In Re: Krishna Pannadi

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Court : Chennai

Decided On : Oct-16-1929

Reported in : (1930)58MLJ352

Appellant : In Re: Krishna Pannadi

Judgement :
ORDER

Jackson, J.

1. The petitioner has been sentenced to one year's rigorous imprisonment for stabbing a man in the neck with a spear, and six months' rigorous imprisonment concurrently for hurting a man in S.C. No. 158 of 1928, Coimbatore. In S.C. No. 1.57 of 1928 he was the complainant, with the plea that certain of the prosecution witnesses in S.C. No. 158 had set upon him.

2. There is no clear law as regards the procedure in counter-cases, a defect which the legislature ought to remedy.

3. It is a generally recognised rule that such cases should be tried in quick. succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished.

4. This precludes the danger of an accused being convicted before his whole case is before the Court, and also prevents there being conflicting judgments upon

similar facts. But at the same time the rule involves obvious difficulty. It seems to infringe the fundamental principle that the Court must not import any facts into a case which are not to be found upon the record. To take an illustration, suppose in the first of the cases the accused succeeds in showing that the prosecution has failed to prove its charge, and then in the second case the same accused as complainant goes into the witness box and breaks down in cross-examination so as to convince the Court that the truth lies with the other side : Can the Court be expected to dismiss this circumstance from its mind, and if it does not do so, what legal justification is there for importing it into the case already heard ?

5. The only way in which such a procedure can be justified is by setting up a fiction that the case and the counter-case are really one; and this fiction should be made a reality by statute. If a Court were empowered to link cases, as they link files in a secretariat, there would also be the incidental advantage of a great saving of time. At present in each case the evidence of every witness must be fully recorded, and what P.W. 1 says for the prosecution in one case must all be written out again when he repeats it as D.W. 1 in the other case.

6. But whether there be a statutory enactment or not the point remains that for practical purposes a case and its counter are one, and it is this that makes these general observations particularly germane to the present case, because the Lower Courts have entirely ignored this principle.

7. The learned Assistant Sessions Judge, when the two cases were referred to him, changed their order for some reason which the record does not divulge, and proceeded to try 158 before 157. Then, when 158 was concluded he wrote his judgment upon it and the Public Prosecutor had no other course open to him than to withdraw 157 which that judgment had irrevocably discredited.

8. The learned Sessions Judge on appeal finds that this procedure did not prejudice the accused. 'There was no restriction regarding the manner in which he might defend himself. There was nothing to prevent him from examining in his defence all his own prosecution witnesses.'

9. That no doubt is true; but on the other hand there was nothing to compel him to do so; and when he expected all these prosecution witnesses to be examined in his own case, he was probably well advised not to subject them to an earlier cross-examination. Was the accused ever warned that if the Judge was against him on the first case, the second would be dropped Presumably not; and if he was not warned, it can never be said that he was not prejudiced.

10. There was, as the learned judge observes, no actual illegality in taking up this case first and disposing of it before the other was heard; but it offends against the accepted practice.

11. He adds 'the Public Prosecutor having requested that this curie might be tried first, the Assistant Sessions Judge was well within his rights in acceding.' The Assistant Sessions Judge should certainly have left a note explaining on what the request was based, and why he acceded. In its absence there arises a suspicion that the Public Prosecutor suggested that he would succeed in 158 and then it would not; be necessary to try 157; and, if so, the suggestion was scarcely proper.

12. As the accused was not given the opportunity which he expected would be given him of examining all his evidence, there must be a retrial.

13. There is one point upon which this Court offers no opinion but which should be borne in mind. If it is found that the accused was going on duty (apparently the sentence was enhanced on some such consideration) what was he doing with a spear?

14. The finding and sentence are cancelled and petitioner is ordered to be retried by the District Magistrate or any Magistrate subordinate to him having jurisdiction and no previous connection with the case.

15. He may remain on bail till the case is concluded.