Patna High Court
Ramchandra Turah And Ors. vs State Of Bihar on 15 March, 1966
Equivalent citations: AIR 1966 Pat 286, 1966 CriLJ 938
Bench: N Untwalia, K Dutta
ORDER

1. On the 6th of September, 1900 at about 5 a. m. the complainant Sahedeo Sah, according to his case, found petitioners 1 to 3 harvesting and looting Sanai Crop from his field bearing plot No. 20, khata No. 76 in village Chakayee, police station Manjhi in the district of Saran. The complainant caught hold of petitioner No. 3 but petitioners 1 and 2 succeeded in making good their escape. While the complainant was taking petitioner No. 3 to the police station, in the way, it is alleged, petitioners 1 and 2 came along with petitioners 4 to 8 and asked the complainant to release petitioner No. 3. They came armed with lathis and bhalas. On his refusal to do so, the said seven petitioners forcibly rescued petitioner No. 8 from the custody and arrest of the complainant. The price of the Sanai crops said to have been looted by some of the petitioners was stated to be Rs. 46. On these allegations, Sahdeo filed a complaint on 7-9-60 before Manjhi-Chainpur Gram Cutcherry. The Gram Cutcherry took cognizance of the case as one for trial of an offence under Section 379 of the Penal Code. After taking evidence in the case, by its order dated 25-10-61 (Ext. F), it acquitted all the petitioners of the charge of that under Section 379 of the Penal Code.

Three days later the complainant filed a complaint petition in the court of the Sub-divisional Magistrate of Chapra making the same allegations which had been made in the complaint filed before the Gram Cutcherry. Fresh cognizance of this case was taken, and eventually the petitioners were tried by the Munsif-Magistrate who, by his order dated 20-12-62, found all the petitioners guilty under Section 379 of the Penal Code and sentenced each of them to pay a fine of Rs. 51 in default, to undergo rigorous imprisonment for one month. The seven petitioners other than petitioner No. 3 have also been convicted under Section 225 of the Penal Code and each has been sentenced to undergo rigorous imprisonment for two months All these petitioners have further been convicted for the offence of rioting also--those armed with deadly weapons, namely, petitioners, 1, 2, and 6 under Section 148 with imposition of a sentence of one month's rigorous imprisonment on each and those armed with lathis, namely, petitioners 4, 5, 7 and 8 under Section 147 and each of them has been sentenced to pay a fine of Rs. 51, in default, to undergo rigorous imprisonment of one month. The sentences have been directed to run consecutively.

2. On appeal by the petitioners, the learned Additional Sessions Judge of Saran has affirmed the conviction of, and the sentences imposed upon, the petitioners by the trial court.

3. The substantial point of law which was urged before the learned Additional Sessions Judge and which is the only point urged in this court is whether the trial of the petitioners for the offence under Section 379 of the Penal Code was barred under Section 403(1) of the Code of Criminal Procedure, hereinafter called the 'Code' And, there being an order of acquittal in their favour recorded by the Gram Cutcherry. The Munsif-Magistrate had no jurisdiction to record a contrary finding in regard to the offence under Section 379; that being so none of the petitioners could be convicted either for the offence of rioting that under Section 225 of the Penal Code as it must be held that the arrest of

petitioner No. 3 by the complainant was not lawful.

4. The learned Additional Sessions Judge repelled the argument on the authority of the decision of a learned single Judge of this Court in Kameshwar Singh v. Bansropan Choudhary, 1961 B. L. J. R. 65, reliance on which was placed by the learned Government Advocate also on behalf of the State in this Court wherein it has been held that if facts disclose commission of graver offence, the trial of a minor offence by the Gram Cutcherry is without jurisdiction and void ab initio. In that view of the mailer the instant trial was according to the learned Additional Sessions Judge, not barred under the provisions of Section 403 of the Code.

5. In our opinion, the point urged on behalf of the petitioners is well founded and must be accepted as correct. The facts alleged in the complaint petition, if true, disclosed commission of various offences of rioting and under Sections 225 and 379 of the Penal Code. Even if it could be assumed, although this is not the case here that all these offences were committed by the same persons in one series of act so connected together as to form the same transaction all the accused could be charged with and tried at one trial for every such offence in view of the provisions contained in Sub-section (1) of Section 235 of the Code, but it was not obligatory to do so. Here, however, the series of acts were not so connected together as to form the same transaction. The offence of theft, if committed was distinct and spaced slightly by time and place from the offences of rioting and rescue under Section 225 of the Penal Code. In such a situation, it is all the more manifest that the petitioners could be charged with, and tried for, the said offences in different trials. Section 223 of the Code provides:-

"For every distinct offence of which any person is accused there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in Sections 234, 235, 236 and 239".

6. In this case the complainant himself approached the Gram Cutcherry and filed a complaint there, and on his complaint it was open to the Gram Cutcherry to take cognizance of the offence of theft said to have been committed by some of the petitioners. As the value of the property alleged to have been looted was only Rs. 46, the Gram Cutcherry could, under Section 62 of the Bihar Panchayat Raj Act, 1947, proceed to try the case for the offence under Section 379 of the Penal Code. The trial was in no sense without jurisdiction or void ab initio as the Gram Cutcherry was competent to try the case for the distinct offence under Section 379. Different considerations may arise, and we are not called upon express in this case our opinion in that regard, if the facts alleged disclose commission of graver offences or minor offences within the meaning of Sections 236 and 237 of the Code and then the Gram Cutcherry proceeds to try such a case as if it was for the trial of a minor offence. But the instant case is undoubtedly of a kind where the trial of various offences could be joined together under Section 239 of the Code as having been committed by the various petitiners; but they could be separately tried also. In that view of the matter, it is wrong to say that the trial of the case, the final judgment of acquittal of which is Ext. F. was without jurisdiction.

7. In the case of Kameshwar Singh, 1961 B. L. J. R. 65 decided by Kanhaiya Singh, J., the facts disclosed commission of offences under Sections 323, 506 and 354 of the Penal Code. The series of

acts alleged to have been committed in that case were so connected together as to form the same transaction, yet it was not obligatory to try at one trial the case for commission of every such offence as Section 235 is an enabling one. The conviction recorded by the Gram Cutcherry was quashed by the learned Judge at the instance of the convicted person chiefly on the ground of the Gram Cutcherry having adopted a hasty and illegal procedure in the trial of the case. Of course, cursorily, the second point urged on behalf of the petitioner also found favour with his Lordship, and it was said :

"But in order to assume jurisdiction it was not open to the Gram Panchayat to minimise the offence and try the petitioner for a lesser offence. The trial was, therefore, void ab initio, being without jurisdiction."

We venture to say and we say this with the greatest respect--that provisions of, and the distinction between. Sections 235, 236 and 237 of the Code were not kept in view, and the attention of his Lordship does not seem to have been drawn to those provisions when the second point was cursorily decided in favour of the petitioner of that case. In our opinion, the view of law expressed therein is not correct. We have pointed out above the distinction which has to be borne in mind with reference to the provisions aforesaid of the Code for holding as to whether the trial by the Gram Cutcherry was without jurisdiction and void ab initio.

8. The view which we have expressed above can also be supported with reference to the provisions of Sub-sections (1) and (3) of Section 403 of the Code. The former Sub-section which embodies the principle known as 'autrefois acquit' provides:-

"A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237".

The latter Sub-section says:-

"A person acquitted, or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235, Sub-section (1)."

In view of this provision of law, it is clear--and Mr. Tarni Prasad, learned Advocate for the petitioners, has fairly conceded--that the petitioners who were acquitted of the offence under Section 379 of the Penal Code could be tried for the distinct offence of rioting and rescue under Section 225 of the Penal Code by the Munsif-Magistrate. But then he invokes the principle of res judicata or, as it is called, 'issue estoppel' on the authority of the Supreme Court decision in Manipur Administration v. Thokchem Bira Singh, AIR 1965 SC 87 in support of his argument that the conviction for the distinct offences under Sections 147, 148 and 225 of the Penal Code is also bad. This argument is also correct and has got to be accepted as such. In view of the order of acquittal

recorded in favour of the petitioners by the Gram Cutcherry for the charge under Section 379, on evidence was admissible to prove the charge afresh before the learned Munsif-Magistrate: there could be no fresh trial of that offence. That being so, for the purposes of the trial of the offences of rioting and under Section 225 of the Penal Code, it has got to be assumed in favour of the petitioners that none of them--and not even petitioner No. 3--had committed the offence of theft under Section 379 of the Penal Code.

In that view of the matter, the complainant was not justified in arresting petitioner No. 3 as under Section 59 of the Code "any private person may arrest any person who in his view commits a non-bailable and cognizable offence". It has got to be assumed in this case that petitioner No. 3 did not commit the offence of theft under Section 379 which undoubtedly was a non-bailable and cognizable offence and, therefore, the complainant had no power to arrest him. Catching hold of petitioner No. 3, taking him in custody or arresting him for the purposes of taking him to the police station by the complainant was itself an unlawful act. In that view of the matter, the petitioners or any of them did not commit any offence either of rioting or one under Section 225 of the Penal Code in rescuing petitioner No. 3 from the unlawful detention and custody of the complainant, as it has got to be held now in view of the order of acquittal recorded by the Gram Cutcherry (Ext.F).

9. In the case of Manipur Administration, AIR 1965 SC 87 Ayyangar, J. delivering the judgment of the Court, has said at page 91 (column 2) :-

"As we have pointed out earlier, issue estoppel does not prevent the trial of any offence as does autre fois acquit but only precludes evidence being led to prove a fact in issue as regards which evidence has already been led & specific finding recorded at an earlier criminal trial before a court of competent jurisdiction." Their Lordships of the Supreme Court have quoted with approval a passage from the judgment of the Privy Council in Sambasivam v. Public Prosecutor, Federation of Malaya, 1950 AC 458, which runs as follows:-

"The effect of a verdict of acquittal pronounced by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication."

In our opinion, therefore, the principle of issue estoppel as decided by the Supreme Court in the case aforesaid has rightly been pressed into service on behalf of the petitioners for setting aside their conviction under Sections 225, 147 and 148 of the Penal Code. It may be reiterated that the conviction of some of the petitioners under Section 379 is bad on the doctrine of autre fois acquit as embodied in Section 403(1) of the Code.

10. In the result, the application succeeds, the convictions of all t
and sentences imposed upon them are set
aside and they are acquitted of all charges.