

Mahendra Singh Vs. the State

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Court : Madhya Pradesh

Decided On : Jul-09-1958

Reported in : AIR1959MP6

Judge : H.R. Krishnan, J.

Acts : M.B. Public Security Act, 1953 - Sections 14; [Indian Penal Code \(IPC\), 1860](#) - Sections 392 to 395, 398 and 458; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 237 and 535

Appeal No. : Criminal Appeal No. 5 of 1958

Appellant : Mahendra Singh

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : Anand, Adv.

Disposition : Appeal dismissed

Judgement :

H.R. Krishnan, J.

1. The appellant having been convicted by the Special Judge Morena under Section 458 I. P. C, after a trial for a charge under Sections 395, 398 I. P. C., has

come up in appeal on three grounds firstly, that the trial had been bad for want of jurisdiction, Section 398 I. P. C. not being included in the notified list of offences triable by the Special Judge. Secondly, that the charges having been under Sections 395, 398 I. P. C. a conviction under Section 458 I. P. C. was bad for prejudice as this case is not one coming properly under Section 237 Criminal Procedure Code or otherwise justified under Section 535 Cr. P. C. and thirdly on the facts.

1a. Under Section 14 of the Madhya Bharat Public Security Act, 1953 Special Courts are created for expeditious trial of certain criminal offences. Notifications are issued from time to time under that section empowering the special courts to try the notified offences, other offences being tried under the general procedure, as the case may be, by Magistrates or by Sessions Judges on commitment. Though it has been the practice to appoint the Sessions Judges and the Additional Sessions Judges as Special Judges, the offices are distinct. The appellant was tried by the Special Judge under a charge framed under Sections 395/398 I. P. C.

The conviction itself was under a third section, but we are not immediately concerned with it. In the relevant notification Section 395 is mentioned (as well as Section 458 under which the conviction was recorded) but not Section 398 (or as for that matter 397). If Section 398 creates a separate substantive offence, then there is no doubt that the trial was bad for want of jurisdiction. In fact, in two Cases the Madh-Bharat High Court has held that the special courts were not competent to try offences under Section 149, I. P. C., because it is not mentioned in the notification, and Section 149 it has been held by the Supreme Court itself, is one creating a substantive offence.

If on the other hand, Section 398 does not create a new offence, but only provides a principle for the sentence for the offence created by any of the Sections 392 to 395, I. P. C. then there is no illegality in the Special Court trying the case. Whether or not it has framed a separate charge under Section 398 I. P. C. is immaterial the question being whether that section creates a new substantive offence. The only reported case is Emperor v. Nabi Bux, ILR 52 Bom 168: (AIR 1928 Bom 52 (1)) (A), where it was held that Section 398 does not create a substantive offence, but

only regulates the measure of punishment when certain facts are found to exist in the commission of substantive offence of robbery or dacoity.

2. The test is whether the existence of this section renders the offender liable to a punishment more severe than the one, that could be imposed under the section applicable to that particular case of actual or attempted robbery or dacoity. Obviously the answer is 'no'. By virtue of Section 398 I. P. C., the maximum punishment under any of the Sections 392 to 395 is not enhanced. This can be illustrated by taking any of the cases of aggravation that constitute a new substantive offence; -- say Section 394 I. P. C. in relation to the non-aggravated Section 392 I. P. C.

Here the aggravating circumstance is the voluntarily causing hurt, then punishment is something higher than that prescribed in Section 392, I, P. C. In other words, it is an aggravation outside the scope of the milder section. On the other hand, if we call the circumstance mentioned in Section 398 an aggravation, it is one within the section applicable, as it does not add to the sentence prescribed. All that the section says is that this aggravating circumstance should not only be noted by the court, but also lead to sentence of not less than 7 years, but one still within the original section. The result is that there is no new Substantive offence created by that section.

3. On the second ground, it would be convenient to give the relevant facts. The private prosecutor, Dwarika, lived in a village 3 miles away from the house of the appellant. He went to sleep on the night of 7-11-55, after chaining from inside the door of the passage into his house. He woke up on hearing the report of firing and found that an intruder had entered and was near him, armed with a gun. As the intruder had his back towards him, the house owner caught hold of him from behind and snatched the muzzle loading gun from his hand. An alarm was raised, the neighbours collected, and one of them named Chhota jumped into the complainant's house.

He saw that the door leading into the house was open, and chained it from inside, so as to prevent the associates of the arrested man from entering and helping him. Both of them said that there were several others outside; they formed the

impression that they were four in number, but they were not certain. One man, the appellant, was certainly secured and was produced before the Sub-Inspector in the next morning. All these facts, in particular the entry into the house, the door being chained from inside, this man being armed with a fire-arm, and the arrest were fully described in the evidence; the charge itself was for dacoity, which does not include the ingredient of lurking house trespass or of house breaking. Thus it is a case of the charge being under one section and evidence being clearly led on other ingredients as well, and the conviction being under a charge that could have been framed, but was not actually framed, on the materials. Further, an examination of the evidence and statement of the accused does not indicate any confusion in mind in regard to the allegations. Each of the ingredients constituting the offence under Section 458 was clearly before the accused and he has tried to meet all of them.

No doubt it is always advisable to frame a separate charge for each group of ingredients that constitute a separate offence; but when it has not been, the question is whether it is a case coming under Section 237 and saved of Section 535 and there is no prejudice. In this case, there has been no miscarriage of justice caused by the conviction under a charge under Section 458 I. P. C.

4. On the facts the strong point in the prosecution case is that the appellant whose house is about 3 miles away from the place of Dwarika (complainant) was caught in his house at night, armed with a gun. Both the man and the gun were produced before the police officer. The information itself seems to have been dictated by Dwarika on the night itself, and handed over to a messenger, but it was given to the S. I. who came to the village early in the morning having gathered from a wireless message sent by an anti-Dacoity patrol in that locality, that there was report that a dacoit had been caught. There is no reason to disbelieve either of the two main witnesses and the plain fact that the man and his firearm were actually made over to the police.

5. The appellant's story is this. Sometime before the incident there was a dacoity in his house and he gave information to the police. Since nothing came out of it, he complained to the higher police officers that the S. I. was negligent in his case.

Nothing particular is said to have happened after this. In fact, reports of dacoity are quite common in that locality and in many cases little or nothing can be or is done. The informant complained that nothing was done but the S. I. was not inconvenienced at all.

Still the appellant alleged that the S. I. caught him in his own house, marched him 3 miles to the place of Dwarika, borrowed a muzzle loading gun from the latter, and planted it on him, persuaded him and his neighbour to give out a false story and then started this case. The whole thing is fantastic and has no evidence in support of it. Naturally the lower court did not believe it.

6. The sentence of 5 years R. I. under Section 458 I. P. C. is if anything lenient. Here is a case where a man enters another's house at night by jumping a wall or removing the door chain, armed with a fire-arm with no purpose except to commit theft.

7. The conviction and sentence are upheld and the appeal is dismissed.

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