SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

D.P. Sinha Vs. E.T. Sen

D.P. Sinha Vs. E.T. Sen

SooperKanoon Citation : sooperkanoon.com/683215

Court : Delhi

Decided On : Oct-14-1969

Reported in : 6(1970)DLT87

Judge : Hardayal Hardy, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 252

Appeal No. : Criminal Revision Appeal No. 427 of 1969

Appellant : D.P. Sinha

Respondent : E.T. Sen

Advocate for Pet/Ap. : A.K. Gupta and; C.L. Sareen, Advs

Judgement :

Hardayal Hardy, J.

(1) The petitioner in this case is the printer and publisher of a pamphlet entitled 'I was a C.I.A. Agent in India' by John D. Smith. He is being prosecuted by Shri E. T. Sen, a former Brigadier in the Indian Army, for offences under sections 500, 501 and 502 Indian Penal Code on the allegations that the pamphlet contains imputations concerning the complainant which are absolutely baseless 'and false and have been made without any justification or lawful excuse with full knowledge that they are false and with intention to harm the reputation of the complainant.

(2) The petitioner's defense, as stated before me by his counsel, is one of justification under the First, Second and Ninth Exceptions in section 499 Indian Penal Code.

(3) The case, though instituted in early April last year has nto even reached the stage of charge uptil now as the complainant whose examination-in-chief was concluded in two hearings on 18-5-1968 and 7-6-1968 is still under cross-examination since that day. Since then there have been several hearings and the cross-examination which according to the record already fills about 85 typed page's is stitll to go a long way betore it can be said to have been concluded.

(4) An examination of the record shows that the petitioner alone is nto to blame for this long delay in completing the cross-examination. A part of the responsibility for this delay must also be shared by the complainant as on numerous occasions the progress of the cross-examination appears to have been held up by constant interruptions and objections from his counsel. But the major portion of the blame must be borne by the petitioner. As I shall presently show, at several places the cross-examination is apparently directed to matters which have nto the remotest connection with the matters in issue in this case. A number of questions would appear to have-no more connection with the case than what the journey of American Astronauts to the moon might have with the political situation in Czechoslovakia or India. And yet pages and pages of the record seem to be filled with such questions.

(5) It is no doubt true that in a case like this where the accused's defense is truth of the libellous matter, good faith and public interest the range of cross-examination is much wider than in an ordinary case. But the rules regarding relevancy are the same in all cases and a line has to be drawn somewhere. It is also true that in a case of libel, the antecedents, character, habits, associations, veracity and resources of the complainant do come in for consideration and cross-examination may justifiably be directed to ascertain such facts; but the attention at all times has to be focussed on the defense pleaded by the accused. If the facts which an accused seeks to elicit in cross-examination have only a very remote connection with that defense then the questions directed to that end have to be

ruled out.

(6) According to the learned counsel for the complainant the crossexamination at one stage became so prolix and repetitive that he was forced to draw the attention of the magistrate to the scope of cross-examination at the stage at which the case stood at that time. namely, the stage before charge. Lengthy arguments were thereupon addressed before the magistrate on the right of the accused to cross-examine the complainant and his witnesses under section 252 Criminal Procedure Code. As a result, the magistrate passed an order dated 6-9-1969 whereby it was directed that the cross- examination of the complainant should be completed by the accused in the course of the next three hearings of the case for two hours each.

(7) The present revision has been filed by the accused who as I have already said is the petitioner before me. against that order. His grievance is that he has a statutory right to cross-examine the complainant and his right cannto be curtailed by imposing an arbitrary limitation as to time on the exercise of his right and that the Court is bound to allow all relevant questions; its power is only to over rule irrelevant questions and some questions regarding which special reservations have been made in the Indian Evidence Act.

(8) Counsel for the complainant has raised on the other hand the off-repeated controversy about the right of the accused to cross- examine the prosecution witnesses before the charge and has strenously urged that the accused has, no such right and that his light arises only under section 256 after the charge is framed. In support of his argument reliance is plased on the decisions of Calcutta High Court in Emperor v. C. A. Malhews : AIR1929 Cal822 Krishna Chandra Dass v. Lakshmi Narayan Das and others, Arabind Dev v. The State : AIR1953 Cal206 , Brahinachari Ajitananda v. Anutha Bandha Dutt : AIR1954 Cal395 and Patna High Court iii G. L. Biswus and others v. The State : AIR1950 Pat550 where it is held that reading the relevant provisions of Chapters xviii and Xxi of the Code in juxtaposition it is clear that section 252 does nto give the accused a statutory right of cross-examination before charge which in practice he is given. The Punjab Chief Court in Sher Singh and others v. Emperor AIR 1916 Lah 445 and the

Hyderabad High Court in Sutyanarayan Singh v. State of Hyderabad also seem to hold the same view. On the other hand the High Courts of Madras and Pepsu, the Chief Court of Lower Burniah, Sind and Nagpur have held that the accused is entitled as of right to cross-examine the prosecution witnesses before charge is framed as well as afterwards, (see Varisai Rowther and another v. The Crown AIR 1923 Mad 609 , W.H. Lackley v. The Emperor AIR 1920 Mad 201. In re : Muthiah Chelty AIR 1924 Mad 735. K. C. Menon v. P. Krishna Nayar AIR 1926 Mad 989 . The State v. Baldev Kishan AIR 1952 Pep 178 , Mahomad Ally and others v. Emperor (12 Criminal Law Journal 277) , Muhammad Rahim v. Emperor AIR 1935 Sind 13, and Gurudin and another v. Emperor AIR 1935 Nag 8.

(9) An examination of the judgment of Calcutta High Court in Emperor v. C.A. Mathews which is a leading case on the subject however shows that according to the learned Judges, Section 256 Cr'.P.C. does nto prohibit cross-examination by the accused before charge is framed and the magistrate can as a matter of discretion allow, and indeed will be well advised to allow the accused to cross-examine prosecution witnesses even before the charge is framed. It was of course said that merely because the magistrate was expected to give an opportunity to the accused to crossexamine before the charge was framed, it did nto follow that the Court must give him such an opportunity.

(10) It however does nto seem necessary to take sides in this controversy as I am of the view that in warrant cases instituted other- wise than on police report, an accused has three opportunities to cross-examine the prosecution witnesses : (a) before the charge is framed under section 252, {b) after the charge under section 256 and (C) after he enters on his dcicncc under section 257 Criminal Procedure Code. Lvcn if it is held tluil hcl'oic the charge is framed the accused lias no statutory rigill to cross-examine the prosecution witnesses, it has to be conceeded that on general principles and under section 138 o.f the Evidence Act. the liability to have the oral testimony of a witness tested by cross-examination by the adverse party is part of the conception of legal evidence. As was held in Benwari Lal and another v. State the word 'evidence' in section 252 means all statements which the Court permits or requires to be made before it by. witnesses. The statements of the witnesses include statements made by them in cross-examination and re-

examination. There is nothing in section 252 to suggest that the accused had no right to cross-examine the prosecution witnesses or that the word 'evidence' means only the statements made by them in examination in chief.' It thereforee follows that once the Court exercises its discretion to permit the accused to cross-examine the prosecution witnesses under section 252 before charge is framed, it is immaterial whether permission is granted to the accused as a matter of right or as a matter of discretion by the Court, the accused gets the right to cross-examine the witnesses and his right cannto be curtailed by imposing any arbitrary restrictions as to time or length of cross-examination. Once such an opportunity is afforded to the accused the length of cross-examination can only be determined by the provisions of Evidence Act and there is no further discretion left in the Court. The real question which arises for decision in this revision however is whether the accused has already exercised what some Judges have described as 'right' and others have described as 'opportunity' to an extent that it has become necessary to impose some restrictions on it. In this connection it is pertinent to remind oneself of what was said by Viscount Sankey L. C. in Mechanical and General Inventions Company Limited and Lchwess v. Austin and the Austin Motor Company Limited'(1935 Appeal Cases 346)('). The learned Lord Chancellor observed:-

'CROSS-EXAMINATIONis a powerful and valuable weapon for the purpose of testing the veracity of a witness and the accuracy and completeness of his story. It is entrusted to the hands of counsel in the confidence that it will be used with discretion; and with due regard to the assistance to be rendered by it to the Court, nto forgetting at the same time that the burden is imposed upon the witness. We desire to say that in our opinion the cross-examination in the present case did nto conform to the above conditions, and at times it fails to display that measure of courtesy to the witness which is by no means inconsistent with a skilful, yet powerful, cross-examination.'

(11) In a case which went to the Privy Council : Rajkumar Sen Chowdhury and others v. Ram Sunder Shaha and others and in which the principal witness for the plaintiff was cross-examined at such great length that it took 226 pages of the record most of which, as admitted at the trial by the valkis on both sides, was quite

irrelevant to the suit, Sir John Wallis speaking turn the Judicial Committee observed :-

'INtheir Lordships' opinion it is imperative that an abuse of this kind, which enormously increases the costs of litigation without any corresponding benefit to the parties, should be checked, and it would appear to be clearly within the powers of the High Courts to direct an enquiry with a view to disciplinary action in flagrant cases which come under their notice at the hearing of appeals.'

(12) The observations of Viscount Sankey in the case of Mechanical and General Inventions Company v. Austin were repeated by Lord Wright in a case from the Supreme Court of Cyprus, Vassiliades v. Vassaliades and another AIR 1945 P.O. 38 and it was observed:

'NOdoubt cross-examination is one of the most important processes for the elucidation of the facts of a case and all reasonable latitude should be allowed, but the Judge has always a discretion as to how far it may go or how long it may continue. A fair and reasonable exercise of his discretion by the Judge will nto generally be questioned by an appellate Court.'

(13) Applying the principles laid down in the aforesaid decisions to the case in hand, it appears to me that a considerable portion of the cross-examination of the complainant is a gross 'abuse of the opportunity afforded to the accused for cross-examining the complainant. The following few instances will make my meaning clear.

(14) In the cross-examination held on. 1-7-1968 as many as six typed pages are devoted to questions of which the following are the samples:-

DIDyou have any conscience to join the army (in 1940) controlled by the foreign rulers when you joined Did yoa join the army because you were keen to fight the Fascists of Germany and Italy When you joined the army were you aware that there was national revolt for the freedom of the country Were you aware in 1940 that the British Army was being used to supress the Indian National Movement Were you aware that the Indians hired by the British rulers in the Indian Army as

also the British officers. of the Indian Army were used to suppress the National Movement of the country Q. Did you or did you nto have any qualms of conscience that you were likely to be used agairist the National Movement in the Indian Army Q. Was it your aim in 1941 to serve the British masters or India after independence Q. Were you completely indifferent to the political and military objectives which may be assigned by the British Government to the Army when you joined the Army?

(15) Apart from the fact that the questions have a tendency to cast a wholly un-merited aspersion on the character and patriotism of all those distinguished officers and soldiers who joined the Indian Army before Independence, the questions have nto the remotest connection with the defense set up by the petitioner.

(16) Turning next to the cross-examination on 25-1-1969 and on 2 or 3 other dates, several pages are devoted to the professional fee paid by the complainant to his counsel Mr. M. C. Chagia in the contempt case filed by him against the petitioner and to Mr. C. L. Sareen. who appeared for the complainant with Mr. Chagia and is also appearing for him now.

LETme now extract a few questions from another day's crossexamination. Q. Are you aware that Mr. Sareen (counsel for the complainant) had appeared for Tarasov in the case when he defected to the American Embassy When the complainant replied that he had no recollection of any such case the counsel for the petitioner darted with the following question:- Q. I put it to you that you know of a case of one Tarasov who was a Russian sailor On the next day die cross-examination proceeded on the following lines. Q. Was this case mentioned to you in 1968 inconnectioii with your fight against Communism Ans. No. Sometimes in 1968 I noticed a book in Mr. Sareen's library which has been written by Mr. Sareen. On my inquiry he mentioned the facts to me. The book was in connection with the case of Tarasov. Q. Was the book against Communism Q. Do you know the publisher of the book Q. Are you aware that the American Embassy financed the publication of the book on Tarasov's trial written by Mr. Sareen ?

(17) Learned counsel lor the petitioner stales that the object of this cross-examination is to show that the complainant was nto in a position to pay the large fee to Rs. 11,500.00 out of which a sum of Rs. 8,500.00 was paid to Mr. Chagla and that the litigation was being financed by the American Embassy. Ironically, when the complainant stated that; the entire fee had been paid by him from his own pocket and that some of the amounts had actually been drawn by him from his bank account, the counsel for the petitioner insisted upon the production of the bank account of the complainant, but when the account was summoned by the Court and the cross-examination of the complainant proceeded thereafter for several days and scores of other questions were put to the com- plainant with regard to the payments made by him on account of counsel's fee, nto even once did the learned counsel refer to the statement of account called for from the bank.

(18) It is no wonder that with this back-ground the learned magistrate felt constrained to direct that the cross-examination of the complainant be completed by the accused on the next three hearings of two hours each. If the order is looked from a purely doctrinaire point of view it would seem rather hard that the Magistrate should curtail the cross-examination by imposing a time-limit; but when the whole thing is viewed in the context of what has happened in this case, the order is neither illegal nor unjust or improper. A time-limit of six hours for further cross-examination , of the complainant in the circumstances of the case appears to me to be wholly adequate and fair.

(19) At the same time it is hoped that the learned magistrate will maintain proper control over the proceedings and will nto allow unnecessary interruptions or objections on behalf of the complainant.

(20) The result is that the revision is dismissed. The file of the case should be returned to the magistrate at once and the parties should appear before him on 18th October, 1969.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com