Abinash Chandra Bose

Vs

Bimal Chandra Bose

Criminal Appeal No. 119 of 1961

(CJI B. P. Sinha, K. N. Wanchoo, J. C. Shah JJ)

03.08.1962

JUDGMENT

SINHA, C.J. -

This appeal, on a certificate of fitness granted by the High Court under Art. 143(1)(c) of the Constitution is directed against the order of a Division Bench of the Calcutta High Court, dated December 21, 1960, setting aside the order of acquittal passed by the trial Magistrate, dated July 2, 1958. We heard this appeal on the eve of the long vacation and pronounced our order to the effect that the appeal was allowed and the order of acquittal was to stand, and that reasons would be given later.

It appears that the appellant, who is a practising lawyer, had been employed by the respondent to work for him to investigate the title to some property which the lawyer was about to purchase, sometime in October 1952. The prosecution case was that the respondent has entrusted the sum of Rs. 5000/- to the appellant for depositing in Court in connection with an application in respect of the proposed transaction, under the Bengal Money Lenders' Act, and that the appellant having been so entrusted with the money, in breach of trust, misappropriated the amount, thus causing loss to his client. The appellant was, therefore, charged under s. 409 of the Indian Penal Code, with having committed criminal breach of trust in respect of the sum of Rs. 5000/-, which had been entrusted to him as a lawyer on behalf of the respondent. The appellant defence was that the case against him was false and that he had been falsely implicated for reasons which need not be stated.

In order to substantiate the charge against him, the complainant (Now respondent) examined himself and a number of witnesses. He also adduced in evidence a certain document, marked Ex. 1, purporting to be a letter in the handwriting of the appellant, to show that Rs. 4200/- being a portion of the amount of Rs. 5000/- required for the deposit, had been asked for by the appellant. It also contained writings in the hand of the complainant showing that there was correspondence in the matter of the deposit. That was a very important piece of evidence, which if genuine could go a long way to prove the case against the appellant. But the appellant challenged the document as a forgery in material parts, and cross-examined the complainant who had produced the document. In spite of the fact that the complainant was very pointedly cross-examined with a view to showing that the document placed before the Court was a forgery in material parts, the complainant did not take any steps to get an expert on handwriting examined. The trial Court, on an examination of the evidence, oral and documentary, came to the conclusion that the case against the accused had not been proved and acquitted him. The complainant preferred an appeal to the High Court against the order of acquittal, which was heard by a Division Bench. The High Court took the view that, in the circumstances of the case, there should be retrial by another magistrate, who should give an

opportunity to the complainant to adduce the evidence of a handwriting expert in order to establish the genuineness of the questioned document. Apparently, the High court, sitting in appeal on the judgment of the acquittal, passed by the learned Magistrate, was not satisfied as to the genuineness of the questioned document. Otherwise it could have pronounced its judgment one way or the other, on the merits of the controversy, whether or not the prosecution has succeeded in bringing the charge home to the accused. If it were not a case between a lawyer as an accused and his client as the complainant, perhaps the High Court may not have taken the unusual course of giving a fresh opportunity to the complainant to have a second round of litigation, to the great prejudice of the accused. In this connection, the following observations of the High Court may be extracted in order to show the reasons for the unusual course it took in this case :

> "Thus there can be no doubt that this was a document of considerable importance. According to the prosecution it clearly showed the respondent's connection with the sum of Rs. 4200/- which was a part of the sum of Rs. 5000/-, the subject matter of the charge. According to the respondent, the figures 4200 and the Bengali word 'sankranta' were forgeries just as at the bottom of the document the word 'yes' and the signature of the respondent with date were also forgeries. This case was clearly put by the respondent to Bimla Krishna Sen and it was suggested to him that the impugned portions of the document were clear forgeries made by the appellant in order to falsely implicate the respondent. It must be said that inspite of this challenge, the appellant took no steps whatever to produce expert evidence to aid the court in coming to a conclusion as to the authorship of the impugned portion of the document. It is true that expert evidence cannot always be a final settler; still in a case of this kind, it is eminently desirable that the court should be assisted by a qualified expert since almost the whole case depends upon proof of the fact whether the impugned portions of that document were in the hand of the respondent..... Comment was also made by the Magistrate on the appellant's failure to call expert evidence. In one sense that comment was justified; but in a case of this kind between lawyer and client we think the matter cannot be left where it is. In view of the fiduciary relationship between the parties it is as much necessary in the interest of the prosecution as in the interest of the accused that the whole matter should be cleared up, and no steps should be spared which might ensure complete justice between the parties. If it were an ordinary case between one litigant and another, we might have hesitated at this distance of time to send the case back even though the prosecution did not avail of the opportunity of proving its own case."

In all civilised countries, criminal jurisprudence has firmly established the rule that an accused person should not be placed on trial for the same offence more than once, except in very exceptional circumstances. In this case, the complaintant had the fullest opportunity of adducing all the evidence that he was advised would be necessary to prove the charge against the accused person. It was not that he proved for the examination of an expert and that opportunity had been denied to him. The prosecution took its chance of having a decision in its favour on the evidence adduced by it before the trial Court. That Court was not satisfied that that evidence was adequately reliable to bring the charge home to the accused. The accused was thus acquitted. On appeal, it was open to the High Court to take a different view of the evidence, if the facts and circumstances placed before it could lead to the conclusion that the appreciation of the evidence by the trial Court was so thoroughly erroneous as to be wholly unacceptable to the Appellate Court. If the High Court could come to the conclusion, it could have reversed the judgment and converted the order of acquittal into an order of conviction. But it should not have put the accused to the botheration and expense of a second trial

simply because the prosecution did not adduce all the evidence that should, and could, have been brought before the Court of first instance. It is not a case where it is open to the Court of Appeal, against an order of acquittal, to order a retrial for the reasons that the trial Court has not given the prosecution full opportunity to adduce all available evidence in support of the prosecution case. It has no where been suggested that the trial Magistrate had unreasonably refused any opportunity to the prosecution to adduce all the evidence that it was ready and willing to produce. That being so, the High Court, in our judgment, entirely misdirected itself in setting aside the order of acquittal and making an order for a fresh trial by another Magistrate, simply on the ground that the case was between a lawyer and his client. Simply because the accused happened to be a lawyer would not be a ground for subjecting him to harassment a second time, there being no reason for holding that his prosecutor had not a fair chance of bringing the charge home to him. In our opinion, the High Court gave way to considerations which were not relevant to a criminal trial. The High Court was not sitting on a disciplinary proceeding for professional misconduct. It had to apply the same rules of criminal jurisprudence as supply to all criminal trials, and, in our opinion, the only reason given by the High Court for ordering retrial is against all well-established rules of criminal jurisprudence. The fact that the appellant is a practising lawyer does not entitle him to any preferential treatment when he is hauled up on a criminal charge, even as he is not subject to any additional disability because the case was between a lawyer and his client. There was no relationship of lawyer and client so far as criminal case was concerned. Hence, in our opinion, the order of retrial passed by the High Court is entirely erroneous and must be set aside.

Appeal allowed.

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