

Ram Kishan Vs. State

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Court : Allahabad

Decided On : Mar-14-1956

Reported in : AIR1956All462

Judge : Asthana, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 537; Code of Criminal Procedure (CrPC) (Amendment) Act; [Constitution of India](#) - Article 21

Appeal No. : Criminal Revn. No. 1683 of 1953

Appellant : Ram Kishan

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : P.C. Chaturvedi, Adv.

Disposition : Application rejected

Judgement :

ORDER

Asthana, J.

1. The applicant Ram Kishan has been convicted under Sections 325 and 379, I. P. C. and has been sentenced to a fine of Rs. 50/- under Section 379, I. P. C. and

to 6 months' rigorous imprisonment under Section 325, I. P. C. by a First Class Magistrate of Jalaun, which conviction and sentence has been upheld in appeal by the learned Sessions Judge of Orai.

2. It appears that the applicant and three other persons were found stealing the crops of one Sher Ali. When Sher Ali came to know of it he went to his fields and challenged the applicant and his companions. They threatened to beat him. He then went to the Sarpanch Budh Singh and reported the matter to him. Budh Singh sent for the applicant who had taken the bundle of stolen crops to his house.

It is said that the applicant admitted before the Sarpanch that he had committed the theft of the crop. Thereupon Eudh Singh sent for the chowkidar Sikandar Ali and asked him to take the applicant to the police station. While the applicant was being taken there he, on the instigation of his companions, started beating Sikandar Ali and ultimately bit his nose with his teeth.

3. The applicant admitted in his statement] that he bit the nose of Sikandar Ali but stated that he did so in his self-defence.

4. Both the lower Courts after a consideration of the entire evidence on the record came to the conclusion that the applicant committed theft of the crop of Sher Ali; that when he was being taken to the police station he, on the instigation of his companions, beat Sikandar AH and then bit his nose with his teeth and thereby committed the offences under Sections 379 and 325, I. P. C. They, therefore, convicted and sentenced him as above.

5. The finding of the Courts below that the applicant committed theft of the crop of Sher Ali and bit the nose of Sikandar Ali Chowkidar when he was being taken to the police station by him, is a finding of fact and is binding on me in revision. Learned counsel for, the applicant was not able to point out anything to me in revision which would justify me to interfere with this finding of fact.

6. It was contended before me on behalf of the applicant that the applicant and the other accused could not be tried together for the offences under Sections 379, 325 and 325/114, I. P. C.; that there was misjoinder of offences and accused persons

and therefore the entire trial was vitiated.

It was further contended that the offences under Sections 379 and 325, I. P. C. were not committed in the course of the same transaction and, therefore, Section 235, Cr. P. C, was not applicable to the case. It is somewhat doubtful if the two offences under Sections 325 and 379, I. P. C. were committed in the course of the same transaction. After committing the theft the applicant had gone away and he was subsequently sent for by the Sarpanch on receipt of some information that he had committed theft and thereafter he was taken to the police station.

Section 537, Cr. P. C., as amended, clearly says that no trial shall be vitiated on account of mis-joinder of charges unless it has caused prejudice to the accused. It was contended for the applicant that Section 537 was applicable only to misjoinder of offences and not to misjoinder of both offences and accused persons. I am afraid I am not able to accept this contention.

Sections 233 to 240, Cr. P. C. deal with joinder of charges whether against the same person in respect of different offences or whether against different persons in respect of different offences. It is immaterial whether the misjoinder is in respect of different offences committed by the same person or in respect of different offences committed by different persons. The words used in Section 537 are not misjoinder of offences or accused persons. They are misjoinder of charges. In my opinion these words clearly include misjoinder of offences or of accused persons.

In this connection reference may be made to 'W. Slaney v. State of M. P.', 1953 S. C. 116 ((S) AIR V 43) (A), where it was held that Section 537 was applicable to all kinds of misjoinder of charges against the provisions of Sections 234 to 239 Cr. P. C., as well as to those cases where no charge had been framed at all, and the trial would not be vitiated unless it was established that the accused had been prejudiced on account of such misjoinder of charges. I am, therefore, of opinion that Section 537, Cr. P. C. is applicable to the present case and as there is nothing on the record to show that the applicant has been prejudiced the trial is not vitiated.

7. It was next contended that S. 537 Cr. P. C. was ultra vires of the Constitution as it contravened the provisions of Article 21 of the Constitution. This contention too, in my opinion, has no force. Article 21 provides that no person shall be deprived of his life and personal liberty except according to procedure established by law.

Section 537, Cr. P. C., in my opinion, does not lay down anything which contravenes the provisions of Art, 21. It does not lay down that an accused person shall be convicted without any proper trial. What it lays down is that if there is any irregularity in the procedure which does not cause any prejudice to the accused this irregularity should not vitiate the whole trial and the conviction following it. Section 537 is a part of the same procedure which lays down in what manner the trial is to be held and what is to happen in case there is any irregularity in the manner of the trial which does not cause any prejudice to the accused.

Article 21 is not intended to be a constitutional limitation upon the powers of the legislature otherwise conferred by the Constitution. Its object is simply to serve as a restraint upon the executive so that it may not proceed against the life or personal liberty of an individual, save under the authority of some law and in conformity with the procedure laid thereunder.

There is nothing in the Constitution which provides that the Legislature has got no power to make provision if some irregularity is committed in the procedure laid down for the trial. In absence of any such limitation I am of opinion that it was open to the Legislature to enact Section 537 and provide therein that in case of certain irregularities the trial should not be vitiated if there is no prejudice to the accused.

What the Constitution has guaranteed under Article 21 is that no person shall be deprived of his life and personal liberty except in accordance with the provisions of law. There is nothing in it to restrict the powers of the Legislature as to what should be the procedure for trial. In my opinion Section 537, Cr. P. C. does not in any way contravene Article 21 of the Constitution and is perfectly valid.

8. It was next contended that the Sarpanch.or the Chowkidar had no power of arrest as the offence of theft had not been committed in their presence. There is no doubt that the theft was not committed in the presence of either of them. The

evidence on the record is to the effect that the applicant admitted the commission of the theft before the Sarpanch. Section 59, Cr. P. C. provides;

'Any private person may arrest any person who in his view commits a non-bailable and cognisable offence, or any proclaimed offender, and without unnecessary delay, shall make over any person so arrested to a police-officer, or, in the absence of a police-officer, take such person or cause him to be taken in custody to the nearest police-station.'

Even if it is accepted that the Chowkidar was not empowered to arrest the applicant and take him to the police station because the theft was not committed in his view or in his presence, there is no doubt that the applicant exceeded his right of self-defence. It appears from an examination of the record that he inflicted a number of injuries on the chowkidar and ultimately chopped off his nose, whereas he himself did not receive a single injury. In view of this fact he has been rightly convicted of the various offences and I see no satisfactory reason to interfere in revision.

9. The application is, therefore, rejected. As the applicant is on bail he shall surrender to it and serve out his sentence.

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