

In Re: Randhir and anr.

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Court : Madhya Pradesh

Decided On : Sep-29-1961

Reported in : AIR1962MP239

Judge : P.R. Sharma, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 307; Evidenc Act, 1872 - Sections 3; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207A(6) and 437

Appeal No. : Criminal Revn. No. 103 of 1961

Appellant : In Re: Randhir and anr.

Advocate for Def. : R.S. Bajpai and ;J.P. Gupta, Advs.

Advocate for Pet/Ap. : H.N. Dwivedi, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

P.R. Sharma, J.

1. This revision application has been preferred against the order dated the 17th of July, 1961 passed by the First Addl. Sessions Judge Morena, in Criminal Revision No. 42 of 1961, whereby he directed the present applicants to be committed to the

Court of Sessions to stand their trial for an offence under Section 307, I. P. C.

2. The facts giving rise to the case are that on 28-12-1959 a fight took place between Rameshwar and his brother Babu on the one hand and the present applicants along with certain others on the other side in the course of which both parties received injuries. The police Ambah after due investigation submitted challans against both parties for offences under Sections 323 and 307 read with Section 34, I. P. C. In Criminal Case No. 120 of 1960 out of which the present revision application arises the Magistrate First Class Ambah observed on perusal of the papers filed along with the challan that it was difficult to hold that the intention of the accused was to cause death. He, therefore, ordered that a charge Under Section 325, I. P. C. be framed against Randhir and that Rajaram be tried on a charge Under Section 323, I. P. C.

3. In the first place it would appear from the medical certificate that Rameshwar had an incised wound measuring $1\frac{3}{4}$ ' X $1\frac{1}{4}$ ' X $1\frac{1}{4}$ ' on the right parietal region as a result of which there was bleeding from the right ear. The patient was in an unconscious state at the time of his admission in the hospital. An X-ray examination revealed fracture of the skull. Another certificate of the medical officer Civil Dispensary Ambah discloses that the patient continued to be unconscious for 5 or 6 days after his admission to the hospital. An injury caused on the skull with a sharp-edged instrument which was attended with such consequences could in all probability have ended in death. I am, therefore, of the opinion that the learned Magistrate ought not to have held without examining the doctors under whose treatment Rameshwar was kept that the injuries on his head were not such as could in all probability have resulted in death.

Since it was a case of a pitched fight between the two parties the persons who took part on either side would prima facie be constructively liable for the offences committed by other members of their party. At any rate the question of constructive liability of Rajaram for the offence committed by Randhir was a matter which could be decided only after the entire circumstances of the case had been proved by legal evidence. A Committing Court is not supposed to take upon itself the responsibility of deciding what offence will ultimately be found proved against

each accused at the conclusion of the trial. An attempt of this nature by the Committing Magistrate to usurp jurisdiction to try a case of such a serious nature by framing a charge for lesser offences cannot be too strongly deprecated. An injury was caused to Rameshwar with a 'farsa' on the head which resulted in fracture of the skull. Rameshwar remained unconscious for a number of days and thereafter developed symptoms of neurosis due to brain injury. Certainly in a case of this nature a charge Under Section 307, I. P. C. against Randhir and Section 307. read with Section 34 along with Section 323, I. P. C. against Rajaram was called for.

The learned counsel for the applicants did not seriously dispute this position when faced with the medical certificates showing fracture of Rameshwar's skull. He, however, contended that since the Magistrate had framed a charge for lesser offences against the present petitioner the Sessions Judge could not in exercise of his powers under Section 437, Cri. P. C. set aside the order of discharge in respect of the offence Under Section 307, I. P. C. According to the learned counsel Section 437, Cri P. C. would not apply to those cases where a charge for some offence is framed by a Magistrate against the accused.

4. It has been held by the Lahore, Madras, Andhra Pradesh and Patna High Courts as also by the Nagpur Judicial Commissioner's Court that the word 'discharge' in Sections 430 and 437, Cri. P. C. includes the case of a person partially discharged.--(See Sultan Ali v. Emperor, AIR 1934 Lah 164; In re Nalla Baligadu, AIR 1953 Mad 801 (FB); In re Valluru Narayana Reddy, AIR 1955 Andhra 48; Ganga Datta v. Emperor, AIR 1936 Nag 87, and Rambalam Pd. Singh v. State of Bihar, AIR 1960 Pat. 507. The Allahabad and the Calcutta High Courts have, however, taken a contrary view--(See Naharsingh v. State, AIR 1952 All 231 (FB) and Yunus Shaikh v. State, AIR 1953 Cal 567).

5. Cruer, J. in Ganga Datta's case, AIR 1936 Nag 87 (supra) observed that 'where a Magistrate deliberately frames a charge on a minor section instead of the major section, on which the case starts, his action is equivalent to a discharge with regard to the major offence'. It was held that in such a case the Sessions Court would have power to interfere with the order of discharge. It would make no

difference whether the implied order of discharge was passed in committal proceedings or in a case triable by a Magisterial Court, AIR 1953 Mad 801 (supra) a Full Bench of the Madras High Court dissented from the view of the Allahabad High Court and held that when a Magistrate discharges an accused in respect of an offence exclusively triable by a Court of Sessions and proceeds to try him himself for an offence within his jurisdiction, it will be open on the language of Section 437, Cri. P. C. to the District Magistrate to direct the committal of the accused for trial 'upon the matter of which he has been improperly discharged.' It was observed that the word 'matter' is elastic enough to comprehend a single charge or a plurality of charges, a single offence or a plurality of offences, a part of a case or the whole of a case.

Desai, J. who delivered the leading judgment in Naharsingh's case, AIR 1952 All 231 (FB) (Supra) referred to the provisions of Section 209, Cri. P. C. which lay down that if the Magistrate does not find sufficient grounds for committing the accused person for trial he will record his reasons and discharge him. If the Magistrate holds that the person could be tried before himself or some other Magistrate there could be no discharge at all. I am afraid it is not possible to accept this reasoning. All that the word 'unless' in Section 209, Cri. P. C. signifies is that the Magistrate is not bound to record his reasons for framing a charge for a minor offence. A person who is accused of an offence must be deemed to have been exonerated from that accusation when he is not charged with that offence. The mere fact that he is charged With a lesser offence does not alter the fact that he cannot be tried for the major offence of which he was accused, unless he is charged with it. It must, therefore, follow that a person accused of a major offence is discharged in respect of that offence even in a case where a charge for a lesser offence is framed.

The learned Judge further observed that under the Code there can be no discharge if proceedings still continue against the accused in the case. I for one fail to see that if a person who is tried on a charge for a major offence but is convicted of a minor offence must be deemed to be impliedly acquitted of the major offence, why the same reasoning should not be applied to imply a discharge in respect of an offence for which a prosecution was launched but on which no

charge was framed by the Magistrate. In the Calcutta case, AIR 1953 Cal 567 the accused was held not to have been improperly discharged. The Court did not hold that no order of discharge was impliedly passed.

6. I would, for the reasons stated above, prefer to follow the view taken by Gruer, J. in Ganga Datta's case, AIR 1936 Nag 87 (supra) which is supported by the decisions referred to by me above of the Madras, Patna Lahore and Andhra Pradesh High Courts. Lastly I would like to refer to the decision in Rambalam Pd. Singh's case, AIR 1960 Pat 507 (supra). It was observed therein that where two views are possible on the evidence it is the duty of the Magistrate to commit the accused for trial. Where this was not done the accused must be deemed to have been improperly discharged in regard to the offence triable exclusively by the Court of Session.

7. In the counter-case arising out of the Same incident the accused were committed to stand their trial in the Court of Session. In the present case in spite of the fact that Rameshwar deceived an injury with a sharp-edged weapon on a vital part of the body which had resulted in fracture of the skull, it is difficult to understand why the learned Magistrate declined to commit the accused for trial before the Court of Sessions. I am clearly of the opinion that on the merits the action taken by the learned Magistrate in framing a charge for lesser offences against the present applicants merely on perusal of the papers filed with the challan was altogether unjustified.

8. I would, therefore, hold that the learned Addl. Sessions Judge acted rightly in directing the Magistrate concerned to commit the accused for trial to the Court of Sessions,

9. In the result this revision application has no force and is hereby dismissed.