

## **Jai Ram And Anr. vs State on 26 February, 1952**

**Equivalent citations: AIR1953ALL137, AIR 1953 ALLAHABAD 137**

ORDER

P.L. Bhargava, J.

1. This is an application in revision filed on behalf of Jairam and Satyaram, who are own brothers and were convicted by the Bench Magistrates of Bhogaon, in the district of Mainpuri, for offences punishable under Sections 147, 452 and 323, I.P.C., and each of them was sentenced to different terms of imprisonment and fine. On appeal, the Assistant Sessions Judge of Mainpuri set aside the conviction of the applicants under Section 147, I.P.C. but upheld their conviction under Sections 452 and 323 I.P.C. The applicants have now come up to this Court in revision.

2. On behalf of the applicants, the first point urged in this revision is that the Bench Magistrates, who delivered the judgment, were not present on the Bench throughout the proceedings. A reference to the order sheets bears out this contention of the applicants' learned counsel. The case was transferred to the Bench Magistrates on the 21st January 1950. When this case was taken up by the Bench Magistrates on the 15th March 1950 the Magistrates present on that date were Dr. Janki Prasad Misra and Chaudhri Sheoraj Singh. On that date, the statement of certain witnesses were recorded and the other witnesses being absent the case was adjourned to the 5th April 1950. On the last mentioned date, only the Magistrate Dr. Janki Prasad Misra was present and Chaudhri Sheoraj Singh, Magistrate was absent. The order-sheet of this date goes to show that as the quorum was not complete, the case was adjourned. The order-sheet also goes to show that the quorum prescribed for this Bench was of two magistrates. The case was then adjourned to April 20, 1950 and the case had to be adjourned to the 25th of April 1950 for want of a quorum. On the 25th April 1950, all the three magistrates who constituted the Bench namely Dr. Janki Prasad Misra, Chaudhri Sheoraj Singh and Chaudhri Bijai Singh were present. Certain witnesses were produced and cross-examined and the case was adjourned for the recording of further evidence to the 10th May 1950. On the order-sheet, against the date 25th April 1950, there is a note showing that the accused persons did not claim a de novo trial, apparently in view of the fact that the constitution of the Bench had been changed.

3. On the 10th May 1950, the case had to be adjourned for want of quorum to the 17th May 1950. On the last mentioned date again the case had to be adjourned for want of quorum. But it is to be noted that on this date Satyaram accused was absent and his absence was excused by an order made by Dr. Janki Prasad Misra who was present on the bench.

4. When the case was taken up on the next date of hearing, namely, the 1st June 1950, it appears from the order-sheet that the constitution of the bench was again changed and the bench so constituted was described as "Jadid Bench". The bench magistrates present on that date were Dr.

Janki Prasad Misra and Chaudhri Bijai Singh. On this date also, a note has been made on the order-sheet on behalf of the accused persons stating that they did not want to claim a 'de novo' trial. On the 14th June 1950, again the quorum was not complete and only Dr. Janki Prasad Misra was present and an order adjourning the case awaiting the receipt of the report regarding an examination of the medical witness was passed. On the next date of hearing i.e. on the 29th June 1950, the Bench Magistrates present were Dr. Janki Prasad Misra and Chaudhri Bijai Singh and the case had to be adjourned again as the report about the examination of the medical witness was not received. On the same date, an order was made by the Bench directing the summoning of the injury register from the hospital under Section 540, Criminal P. C.

5. When the case was taken up next on the 13th July 1950 it appears that all the three Bench Magistrates were present. On this date again, a note was made on the order sheet on behalf of the accused persons that they did not want to claim a de novo trial. The case had to be adjourned as the report about the examination of the medical witness had not been received. On the 19th July 1950, which was the next date of hearing the bench magistrates present were Dr. Janki Prasad Misra and Chaudhri Sheoraj Singh. On this date, the case was adjourned for the recording of the defence evidence to the next date of hearing viz. the 27th July 1950. On the last mentioned date, the Bench magistrates were Dr. Janki Prasad Misra and Chaudhri Sheoraj Singh. After the hearing, the case was adjourned to the next date viz. the 31st July 1950 for delivery of judgment. Judgment was not delivered on the 31st July as the quorum was not complete. The judgment was delivered on the 17th August 1950 by Dr. Janki Prasad Misra and Chaudhri Sheoraj Singh.

6. Learned counsel for the appellant has contended that as Chaudhri Sheoraj Singh who had delivered the judgment along with Dr. Janki Prasad Misra was not present on the Bench throughout the proceedings the judgment is invalid, and as such it should be set aside.

7. Learned counsel holding the brief of the Government Advocate has urged that Ch. Sheoraj Singh was present on the material dates on which the evidence in the case was recorded.

8. Learned counsel for the applicants has relied upon the provisions contained in Section 350A, Criminal P. C. which is in these terms:

"No order or judgment of a Bench of Magistrates shall be invalid by reason only of a change having occurred in the constitution of the Bench in any case in which such order or judgment is passed is duly constituted and the Magistrates constituting the same have been present on the Bench throughout the proceedings."

The section deals with the effect of the change in the constitution of a Bench of Magistrates upon the order or judgment of the Bench and lays down when the change shall not invalidate the order or judgment.

9. Section 15, Criminal P. C. empowers the Provincial Government to constitute Benches of two or more Magistrates. The notification of the Provincial Government constituting the Bench at Bhogaon is not before me; but it appears from the record that the said Bench consisted of three Magistrates,

viz., Dr. Janki Prasad Misra, Chaudhry Sheoraj Singh and Chaudhry Bija Singh; and under the rules framed under Section 16 of the Code two Magistrates could constitute a Bench for trial of cases transferred to the Bench. In other words, two Magistrates could form a quorum.

10. It is not contended that there was any change in the constitution of the Bhogaon Bench, although it has been pointed out that there were frequent changes in the constitution of the Bench, before which the trial of this case had commenced. That Bench consisted of two Magistrates, viz., Dr. Janki Prasad Misra and Chaudhry Sheoraj Singh; and the said Bench recorded part of the evidence in the case. On two subsequent dates at different intervals the Bench which took up this case was constituted of all the three Magistrates. These changes invited on each occasion a statement from the accused persons that they did not want to claim a 'de novo' trial. The Bench which consisted of Dr. Janki Prasad Misra, Chaudhry Sheoraj Singh and Chaudhry Bijai Singh, recorded further evidence in the case. The constitution of the Bench was again changed and the Bench so constituted is described as 'Jadid' or new Bench, This Bench consisted of Dr. Janki Prasad Misra and Chaudhry Bijai Singh. When this Bench was constituted it was again stated on behalf of the accused persons that they did not want to claim a 'de novo' trial.

11. In view of the provisions of Section 350A, Criminal P. C. these changes in the constitution of the Bench would not have been material if the Magistrates constituting the Bench, which started the trial of the case, had been present on the Bench throughout the proceedings. If we take the first Bench, that is the Bench before which the evidence was first recorded, Dr. Janki Prasad Misra and Chaudhry Sheoraj Singh should have been present on the Bench throughout the proceedings; if we take the second Bench, all the three Magistrates should have been present throughout the proceedings; and if we take the third Bench, or Jadid Bench, Dr. Janki Prasad Misra and Chaudhry Bijai Singh should have been present throughout the proceeding. But, we find from the record that only one Magistrate, namely, Dr. Janki Prasad Misra was present throughout the proceedings and the other two Magistrates, or even Chaudhry Sheoraj Singh, who joined Dr. Janki Prasad Misra in delivering the judgment in the case, were not present throughout the proceedings.

12. The argument of the learned counsel holding the brief of the Government Advocate that Dr. Janki Prasad Misra and Chaudhry Seoraj Singh were present on all the material dates on which evidence was recorded, has, in my opinion, got no force. In order to save the order or the judgment of the Bench from being invalid the Magistrates constituting the Bench ought to have been present on the Bench throughout the proceedings. The dictionary meaning of the word 'proceedings' is the course of procedure in an action at law; and an act, measure or step in a course of business or conduct. Hence, the expression 'proceedings' with reference to a case, would imply taking of steps in connection with the further progress of the case. When a case is listed for hearing and the case is taken up by the court and an order is made in the case, it would be proceedings in the case. It is not possible to confine the word 'proceedings' to the recording of evidence only. On a particular date of hearing, on which evidence has to be recorded, a witness may be absent in spite of sufficient service and an order may be made directing the issue of a proclamation or warrant against the witness or witnesses who are absent. That would be a proceeding in the suit, even though no evidence is recorded on that date. Similarly, on any particular date the accused might be absent owing to illness or otherwise and an order may be made either dispensing with the presence of the accused or for the

issue of a warrant for securing their presence. In either case, proceedings " will have to be recorded in the case.

13. In the present case, we find that part of the evidence was recorded on the first date of hearing and some part was recorded on a subsequent date of hearing. During the interval, on some days the case had to be adjourned awaiting the return of the report of the commission which had been issued to Sitapur for the recording of the statement of the medical witness; on one date, the court dispensed with the presence of one of the accused person who was absent; on another date the Bench directed the summoning of a document under Section 540, Criminal P. C.; and on another date time was allowed for the production of defence witnesses. On all these dates, although no evidence was recorded, some proceedings were taken in the case. On all the dates on which the proceedings were taken in the case the Magistrates constituting the Bench, which started the trial of the case and which delivered the judgment in the case, should have been present. Chaudhry Sheo-raj Singh who was one of the members of the Bench, which started the trial of the case and of the Bench which delivered judgment in the case, was not present on some of the dates on which proceedings were recorded in this case. It appears from the record that whoever was present on a particular date of hearing proceeded to hear the case; and the only precaution taken was that at least two Magistrates were present and there was quorum.

14. According to the general rule of law the Bench which recorded proceedings in the case and recorded evidence should have pronounced judgment in the case and if this general rule was not observed, the judgment delivered by a Bench could have been saved from being declared invalid if the provisions of Section 350A, Criminal P. C., were complied with. In the present case, the general rule was violated and the case does not fall within the exception mentioned in Section 350A of the Code, inasmuch as the Magistrates constituting the Bench which delivered the judgment, were not present throughout the proceedings.

15. The judgment which is being challeng-ed in this revision, as already stated, was delivered by Dr. Janki Prasad Misra and Chaudhri Sheoraj Singh. It is true that a Bench so constituted had commenced the trial of this case, but as pointed out above there were frequent changes in the personnel of the Bench and that Chaudhry Sheoraj Singh was not present on the Bench throughout the proceedings. The judgment delivered is, therefore, not protected by Section 350A, Cr. P. C. and must be held to be invalid. The judgment being invalid the applicant's conviction must be set aside.

16. The revision is, therefore, allowed; and the conviction of and the sentences imposed upon the applicants are set aside. Having regard to the petty nature of the offence and the time which has elapsed since the incident took place on the 20th September 1949, I do not order a retrial in this case. The applicants are acquitted. Fine, if paid by them, will be refunded. The bail bonds executed by them are cancelled.