

(1993) 02 DEL CK 0032

In the Delhi High Court

Case No : Criminal Appeal No. 63 of 1984

State (Delhi Administration)

APPELLANT

Vs

Balroop Singh

RESPONDENT

Date of Decision : 03-02-1993

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 252

Citation : (1993) 49 DLT 644 : (1993) 25 DRJ 193 : (1993) 2 ILR Delhi 1 :
(1993) 2 RCR(Criminal) 97 : (1993) RLR 211

Hon'ble Judges : Prakash Narain, J;Jaspal Singh, J

Bench : Division Bench

Advocate : P.S. Sharma and N.S. Safaya, for the Appellant;

Judgement

Jaspal Singh, J.

(1) The appeal unfolds a sad spectacle. Here is a Magistrate who convicts and an Additional Sessions Judge who acquits but not by cooling into grip with the issues involved. Law has been the first casualty.

(2) Here is the background.

(3) On April II, 1983 Constable Bal Roop Singh of the Central Reserve Police Forces was on duty at the Jawahar Lal Nehru Stadium, New Delhi. It is alleged that at about 12.00 hrs. without having been properly marched out, he, of his own accord, turned back, left the Orderly Room of the Officer Commanding—without even paying due complements to his superior. Not only that he is alleged even shouted at his Company Commander in highly insolent and insubordinate manner and as such, was awarded summary punishment of seven days confinement to line. It is Claimed that soon after the announcement of the punishment he removed his web belt from his waist and started swinging it violently resulting in injuries on the person of one Prem Singh Deputy S.P. A complaint was thus made by one Vinod Seth, Assistant Comdt. before a

Metropolitan Magistrate who also happened to be the Assistant Commandant 52 Bn of the Central Reserve Police Force. This was on April 15, 1983. Consequent upon the filing of the complaint, a copy thereof was supplied to Constable Bal Roop Singh Along with copies of other documents and the matter was adjourned to April 16, 1983 for "recording the plea of "Guilty" or "Not Guilty"." On April 16, the accusations leveled against the accused were "read out and explained in Hindi language," and as the accused pleaded "guilty", he was convicted under Sections 10(e) and 10(n) of the Central Reserve Police Force Act, 1949, and on April 20, 1983 was sentenced to undergo six months" rigorous imprisonment. Aggrieved by the said judgment of conviction and order of sentence, Constable Bal Roop Singh preferred an appeal which was accepted by a learned Additional Sessions Judge. The main thrust of his judgment is that since neither any charge had been framed nor put to the accused, Therefore, the Code of Criminal Procedure had not been "adopted" and consequently there was "no alternative but to quash the proceedings."

(4) It was then the turn of the State to feel aggrieved. Hence this appeal against acquittal.

(5) Where did the learned Magistrate go wrong?

(6) First, he took no serious note of the fact that the accused could not be credited with the skill and knowledge essential to prepare his defense and that he needed the guiding hand of counsel at every step of the. proceeding against him. Unfortunately, the accused had to face his accusers without a lawyer to assist him. It is difficult to understand bow this was allowed to happen despite the decisions of the Supreme Court in Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, and Khatri v. State of Bihar 1981 CrL.J.470.

(7) It was observed in Hussainara Khatoon"s case:

".....A procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, Therefore, have to go through the trial without legal assistance, cannot possibly be regarded as "reasonable, fair and just"."

(8) And that:

"FREE legal service is an unalienable element of "reasonable, fair and just" procedure for without it person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal service is, Therefore, clearly an essential, ingredient of "reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or-incommunicado situation and the State is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course the accused

person does not object to the provision of such lawyer

(9) In *Khatri v. State of Bihar*, the view finds further elaboration in the words as follows:

"MOREOVER, this constitutional obligation to provide free legal services to an indigent accused does not arise only when the trial commences but also attaches when the accused is for the first time produced before the Magistrate. It is elementary that the jeopardy to his personal liberty arises as soon as a person is arrested and produced before a Magistrate for it is at that stage that he gets the first opportunity to apply for bail and obtain his release as also to resist remand to police or jail custody. That is the stage; at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at that stage."

(10) It is unfortunate that at no stage of the proceedings was any offer made to provide legal assistance at State expense. Article 21 of the Constitution was thus made to eat dust.

(11) The learned Magistrate also failed to appreciate that a guilty plea is a grave and solemn act to be accepted only with care and discernment. It must not be forgotten that a guilty plea is not merely an admission of past conduct. It is also a waiver of the right to confront one's accusers and a deaf consent to a judgment of conviction without a trial. Not only that, when an accused pleads guilty, he, in a way, stands as a witness against himself. When such be the position, the Magistrate must ensure that the guilty plea is not only voluntary but a knowing intelligent act done with sufficient awareness of not only the relevant circumstances but likely consequences as well.

(12) To lend assurance that there was nothing to question the accuracy and reliability of the guilty plea and that the Magistrate was fully alive to his duties, the record must not be silent. A speaking record is the first guarantee. The availability of legal counsel to the accused is not only a constitutional obligation but a further guarantee to the fairness of the proceedings. The third guarantee is inherent in Section 252 of the Code of Criminal Procedure which provides:

"252. Conviction on plea of guilty.- If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused and may, in his discretion, convict him thereon."

(13) What does this provision show? It shows that the admission must be recorded as nearly as possible in the words used by the accused. Why? Because the right of appeal depends upon whether he really pleaded guilty or not. As far back as in 1966 the Supreme Court had declared in *Mahant Kaushalya Das Vs. State of Madras*, that the requirements of the provisions (Section 243 at that time) are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction invalid. It was observed:

"THE requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice. It is important that the terms of the section are strictly complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or apprehension."

(14) It is unfortunate that in this case all these requirements were made to take wings and fly away. The result was an order of conviction which is so bad that it does not even take note of the fact that on one charge the accused had already been punished. He was convicted and sentenced on that charge again.

(15) And, where did the learned Additional Sessions Judge go wrong? As already noticed, he accepted the appeal and acquitted the accused on the ground that the Code of Criminal Procedure had not been followed in as much as neither any formal charge had been framed nor read out and explained to the accused. He observed:

"IN this case, it appears that no procedure was adopted by the Ld. Magistrate below whereas the procedure of Criminal Procedure Code ought to have been adopted as per rule 36 A of the Act. The provisions of section 167 provides that no acquisition of any charge can be explained by the accused unless a due opportunity is given to him and proper charge is framed so as to explain his cause. The Ld. Counsel argued before me that as per the record, the appellant was in judicial custody and there was no information either with the police or otherwise before the Ld. Magistrate so as to read out the acquisition against the appellant. The presumption and assumption so recorded on the file are altogether without jurisdiction. To my mind, the Appellant has not been given opportunity to defend himself as per law. Even otherwise, the procedure of Criminal procedure Code was to be adopted by the Ld. Magistrate below which has not been adopted in this case and such like illegality vitiates the trial into the Procedure of the Criminal Procedure Code provided that firstly there must be some information before the Magistrate so as to take cognizance and later on the acquisition or the charge must be framed and the charge so framed must be put to the accused concerned and thereafter the trial should be started according to the procedure giving all the opportunities to the delinquent person so as to defend himself in a natural course. As such like procedure has not been adopted in this case, I have no alternative but to quash the proceedings which are not tenable in the eye of law."

(16) We are at a total loss as to how the learned Additional Sessions Judge could rely upon section 167 of the Code of Criminal Procedure, which, in fact, has nothing to do with the framing of a charge. The object of Section 167, which is supplementary to section 57 of the Code, is to see that the person arrested by the police is brought before a magistrate with the least possible delay and contemplates that the investigation should be completed within the stipulated

period.

(17) In any case, it being admittedly a summons case, no formal charge was required to be framed. What was needed to be followed was section 251 of the Code which only requires substance of accusation to be stated.

(18) In short thus what ought to have attracted the discerning eyes of the learned Additional Sessions Judge was totally shut out and what was not there and could not be there was made the foundation of the order.

(19) Ami, in the passing would somebody inform the learned Additional Sessions Judge that "accusation" is never spelled as "acquisition"?

(20) The learned Magistrate convicted by not following the law. The, learned Additional Sessions Judge acquitted by following some law which lives only in his imagination. What should then be done? Should we remit the case for retrial?

(21) The errors committed by the courts below were not purely technical. Rather, the accused was not only deprived of his right to have legal aid and assistance but was also made a victim of proceedings which were neither fair nor legal. The charge is of April 11, 1983. Almost ten years have rolled by since then. We are not prepared to keep the accused anymore under indefinite suspense because the trial Magistrate. Omitted to do his duty. We feel that any further proceedings would be oppressive and unwarranted. Has not the Supreme Court observed:

"JUSTICE is not one sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed."

(22) To ask the accused again to stand fresh trial would be like roasting him at slow fire. We would hate to see him undergo that ordeal again. The accused thus stands acquitted.