Surendran Vs. State and ors.

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SooperKanoon Citation : sooperkanoon.com/726534

Court : Kerala

Decided On : Aug-27-1993

Reported in : 1994CriLJ464

Judge : K.T. Thomas, J.

Acts : Evidence Act, 1872 - Sections 145, 146, 148, 152 and 155(3); Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 162 and 482

Appeal No. : Crl. M.C. 1424 and 1435 of 1993

Appellant : Surendran

Respondent : State and ors.

Advocate for Def. : M. Ratna Singh, D.G.P.

Advocate for Pet/Ap. : T.V. Prabhakaran, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

K.T. Thomas, J.

1. As trial in a murder case was in progress, the defence counsel sought permission to use a statement recorded by Police in another case for cross-

examining one of the prosecution witnesses. Learned Sessions Judge granted permission to do so. Legality of the said orer is now challenged here.

2. Facts necessary for the limited question raised here are the following: Police registered a case in respect of death of one Muraleedharan and after completion of investigation laid charge-sheet against four persons as accused for the offence of murder. Government appointed a Special Public Prosecutor to conduct prosecution in the case. In the Sessions Court some witnesses were examined for the prosecution. Defence counsel, at a particular stage of the trial, brought to the notice of the learned Sessions Judge that the same police had registered another case in respect of another incident which happened later on the same night and investigation has been conducted by the police into that later incident. At the request of the defence counsel, the file relating to the latter case was brought down to the Sessions Court. Defence counsel then moved an application for permitting him to further cross-examine one of the witnesses (who was already examined) with reference to the statement recorded by the Investigating Officer in connection with the second incident. Special Public Prosecutor opposed it, but learned Sessions Judge overruled the objections and granted permission to further cross-examine the witness with reference to the said statement.

3. Learned Sessions Judge in the impugned order has said : 'I have no doubt that the statement of P.W. 5 aiven under Section 161, Cr. P.C. to the police officer in another crime can be used for contradicting him in cross-examination. The learned Special Public Prosecutor has not succeeded in canvassing a contrary view.'

4. One of the brothers of the deceased (on whose request Government appointed the Special Public Prosecutor in the trial Court) has now moved this Court under Section 482 of the Code of Criminal Procedure (for short 'the Code') challenging the said order. State of Kerala, represented by the State Public Prosecutor has filed another petition challenging the same order. However, Shri M. Ratnasingh, learned Public Prosecutor (who is also the Director General of Prosecutions) submitted during arguments that he would present both sides of the question as he only wants an authoritative decision on the point. Shri T. V. Prabhakaran, learned Counsel for the brother of the deceased, strenuously contended that the

impugned order is in violation of the tenor and spirit of Section 162 of the Code.

5. Learned counsel relied on the decision of the Supreme Court in Gajendra Singh v. State of U.P., AIR 1975 SC 1703 : (1975 Cri LJ 1494) in which Fazl Ali, J. has observed that the statement recorded by an Investigating Officer in a 'cross-case' is absolutely inadmissible because it was a statement made under Section 161 of the Code during investigation of the cross-case which was not at all admissible in the present case.' I don't think that the said observation is of any use of resolving the present dispute. The said observation was made by the Supreme Court when the counsel, during arguments in the Supreme Court used the statement of a particular witness recorded by the Investigating Officer in a cross-case. Fazl AH, J. pointed out that without confronting the witness with the statement it could not be used at all. A reading of paragraph 10 of the judgment would unmistakably show that what the Supreme Court said was totally different from what the learned Counsel tried to emphasise now.

6. Section 161 of the Code empowers a police officer, who investigates the case, to examine any person supposed to be acquainted with the facts and circumstances of the case. The police officer is also given the option to reduce writing what the person tells him. Section 162 of the Code which contains the prohibition regarding use of such statements provides that no such statement shall '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.' From the sweep of Section 162 of the Code legislature protected the right of a cross-examiner to use the statement for contradicting the witness who made such statement. Of course, the right of the accused to use it for contradiction is unrestricted while prosecution can use it for contradiction only if the Court permits. Even this can be done only when a witness is called for the prosecution and not otherwise.

7. The words 'save as hereinafter provided ' in Section 162 of the Code have been used in parenthetical form. If we read the main body of the section without those words, it would mean that the statement made by any person to a police officer during investigation shall not 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'. An attempt is made to interpret the words 'be used for any purpose' as indicative that the sweep of the ban is plenary. But a close reading of the section would reveal that the ban is confined to the use of the statement only at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. In other words, Section 162 of the Code does not prohibit the use of such statement in any other proceeding (other than the inquiry or trial in respect of the offence for which the investigation was conducted). Thus, even in the limited application of the ban, one exception which Parliament advisedly provided is to safeguard the right of the accused to contradict a prosecution witness and right of the prosecution also in certain cases under certain conditions.

8. The right to cross-examine a witness with reference to his previous statement can be traced to Sections. 145, 146 and 155(3) of the Indian Evidence Act. Section 145 says that a witness may be cross-examined as to previous statements made by him in writing or reduced to writing. This is the general right of a cross-examiner. The only restriction provided is that the previous statement must be relevant to the matters in question. Section also prescribes the procedure to be followed if the cross-examiner wants to contradict the witness as to the previous statements. Section 146 empowers a cross-examiner to put any question to test the veracity of the witness. Of course, the vast scope covered by Section 146 is subject to the Court's power to control such questions as provided in Sections 148 to 152 of the Evidence Act. Subject to such control the cross-examiner is entitled to put any question to test the veracity of the testimony of the witness. Section 155(3) of the Evidence Act says that any former statement of a witness, which is inconsistent with his evidence can be proved for impeaching the credit of the witness. Section 155(3) of the Evidence Act applies to any previous statement whether oral or in writing. But Section 145 applies only to previous statement in writing. Thus, Sections 145,146 and 155(3) of the Evidence Act are complementary to each other. When they are read together, a cross-examiner cannot be restricted from putting questions except to the extent indicated in Sections 148 - 152 of the Evidence Act. This general right of the cross-examiner has to be borne in mind when deciding the present question.

9. Section 162 of the Code has been inserted for protecting the interest of the accused (vide Tahsildar Singh v. State of U.P., AIR 1959 SC 1012 : (1959 Cri LJ 1231)). Hence that which was intended to provide as a protection to the accused cannot, by interpretation, be made a handicap to the accused. Section 162 is never intended to curb the right of the accused to contradict a witness with his previous statement.

10. The upshot of the above discussion is I that the right of accused to cross-examine the witness by contradicting him with reference to any previous statements made by that witness has not been trammelled by Section 162 of the Code. Secondly, the ban contained in the section is applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

11. In Khatri v. State of Bihar, AIR 1981 SC 1068 : (1981 Cri LJ 597) the Supreme Court pointed out that protection is afforded to the accused against the user of statement of witnesses made before the police during investigation. In that context, learned Judges observed thus: 'But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar.' According to me, the said decision makes the position clear that the limited bar is not to be stretched beyond its contours.

12. Learned Sessions Judge was, therefore, perfectly right in permitting the defence counsel to use the statement recorded by the police in connection with another case for cross-examining the prosecution witness concerned.

I, therefore, dismiss both the Criminal Miscellaneous Cases in limine.