

Abdul (Bari) Mallick and anr. Vs. King-emperor

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Court : Kolkata

Decided On : Jul-07-1925

Reported in : AIR1926Cal157

Appellant : Abdul (Bari) Mallick and anr.

Respondent : King-emperor

Judgement :

Suhrawardy, J.

1. The two appellants have been convicted by the Additional Sessions Judge of 21 Parganahs in agreement with the verdict of the majority of the jury under Sections 304 and 326, Indian Penal Code. The first accused was convicted under Section 304 and sentenced to 10 years' rigorous imprisonment. The second accused was found guilty under Section 326 and sentenced to undergo the same term of imprisonment. Various objections have been taken on the ground of misdirections in the learned Judge's charge to the jury; but it is not necessary to consider them as we find ourselves constrained to order a re-trial on the ground that the provisions of Section 360, Criminal Procedure Code, have not been complied with. An affidavit has been filed on behalf of the accused in which it is stated that the deposition of each of the prosecution witnesses was not read over or explained to him after it had been recorded and before the examination of: the next witness was commenced; but that the depositions of the witnesses examined on the day were read over to them after the close of the day's proceedings. The learned Deputy Legal Remembrancer in order to be sure of the truth or otherwise of this allegation made a reference to the learned Sessions Judge and an affidavit sworn by one Atul Chandra Banerjee, Bench Clerk of the Additional Sessions Judge of Alipore has been placed before us. The deponent states as follows: 'I read over and explained the depositions of the witnesses in the presence and hearing of the accused at the end of the day when the examination of all the witnesses for the day was closed.' It is, therefore, clear that the procedure that was followed was that the deposition of all the witnesses were read over to them at the close of the day. This in our opinion is not sufficient compliance with the provisions of S. 360, Criminal Procedure Code. It has been held in the case of Hiralal Ghose v. Emperor : AIR1924Cal889 that Section 360 is mandatory and its provision must be strictly complied with. This view is based on the wording of the section itself and on the policy underlying it, namely, to protect the witness and also to safeguard the interest of the accused by affording to the witness as well as the accused an opportunity of finding any inaccuracy in the record of the deposition. In Dargahi v. Emperor : AIR1925Cal831 the same learned Judges who decided the case of Hiralal Ghose v. Emperor : AIR1924Cal889 had to consider a similar question with regard to the provisions of the section. There the deposition of a witness was read over to him when another witness was being examined in Court. The learned Judges deprecated

the procedure and were of opinion that it was not a strict compliance with the provisions of S. 360, Criminal Procedure Code; and in expressing that opinion they made the following observation: That clause provides that as the evidence of each witness is completed, it shall be read over before the examination of another witness is commenced.' If it is once conceded that Section 360 is mandatory, it follows that its provisions must be strictly complied with. The section says that 'as the evidence of each witness taken under Section 356 or Section 357 is completed it shall be read over to him in the presence of the accused and etc.' The plain meaning to my mind is that the deposition of a witness must be read to him as it is completed. The practice of reading over the depositions of all the witnesses examined on one day at the end of the day may commend itself as intended to save public time; but it is not in strict conformity with the requirements of the law; and experience gained in this case shows that more public time will be wasted in the re-trial of the case than what was saved by the procedure adopted. The practice of reading over depositions of several witnesses at one time may also defeat the object of the section as laid down in the case of *Hiralal Ghose v. Emperor* : AIR1924Cal889 . The accused or his lawyer may not remember the exact words used or the form of the answer given. It is therefore desirable that the provisions of Section 360, Criminal Procedure Code, should be strictly observed and the evidence of each witness read over to him after it is completed before the evidence of another witness commences; and the reading over should not be postponed till all the witnesses are examined: In this view the trial before the Additional Sessions Judge must be held to be vitiated by this defect in the procedure.

2. The appeal accordingly succeeds, the conviction of and the sentences passed on the appellants are set aside and we direct that they be re-tried according to law. The appellants will remain in jail until further order by the trying Court.

Panton, J.

3. I agree that the conviction and sentence of the appellants must be set aside as this appears to me to be the inevitable result of the earlier decisions of this Court just quoted by my learned brother.

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