

Chatter Singh vs The State on 12 September, 1952

Equivalent citations: [1952]21ITR353(ALL), AIR 1953 ALLAHABAD 161

ORDER

1. This is an application in revision by one Chatter Singh who has been convicted by a learned Magistrate, First Class, of Tarabganj, Gonda, under Section 323, I.P.C. and sentenced to undergo one year's rigorous imprisonment. The conviction and sentence have been affirmed on appeal by the learned Sessions Judge of Gonda.

2. It appears that a complaint was filed by one Munna against the applicant and one Samokhan, charging both of them with offences punishable under Sections 326 and 325, I.P.C. The prosecution case, which both the Courts below have found, proved, is that the applicant and his companion, Samokhan, went in the night between 4th and 5th January 1951, to Munna's house and attacked him. Samokhan was armed with a spear and the applicant with a lathi. Samokhan was convicted by the learned Magistrate under Section 326, I.P.C. and the applicant under Section 323, I.P.C. Samokhan's conviction has also been upheld on appeal by the learned Sessions Judge and has apparently become final.

3. It may be pointed out that the circumstances were such that the applicant also could be convicted under Section 326 by invoking the aid of Section 34, I.P.C. But that was not done and the applicant is certainly entitled to argue that, as the judgments of the Courts below stand he had been guilty of an offence punishable under Section 323, I.P.C. only and the case is to be decided on the assumption that the offence committed by him was not one more serious than that punishable under Section 323, I.P.C.

4. The point urged before us by the learned counsel for the applicant is that since an offence under Section 323, I.P.C. is triable exclusively by a Panchayat Court, the case against the applicant should have been separated from that against Samokhan and should have been sent to the Panchayat Court for decision. No authority having a direct bearing on the point has been cited before us by either side. In order to decide the point raised by the learned counsel for the applicant, reference may be made to Sections 52, 55, and 56, U.P. Panchayat Raj Act (26 of 1947). Section 52 enumerates the offences which are triable by a Panchayat Court. Section 55 lays down that:

"No Court shall take cognizance of any case or suit which is cognizable under the Act by a Panchayati Adalat unless an order has been passed by a Sub-Divisional Magistrate or Munsif under Section 85."

No order such as is contemplated by this section has been passed by a Sub-Divisional Magistrate or Munsif in this case. Section 56 runs as follows : "If at any stage of proceedings in a criminal case pending before a Magistrate it appears that the case is triable by a Panchayati Adalat, he shall at once transfer the case to that Panchayati Adalat, which shall try the case de novo."

5. The words "any case" in Section 55 and "a [Criminal case" in Section 56 mean the entire case |and not a case against any particular accused only. If we accept the contention of the learned counsel for the applicant, we will have to interpret the said two sections as if the words were "any case against an accused." We cannot read in the section words which do not exist. It appears to us that if the entire case is one which lies within the exclusive jurisdiction of the Panchayat Court, it is to be tried by that Court and not by any other Court. But if any one of the offences with which any individual accused stands charged is excluded from the jurisdiction of the said Court, the entire case stands excluded notwithstanding the fact that the offences with which another accused is charged lie within the exclusive jurisdiction of the Panchayat Court. Had it been the intention of the Legislature to have the trial split up in a case like the present, there was no reason why should it not have said so in express language. Such an important intention of the Legislature could not have been left to be inferred from such doubtful language. There is always a possibility of conflicting findings being recorded by two different Courts' if a trial is to be split up as suggested by the learned counsel for the applicant. In our opinion the case was one which was not triable by the Panchayat Court and therefore there was no obligation on the Magistrate to split up the case and to refer the case against the applicant to the Panchayat Court for trial.

6. The learned counsel for the applicant has contended that it is the right of every accused to be tried separately. In support of this contention he places reliance on the following dictum of Mahmood J., in -- 'Queen Empress v. Abdul Kadir', 9 All 452 at p. 457 : "Further it seems to me clear upon general principles that each individual member of the community is in the absence of exceptional authority conferred by the law to the contrary effect, entitled when required by the judiciary either to forfeit his liberty or to have that liberty qualified, to insist that his case shall be separately tried. In the eye of the law, each individual citizen is a separate integer or unit of the commonwealth and his rights of liberty cannot, without express authority in the law, be dealt with jointly with those of a crowd of other persons with whom, far from having a community of interests, he may have incompatibility of interests in matters of a nature such as this case presents."

Whatever may have been the state of law in the year 1886, when this dictum was made this is certainly not the law since 1898 when the present Code of Criminal Procedure was enacted. Section 233 of the said Code lays down that, subject to the exceptions mentioned in the succeeding sections, there shall be a separate trial for every distinct offence. It has not been laid down that there shall be a separate trial in respect of each accused. The criterion for judging the soundness of the applicant's argument is whether on the assumption that the case is triable by a Magistrate, an accused can, as a matter of right, claim a separate trial. If the answer is in the negative the contention that, every accused is entitled to claim separate trial must fail. We are satisfied that no such general right to claim separate trial exists and that no such right has been created by the Panchayat Raj Act.

7. We are not called upon in the present case to express any opinion as to what would happen if a complainant having a genuine case against an accused triable exclusively by a Panchayat Court, falsely implicates a third person and joins him in the trial with a charge punishable under one of the sections excluded from the jurisdiction of the Panchayat Court, A question may arise whether he can, by employing this device, oust the jurisdiction of the Panchayat Court. Such however is not the present case. Here Samokhan has been found to be guilty of an offence not triable by a Panchayat

Court. It cannot be contended that he had been falsely implicated simply to oust the jurisdiction of the Panchayat Court. In the circumstances, any expression of opinion on our part on that hypothetical question would be a mere obiter dictum and we, therefore, refrain from recording our views on that point.

8. We are satisfied that the case against the applicant was rightly tried by a Magistrate and that there was no want of jurisdiction on his part. No other point was pressed before us.

The revision is, therefore, rejected.