Dhirendra Nath Mitra And Anr. vs Mukanda Lal Sen on 1 March, 1955

Equivalent citations: AIR1955SC584, 1955CRILJ1299, AIR 1955 SUPREME COURT 584, 1956 SCC 27

JUDGMENT

Bose, J.

1. Four persons, including the two appellants, were prosecuted at the instance of a private complainant for offences alleged by him to have been committed under Sections 448, 427, 380, 166 and 114, I.P.C.

2. All four were acquitted by the learned trying Magistrate. The complainant applied in revision against the acquittals to the High Court. Chunder, J. issued rules against three of the accused but refused to issue one against the fourth. His acquittal therefore stood. Later, when the revision was heard, also by Chunder, J., he upheld the acquittal of one of the three accused against whom the rule was issued but set aside the acquittals of the other two and remanded the case for a retrial.

Leave to appeal to this Court was granted by two other Judges of the Calcutta High Court.

3. The only question we have to consider is whether Chunder, J., observed and applied the law about setting aside acquittals in revision at the instance of a private party. There are three decisions in point, namely, -- 'D. Stephens v. Nosibolla', ; -- 'Logendranath Jha v. Polailal Biswas', and -- 'Harihar Chakravarty v. State of West Bengal', .

4. The facts are these. The first accused is the landlord of certain premises. The complainant arid one Sarojini Dasi are his tenants while Bacha-ram Khatua (P. W. 2), Gunadhar Sasmal (P. W. 4) and Paban Chandra Mikap (P. W. 6) are subtenants of the complainant. The first accused obtained a decree against Sarojini authorising him to demolish certain huts in her possession. The decree was executed on 13-8-1952 at 5-30 P. M. and in the process of demolition, huts belonging to the complainant, and also to Bacharam Khatua (P. W. 2), Gunadhar Sasmal (P. W. 4) and Paban Chandra Mikap (P. W. 6), were damaged.

The complainant's case is that the first accused and his two sons were present and also the bailiff and that the damage to the other huts was deliberately caused at the instigation of the first accused and his two sons, the second and third accused. According to the complainants the coolies acted under the directions of the four accused when they first began to start work on these other houses.

They desisted for a short time when these other persons, including the complainant, protested. But after putting their heads together for a time all four accused directly and deliberately told the coolies to damage these other huts.

5. It is admitted on all hands that the huts in question were damaged but the accused say that this was due to a mistake made by the coolies because the huts stand cheek by jowl and the coolies did not realise that they were not to touch those other huts when they started to work on them. As soon as the accused realised what was happening they at once stopped the work.

6. The learned trying Magistrate believed this version and disbelieved that part of the complainant's evidence which suggests that the damage was done at the instance and instigation of the accused. He therefore held that no criminal offence was committed because there was no intention proved.

7. Chunder, J. held that the theory of mistake was negatived by two facts. First, because under the procedure of the Civil Courts, when executing a decree the execution does not start until somebody on the decree-holder's side identifies the property. And secondly, because the fact that as many as four wrong huts were damaged makes it unlikely that that was done by mistake. The learned Judge also thought that there was evidence of motive that required consideration.

8. Now it may well, be that a different view of this evidence could have been taken but that is not enough to justify interference in revision when there is an application by a private party to set aside an order of acquittal. It has to be remembered that no right of appeal is conferred in such cases though there is provision for appeal against acquittals.

Courts must therefore use their revisional powers very sparingly. This has been explained so often in this Court (and now we have three reported rulings) that we need not dilate on it again. The following facts stand out on a cursory glance through the depositions of the witnesses.

9. First, there is no direct evidence of prior instigation, that is to say, prior to the time when the coolies first began to cause the damage. Secondly, P. Ws. 2, 4 and 6 all agree that when the complainant and the other tenants protested the accused told the coolies to stop. Thirdly, that after a consultation among themselves, all four accused instigated the coolies to damage these huts and that they themselves, actively participated and assisted. Niroda Dasi (P. W. 3) also implicates all four of the accused.

10. Now the evidence is simple and the witnesses do not differentiate between any of the accused and say that one did more than any other. Despite that the learned Judge refused to issue a rule against the bailiff. It may be that his case can be distinguished because he would not be likely to know the facts personally and would have to depend on what the other three accused told him, but the case of the father of the two sons cannot be distinguished from that of the sons on this evidence because not a single eye-witness differentiates between them.

But Chunder, J. himself did not regard the evidence sufficient against the father though how he differentiated between his case and that of the sons he does not disclose. Lastly, there is this glaring

fact. P. Ws. 2 and 6 admit that the officer in charge of the police thana was there but say that nobody complained to him, at least P. W. 2 identifies him as the officer in charge while P. W. 6 merely says a police officer. We find it impossible to hold that a judicial mind could not reasonably disbelieve this evidence in the face of these facts.

11. In any case, Chunder, J. has not applied his mind to the law laid down by this Court. He has not adverted to any of the factors which these decisions say must be found to be present before interference is called for. We accordingly allow the appeal and set aside Chunder, J.'s order and restore that of the trying Magistrate acquitting the two appellants.