

11. The Investigating Police Officer's deposition contains a great deal which no investigating police officer ought, in my opinion, to be allowed to depose to in examination-in-chief. I refer to the Police Officer's account of what various persons besides Dhhagan said to him. It may be that what the witnesses said admissible by way of corroboration within the terms of Section 157 of the Indian Evidence Act, but to allow the Investigating Police Officer to be questioned about them in examination-in-self opens up an undesirably wide field for cross-examination and leads to the attention of the Court being diverted and distracted from the true issues. Moreover it is contrary to the main intention of Section 162 of the Code of Criminal Procedure, which is that such statements should be used, if at all, on behalf and not against the person under trial. The evidence against lira, in so far as it consists of the statements of witnesses, is intended to be primarily the statements made to the trying Court, and secondarily, in a case tried by a Court of Session, the statements made to the Committing Magistrate.

12. Lastly, the Judge has used against the appellant the statement made by the co-accused in the Sessions Court. That statement is not a confession. Of course the Judge was bound to hear and record what the co-accused said, but it ought to have had very little, if any, effect in determining, in the mind of the Judge, whether the appellant was or was not guilty. So little is it worth, in this case, that it was

really superfluous to mention it amongst the circumstances which go to establish the appellant's guilt.

13. There has not been a proper trial of the appellant. He has been convicted largely on the strength of statements many of which ought never to have been heard or used, and, in my opinion, we are bound to reverse the conviction and acquit the appellant.