The State vs Rasool And Ors. on 24 March, 1955

Equivalent citations: AIR1955ALL620, 1955CRILJ1446, AIR 1955 ALLAHABAD 620

JUDGMENT

Mulla, J.

1. One Mohammad Urooj, a resident of Kanpur, owned and managed a tenanery on 'Kundan Road which was on the road between Unnao and Kanpur. He purchased a large number of goat hides From Gul Mohammad and Brothers of Kanpur. These hides were known by the name of "Patna Tayari" hides. About 8 or 9 days after these hides came to his tannery theft was committed in the tannery buildings between the night of 13 and 14-12-1951 and 389 hides were stolen. Mohammed Urooj made a report about this theft on the 15-12-1951.

No names were given in this report. The police registered a case under Section 380, I. P. C., but did not succeed in tracing the culprits. Sub-Inspector Shaukat Husain was in charge of the investigation. He was about to file a final report when Mohammad Urooj approached one Noor Mohammad, P. W. 3, and tried to trace the stolen hides through him. Before the final report could be accepted, the investigation was taken away from Sub-Inspector Shaukat Husain by the Station Officer Sri Salik Ram, and on 8-1-1952 he recovered 388 hides from shop No. 97/9 on Kayasthana Road, Kanpur which belonged to one Abdul Rahman.

This recovery took place at about 10 P. M. When this recovery was made, Rasul, Abdul Rahman, Ali Husain, Phuddi and Abdul Razzaq were present in the shop of Abdul Rahman. These hides were subsequently put up for identification, and Mohammad Urooj and other employees of his tannery identified these hides as the hides which were stolen on the night between the 13 and 14-12-1951. It was urged that two other persons were also present in the shop of Abdul Rahman when these hides were recovered but they ran away before they could be arrested.

These two persons were, however, recognised, and they were Ghafoor and Salar, the brothers of Rasul. They were also subsequently arrested, and the police prosecuted all the seven persons under Section 380, I. P. C.

2. This case was heard by a Magistrate of Unnao but when the time came for framing the charge, he thought that instead of Section 380, I. P. C., the case proved against the accused person fell under Section 411, I.P.C. He, therefore, framed a charge against all the seven accused persons under Section 411, I. P.Cz. When the case became ripe for decision, the trial court again changed its opinion and came to the conclusion that Section 411, I. P. C., applied only to the case of Abdul Rahman but the cases of the other accused persons fell under Section 414, I. P. C. He thereupon

convicted Abdul Rahman under Section 411, I. P C., and Rasul, Abdul Razzaq and Phuddi under Section 414, I. P. C. The other three accused persons were acquitted. The Court purported to act under the provisions of Sections 236 and 237, Criminal P. C.

3. All the convicted persons went up in appeal, and the Sessions Judge of Unnao rejected the appeal of Abdul Rahman but accepted the appeals of Abdul Razzaq, Phuddi and Rasul. The appellate Court found that the facts of the case believed by the trial Court did not constitute an offence under Section 414, I. P. C., and therefore acquitted these appellants. Aggrieved by this order the State has filed the appeal against the three persons, namely Rasul, Phuddi and Razzaq.

4. The main point that was raised before us in this appeal was that the evidence on the record clearly established a case under Section 414, I. P. C., against Rasul, and the trial Court was fully justified in convicting him under that Section by using the provision of Sections 236 and 237, Criminal P. C. The appeal against the other two appellants, namely Razzaq and" Phuddi was not pressed, and in our opinion rightly not pressed The evidence against these two appellants did not constitute an offence at all and this was conceded by the Counsel for the State.

5. Sections 236 and 237, Criminal P. C., are really meant to apply to that type of cases where there is no doubt about the facts alleged but there is a doubt as to the applicability of any particular law against the proved set of facts: in other words they can be acted upon only where the same facts raise a doubt in the mind of a court whether they constitute one offence or some other offence.

They obviously do not apply to those cases where a different set of facts are to be given prominence for coming to a conclusion that a particular offence, was committed. Apart from this a conviction arrived at under Section 237, Criminal P. C., can only be maintained and upheld if the Court is satisfied that no prejudice was caused to an accused person and he had a full opportunity of meeting the allegations against him.

In our opinion the facts of this case do not disclose that a proper discretion was exercised by the trial Court when it convicted the accused persons of an offence under Section 414, I. P. C., although they were charged only for an offence under Section 411, I. P. C. The three links as brought out from evidence and on the basis of which a charge under Section 414, I. P. C., is made out against Rasul are the following:

> (1) Noor Mohammad deposed that Rasul along with another person came to him with five hides and tried to persuade Noor Mohammad to purchase these hides at a reduced price.
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> (2) Noor Mohammad was taken to the shop of Abdul Rahman by Rasul and several others; and (3) When the hides were recovered from the shop of Abdul Rahman, Rasul was counting these hides and putting them in bags.

6. From a recital of the case given above it is clear that the accused should have been given an opportunity to meet this case. Rasul was examined by the trial Court but we find that no question

was put to him about his counting the hides and putting them in the bags. The decision of the trial Court, however, clearly shows that he has used this circumstance to come to the conclusion that Rasul was guilty under Section 414, I. P. C. We, therefore, find that Rasul was not given an opportunity to meet the case against him. No doubt questions relating to the other two links were put to him but the main question put to Rasul was:

> "Is it correct that on 8-1-1952 at about 10-30 P. M. you and other persons took Noor Mohammad to the shop of Abdul Rahman which is on Kayasdiana Road in Kanpur and out of his shop from your possession were recovered 388 hides which were all stolen from Mohammad Urooj's Tannery?"

From a reading of this question it is clear that the charge against Rasul was that he was in possession of these stolen hides and not that he assisted the disposal of these stolen hides. The charge framed by the trial Court also shows the same thing, it runs as follows :

> "That you on or about 8-1-1952 at about 10-30 P. M. in Mohalla Kaisthana Road, police station Colonelganj, Kanpur in the shop of Abdul Rahman dishonestly retained stolen 388 hides belonging to Mohammad 'Urooj knowing or having reason to believe the same to be stolen property and thereby committed an offence punishable under Section 411 I. P. C"

It is clear from this charge also that no inkling was given to Rasul that he was going to be convicted for assisting the disposal of these hides. The Counsel for the State contested that it is not necessary to give the details of the facts constituting an offence in the charge sheet framed by a Magistrate. In our opinion this contention is not sound at least so far as the circumstances of this case are concerned.

A charge must contain those particulars which give the accused an idea of the case which he has to meet. It may not contain elaborate details but there should be no doubt left in the mind of an accused person as to what is the case against him and what allegations he has to meet. The charge framed in this case did not fulfil these conditions and is, therefore, not a proper charge within the meaning of Section 222, Cr. P. C. It does not contain such particulars which would give notice to the accused that he has to meet the accusation of assisting the disposal of these stolen hides. In our opinion Sections 236 and 237, Cr. P. C. can only be used where it can be held that the accused was not prejudiced by his conviction under a Section for which he was not charged.

Where the accused has been prejudiced or can be prejudiced, a conviction with the help of Sections 236 land 237, Cr. P. C. cannot he maintained or upheld, Under such circumstances the proper course for the trial Court is to amend the charge under Section 227, Cr. P. C. and then explain it to the accused so that he may be in position to defend himself.

7. There is a decision of the Allahabad High Court reported in -- 'Makkhan v. Emperor, 'AIR 1945 All 81 (A), in which the learned Judge observed:

> "The whole object of framing a charge is to enable the defence to concentrate its attention on the case that it has to meet, and if the charge is framed in such a vague manner that the necessary ingredients of the offence with which the accused is convicted are not brought out in the charge, then the charge is defective."

We agree with the view expressed above, and in our opinion the charge framed in this case cannot by any means be said to cover the offence for which the accused was ultimately convicted. The Counsel for the State has referred two decisions to us. The first is reported in -- 'Bejoy Chand v. State of West Bengal.' AIR 1952 SC 105 (B). This is 'a Supreme Court decision in which it was held that:

> "If an accused was charged under Section 307, I.P. C.; he can be convicted under Section 326, I. P. C. even though no charge was framed against the accused under latter Section."

In our opinion this decision is not applicable to the circumstances of this case. No one disputes the proposition that a person can be convicted of an offence although not charged with it under the provisions of Sections 236 and 237, Cr. P. C. What is disputed is whether a person can be convicted without being given a proper opportunity of defending himself; in other words Sections 236 and 237, Cr, P. C. are not applicable to those cases where a different set of facts is to be alleged against an accused person for securing his conviction. They are applicable only to those case's where one set of facts is presented before a Court and the only question in doubt is as to which offence is applicable to that set of facts.

The second decision cited by the Counsel for the State is also reported in -- 'Ram Prasad v. State AIR 1952 All 878 (C).

This is a single Judge decision of the Allahabad High Court in which it was held that the omission to charge an accused person for an unlawful assembly will not vitiate the charge as a clear indication was given by mentioning Section 149 in the charge. In our opinion this case also has no application to the circumstances of this case.

It was clearly held in that case that the accused was not prejudiced by this omission while we have observed above that the accused was clearly prejudiced in this case. We, therefore, find that this case is not covered by the provisions of Sections 236 and 237, Cr. P. C. and the conviction of Rasul cannot be maintained. If the trial Court felt that there was evidence to convict Rasul under Section 414, I. P. C. it should have amended the charge under Section 227, Cr. P. C. at that stage before pronouncing the judgment. At this stage it is not desirable to reopen the whole case again when the evidence against Rasul is also not free from doubt.

We, therefore, dismiss this, appeal. The opposite-

parties are on bail. Their bail bonds are cancelled and they need not surrender.