

Vyas Tewari Vs. State

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Court : Allahabad

Decided On : Mar-12-1973

Reported in : 1973CriLJ1420

Judge : B.D. Gupta, J.

Appellant : Vyas Tewari

Respondent : State

Judgement :

ORDER

B.D. Gupta, J.

1. This is an application in revision by one Vyas Tewari who' has been convicted for the offence punishable under Section 3 of the Railway Property (Unlawful Possession) Act, 1966. The sentence awarded is fine in a sum of Rs. 1,500/-. Having heard learned Counsel for the parties and having sera tinised the material before me, I find myself unable to maintain the conviction of the applicant.

2. The applicant was employed as a Pump Fitter in the electric shop of the Loco Workshop of the North-Eastern Railway at Gorakhpur. The charge against the applicant was that on the 1st October. 1969, at about 1-30 p.m.. when the applicant was coming out of the workshop through a gate, not meant for the purpose, suspicion of Paras Ram (P-W. 2). a Guard at the date, was aroused and

the applicant's person was searched as a result whereof property belonging to the railway consisting of a large number of pieces of brass having a total weight of about 10 kgs. were found in or about the underwear the applicant was wearing.

3. The applicant pleaded not guilty and alleged false prosecution due to enmity. In his statement under Section 342. Cr.PC he alleged that P.W. 2 Paras Ram had enmity with him and had got him prosecuted and the witnesses had given, false evidence as a result of pressure brought upon them by the Railway Protection Force. The evidence at the trial bearing on the factual question about the alleged recovery consisted of statements made by P.W. 2 Paras Ram. P.W. 3 Prem Chand. P.W. 4 Vish-wanath Singh and P.W, 7 Alakh Deo Singh. The case was investigated by Sri R. K. Nandi who was Gate Sergeant in the Workshop. The said Sri Nandi was examined as the first prosecution witness at the trial. He deposed that during investigation he had examined the witnesses examined at the trial, had recorded their statements in writing and had also obtained the signatures of the witnesses at the end of their statements. In regard to the witnesses mentioned earlier the position is that, except for Paras Ram P.W. 2, the attention, of each of the other three witnesses, viz.. Prem Chand P.W. 3. Vishwanath Singh P.W. 4 and Alakh Deo Singh P.W. 7 was, during examination-in-chief itself, drawn to the fact that they had made statements before Sri Nandi who had recorded those statements in writing, and their signature had been obtained on those statements. The principal contention raised on behalf of the applicant is that the procedure that obtained during investigation of the matter by Sri R. K. Nandi P-W. 1 was not authorised by law and that the evidence given by the witnesses could not be safely acted upon as most of them, if not all, appear to have been put under the influence that since they had made certain signed statements to the investigating officer, they were bound to repeat the same at the trial, This conten-, tion appears to be well founded.

4. It has been held by this Court in the case *Durga Prasad v. State*. 1971 All WR (HC) 175 : (1971 Cri LJ 1582) that enquiry proceedings held by an officer of the Eailway Protection Force were covered by the provisions laid down in Section 162, Cr.PC It is not in controversy that the obtaining of signatures of the witnesses on the record of statements made by them was not authorised by law. That by itself

would not however be sufficient to justify rejection of their evidence at the trial unless the record indicated that the witnesses were put under threat, veiled or otherwise, that it would be dangerous for them to make statements different from what stood recorded in the statements signed by them during investigation. In the present case, I have no doubt that the prosecution adopted a procedure which makes it manifest that the prosecution witnesses were put under such threat. The investigating officer who is normally examined as the last witness was examined as a first witness in this case. In the course of his deposition he made it clear that he had recorded the statements of the witnesses and had obtained their signatures on those statements. When the witnesses were examined, the attention of each one of them, except Paras Ram Chaudhary P.W- 2. was drawn, in the course of examination-in-chief itself, to the fact that their statements during investigation had been signed by them. This leaves little room for doubt that in the circumstances the statements of those witnesses could not be safely relied upon. I may mention in this connection that I am inclined to agree with the views expressed by a Division Bench of the Madras High Court in the case of P. Siraj Uddin v. Government of Madras : AIR1968 Mad117 that in a case like the present where the witnesses appear to have been put under influence of the fact that since they had given a signed statement to the police, they were bound to repeat the same at the trial, the evidence given by those witnesses was bound to be seriously impaired. For the reasons given above, I am not inclined to place any reliance on statements made by Prem Chand P.W. 3 Vishwanath Singh P.W. 4 and Alakh Deo P.W. 7.

5. Turning to the statement of Paras. Ram Chaudhary P.W. 2, suffice it to say that, apart from the allegations of enmity set forward by the applicant, the statement made by Paras Ram Chaudhary stands poorly corroborated after the evidence given by the other witnesses is excluded from consideration. I am of opinion that for the reasons given above the finding of conviction in the present case suffers from impropriety.

6. Accordingly, this revision is allowed, the conviction of the applicant, as also the sentence awarded to him. are set aside and the applicant is acquitted of the charge on which he was tried.

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