

In Re: Reference from Tinnevelly Sessions

In Re: Reference from Tinnevelly Sessions

SooperKanoon Citation : sooperkanoon.com/778992

Court : Chennai

Decided On : Apr-08-1946

Reported in : (1946)2MLJ243

Appellant : In Re: Reference from Tinnevelly Sessions

Judgement :

ORDER

1. Three persons were charged by the committing Magistrate both with murder and with theft in a building. When the matter came before the Sessions Court, the Sessions Judge purported to act upon the suggestion contained in Rule 156 of the Criminal Rules of Practice, separated the charges under Sections 302 and 380 of the Indian Penal Code and proceeded only with the trial under Section 302. He convicted the first and third accused and acquitted the second accused. The two convicted accused appealed to this Court; but before the appeal was heard, the Public Prosecutor withdrew the charge under section' 380 against the appellants and they were acquitted. In appeal, this Court held that it had not been proved that the third accused was guilty of murder. In its judgment, however, it indicated that it would have convicted the third accused under Section 411 of the Indian Penal Code had it not been for the circumstance that she had already been acquitted of the charge under Section 380, Indian Penal Code. The learned Judge has pointed out in the reference under consideration that the judgment of this Court contains no reference to Section 240 of the Code of Criminal Procedure and has asked for instructions as to what he should do in future cases of a similar nature.

2. A charge must be framed by the committing Magistrate under Section 210 of the Criminal Procedure Code against a person committed by him to Sessions. The Code of Criminal Procedure makes no provision for the framing of a fresh charge by the Sessions Court; but Section 226 of the Code of Criminal Procedure enables the Sessions Court to add to or alter the charge or to frame one if the Magistrate omits to do so. It would therefore seem that the charge against the accused in the Sessions Court is the charge as framed by the committing Magistrate subject to such addition or alteration as the Sessions Judge may make. Since a charge has already been framed before a case comes before the Sessions Court, any withdrawal of a charge against an accused would operate as an acquittal and would bar a re-trial of the accused on that charge unless Section 240 operated.

3. In his modified charge, the learned Sessions Judge did not include the charge under Section 380 of the Indian Penal Code and so, unless the charge of the committing Magistrate can be read together with the charge read out to the accused in the Sessions Court, the withdrawal of the charge would result in an acquittal that would bar a re-trial; for Section 240 only applies to charges containing more heads than one framed against the same person. It is perhaps possible to regard the charge in the Sessions Court as the charge framed by the committing Magistrate subject to the alterations made in the charge under Section 226. If so, then Section 246, would apply and the third accused could have been re-tried. There is, however, some doubt, whether Section 240 would apply; because of the omission of the learned Judge to include the charge under Section 380, Indian Penal Code, in his revised charge. We therefore consider that the Sessions Judge, confronted with a mixed charge of murder and an offence against property, should either take the charge framed by the committing Magistrate and adopt it or, if he wishes to change the charge in any way, he should include in the modified charge all the various heads found in the charge of the committing Magistrate; so that it can be seen at a glance that the terms of Section 240 would apply.

4. In any case, we consider it desirable--even in the interests of the accused--that the Sessions Judge should not permit the withdrawal of the other charge by the Public Prosecutor until the appeal time has expired and, if an appeal has been

filed, the appeal has been disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com