1953

Nov. 16, 23.

SURENDRA SINGH AND OTHERS

v.

THE STATE OF UTTAR PRADESH.

[MUKHERJEA, VIVIAN BOSE and BHAGWATI JJ.]

Practice—Judgment—Case heard by two Judges—Judgment signed by both—Death of one of them—Delivery by the other—Validity of judgment—Allahabad High Court Rules, 1952, Chap. VII, rr. 1-4.

Where a case was heard by a Bench of two Judges and the judgment was signed by both of them but it was delivered in court by one of them after the death of the other: *Held*, that there was no valid judgment and the case should be re-heard.

A judgment is the final decision of the court intimated to the parties and the world at large by formal "pronouncement" or "delivery" in open court and until a judgment is delivered, the judges have a right to change their mind.

Firm Gokal Chand v. *Firm Nand Ram* (A.I.R. 1938 P.C. 292) and *Mahomed Akil* v. *Asadunnissa Bibee* (9 W. R. 1 F.B.) referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 34 of 1953.

Appeal from the Judgment and Order dated the 5th January, 1953, of the High Court of Judicature at Allahabad (Lucknow Bench), Lucknow (Kidwai and Bhargava JJ.) in Criminal Appeal Register No. 24 of 1952 and Capital Sentence Register No. 4 of 1952 arising out of the Judgment and Order dated the 19th January, 1952, of the Court of the Sessions Judge, Sitapur, in Sessions Case No. 97 of 1951.

Jai Gopal Sethi (*K. P. Gupta*, with him) for the appellant.

G. C. Mathur and *Onkar Nath Srivastava* for the respondent.

1953. November 16. The Judgment of the Court was delivered by

BOSE J.—We have three appellants before us. All were prosecuted for the murder of one Babu Singh. Of these, Surendra Singh alone was convicted of the murder and was sentenced to death. The other two were convicted under section 225, Indian Penal Code.

Each was sentenced to three years' rigorous imprisonment and to a fine of Rs. 200.

All three appealed to the High Court at Allahabad (Lucknow Bench) and the appeal was heard on 11th December, 1952, by Kidwai and Bhargava JJ. Judgment was reserved. Before it could be delivered Bhargava J. was transferred to Allahabad. While there he dictated a "judgment" purporting to do so on behalf of himself and his brother Judge, that is to say, it purported to be a joint judgment : he used the pronoun "we" and not "I". He signed every page of the "judgment" as well as at the end but did not date it. He then sent this to Kidwai J. at Lucknow. He died on 24th December, 1952, before the "judgment" was delivered. After his death, on 5th January, 1953, his brother Judge Kidwai J. purported to deliver the "judgment" of the court. He signed it and dated it. The date he placed on it was 5th January, 1953. Bhargava J.'s signature was still there and anyone reading the judgment and not knowing the facts would conclude that Bhargava J. was a party to the delivery on 5th January, 1953. The appeal was dismissed and the sentence of death was confirmed. The question is whether this "judgment" could be validly delivered after the death of one of the two Judges who heard the appeal.

The arguments covered a wide range but we intend to confine ourselves to the facts of this case and only deal with the narrower issues which arise here.

Delivery of judgment is a solemn act which carries with it serious consequences for the person or persons involved. In a criminal case it often means the difference between freedom and jail, and when there is a conviction with a sentence of imprisonment, it alters the status of a prisoner from an under-trial to that of a convict ; also the term of his sentence starts from the moment judgment is delivered. It is therefore necessary to know with certainty exactly when these consequences start to take effect. For that reason rules have been drawn up to determine the manner in which and the time from when the decision is to take

1953

Surendra Singh and Others
v.
The State of Uttar Pradesh.

Bose J.

effect and crystallise into an act which is thereafter final so far as the court delivering the judgment is concerned.

Now these rules are not all the same though they are designed to achieve the same result. The Criminal Procedure Code takes care of courts subordinate to the High Court. Sections 366 and 424 deal with them. The High Courts have power to make their own rules. The power is now conferred, or rather continued, under article 225 of the Constitution.

The Allahabad High Court framed its present set of Rules in 1952. They came into force on the 15th of September in that year. We are concerned with the following in Chapter VII dealing with the judgment and decree, namely rules 1-4.

These rules provide for four different situations: (1) for judgments which are pronounced at once as soon as the case has been heard; (2) for those which are pronounced on some future date; (3) for judgments which are oral, and (4) for those which are written. These rules use the word "pronounced" in some places and "delivered" in others. Counsel tried to make capital out of this and said that a judgment had to be both "pronounced" and "delivered" and that they were two different things.

We do not intend to construe these rules too technically because they are designed, as indeed are all rules, to further the ends of justice and must not be viewed too narrowly; nor do we desire to curtail the jurisdiction which the Privy Council point out is inherent in courts to make good inherent defects caused by accidents such as death. As this decision of the Judicial Committee was relied on in the arguments we will quote the passage which is relevant here. It is at page 295 of *Firm Gokal Chand* v. *Firm Nand Ram*(1). The facts are not the same as here because the judgment was actually delivered in open court and both the judges who constituted the Bench were present and concurred in it. But before it could be signed,

(1) A.I.R. 1938 P.C. 292.

one Judge went on leave. The rules required the judgment to be signed and dated at the time that it was pronounced. Their Lordships said :—

"The rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words. Indeed the rule does not even state any definite time in which it is to be fulfilled. The time is left to be defined by what is reasonable. The rule from its very nature is not intended to affect the rights of parties to a judgment. It is intended to secure certainty in the ascertainment of what the judgment was. It is a rule which Judges are required to comply with for that object. No doubt in practice Judges do so comply, as it is their duty to do. But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The court must have inherent jurisdiction to supply such a defect. The case of a Judge who has gone on leave before signing the judgment may call for more comment, but even so the convenience of the court and the interest of litigants must prevail. The defect is merely an irregularity. But in truth the difficulty is disposed of by sections 99 and 108, Civil Procedure Code."

That was a civil case. This is a criminal one. But section 537 of the Criminal Procedure Code does much the same thing on the criminal side as sections 99 and 108 do on the civil. The principle underlying them is the same. But even after every allowance is made and every effort taken to avoid undue technicality the question still remains what is a judgment, for it is the "judgment" which decides the case and affects the rights and liberties of the parties; that is the core of the matter and, as the Privy Council say, the whole purpose of these rules is to secure certainty in the ascertainment of what the judgment was. The question assumes more importance than ever in a criminal case because of section 369 of the Criminal Procedure Code which provides that—

1953

Surendra Singh and Others
v.
The State of Uttar Pradesh.

Bose J.

"Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court, by the Letters Patent or other instrument constituting such High Court, no court, when it has signed its judgment, shall alter or review the same except to correct a clerical error."

In our opinion, a judgment within the meaning of these sections is the final decision of the court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest—the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter—can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open court. The exact way in which this is done does not matter. In some courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open court. But however it is done it must be an expression of the mind of the court at the time of delivery. We say this because that is the first judicial act touching the judgment which the court performs after the hearing. Everything else up till then is done out of court and is not intended to be the operative act which sets all the consequences which follow on the judgment

in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. Those are not the judgments either, however heavily and often they may have been signed. The final operative act is that which is formally declared in open court with the intention of making it the operative decision of the court. That is what constitutes the "judgment".

Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of *locus pœnitentiæ*, and indeed last minute alterations sometimes do occur. Therefore, however much a draft judgment may have been signed beforehand, it is nothing but a draft till formally delivered as the judgment of the court. Only then does it crystallise into a full fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in court but he must be in existence as a member of the court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery. But one cannot assume that he would not have changed his mind if he is no longer in a position to do so. A Judge's responsibility is heavy and when a man's life and liberty hang upon his decision nothing can be left to chance or doubt or conjecture; also, a question of public policy is involved. As we have indicated, it is frequently the practice to send a draft, sometimes a signed draft, to a brother Judge who also heard the case. This may be merely for his information, or for consideration and

1953

Surendra Singh and Others
v.
The State of Uttar Pradesh.

Bose J.

criticism. The mere signing of the draft does not necessarily indicate a closed mind. We feel it would be against public policy to leave the door open for an investigation whether a draft sent by a Judge was intended to embody his final and unalterable opinion or was only intended to be a tentative draft sent with an unwritten understanding that he is free to change his mind should fresh light dawn upon him before the delivery of judgment.

Views similar to this were expressed by a Full Bench of the Calcutta High Court consisting of nine Judges in the year 1867 in *Mahomed Akil* v. *Asadunnissa Bibee*(1). In that case, three of the seven Judges who constituted the Bench handed in signed judgments to the Registrar of the court. Before the judgment could be delivered, two of them retired and one died. A Full Bench of nine Judges was convened to consider whether the drafts of those three Judges could be accepted as judgments of the court. Seton-Kerr J., who had heard the case along with them, said :—

"Certainly as far as I can recollect, they appeared to have fully made up their minds on a subject which they had very seriously considered, and on which they had had abundant opportunities of forming a final determination. I am, however, not prepared to say that they might not on further consideration have changed their opinions..." (p. 13).

Despite this, all nine Judges were unanimous in holding that those three opinions could not be regarded as judgments in the formal sense of the term. In our opinion, Jackson J. expressed the law aright in these words :—

"I have however always understood that it was necessary in strict practice that judgments should be delivered and pronounced in open court. Clearly, we are met today *for the first and only time* to give *judgment* in these appeals; and it appears to me, beyond question, that Judges who have died or have retired from the court cannot join in the judgment which is to

(1) 9 W.R. 1 (F.B.)

be delivered today, and express their dissent from it." (p. 5).

Peacock C.J. pointed out at page 30 :—

"The mere arguments and expressions of opinion of individual Judges, who compose a court, are not judgments. A judgment in the eye of the law is the final decision of the whole court. It is not because there are nine Judges that there are nine judgments. When each of the several Judges of whom a simple court is composed separately expresses his opinion when they are all assembled, there is still but one judgment, which is the foundation for one decree. If it were otherwise, and if each of the memoranda sent in on the present occasion were a judgment, there would be nine judgments in one case, some deciding one thing and some another, and each Judge would have to review his own judgment separately, if a review should be applied for."

We do not agree with everything which fell from the learned Chief Justice and the other Judges in that case but, in our opinion, the passages given above embody the true rule and succinctly explain the reasons for it.

As soon as the judgment is delivered, that becomes the operative pronouncement of the court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity in carrying them out it is curable. Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication.

After the judgment has been delivered provision is made for review. One provision is that it can be freely altered or amended or even changed completely without further formality, except notice to the parties and a rehearing on the point of change should that be necessary, provided it has not been signed,

1953

Surendra Singh and Others v. *The State of Uttar Pradesh.*

Bose J.

Another is that after signature a review properly so called would lie in civil cases but none in criminal; but the review, when it lies, is only permitted on very narrow grounds. But in this case the mere fact that a Judge is dead and so cannot review his judgment does not affect the validity of the judgment which has already been delivered and has become effective. For this reason, there is a distinction between judgments which have not been delivered and so have not become operative and those which have. In the former case, the alteration is out of court. It is not a judicial act. It is only part of a process of reaching a final conclusion; also there is no formal public declaration of the Judges' mind in open court and consequently there is no "judgment" which can be acted upon. But after delivery the alteration cannot be made without notice to the parties and the proceedings must take place in open court, and if there is no alteration there is something which is final and conclusive and which can at once be acted upon. The difference is this. In the one case, one cannot know, and it would be against public policy to enquire, whether the draft of a judgment is the final conclusion of the Judge or is only a tentative opinion subject to alteration and change. In the second case, the Judge has publicly declared his mind and cannot therefore change it without notice to the parties and without hearing them afresh when that is necessary; and if there is no change the judgment continues in force. By change we mean an alteration of the decision and not merely the addition or subtraction of part of the reasoning.

Our conclusion is that the judgment which Kidwai J. purported to deliver on 5th January, 1953, was not a valid judgment because the other member of the Bench died before it could be delivered.

The appeal is allowed and the order of the High Court which purports to be its judgment is set aside. As it is no longer possible for the Bench which heard the appeal and the confirmation proceedings to deliver a valid judgment we send the case back to the High

1953

Surendra Singh and Others v. The State of Uttar Pradesh.

Bose J.

Court for re-hearing and delivery of a proper judgment.

1953. November 23. BOSE J.—The order for stay dated the 25th May, 1953, has now expended itself. The death sentence cannot be carried out as there is no valid decision of the appeal and no valid confirmation. The position regarding that is as it was when the appeal was made to the High Court. The second and the third appellants will surrender to their bail as they are now relegated to the position which they occupied when the appeal was filed in the High Court.

Appeal allowed.

Agent for the appellant: *Naunit Lal.*

Agent for the respondent: *C. P. Lal.*

1953

Nov. 18.

NATVARLAL PUNJABHAI AND ANOTHER

v.

DADUBHAI MANUBHAI AND OTHERS.

[MUKHERJEA, VIVIAN BOSE and BHAGWATI JJ.]

Hindu law—Widow—Surrender of estate after third persons have acquired title by adverse possession against widow—Validity—Right of reversioner to recover possession before death of widow—Legal nature of surrender—Power of court to impose conditions on grounds of equity.

Where a Hindu widow surrenders her widow's estate to the reversioners, after a third person has acquired title to the properties by adverse possession against her, the reversioners are entitled to recover possession of the properties from that person immediately as heirs of the last male holder. The person in adverse possession is not entitled to remain in possession till the death of the widow. So far as the legal consequences are concerned there is no material difference in this respect between an adoption and an act of surrender by the widow.

As a surrender by a Hindu widow does not convey any title to the reversioners, but is only a voluntary act of self-effacement by the widow, she can make a valid surrender under Hindu law even after another person has acquired title by adverse possession against her. The reversioners do not take the property subject to the rights created by the widow.

Surrender by the widow and acceptance by the reversioner are not matters of contract. The estate vests in the reversioner by operation of law without any act of acceptance on the part of the reversioner.