

The Public Prosecutor Vs. M. Rangareddy and ors.

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Court : Andhra Pradesh

Decided On : Apr-18-1956

Reported in : 1957CriLJ623

Judge : Umamaheshwaram, J.

Appellant : The Public Prosecutor

Respondent : M. Rangareddy and ors.

Judgement :

Umamaheshwaram, J.

1. This is an appeal filed by the State against the order of acquittal of accused 1, 2 and 4 in C. C. No. 1854/52 on the file of the Stationary Sub Magistrate, Allagadda. The case of the Prosecution is that accused 1 to 3 were carrying 15 tins of arrack in a car M.D.U. 184 belonging to the 4th accused. At about 2.45 a.m. on 12-9-52, the car was stopped by the prohibition Sub-inspector, Sirvel, examined as P. W. 1. Charges framed against the accused were under Sections 4(1)(a) and 12 of the Madras Prohibition Act. The Stationary Sub Magistrate did not accept the evidence of the prosecution witnesses and acquitted the accused. The Public Prosecutor of Andhra has consequently preferred the appeal.

2. The case of the prosecution rests upon the oral evidence of P. Ws. 1 to 4 and Ex. B-1, a statement recording the confessions of accused 1 to 3 P. W. 3 who

signed Ex. P-1 stated that by the-time he went to the place where the car was stopped, he found that the tins were all on the road. His evidence is that he did not see the tins being : seized in the car. He also stated that he did not know the contents of Ex. P-1 and that he signed it after the panchanama was written. His evidence is therefore of no assistance to the prosecution. P. W. 1 is the prohibition Sub Inspector and P. W. 4 is the Police Sub-Inspector.

Their evidence was not accepted by the Sub-Magistrate as being interested. I see no reason to differ from his conclusion. So, the only question is, whether the evidence of P. W. 2 is sufficient to convict the accused of the offences charged. It is elicited in the evidence of P. W. 4 that P. Ws. 2 and 3 are stock panchayatdars. P. W. 2 also admits that the prohibition people generally call him and that he would sign Panchanamas. It is in evidence that there are a number of independent persons residing near the locality. Their signatures were not at all obtained. In the cross examination, P. W. 2 stated that P. W. 4 also signed Ex. P-1.

In the re-examination, he no doubt corrected himself and stated that the signature of P. W. 4 was not obtained. Similarly, he stated in the cross-examination that the signatures of accused 1 to 3 were obtained in Ex. P-1. Having regard to the discrepancies in his evidence, the court below refused to accept his evidence. Having gone through his evidence, I am not prepared to place any reliance and reverse the judgment of the court below. The Magistrate accepted the evidence of the Khaji Sab, examined as D. W. 1. He deposed that he was brought to the place at 4 a.m. and that by the time he went there the tins were already on the road.

It is brought out in the evidence that a lorry passed along the road and that the car of one Kondayya also passed along that road. It was suggested in the course of the cross-examination that the tins might have been recovered from the lorry or Kondayya's car, and kept on road. In the absence of clinching evidence that the tins were in the car of the 4th accused, I am unable to hold that the accused are guilty of the offences charged.

3. Great reliance was placed on Ex. P-1 containing the statements of accused 1 to 3. The Court below held that the document was inadmissible on the ground that the prohibition officer was a police officer and that the statements recorded by him

were inadmissible. The view of the magistrate is no doubt wrong, having regard to the decision of Mr. Justice Somasundaram in *Srinivasa Narasimha Bayanker v. State* 1954 Mad WN 659(A). The learned Judge held that a prohibition officer is not a police officer either within the meaning of Section 162 Cr. P. C. or within the meaning of Section 25 Evidence Act and that a statement by the accused to the prohibition officer is not hit at by those sections. At page 660 are the relevant observations and they are as follows:

The Madras Prohibition Act is a self contained Act prescribing its own procedure; and only by virtue of certain provisions, some of the provisions of the Criminal Procedure Code are made applicable. There is no provision in the Madras Prohibition Act which makes 'Chapter XIV of the Cr. P. C, applicable to investigations under the Madras Prohibition Act, Section 162 Cr. P. C. cannot, therefore, be invoked as a bar to the statement made by the accused to a prohibition officer.

I have already pointed out how by Section 53(a) of the M. P. Act, Prohibition Officer will be a police officer only within the meaning of Section 125 of the Evidence Act, and not within the meaning of Sections 25, 26 and 27 of the Evidence Act. In these circumstances, I must hold that the prohibition officer is not a police officer either within the meaning of Section 162 Cr. P. C. or within the meaning of Section 25 of the Evidence Act.

Following these observations, I hold that the Court below was wrong in holding that the statement was inadmissible.

4. The next question is, what is the value to be attached to the statement having regard to the evidence on record. It is admitted that both the prohibition Sub-Inspector and the Police Sub-Inspector stopped the car, asked accused 1 to 3 to get down from the car and took the statement Ex. P-1. Even assuming that the accused were not arrested by the Police Sub Inspector and were not in the custody of the Sub Inspector, I am prepared to hold that the confession was a voluntary one. I am therefore not prepared to place any reliance on the statements contained therein. As I am not impressed with the evidence of the prosecution witnesses and not prepared to place any reliance upon Ex. P-1, I confirm the

judgment of the court below.

5. Sri K. Subrahmanya Reddi the learned advocate for the 4th accused contended that there is absolutely no evidence to connect his client with the offences. It was fairly conceded by the learned Public Prosecutor that, apart from Ex. P-1, there is no direct evidence connecting the 4th accused with the offences. Accused 1 to 5 stated in Ex. P-1 that the car belonged to the 4th accused and that the 4th accused asked them to get the arrack in his car. In *Kashmira Singh v. State of Madhya Pradesh* : 1952 CriLJ839 (B), Bose, J. held that the confession of an accused person is not evidence in the ordinary sense of the term as against a co-accused, Reference was made to the decision of the Privy Council in *Bhuboni Sahu v. The King* 76 Ind App 147 : AIR 1949 PC 257(C). Reliance was placed on the observations in *Bhuboni Sahu v. the King* (C) at page 155(of Ind App) : (page 260 of AIR) which are in the following terms:

It does not indeed come within the definition of 'evidence' contained in Section 3, Evidence Act. It is not required to be given on oath, nor in the presence of the accused, and it cannot be tested by the cross-examination...it is obviously evidence of a very weak type....It is a much weaker type of evidence than the evidence of an approver, which is not subject to any of those infirmities.

This decision was recently followed by the Supreme Court in *Nathu v. State of Uttar Pradesh* : 1956 CriLJ152 (D). Venkatarama Ayyar, J. observed as follows:

The question how far the confession of co-accused could be treated as evidence against an accused was considered elaborately in *Kashmira Singh v. State of Madhya Pradesh* (B) and it was held there that such statements, were not evidence as defined in Section 3 of the Evidence Act, that no conviction could be founded 'thereon, but that if there was other evidence on which a conviction could be based, they could be referred to as lending assurance to that conclusion and for fortifying it.

6. The decision of the Madras High Court in *Reg v. Ambigara Hulagu* ILR 1 Mad 163(E) is also to the same effect. It was held that a conviction based solely on the evidence of a co-prisoner is bad in law. No doubt the confession is admissible

under Section 30 of the Evidence Act; but, as pointed out by the Supreme Court in *Kashmira Singh v. State of Madhya Pradesh (B)* the evidence is of a very weak type. As already pointed out, the confession does not appear to have been voluntarily made and it cannot be the basis for convicting the 4th accused. I see no ground for interference and in the circumstances, the appeal is dismissed.

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