

Putta Venkatrayudu Vs. the State

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Court : Andhra Pradesh

Decided On : Mar-14-1955

Reported in : 1957CriLJ1225

Judge : Subba Rao C.J. and ;Bhimasankaram, J.

Appellant : Putta Venkatrayudu

Respondent : The State

Judgement :

Bhimasankaram, J.

1. By a judgment dated 10th January, 1955, we disposed of Criminal Appeal No. 454 of 1954. The appellant therein was the first accused in Sessions Case No. 50 of 1954 in the Court of Session, Visakhapatnam Division. He was convicted by the learned Sessions Judge under Section 114 read with Section 302, Indian Penal Code and sentenced to transportation for life. The conviction and sentence were confirmed by our judgment in the appeal. It may be noted that he was tried along with two other accused in the Sessions Court and there were two different charges framed, one against him and the Other two accused (first charge) and another against him and the third accused (second charge). The charges are as follows:

(1) That you three on or about 28th day of March, 1954, before 11 p.m. at Koruprolu, agreed to cause to be done an illegal act to wit murdering Putta

Appalaraju and that the same act to wit murder of Putta Appalaraju was done in pursuance of the agreement and you three thereby committed an offence punishable under Section 120-B read with Section 302 of the Indian Penal Code and within my cognizance.

2. That you (1) Putta Venkatrayudu (A-1) and (2), Putta Chinnayya (A-3) on the night of 28th day of March, 1954, at about 11 p.m. at Koruprolu in 'furtherance of the said conspiracy and in furtherance of common intention of you both, did jointly commit murder by intentionally causing the death of Putta Appalaraju of Koruprolu, by inflicting injuries on his head and thereby committed an offence punishable under Section 302 read with Section 34 of the Indian Penal Code and within my cognizance.

2. The learned Sessions Judge found that there was not sufficient evidence to hold A-2 and A-3 guilty under the first charge.

3. He also gave the benefit of doubt to A-3 under the second charge. The learned Sessions Judge convicted the appellant in Criminal Appeal No. 454 of 1954 under Section 114 read with Section 302, Indian Penal Code, as already stated above.

4. Mr. G. K. V. Devar, the learned Counsel for the appellant, now seeks through this unnumbered petition a rehearing of the appeal mainly on two points. His first contention is that there is an acquittal of the appellant under Section 302 read with Section 34, Indian Penal Code and that the acquittal bars the Court from convicting him upon the same facts under a different section, so long as the acquittal is in force, by virtue of Section 403(1) of the Criminal Procedure Code. Secondly, he states that the learned Sessions Judge was under a misapprehension that the first accused was actually charged under Section 114 read with Section 302, Indian Penal Code. He admits that these points were not raised at the time of the hearing of the appeal, but he urges that it is necessary in the interests of Justice that the appeal should be reheard on the ground that an act of Court should not prejudice any party and that, if there is a clear error of law resulting in miscarriage of justice, this Court is not without power to rectify it.

5. Before proceeding to deal with the merits, we must observe that no statutory provision or binding authority has been brought to our notice which enables us to exercise the power invoked by the appellant's advocate. Section 369 of the Criminal Procedure Code runs thus:

Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court by the Letters Patent or other instrument constituting such High Court, no Court, when it has signed its Judgment, shall alter or review the same, except to correct a clerical error.

This, indeed, the learned Counsel says that he does not dispute but he urges that we can treat our previous judgment as non est and consider the appeal afresh, In support of his contention, he relies on Section 561-A, Criminal Procedure Code. We are unable to agree that Section 561-A, Criminal Procedure Code, enables the High Court to do what Section 369. Criminal P. C., has expressly prohibited. It is true that, where a judgment has been pronounced without notice to the accused or without giving him an opportunity, to appear and plead his case, such a judgment has been treated as one without jurisdiction. In such circumstances, the hearing of the appeal once again would not be a re-hearing, but would really be the first hearing in accordance with law. In an early case reported in 7 Madras High Court Rulings p. xxix, Criminal Proceedings, 7th November, 1873 (A), the Madras High Court decided that when a Criminal Appeal had been rejected without hearing the appellant's pleader and it was afterwards proved to the satisfaction of the appellate Court that an adequate excuse had been made for the pleader's non-appearance, it was open to the appellate Court to rehear the appeal, on its merits. In Kunhammad Haji, In re, ILR 46 Mad 382 : AIR 1923 Mad 426 (B), Deva-doss J., observed that, when an appeal has once been disposed of, the Court is functus officio and cannot hear the appeal again. In support of this view, the learned Judge placed reliance on the decisions in In the matter of Gibbons. ILR 14 Cal 42 (FB) (C) and Queen Empress v. C. P. Fox ILR 10 Bom 176 (FB) (D). This view, it is to be noticed, was expressed when Section 369, Criminal Procedure Code, was couched in a different language. Then it ran thus:

No Court other than a High Court, when it has signed its judgment shall alter or review the same, except as provided in Sections 395 and 484 or to correct a clerical error.

He pointed out that the exception contained in Section 369 is with reference to the power of review in regard to cases decided by a Judge of the High Court presiding over the sessions when points are reserved for consideration by the Full Bench or on the certificate of the Advocate-General. In *Soma Naidu, In re*, ILR 47 Mad 428 : AIR 1924 Mad 640 (E), Wallace J., accepted that view, The head-note of the case runs thus:

The Judgment of the High Court in a Criminal matter is final as soon as it is signed and thereafter the Court is functus officio and has no power to revise or alter its decision. ILR 14 Cal 42 (FB) (C); ILR 10 Bom ,176 (FB) (D); ILR 46 Mad 382 : AIR 1923 Mad 426 (B), followed.

That case further decided that an order passed against an accused who had not been given an opportunity of being heard, as for instance where by mistake of Court a case was posted on a day anterior to that fixed in the notice to the accused and the sentence was enhanced in his absence, is null and void ab initio, as being one passed without jurisdiction. The learned Judges who decided ILR 47 Mad 421 : AIR 1924 Mad 640 (E), referred to an earlier decision of the Madras High Court reported in *In re Ranga Rao*, 23 Mad LJ 371 (F), in support of that position, wherein it was observed that the proper course in such a case was to proceed with the matter afresh after proper notice to the accused.

It has also been pointed out in *Sankaralinga Mudaliar v. Narayana Mudaliar* ILR 45 Mad 913 : AIR 1922 Mad 502 (FB) (G); *Veerappa Naidu v. Avudayammal* ILR 48 Mad 262 : AIR 1925 Mad 438 (FB) (H) and *Marudayya Thevar v. Shanmughasundara Thevar* 49 Mad LJ 593 : AIR 1926 Mad 139 (I), that Section 561-A confers no new powers on the High Court and that the Court cannot in purported exercise of inherent power surmount the limitations imposed by Section 369, Criminal Procedure Code. This view has been shared by other High Courts (vide) *Mohan Singh v. Emperor* ILR 23 Pat 28 : AIR 1944 Pat 209 (J); *Bashiruddin Ahmed v. Emperor* ILR (1937) Nag 236 : AIR 1937 Nag 181 (K); *Nandlal Chunilal*

v. Emperor ILR (1946) Bom 207 : AIR 1946 Bom 276 (FB) (L) and Bhanwarilal v. Emperor AIR 1935 All 466 (M).

But Mr. Devar referred us to the decision in Chandrika v. Rex AIR 1949 All 176 (N); that was also a case where there was no hearing in accordance with law, for a criminal appeal was taken up for hearing and disposed of before the date fixed for hearing thus depriving the advocate for the appellant of an opportunity to argue his client's case. The Court in accordance with the generally accepted view that such a hearing was without jurisdiction, reopened the matter and re-heard the appeal. But that does not support Mr. Dewar's contention that we can re-hear the present appeal for the reasons stated by him. We may add that we feel little regret that we are unable to re-hear the appeal, for we are persuaded that the submissions of Mr. Devar on the merits are devoid of substance.

His first point is based on the assumption that there is an acquittal of the first accused under Section 302 read with Section 34, Indian Penal Code; there is no finding to that effect so far as we can see in the judgment of the learned Sessions Judge, It is true that under the heading 'finding of the Judge' at the top of the judgment, it is stated that A-2 and A-3 are not guilty under the second charge. This entry ignores the fact that A-1 and A-3 alone have been charged under the second count. There is no passage in the judgment which supports or authorises the contention that A-2 is a mistake for A-1 nor do we see any scope for the application of Section 403(1), Criminal Procedure Code, to a case like the present one.

We also do not see any force in the contention that there is no separate charge head under Section 114 read with Section 302, Indian Penal Code. Section 236, Criminal Procedure Code, enable the Court in a case like this to charge the accused with having committed all or any of several offences which will be constituted by an act or a series of acts when it is doubtful which of them the facts which can be proved will constitute; or to charge him in the alternative, with having committed some one of the said offences. Section 237, Criminal Procedure Code, is as follows:

If, in the case mentioned in Section 236, the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of the offence which he is shown to have committed, although he was not charged with it.'

In our view, therefore, the trial was not vitiated by any irregularity or illegality in procedure, we cannot hold that a trial conducted in accordance with the terms of the Criminal Procedure Code has or could have prejudiced the appellant.

6. We therefore reject his unnumbered petition.

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