

Kharaiti Vs. Emperor

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Court : Allahabad

Decided On : Jul-21-1933

Reported in : AIR1933All665

Appellant : Kharaiti

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. The applicant, Kharaiti, has been convicted by the Assistant Sessions Judge of Moradabad of an offence under Section 366, Penal Code, and sentenced to three years' rigorous imprisonment. The conviction and sentence have been upheld by the learned Sessions Judge. The present application is made on the ground that both Courts have convicted the present applicant --who was put on his trial with several others--on the strength of a statement made by Mt. Naziran to the Sub-Inspector of the police station in Delhi, whereas it is argued that the statement was inadmissible under Section 162, Criminal P.C. No objection appears to have been taken to the admission of the statement in the trial Court. It was preferred in evidence by the prosecution and it was also used on behalf of the defence in order to shake the testimony of the witness by showing that there were discrepancies between her statement made in Court and the statement made to the police.

2. It appears that the case for the prosecution was that the girl was taken away from her husband's place in the Moradabad District and that some four months later she was seen with Jahana (one of the persons convicted in this case) in Delhi in circumstances that aroused the suspicion of a constable, who took both of them to the thana and made a report. After receiving the report of the constable the Sub-Inspector recorded the statement of the girl. It was this statement that was afterwards produced in Court to corroborate the testimony of the girl. The question of admissibility of the statement was raised in the lower appellate Court, but the learned Judge, after discussing the matter at some length, came to the conclusion that as the statement was made to a police officer at Delhi who:

had no business to investigate an offence, of the commission of which a report has been made long before at Amroha and which was therefore liable to be investigated by the police there.

3. Section 162, Cr. P.C, would not exclude it from evidence. Section 162 provides:

No statement made by any person to a police officer in the course of an investigation under this chapter shall... be used for any purpose save as hereinafter provided at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

4. An 'investigation' has been defined in para. 4 (1), Cr.P.C, as including:

all proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

5. It can hardly be denied that in recording the statement of the girl and the statement of the constable, the Sub-Inspector was proceeding to collect evidence, but the Sessions Judge has remarked that he cannot have been investigating in the present case because he had no jurisdiction to do so. It has been pointed out however that under Section 156(1), Criminal P.C:

An officer in charge of a police station may...investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such

station would have power to inquire into or try under the provisions of Oh. 15 relating to the place of inquiry or trial,

and turning to Ch. 15, we find that in Clause (4) of Section 181:

the offence of kidnapping or abduction may be inquired into or tried by a Court within the local limits of whose jurisdiction the person kidnapped or abducted was kidnapped or abducted or was conveyed or concealed or detained.

6. The Court at Delhi could therefore have enquired into or tried the case, and the Sub-Inspector in charge of the police station at Delhi could have investigated the case, and consequently it is not correct to say that he had no jurisdiction to investigate the case, or that his proceedings cannot have been an investigation because he had no jurisdiction. I am therefore decidedly of opinion that this statement was not admissible in evidence. The next argument of Mr. S.N. Seth is that the trial Court has made it clear 'that if the statement of the girl in Court had not been corroborated by her statement made to the police, the applicant, at any rate, could not have been convicted. The trial Court after reviewing the evidence for the prosecution remarked:

This oral evidence would not by itself have sufficed to prove the case for the prosecution but to my mind a very strong and reliable piece of evidence is the statement of Mt. Nazar Bi herself which she made to the police at New Delhi in October 1932 when she was arrested.

7. The lower appellate Court has remarked:

The trial Judge had therefore no option but to discard almost the whole of the prosecution evidence as affording sufficient foundation for holding any of the accused other than Jahana guilty of the offence,

and it was only because the lower appellate Court felt justified in admitting the statement recorded by the police and in relying on it that it was able to maintain the conviction. The result is that the application must be allowed and I therefore set aside the order of conviction and sentence passed by the Sessions Judge of Moradabad and direct that the applicant be acquitted, He is on bail and his bail

bonds and sureties may be discharged.

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