

1952

Dec. 10.

AJMER SINGH

v.

THE STATE OF PUNJAB.

[MEHR CHAND MAHAJAN, DAS and BHAGWATI JJ.]

Criminal Procedure Code, 1898, ss. 342, 417—Appeal against acquittal—Interference—Guiding principle—Criminal trial—Examination of accused—Duty of Court—Irregular examination—Validity of trial—Question of prejudice.

After an order of acquittal has been made the presumption of innocence is further re-inforced by that order, and that being so, the trial court's decision cannot be reversed merely on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons.

In an appeal under s. 487, Criminal Procedure Code, the High Court has full power to review the evidence upon which the order of acquittal was founded.

The duty of a Sessions Judge under s. 342, Criminal Procedure Code, to examine the accused is not discharged by merely reading over the questions put to the accused in the Magistrate's Court and his answers, and by asking him whether he has to say anything about them. It is also not a sufficient compliance with the section to generally ask the accused that, having heard the prosecution evidence what he has to say about it. 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 and the questions must be fair and must be couched in a form which an ignorant or illiterate person may be able to appreciate and understand.

It is, however, well settled that every error or omission in complying with s. 342 does not necessarily vitiate the trial. Errors of this type fall within the category of curable irregularities and the question whether the trial has been vitiated depends in each case upon the degree of error and upon whether prejudice has been or is likely to have been caused to the accused.

Tara Singh v. The State ([1951] S.C.R. 729) referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 67 of 1952. Appeal by special leave from the Judgment and Order dated the 14th September, 1951, of the High Court of Judicature for the State of Punjab at Simla (Bhandari and Soni JJ.) in Criminal Appeal No. 351 of 1950, arising out of Judgment and Order dated the 13th May, 1950, of the Court of the Sessions Judge, Ferozepore, in Trial No. 28 of 1950 and Case No. 5 of 1950.

P. S. Safeer for the appellant.

Gopal Singh for the respondent.

1952. December 10. The Judgment of the Court was delivered by

MAHAJAN J.—Ajmer Singh, a young man of about 22 years of age was tried for the murder of Bagher Singh, his first cousin, and was acquitted by the Sessions Judge of Ferozepore by his judgment dated 13th May, 1950. On appeal by the State Government, the order of acquittal was set aside by the High Court and the appellant was convicted under section 304, Indian Penal Code, and sentenced to ten years' rigorous imprisonment. This is an appeal by special leave against that decision.

One Nikka Singh had three sons, Bhagwan Singh, Lal Singh and Sunder Singh. Bhagwan Singh died issueless some years ago and disputes arose between Lal Singh and his brother Sundar Singh in regard to the division of the property of Bhagwan Singh. Sunder Singh was in possession of some of his landed

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properties and Lal Singh obtained a number of decrees against him but Sunder Singh declined to restore possession of the properties to his brother Lal Singh. In view of this litigation the relations between Lal Singh and Sunder Singh were considerably strained and it is said that for some time they were not even on speaking terms. Lal Singh is married to Mst. Dhan Kaur and from her he had two sons. One of them Bagher Singh was murdered and the other, Arjan Singh, is P. W. 5. Accused Ajmer Singh is the son of Sunder Singh and Banta Singh is his real brother. Ajmer Singh is married to Jagir Kaur and Banta Singh to Kartar Kaur. It is alleged by the prosecution that on the evening of the 27th January, 1948, Jagir Kaur complained to her father-in-law that her husband had pawned her ear-rings in order to pay off his gambling debts. On the morning of the 28th Banta Singh inquired from Ajmer Singh about this matter and he replied that he had pawned the ear-rings to one Banta Singh Mazhbi. Soon after this Ajmer Singh, Banta Singh and one Teja Singh went to Banta Singh Mazhbi and asked him to return the ear-rings but the latter replied that no ornaments had been pawned with him and added that he would give a sum of Rs. 30 to them if Ajmer Singh took an oath that the ornaments had in fact been left with him. It is said that Lal Singh was also present when this conversation took place and took up cudgels on behalf of Banta Singh Mazhbi and this led to an exchange of hot words between Lal Singh and the party of Sunder Singh's two sons and their companion Teja Singh. The parties, however, dispersed after exchanging hot words but without coming to blows.

At about sunset the same day Lal Singh and his brother Sunder Singh started abusing each other from their respective houses which open out into a common courtyard. This wordy warfare between the two brothers attracted the attention of Arjan Singh, Bagher Singh and one Ujagar Singh Mazhbi who on hearing the noise came to the house of Lal Singh.

Lal Singh finding himself supported by three others threw out a challenge to Sunder Singh and told him to come out in the open. It is said that Sunder Singh, his two sons Banta Singh and Ajmer Singh, and Teja Singh, a cousin of theirs, accepted the challenge and rushed out of the house. Teja Singh and Banta Singh were armed with spears and they made an attack on Lal Singh and Dhan Kaúr and inflicted on their persons a number of injuries. Ajmer Singh, it is said, was armed with a spear and he plunged his weapon into the chest of Bagher Singh who collapsed and died almost instantaneously. Arjan Singh soon after reported this incident at the police station after travelling a distance of about seven miles at 11-45 p. m. He gave to the police substantially the same version as has now been deposed to by him in the witness box. In this report it was stated by Arjan Singh that it was Ajmer Singh who dealt Bagher Singh a barchha blow on his chest and that Bagher Singh fell down at this blow. The police arrested Sunder Singh, Teja Singh and Banta Singh but the appellant could not be found.

Sunder Singh, Teja Singh and Banta Singh were prosecuted under section 302/34 but were convicted under section 324, Indian Penal Code, Banta Singh and Teja Singh were sentenced to two years' rigorous imprisonment each and Sunder Singh to six months' rigorous imprisonment. On appeal, Sunder Singh was acquitted and the sentences imposed on Banta Singh and Teja Singh were reduced. A lenient view of the affair seems to have been taken because the fight between these near collaterals took place suddenly and ended promptly. Bagher Singh died as a result of one blow and injuries on the person of Lal Singh and Dhan Kaur were not very serious. Ajmer Singh was apprehended on 4th December, 1948, and as above stated, was tried by the learned Sessions Judge of Ferozepore and acquitted, but was convicted by the High Court on appeal by the State Government.

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Lal Singh, P. W. 3, father of the deceased, Dhan Kuar, his mother, and Arjan Singh, his real brother, have given direct evidence about the occurrence. Ujagar Singh Mazhbi whose name is mentioned in the first information report was tendered for cross-examination but no question was put to him about the actual fight, and the manner in which it took place or the part that was taken in it by the accused. One Bishandas, whose shop adjoins the shop of Banta Singh Mazhbi, was tendered for cross-examination as P.W.7. He deposed that Banta Singh Mazhbi and Lal Singh were the only persons when the quarrel about ear-rings took place near his shop. In re-examination he stated that Banta Singh, brother of the accused, and Teja Singh had come on one side and Lal Singh on the other when the quarrel about the ear-rings took place. No direct question was put to the witness about the presence of Ajmer Singh on that occasion. The learned Sessions Judge considered him a wholly independent witness and accepted his evidence about the incident that took place at Banta Singh Mazhbi's shop on the morning of the 28th. He held that Ajmer Singh was not present at Banta Singh Mazhbi's shop and that Lal Singh and Arjan Singh had falsely implicated him in the quarrel over the ear-rings, and that if the witnesses could falsely involve him in regard to one part of the occurrence, the possibility of his being implicated for the murder of Bagher Singh merely as a matter of vindictiveness could not be outruled. After examining the evidence of the three eye-witnesses in detail, the learned Sessions Judge reached the conclusion that they had suppressed the facts in order to absolve themselves of all liability for the happenings of the 28th, and had uttered untruths and that no confidence could be reposed in their statements about the part that they had assigned to Ajmer Singh. In the concluding part of the judgment he observed that "the parties were at logger-heads on several issues and in the absence of independent evidence it is difficult to place reliance on the prosecution story

in regard to Ajmer Singh." The High Court on appeal minutely reviewed the evidence of these three eye-witnesses and considered that the variations in the statements of witnesses made at the two trials and which had weighed on the mind of the Sessions Judge were of a minor and trifling character and were quite natural as the statements at this trial had been made 27 months after the occurrence and that the narration of events by Arjan Singh was substantially the same as had been given by him at the earlier trial and in the first information report. As regards Lal Singh, who had resiled from his earlier statement and had denied that he was armed with a phaura or that Arjan Singh was armed with a lathi, it was said that this omission on his part was due to mere lapse of memory and forgetfulness rather than to a deliberate design to improve upon the prosecution story.

It was argued by Mr. Pritam Singh Safeer that in this case there were no compelling reasons for setting aside the order of acquittal and that due proper weight had not been given by the High Court to the opinion of the trial judge as regards the credibility of witnesses seen and examined by him. The learned counsel submitted that the High Court was in error in the view that "when a strong *prima facie* case is made out against an accused person it is his duty to explain the circumstances appearing in evidence against him and he cannot take shelter behind the presumption of innocence and cannot state that the law entitles him to keep his lips sealed." We think this criticism is well founded. After an order of acquittal has been made the presumption of innocence is further reinforced by that order, and that being so, the trial court's decision can be reversed not on the ground that the accused had failed to explain the circumstances appearing against him but only for very substantial and compelling reasons.

As the courts below expressed divergent opinions on the credibility of the prosecution witnesses, we

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had to read the evidence adduced in the case with great care and after doing so, we are on the whole inclined to agree with the view expressed by the High Court. It is difficult to believe that without there being any truth in the fact that the appellant struck Bagher Singh with a barchha, Arjan Singh selected the appellant and ascribed to him that part soon after the occurrence. There are no material discrepancies in the statements made by Arjan Singh on different occasions and in our view the reasons given by the learned Sessions Judge for rejecting his testimony are not convincing. We agree with the High Court that there are no sufficient reasons for distrusting his evidence. The number of persons who took part in the quarrel was not more than seven or eight and the blows inflicted were few, and in these circumstances Arjan Singh could have made no mistake as to the identity of the person who struck Bagher Singh fatally. This part of his statement is corroborated by the evidence of Lal Singh and Dhan Kaur. No cross-examination was directed against this part of their statements. It seems that the learned Sessions Judge took too exaggerated a view of the minor discrepancies in these statements and read them with a rather hypercritical mind. Bishandas, whose statement considerably impressed him, was only tendered for cross-examination and never made a full statement about the happenings of the 28th morning. The statement made by him is somewhat cryptic and from this it cannot be definitely concluded that Ajmer Singh was not present on the morning of the 28th at the shop of Banta Singh Mazhbi. The learned Sessions Judge was not right in rejecting the whole of the prosecution evidence as unreliable merely on the basis of this cryptic statement. Ujagar Singh, the other so-called independent witness, was tendered for cross-examination but the defence did not ask him a single question about the happenings of the 28th. The argument therefore that the prosecution withheld from court independent witnesses who had witnessed the occurrence is without any substance. The learned Sessions Judge

was apparently labouring under some misapprehension when he said that the prosecution had withheld from the court independent witnesses of the occurrence. Apart from Ujagar Singh Mazhbi, no one else appears to have been present when the attack was made on Bagher Singh, Lal Singh and Mst. Dhan Kaur by the party of the accused. All that appears in evidence is that after the fight was over a number of persons arrived on the scene but as they did not witness the attack on Bagher Singh they could give no evidence on this point and their non-production as witnesses cannot have any consequence on the case. It is significant that the defence also led no evidence to prove that the fight took place in a manner different from the one described by the prosecution witnesses, or that Ajmer Singh was not present on the occasion. In an appeal under section 417 of the Code of Criminal Procedure the High Court had full power to review the evidence upon which the order of acquittal was founded and we are satisfied that it did not in any way exercise it wrongly. The injuries on the person of Kartar Kaur and Sunder Singh were not proved to have been inflicted at the time of the occurrence and were of no consequence. The prosecution was under no obligation to explain how they came about.

It was next argued that the trial held by the Sessions Judge was vitiated as the examination of the appellant was not in accordance with the provisions of section 342, Criminal Procedure Code. There is considerable force in the point that the examination of the appellant by the Sessions Judge was defective. All that the Sessions Judge did was, that he read out the examination of the accused in the committal court to him and then recorded the following questions and answers:—

“Q: Did you make before the Committing Magistrate the statement that has just now been read out to you ?

A: Yes.

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Q: Now that you have heard the entire evidence against yourself and the charge has been explained to you, do you wish to say anything else?

*A: I am innocent.

Q: Do you wish to produce any evidence in defence?

A: No."

In the committal court the questions put to the accused and his answers were these:—

"Q: Did you pawn the ear-ring of your wife with Banta Mazhbi and squander the proceeds on or about 28th January, 1948?

A: No.

Q: Did Lal Singh interfere when you were demanding the ear-rings from said Banta Singh on 28th January, 1948, at Nathuwala and remark that the sweeper, i.e., Banta, was speaking truth when he denied the transaction?

A: No.

Q: Did you on 28th January, 1948, at Nathuwala along with your father Sunder Singh, Banta Singh, and Teja Singh, you Banta Singh and Teja Singh being armed with spears, attack Lal Singh, his son Bagher Singh and Dhan Kaur at their house and in furtherance of the common intention of you all, Banta and Teja caused simple injuries to Lal Singh with spears and you caused fatal injuries with a spear to Bagher Singh deceased?

A: No.

Q: Why this case against you?

A: Due to enmity.

Q: Anything else to say?

A: No."

The Sessions Judge did not even take care to ask the accused the routine question whether the statement made by him in the committal court was correct. As if hard pressed for time, he simply asked him whether he had made that statement read out to him in the committal court, and was satisfied with an

answer in the affirmative. The second question asked is of a general character and does not satisfy the requirements of section 342, Criminal Procedure Code. We are of the opinion that when the Sessions Judge is required by that section to make the examination of the accused, his duty is not discharged by merely reading over the questions and answers to the accused put in the committing magistrate's court and by asking him whether he has to say anything about them. It is not sufficient compliance with the section to generally ask the accused that having heard the prosecution evidence what he has to say about it. The accused must be questioned separately about each material circumstance which is intended to be used against him. It was pointed out by this Court in *Tara Singh v. The State*⁽¹⁾ that the whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand.

In this particular case at one stage of the argument we were inclined to order a retrial of the accused in view of the defective examination of the accused by the Sessions Judge but on further thought we have reached the conclusion that the High Court was right in the view that the defective procedure followed by the Sessions Judge in this respect has not occasioned any prejudice to the accused. The facts of the case are free from any complication and the point in issue was a simple one and it cannot be said that the perfunctory examination of the appellant did any damage. The only point appearing in the evidence against the accused was that he gave a barchha blow to Bagher Singh. The witnesses had stated that fact in his face and had been cross-examined on the point by his counsel. He was fully apprised of the part ascribed to him in the quarrel. His answer to this specific question in the committal court was that he was innocent and that he was being implicated owing to

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enmity. He stuck to that reply in the Court of Session after fully understanding what he was asked. It is well settled that every error or omission not in compliance with the provisions of section 342 does not necessarily vitiate a trial. Errors of this type fall within the category of curable irregularities, and, as held in *Tara Singh's* case⁽¹⁾, the question, whether the trial is vitiated, in each case depends upon the degree of the error and upon whether prejudice has been or is likely to have been caused to the accused. We are of the opinion that the disregard of the provisions of section 342 in this case is not so gross as would justify our quashing the conviction and ordering a retrial.

The result is that we uphold the judgment of the High Court and dismiss the appeal.

Appeal dismissed.

Agent for the appellant: *R. S. Gheba.*

Agent for the respondent: *G. H. Rajadhyaksha.*
