
(1924) 11 PAT CK 0017
In the Patna High Court

Ritbhanjan Rai and Others

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 26-11-1924

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 253
Penal Code, 1860 (IPC) — Section 147, 149, 301, 304, 325

Citation : 86 Ind. Cas. 822

Hon'ble Judges : Das, J

Bench : Single Bench

Judgement

Das, J.—This application is directed against the order of the learned Sessions Judge of Shahabad, dated the 22nd September 1924, by which he has directed the petitioner to be committed to the Court of Session by the discharging Magistrate, or if he is transferred by his successor.

2. The petitioners were tried by a Magistrate of Sassaram in respect of an occurrence which took place on the afternoon of the 14th of April last.

3. By his order dated the 26th June 1924, the learned Magistrate discharged the petitioners u/s 253 of the Code.

4. The complainant thereupon moved the Sessions Judge of Shahabad with the result that the petitioners have now been directed to be committed to the Court of Session.

5. It is not open to doubt that in the course of the occurrence which took place, Sumiran and Balgobind received certain injuries which were more or less slight. It is the case of the prosecution that serious injuries were inflicted on Sheodahin, the brother of Sumiran, and Balgobind, which caused his death. Sheodahin undoubtedly died on the afternoon of the 15th April, and the medical evidence shows that there were two contusions on both sides of his head which were the cause of his death.

6. The defence theory is that he received these wounds by a fall from a tree. The

Medical Officer stated in his evidence that contusion on one side of the head could have been caused by a fall from a tree. On being pressed further, he stated that contusions on both sides of the head could be caused by a fall from a tree but that the idea was far fetched. I understand his evidence to be that it is possible but highly improbable that the injuries on both sides of the head could have been caused by a fall from a tree.

7. Now in respect of the occurrence, Sumiran is alleged to have lodged an information before the Writer Head Constable at 7 P.M. that evening. He is alleged to have reported that the petitioners were taking his cattle to the pound from a purti land when he went and remonstrated. On that there was an altercation and he was assaulted. As the offence disclosed in the information was of a non-cognizable nature, the constable refused to take any action. It is to be noted that there was no suggestion in the Sanha that serious injuries were inflicted on Sheoduhin or that the complainant and his brother were taking the cattle to the pound.

8. The case made by the prosecution at the trial was, however, a different one. That case is as follows:

9. "Twenty or twenty two heads of cattle of village Baluahi were eating the crops stored in the Kalihan of Sumiran Singh, Sheodahin and Balgobind and Sumiran, Sheodahin and Balgobind started driving the cattle to the pound". Thereupon the petitioners came and rescued the cattle and began to assault them in the course of which they all received injuries from the effect of which Sheodahin died the next day.

10. It will be noticed that the case presented in Court was radically different from the one alleged to have been stated to the Writer Head Constable, and it was impossible for the Court to convict the petitioners if it found that the information was correctly recorded by the Writer Head Constable.

11. The Sanha was proved by the Head Constable who was properly called as a witness on behalf of the prosecution. Sumiran in his evidence admitted that he went to the Writer Head Constable to have his information recorded, but he states that the constable refused to take down his statement. In this he was contradicted by the Writer Head Constable and the Court had to consider which of the rival versions was true. On a consideration of the evidence the Magistrate came to the conclusion that the evidence of Sumiran on this point was untrue, and I have no doubt whatever that this is the only conclusion at which he could have arrived.

12. Now if the prosecution case be true, a serious offence had been committed by the petitioners. It is the evidence of Sumiran, that he went to the Writer Head Constable to have his information recorded but that he refused to record his statement, no attempt was made to have Sheodahin conveyed to the hospital and the complaint was not filed in Court till the 16th of April, the occurrence having taken place on the 14th of April. The internal evidence furnished by the

complaint, however, shows that it was drawn up on the afternoon of the 15th of April.

13. Now I cannot believe that, if the Police refused to help Sumiran in the matter, Sumiran would not have rushed to the Court at the earliest possible opportunity and laid his case before the Court, but he waited till the 16th of April and when he did file his complaint in the Court he made no allegation whatever against the Police and suppressed the fact that he had gone to the Head Constable to have his information recorded. The facts speak for themselves and it is not necessary for me to pursue the subject.

14. These being the circumstances, the Magistrate had to consider whether there was a case to go to the Jury, or whether he was not competent to try the case himself. He examined the evidence and came to the conclusion that "there is nothing to show that the injuries were inflicted with intent to cause death or knowing it likely that they will cause death". Although the point is disputed by the learned Government Advocate, I take the view that the finding of the Magistrate amounted to a finding to the effect that there was no case of culpable homicide to be tried by the Court. That being his finding, he tried the case himself to see whether any of the petitioners could be convicted of an offence u/s 325, Indian Penal Code. On this his finding is that "the injuries were received in the heat of the fight and proved fatal afterwards". Having accepted that the Sanha correctly represented the information given by Sumiran, the Magistrate rejected the whole of the prosecution evidence and discharged the petitioners u/s 253 of the Code.

15. When the matter went up to the learned Sessions Judge at the instance not of the Crown but of Sumiran the learned Sessions Judge thought that there was much to be said on behalf of the complainant that the entry in the station diary was not a correct entry.

16. Now it seems to me that this was the vital point in the case; was the entry in the station diary a true entry or a false entry? in dealing with this point, the learned Magistrate referred to two circumstances which in his view were important, first that there was no allegation by Sumiran either in his petition of complaint or in his statement on solemn affirmation that the Writer Head-Constable refused to take down his statement; and secondly that Sheodahin was not taken to the thana.

17. Now these are matters not discussed in the judgment of the learned Sessions Judge. I apprehend, that in considering whether the petitioners should be directed to be committed to the Court of Sessions, notwithstanding they had been discharged by the Magistrate, the Sessions Judge had to consider whether it was open to the Magistrate to come to the conclusion to which he did come on the material before him. That a different view could be taken on the evidence would not justify the learned Sessions Judge to take the course which he has taken, he must come to the conclusion that the finding of the Magistrate is not

only wrong but perverse. In my opinion, on the materials in the record, the learned Sessions Judge could not have come to the conclusion that the finding of the Magistrate on this point was a perverse finding, nor do I think that the learned Sessions Judge has come to that conclusion. The finding of the learned Sessions Judge on this point is somewhat halting, but as I -read the judgment, he does not even say that the finding of the Magistrate is wrong although he does throw some doubt on that finding. In my opinion there is no case to be tried either u/s 304 read with Section 149, or u/s 147 of the Indian Penal Code.

18. But the learned Government Advocate contended before me that at any rate there is a case u/s 325 to be tried. There is no doubt that Sheodahin has died from injuries inflicted on him. I have read the evidence myself and I altogether reject the theory that Sheodahin could have received those injuries by a fall from a tree. But still the prosecution has to establish a case u/s 325 against the petitioners or some of them. The learned Magistrate examined the prosecution evidence and rejected it as unworthy of credit. His finding on this point is as follows:

It is clear that true circumstances of the occurrence have been suppressed and false and fictitious circumstances have been set forth in order to get up a case. All the eleven accused persons are given their respective parts, three assault one man, three assault another and five assault another. None are left to stand idle. But I do not understand how in the heat of fight persons injured can see things so minutely and in detail and why when so many persons used their lathis so few injuries were received. This shows that much less number of men were engaged in the occurrence than what is alleged by the prosecution and this is another proof that the circumstances of the occurrence have been changed.

19. It was, in my opinion, open to the learned Magistrate, on the material before him, to reject the evidence, having regard to the fact that the prosecution had undoubtedly made a false case on many points.

20. It is, however, contended by the learned Government Advocate that Sheodahin having died from the injuries admittedly inflicted on him by the petitioners there would be a gross miscarriage of justice if the petitioners are not directed to be committed to the Court of Session to be charged for an offence u/s 325 or at any rate further inquiry into the matter be not ordered.

21. Now in dealing with this point, it has to be remembered that charges u/s 301 read with Section 149 and Section 147 have wholly failed. I have myself read all the evidence in the case and there is no doubt whatever that there is no case u/s 304 to be tried. That being so, the only question is, is there any evidence in the record to connect the petitioners or any of them with the serious injuries inflicted on Sheodahin? As I have said, I have read all the evidence in the case and in my opinion there is no evidence whatever to connect the petitioners or any of them with those injuries. That being so obviously none of the petitioners could be convicted of an offence u/s 325, Indian Penal Code.

22. The application must be allowed and the order of the learned Sessions Judge must be set aside.