

State Vs. Bauri Bissoi and ors.

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Court : Orissa

Decided On : Nov-19-1968

Reported in : AIR1969Ori286; 35(1969)CLT248; 1969CriLJ1419

Judge : G.K. Misra and ;S. Acharya, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 337(2) and 337(2A)

Appeal No. : Govt. Appeal No. 9 of 1965

Appellant : State

Respondent : Bauri Bissoi and ors.

Advocate for Def. : S. Mohanty, ;R. Mohanty and ;D. Subudhi, Advs.

Advocate for Pet/Ap. : Standing Counsel

Disposition : Appeal allowed

Judgement :

G.K. Misra, J.

1. The respondents, 24 in number, were charged under Sections 148, 454, 427, 380 and 395/149, I. P. C. for unlawfully entering upon the paddy field of one Abdul Samad and removing the crops and also for having committed dacoity in his house. In view of the fact that the case is not being finally disposed of, it is not

necessary to state the details of the prosecution case and the defence. After trial, all the respondents were acquitted and the State has filed this appeal against the order of acquittal,

2. In course of hearing, it came to our notice that Biswanath Sahu, (P. W. 13) was an approver. He had not been examined in the committing Court. A question was raised whether the commitment and the trial are vitiated on account of his non-examination.

3. Section 337, Criminal P. C., so far as is relevant, runs thus:--

'Sub-section (2). Every person accepting a tender under this section shall be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

Sub-section (2-A). In every case where a person has accepted a tender of pardon and has been examined under Sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court, as the case may be'.

The effect of these two sub-sections came up for consideration in AIR 1962 Guj 283 (FB), *Kalu Khoda v. State*. Their Lordships held that the committal proceedings and the order would be illegal if, in breach of Sub-section (2) of Section 337, the committing Magistrate commits an accused to the Court of sessions without the prosecution examining the person who has been tendered pardon and who has accepted the same.

This decision was followed in AIR 1967 Orissa 82, *P. Apparao v. State* and (1966) 1 Andh WR 390, *Public Prosecutor v. K. S. Rajanna*. There is no dissenting voice. It is thus clear that the commitment order dated 20-5-64 in G. R. No. 275 of 1963 is illegal and is liable to be quashed. The commitment order being illegal, the sessions trial is contrary to law and the judgment under appeal is a nullity and must be set aside. In view of this conclusion, the judgment of the learned Assistant Sessions Judge, dated 21-12-64 acquitting the respondents is set aside.

4. The next question for consideration is whether on account of the delay in not examining the approver, for which the prosecution is solely responsible, the entire prosecution would be quashed or whether the case must go back to the committing Court to proceed the committal proceedings after examination of the approver. There is no provision of law that on account of the delay this Court would quash the prosecution. In the aforesaid Gujrat case direction was given to continue the committal proceedings and to dispose of the case in accordance with law. That would be the correct view.

5. In the result, the judgment of the learned Assistant Sessions Judge is set aside and the appeal is allowed. The commitment order is also quashed. The case would go back to the committing Court who would proceed with the committal proceedings wherein he would examine the approver. He would then dispose of the case in accordance with law and the observations made above.

Acharya, J.

6. I agree.