PATNA HIGH COURT

Gaya Singh

Vs

Emperor

(John Bucknill and Ross, JJ.)

26.11.1924

JUDGMENT

John Bucknill, J.

1. This was an appeal made by one Gaya Singh who was charged with having kidnapped a young girl in the spring of this year. He was sentenced to five years' rigorous imprisonment by the Assistant Sessions Judge of Purnea on the 16th of July last. He appealed to this Court, and, on the 28th of July 1924, Adami and Macpherson, JJ., made the following order: "This appeal will be heard on the question of sentence only. Issue notice and send for the record." The matter seems to have come before Mr. Justice Kulwant Sahay on the 7th of September last when he was Vacation Judge, and the learned Counsel who appeared for the appellant then raised before Mr. Justice Kulwant Sahay a question which has here recently been agitated as to whether it was possible rightly for an appeal to be admitted on a limited ground, that is to say, whether it was within the power of the Court to order, in admitting an appeal, that it should be heard only on the question of the appellant's sentence. Mr. Justice Kulwant Sahay thinking that the matter was of some importance thought that the point should be decided by a regular Bench. He accordingly stood the appeal over and it has now come before us.

2. Now, so far as my short experience in this Court has extended, I must say that it seems always to have been the practice in this Court ever since I have been upon this Bench to admit appeals on the question of sentence only. I myself have passed many such orders. As a matter of fact in many cases where such orders admitting an appeal on this limited ground have been passed, the appeals have been preferred by prisoners in Jail. Of course, on the other hand, many cases in which such orders have been passed, are appeals which have come before the Bench in the ordinary course. Now it is stated at the Bar by the learned Counsel, who appears for the appellant in this case, that, in the early days after the establishment of this Court, it was the practice to admit appeals without limitation. At any rate that would seem to have been the practice in Allahabad; but, in the Calcutta High Court, there certainly was the practice in existence of admitting appeals upon the question of sentence only. In 1913, however, the matter came before

the Calcutta High, Court in a substantive fashion and was dealt with very decisively in the case of *Nafar Sheikh v. Emperor*[1] In that case a man had been convicted of attempting to commit rape. He was sentenced to five years' rigorous imprisonment. He appealed and Harington and Coxe, JJ., admitted the appeal only on the ground of severity of the sentence. The appeal came for hearing before a Bench consisting of the Chief Justice (Sir Lawrence Jenkins) and Sharfuddin, J. Their attention appears to have been called to the admission of the appeal coupled with a limitation of the ground upon which it was admitted; and their Lordships then definitely held that an appeal could not, having regard to the wording of Section 422 of the Cr. P.C., be properly admitted on a limited ground. The appeal was accordingly ordered to be heard without any limitation of the grounds. Their Lordships ordered that fresh notice of the appeal should be given to the Crown and that the case should, in due course, come before a Bench.

3. Now the matter in due course accordingly came up for hearing before Mookerjee and Beachcroft, JJ. Mr. Justice Mookerjee in the course of his judgment writes as follows: "The appellant, Nafar Sheik, has been convicted of an offence under Section 376, read with Section 511 of the Indian Penal Code, and sentenced to rigorous imprisonment for five years. The Jury unanimously found him guilty, but recommended a light sentence on the ground that he is a young man and has got a young wife. The Sessions Judge accepted the verdict of the Jury, but did not give effect to their recommendation for a light sentence. The appeal to this Court was, in the first instance, admitted by Harington and Coxe, JJ., for consideration of the sentence only, in view of the representation of the Jury. The appeal thus admitted came to be heard by the Chief Justice and Sharfuddin, J., who held that, in view of the provisions of Section 422 of the Cr. P.C. 1898, the appeal could not be admitted on a limited ground, and directed the scope of the order of admission to be enlarged. As the direction thus given was not formally recorded, it is desirable to draw attention to the terms of Sections 421 and 422 of Cr. P.C. Sub-section (1) of Section 421 lays down that on receiving the petition of appeal, accompanied by a copy of the judgment or order appealed against or a copy of the heads of the charge in cases tried by a Jury, under Section 419 or Section 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. Section 422 then provides that if the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his Pleader and to such officer as the Local Government may appoint in this behalf, of the time and place at which such appeal will be heard, and shall, on the application of such officer, furnish him with a copy of the grounds of appeal. It is plain that the appeal which has thus to be heard is the whole appeal; consequently, all the grounds taken in the petition of appeal are open for consideration at the final hearing and the appellant cannot be restricted to any selected ground out of those specified in his petition. A restrictive order for admission is clearly not contemplated by Section 422 and must be deemed ultra vires. This view is strengthened by a consideration of the terms of Section 423. It is worthy of note that a similar view has been taken by this Court with regard to appeals under the C.P.C. *Lakhi Narain Sarnogi v. Sri Ram Chandra*[2] Fresh notice of the appeal has been given to the Crown, and the appeal has been argued before us on behalf of the accused and the Crown." Beachcroft, J., did not in his judgment mention this

point, but I take it that he must be regarded as having acquiesced in Mr. Justice Mookerjee's decision.

4. I have come to the conclusion that their Lordships of the Calcutta High Court are correct in their construction of the material sections of the Cr. P.C. The practice of admitting appeals only on the question of sentence appears to me to be incorrect. No doubt it was a course which was very convenient, but, I fear, that the provisions of the law do not permit the admission of an appeal on a limited ground. It has been suggested, and, indeed, it occurred to me, that the phraseology of the order "The appeal will be heard on the question of sentence only" might possibly be regarded merely as loose and inappropriate; and that what was really meant was that whilst the appeal was rejected the Court intended to express the opinion that the question of sentence might be brought before the Court which might revise that sentence in the exercise of its revisional jurisdiction. This looked as if it might have been one way of getting over what at first sight appears to be a real difficulty; but, I do not think, that such a direction nor such a course are capable of being legally adopted by this Court. As has been pointed out by my learned brother, the severity of a sentence is in itself a ground of appeal; and, if the effect of the order "The appeal will be heard on the question of sentence only" could be loosely construed to mean that the appeal was dismissed, but that the sentence would be heard in revision, it is obvious that when an appeal, in which the question of severity of sentence is one of its grounds, has been rejected, the matter could not come before the Court again in its revisional jurisdiction. The practical difficulty which no doubt animated the Court in issuing orders admitting appeals on limited grounds was to avoid the possibility of a lengthy dissertation upon the facts when an appeal came to be heard; facts upon which the Court, at the application for admission, had in effect already arrived at a conclusion. This fear, although perhaps it may in some cases be real enough, will, I think in practice, be found not to be so formidable as it at first sight appears. At any rate, following the decision of the Calcutta High Court to which I have already made reference, I have come to the conclusion that the practice of admitting appeals on limited grounds should in this Court cease. The appeals, if they are to be admitted at all, must be admitted in accordance with the provisions of the appropriate sections of the Cr. P.C. They cannot be admitted on the ground of sentence only however, convenient and practical that course, which has hitherto been adopted, may appear. In this particular case the appeal having been admitted on this limited ground, the Crown has had no notice with regard to the facts of the case. There must, therefore, as was done in the case in the Calcutta High Court to which I have referred, be fresh notice to the Crown. After fresh notice has been given to the Crown, the appeal will come up for hearing in the ordinary course.

Ross, J.

5. I agree.

Cases Referred.

120 Ind. Cas. 741 : 41 C, 406 : 14 Cr. L.J. 485 : 18 C.L.J. 582 : 18 C.W.N. 147
211 Ind. Cas. 212 : 15 C.W.N. 921 : 14 C.L.J.146