

Shanker and ors. Vs. Emperor

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Court : Allahabad

Decided On : Jan-30-1913

Reported in : 18Ind.Cas.676

Judge : George Knox and ;Rafique, JJ.

Appellant : Shanker and ors.

Respondent : Emperor

Judgement :

1. Shankar, Hanuman, Tippal, Sheorajwa, Mindua, and Dujva Pasis were committed to the Court of Session at Allahabad. The Magistrate who committed them to the Court of Session for trial framed one charge-sheet. He charged all six with having, on the 17th of August 1912, at Amura 'committed murder by intentionally causing the death of Sheoratan and Madhva Pasis and in connection therewith having caused injuries to Musammat Maiki, wife of Madhva, and Gauri, and having thereby committed an offence punishable under Sections 302 and 323, Indian Penal Code.' We have seldom come across a charge-sheet so carelessly and badly drawn up as the present. The case, moreover, shows the paramount necessity of the Court of Session examining carefully every charge-sheet on which accused are committed to it for trial, and when doing so making such amendments, and alterations in the charge-sheet as appear called for. If the learned Sessions Judge had carefully considered the charge-sheet, he would have found that no one of the six persons was charged categorically with the offence of

voluntarily causing hurt to Gauri. Neither the Sessions Judge nor the assessors were called on by the charge-sheet to investigate the offence of voluntarily causing hurt to Gauri. They might, of course, in consequence of the evidence given before them, have pronounced an opinion on this offence which they might have considered disclosed by the evidence against the accused. What is still more important, the attention of the accused was never called by the charge-sheet to the fact that they had to answer a charge of voluntarily causing simple hurt to Gauri. We cannot find on the record any warning to the accused by the learned Sessions Judge during the course of the trial that they had to answer this particular charge. Again, the offence of committing wilful murder by causing the death of Sheoratan was a distinct offence and a separate charge should have been drawn up on this head alone. The same remark applies to the act of causing wilful murder of Madhva Pasi. For this distinct offence, there should have been a separate charge. The same remark applies to the offence of voluntarily causing hurt to Musammam Maiki. Then, though it is a very small matter in comparison with the above, yet the carelessness which led the Magistrate to talk of these four distinct offences as an offence under Sections 302 and 323: as one section is indicative of the want of care with which the charge was drawn up. The charge-sheet is a very important document and the drawing up of it a very important act in a criminal trial, and Magistrates cannot exercise too much care when they proceed to frame a charge on which, as in this case, six persons were standing in peril of their lives.

2. Now, the Code of Criminal Procedure requires that for every distinct offence of which any person is accused, there should be a separate charge, and that every charge shall be tried separately. This is a broad rule and applies to all trials for offences under the criminal law. In Section 233, this rule is made subject to four exceptions. But a Court cannot and ought not to treat a case before it as an exception to the general and broad rule unless it is satisfied that in the case before it, the charge should be brought within one of the four exceptions, and it would be safer if the Magistrate or the Sessions Judge showed in the charge-sheet or in his judgment that he had reason for bringing the case before him under one of those separate sections. The exception mentioned in Section 236 has obviously no application in the present case. The case before the Judge was a case in which

more persons than one were accused of the same offences, and Section 239 would apply. But Section 239 has this limitation attached to it that the provisions contained in the former part of Chapter XIX apply to all charges falling under Section

239. Thus Section 239 is in turn governed by Sections 234 and 235 of the Code of Criminal Procedure. Section 234 has no application to the present case. It refers to offences of the same kind, and offences of the same kind are defined in Clause

(2) of Section

234. The offence of murder and the offence of voluntarily causing hurt are not what are defined in Section 234 as offences of the 'same kind.' There remains Section

235. Now in considering whether Section 235, Clause (1), applies, the Court has to consider carefully whether the series of acts with which the accused are charged are so connected together as to form the same transaction. We are not considering whether the acts alleged against the accused have or have not been established by the evidence. Taking them as found by the learned Judge in his judgment for a moment as correct, the case before the learned Judge resolved itself into at least two separate transactions. It may be that the murders of Sheoratan and Madhva might be termed one transaction. This will depend a good deal upon the evidence. The voluntarily causing of hurt to Musammatt Maiki was a perfectly distinct and separate transaction. In connection with this, the Court would do well to consider the remarks contained in *Queen-Empress v. Fakirapa*. 15 B. 491 also in *Queen-Empress v. Vajiram* 16 B.

414. Section 235 Clauses.

(2) and

(3) have no application to the present case. Their Lordships of the Privy Council, in *Subraminia Aiyar v. Emperor* 25 M. 61; 28 I.A. 257; 11 M.L.J. 233; L.R. 540; 5 C.W.N. 866 have held that a trial in contravention of Section 233, Criminal Procedure Code, unless justified by the exceptional sections, is not a mere

irregularity but it is an illegality. We have, therefore, no alternative but to set aside the orders of committal and those orders that followed upon it by the orders of conviction and acquittal and to direct that the accused be tried afresh. The case will go back through the learned Sessions Judge of Allahabad to the Committing Magistrate who will draw up carefully charge-sheets in the light of our remarks, and we direct that the cases when ready be committed to the Court of Session at Mirzapur for trial.

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