State of Andhra Pradesh

Vs

Kokkiliagada Meerayya and Another

Criminal Appeal No. 207 of 1967

(J. C. Shah, A. N. Grover JJ)

28.11.1968

JUDGMENT

SHAH, J. - K.

1. Meerayya, K. Venkatanarayana-respondents in this appeal and two others were charged before the Judicial Magistrate, Second Class, Avanigadda, for offences under Section 323 and 324, I.P. Code, for voluntarily causing injuries to Seetharamayya and Veeraraghavayya on June 22, 1964. The Trial Magistrate convicted Meerayya and Venkatanarayana-the first under the offence under Section 324 and the second for the offence under Section 323, I.P. Code. In appeal to the Court of Session, Krishna Division at Machilipatnam, the order was confirmed. The High Court, in exercise of its revisional jurisdiction, set aside the order of conviction and sentence. The State of Andhra Pradesh had appealed to this court with special leave.

2. The case raises a question of some importance in the administration of justice. The findings recorded by the Trial Magistrate and confirmed by the Sessions Judge were that the respondents had committed assault upon Seetharamayya and Veeraraghavayya and that they could in law be properly convicted. But it was urged that here was a bar against prosecution of the two accused Meerayya and Venkatanarayana because of the "principle of issue estoppel". The plea is raised on the ground that the Station House Officer, Kodur Police Station, had instituted proceedings in the Court of the Sub-Divisional Magistrate, Bandar, under Section 107, Code of Criminal Procedure, against 96 persons, amongst whom were the two respondents and an order under Section 112, Code of Criminal Procedure, was made stating that the persons named therein were indulging in acts of violence involving breach of public peace and tranquility in the village of Salempalam and were endangering peace in the village, and that they had formed themselves into a party and were thereby disturbing the public peace and tranquility by committing acts of violence, and on that account they were required to show cause why each person named should not execute a bond for keeping the peace for a period of one year in the sum of Rs. 1,000 with two sureties in a like amount each. In the other requiring the parties to show cause, four incidents were referred to-the first of which is material. It was recited that on June 22, 1964, 11 persons including the two respondents had beaten Seetharamayya and Veeraraghavayya with crow, bars and sticks, and a case in Crime No. 20/64, under Sections 148, 323 and 325, I.P. Code, had been registered and was being investigated. The Sub-Divisional Magistrate held an inquiry and was of the view that since the evidence led in support of the first incident was not supported by reliable evidence, and there were inherent discrepancies in the testimony of the witnesses and the recitals in the complaint, the first incident was not proved against any of the eleven persons.

3. It was urged that the order of the Sub-Divisional Magistrate holding that the respondents were not

concerned in the incident had become final and it was not open to the Judicial Magistrate, Second Class, Avanigadda, to hold a trial against the respondents inn respect of the same incident. The Trial Magistrate rejected the plea, and the Sessions Judge agreed with him. But in view of the High Court since in the proceeding under Section 107 of the Code of Criminal Procedure, the incident which was made the subject-matter of the complaint against the respondents in the court of the Judicial Magistrate was one of the incidents relied upon and was held not proved, it was not open to the State to commence or continue a prosecution against the respondents in respect of the same incident. In so holding, the High Court held that on the "principle of issue estoppel" approved by this court in Manipur Administration v. Thokchom Bira Singh ((1964) 7 SCR 123),so long as the finding, that the respondents were not concerned in the incident, was not set aside by appropriate proceeding, no prosecution on any allegation legally inconsistent with that finding could be commenced against the respondents.

4. Counsel for the State contended that the rule of issue estoppel is inconsistent with the statutory provisions contained in Section 403 of the Code of Criminal Procedure and cannot be resorted to in criminal trials and that in any event the rule of issue estoppel had no application, since there was no "previous trial" of the respondents for any offence alleged to arise out of the incident in respect of which they were tried. It was urged that it was not the law even recognised by the Australian Courts where the rule of issue estoppel had its origin that evidence on which a criminal proceeding was held cannot be utilised in any subsequent proceeding between the same parties.

5. The first contention raised by counsel for the State cannot be entertained in view of a large body of authority in this court. If the matter were res integra the argument that the courts cannot travel outside the terms of the Code of Criminal Procedure and extend the rule of autrefois acquit incorporated in Section 403 of the Code of Criminal Procedure, may have required serious consideration.

6. The following important rules emerge from the terms of Section 403 of the Code of Criminal Procedure :

> (1) An order of conviction or acquittal in respect of any offence constituted by any act against or in favour of a person does not prohibit a trail for any other offence constituted by the same act which he may have committed, if the court trying the first offence was incompetent to try that other offence.
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> (2) If the course of a transaction several offences are committed for which separate charges could have been made, but if a person is tried in respect of some of those charges, and not all, and is acquitted or convicted, he may be tried for any distinct offence for which at the former trial a separate charge may have been, but was not, made.
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> (3) If a person is convicted of any offence constituted by any act, and that act together with the consequences which resulted, therefrom constituted a different offence, he may again be tried for that different offence arising out of the consequences, 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 who has once been tried by a court of competent jurisdiction for an offence and has been either convicted or acquitted shall not be tried for the same

> offence or for any other offence arising out of the same facts, for which a different charge from the one made against him might have been made or for which he might have been convicted under the Code of Criminal Procedure.

7. Section 403 of the Code of Criminal Procedure enacts the rule of autrefois acquit and autrefois convict applicable to criminal trials. The rule is that so long as an order of acquittal or conviction at a trial held by a court of competent jurisdiction of a person charged with committing an offence stands, that person cannot again be tire don the same facts for the offence for which he was tried or for any other offence arising therefrom. But the rule of issue estoppel in criminal trials evolved by the High Court of Australia and approved by the Judicial Committee had been applied to criminal trials in India, apart from the terms of Section 403 of the Code of Criminal Procedure.

8. Lord MacDermott in Sambasivam v. Public Prosecutor, Federation of Malaya (LR (1950) AC 458) observed at p. 479 :

> "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 again 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. The maxim "Res judicata pro veritate accipitur" is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial. And the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the fire-arm charge is plain, but it undoubtedly reduced in some degree the weight of the case against him, for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other."

9. In Sambasivam's case (LR (1950) AC 458) the appellant was tried for the offence of being in possession of ammunition in violation of Regulation 4(1)(b) of the Emergency (Criminal Trials) Regulations, 1948. He was acquitted of the charge. Later he was tried for the offence of carrying a fire-arm contrary to Regulation 4(1)(a) of the Emergency Regulations and was convicted by the Supreme Court of the Federation of Malaya. An appeal was carried to the Judicial Committee and the legality of the conviction was challenged on the grounds, inter alia, that so long as the order of acquittal in respect of the carrying of ammunition stood, the facts proved in support of that charge were in the circumstances of the case clearly relevant to the second charge, and the appellant was entitled to rely upon the acquittal in so far as it was relevant to his defence. The plea so raised was accepted by the Judicial Committee.

10. In Pritam Singh v. The State of Punjab (AIR 1956 SC 415), this court held that where a person has been tried under Section 19(f) of the Arms Act and is acquitted because the prosecution has failed to establish the possession of a revolver by the accused as alleged, in a subsequent trial of the offence of murder, where the possession of the revolver was a fact in issue which had to be established, the prosecution could not ignore the finding at the previous trial.

11. In several later judgments of this court the principle of issue estoppel has received approval :

Manipur Administration v. Thokcham Bira Singh; ((1964) 7 SCR 123) Banwari Godara v. The State of Rajasthan; Lalta & others v. the State of U.P. (Cr A No. 185 of 1966, decided on October 25,1968). It was also accepted in The Assistant Collector of Customs and another v. L.R. Malwani and another Cr As Nos. 15 and 35 of 1967,decided on October 16, 1968). It is too late now to make a departure from the rule accepted by this court. In the American courts also the rule of issue estoppel has received approval : Sealfron v. United States (1948) 332 US Rep 575).

12. It is true that in Connelly v. Director of Public Prosecutions (LR (1964) AC 1254), decided by the House of Lords there was some difference of opinion amongst the Law Lords as to the applicability of the rule to criminal trials in the English Courts. Our Criminal jurisprudence is largely founded upon the basis rules of English Law though the procedure is somewhat different. Trials by jury have been practically abolished and the cases are being tired by Judges. Several charges arising out of the same transaction can be tried under the Code of Criminal Procedure, together at one trial, and specific issues are always raised and determined by the courts. Under the English system of administration of criminal law, trials, for serious offences are held with the aid of the jury and it is frequently impossible to determine with certitude the specific issues on which the verdict of the jury is founded. In criminal trials under the Code of Criminal Procedure, there is no uncertainty in the determination of issues decided. Difficulties envisaged in Connelly's case, (LR (1964) AC 1254) in the application of the rule of issue estoppel do not therefore arise under our system.

13. But it is necessary to notice the true basis of the rule. Dixon, J., in The King v. Wilkes, (77 CLR 511) observed at pp. 518-519.

> " ..... 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. X X X 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 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 autrefois acquit and autrefois 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 anew 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 re-litigation of issues which are settled by prior litigation."

14. The rule does not predicate that evidence given at one trial against the accused cannot again be given in the trial of the accused for a distinct offence. As Lord Morris of Borty-Y-Gest observed in Connelly's case, (LR (1964) AC 1254) at p. 1325 :

> " ..... there is no rule or principle to the effect that evidence which has first been issued in support of a charge which is not proved may not be used to support a subsequent and different charge, X X X."

15. Can it be said in the present case that there has been a trial of the accused on an issue in a prior litigation, and an attempt is made to re-litigate the same ? It may be recalled that the respondents were not tired at any criminal trial in the previous case. The earlier proceeding was for binding over the respondents and 94 others to keep the peace on the case that it was apprehended that they were likely to commit breach of peace or disturb public tranquility. The primary issue which the court was called upon to determine was whether there was any apprehension of the breach of peace or disturbance of public tranquility which necessitated the passing of the order requiring the respondents and others to give security. It is true that in support of that order the Station House Officer in his report had relied upon four incidents, one of which specifically set out the details which formed the subject-matter of the trial from which the present appeal arises. But there was no trial of the respondents for an offence in the earlier proceeding and there was no order of conviction or acquittal. The Rule of issue estoppel cannot, in our judgment, be extended so as to prevent evidence which was given in the previous proceeding and which was held not sufficient to sustain the other for being used in support of a charge of an offence which the State seeks to make out. The rule of issue estoppel prevents re-litigation of the issue which has been determined in a criminal trial between the State and the accused. If a in respect of an offence arising out of a transaction a trial has taken place and the accused has been acquitted, another trial in respect of the offence alleged to arise out of that transaction or of a related transaction which requires the court to arrive at a conclusion inconsistent with the conclusion reached at the earlier trial is prohibited by the rule of issue estoppel. In the present case, there was no trial and no acquittal. The rejection of evidence given in the earlier proceeding to sustain an order for binding over the respondents to keep the peace does not preclude the trial of the respondents in respect of the specific incident which together with the other incident was sought to be made the basis of the order of binding over the respondents.

16. This court in L. R. Malwani's case (Cr A Nos. 15 and 35 of 1967, decided on October 16, 1968) declined to apply the rule of issue estoppel to a case arising under the Sea Customs Act in which there was an inquiry held by the Collector of Customs and a criminal prosecution was then filed.

17. In our judgment, the High Court was in error in holding that the respondents could not be tried and convicted of offences under Section 324 and 323, I.P. Code, because in the earlier proceeding under Section 107 of of the Code of Criminal Procedure, evidence with regard to the incident out of which offences which are the subject-matter of the present appeal was taken, and was regarded as insufficient to sustain the order.

18. The appeal is allowed, and the order passed by the High Court is set aside. As, however, the sentences passed by the learned Trial Magistrate and confirmed by the Court of Session were of short duration and the respondents have been released on bail, we do not think that they should be called upon to undergo the remaining sentences. We reduce the sentences of imprisonment to the period already undergone. The appeal is allowed and the order of the Session Court is restored, subject to the modification in the sentence of imprisonment.

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