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State Vs. Dhanna Sewa

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Court : Madhya Pradesh

Decided On : Jul-16-1958

Reported in : AIR1959MP35; 1959CriLJ197

Judge : V.R. Newaskar and ;T.C. Shrivastava, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 236; Indian Penal Code (IPC), 1860 - Sections 193

Appeal No. : Criminal Appeal No. 56 of 1955

Appellant : State

Respondent : Dhanna Sewa

Advocate for Def. : Amarnath Segal, Adv.

Advocate for Pet/Ap. : P.R. Sharma, Adv.

Disposition : Appeal allowed

Judgement :

1. This is an appeal filed by the State Government under Section 417, Criminal Procedure Code, against the order of the Additional District Magistrate, Ujjain, dated 16-12-1954 by which the respondent Dhanna was acquitted of a charge under Section 193, I.P.C.

2. The respondent had given evidence in Criminal Case No. 8 of 1952 which was pending before the Sub-Divisional Magistrate, Mahidpur. He stated on 21-7-1952 as follows :

'Then it was decided to purchase two she-buffaloes and one calf for Rs. 200/-. Then Bihari brought Rs. 200/- from Nathu who is Patel of the village andtook the two she-buffaloes and the calf from the accused.'

On 24-4-1953 he stated as follows :

'No transaction of sale of any she-buffalo between Bihari Maharaj and the accused took place in my presence. Nor was any amount paid.' The charge framed under Section 193, I.P.C. was in the alternative under Section 236, Criminal Procedure Code that he made these two statements, one of which must necessarily be false.

3. The Additional District Magistrate who tried the case took the view that as the contradictory statements were made during the course of the same deposition, the respondent could not be charged in the alternative on the ground that one of the statements was false and could not be convicted in the absence of proof regarding the falsity of one of the two statements,

4. The fact that the respondent made these two statements during the course of a judicial proceeding is not in dispute. The only question which arises for determination in this appeal is, whether the respondent could not be convicted under Section 193, I.P.C. by reason of the fact that the two contradictory statements appear in the same deposition.

5. The question arose for decision before a Full Bench of the Calcutta High Court as early as 1884 in Habibullah v. Queen Empress, ILR 10 Gal 937 (A). It was held by the majority of the Judges that the fact that the contradictory statements appear in the same deposition was not material and the accused could be convicted under Section 193, I. P. C. The witness in that case was examined on 12th September and made a contradictory statement on 13th September when he was re-examined, his cross-examination having terminated late on the evening of the 12th. The matter again came up for consideration before a Full Bench of the

Madras High Court in re, Palani Palagan, ILR 26 Mad 55 (B). On a difference between two Judges, the matter was referred to a third Judge who held that the accused could be convicted under Section 193, I.P.C. on an alternative charge framed in accordance with Section 236, Criminal Procedure Code even in cases where the contradictory statements appear in the same deposition. The following observations from that judgment are relevant:

'To consider whether the false statement was made in the course of one deposition or in the course of two separate depositions seems to be irrelevant, and calculated to obscure the real question. The offence is defined in the Indian Penal Code, and consists in intentionally making a false statement. The Criminal Procedure Code does not create or define the offence. It rather relates to the mode in which it may legitimately be proved that the offence has been committed.

It says, in effect, you may prove that a false statement has been made by showing that two contradictory statements have been made one or other of which must necessarily be false and it is not necessary for you to show which of the two is, in fact, the false one. This mode of proof is just as applicable in the case of contradictory statements made at different stages of a witness's examination by a Magistrate as in the case of contradictory statements made by the same witness at the inquiry by a Magistrate and at the trial by the Judge.'

6. Reliance is placed on behalf of the respondent on Local Government v. Gambhir Bhujua, AIR 1927 Nag 189 (C) and Tarachand Marwari v. Emperor, AIR 1929 Nag 279 (D). In the first case it has been held that if a witness makes a statement and later in the course of the same deposition contradicts it and says it was untrue, the whole deposition amounts to no more than the second statement and he cannot be convicted of perjury in the alternative.In the second case, it was observed that the gist of the offence of perjury is the fact that it amounts to an attempt to mislead and deceive the Court.

On this view it was held that if the statement was corrected before the witness left the Court, the offence of perjury was not complete. It will be observed that in these two cases the matter arose in the context of granting sanction for prosecution. The question whether in such cases it was expedient in the interest of justice to grant

sanction was the real question before the Court. In these cases the views of the Calcutta and Madras High Courts in Habibullah v. Queen Empress (A) and In re Palani Palagan (B) (Supra) have not been referred to.

7. In Emperor v. Jitsingh, AIR 1935 Nag 145 (E), the matter was considered again in the same context. In that case the contradictions appeared in the deposition of the witness before the Committal Court and the Sessions Court. Referring to the Madras decision in Palani Palagun's case (B) (Supra) it was observed :

'No doubt strictly speaking, a witness can be prosecuted for making such contradictory statements .....The test for determining whether it would be proper to make a complaint was laid down as follows -'Usually it would not be expedient to prosecute a witness who had made contradictory statements in the course of the same deposition, because tha presumption is that the witness is trying to correct a false statement, by bis subsequent statement, and in such cases some locus paenitentiae should be given to the witness, but this does not apply where different depositions are recorded after an interval of time.'

8. It may be mentioned here that the questions which arise in considering the expediency of prosecution differ from tbe considerations arising in determining the legality of a conviction. Sanction to prosecute is refused if the offence is technical or even when it is substantial if it is not in public interest to prosecute. The effect of the prosecution on the witnesses in future has to be taken into account in deciding the matter.

9. In Umrao Lal v. State, 1954 Cri LJ 860:(AIR 1954 All 424) (F), it has been held that the fact that the contradictory statements appear in the same deposition is immaterial. The view was expressed as follows :

'It is quite immaterial that the two contradictory statements were made in the course of one deposition in one trial. If the first statement is false, the applicant committed the offence of perjury as soon as he made it. Whether he made it deliberately and whether he knew or believed it to be false or did not believe it to be true is to be seen with reference to the time at which he made it. If the requirements of Section 191. are fulfilled, he committed the offence of perjury as

soon as he made it.

The completion of the offence does not remain in abeyance for a short time in order to give him an opportunity of repenting and correcting himself. It does not remain in abeyance so long as the trial is not over or so long as he has not been cross-examined under Section 256 of the Code or so long as he has an opportunity of being recalled and making the correct statement later. What he does subsequently has absolutely no bearing on the offence already committed by him. The offence is not purged or wiped off by subsequent repentance or retraction or correction.'

10. The decisions referred to above show that the existence of the contradictory statements in the same deposition or different depositions makes no difference. It is the intention of the witness at thetime of making the statements which is material. If the first statement was made through an error or mistake or under the stress of cross-examination without fully understanding the implication of the question, there could be no intention on the part of the witness to deceive the Court. In such a case the subsequent correction must be accepted as the only statement of the witness. On the other hand, if the first statement is deliberate, the intention to deceive the Court is apparent. The subsequent statement in such a case would be equally deliberate and intended to deceive the Court. The intention is a question of fact to be decided in each case.

11. Coming now to Section 236, Criminal Procedure. Code, the language in the section is general enough to justify alternative charges under Section 193, I.P.C. for contradictory statements whether they be in the same or different depositions. Shri Sebgal for the accused has drawn our attention to Illustration (b) under Section 336. That illustration refers to the case where the statements are made in the Committal and Sessions Courts. He contends that this shows that alternative charges are permissible in the case of depositions in different Courts. We do not agree. The illustration is only a particular instance of the principle given in the section and does not limit it.

12. Where alternative charges are permissible, under Section 236, it is not necessary for the prosecution to prove which one of the two statements is false, if

they are so irreconcilable that one of them must necessarily be false. The statements in the instant case are of this nature. The second statement is a complete denial of the truth of the first.

13. The first statement was made on 21-7-1952 and the witness was cross-examined. The witness was recalled for further cross-examination on 24-4-1953 when he 'made the other statement. The first statement was complete and the intention to deceive the Court is thus apparent. The witness then supported the prosecution case. He was later recalled presumably after charge, and then made the contradictory and irreconcilable statement. Once again he intended to deceive the Court into holding that the prosecution bad no case. It is obvious that there was no error which he wanted to correct. In fact, he explains that the first statement was made under the influence of tbe complainant. The witness has thus told a deliberate lie to mislead the Court at one of the two occasions. It does not matter which of the statements is false. He should have been convicted under Section 193, I.P.C.

14. The decision of the trial Court acquitting the accused -respondent Dhanna is based on an erroneous view of law. The appeal is allowed and the acquittal is sot aside. Instead, we convict the accused-respondent Dhanna under Section 193, I.P.C. and order that he shall undergo rigorous imprisonment for six months.

V.R. Newaskar, J.

15. I agree.

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