
(1895) 07 CAL CK 0021
In the Calcutta High Court

Keshab Chunder Roy

APPELLANT

Vs

Akhil Metey

RESPONDENT

Date of Decision : 30-07-1895

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439

Citation : (1895) ILR (Cal) 998

Hon'ble Judges : Macpherson, J; Banerjee, J

Bench : Division Bench

Judgement

Macpherson and Banerjee, JJ.—The petitioner Keshab Chunder Roy has been convicted by the Deputy Magistrate of Burdwan of the offence of causing grievous hurt to one Akhil Metey by a dangerous weapon and sentenced to rigorous imprisonment for four months, and the learned Sessions Judge having dismissed his appeal, he now asks us, u/s 439 of the Code of Criminal Procedure, to set aside the conviction and sentence on two grounds:

2. First, that the learned Sessions Judge, in dismissing the petitioner's appeal, was greatly influenced by his judgment in the counter-case which was no evidence in this case; and that this error has caused a failure of justice.

3. Second, that the finding of the Courts below is so completely against the weight of evidence that it ought to be set aside.

4. As both these two grounds depend for their success upon its being shown that the conviction is not warranted by the evidence, and as there was some discussion during the argument as to the propriety of our examining the evidence in revision, we deem it desirable at the outset shortly to state our view of the law on the subject.

5. Section 439 of the Criminal Procedure Code provides that the High Court in revision may (subject to certain limitations not necessary now to be dwelt upon) in its discretion exercise any of the powers conferred on a Court of Appeal. The interference of the High Court in revision is not therefore limited to matters of

law : but it is fully competent to this Court to enter into matters of fact if it thinks fit. On the other hand, it is not bound to go into evidence if it does not think fit, and the question is where should it exercise this discretionary power and where not. Clearly the mere application of a party to examine the evidence in any case would not be a sufficient ground for doing so. Section 440, which makes it optional with the Court in revision to hear parties or their pleaders, renders this quite clear. Indeed, were it otherwise, there would virtually be a second appeal on facts in every case in which the parties came up to this Court. This we do not think the Legislature could have intended. There must appear upon the face of the judgment or order complained of or of the record some ground (which need not always be a ground of law) to induce this Court to think that the evidence ought to be examined in order to see that there has been no failure of justice. Where there is no such ground, the practice has been to limit the interference in revision to matters of law. See *Nobin Krishna Mookerjee v. Russik Lall Laha* ILR Cal. 1047, *Reid v. Richardson* ILR Cal. 361, *Queen-Empress v. Shekh Salieb Badrudin* ILR 8 Bom. 197, *Bhawoo Jivaji v. Mulji Dayal* ILR 12 Bom. 377, *Queen-Empress v. Chagan Dayaram* ILR 14 Bom. 331. In making these observations, which are only intended to indicate generally the circumstances under which this Court in revision will enter into questions of fact, we must not be understood as laying down any hard and fast rule for regulating its discretionary power in this respect. It is neither easy nor desirable to lay down any such rule, and each case will have to be dealt with according to its own circumstances.

6. This being premised, let us examine the grounds urged in this case. In support of the first ground, the learned Counsel for the petitioner referred to the following portions of the judgment of the learned Sessions Judge as showing that he was influenced in his decision by his judgment in the counter-case.

7. After stating some of the facts of the case, the learned Sessions Judge observes: "Thus there were the two counter-cases, one by Purna complaining of the loot and the other by Akhil Metey complaining of the hurt. The case of "Puma came up before me in appeal, and I disbelieved the case set up by him, and found that the occurrence had taken place in connection, with the execution of the writ of attachment issued at the instance of the decree-holder, Rajani Bagdi. A copy of that judgment is with the record. The evidence for the prosecution in Puma"s case is, generally speaking, the evidence for the defence in this case." He then adds: "When considering the application for bail in this case I made the following observations:" The facts connected with the occurrence relating to this case were considered by me in another case. It is therefore that I have patiently heard the learned pleader to see if there are grounds for changing the view that I then took." And a little further on he says: "Though the judgment in the previous case is no evidence in this, some of the arguments on which that judgment is based apply to the facts of this." And when commenting adversely on the evidence for the defence, he observes: "The best witness to prove such a fact was the woman herself, but she has not been examined. It is not out of the

scrupulous regard for the female members that she has been kept back, In the previous case it has been pointed out that her evidence was damaging to the case set up by Keshab, and that the evidence of the mother of Keshab went to a certain extent to support the case of Akhil and both of them have been kept back in this case."

8. These remarks of the learned Sessions Judge clearly show that, though he says that the judgment in the former case was no evidence in this, he was influenced in his decision in this case by that judgment. He seems to have heard this case (to use his own words) to see if there are grounds for changing the view he took in the counter-case, when he ought to have heard it quite irrespective of that view, and with reference to the evidence adduced in it. He appears to have been under the misapprehension that because "the evidence for the prosecution in Puma's case (that is the counter-case) is generally speaking the evidence for the defence in this case," the failure of the prosecution, in the former case must lead, not only to the failure of the defence in this case, but also to the success of the present prosecution when he should have borne in mind that it was quite possible for both the two prosecutions to fail by reason of the cases set up being both false.

9. The judgment of the Appellate Court is thus vitiated by a clear error, and the question is, how far that error has affected the decision on the merits. This brings us to the second point raised on behalf of the petitioner and renders it necessary for us to examine the evidence for ourselves.

10. Upon a careful examination of the evidence, and after attaching all due weight to the opinions of the Court below, the conclusion we arrive at is that the evidence does not warrant the conviction of the petitioner. The Courts below seem to have scrutinized the evidence for the defence more narrowly than that for the prosecution; whereas we need hardly add it is only when the evidence for the prosecution stands examination that it becomes necessary to consider the evidence for the defence.

11. The story of the prosecution as told by the complainant in his deposition in this case is, that the witness Rajani Bagdi, who held a decree against the accused Keshab Roy, went with a Civil Court peon to the house of the accused to attach some moveable property in execution of his decree; that after the attachment had been made, an altercation took place between the peon and one Bhubotaron, whereupon the accused chased the peon with a banti or fish knife, and on the complainant Akhil's intervening to save the peon, he, Akhil, was hurt in the hand by Keshab. The case for the defence is, that there is bitter ill-feeling between Sham Chand Roy, the master of Rajani Bagdi, and of Akhil Metey and Loke Nath Roy, to whose party Keshab's brother Purna belongs; that Purna having refused to join Sham Chand's party, Sham Chand with a large band of servants and dependants, among whom was the complainant Akhil, went to loot Puma's house; that while Akhil was attempting to snatch an ornament from the arm of Puma's wife, Purna struck him with a banti and that Keshab had no

interest in the house of Purna, nor was he present at the occurrence. [Their Lordships after dealing with the evidence in the case continued..]

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12. Weighing, therefore, the evidence for the defence against that adduced for the prosecution, and bearing in mind the material discrepancies in the evidence for the prosecution, we must say that the evidence does not warrant the conviction of Keshab Chunder Roy, and that it would be wrong to allow the conviction to stand.

13. The result is that the conviction and sentence must be set aside and the petitioner acquitted and released.