

Ram Sukh and ors. Vs. Emperor

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Court : Allahabad

Decided On : Sep-25-1924

Reported in : AIR1925All299

Appellant : Ram Sukh and ors.

Respondent : Emperor

Judgement :

Mukerji, J.

1. It appears that two parties fought at a public place, and in the course of the fight, the applicants caused hurt to certain persons. Two cases were started, one under Section 160 of the Indian Penal Code against eleven persons at the instance of the police. The other case was started at the complaint of private parties who received injuries. There were separate trials, as has been already observed, and the applicants were separately convicted as the result of the two trials. In revision No. 470 the judgment was pronounced earlier, for we find in the Magistrate's judgment, in the hurt case, that he refers to his earlier judgment. The two judgments were pronounced on the same day.

2. In revision No. 470 of 1924, which arises out of the charge under Section 160, the only point urged is one of sentence. The sentence passed is one of rather a heavy fine. So far as Ram Sukh and Brikbhan are concerned, they were fined in the sum of Rs. 100 each. In view of what I am going to say in the other case, I

reduce the sentence of fine against each of Ram Sukh and Brikbhan to the sum of Rs. 50 only. The sentence of fine against Ganeshi and Beni will stand. Otherwise revision No. 470 is rejected.

3. In revision No. 471 of 1924 two points have been raised. First, it has been urged that the judgment of the learned Magistrate being unsigned did not operate as a judgment at all, and, therefore, the conviction should be treated as illegal. The judgment is entirely in the hand-writing of the learned Magistrate. In the circumstances I should agree with the learned Sessions Judge that the irregularity of the judgment not being signed, is covered by Section 537 of the Cr. P. Code. It will be deplorable if after a trial the judgment has to be set aside and a re-trial has to be ordered simply because the learned Magistrate forgot to sign the judgment and date it. The irregularity does not affect the merits of the case, and, therefore, this point fails.

4 The second point urged is somewhat interesting, though, to my mind, not difficult to answer. The argument is that the applicants having once been convicted of the offence of an affray, they could not be again convicted of the offence under Section 323 of the Indian Penal Code, having regard to the provisions of Section 403 of the Criminal Procedure Code. The argument is this. The offence of causing hurt was committed in the course of one and the same transaction, namely fighting in a public place. It is urged that, if the applicants fought in a public place and caused hurt to the complainants, they committed one single act, and although it may be true that their act fell within the purview of two distinct offences under the Indian Penal Code they could be tried for the two offences jointly under Section 235 of the Criminal Procedure Code; and therefore, a conviction for one of the offences should operate as a bar to conviction under the others.

5. This argument overlooks the fact that the two offences committed are distinct and separate. There may be an affray without causing any hurt to any body. When two people fought in a public street to the disturbance of the public peace, they commit an affray. The police are the guardians of the peace and they may take up a case of affray and prosecute the parties concerned. If in the course of the affray one party causes hurt to the other, it will be for the party who received the hurt, to

decide whether he will proceed against the party who caused the hurt. Are the police to wait indefinitely to find out whether the party who received the hurt is going to prosecute the other party or not? The police would prosecute both the parties. This is very important. The offence is committed not alone by the party causing the hurt but by both parties, namely the party causing the hurt and the party receiving the hurt. It will thus be seen without further argument, that the offences are distinct from each other. The case, therefore, falls within paragraph 1 of Section 235 of the Cr. P. Code. It is true that there might be a joint trial, but that is because it is convenient under the circumstances to have a joint trial. But for the application of the rule of bar, we have to see whether the case does not fall within Clause (2) of Section 403 of the Code. This Clause 2 of Section 403 distinctly lays down that, when a person is acquitted or convicted of any offence, he may afterwards be tried for any distinct offence for which a separate charge might have been made against him in a former trial under Section 235(1). I am clear that this is a case which does not fall under Clause (2) of Section 235 of the Code. A reference to the illustration given under Section 235 will make this matter clear. In my opinion the conviction of the applicants under Section 160 of the Indian Penal Code was no bar to their trial and conviction again under Section 323 of the same Code.

6. In the revision case No. 471 the punishment awarded is one of fine of Rs. 50 each. If Section 71 of the Indian Penal Code applies, the maximum punishment which could be awarded is the punishment which is dictated by Section 323 of the Indian Penal Code, under which the amount of the fine may be more than Rs. 100. Even if the maximum punishment under Section 160 be awarded, which is a fine of Rs. 100, the fact that I have reduced the sentence in the case of two of the applicants would go to ensure that the maximum awardable under this section has not been exceeded. But Section 71 of the Indian Penal Code has no application whatsoever to this case as the offences are distinct.

7. The revision No. 471 is rejected.