The State of Uttar Pradesh

Vs

Shankar and Another

Cr.A. No. 206/1960

(J. L. Kapur, K. C. Das Gupta Raghuvar Dayal JJ)

15.02.1962

JUDGMENT

KAPUR, J. -

In this appeal against the judgment and order of the High Court of Allahabad, the question of the interpretation of s. 423(1)(b) of the Criminal Procedure Code arises.

The case of the prosecution was that respondent Shankar wanted to have illicit intimacy with Mst. Mithana who was not agreeable to his advances. In order to take his revenge he cut off her nose on January 28, 1959. The allegation against the other respondent Goberdhan was that he helped Shanker in felling her down and caught her while Shanker cut off her nose. Both the respondents were tried under s. 326 read with s. 34 of the Indian Penal Code and the Magistrate Ist class found them guilty and sentenced them to rigorous imprisonment for 18 months each. An appeal was taken against this order to the Sessions Judge, Sitapur, who on June 12, 1959, set aside the order of conviction and directed the case to be committed to the Court of Session. On July 15, 1959, the Magistrate committed the respondents to the court of Session to stand their trial under s. 326 read with s. 34 of the Indian Penal Code. A revision was taken to the High Court against the order of the Sessions Judge.

The High Court held that the crime was not only brutal but most cowardly and that the offence was of a grave nature; that the Magistrate was wrong in assuming jurisdiction in such a case and that the cutting of a woman's nose was treated as a trivial matter by the Magistrate. The learned Judge, however, was of the opinion that a Session Judge hearing an appeal against conviction had no power to direct commitment to the court of Session; all that he could do was to recommend enhancement of the sentence but it was not worthwhile enhancing the sentence because the enhancement could only be from 18 months to two years. He therefore allowed the revision and set aside the order of the Sessions Judge and directed that the appeal be reheard on merits. Against this order the State has come in appeal to this Court by Special Leave. It may be mentioned that on an application made to the learned Judge under s. 561A Criminal Procedure Code, the learned Judge, after referring to several decided cases, was still of the opinion that his previous order was correct and he declined to give a certificate under Art. 134(1)(c) and the State has come in appeal by Special Leave. It is not necessary to decide the question whether the application under s. 561 A was entertainable in the circumstances of the case.

Section 423 of the Criminal Procedure Code deals with the power of the Appellate Court in disposing of appeals against convictions. The relevant portion of the section is contained in cl. (b) of sub-s. (1) of that section which is as follows :-

S. "423 (1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. After perusing such record and hearing the appellant or his pleader, if he appears and the Public Prosecutor if he appears, and, in case of an appeal under section 411A, sub-section (2), or section 417 the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

> #(a).....##
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> (b) in an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retired by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding, reduce the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but, subject to the provisions of section 106, sub-section (3), not so as to enhance the same".

The Code expressly gives the power to the Appellate Court to dismiss the appeal, to acquit or discharge the accused or order him to be retired or committed for trial. Therefore the section does empower the Appellate Court to order commitment for trial to the Court of Session. The Courts in India have almost unanimously held that to be the interpretation of the section. In Queen Empress v. Abdul Rahiman ((1891) I.L.R. 16. Bom. 580.) where the circumstances were almost similar as the one in the present case, it was held that s. 423(b) which is the corresponding section of the Code of 1882 empowered an Appellate Court to order an accused person to be committed for trial. That was also the view of the Allahabad High Court in Queen Empress v. Maula Baksh. ((1893) I.L.R. 15. All. 205.) In an earlier case Queen Empress v. Sukha ((1885) I.L.R. 8. All. 14.), Allahabad High Court held that under s. 423 of the Code a commitment could be ordered only when an offence was exclusively triable by a court of Session. That view was overruled in the later Allahabad case Queen Empress v. Maula Baksh ((1893) I.L.R. 15. All. 205.) and was not accepted in the Bombay case above quoted. It is not necessary to refer to cases decided by other Courts where it has been held that the power to order commitment under s. 423(1)(b) is not limited to cases exclusively triable by the Court of Session. In Satish Chander Das Bose v. Queen Empress ((1899) I.L.R. 27 Cal. 172.) and other cases of the High Court of Allahabad the earlier view in Sukha's case was not accepted.

In our opinion the words of s. 423(1)(b) of the Code are quite clear and the power of the Appellate Court to commit is not circumscribed to cases exclusively triable by a court of Session and the High Court was in error in taking a contrary view.

We therefore allow this appeal, set aside the order of the High Court and restore that of the Sessions Judge.

Appeal allowed.

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