

Sukdev Tewari Vs. Emperor

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Court : Kolkata

Decided On : Jan-18-1909

Reported in : 4Ind.Cas.57

Judge : Holmwood and ;Ryves, JJ.

Appellant : Sukdev Tewari

Respondent : Emperor

Judgement :

1. This was a Rule calling upon the District Magistrate of Howrah to show cause why the conviction and sentence passed upon the petitioner under Section 205 read with Section 109 of the Indian Penal Code should not be set aside on the ground that the case falls within the rule laid down in the cases of Queen Empress v. Pahuji. 19 B. 195 and Queen Empress v. Paltua 23 A. 53. In the first case cited, A and B were charged with murder. A pleaded guilty and it was held that after such plea he could not be treated as being jointly tried with A.

2. In the second case it was held that when several persons are being tried jointly for the same offence, and some of them plead guilty, it is unfair to defer convicting those who have pleaded guilty merely in order that their confessions may be considered against the other accused.

3. In showing cause the Magistrate has pointed out that both these cases may be distinguished from the case before us, inasmuch as the plea of guilty made by

Sarat Chandra Dutt was not accepted in view of the fact that the petitioner Sukdeb Tewari's defence if proved would involve the innocence of Sarat Chandra Dutt and he could not be convicted. The joint trial, therefore, went on and rightly so. In arguing the Rule before us learned Counsel has cited a later case Emperor v. Kheoraj 30 A.540; A.W.N. (1908). 241; 4 M.L.T. 398; 8 Cr. L.J. 380 which lays down that where an accused person has pleaded guilty and the Court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who has pleaded guilty may technically be said to be tried jointly for the same offence with other co-accused and any statement in the nature of a confession he may make used against them. The case of Queen Empress v. Paltua 23 A. 53 above cited was there followed.

4. Learned Counsel has also referred us to the case of Subrahmania Ayyar 25 M. 61 (P.C.);28 I.A. 257 where at page 69 it is laid down by Sir Arnold White, C.J. that when an accused person has pleaded guilty nothing remains to be tried as between him and the Crown and that he becomes a competent witness against other accused.

5. It is accordingly argued that Sarat Chandra Dutt should have been removed from the dock and placed in the witness-box where he might have been cross-examined.

6. But we find that before the Privy Council the first point taken was that until the accused who pleaded guilty was convicted or acquitted he was still an accused person and was, therefore, not a competent witness. Their Lordships of the Judicial Committee did not deal with this point inasmuch as they decided the case solely on the misjoinder of charges, but it seems to be sound law and in accordance with the recognised practice of the Courts.

7. In the case of Queen-Empress v. Pahuji 19 B. 195 a. case which is entirely analogous to the case now before us was referred to by the Bombay Court and the opinion of Candy, J. who tried that case was taken. This was Confirmation Case No. 22 of 1893, where a statement of an accused who had pleaded guilty was admitted against his co-accused and the reason given, which was accepted by the High Court, was that the Court of Session had not dealt with the plea of guilty as if

it were such, but had allowed the prisoner so pleading to remain on trial so that he could cross-examine and the opinion of the Assessors was also taken about his guilt. The same rule would obviously apply to a case where the Court is fulfilling the functions of both Judge and Jury as indeed in a case tried with the aid of assessors the Judge really always is. The provision of Section 271 of the Criminal Procedure Code that the plea shall be recorded and the accused may be convicted thereon clearly leaves it open to the Court to refuse to accept the plea and lay the case before the Jury or Assessors or in the case of a Magistrate to try the question of the accused's guilt himself. The record does not, it is true, show in so many words that the Magistrate refused to accept Sarat Chandra Dutta's plea of guilty, but after it was made, nothing was done except the examination of two defence witnesses for the present petitioner, and we observe in the Magistrate's long and careful judgment that not a word is said as to the statements of Sarat Chandra Dutta to the Small Cause Court Judge or to the Magistrate who recorded his confession being evidence against Sukdeb Tewari.

8. The finding against Sukdeb Tewari is based on evidence and considerations entirely independent of any statement made by Sarat Chandra. The Magistrate having so carefully kept out of consideration in his judgment against Sukdeb anything which Sarat Chandra had said, we must accept his statement that he did not think it right to act on Sarat Chandra's plea of guilty which was altogether incompatible with Sukdeb Tewari's defence.

9. He evidently directed his mind and his judgment entirely to the case against Sukdeb Tewari as it stood on the independent testimony since he was of opinion that if Sukdeb Tewari's defence was true, the plea of guilty made by Sarat Chandra was valueless. We, therefore, think that the rulings cited to us in no way apply to this case, and we also find that the statements of Sarat Chandra were not, as a matter of fact, used against Sukdeb Tewari. The Rule is accordingly discharged.