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Lachhman Vs. the State

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Court : Madhya Pradesh

Decided On : Sep-10-1955

Reported in : 1956CriLJ374

Judge : Mathur, J.

Appellant : Lachhman

Respondent : The State

Judgement :
ORDER

Mathur, J.

1. This is a revision application by Lachhman, applicant, against his conviction of an offence under Section 326 Penal Code, and the sentence of 6 months' rigorous imprisonment and a fine of Rs. 100/-. The applicant had filed an appeal against this order of conviction but it was dismissed under order dated 6-9-1955 of the 2nd Additional Sessions Judge, Bhopal.

2. The concurrent finding of the two lower Courts is that the appellant had voluntarily caused grievous hurt with a knife. Such a finding cannot be challenged in revision, specially when it is supported by certain circumstances of the case and the defence version given by the applicant cannot be accepted. The applicant had admitted his presence at the time of the assault and the plea taken by him was

that the blow was inflicted by Arjun so as to injure him (applicant) but when he bent down the blow struck the complainant, whereby he received the grievous hurt.

In case there was any truth in the defence version the complainant would have received only one major injury to the most and this injury would have been accompanied by one incised wound or a minor injury. On the other hand, four injuries were found on the complainant. Apparently, the complainant was injured in other circumstances, that is in the manner' alleged by the prosecution.

3. It was urged on behalf of the applicant that he was not properly examined in accordance with Section 342, Criminal P.C. and consequently prejudice was caused to him and the trial was vitiated. Reliance was placed upon - 'Bihari Singh Madho Singh v. State of Bihar' : AIR 1954 SC692 . In this case the Supreme Court held that the trial was vitiated due to the disregard of provisions of Section 342, Criminal P. C as it had resulted in grave prejudice to the accused.

In two cases, - 'Bejoy Chand Patra v. State of West Bengal'. : 1952 CriLJ644 and - 'Kedar Nath v. State of West Bengal' : AIR 1954 SC660 the Supreme Court did not set aside the proceedings and did not order a fresh hearing as in its opinion no prejudice was caused to the accused.

In : 1952 CriLJ644 , it was also observed that the facts of the case being free from any complications and the points in issue being simple, it was difficult to hold that the examination of the accused in that particular case was not adequate; and that when the accused was not fully examined as required under Section 342, Criminal P.C. it could not be said that it had materially prejudiced him. : 1952 CriLJ644 , can be applied to the present case, the facts of which are also free from complications and the point in issue was very simple,

4. The applicant is said to have been prejudiced in his defence as his attention was not drawn to the fact that four injuries, and not only one or two, were found on the person off the complainant and consequently he was not in a position to give his explanation as to how these injuries were or could be inflicted and to show that the injuries did fit in with the defence version.

In my opinion, no prejudice has been caused to the applicant as a result of his non-examination under Section 342, Criminal P.C. The prosecution witnesses including the doctor had deposed that four injuries were found on the complainant. This point was of such a simple nature that it could not have been forgotten by the applicant (accused) an the time he gave his defence version.

In any, case the applicant was not likely to change his defence version after he had mentioned it before the trial Court in his statement knowing fully well that thereby his case would become weak and on this ground alone the defence plea may be disregarded. At the risk of repetition it may be added that if Arjun was assaulting the applicant and had no intention to injure the complainant, he (Arjun) would not have continued to assault the complainant but would have checked himself on finding that the opponent had escaped unhurt.

Thus the four injuries were likely to be re-celved only if the complainant was attacked by a hostile party, for example, the applicant. In other words, even if the apolicant was properly examined under Section 342, Criminal P.C. the result of the trial would have been the same. No' prejudice was thus caused to him.

5. However, for the information and guidance of the Criminal Courts, I would lay great importance to the proper examination of the accused as required by Section 342, Criminal P.C. and also as laid down by the Supreme Court in - 'Tara Singh v. The State' : [1951]2SCR729 . It is necessary that all the evidence and circumstances on which the prosecution places reliance should be put to the accused for his explanation, if any, at the earliest possible stage.

Thus, where the accused is examined, or has to be examined at two stages, the accused should be examined at either occasion with reference to the evidence which has already come to the record, but at the same time avoiding to repeat the same questions all over again unless necessary for proper examination of the accused.

For example, in summons case this will be done only once after the prosecution witnesses have been examined and before the accused is called upon to give his defence, in view of the fact that in such cases the trial starts with the examination

of the accused, as laid down in Section 242. Criminal P.C. and not with the examination of prosecution witnesses.

It may here be mentioned that even the initial examination of the accused should not be of a cursory nature. It is necessary that the accused should be informed of the particulars of the offence i.e., substance of the accusation, and not merely of the section under which, or the offence of which he is charged.

If this precaution is taken, any admission of guilt made by him can be used in full against him. Similarly, in warrant cases all the evldence and circumstances standing against the accused should be put to him for his explanation first of all when he is examined before the framing of the charge, and any additional evidence or circumstance coming on record after this stage is to be put to him for his explanation, if any, when he is examined under Section 342, Criminal P.C. after the close of the prosecution evidence.

In Sessions trials, Sessions Judges will have to take a similar precaution. A detailed examination of the accused would be necessary, if it is found that the committing Magistrate had not properly followed the procedure laid down in the Code of Criminal Procedure and did not put to the accused all the evidence and circumstances standing against him.

Similarly, if any additional evidence or circumstance comes on record during the trial, such evidence or circumstance must be put to the accused for his explanation during the trial. In order to save time and to avoid the possibility of any legal objection being raised in appeal the Sessions Judges would be well advised to themselves thoroughly examine the accused during the trial,

6. It has further been noticed that the accused persons are not examined with reference to what the various witnesses have deposed, but are asked in the form of a question if on a particular date, time or place they have committed the offence, viz., had committed murder or voluntarily caused simple or grievous hurt. Such an examination, in one way, amounts to cross- examination of the accused and is not warranted by the provisions of the Criminal Procedure Code.

The examination of the accused should be in the manner laid down in : [1951]2SCR729 , namely, that the accused persons should be told what particular witnesses have deposed and then they should be asked what they have to say about it. By way of additional precaution certain general questions can also be put to the accused as, in my experience, illiterate accused persons specially those belonging to the rural areas do not in majority of the cases give out the details of their enmity with the witnesses when examined in the above manner.

Presumptions to be drawn by the Court should also be put to the accused for his explanation. Thus the examination of the accused would be in the following form:

(a) Witnesses, A, B, C and D, have deposed that on ...(give here the date, time and place of occurrence) you assaulted X with a spear and thereby caused his death and committed murder. What have you to say about it?

(b) Witnesses, A, D & E, have deposed that ... (for reasons to be given) you were on inimical terms with the deceased. (What have you to say about it)

Where presumption has to be drawn, the question to be put to the accused can be in the following form:

(a) The prosecution case is that you knew or had reasons to believe that the properties, L. M. and N, were stolen properties, that is, properties which were removed by the thieves in the above theft. What have you to say about it

The three general questions can be:

(i) Why are the prosecution witnesses giving evidence against you?

(ii) Will you give defence?

(iii) Have you anything else to Say?'

In addition, the Sessions Judges will have to read over the statement made by the accused in the Committing Court to him for his explanation, as to whether it was correct and was properly recorded.

7. The Magistrates and Sessions Judges should know that the above directions are not exhaustive but are by way of illustration. They will have to exercise their own discretion, depending upon the circumstances of the case, while examining the accused persons. The sum and substance of the Supreme Court ruling and of Section 342, Criminal P.C. is that all the circumstances or the evidence to be used against the accused should be put to him for his explanation.

The Magistrates and Sessions Judges should realise that in certain cases where prejudice has been caused to the accused, the appellate Courts may disregard such circumstances or evidence as had not been put to the accused for his explanation. The safe guide would, therefore, be not to omit to put to the accused any piece of evidence or circumstance of the case which may subsequently be used against him.

8. Th3 revision application has thus no force and is hereby rejected summarily. The applicant is in Jail and he should be released after he has undergone the sentences awarded to him including the sentence in default of payment of fine, if the fine is not paid.

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