

Lal Singh @ Lal Chand Vs. State

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Court : Delhi

Decided On : Jul-24-1997

Reported in : 1997IVAD(Delhi)895; 1998CriLJ450; 68(1997)DLT503; 1997(42)DRJ729; 1997RLR514

Judge : Y.K. Sabharwal and; A.K. Srivastava, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311; [Indian Penal Code \(IPC\), 1860](#) - Sections 420

Appeal No. : Criminal Appeal No. 75 of 1994

Appellant : Lal Singh @ Lal Chand

Respondent : State

Advocate for Pet/Ap. : G.S. Raghav,; S.K. Chaudhary and; H.J.S. Ahluwalia, Adv

Judgement :

Y.K. Sabharwal, J.

(1) CRL.A.NO. 75/94 & Crl.A.No. 67/94 Preetam Singh and Lal Singh were convicted for offences under Sections 460/320 Indian Penal Code and sentenced to imprisonment for life. They are in appeal before us.

(2) During the course of hearing of the appeal, one of the contentions raised by learned counsel for the appellants is that testimony of Public Witness 17 Asi Shish Ram cannot be relied upon as no opportunity was granted to cross-examine him.

(3) The testimony of Public Witness 17 was recorded by the Court of Sessions on 17th February, 1992. It was inconclusive on that date. The remaining testimony of the witness was recorded on 21st February, 1992. The testimony of Public Witness 18 Inspector Jai Bhagwan was also recorded on 21st February, 1992. The cross-examination of Public Witness 17 and Public Witness 18 was, however, deferred since counsel for Lal Singh was not present in Court on that date. Public Witness 17 was again present on the adjourned date i.e. 18th March, 1992 but on that date Public Witness 18 Inspector Jai Bhagwan was not present and counsel for accused sought adjournment to cross-examine both the witnesses on one date. The request was acceded and case was adjourned. Again Public Witness 17 was present on 7th August, 1997 but since Jai Bhagwan was not present, the case was adjourned for their cross-examination. The same was position on 9th September, 1992. Ultimately on 23rd March, 1993 Public Witness 18 Jai Bhagwan was cross-examined on behalf of accused Preetam Singh. Counsel for Lal Singh, however, had sent a request for adjournment as he was not in Delhi on that date. thereforee, cross-examination of this witness on behalf of Lal Singh was deferred. Public Witness 18 was not cross-examined by Lal Singh because on 23rd August, 1993, Lal Singh stated that he did not want to cross-examine this witness, who was present on that date and, thereforee, the evidence of the prosecution was closed and case was fixed for statement of the accused. An application filed by Lal Singh under Section 311 of the Code of Criminal Procedure for re-summoning Public Witness 18 for his cross-examination was dismissed by learned Additional Sessions Judge.

(4) Learned counsel for appellant Lal Singh submits that denial of opportunity to cross-examine Jai Bhagwan has resulted in gross miscarriage of justice to his client. Learned counsel contends that the date on which the evidence of prosecution was closed by recording that Lal Singh, does not want to cross-examine Jai Bhagwan, counsel for Lal Singh was not present and Lal Singh had been produced in Court in custody. The submission is that having been produced

in custody and also being an illiterate person, Lal Singh could not understand the implication in absence of his counsel and he has thus been greatly prejudiced by non cross-examination of a vital witness. It appears from the order sheet that the case was being adjourned earlier from time to time for the purposes of granting an opportunity to counsel for Lal Singh to cross-examine Public Witness 18 Jai Bhagwan. It is difficult to contemplate the circumstances under which Lal Singh made statement on 23rd August, 1993 that he did not want to cross-examine Public Witness 18 Jai Bhagwan. Soon thereafter he made an application to re-summons Jai Bhagwan for the purpose of cross-examination. One of the grounds on which the said application was rejected is that the counsel for co-accused Preetam Singh had cross-examined Jai Bhagwan at Length. In our view that was not a valid ground to reject that application. Lal Singh had not stated that he did want to cross-examine' Jai Bhagwan because he had been cross-examined by Preetam Singh. Though it is correct that number of opportunities were granted to Lal Singh to cross-examine Jai Bhagwan but having regard to the facts and circumstances of the case as already noticed, we feel it appropriate to grant an opportunity to Lal Singh to cross-examine Jai Bhagwan, in exercise of powers under Section 391 of the Code of Criminal Procedure. The incident relates to the year 1989 and the appeal is pending in this court for last about three years. In this view, it would be appropriate to record further testimony of Jai Bhagwan in this Court instead of sending the case to the Court of Sessions for recording his testimony as that may result in some delay.

(5) As already noticed, the trial was adjourned on number of occasions on request of counsel for accused, to cross-examine Public Witness 17 and Public Witness 18. On many dates of hearings Public Witness 17 was not present but Public Witness 18 was present. Counsel wanted to cross-examine both on same day. From the order dated 24.8.1993, when Public Witness 18 was cross-examined on behalf of Preetam Singh and evidence of prosecution was closed, it is not clear whether Public Witness 17 was present or not. May be, he was present. Had he not been present, counsel for accused Preetam Singh could have made a request as he had been doing on earlier dates, for deferring the case on the ground that both the witnesses were to be cross-examined on the same day. Further it appears that during the trial no grievance was made that the accused had been

denied opportunity to cross-examine Public Witness 17. Preetam Singh had in fact filed an application for summoning three expert witnesses which was dismissed on 27th October, 1993. In that application also grievance was not made that the opportunity was not granted to cross-examine Public Witness 17 Shish Ram. In the lengthy grounds of appeal preferred in this Court, Preetam Singh has also not made any grievance about the denial of opportunity to cross-examine Public Witness 17 Shish Ram. In spite of the circumstances noted above it is not possible to say with certainty whether Shish Ram was present on 23rd August, 1993 or not and was not cross-examined because the accused did not want to cross-examine the said witness since it is not so recorded in the order sheet. No party can be made to suffer on account of mistake of Court. Under these circumstances and also considering the fact that we have allowed Lal Singh to cross-examine Public Witness 18 Jai Bhagwan, we deem it appropriate to give an opportunity to both the accused at this stage to cross-examine Public Witness 17 in exercise of our power under Section 391 of the Code of Criminal Procedure.

(6) It may be noted that learned counsel for accused Lal Singh categorically stated that he has no objection whatsoever to the cross-examination of Shish Ram at this stage. Learned counsel for Preetam Singh, however, objected to the summoning of the witnesses at this stage. Learned counsel could not, however, express what exactly was the objection. In our view the objection is misconceived. A party cannot be allowed to blow hot and cold in same breath. On one hand a contention is raised that no opportunity was granted to cross-examine Shish Ram and on the other hand, the objection is raised to the summoning of Shish Ram in exercise of our power under Section 391 of the Code of Criminal Procedure without explaining the basis of objection. The decisions relied upon by learned counsel for Preetam Singh : [1989]3SCR735 titled *Mir Mohd. Omar and others v. State of West Bengal*, 1996(1) C.C.Cas 459 titled *Datu Ram v. State*, 1994(2) C.C.C 300 titled *Heera Lal v. State*, have no applicability to the facts and circumstances of the present case.

(7) In view of above, we direct the State to produce Public Witness 17 and Public Witness 18 on 21.8.1997 for their cross-examination. Production warrants be also issued for accused Lal Singh and Preetam Singh. Case property shall also be produced on the date of cross-examination of these two witnesses.

