
(1948) 06 AHC CK 0011
In the Allahabad High Court

Rex	Vs	APPELLANT
Pati Ram and Another		RESPONDENT

Date of Decision : 14-06-1948

Acts Referred:

General Clauses Act, 1897 — Section 6

Citation : AIR 1949 All 90 : (1948) 18 AWR 225 : (1949) CriLJ 116

Hon'ble Judges : Agarwalla, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Agarwalla, J.—Hallu and Pati Earn, residents of Lashkar, Gwalior State, were charged with the commission of an offence of murder of Chokhey Lai, Constable, by causing injuries on his skull with a spade on 9th April 1947, at about 8 A. M. near about railway culvert No. 881, mile 151/5-7, between railway stations Sitbauli and Sandalpur on the G. I. P. railway lands in Gwalior State territory. On some date -before 4th May 1947, the accused were arrested, and on 4th May 1947, identification proceedings were held.

2. The charge sheet against the two accused was framed by the Government Railway Police, Gwalior State, on 8th August 1947, but it was submitted to the City Magistrate,, Jhansi, on 27th August 1947. The inquiry was held by the learned Magistrate and by an order dated 31st December 1947, the learned Magistrate committed the accused to stand their trial before the Sessions Judge of Jhansi, within the territories of the Indian Dominion.

3. The learned Sessions Judge, being of opinion that the Indian Courts could not try this case because of constitutional changes brought about on 16th August 1947, has referred the matter to this Court with a recommendation that the proceedings may be quashed and the record may be sent to a competent Court in Gwalior State.

4. By an agreement dated 8th December 1888 entered into between the Council

of Regency, on behalf of His Highness the Maharajah Sindhia, Gwalior State, and the Resident, Gwalior, the Council of Regency, Gwalior, agreed to cede to the British Government the civil and criminal jurisdiction over the lands belonging to Gwalior Durbar on the Jhansi to Gwalior line built up by the Indian Midland Railway, (now the Great Indian Peninsula Railway), on the same conditions as had been agreed to between the Durbar and the British Government in connection with the Agra-Gwalior and Neemuch-Indore line B. The agreement relating to, Gwalior to Agra and Indore to Neemuch lines was made on 29th April 1879, and it ceded "plenary civil and criminal jurisdiction within the lands occupied for Railway purposes": see Aitchison's Treaties, Engagements and Sanads, vol. v, pp. 435 and 461. This agreement remained in force upto the midnight of 14th August 1947. The civil and criminal jurisdiction exercised by the Crown Representative over railway lands was allowed to revert to the States concerned with effect from the midnight of 14th August 1947. Stand-still agreements between the Indian Dominion and the States were signed by the States which acceded to the Indian Dominion on certain specific matters and although the existing arrangements relating to policing of the were continued to remain in force, the civil and original jurisdiction was not so retained. This is clear from a letter, No. F28 (9) IB/47, dated 27th September 1947, from the under Secretary to the Government of India, Ministry of States, to Chief Secretaries to the Governments of Central Provinces, Bihar, Orissa, Bombay, United . Provinces and East Punjab. The letter further stated that

the result is that offences committed in railway lands and detected by the railway police will hereafter be tried by the respective) State Courts.

5. The question before me is whether the offence in the present case having been committed before the criminal jurisdiction was retroceded to the Gwalior State can be tried by the Courts of the Indian Dominion.

6. It is now well recognised that crimes are altogether local, cognizable and punishable exclusively in the country in which they are committed: Story's Conflict of Law, p. 812, para. 620. In the Lotus case between Prance and Turkey the Permanent Court of International Justice elaborated the guiding principles of criminal jurisdiction of States. The Court observed: "In all systems of law the principle of the territorial character of criminal law is fundamental." Schwarzenberger's International Law, Vol. I, p. 81, 1945 Ed. Ordinarily, therefore, in the absence of the agreements already referred to ceding plenary powers of civil and criminal jurisdiction, as the offence was committed within the territories of the Gwalior State, the Gwalior State would ordinarily have had the power and the jurisdiction to try the accused who in also a national of the Gwalior State. It was on account of the said agreements between the Gwalior State and the British Indian Government that the jurisdiction was transferred to the British Indian Courts, The effect of such an agreement was considered by the Privy Council in Muham. mad Yusuf-ud Din v. Queen-Empress 25CaL 20 : 241. A. 137 (PO)). In that case there was a similar agreement for the exercise of civil

and criminal jurisdiction by the British Indian Government over railway lands of the Hyderabad State Railway, It was decided that railway lands over which civil and criminal jurisdiction was to be exercised by British Indian Courts under the agreement were not made part of British India?they still remained part of the Hyderabad State territory?and further that the source of the exercise of the authority by the British Indian Government was not Acts or Notifications passed by the British Indian Government but the agreement made by the Nizam. It follows, therefore, that the British Indian Courts would have the power to exercise that jurisdiction only so long as the agreements remained in force. As soon as the agreements were terminated the British Indian Courts lost the authority which they had acquired to try an offence of this nature. The case is analogous to the repeal of a statute empowering a certain Court to exercise a certain jurisdiction.

7. "When an Act of Parliament is repealed", said Lord Tenterden in *Surtees v. Ellison* (1829) 9 E. & C. 760 at p. 752 : 7 L. J. K. B. 335)

it must be considered (except as to transactions past and closed) as if it had never existed. That is the general rule.

Tindal C. J., states the exception more widely. He says in *Kay v. Goodwin*, (1830) 6 Bing. 876 cited in *Lemm v. Mitchell* (1912) A. O. 400 : 81 L. J. p. 0.173.:

The effect of repealing a statute is to obliterate it as completely from the records of the Parliament as it it had never been passed; and it must be considered as a law that never existed except for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.

Craies in his book on Statute Law says, (Craies on Statute Law, 4th Edn., p. 352):

If an offence is punishable under some certain statute, and the statute is repealed after the offence has been committed, but before the trial has taken place and the sentence pronounced, no punishment can be inflicted by virtue of that statute, unless, as the Court said in *Thomas Miller's case*. (1734) 1 W. Bl. 450: 3 Wils. 420, the repealing Act contained "a special clause to allow it." On this ground it was held in *B. v. Elizabeth M'Kenzie* (1820) E. & E. 429 that if an offence was punishable under some certain statute, and was committed before, but not tried till after, the passing of an Act which repealed that statute, but Imposed new penalties for the commission of the offence, the offence was not liable to be punished under either the repealed or the repealing statute.

8. This was the general common law rule in England before the Interpretation Act of 1889 was passed, By virtue of that Act, in the case of Acts, passed after 1889, the presumption has been altered with the result that, now unless a contrary intention appears, the remedies under the repealed Acts for offences committed before the repeal are not barred (see Section 88, sub. Section 32). Similar is the case in India u/s 6, General Clauses Act (x [10] of 1887), But the rule of presumption laid down in the Interpretation Act of 1889 and the General Clauses

Act of 1897 applies only to statutes and cannot be extended to the case of international agreements unless they contained a special clause permitting the exercise of jurisdiction even after the termination of the agreements.

9. The present case must be distinguished from another class of cases which came up before this Court when part of the Mirzapur district was transferred or converted into the Banares State territory. In *Emperor v. Ganga* 84 ALL. 451 : 13 cri. L. J. 576) the facts were these: An offence was committed in March 1910, in a place which was in the Mirzapur district. Subsequently one of the persons alleged to have taken part in the commission of this offence was arrested in Bengal and sent to Mirzapur where he was committed by the joint Magistrate to take his trial before the Court of Session. In the meanwhile the place where the offence was committed had ceased to be British territory and was transferred to the Banares State. It was held by Sir George Knox that the fact that after the commission of the offence the territory where the offence was committed had been transferred to the Banares State and the British Indian Courts had ceased to exercise jurisdiction therein did not oust the jurisdiction of the Joint Magistrate of Mirzapur. In that case the law that conferred the authority on the Magistrate of Mirzapur to try the offence committed within his jurisdiction as it existed at the time of its commission was neither abrogated nor repealed nor altered. All that had happened was that with effect from a certain date, which was after the commission of the offence, a certain territory had been taken out of the jurisdiction of the British Indian Courts and transferred to another State. Such a transfer of territory from one State to another involves the transfer of jurisdiction to try offences committed within that territory from and after the date of transfer. The transfer does not affect the jurisdiction that had already existed in respect of offences committed prior to the date of the transfer. Section 177, Criminal P. C, 1898, was the source of the law which conferred jurisdiction on the District Magistrate of Mirzapur to try the offence on the date when the offence was committed. This law continued to remain in force even after the transfer of the territory where the offence was committed. As soon as the offence was committed it became triable by the Court which at that time exercised jurisdiction in that territory and any subsequent transfer of the territory could not affect the jurisdiction of the Magistrate at all so long as the law which empowered him to hold the trial at the time of the commission of offence remained in force. In the present case the very law which conferred jurisdiction on a British Indian Magistrate to try the offence has come to an end. The case of *Emperor v. Ganga* 34 ALL. 451 : 13 cri. L.J. 3, 575) therefore, is clearly distinguishable.

10. I, therefore, accept this reference and quash the order of committal and the entire proceedings held before the learned committing Magistrate. Pati Ram accused is said to have escaped from jail custody. The other accused Hallu, will be released forthwith unless required in connection with some other case, or unless he is lawfully required by the Gwalior State authorities to be handed over to them to be tried according to the law of the Gwalior State.