

In Re: Subramania Aiyar

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SooperKanoon Citation : sooperkanoon.com/778216

Court : Chennai

Decided On : Jul-24-1928

Reported in : (1928)55MLJ676

Appellant : In Re: Subramania Aiyar

Judgement :

ORDER

Curgenvan, J.

1. The petitioner was convicted of an offence under Section 323, Indian Penal Code, by the Sub-Magistrate of Aruppukottai and sentenced to pay a fine of Rs. 10. The conviction and sentence have been upheld on appeal by the Sub-divisional Magistrate, Ramnad. I propose to consider first whether there are grounds for revising the trial judgment, and then whether the appellate judgment is open to exception in revision.

2. The trial judgment is attacked upon two grounds : (a) the learned Sub-Magistrate gave an unsustainable reason for disbelieving D.Ws. 1 and 7, and (b) evidence of a conversation between the accused and the Sub-Magistrate alleged to have occurred on 9th November, 1926, was excluded. I can see little substance in point (a). The Sub-Magistrate states that D.W. 7, the proprietor of the motor car which injured the complainant's son, was interested in the motor accident case and so naturally denied having paid any money. That is a fair comment upon the

evidence. It may be going rather far to say that his admission would make him criminally liable, though indeed such a belief would not be unreasonable in the witness, and it would be quite natural to wish to suppress an attempt at composition, as an acknowledgment of at least civil liability. As regards point (b), the defence case is that the accused, who is a Village Munsif, was on the '9th November questioned by the Sub-Magistrate, in the presence of the Circle Inspector, about his omission to report the accident. On the ground that the Sub-Magistrate's evidence was needed upon this point, an application for transfer was presented to the District Magistrate. The learned District Magistrate seems to have misapprehended the purpose of this application, which was clearly enough stated in paragraph 5 of the petition, and rejected the application on the ground that there was no sufficient reason to fear bias on the part of the Sub-Magistrate. In view of the action I propose to take, I do not wish to say anything which might be used by the one side or the other, as to the effect upon the case of assault, of either this alleged conversation or of a connected matter - genuineness of Ex. I. It was open to the petitioner, as soon as the District Magistrate's adverse order was passed, to come up to this Court with an application for transfer; and his omission to do so, in my view, disentitles him now to ask for revision upon this ground. Nor have I any material in the shape of affidavit or otherwise upon which to conclude that any evidence which the Circle Inspector who was a defence witness might give upon this topic was excluded. I do not think, therefore, that there are grounds for reversing the trial judgment.

3. Coming now to the appellate judgment, the main point taken is that the learned Sub-divisional Magistrate deemed it necessary to take additional evidence under Section 428 of the Code of Criminal Procedure, further examining as a Court witness, the Circle Inspector who has already deposed as a defence witness, and that that course was in the circumstances unjustified. The learned Sub-divisional Magistrate gives his reasons in his judgment for taking this additional evidence - the Sub-Magistrate had failed to ascertain what information the accused had given against P.W. 2's son, who is a constable and when his report against P.Ws. 2 and 4 was made. It is urged that these are not such points as an Appellate Court is entitled to elucidate by the reception of further evidence. The suggestion is made, but I think it is groundless, that there was an expectation that the additional

evidence would prove unfavourable to the accused. On the other hand, so far as appears, there was nothing to show that it would not afford a demonstration of the alleged grounds of hostility between P.Ws. 2 and 4 on the one side and the accused on the other. There is certainly nothing,, in the terms of Section 428, Criminal Procedure Code, to preclude an Appellate Court from endeavouring by this means to ascertain the value of statement made by a defence witness, or to limit the application of the section to the reception of merely formal evidence, which in the peculiar circumstances dealt with in *Varadarajulu Naidu v. King-Emperor* : (1919)37MLJ81 was all that the learned Judges who decided that case felt justified in approving. Nor, having regard to the difference in language, are the decisions passed under the corresponding provision in the Civil Procedure Code (Order 41, Rule 27) any trustworthy guide. I cannot, therefore, accept the objection that, in principle, the Appellate Court exceeded the discretion vested in it by taking this additional evidence.

4. There is, however, one respect in which the learned Sub-divisional Magistrate has failed to take note of the evidence, and a consideration of which might have led him to a different view of the attitude of P.W. 2. This is nothing less than an admission by P.W. 2 himself that his son was transferred at the accused's instance. I cannot say that the failure to take this admission into account may not have led the Appellate Court to place a false value upon this witness's evidence, to say nothing of the evidence of the Circle Inspector, and so have vitiated the finding. I feel compelled upon this ground to set aside the judgment in appeal as not being based upon all the material evidence in the case. For the reasons that I have given, I do not go further and direct the exclusion of the additional evidence taken. The appeal will be re-heard and disposed of by a Magistrate other than the Sub-divisional Magistrate whose judgment has been set aside, should that officer be in charge of the same Court when the appeal comes on for hearing.