

Kali Pada Das and ors. Vs. State

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Court : Kolkata

Decided On : Feb-01-1957

Reported in : AIR1958Cal186,1958CriLJ499,61CWN339

Judge : Debabrata Mookerjee, J.

Acts : [Evidence Act, 1872](#) - Section 145; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 439

Appeal No. : Criminal Revn. No. 1416 of 1956

Appellant : Kali Pada Das and ors.

Respondent : State

Advocate for Def. : Rabindra Narayan Chakravarti, Adv.

Advocate for Pet/Ap. : Bijoy Kumar Bhowse, ;Provash Chandra Mullick and ;Gurudas Bhattacharjya, Advs.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. These three petitioners have been convicted by a Magistrate of the First Class, Howrah, under Section 323 of the Indian Penal Code and each sentenced to pay a

fine of Rs. 20/- in default, to suffer rigorous Imprisonment for five days. The petitioners applied to the Sessions Judge of Howrah for a reference to this Court with the recommendation that the convictions and sentences be set aside. The learned Judge, however, declined to interfere. The petitioners then obtained the present Rule.

2. The prosecution case briefly is that on 20-1-1954, at about 5-45 p. m. when the complainant was taking tea at a tea shop, petitioner Kamdeo appeared and told him that his brother was calling him to his house. The complainant came out of the shop and while he was proceeding towards his house, he was dragged inside Dolgovinda Sing Lane and assaulted with lathi, fists, blows etc., by the petitioners. At the approach of witnesses the miscreants left the place, and the complainant thereafter lodged information at the Golabari P. S. He also reported the matter to his office at Netaji Subhas Road and showed the injuries to the men there. Upon these allegations the petitioners were charged under Sections 147 and 323 of the Indian Penal Code.

3. The petitioners denied the charges, and the case was that they had been falsely implicated at the instance of certain factory authorities. The Trying Magistrate found that the charge under Section 147 of the Indian Penal Code was not sustainable in law, and in that view of the matter he acquitted them of that charge. He, however, found the petitioners guilty under Section 323 of the Indian Penal Code.

4. It appears that there was a previous trial held by Sri. N. B. Banerjee, another Magistrate, and in that trial certain statements had been made by witnesses examined in this case. An attempt was made by the defence to bring on the record the previous statements which were contradictory to those made by them at the present trial. The learned Magistrate, it must be held, did not follow the correct procedure in the matter of bringing on the record the previous statements. He seems to have agreed with the prosecution suggestion that in order that the benefit of the contradictions might be available to the petitioners, it was necessary for the defence to put in certified copies of the statements of witnesses at the previous trial. That is not the law. The records of the previous trial should have

been referred to and proved before being relied upon in order to bring out the contradictions between those statements and the evidence given in this trial. The learned Magistrate was, however, right when he said that unless the attention of the witness was specifically drawn to what contradicts his present evidence, the accused were not entitled to the benefit of the contradictions; but then he seems to have misdirected himself by holding that certified copies of the previous statements were necessary to be put in as an essential preliminary to the statements being proved and the contradictions brought out as between those statements and the evidence in Court. The Magistrate accordingly held that the defence 'must suffer for their negligence', and the negligence attributed to the petitioners seems to be that certified copies had not been produced before the Court.

5. Section 145 of the Indian Evidence Act lays down the procedure to be followed in such cases. If the learned Magistrate had taken a little care, the mistake might have been avoided. That section provides that the witness may be cross-examined as to previous statements made in writing or reduced to writing without such writing being shown to him; but if it is intended to contradict him by the writing, his attention has to be drawn before the writing can be proved to those parts of it which are to be used for the purpose of contradicting him. The records of the previous trial were before the Magistrate. It appears that there is one continuous order sheet in the case, and there was nothing to prevent the parties to the proceeding from making use of the original records. As a matter of fact in such cases, only the original records should be used; and they can be dispensed with 'only when it is proved that secondary evidence is allowable. When the records were there. It was the duty of the learned Magistrate while regulating the procedure of his own Court, to refer to the record of the previous statements himself, and see whether there was any contradiction between the statements then made and the evidence now given before him. The Magistrate, it must be held, failed in the discharge of his duty as an officer presiding over the Court in exercising an effective control over the proceedings before him.

6. There cannot be any doubt that the learned Magistrate did not give the petitioners the benefit of the contradictions which were sought to be brought on the

record in this case. That vitiates the procedure that was followed at the trial, and the defect is of such a character as to enable this Court to hold that it has resulted in miscarriage of justice.

7. In the result, the petition succeeds. The convictions and sentences of the petitioners are set aside, and the petitioners are directed to be retried in accordance with law by another learned Magistrate to be selected by the District Magistrate upon a charge under Section 323 of the Indian Penal Code.

8. This Rule is made absolute. The fines, if paid, will be refunded.

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