

Sital Singh and ors. Vs. Emperor

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Court : Kolkata

Decided On : Aug-26-1918

Reported in : 54Ind.Cas.53

Judge : Teunon and ;Cuming, JJ.

Appellant : Sital Singh and ors.

Respondent : Emperor

Judgement :

1. In these five connected cases the twenty petitioners have been convicted under Section 420 read with Section 120B of the Indian Penal Code. In the Rules issued at their instance the questions raised are three, namely, (i) whether the evidence of an accomplice of the name of Ramraj was properly admitted, (ii) whether evidence regarding certain cocaine and gambling dens should have been admitted and (iii) whether the statement made before trial but after arrest by a co accused of the name of Baijnath was admissible in evidence.

2. It appears that the petitioners, the accomplice Ramraj and Ors. were placed on trial together on a charge of the offence of which the petitioners have been convicted. After the case had been opened, on the 14th of June 1917, the Pleader appearing for the Crown, one Agenda Nath Banerjee, with the consent of the Court, withdrew from the prosecution of Ramraj, who was thereupon discharged. He was thereafter examined as a witness.

3. Agenda Nath Banerjee was not a Public Prosecutor appointed by the Governor-General in Council or the Local Government, though he was in fact acting under the directions of the Public Prosecutor duly appointed for the district. The contention then is that he was not competent to withdraw from the prosecution, whether under Section 494 or Section 495(2), and that the position of Ramraj as a co-accused remained unaltered.

4. We need not, however, consider the question of the authority of the Pleader appearing for the Crown. With him was a Court Sub-Inspector who joined with the Pleader in applying for the permission of the Court and in withdrawing from the prosecution. That he is a public Prosecutor appointed in the manner specified in Section 494 is conceded, but it is suggested that his signature to the written application is a subsequent addition. For this suggestion there is in effect no foundation, and against it we have the statement of the Trying Magistrate.

5. But this also is immaterial. Whether the case against Ramraj was properly withdrawn or improperly withdrawn, the fact remains that the Magistrate, by discharging him, separated, his case from the case of his co-accused. He ceased to be on trial with his accomplices and he, therefore, became a competent witness. As this question was fully discussed in the decision of *Akhoy Kumar Mukerjee v. Emperor* 45 Ind. Cas. 999 : 45 C. 720 : 27 C.L.J. 91 22 C.W.N. 405 : 19 Cr. L.J. 663 we need not enter into it more fully here.

6. The second contention is that the evidence given regarding gambling and cocaine dens and the raids thereupon should have been regarded as evidence of bad character : and, therefore, as inadmissible under Section 54 of the Evidence Act.

7. But the case being that the accused or some of them were first thrown together by their frequenting or running such dens, and that for the purpose of their criminal organisation, they continued to meet at such places, their evidence, though doubtless affording indications of bad character, could not be excluded. So also the evidence of the Excise Sub Inspector as to his raids upon these places, though given in too great detail, leads up to the admissions said to have been made to him.

8. Lastly, the statement made by the co-accused Baijnath, on the 1st of January, which we have read, is not a confession. It was no doubt admissible as against Baijnath himself but not under Section 30 of the evidence Act against the others. On the authority of the decisions of Emperor v. Abani Bhusan Chakrabutty 8 Ind. Cas. 770 : 38 C. 169 : 15 C.W.N. 25 : 11 Cr.L.J. 710. and Pulin Behary Das v. Emperor 16 Ind. Cas. 257 : 15 C.L.J. 517 : 16 C.W.N : 1105 : 13 Cr. L.J. 609 it was also not admissible under Section 10. No doubt, therefore, the Courts below erred in using this statement against any one other than Baijnath. We find that in the case of certain of the petitioners reference was made to the statement, but no stress was laid upon it and the error, therefore, does not vitiate the result.

9. For the reasons given we discharge these Rules.

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