

(1985) 12 RAJ CK 0017

In the Rajasthan High Court

Case No : Criminal Revision Petition No. 107 of 1985

Mamraj Singh Ors.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-12-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 193, 199, 323, 407
Penal Code, 1860 (IPC) — Section 147, 149, 302, 307, 323

Citation : (1986) RLW 146 : (1986) 1 WLN 404

Hon'ble Judges : M.B. Sharma, J

Bench : Single Bench

Judgement

Mahendra Bhushan Sharma, J.—This Revision petition is directed against the order dated April 16, 1985 passed by the Sessions Judge, Tonk. It involves an important question of law whether the two cross cases arising out of the same incident can be tried by the same Sessions Judge, though one of them is not triable by him.

2. Statement of one Om Prakash was recorded on July 31, 1978 at 11.45 a.m. in the hospital Niwai and the same was later on registered as FIR No. 103/81. So his "parcha bayan" the said Om Prakash stated that on July 31, 1978 at about 7.30 am he and his younger brother Kailash were constructing the boundary wall of somebody. Mamraj Singh and Kalyan Singh came there and asked them not to do so, and caught hold Kailash his younger brother and Mamraj Singh gave lathi blow to Kailash. He (Om Prakash) intervened and Mamraj Singh gave lathi blow to him also. He along with kailash entered the house and thereafter Mamraj Singh, Kalyan Singh, Pep Singh, Devi Singh. Guman Singh, Chhatar Singh and others armed with lathis entered the said house. They gave blows and started beating them. Kailash received injuries. On raising the alarm Kalu Singh, Balu Singh, Ummaid Singh came there and intervened into the matter. Kailash became unconscious. It appears that a case was registered u/s 307, 147, 307/149 IPC and other sections of the Indian Penal Code. Kailash Singh later on died in the hospital and inquest report was prepared and an offence u/s 302 IPC

was added. After investigation a charge-sheet No. 55/1915 was filed against the accused petitioners in the court of Magistrate. The learned Magistrate committed them to the Court of Sessions Judge, Tonk.

3. Kalyan Singh s/o Bhur Singh also lodged a FIR No. 104/1983 at police station Niwai, District Tonk on that day at 4.30 p.m. wherein it was stated that on that day at about 7.30 am in the morning he Kanswarpal, Man Singh Ramswaroop, Satya Narain, Omprakash, Kailash were raising a wall in the chowk near his house in his enclosure ("bara"). He asked him not to raise a wall there. Mam Singh gave lathi blow and he raised an alarm hearing which Rameshwari came there to rescue him, but she was also beaten by them with lathis. Thereafter, Guman Singh and Chatar Singh came to rescue but they were also beaten. On this report FIR No. . 104/84 u/s 147, 323, 149 IPC was registered and investigation was set in motion. A charge sheet No. 55/83 was filed. The case is pending trial.

4. During the trial before the Sessions Judge in case No. 28/83 State v. Mamraj Singh and Ors. in relation to FIR No. 103/83 PS Niwai an application was filed on behalf of the accused petitioners that a cross-case in relation to the same event against Kalyan Singh and others is pending in the court of Munsif and Judicial Magistrate Niwai and next date fixed in that case is February 3, 1984. It was prayed that the said case should be called and should be tried by the Sessions Judge. The learned Sessions Judge under his order dated April 16, 1985 which is the impugned order, placing reliance on a decision of this Court in S.B. Criminal Revision petition No. 164/1984 Sheodan v. State of Rajasthan decided on July 2, 1984 dismissed that application.

5. I have heard learned counsel for the petitioners and Mr. Tyagi, for the non-petitioners. The contention of the learned counsel for the petitioners is that from the facts of the case it will be clear that in relation to the same incident two reports FIR No. 103/83 and 104/83 were lodged at police station Niwai and after investigation charge-sheets in both cases were filed in the court of Magistrate. The case arising out of FIR No. 103/1983 is u/s 302 and as such is exclusively triable by the court of Sessions but the case arising Out of FIR No. 104/1983 is exclusively triable by the court of Magistrate. But because both the cases arise out of the same incident and they are cross-cases it is necessary to avoid conflict of decisions by two different courts in the cross-cases, both of them should be tried by the learned Sessions Judge. He has referred to the provisions of Section 323 Criminal Procedure Code and submits that under that section the learned Magistrate should have committed the cross-case arising out of FIR No. 104/1983 PS, Niwai to the court of Sessions Tonk because it was a cross-case of FIR No. 108/83. His further contention is that u/s 407 Cr.PC this Court should order the transfer of the case pending in the court of Judicial Magistrate to the court of Sessions because the case pending before the Magistrate is a cross case of the Sessions case pending in the court of Sessions Judge, Tonk. In support of his contention that cross-cases arising out of same incident should be tried by

the same Judge, learned counsel placed reliance on a few authorities which shall be referred to here in after.

6. In *Sheodan v. State of Rajasthan* (supra) decided by this Court on July 2, 1984 a Sessions case No. 51/1981 State v. Sheodan u/s 302 IPC was pending trial. On the application of the accused persons in that case the file of State v. Bhanwarlal was called from the Magistrate on the ground that the same was a cross case. An application was filed that the case of State v. Bhanwarlal is not the cross case of the incident out of which the Sessions case No. 51/1982 arose and therefore the file should be sent back to the learned Magistrate. The learned Sessions Judge holding that place of incident was different and as such they were not cross cases, ordered that the file of Bhanwarlal v. State be sent back to the court of Magistrate. A revision petition was filed in this court and the learned Judge (Sidhu, J.) under his order dated July 2, 1984 holding that the general rule is that there shall be separate trial for each accused, not with standing the fact the offence alleged to have been committed relates to the same transaction, dismissed the revision petition. It will therefore, be clear that the case did not relate to the cross cases arising out of the same incident. That apart, the learned Judge was not required to examine the question as to whether in a case where there are cross cases arising out of the same incident, the two cases should be tried by the same Judge or not.

7. There is no provision in the Code of Criminal Procedure providing that cross cases arising out of the same incident should be tried by the same Judge. u/s 193 Cr.PC except as otherwise expressly provided by the Code of Criminal procedure or by any other law for the time being in force, no Court of sessions shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under the Code of Criminal Procedure. Therefore, generally a court of Sessions shall take cognizance of an offence only if the case is committed to it by the Magistrate under the Code of Criminal Procedure. There are exceptions to this rule and they are contained in Section 199(2) Cr.PC in case of defamation of President, Vice President and Governor etc. A case u/s 302 IPC is triable exclusively by the court of Sessions. On committal the Sessions Judge took cognizance of the offence. But the case arising out of FIR No. 104/83 PS Niwai was u/s 323, 149. 147 IPC which exclusively triable by the Magistrate of the First Class. Such a case therefore, generally could not be committed to the court of Sessions but if the FIR. No. 104/83 is a cross case of FIR 103/83 as appears to be the case in hand from the facts recorded earlier, then u/s 323 Cr.PC the learned Magistrate should have committed the case also to the court of Sessions so that both the cases which are cross cases are arising out of same event could be tried by the learned Sessions Judge, though separately. The question whether the cross cases should be tried by the same Judge came up for consideration before this court in *Mangu v. State* 1958 RLW 505. There were two cross cases, one u/s 302 and the other u/s 307 of the Indian Penal Code and both had been committed to the court of Sessions. The learned Judge, who tried both the cases, it appears, had taken

some evidence of the cross case into consideration in convincing the accused in the murder case. The learned Sessions Judge also gave single judgment in both the cases. It was observed that:

the correct procedure in the trial cross cases should be that both the cases should be tried separately although by the same Judge and separate record should be prepared for each case. The judgments should be separately given and they should be based on the evidence on the record of that case alone.

A reference in that case was made to the case of Emperor Vs. Banappa Kallappa Ajawan, wherein a view has been taken that the most desirable procedure in such cases (cross-cases) would be that both the cases . should be tried by the same Judge, though with different assessors or juries. The first case should be tried to a conclusion and the verdict of jury or the opinion of the assessors taken. But the Judge should postpone judgment in that case till he has heard the second case to a conclusion, and he should then pronounce judgments separately in each case. He would of course be bound to confine his judgment in each case to the evidence led in the that particular case and would not be at liberty to use the evidence of one case for the purpose of the judgment in the other case and to allow his findings in one case to be influenced in any manner to the prejudice of the accused by the views with he may have formed in the other case. In *Mujb Ali v. Bisan Ali and Ors.* 1977 .LJ 914, a Division Bench of Gauhati High Court considered the question of trial of cross-cases and the procedure to be adopted. It was held that:

We are of the opinion that when there are cross-cases or wherever the parties are prosecuted for attack, on each other arising out of the same incident and there are counter-cases with counter versions, trial should be held separately but one after the other, by the same Magistrate who should not pronounce judgments till after both the cases are heard. But it should be noted carefully that the evidence of one case should not be trade use of in the other case. This practice will undoubtedly help the cause of justice and avoid conflicting decision in two cases.

In taking the aforesaid view reliance was placed on number of decisions of various courts. The same High Court in *Girijananda Bhattacharypa and Anr. v. The State of Assam and Ors.* 1978 PJ 914, took a similar view and in para 12 laid down the reasons for trial of cases and counter cases arising out of the same incident by a Presiding Officer. According to the learned Judge such a trial staves off the danger of an accused being convicted before his whole case is before the court, it deters conflicting judgments being delivered upon similar facts and in reality the case and the counter case are to all intents and purposes different or conflicting versions of one incident. In one case charges were such which were not exclusively triable by the court of Sessions where as in the other charges were u/s 302/147 IPC which are exclusively triable by the court of Sessions. On the transfer application u/s 407 Cr.PC the High Court ordered the transfer of both cases to one court on the ground that cross cases should be tried by the same

Judge. In *Rajendra Singh and Ors. v. The State of M.P.* 1984 (1) Crimes 259, was held that even if one set of cases is exclusively triable by the court of Sessions and the other was not, the case which is not triable by the court of Sessions should be transferred to the court of Sessions as to avoid conflicting judgments by the two different courts.

8. From the above discussion, it will be clear that in case there are two cross-cases one is exclusively triable by the court of Sessions and the other is triable by the Magistrate First Class, the case pending in the court of Magistrate First Class should also be tried by the court of Sessions so as to avoid conflicting judgments. u/s 193 Cr.PC the Sessions Judge can take cognizance of offence on commitment. Therefore, in case where the Magistrate is satisfied that the case pending before him is across case of the other which has been committed to the court of sessions, then he should also commit the case pending before him, though not triable by him to the court of Sessions so that both the cases may be tried by the same court. The Sessions Judge shall try both cases, though separately and dispose them of by separate judgments.

9. In the instant case no prayer was made to the Magistrate for commitment of the case to the court of Sessions on the ground that the cross-case has been committed to the court of Sessions. Be that as it may, if a prayer is now made before the Magistrate that the case pending before him is a cross case, should be tried by the Sessions Judge being the cross case of No. 28/83, the Magistrate will commit the case to the learned Sessions Judge and the Sessions Judge will try the case as per directions contained above.

10. The revision petition is disposed of as stated above.