

State Vs. Suwa and ors.

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Court : Rajasthan

Decided On : Nov-20-1961

Reported in : AIR1962Raj134

Judge : L.N. Chhangani and; P.N. Shinghal, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 251A(7)

Appeal No. : Criminal Appeals Nos. 131, 132, 134, 137 and 139 of 1960

Appellant : State

Respondent : Suwa and ors.

Advocate for Pet/Ap. : Raj Narain, Asst. Govt. Adv.

Disposition : Appeals allowed

Judgement :

Chhangani, J.

1. This is a group of five appeals, all directed against separate orders of acquittal passed by Munsif-Magistrate, First Class, Thana Gazi, in cases under the Rajasthan Excise Act, and they all raise a common question of law, viz., whether in a warrant case instituted on a police report it is open to a Magistrate, after recording some evidence, to cut short the trial and refuse to examine the

remaining prosecution witnesses and to proceed to record an order of acquittal ?

2. The facts in the five appeals are similar though not exactly the same. We may set out the facts of criminal appeal No. 131 of 1960 for appreciating and deciding the question of law formulated above and the decision in that appeal will govern the decisions in the remaining appeals also.

3. On June 9, 1959, the Excise Inspector Thana Gazi, recovered at the instance of the accused Suwa son of Lanhu, Kumhar of Chaturpura two pots full of 'pas', one 'degh', one 'babri' and one condenser--Implements for distillation of liquor--and one bottle of illicit liquor. On the basis of this recovery, a charge sheet under Section 16 read with Section 54 of the Rajasthan Excise Act was submitted against the accused in the Court of Munsif-Magistrate, Thana Gazi. The accused disowned the recovery.

A charge under Section 54 (d) of the Rajasthan Excise Act was framed against him and the case was fixed for recording the prosecution evidence on the 27th of October, 1959. On that date, all the witnesses of the prosecution were present but the Magistrate examined two 'motbirs' in the first instance. They, however, did not support the prosecution case and made statements completely favouring the accused. They stated that nothing was recovered at the instance of the accused and that he had been falsely implicated. In view of these statements of the prosecution witnesses the Magistrate considered it unnecessary to record the evidence of the remaining witnesses of the prosecution and ordered the acquittal of the accused.

4. Respondents, in spite of notices, have not cared to appear. We have therefore heard the Assistant Government advocate appearing for the State, gone through the record of the case and examined the legal position with his help.

5. The procedure for the trial of warrant cases instituted on police reports is fully and completely set out in Section 251-A of the Code of Criminal Procedure. Sub-sections (1) to (6) of that section provide for various matters viz., verification by a Magistrate as to whether the requirements of Section 173 have been complied with Or not, determination by the Magistrate on consideration of the documents as

to whether a charge should be framed or the accused should be discharged, framing and explaining the charge, recording of the plea and fixing of a date for the examination of witnesses. Then follows Sub-section (7) which reads as follows:-

'On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution.'

The proviso to the sub-section deals with cross-examination of witnesses and is not relevant for our purposes. The remaining sub-sections provide for the recording of the defence evidence and the final finding whether the accused is guilty and deserves to be convicted, or is innocent and deserves to be acquitted. Thus Sub-section (7) is important in determining the question formulated above. Its provisions are of a mandatory nature and on a plain reading thereof there can be little doubt that the Magistrate is bound to take all such evidence as may be produced in support of the prosecution. The sub-section does not contemplate a premature termination of the trial by the Magistrate refusing to examine the relevant and proper evidence of the prosecution.

The position becomes very clear when a reference is made to Section 253 which deals with the discharge of the accused in cases instituted on private complaints. Under that section, ordinarily, the Magistrate is expected to record all the evidence of the prosecution, but Sub-section (2) thereof enables a Magistrate to discharge the accused at an earlier stage i.e., without recording the full evidence of the prosecution, if, for reasons to be recorded, he considers the charge to be groundless.

It is thus clear that where the legislature contemplated a premature termination of an inquiry or trial, it made an express provision for that purpose. Besides, an examination of Section 256 Criminal P. C. shows that, after the charge is framed, an order of acquittal can follow only a complete trial and termination of the trial by shutting out the prosecution evidence is not permissible.

Reverting to the procedure prescribed for case instituted on police reports, we may observe that Sub-section (2) of Section 251-A provides for an order of discharge after the Magistrate has considered the documents referred to in Section 173 and

has, where necessary examined the accused, and heard the parties. He is empowered to discharge the accused on a consideration of these materials if he finds the charge to be groundless. An examination of the witnesses being unnecessary at that stage, there is no need for a provision similar to that of Section 253 (2).

However, after the framing of the charge, an order of acquittal, without a full trial, was not contemplated under Section 256 which still applies in the case of warrant cases instituted on complaints and, 'therefore, could not be said to be intended under Section 251-A (7) which prescribes the new procedure for cases instituted on police reports. This is why there is no Provision similar to that of Section 253 (2) in Section 251-A. The absence of such a provision is significant and leads to the conclusion that when a Magistrate does not consider it proper to discharge the accused and frames a charge, there is no power left with him to cut short the trial by shutting out the prosecution evidence. A consideration of the other provisions of the section and the scheme disclosed by them also supports the above conclusion.

6. In this view of the matter, we must answer the question set out above in the negative and hold that it is not competent for a Magistrate to record only a part of the evidence in a warrant case instituted on a police report, and to refuse to record the rest of it and to proceed to pass an order of acquittal.

7. Mr. Raj Narain contends that the order of the learned Magistrate is self-contradictory. He has invited our attention to a portion of the judgment ending with the following observations.

^ [kkldj bl lwjr esgt ;fn nwljh lkgnr eku ysusij dkb Qk;nk bLrxklk dks ugha gksxk A**

Mr. Raj Narain's argument is that, properly translated, this would mean that the Magistrate has recorded a conclusion that even if the evidence of the remaining witnesses (expected to fully support the prosecution case) is believed, the prosecution would not get any benefit out of it. His main emphasis is on the word 'man lene par' which according to him mean 'even believing their evidence'. There can hardly be any doubt that, on the above interpretation, the Magistrate's

observation would be self-contradictory for, if the statements of the remaining witnesses are taken to support the prosecution and are believed, it cannot be understood why the prosecution would not be benefited. A reliance on these statements means proof of the Prosecution case and that, in turn, would imply that the evidence of the motbirs who had not supported the prosecution case would be unreliable.

We are, however, inclined to think that the Magistrate did not use an apt expression and did not really mean what has been inferred by Mr Raj Narain. What he perhaps thought was that the motbirs had introduced such deficiencies in the prosecution case that it was not expected to be proved even on a consideration of the evidence of the remaining witnesses if they completely supported the prosecution case. We would, however, leave this matter here as, even apart from this cryptic observation of the learned Magistrate, the order of acquittal is wholly untenable for the reason that the Magistrate committed a serious, illegality in shutting out the prosecution evidence in utter disregard of the mandatory provisions of Sub-section (7).

There is another line of reasoning which also leads to the same conclusion. It cannot be seriously doubted that the prosecution need not be bound by the statements of a few witnesses only and after all the evidence is led it has a right to make a submission for the acceptance of the evidence of some witnesses and for the rejection of the evidence of witnesses who do not support the prosecution case for some reason or the other and it is the duty of the Courts to adjudicate on such submissions after carefully weighing the conflicting evidence. An order refusing to examine the entire evidence of the prosecution and disposing of the case only on partial evidence would evidently prevent the prosecution from effectively making submissions for weighing the conflicting evidence and accepting some of it while rejecting the rest

It may also be observed that the trial Courts are not, ordinarily final Courts of facts and the prosecution has certainly a right to claim an appraisal of the conflicting evidence by the superior Courts of appeal and revision and the trial Courts cannot with any justification deprive the prosecution of this right. For

recognising and safeguarding the right, it is necessary that the trial Courts should not prevent the prosecution from bringing on record the entire relevant evidence. Thus, looked at from various angles, the order of the Magistrate is clearly erroneous and cannot be maintained.

8. We accordingly accept these appeals, set aside the orders of the Magistrate acquitting the accused, and direct retrials. The cases may be sent to the District-Magistrate concerned who will send them for trial to a Magistrate other than the Magistrate who tried them originally.

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