APPELLATE CRIMINAL

Before Lort-Williams and S. K. Ghose JJ.

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March 30 ; *April* 1.

TRAILOKYANATH DAS

v.

EMPEROR.*

Evidence—Judgments of civil courts—Relevancy of such judgments as evidence in criminal trials—Indian Evidence Act (I of 1872), ss. 40, 41, 42, 43—Indian Penal Code (Act XLV of 1860), ss. 379 and 436 read with s. 109—Criminal Procedure Code (Act V of 1898), s. 144.

Where in a Sessions trial, judgments in civil suits between the complainant and the accused had been admitted in evidence and the Sessions Judge in his charge to the jury had discussed the said evidence and then in the High Court it was argued on behalf of the accused appellants that the Judge had misdirected the jury in so doing and that it was not open to the Judge to go into the questions of possession at all, that question having been already decided in the aforesaid civil action,

Held, in a criminal trial, it is for the court to determine the question of the guilt of the accused and it must do this upon the evidence before it, independently of decisions in civil litigation between the same parties. A judgment or decree is not admissible in evidence in all cases as a matter of course, and, generally speaking, a judgment is only admissible to show its date and legal consequences.

Held, further, that the Judge acted properly in discussing the evidence and leaving it to the jury to decide what weight they should attach to that evidence.

CRIMINAL APPEAL by the accused.

The facts and arguments are fully stated in the judgment.

B. C. Chatterji, S. C. Maity and *Apurbacharan Mukherji* for the appellants.

Debendranarayan Bhattacharya and *Saratchandra Jana* for the Crown.

Cur. adv. vult.

S. K. GHOSE J. In this case, the jury, by a majority of 4 to 1, found all the appellants guilty under section 143 of the Indian Penal Code and, by a majority of 3 to 2, they found the three Das appellants guilty under section 379 read with section 109 of the Indian Penal Code, and they unanimously

* Criminal Appeal, No. 591 of 1930, against the order of S. K. Ganguli, Additional Sessions Judge of 24-Parganas, dated July 21, 1930.

found all the appellants not guilty of the charges under section 436 read with section 109 of the Indian Penal Code. The learned Judge, accepting the majority verdict, sentenced all the appellants to undergo rigorous imprisonment for three months under section 143 and the Das appellants to undergo rigorous imprisonment of one year each under section 379/109 of the Indian Penal Code, the sentences running concurrently.

The prosecution case is briefly this: Jnanada, prosecution witness No. 10, purchased the rights of a tenant in respect of 82 *bighâs* and odd of paddy land, the landlords being the Dases. From the time of his purchase in 1920, Jnanada has been in possession through *bhâg* tenants. At the time of the occurrence, the *bhâg* tenant in possession was one Rakhal and it was he who had cultivated the land and grown the paddy. There was trouble going on between him and the landlords, who were of the accused party. On the 23rd November, 1929, the Subdivisional Magistrate passed an order under section 144 of the Criminal Procedure Code, restraining the appellant Trailokya and others from exercising any act of possession on the land in question, but before that order could be served, the occurrence complained of took place on the 28th November, 1929. On that date the appelllants and others, numbering about 150 men, variously armed, came upon the land when Rakhal and his men had started cutting the paddy. The accused party drove away Rakhal and his men and forcibly cut and removed the paddy. This operation lasted for about 7 or 8 days continuously. On the date of the occurrence, it is further alleged that the accused party looted Rakhal's house and burnt it down. On these alleged facts, the appellants were put upon their trial in respect of the offences abovementioned. The common object set out in the charge under section 143 was to assert the supposed right of the accused by a show of criminal force and by driving away Rakhal from his house.

The defence case mainly was that the holding of Jnanada was sold in auction in execution of a rent decree in 1928 and the auction purchaser took possession through court on 19th September, 1928, and that since then neither Jnanada nor any *bhâg* tenant of his had been in possession.

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Mr. Chatterji in arguing the appeal has contended that the learned Judge misdirected the jury as regards the evidence of prosecution witness No. 6, Sukchand, who was declared hostile by the prosecution. I do not see, however, that there was any misdirection. The learned Judge properly warned the jury that they should be careful in accepting the evidence of such a witness in support of the prosecution case and he told them that it was for them to say if it was at all safe to accept that evidence. With that caution, the evidence was left to the jury and nothing can be said against it.

Mr. Chatterji's chief argument in this appeal, however, is that the learned Judge misdirected the jury in dealing with the evidence as to a civil litigation between the parties. It is contended that the civil courts had found that the auction purchaser, after taking delivery of possession through court, was actually in possession of the land by realizing *bhâg* crops from the tenants and that the learned Judge should have told the jury that they were bound by the decision of the civil courts. It appears that evidence was given to the effect that the landlords instituted four rent suits, the fourth one being decreed *ex parte* on the 27th March, 1928. In execution of that decree, the holding was sold on the 9th July, 1928, and possession was delivered through court on the 19th September, 1928. Jnanada's case was that all this was a mere paper transaction, and he applied before the Munsif to have the *ex parte* decree and the sale set aside. The application, however, was dismissed by the Munsif and his decision was upheld by the lower appellate court. These judgments, Exhibits D and E, were put in evidence in this case. The learned Judge pointed out that both the judgments were passed some months after the date of the occurrence. He told the jury what was actually held by those judgments and then he said as follows: "The reason given in those "judgments are no part of evidence. What has "actually been decided in those judgments is certainly "evidence; and like any other evidence, it is optional "with you either to accept or to reject it. You are "not bound by those judgments. If you accept these "two judgments as the best evidence, then the "prosecution case must be seriously affected." Then he went on to point out that the whole case for the

prosecution must fail if Rakhal's story of possession should fail, and that it did happen that, even after taking formal delivery of possession, the auction purchaser might not disturb the actual cultivator.

Mr. Chatterji has contended that the learned Judge should have told the jury that it was not open to them to go into the question of possession at all, that question having been already decided in the aforesaid civil actions. He has strenuously contended that the civil court's decision on a question of fact is binding in a criminal trial. This argument overlooks the elementary position that, in a criminal trial, it is for the court to determine the question of the guilt of the accused, and it must do this upon the evidence before it. Suppose that it is alleged that A and B have committed a criminal offence and A is first tried and convicted, next B is put upon his trial and his defence is that the act alleged was not committed at all. In that case, the judgment of the previous trial will not be binding on the jury as showing that in fact the criminal offence was committed, nor even that it was committed by A. Mr. Chatterji has argued that the position would be different in the case of a judgment *inter partes* where there was first a decision in a civil suit, and then a trial for a criminal offence. In reply to this also I may give an illustration. Where a civil court gives a decree upon the finding that a party has forged a document and then proceeds to prosecute that party under section 476 of the Criminal Procedure Code, even then in the resultant criminal trial the factum of forgery is not to be taken for granted, but it has to be determined independently upon the evidence that is adduced in the criminal case. The fact that the parties in both the proceedings are the same, makes no difference. These two instances, which are of ordinary occurrence in criminal trials, are sufficient to show the fallacy of Mr. Chatterji's argument. I may, however, point out that the law of evidence does not make a judgment or a decree admissible in all cases as a matter of course. In the Evidence Act, the limitations are prescribed by sections 41 to 43. Section 43 provides that judgments, decrees, *etc.*, other than those mentioned in the three previous sections, are irrelevant, unless the existence of such judgment, decree, *etc.*, is a fact in issue, or is relevant

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under some other provisions of the Act. Generally speaking, a judgment is only admissible to show its date and legal consequences. If a party indicted for any offence has been acquitted and he sues the prosecutor for malicious prosecution the judgment is conclusive evidence of the fact of the acquittal, but it is not evidence that the defendant was the prosecutor, and the defendant is still at liberty to prove the guilt of the plaintiff. Similarly, a judgment against a master for the negligence of his servant is conclusive evidence that the master was compelled to pay the amount of damages awarded, but it is not evidence of the fact upon which it was founded, namely the negligence. If authority be needed for these propositions, one may find the cases quoted in the notes to section 43 of the Indian Evidence Act, Woodroffe and Ameer Ali's edition.

In the present case, the learned Judge appears to have discussed the evidence properly and has left it to the jury to decide what weight they should give to that evidence. He pointed out that if the jury should feel disposed to accept the decisions in the other proceedings as the best evidence in the case, then the prosecution case would be seriously weakened. I do not think that any exception can be taken to this part of the learned Judge's charge. Mr. Chatterji has next contended that the conviction under section 379/109 of the Indian Penal Code is wrong in view of the fact that the Das appellants are the proprietors of the paddy land in question. But this argument overlooks the prosecution case that these appellants were not in possession of the paddy land. The complainant Rakhal was in actual physical possession and the accused party came and forcibly took the paddy away. The whole of the prosecution case was before the jury and, so far as the alleged theft of the paddy and the household goods are concerned, apparently the jury have chosen to believe the evidence. There is, therefore, no substance in this contention. On

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the whole, we consider that the jury were properly charged and the convictions are correct.

As regards the sentence, it is pointed out that, in view of the alleged claim of right, the appellants are entitled to leniency. On the other hand, they undoubtedly acted in a very high-handed manner and they deserve a severe sentence. At the same time, so far as the party in possession is concerned, it must be conceded that payment of compensation is indicated. We are, therefore, prepared in this case to re-consider the question of sentence of imprisonment, if the appellants be in a position to pay adequate compensation to the other side. This will turn on the question of the value of the paddy that was taken away and not recovered. Learned counsel on either side has not been able to give us anything like a correct estimate of the value. Figures varying from Rs. 3,000 to Rs. 400 were mentioned. We, therefore, think that the best course would be to send the record down to the District Magistrate of 24-Parganas for a summary enquiry and report as to the value of the paddy which was taken away and not recovered, and also the value of the house that was burnt down. This report should be submitted to us with the record within a month from the date of the arrival of the record in the court below.

Pending final orders the accused will remain on the same bail.

LORT-WILLIAMS J. I agree.

Appeal dismissed.

O. U. A.