

**Balbir Singh Vs. State**

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**Court :** Allahabad

**Decided On :** Dec-09-1975

**Reported in :** 1976CriLJ1784

**Judge :** O.P. Trivedi, J.

**Appellant :** Balbir Singh

**Respondent :** State

**Judgement :**

ORDER

**O.P. Trivedi, J.**

1. This Criminal reference has been made by the Sessions Judge, Agra, recommending that the order of the III Assistant Sessions Judge, Agra, dated 3-12-1973 directing the filing of a criminal complaint against Balbir Singh for perjury may be quashed.

2. The material facts leading to this reference are these; There was a criminal trial before the Assistant Sessions Judge for commission of dacoity in the house of Padum Singh, father of Balbir Singh, on the night between 21st and 22nd September, 1971. Chandra Bhan was one of the accused persons in this case. According to the prosecution Chandra Bhan was identified by Balbir Singh amongst other witnesses. An identification parade was held in which Balbir Singh

recognised Chandra Bhan and made a statement before the Committing Magistrate to the effect that he did not know Chandra Bhan from before.

This evidence was repeated by him when he was reproduced at the trial before the Assistant Sessions Judge. But he admitted in cross-examination that he knew Chandra Bhan from before and that his statement before the Committing Magistrate that he did not know him from before was wrong and his subsequent statement in the court of Session was correct. On the basis of this statement the Assistant Sessions Judge held that the earlier statement of Balbir Singh before the Committing Magistrate was false; that he had perjured himself and directed under Section 479-A of the Code of Criminal Procedure that a complaint for making a perjured statement before the Committing Magistrate should be lodged against him. Balbir Singh filed a revision against this order before the Sessions Judge who has recommended that the order of the Assistant Sessions Judge may be quashed.

3. I have heard Sri N. C. Upadhyaya for the applicant and Sri K. C. Saxena for the State. Section 479-A of the Code of Criminal Procedure provides that

When any Civil, Revenue or Criminal Court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which appears to have been committed by him, the Court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefor and may, if it so thinks fit, make a complaint thereof in writing.

The requirement of Section 479-A of the Code of Criminal Procedure is, therefore, two-fold; firstly, the Court must record its opinion on the question as to whether a witness has intentionally given false evidence or has intentionally fabricated false evidence for the purpose of being used and, secondly, it must also identify and determine the stage of the judicial proceeding in which the witness has

intentionally given false evidence or intentionally fabricated false evidence. This becomes necessary because Section 479-A uses the words 'in any stage of the judicial proceeding'. When Section 479-A requires the Court to record an opinion on the question whether the witness has intentionally given false evidence it clearly implies that it must be a judicial opinion which means that the opinion must be based on judicial material before the Court. From this it follows clearly that the Court cannot proceed under Section 479-A against a witness merely on the statement of the witness to the effect that 'he made a false statement. Witnesses in this country are often times won over and it is necessary for the Court to determine judicially whether the statement of the witness was the result of blandishment, cajolery or coercion.

It is not unoften that a witness makes a truthful statement before the Committing Magistrate, but he is subsequently won over by the accused and prevaricates that statement and states in the court of Session that his earlier statement before the Magistrate was wrong. Such witnesses are frequently declared by the prosecution hostile. It becomes necessary for the Court therefore, in every case to decide judicially whether the statement made by such a witness before the court of Session was false or whether his statement made earlier before the Magistrate was false. In the present case, I am of the opinion that the Assistant Sessions Judge did not record a judicial opinion of the question whether Balbir Singh had given false statement before the Committing Magistrate. He seems to have found that his earlier statement was perjured merely because he declared it to be so in the trial court. Apart from this it was necessary for the Assistant Sessions Judge to determine definitely that the statement made by Balbir Singh at the trial to the effect that Chandra Bhan was known to him from before was true. A finding on this point must obviously be based on other evidence and surrounding circumstances. I notice that the Assistant Sessions Judge did not record a definite finding of this nature.

It is noteworthy that the prosecution had declared Balbir Singh hostile after he had made a statement in cross-examination that Chandra Bhan was known to him from before. The Assistant Sessions Judge did not give any satisfactory and convincing reason for rejecting this plea of the prosecution. It may well be, as

appears to have been insinuated by the prosecution, that Balbir Singh had been won over by Chandra Bhan at the trial and, therefore, described his earlier statement before the Committing Magistrate as wrong in order to help Chandra Bhan. If the prosecution case that Balbir Singh had turned hostile were to be accepted, and there is no cogent reason for not doing so, then one cannot definitely say that the earlier statement of Balbir Singh before the Committing Magistrate was necessarily false. It may well be, as the prosecution themselves maintained, that the statement made by Balbir Singh at the trial was false and the earlier statement made by him before the Committing Magistrate was truthful. When a witness makes contrary statements at different stages he is clearly a witness on whom no reliance can be safely placed and it is for this reason that the Courts are required by Section 479-A of the Code of Criminal Procedure to record a judicial finding on the question whether the witness has made a false statement and the Court must not proceed on the statement of the witness alone. In the present case, I am not satisfied that the statement made by Balbir Singh before the Committing Magistrate was false and the statement made by him subsequently in cross examination at the trial was not false. In a situation of this kind it would not be expedient in the interest of justice that there should be a prosecution.

4. I accept the reference, although for different reasons, and quash the order of the Assistant Sessions Judge dated 3-12-1973 passed against Balbir Singh under Section 479-A of the Code of Criminal Procedure.

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