SUPREME COURT OF INDIA

K. P. Raghavan

Vs.

M. H. Abbas

Crl.A.No.125 of 1966

(V. Ramaswami, V. Bhargava and Raghubar Dayal JJ.)

30.04.1962

JUDGEMENT

BHARGAVA, J.:

1. This appeal, by special leave, arises out of proceedings started on a complaint filed by one M. H. Abbas against the two appellants, of whom appellants No. 1, K. P. Raghavan, was Sub-Inspector of Police posted at Kumbala Police Station, and appellant No. 2, Kunhi Raman, was the Station Writer of that Police Station. The complaint was filed on the allegation that the complainant had cultivation. jointly with one .Seedi, of water melons in a field 'to the west of his house near a railway line, in Mogral village, and some adjoining fields were cultivated by others, two of whom were cited as his prosecution witnesses; they are Abdulla (P. W. 2) and Amdunhi (P. W. 3). The telegraph wires running along the railway line passed over the fields of these two witnesses. The wires once broke down and it was found that a portion of the wires was missing. In that connection, two police constables went to the shop of Abdulla P. 'W. 2, and questioned him at about 2-30 p. m. to find out if he had any knowledge about the missing telegraph wires. P. W. 2 accompained, the police constables to the fields also, but did not find any broken wires. Thereafter, the police questioned P. W. 3, Amdunhi, and subsequently they also questioned these persons about the complainant and his partner Seedi. In pursuance of this information, the complainant was taken to

the police station on the ground that the Sub-Inspector wanted him. They arrived at the Police Station at about 4 p.m. At about 5 p.m. Seedi was bought to the Police Station. Appellant No. 1, the Sub-Inspector, returned at about 6 or 6-30 p.m. and he then questioned them about the wires which had broken down over their fields. All the four persons denied any knowledge about it, whereupon appellant No. 1 saying "Don't you know it" gave slaps on the face of P.W. 2 and two fist blows on his chest. The complainant protested. Then, appellant No. 1 took hold of the complainant's shirt, took him inside a side-room, asked him to remove the shirt and undervest and wrist watch, and said to him that he should tell the truth and confess. Thereafter, he gave him blows on the neck and fist blows on the chest. The complainant felt pains, raised cries and fell down. Thereafter, appellant No. 1 asked appellant No. 2 to bring a ruler and with that he gave blows on the soles of the feet of the complainant until the complainant lost consciousness. The prosecution case was that the complainant regained his consciousness in the hospital.

2. One M. C. Abdulkhadar, P. W. 5, came to the Police Station and asked appellant No. 1 to release the four persons where after the complainant was taken out of the room helped by the police constables. When the police constables let go of him he fell down, whereupon P. W. 5, M. C. Abdulkhadar, went away saying that he did not want to interfere. While he was going away, he met P. W. 6, Ahamedkutty, the elder brother of P. W. 2 Abdulla, and advised him to take the injured persons to the hospital, and accordingly, the complainant was taken in a car to the hospital, where his injuries were examined. He was admitted as an indoor patient, while P. W. 2 was treated as to out-patient. P. W. 6, the elder brother of Abdulla P. W. 2, next day went to his lawyer, and as advised by him, he obtained the injury certificate of the complainant and then sent a complaint to the Superintendent of Police, Cannanore. Since the case was not prosecuted by the Police, the complainant filed his complaint in Court on these allegations.

3. The complaint purported to bring a charge under Section 330 of the Indian Penal Code against two appellants which was an offence exclusively triable by the Court of Session, the Magistrate who held the enquiry, however came to the view that on the evidence adduced before him, there was no justification for committing the appellants for trial to the Court of Session, and consequently, discharged them..

4. The complainant filed a revision in the Court of Session, and the Sessions Judge directed the Magistrate to commit the appellants for trial. The appellants moved the High Court against this order the of the Sessions Judge, but that revision was also dismissed. Consequently, the appellants have come up in this appeal to this Court praying that the order of commitment passed by the Sessions Judge and upheld by the High Court he set aside and the order of discharged by the Magistrate be restored.

5. The main point urged before us by learned counsel for the appellants was that in this case the Magistrate, in discharging the two appellants, had correctly exercised the powers vested in him as an enquiring court under S. 209 of the Code of Criminal Procedure, and that the Sessions Judge was

wrong in interfering with that order of the Magistrate. It was urged that the High Court also committed an error in law in upholding that order of the Sessions Judge.

6. A perusal of the judgement of the committing Magistrate shows that he decided to discharge the appellants on three grounds. The first ground was that the appellants had given very good evidence in defence before the enquiring Magistrate to prove that they were not at the Police Station at the time when the alleged offence is said to have been committed according to the complainant. The evidence which the Magistrate believed consisted of the documents maintained at the Police Station and the statements of police witnesses as well as the statements of some other witnesses who corroborated the version of the appellants that they had left the Police Station and were out making investigation in the case relating to the theft of telegraph wires. The second ground given by the Magistrate was that the medical evidence did not fully bear out the complainant's version, and the third ground was that the prosecution witnesses were interested persons. On these grounds, the Magistrate held that the evidence of the prosecution witnesses could not be relied upon.

7. It is to be noticed that as held by the Sessions Judge and the High Court, the Magistrate did not record any finding that there was no evidence in support of the prosecution case. In fact, a number of prosecution witnesses were examined who gave statements proving the various parts of the prosecution story. There were eye-witnesses, who deposed in support of the incident which was the subject-matter of the complaint. This evidence, if it had stood by itself was very clear and was quite enough to prove the prosecution charge against the appellants.

8. What the Magistrate did was to hold that this prosecution evidence did not justify commitment of the case to the Court of Session on the three grounds, which we have mentioned above. In fact, in dealing with the case, the Magistrate first dealt with the defence evidence and held that, since the plea of alibi of the appellants was supported by good documentary evidence contained in public documents, it was not possible to believe the prosecution version. The Magistrate ignored the fact that another Court could reasonably take a view different from his. The documentary evidence which was relied upon consisted of documents prepared at the Police Station where both the appellants were themselves posted. The value to be attached to those documents, therefore, depended on the view which the Court took after full investigation of facts relating to the circumstances in which these documents came into existence, and after taking into account the evidence produced in support of the genuineness and correctness of these documents.

9. Similarly, the medical evidence was also not of a conclusive nature against the prosecution. The complainant had alleged that he was given blows with the ruler on the soles of his feet until he became unconscious . The doctor's statement was that there were no external injuries visible on the soles of the feet. The Magistrate was of the view that the complainant could not have fainted and could not have suffered severe pain without appearance of external injuries. That was again a point on which another Court could take a different view.

10. The third ground given by the Magistrate for disbelieving the prosecution witness was that they were all interested, because they were persons connected with the fields near which the telegraph wires were said to have been broken and stolen. Whether this was a sufficient ground to doubt the evidence of these witnesses, was again a point on which different views were possible.

11. It will thus be seen that there was nothing in the prosecution or the defence case which made the prosecution case inherently improbable, and there could be no justification for the Magistrate to hold that no Court could reasonably come to a conclusion on this material that the prosecution case had been established. It is clear that in these circumstances, what the Magistrate did was to appropriate to himself the function of judging whether the prosecution evidence was to be believed, or whether the defence evidence was to be believed in preference, and consequently, the evidence of the prosecution witnesses who gave eyewitness account of the offence was unreliable. No doubt a Magistrate enquiring into a case under S. 209, Cr. P. C., is not to act as a mere Post Office, and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session, but in arriving at that conclusion, it is not the function of an enquiring Magistrate to weigh the pros and cons of the prosecution and defence evidence and to discharge the accused merely because in his view the defence evidence was better than the prosecution evidence.

12. On the question of the manner in which an enquiring Magistrate should exercise his jurisdiction in such a case, several decisions were cited before us. The earliest decision cited is in the case of Ramchandra Babaji Gore v. Emperor, AIR 1935 Bom 137 where Beaumont, C. J., held that a Sessions Judge can interfere with an order of discharge by a Magistrate if he finds that it was improper, and he can arrive at that conclusion not only on the ground that the order was perverse or manifestly unreasonable and inconsistent with an honest appreciation of the evidence in the case, but also on the ground that the Magistrate has taken upon himself the discharge of a duty which under the Code is entrusted to the Sessions Court, that is to say, the duty of appreciation of evidence of doubtful credibility.

13. The next case cited is Mohammad Ali v. Emperor, AIR 1943 Oudh 233 where it was held that an enquiring Magistrate must see that a prima facie case has been made out, and if he feels any doubt, he should commit the case to the Court of Session. It is only where he comes to the conclusion that there is no reasonable possibility of conviction that he should discharge; and this discretion must be carefully exercised and wherever there is a possibility that different Courts might take different views of the evidence, he should leave it to the Court of Session to decide. It cannot be said that the Magistrate has no discretion to weight the evidence at all. He must clearly do so to some extent in order to decide whether a prima facie case has been made out and whether a conviction is possible. But these are the limits of his discretion and it is not his duty nor is it necessary for this purpose for him to examine the prosecution evidence with meticulous care, balance the evidence of one witness against the evidence of another, consider the probabilities of a conviction, or come to a conclusion on doubtful points.

14. The first case of this Court cited before us is that of Tara Singh v. The State, 1951 SCR 729: (AIR 1951 SC 441) where the faction of the Committing Magistrate was explained by saying

"all that he had to consider was whether under Section 209 (1) there were sufficient grounds for committing the appellant for trial and not whether, on an appreciation of the whole evidence and other material in the case including witnesses for the defence. the charge against him was proved.

15. This aspect was examined in more detail by this Court in the case of Ramgopal Ganpatrai v. State of Bombay. 1958 SCR 618: (AIR 1958 SC 97) where the law as stated in Halsbury's Laws of England, Vol. l0, 3rd Ed. (Lord Simonds), in Art. 666 at p. 365, was quoted and approved The principle laid down as follows :-

"When all the evidence has been heard the examining justices then present who have heard all the evidence must decide whether the accused is or is not to be committed for trial. Before determining this matter, they must take into consideration the evidence and any statement of the accused. If the justices are of opinion that there is sufficient evidence to put the accused upon trial by jury for any indictable offence, they must commit him for trial in custody or on bail." The Court then proceeded to hold that the Magistrate holding the inquiry. therefore, has to be satisfied that a prima facie case is made out against the accused by the evidence of witnesses entitled to a reasonable degree of credit, and unless he is so satisfied, he is not to commit. That was the test that this Court applied in that case and came to the conclusion that it could not be said that there was no evidence to make out a prima facie case, because there was a large volume of oral evidence besides an unusually large volume of documentary evidence; and the High Court had taken' pains to point out that that was one of those cases where much could be said on both sides.

16. In the case before us, as we have already held above, there was direct evidence of prosecution witnesses to support the charge in the complaint and it could not be held that the. witnesses who gave the evidence were such that there was no reasonable possibility of their being believed by any Court. Consequently, it is clear that the Magistrate had committed an error in discharging the appellants, and the Sessions Judge was right in ordering commitment of the appellants to the Court of Session for trial. His order was also rightly upheld by the High Court.

17. In this connection, learned counsel for the appellants drew our attention to the difference in procedure applicable to inquiries under S. 207-A and S. 209 of the Code of Criminal Procedure. and urged that in view of this difference, we should hold that in exercising his jurisdiction under S. 209, the Committing Magistrate has a wider jurisdiction and is given discretion to weigh the prosecution and defence evidence and make an order of discharge in appropriate cases. We do not think that the introduction of S. 207-A in the Code of Criminal Procedure by a subsequent amendment necessarily implies that the principles governing the exercise of jurisdiction by the Magistrate under S. 209 must thereafter be different from the principles which were held to govern his jurisdiction before

this amendment. How that jurisdiction is to be exercised by a Magistrate when inquiring into a case under S. 207-A need not be laid down by us in this case, where this question does not arise. We are only concerned with the interpretation of S. 209 and we have indicated above how the jurisdiction under that section should be exercised by a Magistrate.

18. In a subsequent case decided by this Court in Bipat Gope v. State of Bihar 1962 Supp 2 SCR 948: (AIR 1962 SC 1195) this aspect came up for investigation. The view taken by this Court was that the words of the two sections are not the same, and it is possible to say that the force of the two sections is also not the same and that S. 209 gives a power to enter upon the merits of a case in a manner which S. 207-A does not warrant. But the test for discharging the act used must in a large way be the same under both the sections. The Court held that it was hardly necessary to decide the full ambit of S. 207-A. and contrast it with that of S. 209 and that if there was any indication in the language it was altogether on the side that the Magistrate must find a stronger case for discharging the accused under S. 207-A shall under S. 209. It was however nowhere said in that case that the test of judging the justification of an order of discharge by the Magistrate under S. 209 has been altered as a result of the enactment of S. 207-A. Consequently, the principles laid down earlier in the cases we have referred to above still hold good and on those principles the Sessions Judge was quite right in directing commitment of the appellants for trial to the Court of Session. There is thus no merit in this appeal and it is dismissed.

Appeal dismissed.