Salig Ram And Ors. vs The State Of U.P. on 6 September, 1955

Equivalent citations: AIR1956ALL138, 1956CRILJ186, AIR 1956 ALLAHABAD 138

ORDER

Roy, J.

1. This is an application in revision by Salig Ram and six others against an order 29-9-1953, passed in appeal by the learned Sessions Judge of Shahjahanpur upholding the order dated 30-5-1953, passed by the learned Magistrate convicting Salig Ram applicant under Sections 148 and 324, I. P. C., and the other applicants under Section 147, I. P. C., and convicting further all the applicants under Sections 323 and 325, I. P. C. and sentencing them to various terms of imprisonment.

The occurrence with respect to which the proceedings were started against the applicants was alleged to have taken place in the evening of 16-9-1952, when the complainant Tribcni Sahai was returning from Nakhasa at Bajhera. It was alleged that when he was near the field of one Darbari Lal, he was set upon by the seven applicants who were sitting near a chari' field.

It was further alleged that the applicants were armed with lathis and kantas. One Darbari Banjara was said to have been coining from the same side just behind Tribcni Sahai. On his trying to intervene and to forbid the assailants not to assault Tribeni Sahai, he too was attacked by them and beaten by lathis and kantas. A report of the occurrence was made at police station Jalalabad at 7.10 P. M. the. same evening. The victims of the assault were sent for medical examination. Thereafter investigation followed, resulting in the seven applicants being prosecuted by the police for the offence for which they have been convicted.

2. The first question which has been urged before me by learned counsel for the applicants is that the disregard of the provisions of Section 342, Criminal P. C., was so gross in the present case that there was grave prejudice to the accused and consequently the conviction could not be sustained. On that aspect of the matter the learned Sessions Judge observed as follows:

> "Another objection raised as to the manner in which the trial was gone through was urged to be that the statements of the accused that were recorded were recorded in a very unintelligible manner. To a certain extent I would agree with their contention that the magistrate has shown little interest in the examination of the accused.

> The first question that was put to them runs into as many as ten or eleven lines, a question which could not even be understood by an educated person much less could the accused be expected to follow the same.
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> In the case of the statement of two of the accused, Salig Ram and Ram Das, only one question has been put down, while the questions leading to the 2nd and 3rd answers have not been put down in the record at all.
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> It is a matter for regret that such discrepancies should occur in the record. But even this cannot be said to have prejudiced the trial of the appellants. They certainly had opportunity to express themselves. They even produced their witnesses before the trial Court in support of their contention. To my mind, therefore, the trial has not in any way been prejudiced by the commission of these irregularities".

3. It has been pointed out by this Court and by the Supreme Court in a number of recent pronouncements that the necessity to observe faithfully and fairly the salutary provisions of Section 342, Criminal P. C. cannot be overemphasised. It is not a proper compliance to read out a long string of questions and answers which may be wholly unintelligible to the accused. Again it is not sufficient compliance to string together a long series of facts and ask the accused what he has to say about them. He must be questioned separately about each material circumstance which is intended to be used against him.

The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him. The questioning must, therefore, be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. In the present case the learned Sessions Judge observed that the first question that was put to the accused ran into as many as 10 or 11 lines and it was a question which could not even be understood by an educated person, much less could the accused be expected to follow the same.

The learned Sessions Judge further observed that the statements of the accused were recorded in a very unintelligible manner. There can therefore be no doubt whatsoever that there was no compliance with the salutary provisions of Section 342 of the Code. The question, therefore, arises whether that error or emission vitiated the trial. As has been held by the Supreme Court in -- 'Tara Singh v. The State', AIR 1951 SC 441 (A), and followed later on by the same Court in -- 'Ajmer Singh v. State of Punjab', AIR 1953 SC 76 (B), it is not correct to say that every error or omission in this behalf would necessarily vitiate a trial, because errors of this type may fall within the category of curable irregularities and that, therefore, the question in each case would depend upon the degree of the error and upon whether prejudice has been occasioned or is likely to be occasioned.

If we look into the question that was put to the accused in an omnibus form, the question running to the length of about 10 or 11 lines, it would be fairly obvious that it could not be understood by the accused who were illiterate persons, and they could not be expected to follow the implications of the same. In fact in the case of two of the accused, namely, Salig Ram and Ram Das, only one question had been put down, while the questions leading to the second and third answers have not been put

down on the record at all by the learned Magistrate. On these facts there can be no doubt whatsoever that the disregard of the provisions of Section 342 of the Code was so gross that there was a grave likelihood of prejudice and the matter has certainly ended in prejudice to the accused persons,

4. The second point that has been pressed he-fore me by learned counsel for the applicants is that certain inadmissible evidence was allowed by the learned Magistrate to go on the record and this too has ended in prejudice. It appears that what had happened was this. The applicants were originally tried and their case was heard by Sri R. L. Sharma.

After the evidence had been recorded to a considerable extent, charges had been framed and the witnesses were cross-examined after the charge. Sri R. L. Sharma was transferred and thereafter the case was transferred to the file of Sri B. N. Upadhya who succeeded him. Before Sri B. N. Upadhya the applicants claimed a trial 'de novo' and evidence was, therefore, recorded afresh by resummoning all the witnesses.

After the charges were framed and the witnesses were recalled for further cross-examination, they were only cross-examined in brief and were asked if they had made the previous statements before Sri R. L. Sharma, and those previous statements were allowed to come on the record as exhibits in the case. The result, therefore, was that in addition to the fresh statements which were recorded before Sri Upadhya, the previous statements recorded by Sri Sharma were also read in evidence.

The question is whether such a procedure was permissible. As has been pointed out by this Court in -- 'State v. Bansu', AIR 1950 All 669 (C), when a Court receives a part-heard case from another Court, it is empowered by Section 350, Criminal P. C., to act on the evidence recorded by the previous Court or to resummon the witnesses and recommence the inquiry or trial, provided that in any trial the accused may demand that the witnesses or any of them may be resummoned and reheard.

It is for the Court to exercise its option either of acting on the evidence recorded by the previous Court or to resummon the witnesses and recommencing the inquiry or trial. The proviso to Section 350 which gives the accused a rignt to demand that the witnesses or some of them may be resummoned and reheard applies only when the Court exercises the first option of acting on the evidence recorded by the other Court.

It cannot apply if the Court selects the other option of recommencing the inquiry or trial and the resummoning of the witnesses. If the Court itself elects to resummon all the witnesses, there is no occasion for the accused demanding that any of the witnesses be resummoned and heard. If the Court decides to resummon the witnesses and recommence thei inquiry or trial, all the proceedings held in the previous Court are wiped off. The effect is the same as if those proceedings were never held.

It was further emphasised in that decision that Courts should be careful to follow the provisions of Section 350 of the Code as their failure to follow the procedure laid down therein causes most of the

trouble that arises subsequently.

5. In the present case it is not contended that any error has been committed by Sri Upadhya in following the provisions of Section 350 of the Code. What has been contended is that Sri Upadhya wrongly admitted certain statements of the witnesses that had been made by them at the earlier trial.

The learned Sessions Judge observed that the procedure that was adopted by the Magistrate at the second trial was irregular and the Magistrate should not have allowed the previous statements to come on the record; but the responsibility for that sorry state of affairs rested more on the applicants themselves than on the Magistrate, because it was in the cross-examination of the prosecution witnesses that they were questioned as to whether they had made the previous statements and it was at the request of the applicants that those statements were accepted in the case.

Now a statement made by a witness at an earlier trial can form evidence at the subsequent trial if it fulfils the requirements of certain provisions of the Indian Evidence Act. The only provisions which can be brough to bear on the subject are the provisions of Sections 145 and 155, Evidence Act .

Section 145, Evidence Act says that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing and relevant to matters in question without such writing being shown to him or being proved. But if it is intended to contradict him by the writing, his attention, before the writing can be proved, should be called to those parts of it which are to be used for the purpose of contradicting him.

Section 155, Sub-clause (3), Evidence Act says that the credit of a witness may be impeached by the opposite party by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

Keeping in view these provisions it would be fairly clear and obvious that the evidence previously made by these witnesses was not brought on the record in strict conformity with the provisions of the ' Evidence Act.

If it was intended to contradict the witnesses by the previous statements, their attention must, before the writing could be proved, have been called to those parts of the statements which were intended to be used for the purpose of contradicting them. That had not been done in the present case. Moreover, if the credit of the witnesses was intended to be impeached, it could be impeached by proof of former statements inconsistent with any part of their subsequent statements which were liable to be contradicted.

It is a cardinal principle of law that if the credit of a witness has to be impeached, his attention must be pointedly drawn to the former statement which is alleged to be inconsistent with any part of his subsequent statement, and an opportunity should be offered to him to explain how the inconsistency arose.

6. In the present case we do not know whether the attempt on the part of the cross-examiner to put the earlier statements to the witnesses and to get them exhibited in Court were by way of an attempt bo discredit the witnesses by impeaching their" credibility or by way of having those statements brought on the record with the object of furnishing substantial proof of certain matters.

At any rate, the provisions of Sections 145 and 155, Evidence Act not having been complied with, it was not open to the Magistrate to act upon those statements and to get them on the record as evidence in the case.

7. It would not be necessary for me to express any opinion on the merits of the case because the errors committed by the Magistrate, as has already been pointed out by me, were so gross that they have ended in prejudice to the accused and I would, therefore, order a retrial.

8. For reasons stated above I allow the application in revision, reverse the finding and sentence of the Courts below and order the applicants to be retried by a Court of competent jurisdiction. The record shall be sent back to the lower Court through the Sessions Judge of Shahjahanpur for proceeding in a manner according to law. The applicants are on bail. They will continue on the same bail during the course of the fresh trial.