Swarth Mahto And Anr. vs Dharmdeo Narain Singh on 31 January, 1972

Equivalent citations: AIR1972SC1300, 1972CRILJ879, (1972)2SCC273, 1972(4)UJ672(SC), AIR 1972 SUPREME COURT 1300, 1973 MADLJ(CRI) 83, 1973 (1) SCJ 149, 1972 PATLJR 457

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Bench: S.M. Sikri, M.H. Beg, D.G. Palekar

JUDGMENT

D.G. Palekar, J.

1. This is an appeal by special leave. The appellants who were accused Nos. 1 and 3 respectively were acquitted by the learned Munsif-Magistrate 1st Class, Aurangabad on march 19, 1966. The case against them had been started on a complaint filed by the respondent for an offence Under Section 420 of the Indian Penal Code. Aggrieved by the acquittal, the respondent filed an appeal under Section 417(3) of the CrPC and the same was registered as Criminal Appeal No. 52 of 1966 in the Patna High Court. The order-sheet shows that notice was issued to the appellants on July 5, 1966. In pursuance of the notice, the appellants appeared in the case on July 28, 1966 through Shri Kedar Nath Verma, Advocate. By some mistake, neither the name of the appellants nor of their advocate Shri Kedar Nath Verma appeared in the cause list, and the case was heard in their absence on December 16 and 17, 1968. The appeal was allowed and the appellants were convicted of the offence under Section 420 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for two months and to pay a fine of Rs. 500/- each. The appellants came to know of this order subsequently. On January 7, 1969 an application was made to the Court for rehearing the appeal, in the presence of the appellants. That application was dismissed on January 24, 1969, the court holding that no opportunity had been denied to the appellants of being heard.

2. The question before us is whether a reasonable opportunity had been given to the appellants of being heard before the order of acquittal was converted into one of conviction. The appellants have also challenged their conviction; but, on the view we are taking on the above question, we do not think that we should enter into the merits of the case.

3. As already stated, notice was issued to the appellants on July 5, 1966. The case came on for hearing on December 4, 1968. The cause list for that date no doubt shows that Criminal Appeal No. 52 of 1966 was on the board; but neither the names of the appellants nor of their advocate, were mentioned in the cause list. On that day, the case was not heard. It came on board on December 11,

1968, but an order was made that it will not be taken up for hearing during that week. Then, it came on board on December 16 1968. But the same mistake of not showing in the cause list either the name of the appellants or of their advocate was repeated. The learned Judge heard the appeal on that day and the next day and delivered judgement immediately convicting the appellants.

4. It is clear from the record that the appellants or their advocate was not heard. Though Criminal Appeal No. 52. of 1966 was duly shown in the cause list on Dec. 16, 1968, the cause list had failed to show either the name of the appellants or their advocate. When an advocate examines the cause list, he is generally not guided by the num bet of the case but by his name appearing against the case. Therefore when Shri Kedar Nath Verma or his clerk examined the cause list, they must not have noticed that the case is on board either on December 4, 1968 or Dec. 16, 1968. In a case of this type which had been filed in court in 1966 and came up for hearing two and half years later, it will be wrong to post the advocate with notice when the cause list is improperly published. If the name of the advocate who appears in the case is not shown, there would be good reason to think that he has no notice of the case being posted for hearing. Therefore, when an application is later made by the parties who were not heard, it would be an exercise of sound discretion if an opportunity is given to the party who is not heard.

5. The appellants came to know from rumours in the village, apparently traceable to the respondent, that the case had been heard and they had been convicted. So on January 7, 1969, they approached the court by an application complaining that the case was heard in their absence. They alleged :

> ...the petitioners have been prejudiced on account of the absence of their names as well as the name of the petitioner's advocate from the cause list.

6. The order sheet shows that Shri Kedar Nath Verma filed his Vakalatnama again on 7-1-1969& appeared to argue the application in the very first para of which it was alleged that he had filed his appearance in the Criminal Appeal on 28th July 1966. Since his case was that neither he nor his clients had any notice of the date of hearing, the matter should have been investigated. But the order passed by the learned judge on January 24, 1969 dismissing the application does not disclose that any such investigation was made. It is, therefore, quite probable that the vakalatnama filed on July 28, 1966 by Shri Verma in the appeal and that is how his name did not appear in the cause lists. If, in fact, no such vakalatnama had been filed, we would expect that when the appeal came on board for hearing on December 4, 1968, nearly 2\ years after the filing of the appeal, some intimation would have been sent personally to the appellants who were the respondents in the appeal. We do not, therefore, believe as stated in the office note dated Feb. 6, 1969 that Shri Verma had not filed his appearance in Criminal Appeal No. 52 of 1966. if after filing his appearance, his name is not shown in the cause list, there was every possibility of Shri Verma not becoming aware of the fact that the appeal had been placed on board for hearing. The learned Judge has come to the conclusion that the application for rehearing of the appeal was not maintainable on the ground that no opportunity had been denied to the appellants of being heard. We are unable to see how it could be said in the circumstances of this case that a fair and reasonable opportunity had been given to the appellants before they were convicted. If by mistake of the court or its Office, the appellants who were respondents in that case were not informed of the date of hearing, it will be unreasonable to hold

that an opportunity had been given to them, merely because notice had been issued to them of the appeal some 2 1/2 years earlier. The very idea behind publishing the cause list is to give notice to advocates and the parties that the case in which they were concerned was going to be heard on or after a particular day. Where no such notice had been given, it will be idea to say that no opportunity had been denied.

7. In our opinion, there was no proper hearing of Criminal Appeal No. 52 of 1966 and, therefore, the order of conviction and sentence recorded by the High Court must be set aside. We have not referred to the facts of of the case because we are not concerned with the same. The High Court shall hear the appeal afresh after issuing necessary notice to the parties.