Before Mr. Justice Piggott and Mr. Justice Walsh.

EMPEROR *v.* BECHAN PANDE AND OTHERS. *

1916
April, 27.

Joinder of case—Offences of the same kind committed in respect of different persons—Legality of joint trial—Criminal Procedure Code, sections 234, 239—Practice.

The words "offences of the same kind" used in section 234 of the Code of Criminal Procedure, and as defined by sub-clause (2) of the said section, do not imply that the offences should necessarily have been committed against the same person. Where therefore there were six persons accused of having been jointly concerned in carrying on a systematic swindle, and three joint charges were framed against all the accused, *held* that there was nothing illegal in the procedure.

IN this case six persons were jointly tried. The prosecution alleged that the six accused had joined together in working a scheme for swindling the public by means of false advertisements. They published advertisements in a newspaper, styling themselves as a Trading Company of Benares City, offering to supply the public with silk and watches on certain terms. Several individuals were induced by the advertisement to send money to them, and instead of the silk and watches advertised they received parcels containing Indian corn cobs. The men were caught and tried together at the same trial. Three such instances of cheating, occurring within one year, were selected, the three individuals cheated being residents of different places; and a charge of cheating under section 420, Indian Penal Code, was framed against each of the accused in respect of each of these three counts. There was no charge of criminal conspiracy. The trying Magistrate found each count proved against each accused and sentenced them to various terms of imprisonment. On appeal the Sessions Judge, relying principally on *Empress* v. *Murari* (1) and *Queen Empress* v. *Jwala Prasad* (2) held that the trial was vitiated by an illegal joinder of charges; and without entering into the merits of the case set aside the convictions and sentences and directed a re-trial according to law. Against this order the Local Government applied in revision to the High Court.

* Criminal Revision No. 196 of 1916, by the Local Government, from an order of E. M. Nanavutty, Sessions Judge of Benares, dated the 1st of February, 1916.

(1) (1881) I. L. R., 4 All., 147. (2) (1884) I. L. R., 7 All., 174.

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The Government Advocate (Mr. *A. E. Ryves*), for the Crown.

Section 234 of the Code of Criminal Procedure sanctions a joint trial for offences of the same kind in cases like the present. That section does not lay down that the offences of the same kind must have been committed against the same individual. The ruling in I. L. R., 4 All., 147, was under the old Code of 1872, and is a mere *ipse dixit*. Mr. Justice STRAIGHT was probably thinking of the English Act. But the Indian Legislature has left out the words "committed against the same person." The case of *Subedar Ahir* v. *Emperor*, (1) lays down the correct law and reviews all the cases on the point. He also referred to Cr. R. *No. 195 of 1916.

*Judgement in Cr. R. No. 195 of 1916.

PIGGOTT, J.—In this case one Jagardeo was tried at one trial in respect of two acts of theft committed in the course of the same night. It was alleged that he stole *bajra* from one man's field and rice from the field of another. He appealed to the court of Session, and there the learned Sessions Judge, holding that the trial was illegal, has directed him to be retried. The case has been brought to our notice and we have taken up the matter in the exercise of our revisional jurisdiction. It is said that there is authority of this Court in favour of the view taken by the learned Sessions Judge. The case of *Empress* v. *Murari*, (2) was decided on a differently worded section of the Criminal Procedure Code of 1872. If it is necessary to say so, we are quite prepared to say that that decision should no longer be regarded as laying down the law as it stands under the Criminal Procedure Code at present in force. The learned Sessions Judge seems to have appreciated this point, but to have been of opinion that the decision in *Empress* v. *Murari* (2) was re-affirmed in the case of *Queen-Empress* v. *Jwala Prasad* (3).

It was remarked at the close of that judgement that the decision in *Empress* v. *Murari* (2) was under a different statute and would not be affected by the decision then being pronounced. It seems to us that, so far from the learned Judge's desiring to lay it down that the decision in *Empress* v. *Murari* (2) was a correct exposition of the law as it stood under the Criminal Procedure Code of 1882, they suggested the contrary. At any rate nothing was decided in the Full Bench case of *Queen-Empress* v. *Jwala Prasad* (3) with regard to the meaning or effect of the expression "offences of the same kind" as used in section 234 of the Criminal Procedure Code, and as defined by sub-clause (2) of the said section. Taking these words into our consideration it seems clear to us that the "offences of the same kind" referred to in that section need not necessarily have been committed against the same person. This principle has recently been affirmed by the Calcutta High Court in *Subedar Ahir* v. *Emperor* (1) after an exhaustive review of previous authorities.

(1) (1915) I. L. R., 43 Calc., 13. (2) (1881) I. L. R., 4 All., 147.
(3) (1884) I. L. R., 7 All., 174.

Babu *Satya Chandra Mukerji*, for the accused.

The joint trial for three distinct offences committed against three different individuals was illegal; *Empress* v. *Murari* (1).

That ruling was considered in the Full Bench case of *Queen-Empress* v. *Jwala Prasad* (2); and it was expressly stated therein that the decision in the former case "will be unaffected" by that in the latter. In the Full Bench case a post master was charged with, and tried at one trial for embezzlement of three separate sums of money handed over to him by different individuals for remittance by Postal Money Order. But it was held that as soon as the amounts were paid in at the Post Office they ceased to belong to the persons who paid them and became Government property, and so the offences were really against the same person. If the Full Bench had meant to lay down generally that section 234 of the Code of Criminal Procedure, then in force (which is identical with the present section 234) was not limited to the case of offences committed against the same person they would not have expressed the reservation in favour of the decision in I. L. R., 4 All., 147. The Full Bench ruling in effect left the earlier case intact in cases where the circumstance that the offences were really against the same individual did not exist. The difference between the language of the present section 234, and the corresponding section of the Code of 1872, is not such as to warrant, of itself, the abrogation of the ruling in I. L. R., 4 All., 147.

Then, in the present case, six persons have been jointly tried, each for three distinct offences. Such a joint trial is improper and the accused are likely to be prejudiced thereby.

PIGGOTT and WALSH, JJ.:—In this case six men were placed on their trial before a Magistrate of the first class at Benares, the allegations against them being that they had been jointly concerned

WALSH, J.—I agree *Empress* v. *Murari* (1) was decided directly in face of the clear definition and exposition contained in the section itself. It must be regarded as no longer law. The point which is now before us and which is the only point reported in the head-note was not the point on which the case came up. The opinion of Mr. Justice STRAIGHT was merely an *obiter dictum* apparently without examination of the section with which he was dealing. It was a statement of the English Law. In that particular case the court enhanced the sentence against the man with regard to whom it was suggested that there was irregularity, so that the report has no weight as an authority.

(1) (1881) I. L. R., 4 All., 147. (2) (1884) I. L. R., 7 All., 174.

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in carrying on a systematic swindle in the course of which they had committed sundry offences punishable under section 420 of the Indian Penal Code. Three of these offences committed in the course of a single year (as a matter of fact in the course of a much narrower interval) were selected, and the prosecution was limited to these. The Joint Magistrate framed three charges each against the entire body of accused, and he proceeded to try all of them at one and the same trial in respect of all these offences, found all the accused guilty, and passed what he considered appropriate sentences. Four of the persons convicted appealed to the Sessions Judge, who has held the trial in the Magistrate's court to be bad in law. He has accordingly ordered a re-trial of the whole body of accused separately on each of the three charges, and he has done this without entering into the merits of the case at all and without recording, or apparently forming, any opinion that the accused had been prejudiced, or that the interests of justice had suffered by the course adopted in the Magistrate's Court. On the question of law involved we have expressed our opinion in a case which has just come before us in which the question as to the operation of section 234 of the Code of Criminal Procedure, was raised in a singularly crude and simple form (1). In the present case it is suggested that the question is complicated by the fact that six persons in all were involved in each of the three charges. The provisions of section 233, and the following sections of the Criminal Procedure Code require to be considered together. They occur in a sub-division of the Code headed "joinder of charges." The general principle that there shall be a separate charge and a separate trial for every distinct offence of which any person is accused is first laid down in section 233 of the Code. Then follow a number of sections specifying possible exceptions. In these sections, where a court is empowered to try offences jointly or accused persons jointly the word "may" is used in each case, and not the word "shall" as used in section 233, where the general principle is laid down. These are therefore empowering sections, which require to be used with due discretion and in suitable cases. In the present case the prosecution set out to prove that the six accused

(1) Cr. R. No. 195 of 1916 *(Supra)*.

persons, acting together, had committed each of the three offences specified in the several charges. On the wording of the section there was nothing illegal in the framing of the three joint charges against all the accused, or in the trial of these three charges at one and the same trial. If the learned Sessions Judge, on examining the record, comes to the conclusion that the accused persons, or any of them, were prejudiced, or that the interests of justice have suffered by the procedure adopted in the Magistrate's Court, it will still be open to him to order such new trial or trials as he may consider that the interests of justice require. We think he was wrong in holding himself bound by the view he took of certain older decisions of this Court to quash the whole of the convictions and direct the re-trial of all the accused on all the charges, on the one ground taken by him, namely, that the trial as held in the Magistrate's Court was absolutely illegal. We therefore set aside the order passed by the Sessions Judge in this matter and direct him to re-admit the appeals of Bechan Pande, Sat Narain Pande, Anrudh Prasad, and Ram Shankar on to his file of pending appeals and dispose of the same according to law with regard to the remarks that have been made above.

Order set aside.

APPELLATE CIVIL.

1916
May, 8.

Before Mr. Justice Walsh and Mr. Justice Sundar Lal.

PARAM HANS AND OTHERS (DEFENDANTS) v. RANDHIR SINGH (PLAINTIFF) AND SAHODRA (DEFENDANT).*

Act No. IV *of* 1882 (*Transfer of Property Act*), *section* 59—*Attestation*—*Document attested by one witness only*—*Mortgage*—*Charge.*

A document purporting to be a deed of mortgage bore the signature of one attesting witness; and the name of another person was written on the margin by the scribe, but there was no signature or mark made by this second person. In a suit brought upon the document after his death it was *held* that the document was not duly attested by two witnesses within the meaning of section 59 of the Transfer of Property Act, inasmuch as there was nothing to show that the person whose name appeared on the document as an attesting witness had authorised the scribe to sign it for him and therefore it could neither operate as a mortgage nor create a charge on immoveable property.

* First Appeal No. 176 of 1915, from an order of Abdul Ali, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge, of Agra, dated the 23rd of September, 1915.