SUPREME COURT OF INDIA

Superintendent and Remembrancer of Legal Affairs, W.B.

Vs.

Md. Samsuddin

Crl.A.No.95 of 1970

(Y. V. Chandrachud and P. N. Bhagwati, JJ.)

12.11.1974

JUDGEMENT

CHANDRACHUD, J.:-

1. This appeal by special leave is directed against a judgment of the High Court of Calcutta quashing an order of commitment made by the Magistrate, 1st Class, Sealdah. The appeal raises a question as to the scope and interpretation of Section 207-A, Criminal P. C., 1898.

2. It would appear that on the Doljatra day which fell on March 14, 1968 communal riots broke out in Calcutta in the wake of the Holi festival. At about 2-30 p. m. on that day two boys, Sital Chandra Prodhan and Rabin Karmarkar, were passing along the Kashai Bustee. They strayed into the Narkeldange North Road locality while sprinkling colours. At about 5 or 5-30 p. m. they are alleged to have been surrounded by 50 or 60 men, 10 or 12 out of which assaulted them with fists, iron rods and bricks. Rabin Karmarkar is said to have been dragged along Narkeldange North Road. His dead body was found floating in the Circular Canal on March 20, 1968. Sital Prodhan was carried inside the Kashai Bustee and was robbed of his wrist watch, a ring and some money. Miraculously, he

managed to run away and kept himself in hiding for a couple of hours. At about 7-30 p. m. he went to the Manicktola Police Station which sent him to the Emergency Ward of the Calcutta Medical College. His statement, it is said, was recorded at the Hospital by a police officer of the Beliaghata Police Station at about 1-30 a. m. on March 15. Another statement was later recorded on March 17 and it was treated as the First Information Report in the case.

3. The respondents, 10 in all, were arrested on June 5, 1968 for their alleged complicity in the incident of March 14. Three identification parades were held on June 28, June 29 and October 8, 1968. Two of the respondents were identified in the first parade, six in the second and two in the third.

4. During the inquiry before the committing Magistrate under Chap. XVIII of the Code, two witnesses were examined by the prosecution: Sital Chandra Prodhan and Asgar Ali. Observing that as a committing court it was not his function to weigh the evidence on record the learned Magistrate, basing himself primarily on the evidence of the two witnesses, framed a charge against the respondents under Section 148 and Sections 302, 324 and 395 read with Section 149 of the Penal Code and committed them to stand their trial in the Court of Session at Alipore. The order of commitment is dated December 18, 1968.

5. On December 23 an application for bail under Section 498 of the Code was moved in the High Court at Calcutta on behalf of the first respondent, Mohd. Samsuddin alias Buddhu. A Division Bench of the High Court (Amaresh Roy and S. N. Bagchi, JJ.) having heard arguments on the bail application, felt that the order of commitment itself needed a closer examination. The learned Judges therefore called for the record of the case and issued a rule calling upon the District Magistrate, 24-Parganas, to show cause why the order of commitment should not be set aside or why the charges should not be altered or modified. Pending the hearing of the rule the first respondent was released on bail. On January 14, 1969 an application for bail was moved in the High Court on behalf of respondents 2 to 10. The learned Judges passed a similar order on that application.

6. The two rules were disposed of by the same Bench by a common judgment dated April 2, 1969. Differing from the view taken by the committing court, the High Court held that there was no ground for committing the respondents to stand their trial in the Court of Session. Some of the respondents, according to the High Court, might have been tried by the learned Magistrate himself on minor charges but considering the long lapse of time the High Court thought that it was not conducive to justice to direct the Magistrate to try any of the respondents on those charges. The State of West Bengal challenges the correctness of the High Court's judgment quashing the order of commitment.

7. Section 207-A of the Code of 1898 was inserted by the Code of Criminal Procedure

(Amendment) Act, XXVI of 1955. By sub-section (4) of that section, the Magistrate is empowered to take the evidence of witnesses and by sub-sec. (5) the accused is given the liberty to cross-examine the witnesses. Sub-sections (6) and (7) which are relevant for our purpose read thus :

"(6) When the evidence referred to in sub-section (4) has been taken and the Magistrate has considered all the documents referred, to in Section 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(7) When, upon such evidence being taken, such documents being considered, such examination (if any) being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged."

8. Looking at the plain language of these two sub-sections it is patent that the Magistrate conducting the inquiry proceedings can discharge the accused only if he is of the opinion that the evidence produced before him and the documents referred to in Section 173 of the Code "disclose no grounds for committing the accused person for trial". The jurisdiction of the inquiring magistrate is thus of a limited character. He has, undoubtedly got to sift and weigh the evidence but that exercise is solely directed to finding whether the prosecution has made out a prima facie case. So long as there is evidence which, if believed, would sustain the conviction of the accused, it is the duty of the magistrate to commit the accused to the Court of Session, unless he comes to the conclusion that the offence disclosed by the evidence is such as may be tried by himself or by some other magistrate. This limitation stems from the fact that a magistrate acting under Chapter XVIII of the Code does not try the accused but merely inquires into the case against him. Sifting and weighing evidence to determine the guilt is the function and privilege of the Court which tries the accused. That explains why this Court held in Thakur Ram v. State - of Bihar, (1966) 2 SCR 740 at p. 748 = (AIR 1966 SC 911 at p. 916) that where two views of the evidence are possible, it is not for the committing Court "to evaluate the evidence and strike a balance" before deciding whether or not to commit the accused to the Court of Session. An order of discharge can be passed by the committing Magistrate only if there is no evidence at all on which to base the conviction. In Bipat Gope v. State of Bihar, 1962 Supp 2 SCR 948 = (AIR 1962 SC 1195) the order of discharge was held to be in excess of jurisdiction because the Magistrate, instead of finding whether the evidence if believed would establish a prima facie case, went further to disbelieve the evidence by an elaborate and painstaking process of examination of evidence in aid of which he brought to bear his own appraisal by considering inconsistencies and improbabilities.

9. The Magistrate, in the discharge of his function under sub-sections (6) and (7) of S. 207-A, cannot certainly act as a mere automaton. He has a judicial, not a ministerial, duty to perform and therefore he cannot act as a post-office for onward transmission of the case. He must apply his mind to the evidence in order to determine whether that evidence makes out a prima facie case against the accused. Thus, the committal proceedings go before the Sessions Court not in a virgin form but with the judicial imprimatur of the magistrate that prima facie the evidence is such as may justify the conviction of the accused.

10. Acting in the. exercise of its revisional powers, the High Court could have quashed the order of commitment if it came to the conclusion that the prosecution had failed to make out a prima facie case or that there was no evidence at all on which the conviction of the accused could rest. Rather than examine the evidence from this limited point of view, the High Court embarked upon a full-fledged appraisal of the evidence as if it was hearing an appeal against an order of conviction recorded by the Magistrate. The evidence of Sital Chandra Prodhan and Asgar Ali, if believed, could sustain the conviction of the accused. The High Court has itself held that.: (i) on March 14, 1968 an incident of the nature alleged by the prosecution took place near the junction of Narkeldange North Road and Kashai Bustee lane; (ii) that the incident resulted in the death of Rabin Karmarkar who was assaulted and thrown into the water of the canal and (iii) that Sital Chandra Prodhan was assaulted during the course of the same incident. But the High Court thought that though the evidence of the two witnesses showed that the respondents were members of the crowd which attacked Sital Chandra Prodhan and Rabin Karmarkar, "mere presence in a crowd on a Calcutta Street does not provide any material for thinking that all those present were members of the unlawful assembly sharing in the common object". The High Court then proceeded to consider the evidence led by the prosecution in regard to the identification parades and held that the delay in holding the parades coupled with the fact that the accused were produced in the court on several occasions rendered that evidence valueless. Asgar Ali's evidence was weighed and rejected by the High Court on the ground that he was contacted by the police several days after the incident which "heightens the improbability of the truth of his presence at the place of incident". The High Court had to determine whether the prosecution had made out a prima facie case so as to justify the order of commitment but it went very much further and weighed the evidence for itself for determining, as it were, the guilt of the accused. In this it fell into an error.

11. Towards the conclusion of its judgment, the High Court finds fault with the committing Magistrate for recording his conclusion in a "double negative". The Magistrate concluded that he could not say that there was no ground for holding the accused responsible for the incident. The High Court says: "That makes his order bad and illegal and also without jurisdiction. The order of commitment must therefore be set aside and the charges framed must be quashed," In holding that it was not possible to say that the evidence disclosed no grounds for committing the accused for trial, the learned Magistrate was using the language of Section 207-A (6) under which he could discharge the accused if he was of the opinion that the evidence and the documents disclosed no grounds for committing the accused for trial.

12. It seems to us that the High Court was more influenced by what it thought was a general failing

of the Magistracy in Calcutta than by the facts of the case before it. This is what it says :

"We have to observe here that this attitude of an automaton without applying the mind has recently been noticeable in many Magistrates thereby bringing forth a result that charges utterly unsustainable on evidence are being framed and accused persons are being put to hazard, expenses and harassment of undergoing trials in Sessions Courts only to be acquitted. Not only so, by such shirking of legal duty Magistrates are flooding Sessions Courts with improper commitments resulting in heavy congestion on those courts obstructing speedy trial of cases which properly should be tried in court of Session. As a means this practice is being availed to shift cases that properly could be tried by Magistrates to the Sessions Courts and as method it is obstructing due course of justice both by harassing innocent persons and achieving acquittals in trials held on unreasonably exaggerated and extravagant charges. Whether it is due to ignorance and incompetence of the Magistrates or due to anxiety to shirk work on purpose remains problematic. Whichever it is, we condemn it emphatically to give the stern warning to all Magistrates that the method and the means both reflect adversely on their efficiency and dutifulness."

We appreciate the anxiety of the High Court that shirkers ought to be made aware of their responsibilities. But such wholesale condemnation of the lower judiciary would fail to achieve any purpose. It is not easy to imagine that "all Magistrates" deserve an emphatic condemnation at the hands of the High Court Circumspect criticism would evoke a better response.

13. As the High Court forestalled the decision of the Sessions Court and appreciated evidence led by the prosecution in the committing court for determining the guilt of the accused we set aside its judgment and restore the order of commitment passed by the learned Magistrate.

14. We wish to make it clear that the Sessions court will try the case uninfluenced by anything said in this judgment or by the High Court. We hope that the case will be taken up for hearing expeditiously and shall be concluded without delay.

15. Six years nearly have already gone by and we are still grappling with the issue: Should the accused not be committed to the Sessions 'Court? Perhaps it would be more satisfactory to allow such issues to rest finally with the High Courts. But so long as this Court possesses a wide Constitutional jurisdiction over criminal matters, such cases are bound to consume its time and energy.

Appeal allowed.