

Williams Luis Vs. State

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Court : Mumbai

Decided On : Nov-03-1955

Reported in : AIR1956Bom185; 1956CriLJ391

Judge : Chainani and ;Gokhale, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 193; Prevention of Prostitution Act, 1923 - Sections 5 and 6

Appeal No. : Criminal Appeal No. 945 of 1955

Appellant : Williams Luis

Respondent : State

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : B.N. Lalla and ;N.C. Shah, Advs.

Judgement :

Chainani, J.

1. This is an appeal by the accused against his conviction under Section 193, Indian Penal Code and the sentence of three months' rigorous imprisonment and a fine of Rs. 201/- Imposed upon him.

2. The facts of the case briefly are that on 8-1-1955, one Jeanne Mondon was arrested by the Colaba police for an offence under Sections 5 and 6, Prevention of Prostitution Act, 1923. The accused and one Mohiddin Mahomed acted as panches in that case. The case against Jeanne Mondon was tried by Mr. Nasrulla, presidency Magistrate 16th Court, Bombay.

While that case was pending the accused and Mohiddin were arrested on the night of 13/ 14th February on the charge of having assaulted one Luis Jacob. They were detained on the night of 13/14th February at the Colaba Police station. They were produced before the Presidency Magistrate from 26th of February to 14th March.

On the 14th March the Magistrate was requested to discharge the accused as the medical report from the hospital showed that the injury caused to Luis Jacob was simple hurt. In the case against the Jeanne Mondon the accused was examined as a witness on 3rd March. After his cross-examination was over, at the suggestion of the defence the Court put certain questions to him.

In answer to these questions the accused Stated as follows:

'I have never been arrested in any case by police and I was never in custody. I have never entered Courts before'.

The judgment in Jeanne Mondon's case was delivered on 4th March and she was convicted and sentenced to six months' rigorous imprisonment. The judgment of the learned Magistrate Mr. Nasrulla shows that in arriving at his conclusions he relied to a great extent on the evidence of the accused who had acted as a panch in that case.

Subsequently it was brought to the notice of the learned Magistrate that the answers given by the accused that he had never been arrested by the police and that he had never been in custody were false. He, therefore, issued a notice to the accused to show cause why he should not be prosecuted for giving false evidence. After hearing the accused the Magistrate decided to file a complaint against him. This was filed before the learned Chief Presidency Magistrate.

The accused admitted that he had stated in his evidence before Mr. Nasrulla that he had never been in custody and that he had never entered the Court before. He, however, denied that lie had intentionally given false evidence. He stated that he had given the above answers in reply to a question whether he was an accused in any prohibition case.

He relied on a statement in the judgment of Mr. Nasrulla that towards the close of the cross-examination of the accused a vague suggestion was made to him that he was an accused in a prohibition case. This defence of the accused was not accepted by the learned Chief Presidency Magistrate. He came to the conclusion that the accused had intentionally given false evidence. Accordingly he convicted the accused under S 193, Penal Code.

3. Mr. Lulla who appears on behalf of the accused has strenuously urged that the answers given by the accused that he had never been arrested in any case by the police, that he had never been in custody and that he had never entered the Courts before, were in reply to a question put to him whether he had been arrested in a prohibition case.

In his evidence Sub-Inspector Parmer has deposed that a question had also been put to him whether the accused had been arrested in a prohibition case. The notes of his evidence recorded by the learned Magistrate contain the following statement.

'I do not know if there is any prohibition case against William Luis (present accused)'. If, therefore, the accused had also been questioned only with regard to the prohibition case the learned Magistrate in the notes of the evidence of the accused would have recorded that the accused had never been arrested in any prohibition case as he has done in the notes of evidence of Sub-Inspector Parmer. Mr. Lulla has invited our attention to the judgment of the learned Magistrate from which it appears that the question put to accused was whether he had been arrested in a prohibition case. The relevant portion of the judgment is as follows:

'The witness has never come to the Courts and he never had contact with the police in his past life. On every consideration this witness ought to be accepted as

a respectable panch witness. I must say here that a very vague suggestion was made to him towards the close of the cross-examination, namely, that this witness was an accused in a prohibition case.

The witness denied this suggestion. In all fairness to the witness it must be said that suggestion like this could easily be made but it could also easily be proved. The defence could contradict the witness on a material point like this by producing the evidence that he was arrested in a prohibition case but the defence have not been able to do so. In view of that I must accept this statement that he is not in any way connected in a police case'.

4. This extract from the judgment of the learned Magistrate undoubtedly supports Mr. Lulla's argument that the question put to the accused was whether he had been arrested in a prohibition case and we will assume that that was the question which was put to the accused.

The answers given by the accused to this question are, however, very general. His answers are not confined only to prohibition cases but to other cases also; for he has stated that he had not been arrested in any case by the police and had never been in custody before. To emphasise that he was not concerned in any police case he went on to add that he had never entered the Courts before.

The judgment of the learned Magistrate which I have quoted above also shows that this was also the impression which was created on the learned Magistrate by the answers given by the accused; otherwise the Magistrate would not have stated that the witness had never come to the courts and he never had contact with the police in his past life. In view of that I must accept his statement that 'he is not in any way connected in a police case'. Even assuming, therefore, that the question put to the accused was with reference to a prohibition case the answers given by him are false for the accused has stated that he had not been arrested in any case by the police and that he had never been in custody.

There can be no doubt that these answers are false for as I have stated the accused was arrested on the night of 13/14th February and had been released on bail on the 14th February. He was actually on bail at the time when he gave the

above answers.

5. The accused was, therefore, rightly convicted by the learned Magistrate.

6. As regards the sentence it seems to us something more than a coincidence that both the persons who had acted as panchas in the case against Jeanne Mondon were arrested at the same time on the night of 13/14th February on the charge of assaulting one Luis Jacob. Both of them were discharged on the 14th March after the case against the Jeanne Mondon had been decided. At the time when the accused gave false evidence he was, therefore, on bail and It seems that he gave false answers to the questions put to him either under the influence of the police or because he was under the impression that if he gave such evidence he would be able to obtain a discharge in the case which was then pending against him.

In these circumstances we do not think that we should impose severe sentence in this case. Accordingly we reduce the sentence of imprisonment imposed upon the accused to one month's rigorous imprisonment. The order passed by the learned Magistrate imposing a fine of Rs. 201/- on the accused is confirmed. The accused to surrender to his bail.

7. Sentence reduced.

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