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Court : Rajasthan

Decided On : Mar-07-1952

Reported in : AIR1953Raj133

Judge : Wanchoo, C.J. and; Bapna, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 423, 423(1) and 535

Appeal No. : Criminal Appeal No. 108 of 1950

Appellant : The State

Respondent : Nanak and anr.

Advocate for Def. : Utsav Lal, Adv. and;Hukma in Person

Advocate for Pet/Ap. : Sumer Dan, Adv.

Judgement :

Wanchoo, C.J.

1. This is an appeal by the State against the acquittal of Nanak and Hukma by the Sub-Divisional Magistrate, Ganganagar.

2. The prosecution story was briefly this. On the evening of 13-5-1949, Ram Chander was returning from the shop of his son-in-law and going home. When he passed by the houses of some 'Nais', he saw Hukma and Nanak hiding there. As

he passed in front of them, he saw that they were armed with 'gandas' and Nanak asked him to stop. Hukma then asked Nanak to shoot Ramchander with a pistol. On hearing this, Ramchander turned round and thereupon he was immediately attacked by Nanak with the 'gandasi'. He fell down injured and thereupon Hukma gave him another 'gandasi' blow on his left hand. A number of people who were passing that way, intervened and the assailants ran away. Information was sent to Ganpat, nephew of Ramchander, and he came and removed Ramchander to his house. The matter was reported in 'thana' Chunawarh the next day at 3 P.M., the distance to the 'thana' from the village Lalgah where the incident took place being 18 miles.

3. It is not necessary for us to consider the evidence in detail at this stage for we have come to the conclusion that there should be a retrial. It is enough to say that the learned Public Prosecutor has taken us through the evidence and we are satisfied that the case should be sent back for retrial because of certain grave formal defects in the framing of the charges. We find that the charge against Nanak was that he had along with Ganpat attacked Ramchander on the way. There is an obvious mistake in this charge as it was nobody's case that Ganpat was one of the assailants with Nanak.

There was then a graver mistake about Hukma. The other charge which should have been against Hukma was, however, framed by the Magistrate against Ganpat and Ganpat was charged along with Nanak for having caused injuries to Ramchander. Further, this charge against Ganpat does not even bear the signature of the Magistrate. Obviously therefore, no charge was framed against Hukma at any stage and the case has resulted in the acquittal of Hukma without any charge having been framed against him.

4. Our attention has been drawn to Section 535, Criminal P. C., which provides that

'no finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed, unless in the opinion of the, Court of appeal or revision, a failure of justice has in fact been occasioned thereby.'

It is urged that in view of this provision, we can convert the finding of acquittal into a finding of conviction and sentence Hukma also, even though no charge was framed against him. We are, however, of opinion that this provision does not go as far as has been urged on behalf of the State. The provision is merely to the effect that any finding or sentence would not become invalid on the ground that no charge had been framed. If we were to confirm the order of acquittal we could use Section 535, Criminal P. C. and hold that the acquittal was correct. We may refer in this connection to two cases which have taken a similar view, namely, -- 'Empress v. Gurdu', 3 All 129 and -- 'Emperor v. Abdur Rahman', AIR 1927 Lah 109.

5. In the Allahabad case, there was an acquittal after a proper trial though no charge had been framed by mistake. Thereafter, there was an attempt to revive the matter and try the accused person a second time and it was held that though the charge had not been drawn up, the explanation to Section 216, Criminal P. C., which corresponded to Section 535 of the present Code, was a bar to a fresh trial because the acquittal could not be held to be invalid merely on the ground that no charge had been framed.

6. In the Lahore case, there was an acquittal and an appeal. It was then discovered that no charge had been framed. The learned Judges allowed the appeal and ordered that there should be a retrial from the stags of the charge. They were of opinion that the defect could not be condoned and the accused could not be, convicted in appeal. This case is similar to the Lahore case and as we are of the opinion that the appeal should be allowed, the proper course is to send the case back for retrial.

7. Learned counsel for the State, however, urges that so far as Nanak is concerned, charge was framed against him even though there is a mistake in it, and that in his case we should decide the matter finally. We are, however, of opinion that the case against both Nanak and Hukma is common and it would be prejudicing the case of Hukma if we were to decide the case against Nanak finally. It seems to us that in the interest of justice, it is necessary that the acquittal should be set aside and the case sent back for retrial from the stage of the charge against

both the accused.

8. We, therefore, allow the appeal, set aside the acquittal of Nanak and Hukma, and send the case back for retrial from the stage of the charge, i.e., the Magistrate will frame fresh and proper charges against Nanak and Hukma and proceed with the trial of the case from that stage. The case will go back to the District Magistrate, Ganganagar, who will either try it himself or transfer it to any Magistrate competent to do so except Thakur Loon Singh. Hukma is present and is ordered to file a personal bond of Rs. 200/- to appear before the District Magistrate of Ganganagar on 8-4-1952.

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