
(1922) 12 CAL CK 0012
In the Calcutta High Court

Haro Nath Malo

APPELLANT

Vs

Ala Bux and Others

RESPONDENT

Date of Decision : 04-12-1922

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 342, 360
Penal Code, 1860 (IPC) — Section 147

Citation : AIR 1924 Cal 182

Judgement

1. On the 4th February 1921 the complainant Haro Nath Malo went to fish in Sonakani Fishery. At that time the accused and some other people of Gouripur and Bhatipara assembled near the fishery and forbade him to fish. As the complainant did not listen, the accused broke down his houses with the help of an elephant and on his opposition assaulted him and looted his property. The case was reported by the Police as one of mistake of law. It ultimately came to the trial Court and the 3 petitioners were summoned u/s 147, Indian Penal Code, and they have been convicted and sentenced to a fine of Rs. 25 each or in default rigorous imprisonment for 3 months each.

2. The conviction and sentence of the trial Court has become vitiated and liable to be set aside inasmuch as requirements of Section 342, Criminal Procedure Code and of Section 360, Criminal Procedure Code, have not been complied with. The trial Court after recording the Examination-in-chief of the prosecution witnesses on 28th April 1922 framed charge and on the same date recorded the statements of the accused persons. These witnesses have been cross-examined on 20th May 1922 but since then no further statement of the accused persons have been recorded. It has been repeatedly ruled by the Hon'ble High Court that this omission is not an irregularity which can be cured by Section 537 of the Code. It is contrary to the provisions of Section 342, Criminal Procedure Code, and according to recent ruling of the Calcutta High Court in revision case No. 569 of 1922 (Sylhet), it has been clearly laid down by Hon'ble Mr. Justice Walmsley and Mr. Justice Ghosh on 31st August last that all the proceedings after the statement of the accused has been recorded were vitiated in law, and the case

came on remand to be taken up after the examination-in-chief of these witnesses has been over. The cases *Mitarjit Singh v. Emperor* AIR 1922 Pat. 158 and *Tilak Gope v. Bhaya Ram* [1921] 22 Cr. L.J. are also to the point.

3. The trial in the lower Court also seems to have been vitiated inasmuch as requirements of Section 360, Criminal Procedure Code have not been complied with with respect to any of the witnesses. In the explanation submitted by the Magistrate marked B, the Magistrate seems to say that provisions of Section 342, Criminal Procedure Code have not been complied with, but then what has been done in this case has been sufficient compliance with Section 360, Criminal Procedure Code. It seems from a slip marked C that the trial Court referred the matter for information to his peshkar, and the peshkar made a report to the following effect that " it is not in practice to read out the depositions in all cases except sessions triable cases, and after some correspondence the trial Court admitted that peshkar's report was correct. In fact there is no certificate appended to the depositions of any witnesses showing that the requirements of Section 360, Criminal Procedure Code, have been complied with. This is an error in law which prejudiced the accused persons in the trial, and I consider that the provisions of both the Sections 342 and 360, Criminal Procedure Code, are mandatory, and no practice to the contrary can alter the plain words of the law. *Jyotish v. Emperor* (1909) 36 Cal. 95 and *Queen v. Issur Raut* (1867) 8 W.R. Cr. 63.

4. The trial also seems to be bad in law inasmuch as the occurrence having taken place on 4th February, 1921, the charges has been framed showing that the occurrence took place on 22nd February, 1921.

5. I, therefore, consider that the conviction and sentence cannot stand for these defects and it should be set aside.

JUDGMENT

6. We must accept the Reference for the reason given by the learned Sessions Judge. The omission to comply with the provisions of Section 342 and Section 360, Criminal Procedure Code, is an illegality which is not curable by the provisions of Section 537. The finding and sentence must, therefore, be set aside. In the circumstances of the case we do not think any retrial is called for and the three accused persons Ala Bux, Sheik Balai and Sonai Miah Ghaudhuri are, therefore, acquitted.