

The State Vs. Genda

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Court : Madhya Pradesh

Decided On : Sep-25-1953

Reported in : 1954CriLJ541

Judge : Dixit, J.

Appellant : The State

Respondent : Genda

Judgement :

ORDER

Dixit, J.

1. This case has been submitted by the Sub-Divisional Magistrate, Chachora to this Court under Section 341, Criminal P. C. The material facts are that the accused Genda who is a deaf and dumb man was charged before the Sub-Divisional Magistrate under Section 326, I. P. C. for having cut the nose of his wife Gendi and also the nose of one Nathua on 9-8-1953. Along with Genda, Hazari, Umariya, Panna, Laxminarayan and Gorelal were also charged for having abetted the offence committed by Genda, After recording the evidence of some prosecution witnesses, the Sub-Divisional Magistrate framed a charge against Genda for an offence under Section 326, I. P. C. He also framed charges against the other accused for offence under Section 326, I. P. C. read with Section 34. When the charge was read out, the accused Genda, by signs, admitted the fact

that he had cut the noses of Gendi and Naihua, The learned Magistrate without proceeding to the end of the trial and without convicting Genda, has referred this case to this Court under Section 341, Cr. P, C. expressing his opinion that Genda had by signs admitted the offence.

2. Mr. Mungre, Government Advocate for the State opposes the reference on the ground that it does not Satisfy the requirements of Section 341, Criminal P. C. I agree with the learned Government Advocate. Section 341, Criminal P. C. reads as follows:

If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

3. It is plain that a reference can be made under Section 341 only if the accused, though not insane, cannot be made to understand the proceedings. If, however, the deaf-mute is intelligent and able to understand the proceedings as for example by means of signs, the provisions of this section cannot be applied and the case of the accused must be dealt with in the ordinary way. The Court must, therefore, find out whether the accused person cannot be made to understand the proceedings against him by means of signs. In the present case the Sub-Divisional Magistrate made no attempt to satisfy himself whether Genda could or could not be made to understand the proceedings by means of signs. He also gave no finding as to the inability of Genda to understand the proceedings. Indeed, the observation of the Sub-Divisional Magistrate that when the charge was read out to him, Genda by signs admitted the cutting of the noses shows that the accused understood the proceedings. Thus the condition that the accused Genda is incapable of understanding the proceedings has not been fulfilled in the present case.

This reference cannot, therefore, be entertained. In this connection I need only refer to the case of - Allah Dia v. Emperor AIR 1929 Lah 840 (1) (A) and - Isso v. Emperor AIR 1943 Sind 237 (B) where it has been held that the Magistrate must

make a proper endeavour to find out whether the deaf-mute accused is capable of understanding the proceedings and must give a finding on that point before proceeding to act under Section 341, Criminal P. C. and that if the accused can be made to understand the proceedings by means of signs, Section 341, Criminal P. C. will not apply.

4. Again it is obvious from the wording of Section 341 that the Court cannot refer a case in the midst of a trial before any conviction or committal takes place. The Court is required to proceed to the end of the trial and it is only if the trial results in a conviction that the question of forwarding the proceedings to the High Court under Section 341 can arise. The mere expression of opinion by the Sub-Divisional Magistrate in this case that the accused by signs admitted the offence does not amount to a conviction. I also think that it would not be safe from certain gesture or signs made by the accused to infer that he admitted the offence,

5. For all these reasons, I return the case to the trial Magistrate and direct him to proceed in accordance with law.

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