

Tilak Singh Vs. the State

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Court : Guwahati

Decided On : Apr-28-1952

Judge : Ram Labhaya, Ag. C.J. and Deka, J.

Appellant : Tilak Singh

Respondent : The State

Prior history : Deka, J. 1. These are two criminal revising one filed by Tilak Singh alias Phasu and the other on behalf of Bhusan Chandra Chetia, Seranedlxin Lodua, and Protap Singh against the order of the Sessions Judge, U.A.D., dated 5.7.1851 in two analogous criminal appeals. All these four petitioners along with four others were trial in the Court of Session by the Assistant Sessions Judge U.A.D. and six of them including the present petitioners were found guilty under Section 395, Panel Code and were c

Judgement :

Deka, J.

1. These are two criminal revising one filed by Tilak Singh alias Phasu and the other on behalf of Bhusan Chandra Chetia, Seranedlxin Lodua, and Protap Singh against the order of the Sessions Judge, U.A.D., dated 5.7.1851 in two analogous criminal appeals. All these four petitioners along with four others were trial in the Court of Session by the Assistant Sessions Judge U.A.D. and six of them including the present petitioners were found guilty under Section 395, Panel Code and were

convicted by the Assistant sessions Judge agreeing with the unanimous underline of the jury and each of the accused was sentenced to three years' rigorous imprisonment. All the six convicted persons appealed to the Sessions Judge and their appeals were dismissed as surfed above and only four of them have moved this Court and rules were issued in each of the two revision cases (criminal Revision No. 98/99 by Tilak Singh and criminal Revision No. 107/11 by Bhusan Chandra Chetia and two others) and they are heard together.

2. The learned Sessions Judge held that there were not sufficient misdirection's in the charge to make it defective and the legal contentions which were raised were considered to be of little sub.stance. I reproduce below the passage from the appellate judgment showing the attitude taken by the petitioners in the Court of the Sessions Judge:

The charge delivered by the learned judge has, been assailed by the learned Advocate for the accused.eggplants on two grounds, viz., (1) that the learned judge's charge with regard to the value of a retracted confession as against a co.accused was not sufficiently clear and explicit, and (2) that the learned judge's discussion of law bearing on the fact of the failure of the Investigating Officer to record the statements of the prosecution witnesses in accordance with the provisions of Sub.Section (3) of Section 161, Criminal P.C., was incomplete and unintelligible to the jury. The leading Advocate for the accused.appellants admitted that otherwise the charge delivered by the learned judge was on the whole fair and elaborate....

The same point have been urged before us on behalf of the petitioners with some modifications and additions which I shall deal with later.

3. The following contentions have been raised by Mr. Ghose on behalf of Tilak Singh alias Phasu (1) that the learned Sessions Judge failed to place before the jury certain relevant fact with regard to the nationality of the dacoits as was recorded in the F.I.R. (2) that it was not placed before the jury by the learned Assistant Sessions Judge that the accused was a man known from before to some of the inmates of the house of Juthalal in whose house the dacoity was committed, (3) that the learned Assistant Sessions Judge failed to give proper direction to the

jury as to the defects in the investigation by the Police for not recording properly the statements of the witnesses under Section 161(3), Criminal P.C. and to what extent the accused were prejudiced thereby and (4) that the learned Assistant Sessions Judge failed to give proper direction as to the effect of the retracted confessional statements made by two of the accused person? Kolia and Protap against other accused persons including Tilak Singh.

4. Mr. J.C. Medhi, appearing on behalf of the other three petitioners has raised two of the identical points in defence of his clients and they ware, (1) that the evidence of the witnesses not being properly recorded by the Police during the investigation, the Assistant Sessions Judge ought to have directed the jury that the testimony of those witnesses should have been treated as unreliable and (2) that the Assistant Sessions Judge failed to give proper direction as to the effect of the retracted confessions both against the maker as well as against the co.accused. He drew our attention to some other points in relation to each of the accused persons whom he represented and I shall deal with those objections while dealing with their respective cases.

5. With regard to Mr. Ghose's first contention, the relevant passage in the F.I.R. is that the inmates of the house of Juthalal Agarwalla reported that while the dacoits were inside the house they were talking in Assamese and some used English words 'Quick, quick' and they (inmates) took them to be Assamese. Mr. Ghose's contention is that his client Tilak Singh is a Punjabi and the inmates of the house being under the impression at the material time that the dacoits were Assamese the jury should have been told about this and that might have led the jury to doubt as to whether his client was a participant in the crime, It appears from the charge that the F.I.R. was placed before the jury but no special stress was laid on this passage as alleged. We do not know what the accused looked like, that is whether he had any distinguishable feature but it appears from the record that the accused knew Assamese and he has not only made his statements, in the Committing Court as well as in the Sessions Court in Assamese but put his signature also in Assamese. It must, therefore, be presumed that the accused could talk in Assamese and if the impression was created by the talk the accused had, it is immaterial whether he looked like a Punjabi or an Assamese. The Ejahar being

placed before the jury in its entirety, we cannot; say that anything material was withheld or that special stress ought to have been laid on this passage. We, therefore, do not consider the omission as pointed by Mr. Ghose to be a material defect in the charge.

6. With regard to his second contention that it was not placed before the jury that the accused was known to the sons of Juthalal or his wife from before, we must hold that Mr. Ghose's contention is not correct. The learned Assistant Sessions Judge took sufficient pains to place before the jury that this accused was known to Kameswar,. Juthalal's brother from before and that Juthalal and the members of his family once travelled in his taxi during night. The learned Judge categorically states that the implication of the evidence is that he (Tilak Singh) must be a known man from before and if ho was really in the gang and if he was really recognized how is it that he was not described by Sitaram before Rameswar that one of them was that taxi owner. We, therefore, cannot say that sufficient direction was not given on the point. The learned Assistant Sessions Judge made it sufficiently clear that the only evidence of identification against these witnesses (sic) was that of the testimony of Sitaram, that his name was not disclosed in the F.I.R. and that it was not safe to convict the accused on the sole testimony of this witness when he could not be confronted with what he stated before the Police. He suggested that the jury had the right to draw adverse inference against prosecution on this account. We, therefore, consider that the directions were quite adequate on this point.

7. With regard to Mr. Ghose's third contention that the learned Assistant Sessions Judge did not give proper directions to the jury on the effect of the non.recording of the statements of the P. Ws. by the Police in the course of investigation as provided under Section 161(3), Criminal P.C., we are inclined to hold that directions on the point by the learned Assistant Sessions Judge were quite adequate. Mr. Ghose mainly relied on Bejoychand v. The State 54 cal. W.N. 447 and Laxman Chandra v. Emperor 52 cal. W.N. 401 in support of his contention 54 cal. W.N. 447 has been decided on the strength of the case reported in 52 Cal. W.N. 401. In both these cases, there was no warning given to the Jury about the effect of the irregularity in recording the evidence of the witnesses by the police

under Section 161(3), Criminal P.C., in what is described as in a boiled form.

8. In *Laxman Chandra v. Emperor* 52 Gal. W.N 401, Chakravarty J., observed as follows:

If a police officer records statements in a boiled form in the face of Section 161(3), Criminal P.C., or deliberately destroys the statements recorded by him, resulting in either case in loss of valuable material to the accused, there can be no doubt that he acts with gross impropriety and may be presumed to have acted from design. In such a case, the prosecution fails to produce material which it was its legal duty to produce for the benefit of the accused and accordingly it lays itself open to a presumption under Section 114, Illus. g, Evidence Act that if the statements made to the police were produced, they would be found to be contrary to the evidence given in Court.

Further down in the same judgment, it is observed:

When the trial is by Jury, the Judge must direct the Jury fully and properly on the bearing of the omission on the credibility of the evidence and on their right to raise an adverse presumption, if they think fit, to do so.

In the same judgment, Roxburgh J., observed as follows:

The question is: what is a Court to do when it learns that records on such statements have been destroyed? It seems to me that all it can do is to consider whether any and what presumption can be made against the prosecution in the circumstances of the particular case.

In *Bejoy Chand v. State* 54 Cal. W.N. 447, Harries C.J. and Bachawat J., endorsed the same view and in the words of Harries C.J.:

if such statements were deliberately destroyed or were recorded in a boiled form in contravention of law, that would be tantamount to withholding of evidence by the prosecution and a presumption might be raised under Section 114, Evidence Act, 1872, that the evidence, if produced, would have gone against the prosecution.

and this view is in conformity with the view expressed in *Laxman Chandra v. Emperor* 52 Cal. W.N. 401. It was held in the case of *Bejoy Chand v. The State* 54 Cal. W.N. 447, that where no reference whatsoever is made to the manner in which these statements were recorded in the charge to the Jury, the charge is defective and that the Jury should have been warned as to the danger of accepting these witnesses in the circumstances as witnesses of truth and should have been told that it was open to them if they thought proper to disbelieve these witnesses on the assumption that their statements if properly recorded would have contradicted their evidence in Court.

9. In the present case, all these warnings were repeated by the learned Assistant Sessions Judge with regard to the recording of the statements of the witnesses in a boiled form and the observations of the Judges of the Calcutta High Court in these two cases were fully carried out. In the bases of all the accused including Tilak Singh, this warning was repeated separately apart from the general rule of law placed before the Jury. We hold, therefore, that this objection has no substance.

10. With regard to Mr. Ghose's fourth contention that the learned Assistant Sessions Judge failed to give proper directions with regard to the retracted confessions by the co.accused, we agree with the learned Sessions Judge in holding that the learned Assistant Sessions Judge gave proper directions inasmuch as he said that a retracted confession though admissible should carry no weight as against the person other than the maker. He farther says that its value against the co.accused is nil and that a retracted confession itself should in no way be used to support a conviction. This contention as well fails. We, therefore, discharge the Rule issued on the petition of Tilak Singh. (Criminal Revision No. 96 of 1951).

11. Two of the contentions raised by Mr. Medhi are identical, with the objections raised by Mr. Ghose, which I have indicated above. They are with respect to the boiled form of statement recorded by the police and the other is with regard to the effect of the retracted confession against the accused persons other than the maker. Mr. Medhi has relied on the Privy Council usage reported in *Pulukun*

Kottaya v. Emperor A.I.R. 1947 P.C. 67. In that case, the copy of the statements recorded under Section 161(3), Criminal P.C., was refused and their Lordships held that the accused were thereby prejudiced in their defence, but in this case, the position is not identical. This decision was considered by the Hon'ble Judges of the Calcutta High Court in Bejoy Chand v. State 54 Cal. W.N. 447 and this Privy Council decision was construed to point out that the failure to comply with the provisions of Section 361, Criminal P.C., might throw very grave doubt upon the evidence of the witnesses and it was a matter which the Court was entitled to consider in dealing with the credibility of these witnesses. In this case, as I have pointed out above, similar observations were made by the learned Assistant Sessions Judge with regard to the omission. Both these two contentions are, therefore, overruled in the light of the observations made with regard to these points in the case of Tilak Singh.

12. Mr. J.C. Medhi contended on behalf of petitioner Protap Singh, that proper directions were not given by the learned Assistant Sessions Judge with regard to the retracted confession, inasmuch as the learned Assistant Sessions Judge omitted to mention when presenting the case of this accused before the jury that the explanation offered by the accused in this behalf was that it was under threat and violence that he made this retracted confession but the record reveals that this contention has no substance because of the fact that the learned Assistant Sessions Judge has observed in the charge to the Jury as follows:

Both these two persons Kola and Protap to whom these confessions are attributed have suited before you that the same were obtained from them by threat and persuasion. They go to the length of saying that police people went and persuaded them with alternate taking while they were in the Jail custody.

13. Mr. Medhi's contention is that a statement made by the accused in writing printed at p. 62 of the Paper Book was not placed before the Jury. As a matter of fact, the passage that I have reproduced above is a substance of the statement contained in that written statement. We cannot, therefore, say that any prejudice was caused even if the aforesaid paper was not read out specifically.

14. In our opinion, the case of the accused was fairly summed up and we cannot say that there were any misdirections with regard to the accused. Mr. Medhi further contended that this accused was known to the members of the family of Juthalal, being a close neighbour and that too has been placed before the Jury and if the Jury believed in the guilt of the accused in spite of all that has been placed before them in favour of the accused, we cannot say that the charge involves any misdirection.

15. With regard to Bhusan Chandra Chetia, Mr. Medhi contended that he was a neighbour of Juthalal and that he had gone to the place of occurrence soon after the dacoity which would only lead one to suppose that he was not guilty. It appears from the record that all these matters were placed before the Jury and there was no material misdirection which Mr. Medhi could point out.

16. With regard to Berajuddin, the contention has been that proper direction has not been given with regard to the retracted confession and that this accused was prejudiced thereby. I have already discussed about this point and find no substance in this contention. It appears that no objection was raised with regard to most of the minor discrepancies bearing on the evidence in the Court of appeal below and we here sitting as a Court of revision would not like to go into those minor details which in our opinion do not vitiate the charge. The main contentions on the points of law have been all decided against the accused persons and this Revision (criminal Revision No. 107 of 1951) must also fail and the Rule is discharged accordingly.

17. The same judgment will cover both the revision cases.

Ram Labhaya, Ag. C.J.

18. I agree.