

## **Pati And Ors. vs Dubari And Anr. on 14 August, 1952**

**Equivalent citations: AIR1953ALL144, AIR 1953 ALLAHABAD 144**

### **JUDGMENT**

Malik, C.J.

1. The applicants, who are four in number, were convicted by the Panchayati Adalat Kaundhiara in Pargana Arail, District Allahabad, under Sections 426, 447, 504 and 506, Penal Code and a fine under each section in the amounts of Rs. 25/-, Rs. 20/-, Rs. 15/- and Rs. 15/- respectively was imposed on each of the applicants. Pati, applicant, was further convicted under Section 323, Penal Code and sentenced to pay a fine of Rs. 10/-. The case for the prosecution was that the four accused had cut and removed the crop belonging to the complainant and when he protested against their illegal action they assaulted him. The accused, on the other hand, claimed that the field belonged to them and that they had sown the crop and were not guilty of any illegal act in reaping the same. On a revision in the Court of the Sub-Divisional Magistrate, Karchana, the Magistrate was of the opinion that the accused were wrongly convicted under Sections 447, 504 and 506 I.P.C. and he set aside their convictions and sentences under those sections. The learned Magistrate was, however, of the opinion that all the four accused should have been convicted under Section 323, I.P.C. He, therefore, maintained the conviction of Pati under Section 323 but reduced the fine to Rs. 5/- and convicted Khelawan, Gopali and Ram Autar under Section 323, I.P.C. and imposed a fine of Rs. 5/- each under that section. The learned Magistrate was also of the opinion that the accused should not have been convicted under Section 426 and altered their conviction to one under Section 379, I.P.C. and imposed a fine of Rs. 5/- each under the latter section.

2. Learned counsel for the applicants has referred us to Section 85 of the Panchayat Raj Act (No. 26 of 1947) and to a single Judge decision of this Court in the case of -- 'Raghunandan Singh v. State', 1952 All LJ 18 and has urged that the Sub-Divisional Magistrate could not vary or modify the convictions and sentences passed by the Panchayati Adalat and that he could either quash the proceedings in their entirety or maintain the convictions as they stood. It is not necessary for us in this case to express any opinion on the point as the case must succeed on another ground.

3. It appears from the Sub-Divisional Magistrate's order that the accused were allowed to be cross-examined by the complainant. There is no provision in the Panchayat Raj Act enabling the Panches to administer oath to an accused person or allow him to be cross-examined by the complainant or the prosecution. Learned counsel has relied on Section 85 of the Act and has urged that, as the Panchayat Raj Act provides that the Evidence Act shall not apply to any suit, case or proceeding, in a Panchayati Adalat, except as provided in the Act or as prescribed under the rules, the Panches were entitled to allow the accused to be cross-examined. It is admitted that there is nothing in the Panchayat Raj Act which gives the Panches the right to put an accused person on oath or allow him to be cross-examined. As a matter of fact, Rule 95(3), of the Rules framed under the

Act does not entitle the Panchayati Adalat to administer oath to an accused person. It is true that in England there has been recent legislation which entitles an accused person to give evidence on oath and then render himself liable to be cross-examined. In the absence, however, of any legislation to that effect, the rule of natural justice is well settled that an accused is not liable to prove that he is innocent. He cannot, therefore, be administered oath, nor can he be cross-examined. The learned Sub-Divisional Magistrate has no doubt said that this did not prove harmful to the accused. It is, however, not possible to say what effect the answers, given by the accused to the questions put to them in cross-examination, had on the minds of the Panches.

4. Our attention has been drawn to a case decided by a learned single Judge of this Court, -- 'Sant Prasad v. State', 1951 All LJ 719. In that case the accused had been put on his oath. This, it was said, vitiated the proceedings. The learned single Judge, however, observed as follows :

"That rule (Rule 95(3) framed under the U.P. Panchayat Raj Act, 1947) makes it incumbent upon the Panchayati Adalat to examine all persons other than the accused after administering to them the prescribed oath. It does not lay down that if oath is administered to an accused person before his statement is recorded, that would vitiate the entire proceeding in which the statement is recorded. I, therefore, see no force in this objection."

It does not appear from the facts stated in the judgment whether the accused was examined like any other witness or the Panchayati Adalat while examining the accused under Section 342, Criminal P. C. had by mistake administered oath to him. If the examination was in accordance with the provisions of Section 342 and by an oversight oath had been administered to the accused, it might be possible to take the view that the proceedings were not vitiated, but if, on the other hand, the accused was cross-examined either by the prosecution or by the Panchayati Adalat it is difficult to hold that such a trial should be held to be a proper trial.

5. We have already expressed our opinion, that such a procedure violates the rules of natural justice and it is not possible to say what effect, such cross-examination might have had on the minds of the Panches. The procedure adopted by the Panchayati Adalat being contrary to rules of natural justice in our view the entire proceedings are vitiated. We consider it, therefore, just and proper to set aside not only the order passed by the Sub-Divisional Magistrate but to cancel the jurisdiction of the Panchayati Adalat in accordance with the provisions of Section 85(1)(a) of the Panchayat Raj Act We order accordingly.