

Rakesh Yadav Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Sep-16-2008

Reported in : 2009(1)MPHT43

Judge : Rakesh Saxena, J.

Appellant : Rakesh Yadav

Respondent : State of M.P.

Disposition : Petition allowed

Judgement :

ORDER

Rakesh Saxena, J.

1. Applicant has filed this revision against the order dated 22-1-2008, passed by Sessions Judge, Satna in Sessions Trial No. 85/07, sustaining the objection raised by the Public Prosecutor that a prosecution witness of a case cannot be cross-examined and confronted with confessional part of his statement recorded under Section 161 of the Code of Criminal Procedure even if confession pertains to some other case.

2. In short, facts of the case are that applicant/accused is facing trial for an offence under Section 307/34 and Section 323 of the Indian Penal Code in Sessions Trial

No. 85/07 before the Court of Sessions Judge, Satna. One Shri Ram Janam Rai is a prosecution witness in the case. There is a counter case also which is Sessions Trial No. 46/2007 under Section 302/34 of the Indian Penal Code. In the trial, Shri Ram Janam Rai is an accused. While recording the statement of Ram Janam Rai under Section 161 of the Code of Criminal Procedure in connection with the case registered under Section 307/34 of the Indian Penal Code, he made a confessional statement that he had also fired a gun at Jhablu Yadav who died.

3. At the time of examination of Shri Ram Janam Rai, as a prosecution witness, in Sessions Trial No. 85/07, a question arose whether he could be confronted with his statement recorded under Section 161 of the Code of Criminal Procedure with respect to his confessional part. Learned Prosecutor raised objection that the defence cannot be permitted to cross-examine the witness with respect to a confessional part of the statement, as it was hit by Section 25 of the Indian Evidence Act, especially because at the time of making such statement the witness was in police custody in the counter case.

4. The contention of the defence Counsel was that if the accused was not permitted to cross-examine the witness with his statement recorded under Section 161 of the Code of Criminal Procedure, he would be immensely prejudiced in his defence. If the statement of witness was in the nature of confession pertaining to some other offence, the right of accused could not be curtailed and he could not be debarred from cross-examining the witness in respect to any part of the statement.

5. Learned Sessions Judge upholding the objection of Prosecutor held that it was not necessary for the maker of a confessional statement to police for seeking protection of Section 25 of the Indian Evidence Act, that he should be an accused in that case. Since the police recorded the statement of Shri Ram Janam Rai, under Section 161 of the Code of Criminal Procedure, while in custody of police, wherein he admitted commission of murder of one person, he ultimately became an accused in counter case for an offence punishable under Section 302 of the Indian Penal Code. His confessional statement recorded during investigation of any offence could be used only under Section 27 of the Indian Evidence Act for

recovery of certain facts or things, but as Shri Ram Janam Rai, in the so called confessional statement, did not give any information to the police about any weapon or anything, the part of his statement as it related distinctly to the confession of committing the offence of murder was inadmissible and, therefore, the defence could not be permitted to use this part of statement to contradict or cross-examine the witness.

6. Learned Sessions Judge placed reliance on Santokhi Beldar v. Emperor 1934 Cr.LJ 349, wherein it was held that as soon as a person states that he had done a certain act, which amounts to an offence, he accuses himself of committing the offence and if the statement is made to a Police Officer as such, he becomes accused person in the custody of Police Officer within the Section 27 of the Indian Evidence Act.

7. Learned Counsel for the applicant submits that the learned Sessions Judge committed grave error in disallowing the accused to cross-examine the witness and to confront him from his police statement, even though some part of it amounted to confessional statement. On the other hand, learned Counsel for the State justifies the impugned order passed by the Sessions Judge.

8. I have heard the Counsel of both the parties at length and perused the impugned order.

9. Before dilating on the legal position involved in the present case, it is necessary to look into the provision of Section 162 of the Code of Criminal Procedure, which reads as under:

162. Statements to Police not to be signed: Use of statements in evidence.- (1) No statement made by any person to a Police Officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, 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:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination. (2) Nothing in this Section shall be deemed to apply to any statement falling within the provisions of Clause (1) of Section 32 of the Indian Evidence Act, 1872 (1 of 1872), or to affect the provisions of Section 27 of that Act.

Explanation: An omission to state a fact or circumstance in the statement referred to in Sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.

It is also necessary to examine Section 25 of the Evidence Act, which is quoted hereunder:

Confession to Police Officer not to be proved.- No confession made to a Police Officer, shall be proved as against a person accused of any offence.

10. It has been provided in Section 162 of the Code of Criminal Procedure that no such statement or any record thereof, whether in police diary or otherwise, or any such part of such statement or record, shall be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872.

11. On close examination of the aforesaid provisions, it would be clear that the bar imposed under Sub-section (1) of Section 162 of the Code of Criminal Procedure with respect to statement recorded under Section 161 of the Code of Criminal Procedure relates only to offence under investigation. The words 'at any inquiry or trial in respect of any offence under investigation at the time when such statement was made' engrafted in the provision means that the bar imposed by Section 162(1) of the Code of Criminal Procedure applies only when the statement is given by a person as a witness and not an accused.

12. In the present case, the statement of Shri Ram Janam Rai was recorded under Section 161 of the Code of Criminal Procedure in respect of the offence under Section 307/34 of Indian Penal Code, allegedly committed by the accused person, which is subject matter of Sessions Trial No. 85/07 and not as an accused of offence under Section 302/34 of the Indian Penal Code, which is subject matter of Sessions Trial No. 46/07.

13. Section 25 of the Indian Evidence Act safeguards the interest of a person in respect of the confession made by him to a Police Officer where he is an accused of any offence. Statement of Shri Ram Janam Rai was not recorded by the police under Section 161 of the Code of Criminal Procedure as an accused of the offence under Section 302/34 of the Indian Penal Code.

14. Merely because a witness happens to be an accused in another case or a counter-case, the accused cannot be deprived of his right in the case against him to cross-examine him with respect to his confessional statement made by him under Section 161 of the Code of Criminal Procedure even if whole or some part of it is confessional in nature.

15. It is true that the part of statement amounting to confession cannot be proved in the case in which he himself is facing trial as an accused. Since Shri Ram Janam Rai is appearing as a witness (and not as accused) in Sessions Trial No. 85/2007, he cannot be exempted in that case from giving answer to the question put by defence Counsel, even in respect to the confessional part of the statement.

16. The position would be different where Shri Ram Janam Rai is being tried as an accused in the counter-case. In that case, the confessional part of his statement recorded under Section 161 of the Code of Criminal Procedure cannot be proved against him in view of the provisions of Section 25 of the Evidence Act. The bar imposed under the provisions of Section 25 of the Indian Evidence Act would not help Shri Ram Janam Rai in the trial where he appears as a witness and not as accused.

17. There is absolutely no conflict between the provisions of Section 162 of the Code of Criminal Procedure and Section 25 of the Indian Evidence Act. Both the provisions act in different fields. Provision of Section 25 of the Indian Evidence Act creates safeguards for an accused in police custody, whereas provision of Section 162(1) of the Code of Criminal Procedure creates an important right in favour of accused to cross-examine a witness by confronting him with his previous statement reduced into writing by the police during investigation. The pith and substance of the provisions of Section 162 of the Code of Criminal Procedure and Sections 25 and 27 of the Evidence Act, taken together, is that the law provides protection to a person, in a criminal trial against him, from his confessional statement or any part thereof to the police, excepting the exceptions ingrained in the provision of Section 27 of the Evidence Act.

18. For the foregoing reasons, I am of the considered opinion that the impugned order passed by the Sessions Judge is not legally correct and therefore deserves to be set aside.

19. Accordingly, the order dated 22-1-2008, passed by Sessions Judge, Satna, in Sessions Trial No. 85/07 is set aside. The defence, in cross-examination, may put questions to witness Shri Ram Janam Rai in respect of his statement made to police under Section 161 of the Code of Criminal Procedure and confront him with it, including the confessional part.

20. Revision allowed.