

State Vs. Radhamal Sangatmal Sindhi

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Court : Mumbai

Decided On : Jan-19-1960

Reported in : 1960CriLJ1575

Judge : Gokhale and; Tarkunde, JJ.

Appellant : State

Respondent : Radhamal Sangatmal Sindhi

Judgement :

ORDER

Gokhale, J.

1. This is a reference made by the learned Judicial Magistrate, First Class, Court No. 1, Kolhapur, Under Section 341 of the Cr.PC The accused Radha mal Sangatmal Sindhi was alleged to have stabbed one Parumal on 2nd December 1958 as; a result of which the said Parumal ultimately died in the Civil Hospital at Kolhapur. That is why committal proceedings were started against the accused before the learned Judicial Magistrate. It appears that before the prosecution led evidence in the committal proceedings it was discovered that the accused was deaf and dumb and could not be made to understand the nature of the proceedings against him and the Public Prosecutor, therefore, submitted a report to the learned Magistrate on 3 2 1959 to that effect. In support of his report, the father as well as the father in law of the accused were examined, as also one

more witness by name Madhumal Dholumal, who was a neighbour of the accused for several years. On the basis of this evidence the lower Court was of the view that the accused was deaf and dumb, as alleged and, therefore, incapable of understanding the nature and substance of the proceedings against him. In view of this finding, it passed an order on 17 3 1959 that the inquiry should proceed against the accused Under Section 207A read with Section 341 of the Cr. P. G. Thereafter, the prosecution led the necessary evidence against the accused and the learned Magistrate was of the view that there were sufficient grounds to commit the accused to the Sessions Court at Kolhapur for trial in respect of the offence alleged to have been committed by him. The learned Magistrate, therefore, passed an order on 31 3 1959 committing the accused to stand his trial Under Section 302 of the I, P. C. before the Court of Session at Kolhapur. But in view of the fact that he had found that the accused was deaf and dumb and was unable to understand the nature of the proceedings the present reference was made by him to this Court Under Section 341 of the Cr.PC

2. Section 341 of the Code provides as follows:

Section 341. 'If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the Inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the Circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

Now, this is a reference which has been made after the termination of the committal proceedings which have resulted in the commitment of the accused on a charge Under Section 302 of the IPC The finding of the learned Magistrate that the accused is deaf and dumb and unable to understand the proceedings against him seems to. be justified in view of the evidence led by the Public Prosecutor in support of his report (Exh. 4). Now, the mere fact that an accused person is deaf and dumb will not exempt him from being proceeded against for his criminal actions. The object of Section 341, in our Judgment, appears to be that the High Court should see that the accused is ensured a fair trial, and that can be done in

the present case by giving the necessary directions to the learned Sessions Judge before whom the accused might be tried.

3. The learned Assistant Government pleader drew our attention to some of the decided cases Under Section 341 of the Cr.PC, *Queen Empress v. Somir Bowra*, Hit 27 Cal 368, to which our attention was invited, is not helpful because it appears that in that case apart from the fact that, the accused was deaf and dumb, the High Court also found that he was of unsound mind and incapable of knowing that he was doing what was wrong and contrary to law, though it found on the evidence that he was responsible for the murder of a woman,/ That is why he was directed to be kept in jail until orders of the local Government were received. Our attention was also invited to four Bombay cases. The earliest is *King Emperor v. Monya* 4 Bom LR 296, where on a reference made by a Magistrate this Court acquitted the accused on the ground that the accused could not be made to understand the proceedings and it was impossible to say that he knew the nature of the act committed by him. In *In re, a Deaf and Dumb Man* 8 Bom LR 849, it was held that where the accused is deaf and dumb it is inconvenient to try him summarily and in such a case an attempt should be made to find out whether the accused has any friends or relatives who are accustomed to communicate with him and the Magistrate should make inquiries about his antecedents and ordinary mode of life and the manner in which he has communicated within the ordinary affairs of life. In the present case, as already stated, the learned Magistrate has made the necessary inquiries and found that the accused is unable to understand the nature of the proceedings against him. In *Emperor v. A Deaf and Dumb* : AIR 1917 Bom 288, it was observed that though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such a person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment. In *Emperor v. Khashaba*, 25 Bom LR 43 : A.I.R. 1923 Bom 194, a deaf and dumb person was found guilty of attempt to commit suicide and this Court directed that the accused be sentenced to one day's simple imprisonment, after affirming the finding that he was guilty of the offence with which he was charged, and the trial Magistrate was also requested, if practicable, to admonish the accused and to point out to him that it was wholly improper for him to attempt to take his own life as a remedy for his brother's alleged conduct in refusing to

partition joint lands. In *In re, Boya Polamma* A.I.R. 1941 Mad., 225, the Sessions Judge, in a trial Under Section 302 of the IPC felt, towards the end of the trial, that the accused was unable to understand the proceedings, and that is why he made a reference to the Madras High Court Under Section 341 of the Cr.PC, after recording a conviction Under Section 302 against the accused. It appears that in that case the accused was able to understand the proceeding up to the stage of questioning Under Section 342, Cr, P. C, but subsequently it was discovered that the accused was deaf, and the High Court held that the conviction for murder was justified and that it was not vitiated by the fact that the Sessions Judge felt himself unable to question the accused with regard to the evidence appearing against her, inasmuch as there had been no miscarriage of justice,

4. Our attention was also invited to two cases of the Allahabad High Court. In *Emperor v Ultat Singh*, ILR 1947 All 490 ; A.I.R. 1947 All 301 the accused Ulfat and several others were charged Under Sections 302, 201 and other Sections of the IPC and were committed to stand their trial before the Court of Sessions, but as Ulfat was deaf and dumb a reference was made to the High Court Under Section 341 of the Cr.PC Mr. Justice Malik observed that there was no provision in the Cr. P. C. under which an accused can be exempted from punishment merely because he was deaf and dumb: that being so, the Courts have to do their best to see that the trial against such an accused is a fair one and that he get a chance of putting up such defences as he may have. On this ground, the High Court ordered that a special Counsel be appointed for the accused at Government cost who may explain to the accused the nature of the charge by signs and other means and put up on his behalf such defences as he may consider proper or as the accused may desire. In our judgment, the principle laid down in this case would be applicable to the facts of the Instant case. The last case to which our attention was invited is *Rex v. Goonga* : AIR1950 All143 where the accused who was deaf and dumb was caught red handed in the act of stealing a bullock. On a reference to the High Court, it was held that there was nothing suspicious about the evidence against the accused and consequently he was liable to be convicted Under Section 380 of the IPC

5. These decisions would indicate that when it is alleged in any criminal proceedings that an accused is deaf and dumb, the Court may proceed with the enquiry or trial, but it should first enquire into the antecedents of the accused and should also make an endeavour to find out as to how his friends and close relatives are accustomed to communicate with him in ordinary affairs and record its Own conclusions, if necessary by taking evidence. The Court if it finds that the accused is unable to follow and understand the Proceedings can proceed with the enquiry or trial and can commit the accused, or convict him for the offence with which he is charged. In either of the two cases, the Court must refer the matter to the High Court Under Section 3d of the Cr.PC Under the provisions of this Section the High Court has wide powers to take such action and to give such directions as it deems fit and proper in the interest of justice to ensure a fair trial of the accused, if it decides that the trial should proceed against him, after the order of committal. However, the Court trying such an accused will be directed to see that he has the necessary legal assistance, that the trial proceeds on the basis that the accused has pleaded not guilty to the charge, and that all possible defences open to him in the circumstances of the case are considered. The fact, however that an accused is deaf and dumb and is unable to follow and understand the nature of the proceedings against him would not exempt him from punishment if it be shown and found that he had sufficient intelligence to understand the criminal character of his act.

6. In our Judgment; therefore, as the learned Magistrate has found that the accused is deaf and dumb and unable to follow the proceedings against him and held that a prima facie case has been made against him, and has committed the accused to stand his trial before the Court of Session on a Charge under'S. 302 of the IPC it is necessary to direct that his trial may proceed in accordance With law for the offence with which he is charged. There is no question of directing the appointment of an advocate at Government cost to denied the accused in the present case, as Mr. ShevakramatuV learned advocate appearing on behalf of the accused, in this reference, has informed us that that is not necessary in view of the fact that he has been instructed to appear for the accused in the Sessions trial also. In case the Sessions Court finds on the evidence that the accused is guilty of any offend and convicts him, it will have to make a further fe ferernce to this Court

under the provisions of Section 341' of the Cr.PC

7. The result is that we direct that the trial of the accused should proceed¹ in accordance with law, Under Section 302 of the IPC in the light of this judgment. Papers should be sent to the learned Sessions Judge at Kolhapur immediately.

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