LALTA AND ORS.

v.

STATE OF UTTAR PRADESH

October 25, 1968

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Code of Criminal Procedure (5 *of* 1898), *s.* 403—*Rule of issue-estoppel—Applicability.*

The first appellant filed a suit on a promissory note. Prior to the institution of the suit, the executant of the promissory note had filed a complaint against the appellants alleging that they had forcibly taken his thumb impressions on a number of blank forms of promissory notes. The Magistrate acquitted the appellants. Thereafter, the suit on the promissory note was dismissed on the ground that the promissory note was a forgery because, the stamps affixed were of a date later than that of the promissory note. The Court then filed a complaint against the appellants for the offence of forgery. The appellants were convicted for forgery and abetment of forgery.

In appeal to this Court,

HELD : In the earlier criminal case, the allegation that the executant's thumb impressions on blank forms were obtained by force, was found to be false. That finding was final and could not be reopened because of the rule as to issue-estoppel. Therefore, the sub-stratum of the present case failed and the appellants could not be convicted for the offence of forgery and its abetment. [532 D—F]

The rule of issue-estoppel is not covered by s. 403, Criminal Procedure Code, which deals with the principle of *autrefois acquit* : but that section does not preclude the applicability of the rule. The rule is in accordance with sound principle and was applied in two decisions of this Court, namely, *Pritam Singh* v. *State of Punjab,* A.I.R. 1956 S.C. 415 and *Manipur Administration* v. *Thockechom Bira Singh,* [1964] 7 S.C.R. 123. There is no reason for casting any doubt on its soundness or for taking a different view. [532 B—D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 185 of 1966.

Appeal by special leave from the judgment and order dated June 3, 1966 of the Allahabad High Court, Lucknow Bench in Criminal Revision Applications No. 410 and 413 of 1964.

R. K. Garg, S. C. Agarwala, S. Chakravarti and *S. S. Shukla,* for the appellants.

O. P. Rana and *Ravindra Bana,* for the respondent.

The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Allahabad High Court dated June 3, 1966

A dismissing the Criminal Revision Applications Nos. 410 and 413 of 1964.

The appellant, Lalta filed a money suit no. 54 of 1955 in the Court of Civil Judge, Gonda against Swami Nath on the basis of a pronote and receipt dated July 1, 1952 on the allegation that Swami Nath had taken a loan of Rs. 250 from him and executed a promisory note and a receipt in lieu thereof. Swami Nath filed a written statement in that suit denying to have taken any loan or to have executed any pronote and receipt in favour of Lalta. It appears that prior to the institution of this suit Swami Nath had filed a complaint on January 24, 1955 against Lalta and others alleging that they had forcibly taken his thumb impressions on a number of blank forms of pronotes and receipts. The case arising out of the Criminal complaint came to be heard by a Magistrate Second Class who by his judgment dated May 31, 1956 acquitted Lalta and the other persons complained against. The Criminal case against Swami Nath proceeded on the charges framed under ss. 342 and 384, Indian Penal Code. In the Civil Suit which was filed by Lalta, the defendant Swami Nath moved an application for a report being called from the Superintendent, Security Press, Nasik regarding the year of the revenue stamps affixed on the pronote and the receipt. The matter was accordingly referred to the Superintendent, Security Press, Nasik and the report received was that the stamps in question had been printed on December 21, 1953 and were issued for the first time on January 16, 1954 to the Treasury. Subsequent to the receipt of the report Lalta did not put in appearance and the suit was dismissed for default on June 1, 1956. The Civil Judge was moved for filing a complaint against the appellants for committing forgery. The Civil Judge Gonda actually filed a complaint on November 9, 1956 against Lalta for offences under ss. 193, 194, 209, 465, 467 and 471, Indian Penal Code and against Tribeni and Ram Bharosey for an offence under s. 193, Indian Penal Code. The complaint was enquired into by a First Class Magistrate who committed the appellants to the Court of Sessions. By his judgment dated November 27, 1963, the Assistant Sessions Judge, Gonda convicted Tribeni and Ram Bharosey under s. 467 read with s. 109, Indian Penal Code and sentenced them to 3 years rigorous imprisonment. He found Lalta guility under s. 467, Indian Penal Code and sentenced him to 3 years rigorous imprisonment. Lalta was also convicted under s. 471, Indian Penal Code and sentenced to 2 years rigorous imprisonment. He was also found guilty under s. 193, Indian Penal Code and sentenced to rigorous imprisonment for two years. The appellants took the matter in appeal to the Sessions Judge, Gonda who by his order dated October 17, 1964 set aside the convic-

tion of Lalta under s. 193, Indian Penal Code but maintained the conviction of the appellants under the other sections. Tribeni, Lalta and Ram Bharosey filed Revision Applications before the Allahabad High Court which by its order dated June 3, 1966 affirmed the order of the Sessions Judge, Gonda and dismissed the Revision Applications.

In support of this appeal Mr. Garg put forward the argument that in view of the fact that Swami Nath's complaint had been dismissed by the Second Class Magistrate on May 31, 1956, the prosecution case with regard to the act of forgery must fail and the conviction of Lalta under s. 467 and s. 471, Indian Penal Code was not sustainable. It was also pointed out that the charge of abetment against Ram Bharosey and Tribeni under s. 467 read with s. 109, Indian Penal Code and s. 471 read with s. 109, Indian Penal Code must fail for the same reason. In our opinion, the argument put forward on behalf of the appellants is well-founded and must be accepted as correct .

In *Pritam Singh* v. *The State of Punjab*(1), it was pointed out by this Court that the effect of a verdict of acquittal passed by a competent court on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence, but to that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. In that case, the appellant had been acquitted of the charge under s. 19(f), Arms Act for possession of a revolver. There was a subsequent prosecution of the appellant for an offence under s. 302, Indian Penal Code and the possession of the revolver was a fact in issue in the later case which had to be established by the prosecution. It was held that the finding in the former trial on the issue of prossession of revolver will constitute an estoppel against the prosecution, not as a bar to the trial and conviction of the appellant for a different offence but as precluding the reception of evidence to disturb the finding of fact.

Section 403, Criminal Procedure Code embodies in statutory form the accepted English rule of *autrefois acquit*. The section reads as follows :

> "403. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made

(1) A.I.R. 1956 S.C. 415.

A under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1).

B

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not

C happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts

D which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of section 26 of the General Clauses Act, 1897, or of section 188 of this Code.

E

Explanation.—The dismissal of a complaint, the stopping of proceedings under section 249, the discharge of the accused or any entry made upon a charge under section 273, is not an acquittal for the purposes of this section."

F Section 26 of the General Clauses Act which is referred to in s. 403, Criminal Procedure Code enacts as follows:

"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be

G punished twice for the same offence."

It is manifest in the present case that the appellants cannot plead the bar enacted in s. 403(1) of the Criminal Procedure Code. It is equally manifest that the prosecution of the appellants would be permitted under sub-s. (2) of s. 403, Criminal Procedure Code. The question presented for determination in this appeal is, how-

H ever, different. The question is whether where an issue of fact has been tried by a competent court on a former occasion and a finding has been reached in favour of an accused, such a

finding would constitute an estoppel or *res judicata* against the prosecution, not as a bar to the trial and conviction of the accused for a different offence but as precluding the reception of evidence to disturb that finding of fact when the accused is tried subsequently even for a different offence which might be permitted by the terms of s. 403(2), Criminal Procedure Code. The distinction between the principle of *autrefois acquit* and the rule as to issue-estoppel; in other words, the objection to the reception of evidence to prove an identical fact which has been the subject-matter of an earlier finding between the same parties is clearly brought out in the following passage from the judgment of Wright, J. in *The Queen* v. *Ollis*(1):

> "The real question is whether this relevant evidence of the false pretence on July 5 or 6 ought to have been excluded on the ground that it was part of the evidence given for the prosecution at the former trial, at which the prisoner was charged with having obtained money from Ramsey on that false pretence, and was acquitted of that charge."

Speaking of this type of estoppel, Dixon, J. stated in *The King* v. *Wilkes*(2):

> "Whilst there is not a great deal of authority upon the subject, it appears to me that there is nothing wrong in the view that there is an issue estoppel, if it appears by record of itself or as explained by proper evidence, that the same point was determined in favour of a prisoner in a previous criminal trial which is brought in issue on a second criminal trial of the same prisoner. That seems to be implied in the language used by Wright, J. in *R.* v. *Ollis* which in effect I have adoptde in the foregoing statement. .....There must be a prior proceeding determined against the Crown necessarily involving an issue which again arises in a subsequent proceeding by the Crown against the same prisoner. The allegation of the Crown in the subsequent proceeding must itself be inconsistent with the acquittal of the prisoner in the previous proceeding. But if such a condition of affairs arises I see no reason why the ordinary rules of issue-estoppel should not apply. Such rules are not to be confused with those of *res judicata,* which in criminal proceedings are expressed in the pleas of *autrefois acquit* and *autrafois convict.* They are pleas which are concerned with the judicial determination of an alleged criminal liability and in the case of

(1) [1900] 2 Q.B. 758, 768-769. (2) 77 C.L.R. 511, 518.

A conviction with the substitution of a new liability. Issue-estoppel is concerned with the judicial establishment of a proposition of law or fact between parties. It depends upon well-known doctrines which control the relitigation of issues which are settled by prior litigation."

B The same question was the subject-matter of consideration by the High Court of Australia in a later case *Marz* v. *The Queen*(1). The question at issue was the validity of a conviction for rape after the accused had been acquitted on the charge of murdering the woman during the commission of the act. In a unanimous judgment by which the appeal of the accused was allowed, the High Court stated as follows :—

C

"It is a negation in the alternative upon which, so long as the verdict stood in its entirety, the applicant was entitled to rely as creating an issue estoppel against the Crown. He was entitled to rely upon it because when he pleaded not guilty to the indictment of murder the issues which were thereby joined between him and
D the Crown necessarily raised for determination the existence of the three elements we have mentioned and the verdict upon those issues must, for the reasons we have given, be taken to have affirmed the existence of the third and to have denied the existence of one or other of the other two elements. It is nothing to point that
E the verdict may have been the result of a mis-direction of the judge and that owing to the misdirection the jury may have found the verdict without understanding or intending what as a matter of law is its necessary meaning or its legal consequences. The law which gives effect to issue estoppels is not concerned with the cor-
F rectness or incorrectness of the finding which amounts to an estoppel, still less with the processes of reasoning by which the finding was reached in fact; it does not matter that the finding may be thought to be due to the jury having been put upon the wrong track by some direction of the presiding judge or to the jury having got
G on the wrong track unaided. It is enough that an issue or issues have been distinctly raised and found. Once that is done, then, so long as the finding stands, if there be any subsequent litigation between the same parties, no allegations legally inconsistent with the finding may be made by one of them against the other."

H It is therefore clear that s. 403, Criminal Procedure Code does not preclude the applicability of this rule of issue-estoppel.

(1) 96 C.L.R. 62, 68-69.

It was contended by Mr. Rana on behalf of the respondent that the decision of this Court in *Pritam Singh's* case(1) was based on the observations of the Judicial Committee in *Sambasivam* v. *Public Prosecutor, Federation of Malaya*(2) and the decision in *Pritam Singh's* case(1) required reconsideration because the principle could have no application to India where the principle of *autrefois acquit* is covered by a statutory provision *viz.*, s. 403, Criminal Procedure Code which must be taken to be exhaustive in character. We are unable to accept this contention as right. We have already pointed out that s. 403, Criminal Procedure Code does not preclude the applicability of the rule of issue-estoppel. In any event, the rule is one which is in accordance with sound principle and supported by high authority and there are already two decisions of this Court, *viz.*, *Pritam Singh's case*(1) and a later case *Manipur Administration* v. *Thokchom, Bira Singh*(3)—which have accepted the rule as a proper one to be adopted. We therefore do not see any reason for casting any doubt on the soundness of the rule or for taking a different view from that adopted in the two earlier decisions of this Court referred to.

If the rule of issue-estoppel is applied to the present case, it follows that the charge with regard to forgery must fail against all the appellants. The reason is that the case of Swami Nath is solely based upon the allegation that his thumb impressions were obtained on blank forms of promissory notes and receipts on January 7, 1955 by the use of force. If the finding of the Second Class Magistrate on this issue is final and cannot be reopened, the substratum of the present prosecution case fails and the charges of forgery under ss. 467 and 471, Indian Penal Code cannot be established against any of the appellants.

For these reasons we hold that this appeal must be allowed, the judgment of the Allahabad High Court dated June 3, 1966 must be set aside and the convictions of each of the appellants and the sentence imposed upon them should be quashed. If the appellants are still in jail they should be set at liberty forthwith.

V.P.S. *Appeal allowed.*

(1) A.I.R. 1956 S.C. 415.
(2) [1950] A.C. 458.
(3) [1964] 7 S.C.R. 123.

L3Sup.C.I/69—2,500—19-1-70—GIPF.