Kapil Deo Shukla

Vs

The State of Uttar Pradesh

Criminal Appeal No. 82 of 1957

(B. P. Sinha, P. Govinda Menon, J. L. Kapur JJ)

14.10.1957

JUDGMENT

SINHA J. -

This appeal by special leave is directed against the judgment and order dated August 12, 1953, of a Division Bench of the Allahabad High Court (Desai and Beg JJ.), setting aside the order of acquittal passed by the learned Additional Sessions Judge at Allahabad, dated July 31, 1950, in Sessions Trial No. 22 of 1949. The appellant had been charged under ss. 408 and 477A of the Indian Penal Code, and tried by jury of 5. The jury returned a unanimous verdict of not guilty. The learned Additional Sessions Judge accepted the verdict of the jury and acquitted the accused. On appeal by the Government of Uttar Pradesh, the High Court in a judgment covering about 130 typed pages set aside the order of acquittal and convicted the appellant under the sections aforesaid, and sentenced him to rigorous imprisonment for four years and a fine of ten thousand rupees, in default of payment, further rigorous imprisonment for one year, under s. 408, Indian Penal Code, and to rigorous imprisonment for four years under s. 477A, Indian Penal Code, the sentences of imprisonment under the two sections to run consecutively. Out of the fine, if realized, seven thousand rupees was directed to be paid to the Imperial Bank of India, Allahabad, as compensation. The prayer for a certificate of fitness for appeal to this Court was refused. The appellant moved this Court and obtained special leave to appeal by order dated December 15, 1953.

In the view we take of the legality of the trial in this case, it is not necessary to go into the details of the prosecution case except to state that the appellant was charged under the sections aforesaid, for having committed criminal breach of trust in respect of valuable securities amounting to Rs. 7,410 odd of the Imperial Bank at Allahabad, while in the employment of the Bank as a clerk, and had in that capacity, "with intent to defraud, destroyed, altered, mutilated and falsified accounts and other papers" during January to July, 1946.

A number of contentions were raised before us by the learned counsel for the appellants, but it is necessary to notice only two of them, namely, (1) that the appeal by the State of Uttar Pradesh, to the High Court, should not have been entertained as the memorandum of appeal did not comply with the requirements of law as laid down in ss. 418 and 419 of the Code of Criminal Procedure; and (2) that the trial in the Sessions Court was no trial at all in the eye of law. In respect of the first contention, it is enough to say that though the memorandum of appeal filed in the High Court was wholly inadequate, the defect was not such as to render it null and void so as to entitle the High Court to reject it in limine. The point arises in this way : Apart from the prayer, the only ground taken in the petition of appeal is "that the order of acquittal is against the weight of evidence on the record and contrary to law." The argument is that under s. 418 of the Criminal Procedure Code,

where a trial is by jury, "the appeal shall lie on a matter of law only", and as no particular error of law is set out in the memorandum of appeal, the consequence of this serious omission, it is further contended, is that in the eye of law, this was no petition of appeal at all, which could have been entertained by the High Court. This contention was raised before the High Court by way of a preliminary objection to the maintainability of the appeal. The High Court overruled that objection on the ground that s. 419 which is the specific provision of the Code of Criminal Procedure, relating to petition of appeal, only requires that it shall be in writing and accompanied by a copy of the judgment or order appealed against, and in cases tried by jury, a copy of the heads of the charge recorded under s. 367 of the Code. The High Court observed that there is no provision in the Code which required that the petition of appeal should specify the matters of fact or of law, on which the appeal is based. The Court also referred to the prevailing practice in that Court according to which no specific grounds are taken either on fact or on law. According to the High Court, there was no difference between an appeal based on facts and an appeal based only on questions of law, as in the case of a jury trial. In view of these considerations, the High Court held that the preliminary objection was not well-founded in law.

Assuming that the High Court was correct in its appreciation of the legal position, even so, we must express our disapproval of any such practice as has been referred to in the judgment below. A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the Court that such and such specific grounds are proposed to be urged on behalf of the appellant, as also a notice to the respondent that he should be ready to meet those specific grounds. A memorandum of appeal with a bald ground like the one quoted above is of no help to any of the parties or to the Court. It may have the merit of relieving the person responsible for drawing up the ground of appeal, of applying his mind to the judgment under appeal and its weak points, but this slight advantage, if it is so, is very much out-weighed by the serious disadvantage to the parties to the litigation and the Court which is to hear the appeal. Such a bald statement of the grounds leaves the door wide open for all kinds of submissions, thus, tending to waste the time of the Court, and taking the respondents by surprise. It is a notorious fact that courts, particularly in the part of the country from where this appeal comes, are over-burdened with large accumulations of undisposed of cases. The parties concerned and their legal advisers should concentrate and focus their attention on the essential features of cases so as to facilitate speedy, and consequently, cheap administration of justice. It may be that a bald ground like the one noticed above, was responsible for the inordinately long judgment of the High Court. Such a practice, if any, deserves to be discontinued and a more efficient way of drawing up grounds of appeal has to be developed. If counsel for the parties to a litigation concentrate on the essential features of a case, eliminating all redundancies, the argument becomes more intelligible and helpful to the Court in focussing its attention on the important aspects of the case. As the appeal succeeds on the second ground, as will presently appear, we need not say anything more on the first ground.

The second ground on which, in our opinion, the appeal must succeed, is based on the findings of the High Court itself. This case involved a consideration of a large volume of documentary evidence almost all in English. The oral evidence was directed mainly to connect those documents and to explain their bearing on the charges framed against the accused, of criminal breach of trust and falsification of relevant accounts and entries in the registers maintained by the Bank. Mr. Ganguli, prosecution witness No. 26 - Agent of the Bank - was examined at great length, and he gave his evidence on 12 days between October and December, 1949. It runs into about 45 typed pages. This evidence appears to have been given by him in English because he put in an application that he had given the evidence in English and that he was not in a position to say whether the Hindi version as recorded by the deposition-writer was the correct version, as he was not familiar with Hindi. The

High Court had made the following observations as to the nature of the case and the requisite qualifications of the members of the jury necessary for a proper understanding of the case :

> "We consider that the instant case was not fit to be tried by a jury at least by any ordinary jury. It was a very complicated case in which a mass of documents was produced. The decision of the case rested upon the question by whom the various documents were written or prepared. Those documents are all in English and nobody could decide the case satisfactorily unless he had a good knowledge of English and was in a position to judge the writing. The offences with which the respondent was charged were under a Government order triable by a jury and the case had to be tried by a jury unless the Government thought fit to revoke or alter the order. The Government did not revoke or alter the order and did not even declare that the case should be tried by a special jury under s. 269(2), Criminal Procedure Code."

In our opinion, the remarks of the High Court quoted above give a correct impression of the proceedings in the Court of Session. It further appears from the judgment of the High Court that the learned Advocate-General who argued the case in support of the appeal on behalf of the State, urged that the jurors were not equal to the task involved in a proper determination of the controversy. The High Court directed the trial court to hold an inquiry and report on this aspect of the case. On a consideration of the report submitted by that court, the High Court recorded its finding to the following effect :

> "Out of the five jurors selected by the learned Sessions Judge, three had sufficient knowledge of English, fourth knew very little English and could not read the documents produced in the case and the fifth also had not sufficient knowledge of English; he could understand a letter written in English with some difficulty and could not read English newspapers. This is what we find from a report made by the learned Sessions Judge after summoning the jurors and examining them on a letter issued by us. We are satisfied that the two jurors, Shri Sheik Ashique Ali and Shri Farman Ali, were not in a position to decide the question of authorship of the forged documents satisfactorily. It was not merely a question of understanding the contents of the documents produced in the case; the jurors also had to decide whether they were written or signed by the respondent as deposed by the prosecution witnesses or not. They did not possess sufficient acquaintance with English to decide that question satisfactorily."

On that finding, it is clear that the appellant's contention that it was a trial coram non judice is well-founded. This case is analogous to the case of Ras Behari Lal v. The King Emperor [(1933) L.R. 60 I.A. 354, 357], which went up to the Judicial Committee of the Privy Council, from a judgment of the Patna High Court confirming the conviction and the sentences of the accused persons on a change of murder and rioting. In that case, the trial was by a jury of 7. The jury by a majority of six to one found the accused guilty. The learned trial judge accepted the verdict and sentenced some of the accused persons to death. The High Court overruled the accused persons' contentions that there was no legal trial because some of the jury did not know sufficient English to follow the proceedings in Court. The Judicial Committee granted special leave to appeal on a report made by the High Court that one of the jurors did not know sufficient English to follow the proceedings in Court. Before the Judicial Committee, it was conceded, and in their Lordships' view, rightly, by counsel for the prosecution that the appellants had not been tried, and that, therefore, the convictions and sentences could not stand. Lord Atkin, who delivered the judgment of the Judicial Committee,

made the following observations upon the concession made by counsel for the respondent :

> "In their Lordships' opinion, this is necessarily the correct view. They think that the effect of the incompetence of a juror is to deny to the accused an essential part of the protection accorded to him by law and that the result of the trial in the present case was a clear miscarriage of justice. They have no doubt that in these circumstances the conviction and sentence should not be allowed to stand."

In our opinion, the legal position in the instant case is the same. It was, however, argued on behalf of the State Government that in the instant case, the jury had returned a unanimous verdict of not guilty, and that, therefore, there was no prejudice to the accused persons. It is true that the incompetence of the jury empanelled in this case was raised by the counsel for the State Government in the High Court, but in view of the findings arrived at by the High Court, as quoted above, the position is clear in law that irrespective of the result, it was no trial at all. The question of prejudice does not arise because it is not a mere irregularity, but a case of "mis-trial", as the Judicial Committee put it. It is unfortunate that a prosecution which has been pending so long in respect of an offence which is said to have been committed about eleven years ago, should end like this, but it will be open to the State Government, if it is so advised, to take steps for a re-trial, as was directed by the Judicial Committee in the reported case referred to above.

The appeal is, accordingly, allowed and the convictions and the sentences are set aside. We do not express any opinion on the question whether it is a fit case for a de novo trial by a competent jury or by a Court of Session without a jury, if the present state of the law permits it. The matter will go back to the High Court for such directions as may be necessary if the High Court is moved by the Government in that behalf.

Appeal allowed.

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