Manipur Administration

Vs

Thokchom, Bira Singh

Criminal Appeal No. 6 of 1962

(CJI P. B. Gajendragodkar, K. N. Wanchoo, K. C. Das Gupta, J. C. Shah, N. Rajgopala Ayyangar JJ)

11.03.1964

JUDGMENT

AYYANGAR, J. –

This appeal which comes before us by special leave is directed against the judgment and order of the Judicial Commissioner of Manipur acquitting the respondent and setting aside the conviction and sentence passed against him by the learned Sessions Judge.

This appeal was originally heard before a Bench of two Judges but has been directed to be placed before this Bench by reason of the learned Counsel for the appellant seeking to question the correctness of the judgment of this Court in the case of Pritam Singh v. The State of Punjab [A.I.R. 1956 S.C. 415] in view of the decision of the English Court of Criminal Appeal in R. v. Connelly [[1963] 3 All E.R. 510] and the subsequent decision of this Court in Gurcharan Singh v. State of Punjab [A.I.R. 1963 S.C. 340].

The facts giving rise to the appeal are in brief as follows : There was an agitation by certain political parties and groups in Manipur in April, 1960 for establishing responsible Government in the Manipur area. The agitation took the form of picketing of Government offices and the residences of Government servants and blocking roads in order to paralyse the administration. After this form of agitation continued for some time, the District Magistrate of Manipur promulgated orders under s. 144, Criminal Procedure Code on the morning of April 25, 1960 banning public mattings and processions and these orders were proclaimed and communicated to the public through loudspeakers. Notwithstanding this order, crowds continued to collect and move on the streets shouting slogans. Bira Singh - the respondent - was said to have been leading this mob. A lathi charge by the police took place but it is stated that because of this the crowd moved a little away and began to pelt stones. The crowd was thereupon directed to disperse, its attention being drawn to the promulgation of the order under s. 144, Criminal Procedure Code and to the fact that the gathering in a public place in violation of the order made it an unlawful assembly; but this command was not heeded and the stone-throwing continued. There was firing by the police which resulted in injuries to certain persons including some of the police personnel. The first information report in regard to the incident and the offences committed during it scours was lodged at the Imphal Police station at about 7 p.m. that day in which the informant specified the name of the respondent - Bira Singh as the leader of this mob. On this a case was registered under ss. 114/149/332/342 and 307 of the Indian Penal Code and s. 7 of the Criminal Law Amendment Act, and a few days later the respondent was arrested. Charges were framed against the respondent who was placed before the Magistrate and the charge sheet stated that the respondent was in the crowd between 3 and 5 p.m. on that day, that the crowd was an unlawful assembly, that he was among those who pelted stones

which caused grievous hurt to one person and simple hurt to others and also caused damage to the Inter-State Police Wireless Station. Along with the respondent certain others were included as accused but we are now concerned only with the respondent. The learned Sessions Judge convicted all of them of the offences with which they were charged and sentenced them to varying terms of imprisonment but into the details of these it is not necessary to enter.

The question of law that arises in this case is by reason of a prior prosecution of the respondent in which he was acquitted. That prosecution was founded on a compliant against him filed on May 12, 1960 under s. 188, India Penal Code in connection with his participation as a member of the same crowd in regard to which the charge which is the subject-matter of the present proceedings is concerned. In that complaint the District Magistrate alleged that the respondent had disobeyed the order passed under s. 144 by forming himself along with 2,000 other persons into an unlawful assembly between the hours of 3 and 5 p.m. on April 25, 1960 by shouting slogans and pelting stones at police officers and this was stated to be on the road in front of the Police Wireless station. This complaint by the District Magistrate was registered and taken cognizance of by the Magistrate. The respondent pleaded in his defence that he was not present at the scene of the occurrence at all and that he had been falsely implicated by the police. The Magistrate rejected the defence and accepting the prosecution case that the respondent was present as the head of the mob on that occasion convicted him of the offence charged and sentenced him by his order dated July 8, 1960 to rigorous imprisonment for six months. Ten days thereafter on July 18, 1960 the charge sheet in the present cases was filed.

During the pendency of the prosecution from which the present appeal arises the respondent appealed to the learned Sessions judge against his conviction by the Magistrate on the charge under s. 188, Indian Penal Code. The learned Sessions Judge allowed the appeal holding that the prosecution had not established that the respondent was present at the place and at the time where the occurrence took place at which he was said by the prosecution to have been present or that he disobeyed the order under s. 144, Criminal Procedure Code. In the course of his judgment delivered on July 30, 1960 the learned Sessions Judge observed after referring to the delay in the filing of the complaint after the occurrence :

> "This delay in the filing of the complaint and in the naming of the appellant.......throws considerable doubt on the presence of the appellant amount the agitators on 25-4-60....if the P.Ws. did not know the appellant from before no reliance can be placed on their identification of the appellant during the trial because that identification was not tested in a test identification parade. This also confirms my suspicion that the appellant might not have been present in the incident of 25-4-60......... The important position which the appellant had in organising the agitation in my opinion, afforded sufficient motive for the P.Ws. to come to a conclusion that the appellant might have been present in the agitation. But that erroneous impression on conclusion would not prove the presence of the appellant among the agitators on 25-4-60. .... For reasons given above the appeal is allowed and the conviction and sentence of the appellant under s. 188 I.P.C. are set aside and he is acquitted."

This acquittal was confirmed by the Judicial Commissioner on April 29, 1961. Meanwhile, to proceed with the narrative of the proceedings which has given raise to the present appeal, the learned Magistrate committed the respondent and 5 others to take their trial before the Sessions Judge, Manipur on a charge in respect of the offences were have set out earlier. Before the learned Sessions Judge an objection was raised on behalf of the respondent that the trial was barred by s.

403, Criminal Procedure Code by reason of the acquittal of the accused under s. 188, Indian Penal Code on July 30, 1960. The learned Sessions Judge, however, held, that the terms of the section were not satisfied, in that the ingredients of the two offences with which the accused was charged in the two prosecutions were different and rejected that submission. On the evidence adduced before him he found that it had been established to his satisfaction that the respondent as well as the others were present at the scene of the occurrence and held the accused guilty of the offences under ss. 333, 323 and 440 all read with s. 149, Indian Penal Code and sentenced him to 4 years R.I. All the six accused filed appeals against their conviction and sentences before the Judicial Commissioner, Manipur and the learned Judicial Commissioner after making some variations in the sentences as regards certain of the accused directed the acquittal of the respondent on the ground that the finding of fact recorded by the learned Sessions Judge in his trial for the offence under s. 188, Indian Penal Code that he was not present at the scene of the occurrence on April 25, 1960 between the hours of 3 and 5 p.m. was final and conclusive and binding upon the prosecution and that no evidence could be led to establish a contrary state of affairs in the present proceedings. In so holding the learned Judicial Commissioner followed the decision of this Court in Pritam Singh v. State of Punjab [A.I.R. 1956 S.C. 415] and certain other decisions and held that the principle of res judicata applicable to criminal proceedings was not confined to cases falling within the bar of s. 403, Criminal Procedure Code but was of wider application. It is the correctness of this view of the law that calls for consideration in this appeal.

Before referring to the decision of this Court in Pritam Singh v. State of Punjab [A.I.R. 1956 S.C. 415] it would be convenient to refer to and put aside one point for clearing the ground. Section 403, Criminal Procedure Code embodies in statutory form the accepted English rule of autre fois acquit. This section runs :

> "403 (1) A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any offence for which a different charge from the one made against him might have been made under s. 236, or for which he might have been convicted under section 237.
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> (2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).
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> (3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted may be afterwards tried for such last mentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.
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> (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.
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> (5) Nothing in this section shall affect the provisions of section 26 of the General

> Clauses Act, 1897, or section 188 of this Code.

Explanation - The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section."

Section 26 of the General Clauses Act which is referred to in s. 403 enacts :

> "26. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

We might also, in this connection, refer to Art. 20(2) of the Constitution since it makes provision for a bar against a second prosecution in an analogous case. That provision reads :

> "20(2). No person shall be prosecuted and punished for the same offence more then once."

As has been pointed out by this Court in State in Bombay v. S. L. Apte [[1961] 3 S.C.R. 107], both in the case of Art. 20(2) of the constitution as well as s. 26 of the General Clauses Act to operate as a bar the second prosecution and the consequential punishment thereunder, must be for "same offence" i.e., an offence whose ingredients are the same. It has been pointed out in the same decision that the V Amendment of the American Constitution which provides that no person shall be subject, for the same offence, to be twice put in jeopardy of life or limb, proceeds on the same principle.

It is common ground that the respondent cannot bring his case within the provisions of sub-s. (1) of s. 403 and it was also common ground that the trial of the respondent would be permitted by sub-s. (2). It should, however, be noticed that sub-ss. (1) to (3) of this section deal with the trial of an accused for an offence and his conviction therefor. The question raised for decision in Pritam Singh's [A.I.R. 1956 S.C. 415] case however was different and was whether where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a finding would constitute an estoppel or res judicata against the prosecution not as a bar to the trial and conviction of the accused for a different or distinct offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of s. 403(2).

As Pritam Singh's [A.I.R. 1956 S.C. 415] case was based wholly on the decision of the Privy Council in Sambasivam v. Public Prosecutor, Federation of Malaya [[1950] A.C. 458] it would be necessary to examine the basis of the latter decision. The appellant - an Indian Tamil - was traveling on foot in the company of two Chinese. They met a party of three Malayas. A fight ensued between the two groups in the course of which one of the Chinese was killed. The Malays alleged that they had been fired on by the Chinese and that the appellant had with him a revolver which he had held out and pointed at one of them. In connection with this incident the appellant was charged with carrying a fire-arm and being in possession of ten rounds of ammunition. Two charges were framed against the appellant : (1) of carrying a fire-arm, and (2) of being in possession of ammunition. He was acquitted of the second charge of being in possession of ammunition and that acquittal became final. He was, later convicted of the offence of carrying a fire-arm and the appeal before the Privy Council related to the legality of this conviction. Diverse objections branching into several fields of

law were raised before the Privy Council in support of the appeal but what is, however, of relevance now, is the one which related to the admissibility of the evidence of the prosecution witnesses who spoke of the revolver carried by the appellant being loaded with bullets and of the appellant carrying four more bullets in a bag. Their Lordships rejected all the other contentions raised on behalf of the appellant but allowed the appeal on the ground that this evidence regarding the revolver being loaded and of the appellant carrying a bag containing some bullets was inadmissible in law. In dealing with this Lord MacDermott speaking for the Board said :

> "The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried appeal for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication."

After pointing out that the prosecution witnesses were permitted to depose regarding the possession of ammunition by the appellant and that it was not possible to exclude the effect of this evidence on the prosecution case, their Lordships held that the appellant was seriously prejudiced by the reception of this evidence and therefore allowed the appeal and directed his acquittal. The point in regard to which the observations in Sambasivam's [[1950] A.C. 458] case was applied by this Court related to the use of the recovery of a revolver from the accused to sustain his conviction of the offence of murder. Previous to the prosecution for an offence under s. 302, Indian Penal Code the appellant before this Court had been tried before the Additional Sessions Judge, Faridpur under s. 19(f) of the Indian Arms Act of an offence for possession of that revolver and had been acquitted. This Court speaking through Bhagwati, J. extracted the observations we have quoted from the judgment of Lord MacDermotta and pointed out that on the basis of this decision the evidence relating to the recovery of the revoler from the accused should have been excluded.

It was not contended by learned Counsel for the appellant that if the principle laid down by this decision was correct, the acquittal of the respondent by the learned Judicial Commissioner by the order now under appeal was erroneous. The argument, however, was that the observations in Pritam Singh's [A.I.R. 1956 S.C. 415] case required reconsideration. This submission was rested on two separate lines of reasoning : (1) That the rule in Sambasivam's [[1950] A.C. 458] case on which Pritam Singh's [A.I.R. 1956 S.C. 415] case was based had been dissented from by the English Court of Criminal Appeal in R. v. Connelly [[1963] 3 All E.R. 510] and that, similarly that principle had been departed from by this Court in Gurcharan Singh v. State of Punjab [A.I.R. 1963 S.C. 340]. (2) That the principle of Common law which was applied by the Privy Council in Sambasivam's [[1950] A.C. 458] case could have no application in a jurisdiction like ours where the principle of autre fois acquit is covered by a statutory provision framed on the lines of s. 403 occurring in a Code which is exhaustive.

As regards the first ground, it must be pointed out that learned Counsel for the State admitted that there was nothing a Gurcharan Singh's [A.I.R. 1963 S.C. 340] case which militated against the acceptance of the rue laid down in Pritam Singh's [A.I.R. 1956 S.C. 415] case. Coming next to the point made regarding the decision of the English Court of Criminal Appeal in R. v. Connelly [[1963] 3 All E.R. 510], we should make it clear that the decisions of the English Courts being merely of persuasive authority, decisions of such a court even if at variance with one of this Court do not by themselves justify an application to reconsider an earlier decision of this Court. Besides, a close examination of the judgment R. v. Connelly [[1963] 3 All E.R. 510] through which learned Counsel for the State has taken us, does not disclose any dissent from the principle stated by Lord

MacDermott. The entire case before the Court turned upon whether there had been a specific finding on an issue of fact - an issue directly raised regarding an ingredient of the offence charged at the later trial, when the accused was acquitted by the Court of Criminal Appeal in the former proceeding. Except that the Court did not expressly rule that the principle for issue-estoppel applied in England, no exception was taken to its soundness and the decision proceeded on the basis of the facts not justifying the application of the principle, the conditions not being fulfilled. Learned Counsel is, therefore, not well-founded in his submission that the principle underlying Sambasivam's [[1950] A.C. 458] case was dissented from in R. v. Connelly [[1963] 3 All E.R. 510]. Besides, it should be pointed out that the principle underlying the decision in Pritam Singh's [A.I.R. 1956 S.C. 415] case did come up for consideration before this Court on several occassions, but it was never dissented from though in some of them it was distinguished on facts. (See Banwari Godara v. The State of Rajasthan [G.A. No. 141 of 1960, d/February 7, 1961], Mohinder Singh v. State of Punjab [A.I.R. 1965 S.C. 79] and Kharkan v. The State of Uttar Pradesh [A.I.R. 1965 S.C. 83].

These two decisions in R. v. Connelly [[1963] 3 All E.R. 510] and Gurcharan Singh v. State of Punjab [A.I.R. 1963 S.C. 340] being out of the way, we shall address ourselves to the question as to whether what is termed "issue estoppel" which has been held by this Court in Pritam Singh's [A.I.R. 1956 S.C. 415] case to be applicable to criminal proceedings is excluded by reason of the provisions of the Criminal Procedure Code. For this purpose learned Counsel invited our attention to s. 5(1) which enacts :

> "All offences under the Indian Penal Code shall be investigated, inquired into, tried, otherwise dealt with according to the provisions hereinafter contained."

This, however, in our opinion, does not afford any assistance to the argument because Pritam Singh's [A.I.R. 1956 S.C. 415] case did not introduce any variation in the Code as regards either investigation, enquiry or trial. As we have pointed out earlier, issue-estoppel does not prevent the trial of any offence as does autre fois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led and a specific finding recorded at an earlier criminal trial before a court of competent jurisdiction. Learned Counsel next drew our attention to the observations of the Privy Council in Yusofalli Mulla v. The King [76 I.A. 158] at page 169 where the following observations occur :

> "The last point urged by Mr. Page was that even if the case did not fall within the terms of s. 403 of the Code of Criminal Procedure the appellant could nonetheless rely on the common law rule that no man should be placed twice in jeopardy."

After stating that even for the application of the Common Law rule of double jeopardy the earlier order had to be by a court competent to pass a valid order of acquittal or conviction the judgment proceeded :

> "This argument therefore fails on the facts, and it is not necessary for their Lordships to consider whether s. 403 of the Code of Criminal Procedure constitutes a complete code in India on the subject of autre fois acquit and auter fois convict, or whether in a proper case the common law can be called in aid to supplement the provisions of the section."

As we have pointed out, we are not now concerned with any extension of the principle of autre fois

acquit but as to the admissibility of evidence which is designed to upset a finding of fact recorded by a competent court at a previous trial. The reasoning of Lord MacDermott in Sabasivam's [[1950] A.C. 458] case was not the first occasion when this rule as to issue-estoppel in a criminal trial was formulated or given effect to. That it is to the same as the plea of double jeopardy or autre fois acquit is also clear from the statement of the law by Lord MacDermott himself. The distinction between autre fois acquit and the objection to the reception of evidence to prove an identical fact which has been the subject of an earlier finding between the parties is brought out in the following passage from the judgment of Wright, J. in The Queen v. Ollis [(1900) 2 Q.B. 758, 768-769] :

> "The real question is whether this relevant evidence of the false pretence on July 5 or 6 ought to have been excluded on the ground that it was part of the evidence given for the prosecution at the former trial, at which the prisoner was charged with having obtained money from Ramsey on that false pretense, and was acquitted of that charge."

The learned Judge then went on to point out that if the acquittal at the first trial was based on the negativing of this fact the evidence would be inadmissible but if that acquittal was based on other circumstances the evidence would be admissible. That is why he said :

> "An objection in the nature of a plea of "autre fois acquit" cannot of course be maintained, because on either indictment the prisoner could not have been convicted of the offences, or any of them, which were alleged in the other indictment. Nor can there be an estoppel of record or quasi of record, unless it appears by record of itself, or as explained by proper evidence, that the same point was determined on the first trial which was in issue on the second trial."

Speaking of this type of estoppel Dixon, J. said in The King v. Wilkes [C.L.R. 511 at pp. 518-519] :

> "Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner. That seems to be implied in the language used by Wright, J. in R. v. Ollis which in effect I have adopted in the foregoing statement............... There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see no reason why the ordinary rules of issue-estoppel should not apply. Such rules are not to be confused with those of res judicata, which in criminal proceedings are expressed in the pleas of autre fois acquit and autre fois convict. They are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of conviction with the substitution of a new liability. Issue-estoppel is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well-known doctrines which control the relitigation of issues which are settled by prior litigation."

This decision was rendered in 1948. The matter was the subject of consideration by the High Court

of Australia after the decision in Sambasivam's [[1950] A.C. 458] case in Marz v. The Queen [96 C.L.R. 62, 68-69]. The question concerned the validity of a conviction for rape after the accused had been acquitted on the charge of murdering the woman during the commission of the act. In an unanimous judgment by which the appeal of the accused was allowed, court said :

> "The Crown is as much precluded by an estoppel by judgment in criminal proceedings as is a subject in civil proceedings........ The law which gives effect to issue-estoppels is not concerned with the correctness or incorrectness of the finding which amounts to an estoppel, still less with the process of reasoning by which the finding was reached in fact........ It is enough that an issue or issues have been distinctly raised or found. Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding may be made by one of them against the other."

It is, therefore clear that s. 403 of the Criminal Procedure Code does not preclude the applicability of this rule of issue-estoppel. The rule being one which is in accord with sound principle and supported by high authority and there being a decision of this Court which has accepted it as a proper one to be adopted, we do not see any reason for discarding it. We might also point out that even before the decision of this Court this rule was applied by some of the High Courts and by way of illustration we might refer to the decision of Harries, C.J. in Manickchand Agarwala v. The State [A.I.R. 1952 Cal. 730]. Before parting, we think it proper to make one observation. The question has sometimes been mooted as to whether the same principle of issue-estoppel could be raised against an accused, the argument against its application being that the prosecution cannot succeed unless it proves to the satisfaction of the Court trying the accused by evidence led before it that he is guilty of the offence charged. We prefer to express no opinion on this question since it does not arise for examination.

As stated earlier, if Pritam Singh's [A.I.R. 1956 S.C. 415] case was rightly decided, it was conceded that the decision of the Judicial Commissioner was right.

The appeal, therefore, fails and is dismissed.

Appeal dismissed.

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