SUPREME COURT OF INDIA

Narayan Rao

Vs.

State of A.P.

Crl.A.No.97 of 1957

(B. P. Sinha, S. J. Imam and J. L. Kapur, JJ.)

15.07.1957

JUDGEMENT

SINHA J.-

1. The main question for determination in this appeal by special leave is whether and, if so, how far non-compliance with the provisions of Ss. 173 (4) and 207A (3) of the Code of Criminal Procedure, has affected the legality of the proceedings and the trial resulting in the conviction of the appellant. The appellant was tried by the learned Sessions Judge of Karimnagar in what used to be the State of Hyderabad (now part of the State of Andhra Pradesh), under S. 302 of the Indian Penal Code, for the murder of his brother Baga Rao, and sentenced to death.

The conviction and the sentence were affirmed by the High Court of Judicature of Andhra Pradesh at Hyderabad on appeal and on a reference by the learned Sessions Judge. Along with the appellant three other persons named Lingaro the appellant's brother, Narsingrao, the nephew of the appellant and son of Lingaro aforesaid and Mahboob Ali, said to be a close friend of the other accused, were also tried under S. 302, read with Ss. 34 and 109 of the Indian Penal Code, and convicted and sentenced to imprisonment for life.

Their appeals also were heard along with the appeal preferred by the appellant and by a common judgment, the High Court dismissed all the appeals and confirmed the convictions and sentence passed against all the four accused persons. This appeal concerns only Narayan Rao who has been sentenced to death by the Courts below.

2. The facts of the case are short and simple. The murdered man Baga Rao who was an excise contractor, had separated from his other brothers aforesaid, and had partitioned the family lands. There were differences amongst the brothers which had led to arbitration proceedings a few months earlier, which did not satisfy Baga Rao. On the Saturday previous to the Monday 26th December 1955 which was the day of the occurrence, there was a quarrel between Baga Rao on one side and Lingarao and Narsingrao on the other in the field said to belong to Baga Rao.

The parties reside in village Kollamaddi taluk Sircilla, district Karimnagar. At about 7 a.m., on the morning of 26th December 1955, Baga Rao had been proceeding from his village towards Nirmal side. The accused who appears to have been lying in wait for Baga Rao, came running from behind and the appellant fell upon Baga Rao with his knife. The other accused persons caught hold of Baga Rao and the appellant inflicted several injuries on his person with his knife (M.O.13.).

At first, Baga Rao got himself released from the grip of Narsingrao but the latter chased him and overtook him. All the accused over-powered him by catching hold of the different parts of his body, and the appellant stabbed him in the regions of the neck, abdomen, thigh and other parts of his body, the fatal injuries being in the neck and the abdomen. At the time of the occurrence, P.W. 1, father's brother of the appellant who also was proceeding towards Nirmal, saw most of the occurrence and then, out of fear, hid himself in a hut nearby.

P.W. 2 - a boy of about 12 years-a student of 4th standard in a Government school, was also proceeding in that direction that morning and saw the whole occurrence from beginning to end from a short distance of a few yards. This young boy claimed the murdered Baga Rao as his maternal uncle, stating that his mother is the sister of Baga Rao. But the wife of the murdered man P.W. 6. stated in cross examination that P.W. 2 - Ramchander Rao- is distantly related to her husband and that he is not the son of her- husband's sister.

The father of the murdered man Chatriah, aged about 85 years, who has been examined as defence witness No 1, disclaimed all relationship with the said P.W. 2, but stated that he is related to Dharmiah, P.W. 1, who is no other than his full brother. Chatriah, the father, had been examined to support the defence suggestion that it was P.W. 1, Dharmiah Rao and his son who got Baga Rao murdered and falsely implicated the accused persons.

That evidence has naturally not been accepted by the Courts below because such a case was never sought to be made out at any previous stage of the proceedings until his examination in Court. D.W. 2 who claims to be the son-in-law of P.W. 1, was examined only to prove that there had been a rivalry between P.W. 1 and the accused persons for the purchase of some land. His evidence was rejected as vague and of no relevance.

3. The case against the appellant as also against other accused persons not before this Court, rested mainly on the evidence of Dharmiah P.W. 1 and Ramchander Rao P.W. 2 who figure as the eyewitnesses. Besides their testimony, there is the evidence of the recovery of the blood-stained garments from the houses of the accused persons and the bloodstained knife found near the dead body and identified in Court as belonging to the appellant, which were all found by the chemical examiner, to have stains of human blood. The Courts below have relied upon the evidence of the eye-witnesses, corroborated by the incriminating circumstances aforesaid, and have agreed in convicting and sentencing the accused as stated above.

4. We have been taken through the evidence in this case and after having heard counsel for the appellant, we do not see any reasons to differ from the Courts below in their estimate of the evidence adduced by the prosecution in support of the case against the appellant. Hence, in our opinion, there is no ground for interference with the conclusions of the Courts below on the merits of the case.

5. It now remains to consider the question of law which has been seriously pressed upon us. It has been argued, as was admitted by the learned Government. Advocate before the High Court, that the provisions of Ss.173 (4) and 207A (3) of the Code of Criminal Procedure, have not been complied with and, that as a necessary consequence of those omissions, the entire proceedings and the trial are vitiated.

It is convenient at this stage to set out the course, in some respects rather unusual, of the proceedings before the police and the committing Magistrate as also at the trial before the learned

Sessions Judge. When P.W. 1 aforesaid, informed Gopal Rao (P.W. 8) - Police Patel - about the occurrence, he drew up the first information report at about 11 a.m., on 26th December. All the four accused were named as the culprits in the first information report.

He issued that report to the station house, Gamphiraopet, about 5 miles from the place of occurrence. The Sub-Inspector of police, P.W. 11, proceeded to the spot and prepared the inquest report. He found the throat of the deceased cut, besides other injuries on the left side of the stomach and right thigh and three wounds on the left hand. Two panchas, Lachmayya and Ramayya (P.W. 10), were called by the police officer and in their presence and under their signatures, he entered a long note as to what the panchas saw on the spot, and then follows the substance of the statements of the eye-witnesses, P.Ws. l and 2, aforesaid.

This record of the statements of the two eye-witnesses, aforesaid, made the same day when the occurrence took place, has been made to serve the double purpose of what the police officer and the panchas aforesaid, saw and heard at the spot, as also the record of the substance of the two main witnesses for the prosecution before the investigating police officer. The post mortem report, made the next day, December 27, corroborated the nature of the injuries stated above, and added that the incised wound across the lower part of the neck, had cut the vital organs like trachea, oesophagus and the jugular vein.

The prosecution also proved, as EX. P-5, the panchnama prepared the same day and signed not only by the panchas but purporting to have been signed also by the accused persons. This document is a record which is a complete confession of the crime from the beginning to the end, by all the accused persons.

This was highly irregular, but fortunately, it was not a jury trial and has not, therefore, done much harm to the accused persons, but certainly the provisions of the Evidence Act and of the Code of Criminal Procedure, have not been observed. On 10th and 11th January 1956, the learned Munsif-Magistrate recorded the full length statements of Ramchander Rao as P.W. 1, and of Dharmiah Rao, P.W. 2, under S. 164, Criminal P.C.

Apparently, the police, apprehending that those two persons were related to three out of the four accused, took the precaution of having their statement so recorded. The police report under S.173, Criminal P.C., was made by the investigating police officer on 11th January 1956, and was placed before the Munsif. Magistrate on 12th January. It gives a very complete statement of the prosecution case and the names and full description of the witnesses to be examined in support of the prosecution case.

The learned Munsif Magistrate appears to have examined the investigating police officer as P.W. l and the two eye-witnesses, Dharmiah and Ramchander Rao, as P.Ws.2 and 3, and the medical officer as P.W. 4, on or about 15th February 1956. The record of the statement of the medical officer appears in the paper book, but the evidence of the other three witnesses does not appear in the paper book.

On 16th February 1956, the learned Munsiff-Magistrate put very detailed questions to each one of the accused persons and placed the evidence of all the witnesses examined by him in detail, to the accused persons who have denied their complicity in the crime and who alleged enmity with the two eye-witnesses aforesaid. The committal order, if any, is not before us.

The learned Munsiff-Magistrate framed a charge for murder under S. 302, against the appellant, and for participation in the crime, against the other three accused, under S.302, read with Ss.34 and 109 of Penal Code. He again put a number of questions to each one of the accused persons as to what they had to say against the charges framed and as to what they bed to say in their defence.

6. It does not appear that before the learned Munsiff-Magistrate who was holding his inquiries under S. 207A (3) and (4), any grievance was made that the provisions of S. 173 (4) had not been complied with by the police officer in charge of the investigation. Nor does it appear that any request was made, to call upon the police officer concerned, to furnish to the accused, copies referred to in Sub-s. (4) of S. 173 of the Code.

There is no indication in the record that even when the accused persons were placed on their trial before the learned Sessions Judge any such grievance or any such request was made to that Court. The cross-examination of the eye-witnesses aforesaid has been done at some length, and there are also references to the record made by the police officer during the investigation. It was only after the conviction and sentences of the accused persons by the learned Sessions Judge, when the appeals were preferred to the High Court, that the ground is raised, for the first time, in the memoranda of appeal in these terms:

"The lower Court has lost sight of the fed that the mandatory provisions of Ss. 173, 207A and other sections of the Code of Criminal Procedure have not been complied with, and this fact has caused a complete failure of justice."

7. The High Court, while dealing with this ground of appeal, has observed that the learned Government Advocate, while conceding that the committing Court had not complied with the provisions of those sections, had urged that that omission was not sufficient to vitiate the trial unless the accused succeeded in showing that they had been prejudiced in their defence.

They further observed that the accused got the copies in the Sessions Court before the recording of the statement of the witnesses, it could not be said that the accused had been so prejudiced.

The High Court finds, as a fact, that the accused got the necessary copies of the depositions of the witnesses in the Sessions Court before the statements of the prosecution witnesses were recorded by that Court.

The High Court also remarked that it was not denied that the copies were supplied a day earlier, but that there was nothing to show that the accused made any grievance that the time at their disposal was too short to enable them to cross-examine the prosecution witnesses, or, that they prayed for an adjournment of the case in order to enable them to effectively cross-examine those witnesses. In view of these considerations, the High Court held that the accused had failed to show any prejudice.

8. Before us, no attempt was made to show that the non-compliance with the provisions of Ss. 173 (4) and 207A (3) had caused any prejudice to the accused. The learned counsel for the appellant sought lo argue that the omission had the effect of vitiating the entire proceedings ending in the trial of the accused and that, therefore, ipso facto, a fresh trial became necessary irrespective of whether or not the accused had shown any prejudice.

In other words, he contended that these illegalities rendered the proceedings null and void and that the Court need not stop to consider the question of prejudice. Section 173 sub.s. (4), Criminal P.C., was amended by the Code of Criminal Procedure Amendment Act 26 of 1955, by adding the

following:

"(4) After forwarding a report under this section the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish to the accused, free of cost, a copy of the report forwarded under sub- s. (1) and of the first information report recorded under, S. 154 and of an other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statement and confession, if any, recorded under S. 164 and the statements recorded under sub-s. (3) of S. 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(5) Notwithstanding anything contained in sub-section (4), if the police officer is of opinion that any part of any statement recorded under sub-s. (3) of S. 161 is not relevant to the subject-matter of the inquiry or trail or that its disclosure to the accused is not essential in the interest of justice and is inexpedient in the public interest, he shall exclude such part from the copy of the statement furnished to the accused and in such a case, he shall make a report to the Magistrate stating his reasons for excluding such part:

Provided that at the commencement of the inquiry or trail, the Magistrate shall, after perusing the part so excluded and considering the report of the police officer, pass such orders as he thinks fit and if he so directs a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused."

9. In order to simplify commitment proceedings preceding the trail of accused persons by a Court of Session, S.207A was added by way of amendment of the Code at the same time. In the added S. 207A, sub-ss. (3) and (4) which are material portions of that section, are in these terms:

"(3) At the commencement of the inquiry, the Magistrate shall, when the accused appears or is brought before him, satisfy himself that the documents referred to in S.173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished.

(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution he may take such evidence also,"

10. It will, thus, appear that in cases exclusively triable by a Court of Session, it is the duty of the Magistrate while holding a preliminary inquiry, to satisfy himself that the documents referred in S. 173 have been furnished to the accused and if he found that the police officer concerned had not carried out his duty in that behalf, the Magistrate should see to it that that is done.

After the accused have been furnished with the necessary documents, it is now required to record evidence of only such witnesses for the prosecution as had witnessed the actual commission of the offence charged against the accused and of such other witnesses as he may consider necessary in the interests of justice. From what has been said above, it is clear that the Munsiff-Magistrate did record the evidence as required by sub-s. (4) of S.207-A.

But it has been found by the High Court on the admission of the Government Advocate, that the provisions of sub-s. (3) of S. 207-A, had not been complied with. It is not clear as to whether all the documents contemplated by S.173 (4), quoted above, had not been furnished to the accused or documents other than the statements of witnesses had not been so supplied. The judgment of the

High Court, would appear to indicate the latter, but we shall proceed on the assumption that there was an entire omission to carry out the provisions of sub-s. (4) of S. 173, read with sub-s. (3) of S. 207-A.

Does such an omission necessarily render the entire proceedings and the trial null and void; or is it only an irregularity curable with reference to the provisions of S. 537 (a) of the Code? In other words, are the provisions of S. 173 (4), read with S. 207-A (3) mandatory or only directory? There is no doubt that those provisions have been introduced by the amending Act of 1955, in order to simplify the procedure in respect of inquiries leading upto a Sessions trial, and at the same time, to safeguard the interests of accused persons by enjoining upon police officers concerned and Magistrates before whom such proceedings are brought, to see that all the documents, necessary to give the accused persons all the information for the proper conduct of their defence, are furnished.

It has rightly been contended on behalf of the appellant that it was the duty of the Magistrate to see that the provisions aforesaid of the Code, have been fully complied with. Magistrates, therefore, have to be circumspect, while conducting such proceedings, to see to it that accused persons are not handicapped in their defence by any omission on the part of police officers concerned, to supply the necessary copies.

But we are not prepared to hold that noncompliance with those provisions has, necessarily, the result of vitiating those proceedings and subsequent trial. The word "shall" occurring both in sub-s. (4) of S.173 and sub-s. (3) of S.207-A, is not mandatory but only directory, because an omission by a police officer, to fully comply with the provisions of S.173, should not be allowed to have such a far-reaching effect as to render the proceedings including the trial before the Court of Session, wholly ineffective.

Instead of simplifying the procedure, as was intended by the amending Act, as indicated above, the result contended for on behalf of the appellant, will, necessarily, result in re-opening the proceedings and trials which may have been concluded long ago. Such a result will be neither conducive to expeditious justice nor in the interest of accused persons themselves.

Certainly, if it is Shown, in a particular case, on behalf of the accused persons that the omission on the part of the police officers concerned or of the Magistrate before whom the committal proceedings had pended, has caused prejudice to the accused, in the interest of justice, the Court may re-open the proceedings by insisting upon full compliance with the provisions of the Code.

In our opinion, the omission complained of in the instant case, should not have a more far-reaching effect than the omission to carry out the provisions of S. 162 or S. 360 of the Code. Courts in India, before such matters were taken to their Lordships of the Judicial Committee of the Privy Council, had taken conflicting views on the scope of S. 537 of the Code in curing such omissions as aforesaid.

In the case of Abdul Rahman v. Emperor, 54 Ind App 96 : (A I R 1927 P C 44) (A), their Lordships of the Judicial Committee, had to consider the effect of non-compliance with the provisions of S. 360 of the Code. After considering the relevant provisions of the Code, their Lordships came to the conclusion that it was a mere irregularity which could be cured by the provisions of S. 537.

In the case of Pulukuri Kotayya v. Emperor, 74 Ind App 65: (A I R 1947 P C 67) (B), the Judicial Committee had to consider the effect of breach of the statutory provisions of S. 162 of the Code.

The following observations of their Lordships, at pp. 75 -76 (of Ind App): (at pp.69-70 of A I R) are a complete answer to the arguments advanced on behalf of the appellant before us, and we respectfully adopt them:

"When a trial is conducted in a manner different from that prescribed by the Code (as in Subramanya Iyer v. Emperor, 28 Ind App 257 (PC) (C), the trail is bad and question of curing an irregularity arises; but if the trail is conducted substantially in the manner prescribed by the code, but some irregularity occurs in the course of such conduct, the irregularity can be cured under S.537, and none the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of degree rather than of kind. This view finds support in the decision of their Lordships' Board in 54 Ind App 96: (A I R 1927 P C 44) (A), where failure to comply with S.360, Criminal P.C. was held to be cured by Ss.535 and 537. The present case falls under S. 537, and their Lordships hold the trial valid notwithstanding the breach of S. 162."

11. In the instant case, the facts as stated above, are extremely simple. It was a case of a day-light murder by four persons acting in concert and way-laying the deceased when he was out on business that morning. Two persons, more or less related to three of the accused persons, gave evidence as eye- witnesses to the occurrence. Their statements were recorded by the police in some detail in the inquest report itself on the very day of the occurrence.

There was not much scope for variations in their statements during police investigation and those before the Court. It was a simple case of either believing or disbelieving those two eyewitnesses. As already indicated, all the four accused persons including the appellant were named at the earliest opportunity in the first information report which was lodged without any avoidable delay within a few hours after the occurrence.

Both the Courts below have preferred to rely upon the testimony of the two eye-witnesses, corroborated by the circumstantial evidence referred to above. They have rejected the defence suggestions supported as they are by the two defence witnesses one of whom is a common ancestor of three of the four accused persons. It has not been argued, and there is no scope for the argument, that the accused persons have been prejudiced in any way in their defence. They had to meet a straightforward case which they failed to do.

12. After carefully considering the arguments advanced on behalf of the appellant, we have come to the conclusion that the proceedings and the trial have not been vitiated by the admitted non-compliance with the provisions aforesaid, of the Code, and that the irregularity is curable by reference to S. 537 of the code, as no case of prejudice has been made out.

This Court in the case of Gurbachan Singh v. State of Punjab, Cri. A. No. 48 of 1957, D/-24-4-1957: ((S) A I R 1957 S C 623) (D), was inclined to take a similar view of the provisions aforesaid of the Code, though it ultimately held that those provisions did not apply to the case then before them. The appeal is accordingly dismissed.

Appeal dismissed.

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