

## REVISIONAL CRIMINAL

Before Mr. Justice Bajpai

EMPEROR *v.* MATHURA AND OTHERS\*

1933  
February, 10

*Criminal Procedure Code, sections 15, 16, 350A—Bench of Magistrates—Bench of three, with quorum of two—Trial begun before three, but heard throughout and decided by two—Validity.*

At the commencement of a trial all the three Magistrates constituting a Bench of Honorary Magistrates were present, but at some of the subsequent hearings one of them was absent. The other two Magistrates were present at all the hearings and it was they who delivered the judgment. According to the rules framed by the District Magistrate under section 16 of the Criminal Procedure Code, two Magistrates were to form a quorum, and the same two Magistrates must hear a particular case from start to finish and sign the judgment. *Held*, that the trial was valid. *Chiteshwar Dube v. King-Emperor* (1), distinguished.

Mr. *Gopalji Mehrotra*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

BAJPAI, J. :—The applicants before me were convicted by a Bench of Honorary Magistrates at Jaunpur under sections 323 and 452 of the Indian Penal Code. Their convictions were affirmed in appeal by a Magistrate of the first class with appellate powers. A revision filed by them before the Additional Sessions Judge of Jaunpur was also dismissed. In revision before me it is argued that the conviction is illegal, inasmuch as there was a defect in the constitution of the Bench.

The facts are that there is a Bench of Honorary Magistrates at Jaunpur consisting of three members (1) Babu Sundari Prasad, (2) Babu Lakshmi Shankar, and (3) Maulvi Muhammad Abbas Khan. The present trial commenced before all the three Magistrates, but at

\*Criminal Revision No. 737 of 1932, from an order of M. B. Ahmad, Esq., Additional Sessions Judge of Jaunpur, dated the 6th of June, 1932.

(1) [1932] A. L. J., 42.

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some of the subsequent hearings Maulvi Muhammad Abbas Khan was not present. The other two Magistrates, however, were present at all the hearings, including the first and the last, and it is these two Magistrates who delivered the judgment. It is contended before me that inasmuch as the trial commenced before three Magistrates the trial should have continued before the same three, and the fact that Maulvi Muhammad Abbas Khan was absent at some of the hearings and at the time of the delivery of judgment makes the trial invalid, and the judgment passed by the other two Magistrates is liable to be set aside.

Under section 15 of the Code of Criminal Procedure the Local Government may direct any two or more Magistrates in any place outside the Presidency Towns to sit together as a Bench. In the present case the Local Government has directed three Magistrates at Jaunpur to constitute a Bench. It is absolutely necessary under section 15 that the Bench should consist of at least two Magistrates and on that score there is no defect in the constitution of the Bench. Under section 16 of the Code of Criminal Procedure the Local Government may, or subject to the control of the Local Government the District Magistrate may, make rules for the guidance of Magistrates' Benches. The District Magistrate of Jaunpur has framed certain rules under section 16 and the rule as supplied to me at the Bar runs as follows: "Two Magistrates shall form a quorum; and the same two Magistrates must hear a particular case from start to finish and sign the judgment, except when under section 350A of the Code of Criminal Procedure there has been a change in the constitution of the Bench, for example, some particular Magistrate has ceased to work temporarily or permanently under proper orders." The position, therefore, is that in Jaunpur two Magistrates form the quorum of the Bench and under the rule just mentioned the same two must hear

a particular case from start to finish and sign the judgment. In the present case, when the case was started there were three Magistrates and throughout the conduct of the case there was a quorum of two and the judgment was delivered by those Magistrates only who were present throughout the case. I am, therefore, of the opinion that the trial is not irregular. It is, however, argued that the constitution of the Bench at the inception of the trial was of three Magistrates and, therefore, this number became rigid and inflexible for all the subsequent hearings and, therefore, the fact that certain hearings took place before two of the Magistrates only and the fact that the judgment was delivered by two only makes the trial illegal. No authority has been cited for this proposition, but certain cases having an indirect bearing have been placed before me, from which it was argued that there has been a defect in the constitution of the Bench at some of the hearings and, therefore, I should order a re-trial. The strongest case on behalf of the applicants is the case of *Emperor v. Mohidin* (1). In this case a Bench of three Special Magistrates heard the prosecution evidence, but owing to the absence of one of the Magistrates later on the remaining two went on with the trial, heard the defence evidence and convicted and sentenced the accused. It was held that the trial was void, but this decision was arrived at by reason of rule 4 of the rules for the guidance of the Special Magistrates' Bench there. That rule runs as follows: "If for any cause it is found necessary to adjourn the hearing of the case after the evidence has been partly taken, the trial must be completed before the same Magistrates who commenced it, or must be held afresh before a different set of Magistrates." That case, therefore, has no application to the facts of the present case. Next, reliance was placed upon the case of *Chiteshwar Dube v. King-Emperor* (2). I sent for the record of this case and from it I find that the Bench at

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(1) (1919) I. L. R., 44 Bom., 400. (2) [1932] A. L. J., 42.

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Ghazipur consisted of three Magistrates, (1) Pandit Paras Ram, (2) Pandit Lachhmi Narain, and (3) Maulvi Abdul Mughni. The last, however, was not present on several occasions when witnesses were examined, but he joined in signing the judgment. The trial was held to be invalid. I am in perfect agreement with this view. In that case, although two of the Magistrates who took part in the decision had heard the evidence throughout, it is impossible to say to what extent their opinion was influenced by the third Magistrate who had only heard a portion of the evidence. In the case before me the presence of Muhammad Abbas Khan was unnecessary, because the quorum consists of two Magistrates, and he was not a party to the judgment and, therefore, he did not in any way influence the opinion of the other two. The rule mentioned by me in the beginning of my judgment has in no way been offended. Section 350A, which has been added by the Amending Act XVIII of 1923, also lends support to the view which I have taken. My opinion is also fortified by the following cases: *Karuppana Nadan v. Chairman, Madura Municipality* (1), *Venkatarama Aiyar v. Saminatha Aiyar* (2), and *Khuda Baksh v. Emperor* (3). There is no force in this revision and I dismiss it.

(1) (1893) I.L.R. 21 Mad., 246.

(2) (1914) I.L.R., 38 Mad., 797.

(3) (1917) 15 A.L.J., 463.