

Obedar Rahaman Vs. Emperor

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Court : Kolkata

Decided On : Feb-08-1929

Reported in : AIR1930Cal219,122Ind.Cas.291

Judge : Zahhadur Rahim Zahid Suhrawardy and ;Graham, JJ.

Appellant : Obedar Rahaman

Respondent : Emperor

Judgement :

Suhrawardy, J.

1. This rule has been issued upon two grounds. Ground 1 is that the provisions of Section 342, Criminal P.C., were not complied with and, therefore, the conviction is bad in law. The facts, in so far as they are relevant for our present purposes are that, on 16th May 1928, six prosecution witnesses were examined in chief and the accused was also examined. The charge was, thereafter, framed under Section 354, I.P.C., and the prosecution wanted to examine some witnesses. On 31st May 1928, the next hearing day, the prosecution examined one more witness and all the witnesses for the prosecution, eight in number, were cross-examined by the accused. Then the accused was examined, presumably under Section 342 and the Magistrate's order runs thus:

Defence wants to examine six prosecution witnesses after this. Of them, the Sub-Inspector is to be resummoned. Others to come on personal recognizance. Accused as before. Defence will pay costs of all but the Sub-Inspector. Defence will bring in witnesses on next date.

2. On the next date, 14th June 1928, seven prosecution witnesses were cross-examined and the accused was again examined. Only one witness (the Sub-Inspector) was not in attendance, and, therefore, could not be cross-examined. He was examined on the next day of hearing, but no further examination of the accused was held. It is argued that the accused should have been examined under Section 342, after the examination of the Sub-Inspector and, as he was not so examined, his conviction must be held to-be illegal.

3. Section 342, Criminal P.C., has been interpreted by this Court in several cases and, in my opinion, has been too liberally construed. I do not think it will be profitable to discuss it any further. Section 342 says that, for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may at any stage of any enquiry or trial, without previously warning the accused, put such questions to him as the Court considers necessary and shall question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.

4. As has been held in *Mozahur Ali v. Emperor* A.I.R. 1923 Cal. 196 and *Dibakanta hatterjee v. Gour Gopal Mukherjee* A.I.R. 1923 Cal. 727, the word 'examination' in that section includes cross-examination and re-examination; that is the witnesses have been completely examined. Now in the present case, the witnesses were completely examined on 31st May 1928. The order recorded by the Magistrate on that day does not expressly say so, but it shows that, after the examination of the witnesses was closed and the accused examined, he was asked to examine his witnesses or he was called upon to enter upon his defence. The accused, however, applied to the Court for permission to recall some of the prosecution witnesses for further cross-examination. That was apparently done under Section 257 of the Code, which says that if the accused, after ho hay entered upon his defence, applies to the Magistrate, etc. This must be so, as the

order recorded by the Magistrate on that date shows that the application to further examine some prosecution witnesses was made after the examination of the accused; and further, that the accused was ordered to pay the costs of the prosecution witnesses for their attendance. This order could only be passed under Section 257. It, therefore, appears that the accused had already entered upon his defence and the stage at which he must be examined under Section 342 had passed. I do not think it proper to hold that after the prosecution has closed its case by examining its witnesses in chief and submitting them to cross-examination and re-examination, the accused can well re-open the prosecution case by applying for an indulgence from the Court for further cross-examination and then claim the right that he should be examined over again. In my opinion, there has been sufficient compliance with the directory provision of the section and this ground must be overruled.

5. Ground 2 upon which this rule has been issued is that two of the witnesses, whom the trial Magistrate regarded as corroborating the complainant did not really corroborate her. The Magistrate, in his judgment, says that these two witnesses corroborate the story given by the girl. One of the witnesses says that:

the girl told him that the accused had thrown away her pitcher and was pulling to take her away and thereby violated her modesty.

6. The other witness said that:

she said that Obedar had thrown her pitcher and was pulling her to take her to the school hut.

7. He also said that he had heard her cries and saw the accused run away from the tank. This evidence corroborates the story of the girl, at any rate under Section 157, Evidence Act. I do not think that there is any substance in this ground.

8. The rule is, accordingly, discharged. The accused must surrender to his bail and serve out the remainder of the sentence.

Graham, J.

9. I agree that the rule should be discharged. With regard to the first point, it seems to me that the entire argument on behalf of the petitioner is one of technicality, rather than of substance. I am further of opinion that, having regard to the facts and circumstances of this particular case, there was a proper compliance with the provisions of Section 342, Criminal P.C. As regards ground 2, on which the rule was granted, it may be observed, in the first place, that on reference to the judgment of the appellate Court it does not appear that the learned Sessions Judge has said anything about the evidence of Khalilur Rahaman and Chand Mia corroborating the story of the girl. This ground, therefore, was not correctly worded. The judgment of the trial Court does, however, refer to there being such corroboration, and when the evidence of these two witnesses is referred to, it is clear that they do in fact corroborate the story told by the girl. There is, therefore, no substance in this ground.

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