

In Re: Gurramkonda Chinnabba

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Court : Andhra Pradesh

Decided On : Jan-10-1958

Reported in : 1958CriLJ850

Judge : K. Subba Rao, C.J. and; Kumarayya, J.

Appellant : In Re: Gurramkonda Chinnabba

Judgement :

K. Subba Rao, C.J.

1. The accused, Gurramkonda Chinnabba, who was convicted by the Sessions Judge, Chittoor, under Section 302, IPC and sentenced to imprisonment for life has preferred this appeal.

2. The prosecution version of the incident is as follows. The accused and the deceased were husband and wife and had four children. After their house in Divitivaripalle was destroyed by fire, the accused, along with the members of his family, migrated to Erlampalle, took on rent the house of P.W. 14 and resided therein. During their stay in that house, the mother of the deceased and a grandchild of the accused died and the deceased for sentimental reasons was pressing her husband to go back to Divitivaripalle.

The accused not only did not like that idea but was contemplating to buy the house of P.W. 14. His attitude led to ill-feelings between the couple and there were frequent quarrels on that account. On the evening of 13-3-1957, the husband and

wife quarrelled in the street but some of the villagers intervened and separated them. Thereafter, the deceased entered her house followed by the accused who bolted the door from inside. The accused beat her with M. O. 1 which resulted in her death.

The accused absconded and he was arrested on 16-3-1957, at about 10 P.m. The learned Judge accepted the evidence of the 13 year old young son of the accused, P.W. 3, given by him in the committing Magistrate's Court which he had marked as substantive evidence under Section 288, Cr.PC and that of P.W. 2 a neighbour of the accused, and held that the prosecution had brought home the guilt to the accused.

3. learned Counsel for the accused contends that the learned Judge went wrong, in the circumstances of the case, in accepting the evidence of P.W. 3 given in the committing Magistrate's Court as substantive evidence and that, if that evidence be excluded, there is no other acceptable evidence on the basis of which the accused can be convicted. He further argues that the confessional statement of the accused, Ex. P-3, records the true state of facts and that, if that is accepted, it should be held that the accused committed the act in self-defence.

4. The first question, therefore, is whether the learned Judge was justified in accepting the evidence of P. W-3 given in the committing Magistrate's Court as substantive evidence. P. W-3 is 13 years old. He is son of the accused. Ex. P-2 is the evidence given by this witness before the committing Magistrate. After narrating the circumstances under which his parents were quarrelling and after stating that his mother went inside the house followed by his father, who bolted the door from inside, he described what had taken place inside the house thus:

A tin lamp was burning. There was light inside the house. The house is one room. My father was beating my mother. He was beating her with something that was black and stouter than the size of hand. I cannot say what it was. My mother shouted 'I am dying. Then a blow was dealt on my mother's head. Thereafter, another blow was given on her cheek. My mother fell down. My father opened the door and came out. I questioned him 'why, father, you are going away after beating?' My father went away without talking.

He stated that he saw the entire incident by peeping inside the house through the caves. If this evidence is accepted, it would establish that the accused beat the deceased with a black object and that she met her end on account of the beating given to her. Before the Sessions Judge, this witness went back on what he had stated before the Committing Magistrate. In-deed, he denied the entire incident.

He would say that, on 13th March, 1957, he went to the shandy and returned after lamp lighting time when he found his mother dead, that he did not see the dead body of his mother, that he did not see his father in the house, that the police did not examine him at the inquest and that he did not give a statement before the Magistrate. It is therefore, clear that this witness, obviously to save the life of his father, disowned the entire version given by him at the earlier stages of the proceedings. At the request of the Public Prosecutor, this witness was treated as hostile and the Public Prosecutor was given permission to cross-examine him.

During the cross-examination, the Public Prosecutor put him some questions with reference to the earlier statements made by him under Section 164, Cr.PC and presumably also with reference to the evidence given by him before the committing Magistrate. But it does not appear that either the entire evidence given by him before the Committing Magistrate or the relevant passage therein was put to him specifically with a view to contradict him. The tenor of the cross-examination is in general terms.

After practically finishing the cross-examination, the evidence of this witness recorded by the stationary Sub-Magistrate, Chittoor, was read out in extenso. The Judge, having satisfied himself that the witness was not telling the truth, treated the evidence as evidence in the case under the provisions of S, 288, Cr.PC. The short question is whether, in the aforesaid circumstances, the learned Judge was justified in treating the evidence as substantive evidence. Section 288, Cr.PC reads:

The evidence of a witness duly recorded in the presence of the accused under Chapter XVIII may, in the discretion of the presiding judge, if such witness is produced and examined, be treated as evidence in the case for all purposes subject to the provisions of the Indian Evidence Act, 1872.

5. The object of the section is to confer a power on the Judge to treat the evidence given by a witness before a Magistrate as substantive evidence, if he is satisfied that the evidence given before the Magistrate is true and that given before him is not true.

6. Two judgments of the Supreme Court have given an authoritative interpretation to the provisions of this section. In *Tara Singh v. The State*, : [1951]2SCR729 , two of the three eye-witnesses, whose depositions before the Committing Magistrate were brought on the sessions record under Section 288, Cr.PC were not confronted with their former statements in the manner required by Section 145 of the Evidence Act. All that happened was that they were asked something about their previous statements and they replied that they were made under coercion. After referring to the provisions of Section 145 of the Evidence Act, the Supreme Court pointed out that

one of the main purposes of using the previous statements was to contradict and displace the evidence given before the Sessions Court because until that evidence was contradicted and displaced, there was no room in this case for permitting the previous statements to be brought on record and used under Section 288.

After adverting to the conflicting views in the applicability of the provisions of Section 145 of the Evidence Act to a case covered by Section 288, Cr, P.C. Bose, J., who delivered the judgment of the Court expressed his view thus at page 526:

I see no reason why Section 145 of the Evidence Act should be excluded when Section 288 states that] the previous statements are to be 'subject to the provisions of the Indian Evidence Act. Section 145 falls fairly and squarely within His plain meaning of these words... I hold that the evidence in the Committal Court cannot be used in the Sessions Court; unless the witness is confronted with his previous statement as required by Section 145 of the Evidence Act.

Of course, the witness can be cross-examined about the previous statement and that cross-examination can be used to destroy his testimony in the Sessions Court. If that serves the purpose of the prosecution, then nothing more is required, but if the prosecution, wishes to go further and use the previous testimony to the

contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. ' Then only can the matter be brought in as substantive evidence under Section 288.

7. The Supreme Court again elucidated and clarified in *Bhagawan Singh v. State of Punjab*, : 1952 CriLJ1131 , the scope of their earlier decision in : [1951]2SCR729 . There, the distinction between the different ways in which a witness' testimony can be shifted and examined are pointed out. The chief-examination of a witness may be corroborated by as earlier statement made by the witness before the committing Magistrate in which case the evidence given in the chief-examination would be accepted as substantive evidence.

The earlier statement could also be used for contradicting the version given in the cross-examination in which case also the evidence in the chief-examination would be substantive evidence. But the third alternative, with which we are now concerned, is using the previous evidence as substantive evidence. This mode would have to be resorted to in a case where the witness is hostile from the start. Dealing with such a situation, their Lordships observed at page 821 thus:

We turn next to *Jagir Singh*, P.W. 4. In his case there was no choice. He was hostile from the start and in his case our observations in the ruling just referred to apply in full. But on an examination of his evidence we find that the formalities prescribed by Section 145 were complied with.

His cross-examination in contrast to *Jit Singh's* where such a procedure was not necessary shows that every circumstance intended to be used as contradiction was put to him point by point and passage by passage. That was conceded, but it was argued that this; was done without drawing the witness's attention to the parts of the writing which were to be used for the purpose of contradiction.

We are by no means satisfied that that is the case because at least one of the passages is reproduced in inverted commas and so must have been read out from the statement. But that apart, immediately after the witness had been questioned about each separate fact point by point, whole statement was read out to him and

he admitted that he had made it in the committing Court.

Now this procedure may be open to objection when the previous statement is a long one and only one or two small passages in it are used for contradiction that may, in a given case, confuse a witness and not be a fair method of affording him an opportunity to explain but in the present case the previous statement is a short one and the witness was questioned about every material passage in it point by point.

Accordingly, the procedure adopted here was in substantial compliance with what Section 145 requires. There can be no hard and fast rule. All that is required is that the witness must be treated fairly and be afforded a reasonable opportunity of explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner.

8. The above passage illustrates the manner in which the provisions of Section 288, Cr.PC can be legitimately invoked in a particular case. Emphasis is laid on the substance rather than on the form. What is necessary is that the previous statement or parts of it, which are used to contradict a witness, must be fairly put to him thereby giving him a reasonable opportunity to explain the contradictions.

In that case, every circumstance intended to be used as contradiction was put to the witness point by point and passage by passage, though it does not appear that the witness's attention was drawn to every part of the writing, and after every point was put to him passage by passage, the whole statement was read over to him. All the witnesses admitted that he made that statement. It is, therefore, manifest that, in the case before the Supreme Court, the relevant parts of the whole statement were fairly brought to the notice of the witness, which gave him a reasonable opportunity to explain the contradictions.

9. The combined effect of the aforesaid two judgments may be stated briefly thus. Section 288, Cr.PC empowers a Sessions Judge to use as substantive evidence the evidence given by a witness in the committing Magistrate's Court, if true and what he is deposing before him is not true. He cannot do so unless the present evidence is contradicted and displaced by the earlier statement.

Section 145 of the Evidence Act lays down the procedure by which a witness may be contradicted by the previous statements made by him in writing or reduced to writing. Under that section, if it is intended to cross-examine him, it may be done without such writing being shown to him but if it is intended to contradict¹ him by the writing, his attention before the writing can be proved, should be called to those parts of it which are to be used for the purpose of contradicting him.

It is, therefore, necessary that parts of the writing should be put to the witness for contradicting him with a view to displace the present evidence. It is a question of fact in each case whether the procedure followed is in substantial compliance with what Section 145 of the Evidence Act requires. The test is to ascertain whether the witness is treated fairly and is afforded a reasonable opportunity of, explaining the contradictions after his attention has been drawn to them in a fair and reasonable manner.

10. Can it be said that, in the present case, the attention of P.W. 3 was called fairly to the contradictions in his previous statement in such a manner as to afford a fair and reasonable opportunity to explain them? The witness is a young boy of 13 years. The deposition does not disclose that any part of his earlier statement was specifically put to him.

He was cross-examined generally on his previous statement. After the cross-examination was over, the entire statement made by him before the committing Magistrate was read over to the Court presumably to enable it to exercise its discretion under Section 288, Cr.PC. In the circumstances of this case, we cannot hold that the provisions of Section 145 of Evidence Act have been substantially complied with. If so, it follows that the learned Judge was not entitled to treat the evidence of the witness before the committing Magistrate as substantive evidence in the case.

11. If the evidence of P.W. 3 is excluded, the only evidence that remains to be considered is that of P.W. 2. P.W. 2 is not an eye-witness. Her evidence to put it at its best in favour of the prosecution, is only corroborative of some of the facts deposed to by P.W. 3. If P.W. 3's evidence is excluded and even if the entire evidence of P.W. 2 is accepted, it is consistent with the confessional statement

made by the accused.

Though this witness speaks to the facts that she heard sound of beating from inside the house, that P.W. 3 got up the wall with his leg in a niche and peeped inside, that after he got up the wall, she heard the sound of another beating, that she heard Munemma's shout that she was dying, that the accused opened the door, came out and went away and that) when she and P.W. 3 went in, they saw Munemma speechless with a bleeding head injury, she did not know what really happened between the husband and wife before she was beaten by her husband. That omission is supplied by the confession made by the accused before the Magistrate Ex. P-3. The accused therein gives in minute detail the circumstances that caused enstrangement between him and his wife and which finally led to the assault on her. What happened within the closed doors was described by him thus:

She took out the first pot from out of the row of pots taking the sum of Rs. 11- and a saree kept in a pot in the row. I questioned her saying 'where are you going'. I caught hold of the saree in my wife's hand. I pulled the saree. Leaving the saree, my wife caught hold of my testes and pulled. I fell down. My wife continued pulling my testes. In falling on the ground, I stretched my hand.

I felt a wooden hammer. As my wife was going, I dealt two blows with the hammer on her left ear. My wife fell down and was abusing me. I got up and went away. My son asked me in the street saying 'have you killed?' I said you better hear her. She is abusing' and went away. I went to the reserve forest.

12. The quarrels between the husband and the wife were not such that would ordinarily afford any motive for him to kill her. The version given by him appears to be natural and, in the absence of any other acceptable evidence, there is no reason to reject it. In the circumstances in which the accused was placed, we must hold that he did not exceed the limits of self-defence.

13. In the result, we set aside the conviction of the accused by the Sessions Judge and the sentence awarded to him and direct him to be set at liberty. The appeal is allowed.

