

REVISIONAL CRIMINAL

Before Mr. Justice Mulla

EMPEROR v. LALA AND OTHERS*

1938

August, 29

Criminal Procedure Code, sections 252, 254, 256—Further evidence for the prosecution after framing of charge and at the stage of cross-examination of the prosecution witnesses—Court can allow further evidence at any stage of the trial—Inherent power—Opportunity for rebuttal—Prejudice to accused—Criminal Procedure Code, section 537.

After witnesses for the prosecution in a case of theft of crops had been examined and a charge had been framed, and while the witnesses for the prosecution were being cross-examined under section 256 of the Criminal Procedure Code, certain documentary evidence, consisting of certified copies of the khatauni showing that the complainant was in possession of the field in question, was allowed to be produced by the prosecution:

Held, that there was no prohibition in sections 252, 254 and 256 of the Criminal Procedure Code against the admission of relevant and admissible evidence for proving an offence after a certain stage in a trial. Every court has got inherent power to allow relevant evidence to be produced by any party at any stage of the trial. If such evidence is allowed to be produced by the prosecution, all that the accused can urge is that he should be given a full opportunity of rebutting it.

Further, even if it were assumed that the admission of the documents at that stage was an irregularity, it would be cured under section 537 unless the accused was prejudiced thereby; and in the present case the accused raised no objection and would have ample opportunity for rebutting that evidence at the time when he would enter upon his defence.

Mr. *Saila Nath Mukerji*, for the applicants.

The Deputy Government Advocate (Mr. *Sankar Saran*), for the Crown.

MULLA, J.:—This is a reference by the learned Additional District Magistrate of Allahabad in a case in which 14 persons have been convicted by a Special Magistrate of the first class of an offence under section 379 of the Indian Penal Code on the complaint of one

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Sami Ullah. The prosecution case was that a certain field had been in the complainant's possession for some years and he had sown a mixed crop therein, but during his absence from the village some time on the 17th of September, 1937, the opposite parties cut the crop away. In the report of the incident which he made at the thana on the 20th of September he charged 23 persons with an offence under section 379 of the Indian Penal Code. The delay in the report was explained by him on the ground that it was only when he returned to his village on the evening of the 19th of September that he came to know what had happened and it was then that he proceeded to the thana the next day after making some inquiries and ascertaining names of the accused persons from certain witnesses. Besides the complainant five witnesses were examined on his behalf to prove the fact that the crop in question had been sown by him and had been cut away by the opposite parties in the circumstances alleged by the prosecution.

Two of the accused persons Sheo Narain and Sita Ram are recorded as occupancy tenants of the field in dispute in the khasra of the village. The defence relied upon that entry and put forward the case that the crop in question had been sown by Sita Ram and Sheo Narain and had rightfully been appropriated by them. The other accused persons put forward various pleas of enmity and *alibi*.

The learned Special Magistrate wrote a very elaborate and able judgment in which he came to the conclusion that the prosecution case was fully proved. In order to hold that the field in question was in the possession of the complainant for several years past, the learned Magistrate relied not only upon the oral evidence produced by the prosecution but also on some documentary evidence. The latter consists principally of two certified copies of certain entries in the khatauni of the village from which it appears that the person in actual possession of the field in dispute was the complainant.

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ant, even though the tenants-in-chief were Sita Ram and Sheo Narain. It appears that these two documents were produced on behalf of the prosecution while the prosecution witnesses were being cross-examined by the defence. Relying upon the oral and documentary evidence the learned Magistrate found the charge proved against the 14 applicants and convicted them under section 379 of the Indian Penal Code.

The applicants went up in revision to the District Magistrate and the matter came up for hearing before the learned Additional District Magistrate who has made this reference. The learned Additional District Magistrate has conceded that the judgment of the trying Magistrate is very well reasoned and lucid and that there can be no ground for interference with the finding upon the merits, but it appears that one of the grounds taken before him by the applicants was that the admission of the two certified copies of the entries in the khatauni of the village during the cross-examination of the prosecution witnesses was an illegality which had vitiated the trial or at least an irregularity which had caused material prejudice to the applicants. This argument has found favour with the learned Additional District Magistrate who has referred to sections 252 and 256 of the Criminal Procedure Code and has upon that basis arrived at the conclusion that a criminal court cannot admit any documentary evidence after the framing of the charge. Being of the opinion that this raised an important question of law he has referred the matter to this Court.

I have heard Mr. *Saila Nath Mukerji* in support of the reference and have fully considered the provisions of the Criminal Procedure Code upon which the learned Magistrate has relied, but I see no reason to hold that there is any prohibition in law against the admission of relevant and admissible evidence for proving an offence after a certain stage in a trial. To my mind it is quite clear that every court has got inherent power to allow

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relevant evidence to be produced by any party at any stage of the trial. If such evidence is allowed to be produced by the prosecution all that the accused can urge is that he should be given a full opportunity of rebutting it. I cannot conceive for a moment that the provisions of the Criminal Procedure Code referred to by the learned Additional District Magistrate were intended by the law to prevent the admission of relevant evidence for the purposes of proving an offence, beyond a certain stage of the trial. In this connection it may be pointed out that under section 428 of the Criminal Procedure Code even the appellate court may admit evidence if it considers that evidence necessary for the purpose of deciding the case. Again even this Court in the exercise of its revisional powers under section 439 of the Criminal Procedure Code can admit fresh evidence if it is relevant and its production is found to be necessary in the interest of justice. I am, therefore, of the opinion that there was nothing illegal or irregular in the fact that the learned Special Magistrate allowed the two documents to be produced while the prosecution witnesses were being cross-examined by the defence. Even if it is assumed for the purpose of argument that the admission of the documents at that stage was an irregularity the question still remains whether it materially prejudiced the accused in the trial. There is absolutely no suggestion that the defence raised any objection to the production of the documents and having regard to the fact that the accused persons had not even entered upon their defence up till that stage there was obviously ample opportunity for rebutting the evidence. I do not, therefore, see any reason for holding that the accused persons were prejudiced in their trial. Even in this view of the case section 537 of the Criminal Procedure Code would cure the irregularity. The result, therefore, is that I reject the reference made by the learned Additional District Magistrate.