

Kuber Nayek Vs. the State

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Court : Kolkata

Decided On : Jun-02-1961

Reported in : AIR1962Cal195,66CWN47

Judge : Amaresh Roy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 21, 179; ;[Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 480, 485 and 492

Appeal No. : Criminal Admitted Appeal No. 707 of 1960

Appellant : Kuber Nayek

Respondent : The State

Advocate for Def. : Sudhindra Kumar Palit, Adv.

Advocate for Pet/Ap. : Chittaranjan Das, Adv.

Disposition : Appeal allowed

Judgement :

1. This appeal is by a person who has been dealt with by the learned Additional Sessions Judge of Midnapore under Section 480 Cri. P. C. and convicted and sentenced under Section 179 I. P. C. and sentenced to pay a fine of Rs. 100/-(one hundred) only, in default to suffer rigorous imprisonment for a period of three weeks. The present appellant was a prosecution witness in a sessions trial in

which 7 (seven) persons were being tried for alleged offences under Section 302/149 and 148 I. P. C. with the aid of 9 jurors. That trial commenced on 16th AUGUST 1960, and on the 17th AUGUST 1960 THE PRESENT APPELLANT Kuber Nayek was examined as the 4th witness for the prosecution. It appears from the Order-sheet of that sessions trial No. IV of 1960, that during the cross examination of this witness, the learned lawyer for the defence in the case filed a petition stating that the prosecution lawyer was putting and leading suggestive questions to the witness and prayed for passing necessary orders by the court. In answer to that petition, the learned Assistant Public Prosecutor filed a petition only stating that he did not put any suggestive question to the witness Kuber Nayek. Upon these applications the learned Additional Sessions Judge recorded an order to this effect :

'The Court is quite alert to prevent the P. P. from putting improper question or from putting question in an objectionable form.'

2. The record of the deposition of the witness Kuber Nayek shows that after he had been examined by the learned Public Prosecutor upto a length, the learned Public Prosecutor was by an order noted in the record of deposition by the court allowed to put leading question. Thereafter, the learned Public Prosecutor asked him questions regarding his deposition in the court of the committing Magistrate. To those the witness answered on one occasion by saying that he did not remember if he stated so and on another occasion by saying that he did state so before the committing Magistrate. The witness stated also that the statements made by him in Jhargram Court are true. Thereafter, in the record of the deposition, it appears that the learned Additional Sessions Judge made note that in spite of frantic efforts by the learned Assistant Public Prosecutor the witness did not reply to questions he was asked about certain acts of the accused persons in that case. To another question he also did not make any reply but remained silent and to a third question also the witness did not give any answer. Thereafter, he was questioned by the learned Assistant Public Prosecutor and he answered those questions which have been recorded in his deposition and then he was cross-examined by the defence lawyer. It also appears from the order sheet of that sessions trial that learned Assistant Public Prosecutor then filed a petition praying

for putting relevant portion of the deposition of the witness Kuber Nayek in the committing court under Section 288 Cri. p. C. as evidence in the sessions court. That prayer was allowed and the entire evidence of this witness recorded by the committing Magistrate was admitted in the sessions court under Section 288 Cri. P. C. As this witness had not replied to certain questions as mentioned above put by the learned Assistant Public Prosecutor, the learned Additional Sessions Judge called upon the witness to show cause at once why he shall not be summarily dealt with under Section 480, Cr. P. C. for having committed an offence punishable under Section 179 I. P. C. In the presence of the court the appellant made statement, then asked

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which shows that he had got confused and did not understand the questions put by the learned Assistant Public Prosecutor. This explanation of the appellant, the learned Additional Sessions Judge found to be unsatisfactory and he also found the appellant to be guilty of contempt and under Section 480 Cri. P. C. The punishment was imposed in these words :

'I accordingly sentence him to pay a fine of Rs. 100/-i/d, to suffer S. I. for a period of three weeks. The witness Kuber Nayek be made over to custody to suffer his term of imprisonment, if he fails to pay down the fine at once.'

3. Immediately thereafter, an application was made by the present appellant before the learned Additional Sessions Judge praying for appeal under Section 426(2A) Cr. P. C. and also made an application under Section 484 Cr. P. C. both of which applications were rejected by the learned Additional Sessions Judge.

4. Against that order of conviction and sentence the present appellant has preferred this appeal. The learned Advocate Mr. Chittaranjan Das has contended that element of offence under Section 179 I. P. C. is absent inasmuch as the Assistant Public Prosecutor was not a public servant. This contention of Mr. Das must be rejected because by the definition under Section 21, 9th Clause., I. P. C. a person who is appointed to be a Public Prosecutor under S. 492 of the Code is an officer in the service of the Government and is also remunerated by fees for the

performances of that public duty and therefore is a public servant for the purposes of the case in which he is appointed as a public prosecutor.

5. Next point urged by Mr. Das is that there is no reason for the learned Additional Sessions Judge for not accepting the explanation offered by the appellant because the records of the deposition shows that the period of his silence was only in an intermediate stage and after he recovered from his confusion he did answer to the questions of the Assistant Public Prosecutor and also the questions put by the defence lawyer in cross examination, Mr. Das suggests that it is quite possible for this witness who is a cultivator and aged about only 25 years to get confused in sombre atmosphere of the Sessions Court where the learned Additional Sessions Judge was presiding with the aid of 9 jurors and it is also probable that due to his deficient memory and intelligence he would take time to recall what he had said or had been said months before in the committing Magistrate's Court and if the learned Assistant Public Prosecutor for hustled for an answer too early for him to provide he would very likely get confused and maintain a silence, but that silence Mr. Das argues is not refusal to answer as is necessary for an offence under Section 179 I. P. C.

6. On behalf of the State the learned Advocate Mr. Sudhindra Kumar Palit has drawn my attention to the state of records in this case which shows that something sufficient to jolt a person like Kuber Nayek to confusion and/or something like that happened. What it was does not appear clear. It might have been the heat and crowd at the Sessions trial in Midnapore, it might have been the excited voice of the learned Assistant Public Prosecutor or it might have been the ex-change of arguments between learned Assistant Public prosecutor and the learned defence lawyer every the objections regarding the manner of examination of this witness which I have mentioned above. Whatever that was, it was not unlikely for a man of education and intelligence of Kuber Nayek to be struck with awe and to lapse into silence without any intention to refuse to answer the question or of disobeying the directions of the learned Judge.

7. Another point regarding the procedure adopted by the learned Additional Sessions Judge has been pointed out to me by the learned Advocate for the State

Mr. Palit. He points Out with fairness and cogency that in Chapter XXXV, Section 480 is the general Section for contempt's committed in view or presence of the court whereas Section 485 is the particular provision regarding the witness refusing to answer questions as required in Section 179 Indian Penal Code. That being the relative scope of the two sections, it would have been only proper for the learned Sessions Judge to employ the particular provision under Section 485 Cr. P. C, before taking action under Section 480 Cr. P. C. A reference to previous Section 485 Cr. P. C. clearly points to the necessity of that Section being employed before Section 480 Cr. P. C. is employed. In the present case, in the heat and excitement that must have generated, not only the witness suffered but that has led also the learned Additional Sessions Judge to forget Section 485 Cr. P. C., before employing Section 480 Cr P. C. The records bear sufficient material to show that if the steps provided under Section 485 Cr. P. C. had been taken, the present appellant would have come, to regain his wits and would not persist in his silence and there would be no necessity of taking recourse to an action under Section 480 Cr. P. C. as the learned Additional Sessions Judge has done in the present case.

8. I may mention that in an old case reported In re Ganesh Narayan ILR 13 Bom 600 the course followed in this Chapter was the course that I have mentioned above. I therefore hold that the procedure followed by the learned Additional Sessions Judge in the present case is not strictly in accordance with the provisions of Chapter XXXV Cr. P. C. and the order of conviction and sentence recorded under Chapter XX Cr. P. C. and under Section 179 I. P. C. has been improper.

9. Having heard the learned advocates appearing on behalf of both sides and having examined the records with their able assistance I am fully satisfied that the accused Kuber Nayek had not intentionally committed an offence under Section 179 I. P. C. and his explanation though not very elaborate was sufficient explanation in the circumstances of the case. I therefore hold him not guilty and set aside the order of conviction and sentence and acquit him. Fine that has been paid by the appellant shall be refunded.

10. The appeal is allowed accordingly.

