

Umesh Chandra Roy Vs. Satis Chandra Roy and ors.

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Court : Kolkata

Decided On : Jun-29-1917

Reported in : 41Ind.Cas.998

Judge : Teunon and ;Shamsul Huda, JJ.

Appellant : Umesh Chandra Roy

Respondent : Satis Chandra Roy and ors.

Judgement :

1. This Rule is directed against an order made by the Sub- Divisional Officer of Uluberia under the provisions of Section 494 (a) of the Code of Criminal Procedure.

2. It appears that on the application of the Court Sub-Inspector acting as Public Prosecutor the Magistrate accorded his consent to the withdrawal by the Public Prosecutor from the prosecution of three persons, who under the provisions of Section 170 of the Code had been sent up for trial on charges of rape and murder. For this order, according his sanction to the withdrawal from the prosecution and to the subsequent or consequential order discharging the accused, the Magistrate gave no reasons. As from the petition presented by the complainant it appeared that one of the persons put on their trial had made a confession implicating himself and the others, we were of opinion that these orders should be examined by this Court.

2. The learned Counsel who has appeared to oppose this Rule on behalf of the accused persons has contended that the consent given by the Court under the provisions of Section 494, Criminal Procedure Code, is to be regarded as a mere ministerial or executive act for which it is not necessary that the Magistrate should set out any reason; and in support of this view he refers us to a case decided by two learned Judges of the Madras High Court and reported as Sadayan, In re 4 Ind, Cas. 1126 : 6 M. L. T. 216 : 11 Cr. L. J. 193. With all deference to the opinion there expressed by these learned Judges we are unable to assent to the view there taken, or to the view now urged upon us by the learned Counsel appearing in the present case. The only prosecutor who may under the provisions of the Code of Criminal Procedure withdraw; from a prosecution without obtaining the consent of the Court and without giving reasons is the Advocate-General. No other Public Prosecutor is placed in that privileged position; and if the consent of the Court is to be regarded as a ministerial act or merely an executive act, we do not understand why. it should have been necessary for the Legislature to insert such a provision in the Section of the Code with which we are now dealing. It is clear to our minds that in either withholding consent or in according consent the Court is acting in a judicial capacity, and, for its orders as for every order judicially made it ought to give and record its reasons. We are fortified in this view by a consideration of the provisions of Sections 435 and 437 of the Code of Criminal Procedure. If the consent has been improperly accorded, it is clear that the consequential discharge must also be looked upon as improper. For these reasons we are of opinion that when a Court acting under Section 494 of the Code gives its consent to a withdrawal from a prosecution, it should record its reasons in order that this Court may be in a position to say whether the discretion vested in the Court has been properly exercised.

2. In the present case the Magistrate has now submitted to this Court in his explanation the reasons which led him to make the order under consideration. We are not satisfied that the first reason in which he refers to the action of the Superintendent of Police is a good or sufficient reason. We are not certain that the discretion vested in the investigating officer by the provisions of Section 170, Criminal Procedure Code, can be controlled in the way suggested by the Superintendent of Police; or so controlled after the discretion has been exercised.

But the other reasons that have been given by the Magistrate appear to us to be of a more substantial character. We have examined for ourselves what was put forward to us as a confession implicating the confessing accused and his co-accused; and when we read it we find that he, the confessing accused, does not in fact implicate himself. In the course of the argument before us, reference has been made to a confession said to have been made by the same accused in his village in the presence of a number of villagers. But it would appear that that confession was made while the accused was in the presence and practically in the custody of Police Officers, so that also becomes inadmissible.

3. Having now considered the reasons which led the Magistrate to consent to the withdrawal from the present prosecution, we are of opinion that in the present case we ought not to interfere. But we desire to point out that after all, the ultimate order is one only of discharge, and that if and when evidence becomes available it will still be open to the Crown or to the Court to re-open this prosecution

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