

Ram Lal Babu Ram Vs. the State

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Court : Punjab and Haryana

Decided On : Oct-07-1963

Reported in : 1964CriLJ544

Judge : Shamsher Bahadur, J.

Appellant : Ram Lal Babu Ram

Respondent : The State

Judgement :

Shamsher Bahadur, J.

1. This appeal arises out of a conviction Under Section 193, Indian Penal Code, and a sentence of 4 months' rigorous imprisonment coupled with a fine of Rs. 200/- thereunder by the learned Sessions Judge of Amritsar against the appellant Ram Lal.

2. The basis for the prosecution is a statement which was made by the appellant in the Court of the inordinate Judge, Miss Santosh Mehta, on the 21st of June, 1961 that he had paid a sum of Rs. 130/- to Ajaib Singh P. W. on the 4th of Sawan Samvat 2018 and that Ajaib Singh has given his thumb-impression in the presence of the accused on entry, Exhibit P 4/D, which was scribed by his munim also in his presence. The learned Sessions Judge found that prosecution could not succeed on charges made under Secs. 467 and 471 of the Indian Penal Code

and accordingly acquitted him. It has, however, been found by him that Ram Lai is guilty, of an offence Under Section 193 of the Indian Penal Code. Before a person can be convicted for giving false evidence Under Section 193, Indian Penal Code, it has to be proved that he was 'legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject makes any statement which is false x x x x x'. though it is not denied that the appellant made his statement attributed to him, it has been submitted in this Court as also before the learned Sessions Judge that the record does not show that the appellant was administered an oath before he gave his evidence and that this statement was not read over to the accused after it had been completed.

3. Neither of these submissions in my opinion can be sustained. I have looked into the original records of the case and find that Exhibit P. E./I is the certified copy of the statement made by Ram Lai deposed by Miss Santos Mehta on the 21st of June 1961. It shows that the statement was made on solemn affirmation, the statement was continued on the 30th of June 1961 and it must be presumed that the oath which was administered to the witness on the 21st of June 1961 continued to bind his statement and he continued to be on oath till the evidence was concluded.

4. On the second submission Mr. Partap Singh, learned Counsel for the appellant has brought to my notice a judgment of Sir Shadi Lal, C. J. in *Taj Mahmud v. Crown* ILR 15 Lah 407 : AIR 1928 Lah 125. The conclusion of the learned Chief Justice is given at page 413 (of ILR Lah) : (at p. 128 of AIR) in these words:-

There is ample authority in support of the proposition that when a deposition is not read over to the witness in accordance with the requirements of the law under which it was taken, it cannot be used against him on a charge of perjury.

Miss Santosh Mehta in her statement deposed that she was not quite certain whether the statement had been read over to Ram Lal on completion of his evidence. But she was quite certain that it was read over to him (sentence by sentence). Under Rule 5 of O. 18 of the Civil Procedure Code the statement of a witness 'when completed, shall be read over in the presence of the judge and he shall correct the same and shall sign it'. Likewise it is equally necessary Under

Section 360 of the code of uremia Procedure that a statement of a witness is to be read over to him on completion. The statement not naming been so read over on the evidence of the Subordinate Judge herself, it is argued that it cannot form the foundation of the charge of perjury.

5. There is a decision of their Lordships of this Privy Council on which reliance has been placed of the counsel for the State as also by the learned Sessions Judge in *V.M. Abdul Rahman v. Emperor* AIR 192/ P. C. 44. Lord Phillimore who delivered the judgment observed that

The object of reading over the deposition is to ordain an accurate record from the witness of what he really means to say, and to give him an opportunity of correcting the words which the Magistrate or his clerk has taken down. It is not to enable the accused or his advocate to suggest corrections. x x x x x We bare fact of such an omission or irregularity as occurred in the case under appeal, unaccompanied by any probable suggestion of any failure of justice having been thereby occasioned, is not enough to warrant the quashing of a conviction, which in their Lordships' view, may be supported by the curative provisions of Sections 535 and 527.

In a subsequent decision of the Allahabad High Court in *Mohammad Farooq v. Rex* AIR 1950 All south, the entire case law was reviewed by Desai J. and it was held that where it is not disputed that the deposition was correctly recorded and it is found that the statement made was false, the witness would be guilty notwithstanding the fact that the deposition was not read over to him as required by law. Desai J. observed as follows:

I find it difficult to accept the proposition that if a deposition is not read over it cannot be found to be false. Whether it is false or not does not depend upon whether it was read over to the witness or not. It depends upon whether the facts alleged to exist or to have existed in the deposition existed or not. If they did not exist the deposition is false and remains false, notwithstanding its not being read over to the witness. The provisions of the Penal Code relating to punishment for perjury do not pay any regard to the question whether the deposition was read over or not.

This decision has been followed subsequently by a Division Bench of the Saurashtra High Court consisting of Chief Justice Shah, and Chhatpar J. in *Koli Bnima v. State* AIR 195 Sau. in the words of the Chief Justice Shah, a witness can be convicted of perjury if it is found that he has given false evidence despite the fact that his evidence was not read over to him under Section 360 of the Code of Criminal Procedure.

6. To reiterate once again, the appellant did not dispute the statement which has been attributed to him. It has been shown to be demonstrably false. What has been contended is that the statement which is sought to be used as the foundation of the charge of perjury was not read over to him. There is preponderance of authority for the proposition that the omission of reading over the deposition to a witness is curable and at any rate not fatal to a charge of perjury. In this view of the matter I consider that the case against the appellant is well founded and his conviction must be upheld. As regards the sentence, however, I am of the view that ends of justice would be served if the sentence of imprisonment is reduced to that already undergone, and in addition to it he would pay a fine of Rs. 200/- as directed by the learned Sessions Judge. If the fine is not paid the appellant would undergo rigorous imprisonment for two months in default. Subject to this slight modification in sentence, the appeal is dismissed.