

In Re: Beda

In Re: Beda

SooperKanoon Citation : sooperkanoon.com/524145

Court : Orissa

Decided On : Jan-14-1969

Reported in : AIR1970Ori3; 35(1969)CLT218; 1970CriLJ60

Judge : A. Misra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 341

Appeal No. : Criminal Ref. No. 1 of 1968 (Deaf & Dumb)

Appellant : In Re: Beda

Advocate for Pet/Ap. : A.B. Misra, Adv.

Judgement :

ORDER

A. Misra, J.

1. This is a reference Under Section 341 Cr. P. C. by the Sub-divisional Magistrate. Athmallik forwarded by the Sessions Judge, Cuttack-Dhenkanal.

This pertains to Beda alias Suramani Sahu (accused No. 3) who along with two others charged with offences Under Sections 302, 324 and 323 read with Section 34 I. P. C. has been committed to take his trial before the Court of Session. After making the commitment, the learned Magistrate has made the present reference having come to the conclusion that the said accused who is deaf and dumb is

incapable of being made to understand the proceedings.

2. Shri A. B. Misra, learned counsel appearing for the State points out that before making the reference, the learned Magistrate should have made adequate enquiries about the antecedents of the said accused, an endeavour to find out as to how his friends and close relatives are accustomed to communicate with him in ordinary affairs, got him kept under medical observation and thereafter recorded his own conclusions. In this case, no such steps appear to have been taken and the learned Magistrate seems to have come to his conclusions on the basis of his impression and made this reference. Therefore, learned counsel for the State suggests, as was done in a Kerala case reported in AIR 1957 Ker 9, In re: Padmnabhan Nair Narayanan Nair, to issue necessary directions to the Sessions Judge. who is to try the case, to ascertain and satisfy himself whether the said accused can be made to understand the proceedings and thereafter proceed with the trial.

3. The learned committing Magistrate has simply observed as follows:

'During committal enquiry, it came to light that accused Beda alias Suramani Sahu is not able to understand the proceedings of the enquiry as he happens to be deaf and dumb.'

He appears to have reached the aforesaid conclusion simply on the ground that the said accused is deaf and dumb. This manner of coming to a conclusion by the learned Magistrate is neither proper nor helpful to this Court. Apart from observing the demeanour and conduct of the said accused and being influenced by the fact that he is deaf and dumb, the learned Magistrate does not seem to have made any attempt or taken any steps to make him understand the proceedings of the court. So also, no endeavour seems to have been made to find out as to whether it was not possible for any of the relations or friends of the said accused to communicate with him by signs and as to whether it would not be possible for such a person to interpret the proceedings of the court by means of such signs to him. In the decision reported in AIR 1960 Mys. 315, State v. N. Maktumsab Jatgat, it has been observed:

"The fact that the person is deaf and dumb does not necessarily mean that he cannot understand or cannot be made to understand the proceedings before a court, though the disability is undoubtedly a serious handicap to communication either way. Before the Court of enquiry or trial forwards the proceedings to the High Court Under Section 341 Cr. P. C., it must be satisfied that the accused cannot be made to understand the proceedings and the enquiry or trial must result in a commitment or a conviction.'

Similarly, in the decision reported in AIR 1960 Bom 526, State v. Radhamal, it was observed:

'When it is alleged in any criminal proceedings that an accused is deaf and dumb, the court may proceed with the enquiry or trial, but it should first enquire into the antecedents of the accused and should also make an endeavour to find out as to how his friends and close relatives are accustomed to communicate with him in ordinary affairs and record its own conclusions, if necessary, by taking evidence.'

In the Kerala case referred to by the learned counsel, though the learned Magistrate who conducted the earlier stage of the enquiry had got the accused kept under medical observation and the doctor's evidence had also been taken to the effect that the accused was deaf and dumb and unable to hear and reply to questions put by him, the Court observed:

'The enquiry as to the capacity of the accused to understand the proceedings in court preceded the preliminary enquiry. The Magistrate who conducted the latter enquiry did not endeavour to see whether the accused can be made to understand the proceedings, xxxxx It is the court's duty to make a proper endeavour to see whether the accused can be made to understand the proceedings.'

4. Thus, it is well settled that before making a reference Under Section 341 Cr. P. C. it is obligatory on the court to make necessary enquiries and endeavour to find out if the accused can be made to understand the proceedings and come to a definite conclusion. In the present case, the learned Magistrate has simply recorded his conclusion that the accused is deaf and dumb which, in my opinion, is hardly sufficient to make such a reference. Any way, as the commitment has

already been made, it is for the learned Sessions Judge who will try the case to satisfy himself about the capacity of the accused to understand. If it is found that the accused cannot be made to understand the proceedings, the court can convict him, if the evidence warrants it, but it cannot pass sentence against him. The court must forward the proceedings to this Court for such orders as the court thinks fit. On the other hand, if the court finds that it is possible for the accused to be made to understand the proceedings, the trial will proceed in the ordinary way and the court, if the accused is found guilty, convict him and pass sentence. Therefore, I direct that the learned Sessions Judge should first ascertain for himself whether the accused Beda alias Suramani Sahu can be made to understand the proceedings with the help of his relations or friends, if any such person is available, and if he considers necessary, he may keep him under medical observation to enable him to, come to his conclusion. If he finds that¹ the said accused can be made to understand the proceedings, he will proceed in the ordinary way. If on the other hand, he is satisfied that the said accused cannot be made to understand the proceedings of the court, the procedure prescribed Under Section 341 Cr. P. C. should be followed. The learned Sessions Judge will see that the said accused gets the necessary legal assistance, if he finds him undefended. The trial will proceed against him on the basis that he has pleaded not guilty to the charge and all possible defences open to him, in the circumstances of the case, shall be taken into consideration. The reference stands disposed of accordingly.