

(1967) 10 GUJ CK 0011
In the Gujarat High Court

The State of Gujarat

APPELLANT

Vs

one deaf and dumb man

RESPONDENT

Date of Decision : 20-10-1967

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 380

Citation : (1969) CriLJ 328

Hon'ble Judges : J.M. Sheth, J

Bench : Single Bench

Judgement

J.M. Sheth, J.—This is a reference made by the learned Judicial Magistrate, First Class, Dhrangadhra. Mr. K.H. Banker, u/s 341 of the Criminal Procedure Code in a Criminal Case No. 330 of 1967.

2. The facts leading rise to this reference are briefly stated as under:

One Ala Raja, a labourer, had gone with his wife Prembai Natha and his cousin sister Dani Bhana and other labourers of Dhandhuka for labour work to the village Kuda, Taluka Dhrangadhra, They worked there as labourers for about 22 days and had returned from Kuda to Dhrangadhra Railway Station by a night train and were waiting in the third class passenger hall on the night of 16.5.1967 for catching train for Dhandhuka which was to leave that station in the early hours of 16.5.1967. The complainant and his wife and other passengers were there with their kit. Except the complainant, other members of the party were sleeping. The accused-opponent was also sleeping nearby the complainant's wife's feet. At about 3-00 a.m. the accused stretched his hand and removed a silver anklet from one of her feet and kept it in a bag which he had hung over his shoulder. It came to the notice of the complainant and he shouted. The accused began to run with his Trishool (three-pointed spear), but as the other labourers and members of the Railway staff reached the scene of offence, the accused was arrested there and then; on taking a search of his bag in the presence of the panchas, the muddamal anklet was recovered from his bag. The Railway Head Constable of Dhrangadhra Outpost Police Station recorded the complaint and

arrested the accused and the Railway Police Sub-Inspector Surendranagar Railway Junction, submitted the charge-sheet against the accused for the offence, punishable u/s 379 of the Indian Penal Code, after the necessary investigation.

3. Before the trial commenced, the accused was sent to the doctor for examination and the Assistant Medical Officer had sent his certificate, dated 19.5.1967 stating that he was not speaking and he should be examined by a specialist. The accused was then sent to R. R. Hospital at Limdi. The Medical Officer certified that the accused appeared to be deaf and dumb. The learned Judicial Magistrate relied upon that certificate and found that the accused was deaf and dumb. The accused is a sadhu living on alms. Nothing is known about his name, place of residence, or his relation, if any. Thus, there is no possibility of communication with him with the assistance of his relation. Again an attempt was made to talk to him from close range, but it proved to be fruitless. The charge against the accused was framed for the offence, punishable u/s 379 of the Indian Penal Code. No specific plea of his could be taken, as he was deaf and dumb and for the same reason, his statement could not be recorded u/s 342 of the Criminal Procedure Code. The Jailor had reported, vide Ex. 4, that the copies of the police papers u/s 173(4) of the Criminal Procedure Code had been given to the accused. The learned Judicial Magistrate recorded the evidence and recorded a finding that the accused-opponent had committed an offence, punishable u/s 379 of the Indian Penal Code. As he found that though the opponent-accused was not insane, but he was found to be deaf and dumb and is liable to be convicted of the offence with which he is charged, he has reported the matter to this Court for passing orders that are deemed proper.

4. Section 341 of the Criminal Procedure Code runs as under:

If the accused, though not insane, cannot be made to understand the proceedings, the Court may proceed with the inquiry or trial; and, in the case of a Court other than a High Court, if such inquiry results in a commitment, or if such trial results in a conviction, the proceedings shall be forwarded to the High Court with a report of the circumstances of the case, and the High Court shall pass thereon such order as it thinks fit.

The judgment of the learned Judicial Magistrate reveals that the accused-opponent is a sadhu living on alms. Nothing is known about his name, place of residence or his. relation, if any. It is thus evident that, in the instant case, in view of the aforesaid circumstances, it is not possible to find out any relation who could communicate with the accused and make him understand the proceedings thereby. From the medical evidence it has revealed that the accused is deaf and dumb.

5. The learned Advocate, Mr. A.D. Shah, appointed as amicus curiae for the accused, invited my attention to the case of King-Emperor v. Monya (1902) 4 Bom LR 296, It has been observed therein as under:

Where an accused being dumb cannot be made to understand the proceedings against him, and it becomes impossible to say that he knew the nature of the act committed or that he acted with dishonest intention therein, he must be acquitted and discharged.

In the order that came to be made in the Reference, it has been observed as under:

As the accused cannot be made to understand the proceedings, it is impossible to say that he knew the nature of the act committed or that he acted with dishonest intention. The Court, therefore, directs that he be acquitted and discharged.

Merely because a man is deaf and dumb, it cannot be necessarily deduced that he cannot understand the nature of the act committed or that he cannot act with dishonest intention. In a later decision of the Bombay High Court, in the case of Emperor Vs. Khashaba Tatyai Lawand, , a Division Bench of the Bombay High Court has made the following observations:

A deaf and dumb person was found guilty of attempt to commit suicide. At the trial he made certain signs to signify what took place. On the case being reported u/s 341 of the Criminal Procedure Code, the High Court affirmed the conviction and sentenced the accused to one day's simple imprisonment.

At page 45 of Bom LR : at p. 194 of AIR, it has been observed as under:

Unfortunately the learned Magistrate does not say definitely whether the accused is able to read or write and consequently to communicate with people in that way.

It has been further observed therein as under:

But on the whole, I do not think it necessary to have this case remanded or to direct a retrial. I think the justice of the case will be met if we affirm the finding that he is guilty of the offence and convict him accordingly of an attempt to commit suicide and direct that he be sentenced to one day's simple imprisonment.

In the instant case the learned Advocate Mr. Shah urges that no useful purpose would be served by ordering a retrial. He further urges that if retrial is ordered, the accused will suffer as he is in jail as an under-trial prisoner from 16.5.1967. He is thus in jail for a period over five months.

6. The learned Government Pleader, Mr. Sompura also on behalf of the State urges that the interests of justice would be met if the accused is convicted of the offence in question as there is very strong evidence against him, he having been caught red-handed, and sentence of one day's rigorous imprisonment is awarded to him in view of the fact that he is in jail for a period over five months.

7. In the case of Emperor Vs. A Deaf and Dumb, , a Division Bench of the Bombay High Court has made the following observations:

Though great caution and diligence are necessary in the trial of a deaf and dumb person, yet if it be shown that such person had sufficient intelligence to understand the character of his criminal act, he is liable to punishment.

The facts in that case were as under:

The accused, a deaf and dumb person, was charged with having stolen two sadis. At the trial, the prosecution witnesses were examined and their depositions were recorded. The accused, however, could not be made to understand the proceedings though every possible effort was made to make him understand by means of signs. No statement of his was, for the same reason, taken.

It appeared to the Magistrate, from the evidence adduced, that the accused committed an offence of theft punishable u/s 380 of the Indian Penal Code. He accordingly framed a charge and recorded his judgment convicting the accused.

The Magistrate next submitted the papers in the case to the High Court u/s 341 of the Criminal Procedure Code.

The High Court observed, after referring to several authorities in that case that they were satisfied that the learned Magistrate was right in finding that the accused understood the nature of the act which he was committing, when he committed the theft and confirmed the conviction and sentenced the accused to one month's rigorous imprisonment. In the instant case also, the learned Judicial Magistrate has observed in his judgment, in para 11 as under:

I have already observed above that the accused is deaf and dumb and a presumption may be made in such types of cases in favour of an absence of mind, but it is equally true that the said presumption cannot always be taken as an irrebuttable presumption and upon the evidence on record and immediate conduct of the accused, to wit, the way in which he committed the theft of anklet and thereafter his attempt to escape with the muddamal, this conduct of the accused immediately after the happening of the incident shows that he has had sufficient intelligence and guilty conscience to understand the character of his criminal act and hence in my opinion he is proved to have committed an offence punishable u/s 379 of the Indian Penal Code.

Taking into consideration the evidence led by the prosecution, which appears to be absolutely disinterested and independent evidence, and none of them is in any way interested in falsely involving the accused, I find that the learned Judicial Magistrate was fully justified in convicting the accused of the offence, punishable u/s 379 of the Indian Penal Code. It is a case where the accused was caught red-handed and immediately on being accosted, he began to run away with muddamal silver anklet which he had removed from one of the feet of the complainant's wife. He was chased by the Railway staff people and others and was caught and from his bag which he had hung over his shoulder, this article was found. The witnesses examined by the prosecution are reliable witnesses. The conduct of the accused in taking out this silver anklet from one of the feet of

the complainant's wife who was sleeping and his conduct of running away with it on being accosted, are clearly indicative of the fact that he knew the nature of his criminal act. It could, therefore, be said with a reasonable certainty that he did this act knowing fully well that he was committing a criminal act. It was with a dishonest intention. I, therefore, affirm the conviction of the accused, recorded by the learned Judicial Magistrate, for the offence, punishable u/s 379 of the Indian Penal Code.

8. In the case of Rex Vs. Goonga, , Desai J. has also made the following observations:

Where a man who is deaf and dumb is caught red-handed in the act of stealing a bullock and there is nothing suspicious about the evidence against him, the High Court will accept the reference u/s 341 and convict him u/s 380, Penal Code.

9. In the case of State Vs. Radhamal Sangatmal Sindhi, , a Division Bench of the Bombay High Court has made the following observations:

Under Section 341 the High Court has wide powers to take such action and to give such directions as it deems fit and proper in the interests of justice to ensure a fair trial of the accused, if it decides that the trial should proceed against him, after the order of committal. However, the Court trying such an accused will be directed to see that he has the necessary legal assistance, that the trial proceeds on the basis that the accused has pleaded not guilty to the charge and that all possible defences open to him in the circumstances of the case are considered.

The fact, however, that an accused is deaf and dumb and is unable to follow and understand the nature of the proceedings against him would not exempt him from punishment if it be shown and found that he had sufficient intelligence to understand the criminal character of his act.

As that was a case where a reference was made u/s 341 of the Criminal Procedure Code, after a deaf and dumb person was ordered to be committed to the Court of Session for his trial, directions regarding legal assistance etc. could be given. In the instant case, the trial has already proceeded and a finding regarding the commission of offence has been recorded by the learned Judicial Magistrate.

10. In the case of State v. Kampu Shetty AIR 1965 Mys 95, a Division Bench of the Mysore High Court has made the following observations:

Where in a trial it is averred that a particular accused though not insane, is deaf and dumb and the Public Prosecutor does not challenge its veracity and his attitude is in no way helpful to the Court for purpose of ascertaining as to whether the accused cannot be made to understand the proceedings of the Court, that does not in any way lessen the responsibility of the Magistrate to make every reasonable attempt to find out whether it is possible to make the accused understand the proceedings of the Court. The Magistrate's conclusion

that the accused is deaf and dumb by merely observing the demeanour and the conduct of the accused and by questioning with reference to certain pieces of evidence, is not proper when he has not made every attempt or taken every step to make the accused understand the proceedings of the Court. He should have made an endeavour to find out as to whether it was not possible for any of the relations or friends of the accused to communicate with him by signs and as to whether it would not be possible for such a person to interpret the proceedings of the Court further, he should have sent the accused before a doctor for the purpose of ascertaining the degree of his disability.

The object of Section 341 is that the High Court should be in a position to satisfy itself that the accused is ensured a fair trial. It is also within the power of the High Court to give necessary directions to the trial Court before whom such an accused is to be tried, to ensure that sufficient provision is made for his defence and that he will have a fair trial.

No doubt, the learned Judicial Magistrate has to make all possible endeavours to see whether the accused can be communicated in any manner. In the instant case, it does appear that the learned Judicial Magistrate has made some efforts. He has also got the accused examined by the doctors and it has been found that he appears to be deaf and dumb. The only omission is that the learned Judicial Magistrate has not brought on record a fact whether the accused is able to read and/or write. If he is able to read and write, the proceedings can be got understood to him by that communication. But as the learned Advocate Mr. Shah, appointed as *amicus curiae* for the accused, states that if the retrial is ordered, the accused will suffer and it would cause further harassment, I do not think it fit in the circumstances of this case to order retrial. Interests of justice would be met if the accused is sentenced to suffer one day's rigorous imprisonment, as he has already remained in jail for a period over 5 months.

11. I affirm the order of conviction, passed against this accused, a deaf and dumb person for the offence, punishable u/s 379 of the Indian Penal Code, recorded by the learned Judicial Magistrate, First Class, Dhrangadhra, and he is sentenced to suffer one day's rigorous imprisonment.

Reference is accepted, Rule is made absolute.