Chittaranjan Das

Vs

State of West Bengal

Criminal Appeal No. 165 of 1960

(P. B. Gajendragadkar, K. N. Wanchoo, K. C. Das Gupta JJ)

22.04.1963

JUDGMENT

GAJENDRAGADKAR J. –

The appellant Chittaranjan Das was charged with having committed an offence punishable under section 376 I.P.C. This charge was framed against him on three counts. It was alleged that between November 18, 1958 and November 21, 1958 at 29A and B, Kailash Bose Street, Calcutta, he committed rape on Sandhyarani Das Gupta alias Nirmala. The second count was that he committed the same offence at the same place and in respect of the same girl between December 1, 1958 and December 6, 1958; and the third count related to the commission of the said offence between December 9, 1958 and December 15, 1958 at the same place and in respect of the same girl. Along with the appellant, Ganesh De was charged with having abetted the appellant in the commission of the said offence, the charge framed against Ganesh De being under section 376 read with s. 109 of the Indian Penal Code. The learned Presidency Magistrate, 8th Court, Calcutta, held the commitment proceedings, and was satisfied that the evidence adduced by the prosecution before him made out a prima facie case against both the accused persons. Since the offence in question was triable exclusively by the Court of Sessions, the learned Magistrate committed them to the Sessions on May 4, 1960.

The case of the appellant and his co-accused was then tried by the City Sessions Court at Calcutta with the aid of jury. The jury returned a verdict of guilty against the appellant in respect of all the three counts. A similar verdict was brought by the jury in respect of the co-accused Ganesh De. The learned Sessions Judge took the view that the verdict of the jury was not perverse, and so, he decided to accept the said verdict and accordingly convicted the appellant under s. 376 and sentenced him to suffer rigorous imprisonment for four years on the first charge. No separate sentence was awarded in respect of the other charges. Ganesh De was also sentenced to a similar period of imprisonment. This order was passed on July 9, 1960.

The appellant challenged the correctness of the order of conviction and sentence passed against him by the learned Sessions Judge by preferring an appeal before the Calcutta High Court. A Division Bench of the said High Court did not feel impressed by the points made on appellant's behalf, and so, his appeal was summarily dismissed on July 22, 1960. The appellant then applied for a certificate under Article 134(1)(c) of the Constitution. This application was allowed by Lahiri C.J. and Bose J. on the ground that some of the points which the appellant wanted to raise before this Court by his appeal were substantial points of law, and so, they granted him a certificate under the said Article. It is with this certificate that the appellant has come to this Court.

Before dealing with the points which fall to be considered in the present appeal, it is necessary to state briefly the material facts leading to the prosecution of the appellant. Sandhyarani Das Gupta was a minor girl who was staying with her mother Soudamini in the Refugee Colony at Ghola. It appears that one Maniprova alias Manibala Majumdar induced this young girl to go to her house at Ashutosh Mukherjee Road, Bhowanipur some time in the first week of November 1958. Manibala induced Sandhya to go to her place with a promise that she would secure a nurse's job for her. The appellant was the Zonal Officer of the Refugee Rehabilitation Office at Tollygunge at that time and, according to the prosecution, the co-accused Ganesh De was a Peon in the said office. The prosecution alleged that in course of time, Sandhya was taken to the appellant in his house in about the middle of November 1958 on the representation that the appellant wanted to give her employment. When Sandhya met the appellant, the appellant held out the hope of a job for her and he managed to ravish her. Similarly, Sandhya was taken to the house of the appellant on two or three occasions within a period of one month and each time the appellant had sexual intercourse with her. Every time this happened the appellant promised that he would provide Sandhya with a job. The prosecution case is that as a result of this sexual intercourse, Sandhya conceived and the appellant was anxious to cause her abortion. In accordance with the plan, Manibala attempted to cause her abortion but did not succeed, and so, the girl was taken to the Chittaranjan Sevasadan on February 11, 1959 where the abortion was completed. Some time, thereafter, she was sent back to her own house on her insistence. It appears from the evidence that Sandhya was again taken to the house of the appellant and was ravished by him. This happened on two or three occasions again. At one of these meetings with the appellant, Sandhya was introduced to a young man named Himangsu Ganguli. This young man had approached the appellant for a job. The appellant exploited the helpless position of both Himangsu and Sandhya, and asked them to go through a show of marriage. Thereafter, the appellant wanted a photograph in proof of their marriage and a group photo was accordingly taken with Ganesh De, Manibala, Himangsu and Sandhya, the last two having posed as husband and wife. Himangsu and Sandhya then went to the house of the appellant and gave him a copy of the photograph. This time again Sandhya was ravished by the appellant. That, in broad outlines, is the prosecution case against the appellant.

On June 6, 1959, Sandhya's mother filed a complaint that her daughter had disappeared. This complaint was investigated by the Enforcement Branch Calcutta, and in consequence, Sandhya was recovered from the house of Ganesh De on June 10, 1959. She was then taken to the Tollygunge Police Station where her statement was recorded. It, however, appeared that the offence which on Sandhya's statement seemed to have been committed by the appellant was within the jurisdiction of the Amherst Street Police Station, and so, the case papers were transferred to the said Police Station. Sandhya's statement was again recorded at this Police Station on June 12, 1959. As a result of the statement, Challan was forwarded which specified November 14, 1958, May 30, 1959 and June 6, 1959 as the dates on which the appellant had raped Sandhya. Subsequently, the appellant was arrested and he along with the co-accused was charged before the Court of the Presidency Magistrate as we have already mentioned.

In granting certificate to the appellant, the High Court has held that the point which the appellant sought to raise in regard to the invalidity and illegality of the charge was a point of substance. In fact, it has observed that the scheme of section 222 of the Criminal Procedure Code seems to suggest that the charge framed in the present case contravened the requirement of s. 222(1), and was therefore, invalid. The High Court also appears to have thought that this contention received support from a decision of the Calcutta High Court in Ali Hyder v. Emperor, ((1939) 40 Cr. L.J. 280.). It is, therefore, necessary to examine this argument at the outset. We have already set out the 3 counts of the charge framed against the appellant and we have noticed that in the three counts periods were

mentioned within which the appellant was alleged to have committed rape on Sandhya. The first period was between 18.11.1958 to 21.11.1958, second was 1.12.1958 to 6.12.1958 and the third was 9.12.1958 to 15.12.1958. The argument is that s. 222(1) Cr. P.C. requires that the charge must specify, inter alia, the particulars as to the time when the offence was committed, and this means that the precise date on which and the time at which the offence was committed must be stated in the charge. Before dealing with this argument, it is necessary to read s. 22 :

> "(1) The charge shall contain such particulars as to the time and place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.
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> (2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234 :
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> Provided that the time included between the first and last of such dates shall not exceed one year."

The appellant's contention is that it is only in cases under s. 222(2) where the prosecution is not required to specify the precise date and time at which the offence is committed; and that means that it is only in respect of the offences of criminal breach of trust or dishonest misappropriation of money to which the said sub-section applies that liberty may be claimed by the prosecution not to mention the date and time of the offence. In all other cases to which s. 222(1) applies, particulars as to the time and place of the alleged offence must be specifically mentioned. In our opinion, this contention is not well founded. In fact, Mr. Chari who appeared for the appellant himself fairly conceded that in almost every charge to which s. 222(1) applies, it is usual to state that the particular offence was committed on or about a certain date. In other words, it is not suggested by Mr. Chari that the specific date and the specific time must necessarily be stated in the charge in every case. If it is permissible to say in a charge that a particular offence was committed on or about a specified date, without specifying the particular time, it is difficult to hold that because a period of four or five or six days is indicated in the charge within which the offence is alleged to have been committed s. 222(1) has been contravened. It is true that sub-section (2) specifically deals with two kinds of offences and makes a provision in respect of them, but that is not to say that in every other case, the time must be so specifically mentioned as to indicate precisely the date and the time at which the offence was committed.

It is quite clear that if the charge mentions an unduly long period during which an offence is alleged to have been committed, it would be open to the criticism that it is too vague and general, because there can be no dispute that the requirement of s. 222(1) is that the accused person must have a reasonably sufficient notice as to the case against him. The basic requirement in every criminal trial therefore, is that the charge must be so framed as to give the accused person a fairly reasonable idea as to the case which he is to face, and that validity of the charge must in each case be determined by the application of the test, viz., had the accused a reasonable sufficient notice of the matter with which he was charged ? It is quite conceivable that in some cases by making the charge too vague in the matter of the time of the commission of the offence an accused person may substantially be

deprived of an opportunity to make a defence of alibi, and so, the criminal courts naturally take the precaution of framing charges with sufficient precision and particularity in order to ensure a fair trial; but we do not think it would be right to hold that a charge is invalid solely for the reason that it does not specify the particular date and time at which any offence is alleged to have been committed. In this connection, it may be relevant to bear in mind that the requirements of procedure are generally intended to subserve the ends of justice, and so, undue emphasis on mere technicalities in respect of matters which are not of vital or important significance in a criminal trial, may sometimes frustrate the ends of justice. Where the provisions prescribed by the law of procedure are intended to be mandatory, the legislature indicates its intention in that behalf clearly and contravention of such mandatory provisions may introduce a serious infirmity in the proceedings themselves; but where the provisions made by the law of procedure are not of vital importance, but are, nevertheless, intended to be observed, their breach may not necessarily vitiate the trial unless it is shown that the contravention in question has caused prejudice to the accused. This position is made clear by sections 535 and 537 Cr. P.C.

Take, for instance, the case of murder where the prosecution seeks to prove its case against an accused person mainly on circumstantial evidence. In such a case, investigation would generally begin with, and certainly gather momentum after the discovery of the dead body. In cases of circumstantial evidence of this character, it would be idle to expect the prosecution to frame a charge specifying the date on which the offence of murder was committed. All that the prosecution can do in such cases is to indicate broadly the period during which the murder must have been committed. That means the precision of the charge in respect of the date on which the offence is alleged to have been committed will depend upon the nature of the information available to the prosecution in a given case. Where it is possible to specify precisely the necessary particulars required by s. 222(1), the prosecution ought to mention the said particulars in the charge, but where the said particulars cannot be precisely specified in the charge having regard to the nature of the information available to the prosecution, failure to mention such particulars may not invalidate the charge.

In this connection, it may be useful to refer to the facts in the present case. The evidence of Sandhya shows that she and the members of her family had to face the terrible problems posed before the refugees in that part of the country, and in her anxiety to help her destitute family in its hour of need Sandhya was very easily persuaded by Manibala to adopt the course of earning money by selling her body. In such a case, if the minor girl has been exposed to the risk of having sexual intercourse with several people from time to time, it is unreasonable to expect that she would be able to specify the precise dates on which particular individuals had intercourse with her. If it is insisted that in a case of this kind, the charge of rape framed against the appellant must specify the date on which the offence was committed by him, it would really mean that the appellant cannot be charged with the offence because the unfortunate victim would, in the ordinary course of things, not be able to state precisely the dates on which she was made to submit to the appellant. Therefore, in dealing with the question as to whether the charge framed in a criminal trial has contravened s. 222(1), the Court will have to examine all the relevant facts and if it appears to the Court that having regard to them, the charge could and ought to have been framed more precisely, the Court may reach that conclusion and then enquire whether the defective charge has led to the prejudice of the accused. That, in our opinion, is the reasonable course to adopt in dealing with contentions like the one raised by the appellant before us. The question of prejudice did not impress the High Court, because it has summarily dismissed the appeal. It is not a matter on which the appellant can be permitted successfully to challenge the view taken by the High Court. In this connection we ought to add that the decision in the case of Ali Hyder ((1939) 40 Cr. L.J. 280.) to which the High Court has referred

in granting a certificate on this point does not support the contention in question.

The next ground on which the High Court has granted certificate to the appellant is that the Division Bench should not have summarily dismissed his appeal, and in coming to the conclusion that this argument amounted to a substantial point of law, the High Court has referred to two decisions of this Court in Mushtak Hussein v. The State of Bombay (A.I.R. 1953 S.C. 282.), and Shreekantiah Ramayya Municipalli v. State of Bombay (A.I.R. 1955 S.C. 287.). In Mushtak Hussein's case, this Court has no doubt observed that it is not right for the High Court to dismiss an appeal preferred by the accused to that Court summarily where it raises some arguable points which require consideration. It was also added that in cases which prima facie raise no arguable issue, that course is, of course, justified. It is in the light of this conclusion that this Court stated that it would appreciate it if in arguable cases the summary rejection orders give some indications of the views of the High Court on the points raised.

In the case of Shreekantiah Ramayya (A.I.R. 1955 S.C. 287.), it appeared that out of the two appeals filed separately by two different accused persons against the same judgment, one was summarily dismissed by one Bench of the High Court and the other was admitted by another Bench. It is in the light of this somewhat anomalous position that this Court repeated its observation made in the case of Mushtak Hussein (A.I.R. 1953 S.C. 282.), that summary rejections of appeals which raise issues of substance and importance are to be disapproved.

With respect, there can be no doubt whatever that in dealing with criminal appeals brought before them the High Courts should not summarily reject them if they raise arguable and substantial points and it would be stating the obvious if we were to add that no High Court summarily dismisses a criminal appeal if it is satisfied that it raises an arguable or substantial question either of fact or of law. In this connection, it is, however, necessary to bear in mind that it is for the High Court which deals with the criminal appeal preferred before it to consider whether it raises any arguable or substantial question of fact or law, or not. Section 421(1) of the Code provides that on receiving the petition and copy under s. 419 or s. 420, the appellate court shall peruse the same, and, if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily. The proviso to this section requires that no appeal presented under s. 419 shall be dismissed unless the appellate or his pleader has had a reasonable opportunity of being heard in support of the same. Sub-section (2) empowers the appellate court to call for the record of the case before dismissing the appeal under sub-section (1) but it does not make it obligatory on the court to do so. Therefore, the position under s. 421 is clear and unambiguous. When a criminal appeal is brought before the High Court, the High Court has to be satisfied that it raises an arguable or substantial question; if it is so satisfied, the appeal should be admitted; if on the other hand, the High Court is satisfied that there is no substance in the appeal and that the view taken by the Trial Court is substantially correct, it can summarily dismiss the appeal. It is necessary to emphasise that the summary dismissal of the appeal does not mean that before summarily dismissing the appeal, the High Court has not applied its mind to all the points raised by the appellant. Summary dismissal only means that having considered the merits of the appeal, the High Court does not think it advisable to admit the appeal because in its opinion, the decision appealed against is right. Therefore, we do not think the High Court was right in granting certificate to the appellant on the ground that his appeal should not have been summarily dismissed by another Division Bench of the said High Court. If the High Court in dealing with criminal appeals takes the view that there is no substance in the appeal, it is not necessary that it should record reasons for its conclusion in summarily dismissing it.

The third ground on which the certificate has been granted by the High Court is in regard to an

alleged misdirection in the charge delivered by the learned Sessions Judge to the Jury. It appears that in dealing with the argument of the defence that the charge was vague and that the dates specified in the charge did not correspond to the dates given by Sandhya in her evidence, the learned Judge told the jury that if the statement of the girl in her cross-examination is taken as the basis, the dates on which the girl was ravished by the appellant would not be covered by the three sets of dates mentioned in the charge, and then he added that "in case you hold that the charges are in order, in that case you shall proceed to consider the evidence." It was urged by the appellant before the Division Bench of the High Court which granted the certificate that the last statement constituted a misdirection. The argument was that whether or not a charge is valid is a question of law which the learned Judge should have decided himself and given a direction to the jury in accordance with his decision; inasmuch as he left that question to the jury, he failed to exercise his jurisdiction and to discharge his duty, and as such the charge must be held to suffer from a serious misdirection. This argument appears to have appealed to the Division Bench which granted the certificate and has been pressed before us by Mr. Chari. In our opinion, there is no substance in this argument. We should have stated earlier that after the committal order was passed by the presidency Magistrate, the appellant moved the High Court in its revisional jurisdiction and urged that the charge framed against him was defective and invalid and should be quashed. The High Court rejected this contention and held that the charge was valid within the meaning of s. 222 and s. 234 of the Code. Therefore, the true position is that at the time when the learned Sessions Judge delivered his charge to the jury, the question about the validity of the charge had been considered by the High Court and so far as the learned Sessions Judge was concerned, the finding of the High court was binding on him, so that when the learned Sessions Judge told the jury that they may consider whether the charges were in order, he was really leaving it open to the jury to consider the matter which had been decided against the appellant and in favour of the prosecution. If there can be any grievance against this part of the charge, it would be on the side of the prosecution and not on the side of the appellant.

That leaves to be considered certain other alleged misdirections to which Mr. Chari has referred. Mr. Chari contends that in explaining the true legal position with regard to the evidence of a prosecutrix in cases of rape, the learned Judge did not tell the jury that in view of the contradiction brought out in the evidence of Sandhya and in view of her past career and record, her evidence should not be believed. Mr. Chari argues that when criminal courts require corroboration to the evidence of the prosecutrix in such cases, as a matter of prudence, it necessarily means that in the first instance, the prosecutrix must appear to the court to be a reliable witness. If the prosecutrix does not appear to be a reliable witness, or if her evidence suffers from serious infirmities, corroborations in some particulars would not help the prosecution, and according to Mr. Chari, this aspect of the matter was not properly brought to the notice of the jury by the learned Sessions Judge. We do not think there is any substance in this contention. We have carefully read the charge and we are satisfied that on the whole, the charge has not only been fair, but has been more in favour of the appellant than in favour of the prosecution. In fact, the whole tone of the charge indicates that the learned Sessions Judge was not satisfied that the prosecution had really made out a case against the appellant beyond a reasonable doubt. But in delivering charge to the jury, the learned Sessions Judge can never usurp the function of the jury. He cannot pronounce on the reliability or otherwise of any witness. The requirement as to corroboration in regard to the evidence of a prosecutrix like Sandhya has been elaborately explained by the Sessions Judge to the jury. He told them that the most important witness in the case was Sandhya and that there was hardly any corroborative evidence to her story. He also warned them that though it was not illegal to act upon the evidence of a prosecutrix, it was unsafe to adopt that course and he said that before convicting the appellant on the uncorroborated

testimony of Sandhya, the members of the jury should ask themselves whether they were so much convinced about the truthfulness of the girl as to accept her evidence in its entirety. He referred to the broad and material contradictions brought out in her evidence and asked them to bear that fact in mind in deciding whether they should accept her testimony or not. Having regard to the several statements made by the learned Judge in his charge on this topic we find it difficult to accept Mr. Chari's grievance that the charge was materially defective in this matter.

The next misdirection on which Mr. Chari has relied is in regard to the prosecution evidence about the age of the girl.. The prosecution alleged that the girl was below 16 years of age, whereas the defence contended that she was above 16 and was a consenting party. As usual, evidence was given by the prosecution in support of its case as to the girl's age. This evidence consisted of the testimony of the girl's mother Saudamini and of Dr. Nag as well as Dr. Saha. Having summarised the material evidence fairly and accurately, the learned Judge told the jury that the said evidence was no doubt somewhat conflicting and he warned them that they had to decide as a question of fact whether the age of the girl at the relevant time was above or below 16. Mr. Chari contends that at this stage, the learned Judge should have told the jury that the onus to prove the fact that the girl was below 16 was on the prosecution and that if there was any doubt about her age, the benefit of the doubt must go to the appellant. We do not think there is any substance in this argument. In the first part of this charge, the learned Judge explained to the jury the essential requirements which had to he proved by the prosecution in support of its charge under s. 376, and there the learned Judge had made it clear to the jury that the prosecution had to show that the girl was below 16. That being so, we do not think that his failure to mention the point about onus once again when he dealt with the actual relevant evidence, can be said to constitute a misdirection, much less a material misdirection which may have led to the prejudice of the appellant.

The last misdirection on which Mr. Chari has relied is the statement of the learned Judge that the previous statements made by the girls which had been brought on the record do not constitute substantive evidence but are intended only to contradict the actual evidence given by her in court. It appears that on behalf of the appellant the evidence given by the girl on a previous occasion had been brought out under s. 145 of the Indian Evidence Act. In that statement the girl had sworn that Anil Chatterjee had sexual relations with her day after day and that she had sexual relations with others also. The girl admitted in her cross-examination that her statement had been recorded on a previous occasion by the Magistrate, Alipore, but when the contents of the statement were put to her, she said she did not remember whether she had made those statements or not. Now, it is clear that when a previous statement is put to a witness in cross examination under s. 145 of the Indian Evidence Act, its primary purpose is to contradict the witness by reference to the evidence he gives at the trial, and so, it cannot be said that the learned Judge was wrong in law in telling the jury that the previous statement on which the defence relied may help the defence to contend that the girl was not a straightforward witness and was changing her story from time to time, but the said previous statement cannot be treated as substantive evidence at the trial. That is the true legal position and no grievance can be made against the charge for stating the said position in the terms adopted by the learned Sessions Judge. Therefore, we do not think that the grievance made by Mr. Chari that the charge suffered from serious misdirections is well founded.

There is one more point which we may mention before we part with this appeal. After the verdict was returned by the jury, the learned Sessions Judge considered the question as to whether he should accept the said verdict, or should make a reference. In that connection, he observed that the verdict that the jury had returned against the appellant, was practically based on the uncorroborated testimony of the prosecutrix but he thought that the said course adopted by the jury cannot be said to

be illegal and he was not prepared to take the view that the verdict of the jury was in any way perverse. Mr. Chari contends that having regard to the general tone of the charge delivered by the learned Judge to the jury, the learned Judge should have treated the verdict as perverse and not acted upon it. We do not think that this contention can be accepted. In his charge, the learned Judge no doubt indicated that the evidence of the girl was not satisfactory, that it was not corroborated and that there were other circumstances which showed that the prosecution case might be improbable, but having done his duty, the learned Judge had to leave it to the jury to consider whether the prosecution had established its charge against the appellant beyond reasonable doubt or not. The jury apparently considered the matter for an hour and half and returned the unanimous verdict of guilty. In the circumstances of this case, we cannot accede to Mr. Chari's argument that the Sessions Judge was required by law to treat the said verdict as perverse. In a jury trial where questions of fact are left to the verdict of the jury, sometimes the verdicts returned by the jury may cause a disagreeable surprise to the Judge, but that itself can be no justification for characterising the verdict as perverse.

In the result, the appeal fails and is dismissed, the appellant to surrender to his bail bond.

Appeal dismissed.

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