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Court : Allahabad

Decided On : Dec-10-1925

Reported in : AIR1926All318

Appellant : Shanker

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is an application in revision from an order dismissing the appeal of the accused and upholding his conviction and sentence under Section 454, I.P.C. The judgment of the appellate Court is as follows:

The case has been carefully triad, and after examining the evidence I am fully satisfied that Shanker, appellant, took part in the burglary. The appeal is dismissed.

2. This judgment, with the exception of giving a revisional Court an idea that the accused was charged with an offence of burglary, does not show anything more. The first point taken in revision is that this judgment is not in accordance with law inasmuch as it does not comply with the provisions of Section 367, Criminal P.C. That section requires that a judgment shall contain the point for determination, the decision thereon and the reasons for the decision. The dismissal of the appeal

was not a summary one under Section 421 to which case Section 367 would not have applied. The dismissal was after it had been admitted under Section 422. 8. 424 then made the provisions of Section 367 applicable.

3. The question whether the expression 'I am satisfied that the accused took part in the offence' amounts to giving reasons for the decision is a difficult question to answer in the abstract. It is obvious that in simple cases where the facts are clear no further reason than that the evidence is accepted by the Judge may be strictly required. In complicated cases, however specially when there are more than one question, both of law and fact, arising a mere statement of this kind will have to be accepted with difficulty as amounting to a reason for the dismissal of the appeal.

4. In the present case the accused was put on his trial along with three other co-accused persons. He had not been named in the first information report and he was not arrested till a week after. The evidence against him consisted mainly of the confession of a co-accused Khairati who had pleaded guilty and the retracted confession of another co-accused Sita Ram. There were other witnesses also who deposed to having seen him at particular places near about the house where the burglary was committed, and in fact one of the witnesses deposed to having seen him on the roof of a house in that lane. There was also the evidence of one goldsmith that the accused after the burglary had gone to him to sell, certain ornaments which were similar in appearance to certain articles discovered from the custody of the confessing accused and produced in Court. As against this evidence the accused produced no less than 11 witnesses and his defence was fourfold.

5. In the first place, be proved that two or three weeks before his arrest he had been beaten by some of the constables of his police circle against whom he had complained to the Superintendent of Police and then ultimately filed a complaint in the criminal Court which was then sub judice. Ha produced medical evidence to show that the injuries on his person, and it was suggested on his behalf that the police officers had got him implicated in order to handicap him in the prosecution of his case and in order to have a revenge on him. He next tried to prove his enmity with Bhajja master who he suggested had helped the police in incriminating

him. In the third place, he led evidence to establish his alibi, and, in the fourth place, he led evidence to show that the prosecution story that he was an associate of the other co-accused was untrue.

6. The learned Assistant Sessions Judge discussed the evidence in great detail and examined it carefully. He has devoted several type-written pages to the case for and against the accused. There was a further legal question as to whether when Khairati on the charge being read over to him had pleaded guilty the learned Assistant Sessions Judge acted properly in not convicting him there and then, but continuing a point trial and using his previous confession as evidence against Shanker also. In the memorandum of appeal filed before the learned Sessions Judge no less than eight grounds were taken. Having regard to all these circumstances it does appear that the judgment passed in appeal is, to say the least, unsatisfactory. Judgment of an appellate Court ought contain particulars so as to satisfy the revisional Court that the case has been examined from every aspect.

7. My attention has been drawn by the learned advocate for the applicant to the case of Kanhai Singh v. King-Emperor (1912) 10 ALJ 435 where a learned Judge of this Court held that a brief judgment of this kind was illegal. That was a judgment passed in a connected case and fuller facts were mentioned in the other case. There were also notes of arguments attached. But that however is a single-Judge case and I am not sure whether the attention of the learned Judge was drawn to an earlier Full Bench of this Court; Queen-Empress v. Pandeh Bhat (1897) 19 All 506. In this Full Bench case all that the Sessions Judge had remarked as regards the conviction was: 'I have persuade the record and see no cause for interference with the finding of the District Magistrate.' The Pull Bench came to the conclusion that this was in compliance with the letter of Section 367. I am, therefore, constrained to hold that the judgment before me can also not be said to be illegal. But the learned Judges constituting the Full Bench discouraged such judgments and hoped that Sessions Judges in these provinces would in criminal appeals; which raised complicated questions of fact and law, write fuller judgments dealing with such questions. I also can not refrain from deprecating judgments of the type before me.

8. The next point urged on behalf of the applicant is that the confession of Khairati was inadmissible. When the charge was read over to Khairati, be at once pleaded guilty and admitted the facts implicating himself. I agree that it would have been more satisfactory and proper if the learned Assistant Sessions Judge had convicted Khairati on his own plea of guilty particularly as there was a previous confession of his both under Section 164 and before the committing Magistrate. No reasons were given why this plea of guilty was not accepted. Nor does it appear that there existed any good reason. At the same time, under Section 271, Sub-section (2), all that is incumbent on the Court is to record his plea of guilty. It is not obligatory on the Court to convict him thereon. The conviction on a plea of guilty is discretionary. If therefore the learned Assistant Sessions Judge did not choose to convict; Khairati on his own plea of guilty, it would be difficult to say that his procedure was in contravention of that sub section.

9. The learned advocate for the applicant has relied on a passage in the Commentary on the Indian Evidence Act by Messrs. Woodroffe and Ameer Ali under Section 30, where the learned authors have remarked:

When one of several prisoners pleads guilty, the proper course for the Court before whom the trial of the others is pending is to sentence him and either to put him aside or to remove him from the dock and call him as a witness, but it is improper to leave him in the dock unconvicted merely to see what the evidence will show.

10. This view is based on certain judgments of the Madras Court. So far as the cases of this Court are concerned, they are to the effect that where the Court accepts the plea of guilty and convicts the accused on his plea of guilty his confession should not be used as evidence against his co-accused because he ceases to be tried jointly along with them. The cases of Queen-Empress v. Pirbhu (1893) 17 All 524 was a case where a learned Sessions Judge had convicted Pirbhu Singh and Kishna on their plea of guilty as appears from the original paper-book sent for by me. Similarly in the case of Emperor v. Kheoraj (1908) 30 All 540, Chidda had been actually convicted by the Judge on his plea of guilty though this conviction was deferred till the conclusion o the trial. It was pointed by Henderson,

J., in the case of Queen-Emperor v. Paltua (1901) 23 All 53, that:

If the Court does not convict an accused person on his plea of guilty, his trial, does not terminate with his plea and therefore a confession by him may be taken into consideration under Section 30 of the Evidence Act as against any other person who had been jointly tried with him of the same offence.

11. At the same time one cannot lose sight of the fact that if Khairati, whose confession is very damaging to the applicant, had been convicted on his plea of guilty and had then been produced as a witness for the prosecution, the accused would have had ample opportunity to cross-examine him of which he has been deprived by the procedure adopted by the learned Assistant Sessions Judge.

12. As regards the confession of Sita Ram. I have already remarked that it was a retracted confession. When Sita Ram was questioned by the Judge about hts previous statement, he alleged that it bad been made under coercion and threat by the police. With regard to the implication of Shanker he stated that the second officer took him aside and said that he should name Shanker as the man who had given him the ornaments, that when ho refused to do so the Sub-Inspector then assured him that he would get him off if he were to stats that he had received the ornaments from Shanker and that the Sub-Inspector threatened him that if he did not de as directed he would take him to the thana and torture him and have him beaten with a broom-stick by some sweeper in insulting manner, and that therefore out of fear he agreed to implicate Shanker. The learned Sessions Judge's judgment does not indicate how far he has been influenced by the retracted confession of Sita Ram. There can be no question as to the admissibility of Sita Ram's statement. The only doubt that there could be would be as to its weight.

13. Having regard to these circumstances, I am of opinion that the disposal of the appeal of the accused has not been satisfactory. But as the accused has already been in jail for nearly seven months, it would be unfair to set aside the conviction and order a re-trial. He has had no previous conviction for any offence under Chapters 12 and 17 of the Indian Penal Code. After some hesitation I have come to the conclusion that the best order to pass in this case is to uphold his conviction

on the other materials on the record, but to reduce his sentence to the period already undergone and set aside the sentence of fine. The accused will be released forthwith and the fine, if paid will be refunded.