1956

Pannalal Binjraj v. Union of India

Bhagwati J.

rejoinder, we presume that such facilities will continue to be afforded to them in the future and the inconvenience and harassment which would otherwise be caused to them will be avoided. A humane and considerate administration of the relevant provisions of the Income-tax Act would go a long way in allaying the apprehensions of the assessees and if that is done in the true spirit, no assessee will be in a position to charge the Revenue with administering the provisions of the Act with "an evil eye and unequal hand".

We have, therefore, come to the conclusion that there is no substance in these petitions and they should be dismissed with costs. There will be, however, one set of costs between respondents in each of the petitions and one set of costs in each group of these petitions, *viz.*, (1) Petitions Nos. 97 & 97-A of 1956, (2) Petitions Nos. 44/56 and 85/56, (3) Petitions Nos. 86/56, 87/56, 88/56, 111/56, 112/56 and 158/56, (4) Petitions Nos. 211 to 215 of 1956, and (5) Petitions Nos. 225 to 229 of 1956.

Petitions dismissed.

1957

January 30.

RATAN RAI

v.

STATE OF BIHAR

[BHAGWATI, B. P. SINHA and J. K. KAPUR JJ.]

Reference—Jury trial—Judge disagreeing with the verdict—Procedure—Duty of counsel—High Court—If can accept majority verdict without considering the entire evidence—Supreme Court—If should adopt the procedure—Code of Criminal Procedure (Act V of 1898), as amended by Act XXVI of 1955, s. 307.

The appellants were charged under ss. 435 and 436 of the Indian Penal Code and were tried by a jury, who returned a majority verdict of guilty. The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court.

At the hearing of the reference the counsel for the appellants only contended that the charge to the jury was defective, and did not place the entire evidence before the Judges, who only considered the objections urged, and nothing more, and held the

1957

Ratan Rai
v.
State of Bihar

reference to be incompetent and found the appellants guilty and convicted them.

Held, that in a reference under s. 307 of the Code of Criminal Procedure it was the duty of counsel to place, and it was incumbent on the High Court to consider, the entire evidence and the charge as framed and placed before the jury and to come to its own conclusion, after giving due weight to the opinion of the trial Judge and the verdict of the jury, and to acquit or convict the accused of the offences of which the jury could have convicted or acquitted him. It was wrong of the High Court to pass judgment without considering the entire evidence.

It is not proper for the Supreme Court to adopt the procedure of considering the entire evidence and come to a conclusion which according to the provisions of s. 307(3) of the Code of Criminal Procedure the High Court should have done.

Akhlakali Hayatalli v. *The State of Bombay,* (1954) S.C.R. 435 and *Ramanugrah Singh* v. *The Emperor,* A.I.R. 1946 P.C. 151, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 104 of 1955.

Appeal by special leave from the judgment and order dated September 9, 1953, of the Patna High Court in Jury Reference No. 1 of 1952 arising out of the Reference made on February 16, 1952, by the Assistant Sessions Judge, 2nd Court, Chapra, in connection with Sessions Trial No. 81 of 1951.

S. P. Verma, for the appellants Nos. 2 and 3.

B. K. Saran and *R. C. Prasad,* for the respondent.

1957. January 30. The Judgment of the Court was delivered by

BHAGWATI J.—The appellants Nos. 2 and 3, who are the surviving appellants after the death of appellant No. 1 during the pendency of this appeal, were charged with having committed offences under ss. 435 and 436 of the Indian Penal Code and were tried by the Second Assistant Sessions Judge of Saran, Chapra, with the aid of a jury. The jury returned a majority verdict that both of them were guilty of the offences under those sections. The Assistant Sessions Judge disagreed with the said verdict and made a reference to the High Court of Judicature at Patna

under s. 307 of the Code of Criminal Procedure. The said reference was heard by a Division Bench of that High Court. The learned judges of the High Court overruled the contentions which were urged before them in regard to the charge to the jury being defective and further held that the reference was, in the circumstances, not competent. They, however, without anything more accepted the majority verdict and held the appellants guilty of the offences under ss. 435 and 436 of the Indian Penal Code and sentenced them to six months' rigorous imprisonment each. The appellants obtained from this Court special leave to appeal under Art. 136 of the Constitution and hence this appeal.

The facts leading up to this appeal may be shortly stated as follows :—There was a dispute between the parties as to title to plot No. 1100 of village Rampur, Tengrahi. One Kailash Rai claimed to be the owner of that plot and also claimed to be in possession of a Palani standing in a portion of that plot as also of a Punjaul, i.e., a haystack in its vicinity. There had been proceedings under s. 144 of the Code of Criminal Procedure in regard to this area leading up to a title suit being T.S. No. 58/8 of 1948/50 filed by Kailash Rai against the appellants in regard to the same. A decree had been passed on December 16, 1950, in that title suit dismissing the claim of Kailash Rai. An appeal had been filed by Kailash Rai against that decree and that appeal was pending at the date of the occurrence. On March 4, 1951, Kailash Rai was sitting in the Palani and at about 3 to 4 p.m. a mob consisting of about 100 to 125 persons including the appellants all armed with lathis, bhallas and pharsas came to the Palani and began to demolish the same. Kailash Rai remonstrated and the deceased appellant No. 1 ordered that the Palani should be set on fire. The appellant No. 2 thereupon set fire to the Palani with a match stick and the appellant No. 3 set fire to the Punjaul. The first information report of this occurrence was lodged at Gopalganj Police Station at 8 p.m. the same night. The officer in charge of Gopalganj Police Station investigated the case and

1957

Ratan Rai
v.
State of Bihar

Bhagwati J.

challaned the appellants charging them with having committed offences under ss. 435 and 436 of the Indian Penal Code.

The Committing Court found a *prima facie* case made out against the appellants and sent them up for trial by the Assistant Sessions Judge, Second Court, Chapra, who tried them by a jury. The jury returned a majority verdict of guilty against the appellants. The Assistant Sessions Judge, however, disagreed with that verdict and made a reference to the High Court stating in the letter of reference that on the evidence recorded before him the appellants had been in possession of the Palani and the Punjaul but were dispossessed of the same some time prior to the passing of the decree in the title suit on December 16, 1950, and were therefore justified in taking steps for recovery of possession thereof from Kailash Rai on March 4, 1951, and if in that process the appellants set fire to the Palani and the Punjaul they were only destroying their own property and were not guilty of the offence of committing mischief by fire as alleged by the prosecution. The Assistant Sessions Judge tried to analyse the working of the minds of the jury in arriving at the verdict which they did and though he agreed with the alleged finding of fact reached by the jury in regard to the possession of the Palani and the Punjaul, disagreed with the law as allegedly applied by the jury and therefore disagreed with the majority verdict.

When the reference was heard before the High Court, the counsel for the appellants only contended that the charge addressed by the Assistant Sessions Judge to the jury was defective and he did not invite the High Court, as he should have done, to consider the entire evidence and to acquit or convict the appellants of the offences of which the jury could have convicted them upon the charges framed and placed before it, after giving due weight to the opinions of the learned Sessions Judge and the jury as required by s. 307(3) of the Code of Criminal Procedure. The High Court, therefore, only considered the objections which had been urged by the learned counsel for the appellants before it in regard to the charge being defective and

overruled them, accepted the majority verdict, convicted the appellants and sentenced them as above.

We are of opinion that in so doing the High Court was clearly in error and acted in violation of the provisions of s. 307(3) of the Code of Criminal Procedure. Section 307(3) provides:—

"In dealing with the case so submitted the High Court may exercise any of the powers which it may exercise on an appeal, and subject thereto it shall, after considering the entire evidence and after giving due weight to the opinions of the Sessions Judge and the jury, acquit or convict such accused of any offence of which the jury could have convicted him upon the charge framed and placed before it; and, if it convicts him, may pass such sentence as might have been passed by the Court of Sessions."

We had occasion to consider this provision in *Akhlakali Hayatalli* v. *The State of Bombay* (1) where we approved of the following observations of their Lordships of the Privy Council in *Ramanugrah Singh* v. *The Emperor* (2):

"The powers of the High Court in dealing with the reference are contained in sub-section (3). It may exercise any of the powers which it might exercise upon an appeal, and this includes the power to call fresh evidence conferred by s. 428. The Court must consider the whole case and give due weight to the opinions of the Sessions Judge and jury, and then acquit or convict the accused. In their Lordships' view, the paramount consideration in the High Court must be whether the ends of justice require that the verdict of the jury should be set aside. In general, if the evidence is such that it can properly support a verdict either of guilty, or not guilty, according to the view taken of it by the trial Court, and if the jury take one view of the evidence and the judge thinks that they should have taken the other, the view of the jury must prevail, since they are the judges of fact. In such a case a reference is not justified, and it is only by accepting their view that the High Court can give due weight to the opinion of the jury. If, however,

(1) [1954] S.C.R. 435, 442. (2) A.I.R. 1946 P.C. 151, 154.

1956

Ratan Rai
v.
State of Bihar

Bhagwati J.

the High Court considers that upon the evidence no reasonable body of men could have reached the conclusion arrived at by the jury, then the reference was justified and the ends of justice required that the verdict be disregarded."

This was pronounced by us to be the correct method of approach in a reference under s. 307 of the Code of Criminal Procedure. It was incumbent on the High Court when the reference was heard by it to consider the entire evidence and come to its own conclusion whether the evidence was such that it could properly support the verdict of guilty against the appellants. If the High Court came to the conclusion that the evidence was such that it was possible for the jury to take the view that it did even though the judge thought that they should have taken another view the reference would not have been justified and the High Court should have accepted the opinion of the jury. If the High Court was however of opinion upon the evidence that no reasonable body of men could have reached the conclusion arrived at by the jury the reference would have been quite justified and the ends of justice required that the verdict should be disregarded. The High Court, however, only considered the arguments in regard to the defect in the charge to the jury addressed before it by the learned counsel for the appellants and did not consider the entire evidence which was on the record before it. In not having done so, we are clearly of opinion that it violated the provisions of s. 307(3) of the Code of Criminal Procedure.

We are accordingly of opinion that the judgment of the High Court accepting the majority verdict and convicting the appellants and sentencing them as above without considering the entire evidence was clearly wrong and the conviction of the appellants and the sentences passed upon them should be set aside.

We were invited by learned counsel for the parties appearing before us to consider the entire evidence for ourselves and come to the conclusion which, according to the provisions of s. 307(3) of the Code of Criminal Procedure, the High Court should have done. We do

not think that that is the proper procedure to adopt and we therefore allow the appeal, and remand this matter to the High Court to act in accordance with the provisions of s. 307(3) of the Code of Criminal Procedure and deal with the same in accordance with law. The appellants will continue on the same bail as before.

Appeal allowed.

1957
January 31.

THE STATE OF BIHAR
v.
RAM NARESH PANDEY
(*With Connected Appeal*)

[JAGANNADHADAS, JAFER IMMAM and GOVINDA MENON JJ.]

Criminal law—Prosecution—Application for withdrawal by Public Prosecutor—Consent of Court—Function of the Court in giving such consent—Case triable by a Court of Session—Whether application for withdrawal does not lie in the committal stage—'Tried', 'judgment', Meaning of—Code of Criminal Procedure, 1898 (Act V of 1898), s. 494.

By s. 494 of the Code of Criminal Procedure, 1898: "Any Public Prosecutor may, with the consent of the Court, in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,—(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences."

The prosecution of M. and others was launched on the first information of the first respondent, and when the matter was pending before the Magistrate in the committal stage and before any evidence was actually taken, an application for the withdrawal of M. from the prosecution was made by the Public Prosecutor under s. 494 of the Code of Criminal Procedure on the ground that "on the evidence available it would not be just and expedient to proceed with the prosecution of M." The Magistrate was of the opinion that there was no reason to withhold the consent that was applied for and accordingly he discharged the accused. This order was upheld by the Sessions Judge, but on