

Basdeo and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jan-31-1945

Reported in : AIR1945All340

Appellant : Basdeo and ors.

Respondent : Emperor

Judgement :

Braund, J.

1. This is an appeal by three men named Basdeo, Rupi and Sirya respectively, who have been charged, convicted and sentenced under Sections 147 and 323, coupled with Section 149, Penal Code. At the outset of the appeal, a preliminary point has been taken on behalf of the appellants. It is this. The two charges upon which the appellants have been tried were under Sections 323 and 147, Penal Code, respectively. A reference to Schedule 2, Criminal P.C. shows that each of these offences is what is known as a 'warrant' case and is triable by 'any Magistrate.' In the present case the proceedings in their earlier stages came before the Special Magistrate of the first class of Muttra and he, on 14th March 1944, committed the present appellants to stand their trial before the Sessions Court of Muttra. At that stage it is necessary to say that the charges against these appellants were the outcome of one of those unfortunate affairs which so frequently happen and which give rise to cross-charges by and against two

opposing parties of villagers, the substantial question being in each case as to which of them was the aggressor. This case was one of this kind; and, in addition to the charges against these appellants, the appellants themselves had made cross-charges against the complainants, which cross-charges under Section 304, Penal Code, had already been sent to the Sessions Court for trial. The learned Magistrate accordingly, for reasons which must be obvious enough, in his committing order said that, as there was a cross-case of the same date relating to the same dispute, he also committed the appellants to stand their trial in the same Sessions Court. Apart from any technicalities under the Criminal Procedure Code, that sounds reasonable enough.

2. What, however is said is that, inasmuch as the charges framed by the learned Magistrate against the appellants in this case were within the competence of the committing Magistrate himself, and the committing Magistrate expressed no opinion that the appellants could not be adequately punished by him, the committal to the Court of Session was bad in law under Section 254, Criminal P.C. That section provides that, after the hearing by the Magistrate of the evidence, he is to frame a charge in writing against the accused and to proceed to try them in all cases in which he is himself competent to try them and is of the opinion that an adequate punishment can be inflicted by him. That is a mandatory provision and amounts really to the direction of the Criminal Procedure Code that, unless the Magistrate holds the view that his powers of punishment are insufficient, he is bound to try those cases which are within his own jurisdiction, instead of sending them to the Sessions Court to be tried. In the present case the charges framed by the learned Magistrate were within his own competence to deal with, and his own powers of punishment were, so far as imprisonment was concerned, sufficient to cover the maximum sentences allowed by the relevant sections of the Penal Code. Moreover, in his committing order, the learned Magistrate did not purport to give as his reason for sending the matter to the Sessions Court any doubt as to his own power to inflict an adequate sentence. In all these circumstances it is contended on behalf of the appellants that their trial in the Sessions Court has been bad in law and that, apart from the merits of the case, they are entitled to have it set aside and, presumably, either to be acquitted or to have a retrial. Numerous authorities bearing on this matter have been referred to. In our own Court in

Emperor v. Dharam Singh ('06) 3 A. L. J. 14 the late Sir George Knox in circumstances very similar to the present circumstances quashed a commitment to a Court of Session upon the ground that the committing Magistrate might himself have tried the case. To the same effect were the cases in 456, Emperor v. Bindeshri Goshain ('19) 6 A.I.R. 1919 All. 366 and Emperor v. Ram Jatan ('24) 11 A.I.R. 1924 All. 185. All these cases, however, are cases in which committal orders were quashed at the point of commitment and before they had proceeded to trial in the Sessions Court. Had this case involved the same question as in those referred to above, no question would have arisen. But, in my view, the question here is quite a different one. In this case, the trial has been held by the Sessions Judge. Even assuming that the trial was one which should properly, according to Section 254, Criminal P.C., have taken place before the learned Magistrate, there still arises, in my view, the question whether this is not a matter which is covered by Section 537 of the same Code. That section provides that:

Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chap. 27 or on appeal or revision on account-(a) of any error, omission or irregularity in the complaint, summons, warrant, charge, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code...unless such error, omission, irregularity or misdirection has in fact occasioned a failure of justice.

3. The material question here, to my mind, is whether what has happened, even assuming it to have been wrong, is not merely an error or irregularity of proceeding, which has in fact occasioned no failure of justice within the meaning of Section 537, Criminal P.C. Against this it is said that the effect of the irregularity on the part of the committing Magistrate was that there came into the Sessions Court for trial something which that Court, had no power to try, and accordingly, for the purpose of Section 537 of the Code, the Sessions Court cannot be described as a Court 'of competent jurisdiction.' This argument rests on Section 193 (1), Criminal P.C. That section says:

(1) Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction, unless the accused has been committed to it by a Magistrate duly empowered in that behalf....

4. There is no doubt that the Magistrate in this case was duly empowered to commit cases to a Sessions Court in the sense that, provided he followed the procedure of the Criminal Procedure Code, that was a general power vested in him. Once a case was committed by the Magistrate to the Sessions Court in accordance with the procedure of the Code, then the Sessions Court was placed in a position of taking 'cognizance' of it. Now, what has happened in the present case is that the learned Magistrate has done something that he had a general power to do, but he has done it in disregard of certain provisions of the Criminal Procedure Code which, if he had observed them, would have prevented him from doing so. But, to my mind, the only effect of that is that under Section 193 the Sessions Court is, or might be, prevented from taking 'cognizance' of the case committed to it by the Magistrate. There is, I think, a great deal of difference between a case in which the Sessions Court is enjoined in certain circumstances not to take cognizance of an offence and a case in which the Sessions Court is not a Court of 'competent jurisdiction' in relation to that offence. A committal by a Magistrate to another Court does not confer jurisdiction on that other Court. Jurisdiction is given to Courts by the statutes which create them. Jurisdiction is the definition of their legal powers in contra-distinction to the machinery and procedure in accordance with which those legal powers are to be exercised. Moreover, 'cognizance' of an offence or a case is, I think, something quite different from jurisdiction to deal with that case. A Court may very well be a Court of competent jurisdiction in regard to any particular offence or any particular case without being in a position to take 'cognizance' of it; and, to my mind, it is a confusion of ideas to treat competence to take cognizance of an offence as the same thing as competence in respect of jurisdiction in relation to that offence. The two things are, as I see it, quite different.

5. For these reasons I am inclined to the view that there has been no such irregularity in this case, even assuming that everything that the appellants say is

true, as could have rendered the Sessions Court of Muttra a Court incompetent in respect of jurisdiction to try the case. I think, therefore, that it is one to which Section 537, Criminal P.C. applies. So far from there having been in fact any failure of justice, so far as the method of the trial of the appellants goes, on the contrary they have had the benefit of a trial by an experienced Sessions Judge instead of by a Magistrate. I do not say that in order to draw invidious distinctions between a Sessions Judge and a Magistrate; but it is, I think, a matter which conclusively shows that there has in fact been no failure of justice. If I am* right in what I have said above, I should not be disposed to regard anything that has happened as vitiating the trial of the appellants on any ground of law, and I propose therefore to go on and to hear the appeal on its merits.

6. Upon the merits of this appeal I have no doubt that the convictions of the appellants must be upheld. It is a case of one of those unfortunate village disputes in which one party of villagers find themselves involved in a dispute over crops or land with another party of villagers, and this leads to serious consequences. In this particular case there was near the village a piece of uncultivated land of which the appellants and two others had reclaimed nearly five acres. Other villagers had reclaimed other parts of it. On the day in question? according to the evidence, the three appellants, with two other men, Natholi and Posti, went with ploughs. There they found the other party, also with ploughs. What then happened is a matter of evidence. Upon the prosecution version in this case, the appellants' party started ploughing on land which had not been reclaimed by them and this led to the fight. The appellants' own story is, of course, the reverse, viz., that the complainants were the trespassers in the first instance. We can only be guided by the evidence and, on the facts as disclosed, it seems to me that there is little room for doubt but that the prosecution story is the true one. There are a number of witnesses who say that the appellants started ploughing on land which had not been reclaimed by them. It is true that these witnesses include Rampal, Inda and Medi who are implicated in the cross case; but they also include four or five witnesses who are independent in the sense that they are not themselves charged in any case. Moreover, the learned Judge has taken the evidence of the patwari, and it would seem that the spot where blood was found was in fact in the complainant's territory and not in the territory of the appellants. On the question of fact I feel bound to

accept the prosecution version. It is said on behalf of the appellants that the learned Judge took the evidence of the patwari more or less as an afterthought and subsequently to requiring from the appellants their own statements. This was perhaps an irregularity, but I do not think that there has been any miscarriage of justice in fact on that account.

7. The question of sentence has caused me more anxiety. The appellants have been charged on two counts - the first for rioting and the second for inflicting simple hurt in the course of the riot. I desire to say that I deprecate an indiscriminate use of auxiliary sections, like Section 149, Penal Code, for the purpose only of avoiding the hazards and inconvenience of having to bring home offences to individual accused. And still more should I deprecate the use of such section as Section 147 for the purpose of enabling a sentence to be given which is greater than the sentence attributed by the Act to that offence of which the accused has in substance really been guilty. In this case, on a common sense view of the matter, I doubt whether it can be said that the appellants have really been guilty of two individual offences, one of rioting and the other of inflicting hurt, thereby attracting the punishments of two separate sections to be applied consecutively, so as thereby to exceed the maximum penalty for either of '?' the two offences taken disjunctively. The gravamen of what happened in this case was, I think, that there was a fight, in the course of which injury was inflicted. That is the real ' substance of the matter. It was not really a riot in any but the most technical sense and, in my judgment, what the appellants should really be punished for is for fighting with their neighbours and inflicting simple hurt on them. The substance of the matter is, therefore, in my opinion Section 328, and not Section 147. Nor do I think that there is any justification for giving the maximum sentence under Section 147 and then adding it to a further consecutive sentence under Section 323. As regards the appellants Basdeo and Rupi, I propose to leave their sentences under Section 323 as they are, that is, at six months' rigorous imprisonment, but to reduce their sentences under Section 147 to six months' rigorous imprisonment also and to direct that the two sentences shall run concurrently.

8. As to the appellant Sirya, there are other matters to be considered. Sirya was at the time this happened a boy of sixteen. There is no evidence that he took more than a technical part in what happened and I do not think it will be right, if it can be avoided, to send him to prison. As regards the appellant Sirya, therefore, his conviction will be maintained, but the sentences of imprisonment will be set aside and in place thereof, having regard to his age, and to the circumstances in which the offence was committed, ' I shall order that he be released on probation of good conduct on his entering into a bond of fifty rupees before the Sessions Judge of Muttra, without sureties, to appear and receive sentence when called upon at any time before 4th May 1946, being two years from the date of his conviction, and in the meantime to keep the peace and be of good behaviour. The bail bond of the appellant Sirya. will not be discharged until the foregoing bond has been entered into to the satisfaction of the learned Sessions Judge. Basdeo and Rupi will now surrender to their bail.

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