

Patar Munda Vs. State

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Court : Orissa

Decided On : Sep-13-1957

Reported in : AIR1958Ori69; 23(1957)CLT428; 1958CriLJ541

Judge : P.V.B. Rao and ;Das, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 324 and 353; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 218; High Court Rules; High Court Order; Contempt of Courts Act, 1952 - Sections 1

Appeal No. : Criminal Appeal No. 133 of 1955

Appellant : Patar Munda

Respondent : State

Advocate for Def. : Government Adv.

Advocate for Pet/Ap. : Sk. Rahenoma, Adv.

Judgement :

P.V.B. Rao, J.

1. The appellant was convicted by the learned Sessions Judge of Mayurbhanj, Shri A.R. Guru, on the offences punishable under Sections 302, 324 and 353. I. P. C., and was sentenced to imprisonment for life under Section 302, I. P. C., but no

separate sentences were passed under Sections 324 and 353, I. P. C. The learned Sessions Judge also directed that the knife (M. O. I.) was to be returned to P. W. 8 and the axe (M. O. II) was to be returned to P. W. 10 after the expiry of the period of appeal if there be no appeal, or after the disposal of the appeal if there be any; and that if P. Ws. 8 and 10 or any of them disliked to take back, they might be forfeited to the State Government. No order was passed with regard to the rifle (M. O. III) for its disposal as it belonged to the Government.

2. The prosecution case is briefly as follows: Shri Nirmal Chandra Patnaik, Sub-Deputy Collector (P. W. 20) was camping in the local school of Erundei village having gone there to distribute Takabi loans. A police force consisting of about four constables were attached to his camp to guard the cash meant for distribution as Takabi loans. P. W. 8 Shaymsudar Rout and P. W. 9 Bhagaban Rout were also there to write out papers-receipts, loan bonds and declarations on behalf of the illiterate villagers on payment of writing charges.

It is stated that on the date of occurrence (16-2-1955) a number of villagers of Kumadabahali under Ghatgan Police station including the appellant had gone there to receive loans; that P. Ws. 8 and 9 prepared the necessary documents for them and also took the thumb impressions of the applicants; that when the appellant was either putting his thumb impression or had just finished, he suddenly picked up the knife (M. O. I.) lying in closed condition by the side of the petitioner P. W. 8; that when P. W. 8 wanted to take it back it is stated, that the appellant dealt a blow on his cheek which slipped to his shoulder causing a minor injury; and that the appellant ran to one of his co-villagers, namely, Mutu Munda (P. W. 2) after opening the blade and dealt him a stab.

Then when his co-villager (P. W. 3) Budhan Munda intervened, he was also given a stab, and then the appellant ran to another co-villager Routa Munda (P. W. 5) and dealt him also a stab. There was a great commotion and confusion and people began to flee away. The appellant also, while running away came across Lalmohan Mahanta (P. W. 14) and dealt him a stab. Then he went on running and met his co-villager Lada Munda (P. W. 1) and dealt him also a stab as also Ratha Munda (P. W. 4).

It is stated, then the appellant met Pallam Kolhani (P. W. 6) near the house of her son-in-law the deceased Lada Munda and dealt her a stab. It is the case of the prosecution that then the appellant chased Leda Munda and that when Leda Munda entered one of his rooms and wanted to shut the door against the appellant, the latter dealt a stab wound to the deceased who fell down at the threshold. Thereupon the appellant threw the knife and brought out an axe from the house of Leda Munda when the constable (P. W. 21) who was chasing the appellant armed with his rifle containing five rounds of ammunition arrived at the place to apprehend the appellant.

The appellant rushed at him brandishing his axe notwithstanding the fact that the rifle with its bayonet had been pointed out against him. The constable, it appears fired the rifle, but curiously enough it did not explode. The appellant then aimed a blow with the axe at the constable who caught hold of the appellant, and then charged the appellant with the bayonet which struck the appellant on his chest. The appellant then caught hold of the rifle and though the constable struggled against the appellant, the constable fell down and the rifle went off his hand and the appellant ran away with the rifle leaving the axe in the hand of the constable.

It is also the prosecution case that the constable followed the appellant asking him to return the rifle, but the appellant refused saying that unless he was cured of the wound inflicted on him, he would not return the rifle. The constable gave up the chase as it became dark and returned to the School.

3. It is next stated by the prosecution that the appellant returned home with the rifle and told his mother (P. W. 23) and his brother (P. W. 24) in presence of his wife late Mani Kolhani that he had a fight with the constable and was wounded and so he had to snatch away the rifle from the constable; and that he also injured 3 to 4 persons. Then the appellant took only some water, refused to take rice, complained of pain and slept on a charpoy keeping his rifle below it.

Next morning, on the asking of the choukidar (P. W. 22), P. W. 24 removed the rifle and gave it to the Chokidar who then apprehended the appellant. The Choukidar tied the appellant with a rope and while the appellant was being taken to the Thana, the Thana Officer (P. W. 26) met them on the way and arrested the

appellant.

4. The deceased Leda Munda, after being given the blow, fell down, but subsequently got up from the place, moved towards his Bari and died there. The Investigating Officer seized the knife (M. O. I.) from the house of the deceased Leda Munda, the axe (M. O. II) on production by the constable and the rifle containing five rounds of ammunition on production by the Choukidar (P. W. 22) as also some blood-stained articles. None of the blood-stained articles was sent to the Chemical Examiner,

5. P. W. 27 the Medical Officer examined all the injured persons as also the appellant. The Medical Officer found one stab wound on each of them which was simple in nature caused by short sharp-edged weapon and he was of opinion that they might have been caused with a knife like M. O. I. or the bayonet except the wound found on the person of P. W. 8 which was only a linear scratch on the right molar region with ecchymosis around it, P. W. 27 held the postmortem examination on the deceased on 17-2-1955 and found only one punctured wound about 1/2' x 1/2' x 1 1/2' on the left side of the neck about 1/2' above the middle of the left clavicle.

On dissection, it was revealed that the left sub-clavian artery was cut and enormous clotted blood was found underneath the skin and along the muscular walls of the neck muscles. According to his opinion, the injury was ante-mortem and death was due to sudden excessive haemorrhage and shock arising from the fatal punctured wound in the neck.

6. The appellant pleaded not guilty and stated that as the constable charged him with a rifle and inflicted a wound on him, he snatched it from him and went home with that. He pleaded ignorance if he assaulted P. W. 8 and suggested that it might have been due, if at all he injured him, to unsoundness of mind and denied having injured the others except P. W. 14 whom he never saw there. He also denied having stabbed the deceased.

7. The prosecution examined about 27 witnesses. P. Ws. 1 to 3, 5, 8, 9, 13 to 15 and 18 deposed to the assaults near about the place where the petition-writers

were scribing. All these witnesses spoke to one or other assault on the injured persons except the deceased. The assault on P. W. 6 and on the deceased were deposed to by P. Ws. 10, 16, 17 and 19. The struggle with the constable was deposed to by these witnesses as also by P. Ws. 1 and 12. After a careful consideration of the evidence, the learned Sessions Judge came to the conclusion that it was proved that the appellant caused injuries to P. Ws. 1 to 6, 8 and 14.

8. The learned counsel appearing for the appellant placed the evidence of these witnesses before us and we are of opinion that the finding in this respect of the learned Sessions Judge cannot be assailed. The learned counsel contended that the conduct of the appellant, according to the evidence in the case, was such as would lead one to find that the appellant was mentally unsound at the time and as such was protected under Section 84 of the Indian Penal Code.

The evidence, it must be stated, shows that there was absence of any apparent motive. The appellant suddenly picked up the knife and went on assaulting one after the other uttering not a single word and making no discrimination of choice and was running away in a zigzag way and not straight. But on this evidence as also the evidence of the Medical Officer and the subsequent conduct of the appellant, it cannot be held that at the time of the several assaults the appellant by reason of unsoundness of mind was incapable of knowing the nature of the act or that his act was either wrong or contrary to law.

The mother, the brother and the wife of the appellant gave positive evidence that the appellant never suffered from any insanity and was managing all the domestic affairs and was also doing the cultivation work; and that the appellant went to get loans after taking his meal. According to their evidence, on his return in the evening with the rifle, on being questioned the appellant gave answers like a sane man. Therefore it is clear that the appellant behaved like a sane man and exhibited no signs of abnormality before and after the occurrence. His reply to the constable when the rifle was demanded also appears to be rational.

He did not object to the seizure of the rifle by the Choukidar and when the Choukidar wanted to tie him with a rope, he asked the choukidar not to tie him saying that he would go out of his own accord. He was an in-patient in the hospital

for 3 or 4 days and was discharged after that. The Medical Officer does not say that he showed any symptoms of mental derangement.

Therefore I cannot accept the contention of the learned counsel that the acts of the appellant come under Section 84 of the Indian Penal Code.

9. The occurrence at the house of the deceased is with regard to the charge under Section 302, I. P. C., as also the assaults on P. Ws. 6 and 21. According to P. W. 10 the wife of the deceased, she and her mother (P. W. 6) were in the Bari when the deceased came running suddenly, caught hold of the hair of P. W. 6 and dealt a stab causing a bleeding injury and P. W. 6 fell down. P. W. 10 deposed that her husband was nearing her mother on seeing the assault but she asked him to run away as the appellant was armed with a knife.

When the deceased was trying to shut the door, it is stated that the appellant dealt a stab on Leda Munda. According to the evidence of this witness, the assault on the deceased was just on the threshold of the room; P. Ws. 16, 17 and 19 deposed to having seen not only the assault on P. W. 6 but also the assault on the deceased. They followed the appellant, but they did not say before the Investigating Officer that they saw the assault on the deceased.

The learned Sessions Judge did not accept the evidence of P. Ws. 16, 17 and 19 that the appellant assaulted the deceased and in my opinion correctly. According to the evidence of P. W. 21, he was the first man to run after the appellant and others were behind him and he was the first man to arrive at the house of the deceased. He stated that when he passed the injured P. W. 6 and went up to the house of the deceased, the appellant came out with an axe and engaged him.

The learned Sessions Judge based the conviction of murder on the statement of P. W. 10 as an eye-witness corroborated by what passed earlier and what passed subsequent to the assault made on the deceased as also on the fact that M. O. I. the knife which was identified to belong to P. W. 8 was lying at the place of occurrence and was seized by the Investigating Officer as also the identification of the axe M. O. II. P. W. 21 stated that it was with this axe that the appellant engaged him and that he took it from the appellant's hand and produced the same

before the Investigating Officer.

On the important point whether the deceased was still inside the house or came out when the appellant engaged him, the witnesses P. Ws. 10 to 12 on the one hand and P. W. 21 on the other materially differed. According to P. W. 21, the constable, he loaded the gun when he neared Leda Munda's house and saw the appellant coming out of the house of Lada Munda with the axe M. O. n when he fired the gun which did not explode and he was the first man to arrive in the house of Leda Munda. He stated that the injured old woman told him that the appellant had entered inside the house after wounding her and when he went near the house, the appellant was coming out of it. He stated before the Investigating Officer that he went up to the threshold of the door of the house. It was suggested that he was on guard position at the door and when the deceased came out, he charged him with the bayonet mistaking him to be the appellant.

10. In cross-examination, the Medical Officer P. W. 27 stated that the punctured wound on the deceased could have been produced with the help of the bayonet. According to this witness, the Injury on the appellant might have been caused by some short sharp-edged weapon like the bayonet M. O. III, and it was an incised wound of about $3/4'$ x $1/5\ 1/4'$ on the left pectoral region about 2' above the left nipple.

On this evidence, the learned counsel contended that the injury on the deceased might have been caused by P. W. 21 the constable by mistake or accident and must not have been caused by the appellant. As the Medical Officer described both the injuries on the deceased as well as on the appellant as having been caused by some short sharp-edged weapon and as he also opined that the wound on the deceased could have been produced with the help of the bayonet, we wanted to have a view of the rifle with the bayonet M. O. III as also the knife M. O. I, when this point was being argued on 22-4-57.

11. On being told that the material objects were not received in this Court, we sent for the Registrar who informed us that there was a previous observation made by me when such a lacuna was observed, to send for the material objects in criminal appeals. He stated that according to the rules the Sessions Judges should send

the records to the appellate Court along with the necessary material objects.

As the material objects were not available on that day, this appeal was adjourned till the receipt of the material objects. Accordingly the Deputy Registrar sent a telegram on the very day 22-4-1957 to the District Magistrate, Keonjhar to send the material objects in this case to which he received a reply dated 23-4-1957 to the effect that the material objects in the original Sessions Case No. 14-K of 1955 had been destroyed except a rifle which had been sent to police reserve and the District Magistrate solicited instruction if the rifle would be sent.

The important material object on which the contention raised by the learned counsel for the appellant would depend is the knife M O. I. and this was destroyed during the pendency of the appeal and also contrary to the directions given by the learned Sessions Judge. I would revert to this object and comment upon the way in which the material objects are dealt with by the courts below. But for purposes of the criminal appeal it is enough to state that the important material object which conclusively determines the guilt or otherwise of the appellant in view of the contentions raised before us by the learned counsel for the appellant is not there.

The contention of the learned counsel is that in view of the medical evidence in this case it is quite probable that it is the constable P. W. 21 who gave the blow to the deceased by mistake or accident, but it is not the appellant who gave the blow to the deceased on account of which the latter died. In view of the evidence discussed above with regard to the charge under Section 302, I. P. C., and in view of the absence of the material object on which the learned counsel wanted to rely to convince us of the correctness of his argument, we have no other alternative but to hold that it is not proved beyond all possibility of doubt that the appellant gave the fatal blow to the deceased with M. O. I., which caused his death. Consequently, the conviction and sentence of the appellant under Section 302, I. P. C., must be set aside.

12. The learned counsel next contended that the offence of assaulting a public servant in discharge of his duty is not made out. He contends that at the time when the constable was assaulted, he was not performing any duty. I cannot accept this contention. The appellant was being chased by the constable as he

inflicted several wounds to several persons with a penknife. Causing hurt with a short sharp-edged instrument is an offence punishable under Section 324, I. P. C., and it is a cognisable offence. The constable is entitled to arrest the appellant for having inflicted injuries with the knife and if he is assaulted, it is clearly an offence under Section 353, I. P. C.

13. It is therefore clear that the appellant is guilty, for the reasons stated above, under Sections 324 and 353, I. P. C. The offence under Section 324, I. P. C., is punishable with imprisonment for 3 years and that under Section 353, I. P. C., with imprisonment for two years. The judgment of the learned Sessions Judge was delivered on 17-10-1955. Thus the appellant has undergone the sentence for about 1 year and 11 months.

The learned Sessions Judge did not pass any separate sentence for convictions under these two sections. We therefore convict the appellant under Section 324, I. P. C., as well as under Section 353, I. P. C., to rigorous imprisonment for the period already undergone under each of the sections. The conviction and sentence under Section 302, I. P. C., having been set aside and in view of the sentence of the other two offences being to the period he was already in jail, we direct that the appellant be set at liberty forthwith.

14. A very sad state of affairs is disclosed during the hearing of this appeal which I cannot ignore but must comment upon, in the hope that such things may not recur hereafter or the practice, if it is not according to the law, may be discontinued.

15. In my judgment in Criminal Appeal No. 25 of 1955 delivered in or about November, 1956 I observed on the submission from the Bar

'I may note that it is necessary at least in cases where accused were charged and tried for murder, material objects should be sent to the appellate Court so that the appellate Court may have a view of the material objects which in my opinion may help in determining the nature of the offence committed in the particular case. But I find that it is not the practice in this State to send for material objects. It would be a healthy rule if material objects are sent to the appellate Court along with the case record.'

In consequence of this observation a file was started and the Registrar brought to the notice of the Hon'ble Chief Justice the observation made by me in the said criminal appeal as also the existence of Rule 64 at page 26 of the General Rules and Circular Orders, Criminal, Volume I that the Sessions Judge should forward such of the material exhibits as in his opinion will be of importance at the hearing in the High Court; that it is important to send all material objects directly connecting the accused with the crime; and that in murder cases all weapons, garments and other articles which are relied upon by the prosecution to prove the identity of the murderer or his victim should invariably be forwarded.

This rule is mandatory, but the Sessions Judges never followed it. In Circular Letter No. 1 of 1935 Sessions Judges, according to the note of the Registrar, were further instructed that Selections of material Exhibits for despatch to the High Court should be made by themselves and not left to their subordinates and they had been asked to carefully consider the matter in each case at the time of conducting the trial and prior to forwarding the record pass a specific order in the order sheet as to which of the material objects, if any, are to be forwarded therewith.

The note of the Registrar further showed that the personal attention of the Sessions Judges was again drawn in Court's General Letter No. 1 of 1936 to the aforesaid rule and instructions for strict guidance. Consequently, the Registrar by his note dated 5-12-1956 suggested to the Full Court that a further general letter be issued drawing the attention of all the Sessions Judges to the aforesaid rule and instructions and impressing upon them the necessity of strict observance of the same in future. The Hon'ble Chief Justice agreed with this note as also the other Judge. A general letter was accordingly ordered to be issued by the Registrar on 11-12-1956 and it was issued as General Letter No. 6 of 1956.

16. In view of my observation in Criminal Appeal No. 25 of 1955 and in view of the orders and observation made on the file, the Registrar should have also, in addition to the issue of the General Letter, asked the respective Sessions Judges to send the material objects in appeals pending by December 1956 and only after the receipt of the material objects should have shown the appeals as ready for

hearing.

In spite of these proceedings which were initiated by the Registrar himself in consequence of my observations in Criminal Appeal No. 25 of 1955 the Registrar did not send for the material objects before this appeal was listed for hearing. But when asked for an explanation, the Registrar simply avoided and shifted the responsibility to the Deputy Registrar though initially in the first instance he stated that it was neither possible nor practicable on his part to submit any explanation personally for any matter of omission or commission done by the office and consequently he put up the explanation of the dealing assistant through the Deputy Registrar with his comments.

When the Court asked the Registrar on the date on which the appeal was being heard to explain why the material objects in that appeal were not sent for, it is astonishing that the Registrar should submit an explanation of the dealing assistant through the Deputy Registrar and himself to the Court. The explanation submitted by the dealing assistant also is not at all satisfactory.

It says, after referring to the rule in General Rules and Circular Orders, the office was not sending for material objects in Criminal Appeals unless the Court required them at the time of hearing, that such was the practice from the time of Patna High Court and that since the issue of the General Letter No. 6 of 1956 the office was calling for the material objects in recently instituted criminal appeals.

It also says, with regard to this criminal appeal and other criminal appeals of 1955, the records were long ago sent to the copying department for preparation of the paper books; that the criminal appeals had to be shown in the ready list immediately in pursuance to the Hon'ble Chief Justice's direction that all 1955 cases should be shown ready expeditiously and that there would have been further delay in the hearing of these order cases if they would have awaited receipt of the material objects.

This explanation is, in my opinion, nothing but a distortion of facts. The Hon'ble Chief Justice could never have insisted to show all criminal appeals of 1955 in the ready list. In my opinion, he must have instructed the office to make all criminal

appeals of 1955 ready for hearing soon. Making criminal appeals ready for hearing means and includes not only preparation of the paper books but getting the material objects also, and if the material objects were not brought it was incumbent on the Registrar or according to him the Deputy Registrar to have brought to the notice of the Hon'ble Chief Justice that those criminal appeals could not be shown in the ready list as the material objects were not received instead of giving them in the hearing list practically when they were not in effect ready for hearing.

17. When I adjourned the appeal on 22-4-57 to be put up for further hearing after the material objects were received, the Deputy Registrar, as already stated, sent a Telegram to the District Magistrate to send the material objects. I do not understand why a telegram was not sent to the Sessions Judge who is in law in seisin of the material objects or at least a copy of the telegram was not sent to him.

The Additional District Magistrate sent a reply by wire the next day that the material objects had been destroyed except a rifle which had been sent to police reserve and solicited instruction if the rifle would be sent and the Deputy Registrar on 24-4-57 sent a telegram to send the same through a special messenger. The rifle was received through a special messenger by the office on 26-4-57, and all these facts were noted on the respective dates in the order sheet of the appeal, The so-called explanation of the dealing assistant submitted to me through the Deputy Registrar and the Registrar is dated 29-4-57 and the last sentence in the note of the Registrar submitting the same to me which is dated 1-5-57 is 'I may also mention here that the M.Os available in Criminal Appeal No. 133 of 1955 have since been obtained.' The fact of the destruction of the other material objects was not referred to though the destruction of M.O. is a serious matter.

18. Under Section 218, Cr P. C., the committing Magistrate shall send the charge, the record of the inquiry and any weapon or other thing which is to be produced in evidence in the Court of Sessions. Rule 64 of General Rules and Circular Orders, Criminal, Volume I directs that in submitting the record to the High Court the Sessions Judge should also forward the material objects 'to the High Court.

Under Rule 23, Chapter I, Part III of General Rules and Circular Orders, Criminal, Volume I, no article which has been admitted in evidence shall be returned or destroyed until the period of appeal has expired or until the appeal has been disposed of, if an appeal is preferred against the conviction and judgment.

19. From these provisions of law and rules, it is clear that the Sessions Judge is in custody of the material objects from the day the commitment order is received by him till they are destroyed by his order and they should not be destroyed till the disposal of an appeal is filed. Notice of appeal was issued in this case to the District Magistrate on 22-11-55 and a copy of the same was forwarded to the Sessions Judge on the same day.

The Sessions Court sent the records which were received in this Court by 2-12-55, but the material objects were not sent. The Sessions Judge is thus aware of the pendency of the appeal in this Court as also the District Magistrate. Under these circumstances, I cannot understand how the material objects could have been destroyed as intimated by the Additional District Magistrate.

I therefore directed, in my note dated 11-5-57, the Registrar to enquire from both the Sessions Judge and the District Magistrate as to when the material objects were destroyed, by whom they were destroyed and under whose authority they were destroyed or otherwise dealt with and also to state at once why the material objects were destroyed during the pendency of the appeal and before it was disposed of, contrary to the directions in the judgment of the Sessions Judge.

The District Magistrate by his letter dated 11-6-57 enclosing therewith the explanation of the Sub-Divisional Magistrate in original as also the explanation of the Court Sub-Inspector with the remarks of the Prosecuting Inspector thereon stated, 'The mistake lies with the Court Sub-Inspector Shri Gandharsen Biswal who did not care even to ascertain whether the case had gone up for appeal or not. From the Malkhana Register of the Court it is ascertained that even as late as 12-1-58 when the Court Sub-Inspector took up the Malkhana Register to the Sub-Divisional Magistrate, he had not made any entry therein to the effect as to whether an appeal had been Instituted or pending. The order of the Sub-Divisional Magistrate regarding the disposal appears to have been passed in implicit faith in

the Court Sub-Inspector and with no mala fide intention.....Action is being taken against the Court Sub-Inspector Shri Gandharsen Biswal.' But the Court uptill now has not been informed what action was taken. In the copy of the letter from the Sub-Divisional Magistrate submitted along with the report of the District Magistrate, it is stated that since the original case, was disposed of on 17-10-55, the period of filing appeal extended up to 16-12-55; that although appeal was preferred by the accused in the meantime and the intimation to that effect was given to the Court Office on 5-12-66, the then C. S. I., Sri Gandharsen Biswal did not enter the said letter of Intimation in the appeal register and the Malkhana register as well; that on the other hand, he came to him with the Malkhana register on 12-1-56, that is to say, after the appeal period was over for orders regarding disposal of exhibits in this case; that at the time of obtaining orders there was neither any entry in the Malkhana register that an appeal had been pending nor did he point out that the appeal had at all been preferred; that the C. S. I wrote out in the Malkhana register for destruction of the weapons of violence leading him to believe that the Court of Sessions had passed such orders and obtained his signature on it; that as he was very much busy in the execution and implementation of various development programmes he honestly believed in the statement of the C. S. I and put his signature on the order written by him; and that he had not the slightest intention to go beyond the orders of the Sessions Judge and as such the order passed by him was more due to inadvertence than with intention to disobey the direction for which he offered his apology to the District Magistrate.

The Court Sub-inspector in charge stated that the Court Sub-Inspector Shri Gandharsen Biswal was responsible for obtaining this order from the Sub-Divisional Magistrate without reference to the intimation of appeal and the judgment of the Sessions Judge. The Prosecuting inspector noted that the initial mistake and fault lay at the C.S.I., G.S. Biswal who was not alert to the appeal intimation and the orders of the learned Sessions Judge with regard to the disposal of the properties and that he failed in his duty to produce the judgment before the Sub-Divisional Magistrate and probably made him believe that orders of destruction have been passed in respect of other exhibits except the rifle.

These letters clearly show that nobody entrusted with the duty of keeping the material objects is alive to his responsibility. The District Magistrate in law, has the control over the Malkhana. The Sub-Divisional Magistrate appears to be actually put in charge of the same. The material objects in pending cases in the Magistrate's Court as also in this part of the State all cases pending in the Sessions Court are always kept in the Malkhana.

The material objects afford very important evidence in certain cases. These are kept in the actual custody of the Court Sub-Inspector who belongs to the police force and from the correspondence stated above, there seems to be no effective control even by the magistracy who has also to perform the executive functions. This is a very regrettable state of affairs. The explanation of the Sub-Divisional Magistrate, as seen from his letter to the District Magistrate, reveals a lack of sense of responsibility.

In this case the material evidence in the case afforded by the material objects is destroyed contrary to the terms of law and the directions of the Sessions Judge in the judgment, deliberately by the Court Sub-Inspector and negligently, as he says, by the Sub-Divisional Magistrate. This serious dereliction of duty and breach of the law, assuming that it does not amount to causing disappearance of evidence, ought not to be allowed to go on unchecked.

I therefore think, it is necessary in the interests of justice that the Sub-Divisional Magistrate Shri K.C. Mohapatra and the Court Sub-Inspector Shri Gandharsen Biswal should be asked to show cause why they should not be committed for contempt and I therefore direct that notice should be issued to them both to that effect.

20. The learned Sessions Judge by his letter dated 24-6-57 in reply to the letter of this Court stated that according to the practice of that sessions division, the exhibited material objects are returned to the respective Court Sub-Inspectors after the disposal of the Sessions cases although there is no rule in the General Rules and Circular Orders to support it; that the material objects in question were returned to the Court Sub-Inspector. Keonjhar after the disposal of the case of 17-10-55 and after referring to the explanation of the Sub-Divisional Magistrate, a

copy of which was sent to him, stated that the material objects were disposed of by the Court Sub-Inspector without the knowledge of the Sessions Judge and that by the time they were disposed of, Shri D.N. Das was the Sessions Judge.

It is unfortunate that even senior and experienced Sessions Judges in charge of the sessions divisions ignore the mandatory provisions of the Criminal procedure Code that they should be In custody of the material objects from the date of commitment of the case to the date of disposal of the Sessions case and the disposal of the material objects in accordance with the directions in the judgment.

It is better in the interests of justice that the-Sessions Judges are directed to be in custody of the material objects in all cases which are committed to them by the committing Magistrate as without that the provisions of the Criminal Procedure Code cannot be held to have been complied with. It is a very improper practice to allow material objects in cases triable by Sessions Courts, where sometimes the lives of individuals are at stake, in the. custody of a Court Sub-Inspector who is a member of the police force,

Das, J.

21. I agree with the orders proposed.

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