## CRIMINAL REVISION.

*Before C. C. Ghose and Cuming JJ.*

ASUTOSH DAS GUPTA

*v.*

PURNA CHANDRA GHOSH.*

1922

*July* 27.

*Misjoinder—Joint trial for offences under ss. 500 and 501 of the Penal Code—Criminal Procedure Code (Act V of 1898), s. 239.*

A joint trial of the author of a book, alleged to contain defamatory matter, under s. 500 of the Penal Code, and of the printer under ss. 500 and 501 of the Code, is illegal, when the Appellate Court found that there was no evidence to support the conviction under s. 500 of the latter, and no evidence of a conspiracy between them.

A private complainant in a defamation case was heard in the High Court on revision against an order of acquittal, on the facts of the case.

*Faujdar Thakur* v. *Kasi Chowdhury* (1) referred to.

*Semble*: The only persons who can be heard on an appeal are those mentioned in s. 423 of the Criminal Procedure Code, and not the complainant when the question is whether the conviction is right or not.

THE facts of the case were as follows. One Purna Chandra Ghosh was the author of a book called the "*Fakir basha praner raja*" which was printed at Dacca, at the Jagat Art Press, of which Satish Chandra Roy was the printer. The defamation alleged was to the effect that the complainant, Asutosh Das Gupta, a medical practitioner, had entered into a conspiracy with others, and in pursuance thereof had accompanied Kumar Ramendra Narain Roy to Darjeeling and administered poison to him while there, causing his death. On the 9th September, 1921, the petitioner

* Criminal Revision, No. 494 of 1922, against the order of W. N. Delevingne, Sessions Judge of Dacca, dated May 20, 1922.

(1) (1914) I. L. R. 42 Calc. 612.

1922

ASUTOSH DAS GUPTA v. PURNA CHANDRA GHOSH.

Asutosh filed a complaint against Purna Chandra Ghosh and Satish Chandra Roy before a Deputy Magistrate at Dacca. After hearing the complainant and his witnesses, the Magistrate framed a charge under s. 500 of the Penal Code against Purna and charges under ss. 500 and 501 against Satish. On the 26th April, 1922, he convicted them under the sections charged, and sentenced the former to 3 months' simple imprisonment and a fine, and the latter to a fine under s. 501 of the Penal Code, passing no sentence under s. 500. He further directed the payment of compensation to the complainant out of the fines if realized.

The accused appealed to the Sessions Judge of Dacca, who, by his judgment dated the 20th May, 1922, held that there was no evidence to support the conviction under s. 500 of the Penal Code against Satish, and no evidence of conspiracy between them, and that their joint trial was, therefore, illegal. He ordered a retrial of the accused. The petitioner then moved the High Court and obtained the present Rule.

*Babu Manmatha Nath Mukerjee* (with him *Babu Prakash Chandra Pakrasi*), for the petitioner. The complainant should have been given an opportunity in the Appellate Court to support the conviction as compensation was awarded to him. The joint trial was legal. The offences under ss. 500 and 501 of the Penal Code formed one transaction, being a series of acts committed towards the same goal.

*Babu Dasarathi Sanyal* (with him *Babu Asita Ranjan Ghose*), for the opposite party. The order of the Judge being one of acquittal, the petitioner has no *locus standi*: *Faujdar Thakur* v. *Kasi Chowdhury* (1). The only parties that can be heard on the appeal

(1) (1914) I. L. R. 42 Calc. 612.

are those specified in s. 423 of the Code. The joint trial was illegal. The offences were committed in different transactions: *Emperor* v. *Datto Hanmant Shahapurkar* (1).

GHOSE AND CUMING JJ. This Rule was issued on the application of one Asutosh Das Gupta calling on the District Magistrate of Dacca and on the opposite parties to show cause why the order of the learned Sessions Judge, setting aside the convictions and sentences of the opposite parties and directing a retrial, should not be set aside, or why such other and further order should not be made as to this Court may seem fit and proper.

The facts which have given rise to this application are as follows. It appears that on the complaint of the petitioner, the opposite parties, namely, one Purna Chandra Ghosh and Satish Chandra Roy, were put upon their trial before the Deputy Magistrate at Dacca on charges under sections 500 and 501 of the Penal Code, respectively. The trial took a very long time, and at the expiration of nearly 7 months the learned Deputy Magistrate, by his judgment dated 26th April, 1922, convicted the opposite party, No. 1, under section 500 of the Penal Code and sentenced him to simple imprisonment for 3 months and also to pay a fine of 500 rupees, in default, to undergo simple imprisonment for 6 months more, and he convicted the opposite party, No. 2, under sections 500 and 501 of the Penal Code and sentenced him to pay a fine of 200 rupees, in default, to undergo simple imprisonment for 3 months under section 501. No separate sentence under section 500 of the Penal Code was passed. The opposite parties thereupon preferred an appeal to the learned Sessions Judge of Dacca. The latter by his judgment, dated the

(1) (1905) I. L. R. 30 Bom. 49.

1922

ASUTOSH DAS GUPTA v. PURNA CHANDRA GHOSH.

20th May, 1922, held that there was no evidence to support a charge under section 500 of the Penal Code so far as the opposite party, No. 2, was concerned, and he further held that the opposite parties could not be tried together legally, and he thereupon ordered a retrial of the opposite parties separately, that is to say, of the opposite party, No. 1, under section 500 of the Penal Code and of the opposite party, No. 2, under section 501 of the Penal Code.

The orders referred to above were made by the learned Sessions Judge under the provisions of section 423 of the Criminal Procedure Code. That section enacts that the Appellate Court shall peruse the record of the appeal, and after hearing the appellant, or his pleader, if he appears, and the Public Prosecutor, if he appears, and in the case of an appeal under section 417, the accused, if he appears, the Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may, in an appeal from an order of acquittal, reverse such order and direct further enquiry: or in an appeal from a conviction, reverse the finding and sentence, acquit or discharge the accused or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court. It is not necessary for us to quote the remaining words of the section.

The order of retrial which was made by the learned Sessions Judge on the 20th May, 1922, has been attacked before us on two grounds, one, that such an order of retrial should not have been made without giving the complainant, who had complained of having been defamed by the printing and publication of a certain defamatory matter, an opportunity of stating what he had to say in support of the order of conviction by the Deputy Magistrate. In the second place the order has been attacked on the ground that the

learned Sessions Judge was wrong in holding that the opposite parties could not be tried together legally and in ordering a retrial.

Before us a preliminary objection has been taken by Mr. Sanyal, who appeared on behalf of the opposite parties, to the effect that the order of the Sessions Judge being an order of acquittal, a private complainant has no *locus standi* whatsoever, and ought not to be heard by us. To that a sufficient answer is to be found in the judgment of Sir Lawrence Jenkins, C. J., in the case of *Faujdar Thakur* v. *Kasi Chowdhury* (1). We think that in a case of this description, and on the facts such as have been brought to our notice in this case, a private complainant may well be heard by the High Court when it is called upon to exercise its powers of revision. The preliminary objection, therefore, fails, and we now proceed to consider the points which have been urged before us.

Of the two points mentioned, the second is the real point involved in the case, but before the second point is discussed we may observe in passing that before the learned Sessions Judge the only question for decision was whether the conviction of the appellants was right or not, and in this view of the matter he could only hear the parties who are mentioned in section 423 of the Criminal Procedure Code. Be that as it may, as has been observed above the second point is the real point which is involved in the case. We are indebted to Mr. Mukherjee and to Mr. Sanyal for the very exhaustive arguments addressed to us on the question whether there should or should not have been a joint trial of the two opposite parties under section 239 of the Criminal Procedure Code on the charges which were brought against them.

(1) (1914) I. L. R. 42 Calc. 612.

1922

ASUTOSH DAS GUPTA v. PURNA CHANDRA GHOSH.

Mr. Mukherjee has argued that the two offences, namely, the offence under section 500 and the offence under section 501 really form parts of one transaction, the transaction being the publication of a matter which was defamatory, and if they form parts of one transaction and if the two acts, namely, the act referred to in section 500 and the act referred to in section 501 form a series of acts leading to one transaction, the joint trial of the two opposite parties was entirely in order, and the learned Sessions Judge had no power whatsoever to set aside the conviction and sentence passed on the opposite parties and to order a retrial of the opposite parties; in other words, if Mr. Mukherjee is right in his contention that the accused started together for the same goal, and that in the process a series of acts, although separated by intervals of time, were committed, they could legitimately have been jointly tried for those offences. For the purpose of finding out whether in this case the opposite parties could have been jointly tried it is necessary to look into what has been found by the learned Sessions Judge. Both the opposite parties, as we have said, were charged under section 500 of the Penal Code and the opposite party, No. 2, was charged under section 501. Now, so far as the charge under section 500 is concerned, we have the findings of the learned Sessions Judge that there is really no evidence of conspiracy between the two opposite parties: in other words, this finding amounts to a statement that, so far as the charge of publication of the defamatory matter is concerned, the two petitioners could not have been charged together. Therefore, the position is that according to the learned Sessions Judge there could have been one charge under section 500 against the opposite party, No. 1, and another under section 501 against the opposite party, No. 2, but that for the

reasons given by the Sessions Judge no joint trial was possible. For the purpose of finding out whether the learned Sessions Judge is right in his contention, we must examine the terms of section 239 of the Criminal Procedure Code and the *illustrations* to that section in order to test the soundness of the reasoning adopted by the learned Sessions Judge. Having regard to the finding of the learned Sessions Judge we are of opinion that it is difficult to say that there is any common act with which both the opposite parties could have been linked together. There is no common factor so far as the offences alleged to have been committed by the two opposite parties are concerned. *Illustration (b)* of section 239 affords, on the facts of this case, and on the findings arrived at by the learned Sessions Judge, a conclusive answer to the question of the legality of the joint trial of the two opposite parties. We must proceed on the basis that so far as the opposite party, No. 2, is concerned, he is innocent of the charge of the publication of the defamatory matter. That being so, and although this case is one on the border line, taking into consideration the peculiar facts of this case, we are unable to say that the joint trial of the two opposite parties was validly held: in other words we have come to the conclusion on a very careful consideration of the arguments that have been addressed to us that the order made by the learned Sessions Judge must be allowed to stand.

The result is that this Rule must be discharged.

E. H. M. *Rule discharged.*