Tejumal Vs. State

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Court : Rajasthan

Decided On : Mar-20-1957

Reported in : AIR1958Raj240; 1958CriLJ1241

Judge : K.L. Bapna and; K.K. Sharma, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 195 and 236; Indian Penal Code (IPC), 1860 - Sections 193; Evidence Act, 1872 - Sections 18

Appeal No. : Criminal Revn. No. 66 of 1956

Appellant : Tejumal

Respondent : State

Advocate for Def. : C. Chaterjee, Asstt. Govt. Adv.

Advocate for Pet/Ap. : Shirumal Bishan Dass, Adv.

Disposition : Revision allowed

Judgement :

K.L. Bapna, J.

1. This is a revision against the framing of a charge against the accused under Section 193. I. P. C.

2. One Dr. Jaisingh made a police report against Laxmandass and two others on a charge under Section 332, I. P. C. and the said persons were challaned in the court of the Extra Magistrate, Tonk. The case ended in acquittal. Tejumal petitioner while appearing as a defence witness in that case made a statement on 21-7-1953 that

'Laxmandass is not related to me as a son of any of my uncles.'

The Extra Magistrate, Tonk after dealing with the proceedings in which the statement was made filed a complaint to Sub-Divisional Magistrate, Tonk on 4-11-1953 under Section 193 I. P. C. on the allegation that the said statement was false and the accused had intentionally given false evidence in judicial proceedings when he was legally bound on oath to state the truth.

It was alleged that the said statement was false to the knowledge of the accused and he had no reason to believe it to be true. In support of the prosecution, a previous statement of the accused recorded by Mr. Hari Kishan Dayal, Civil Judge, Tonk in civil suit instituted by, Mirchumal against Phagunmal and others for recovery of Rs. 2542/- (Civil Suit No. 7 of 1953) was produced in which Tejunial appeared as a witness of the defendant and during cross-examination admitted that Laxmandass was his uncle's son.

The learned Sub-Divisional Magistrate after recording the statement of certain prosecution witnesses and examining the accused ramed the following charge against the petitioner Tejumal on 3-12-1955:

'I, Bhawani Shanker Sharina, Magistrate First Class and Sub-Divisional Magistrate, Tonk hereby charge Tejumal son of Khanchand that you made a statement on 21-7-1953 in case State v. Laxmandass on oath that Laxmandass is not a son of my uncle which statement is Ex. P. 1 recorded by Mr. Yeshodeo Sharma, Extra Magistrate, Tonk. Further in civil suit Mirchumal v. Phagunmal you gave a statement on 25-5-1953 before Mr. Harikishan Dayal, Civil Judge, Tonk (wrongly mentioned as Additional Sessions Judge, Tonk) in which you said 'Laxmandass is my cousin being the son of my uncle.'

You deliberately made the two statements of which one is false and was so to your knowledge. You have thereby committed an offence which is punishable under Section 193 of the Indian Penal Code and within the jurisdiction of this Court and I hereby direct that you be tried on that charge'.

3. The accused Tejumal filed a revision against the said charge on two grounds that (1) if he was tried on an allegation that one of the two statements was false, it involved the trial of a charge that the statement made before the Civil Judge was false but the court could not take cognizance of that charge without a complaint being filed by the Civil Judge in that respect and (2) he could not be charged in the alternative when the two statements did not form one series of acts.

The learned Additional Sessions Judge was of opinion that the points raised had some force but did not like to interfere unless the matter was decided first by the Magistrate himself. The accused has come to this Court in revision.

4. It may be pointed out that the complaint was by the Extra Magistrate in respect of the statement made in his court in case State v. Laxmandass on the definite allegation thatthe particular portion of that statement was false. The provisions of Section 195 Cr. P. C. were fully complied with in respect of the complaint arising out of the statement before the Extra Magistrate. If the accused was also to be tried in the alternative that his previous statement before the Civil Judge was false, it no doubt required a complaint in respect of the statement by the Civil Judge.

That court had not filed any complaint and therefore the contention of the petitioner that the court could not take cognizance of the offence with respect to the statement before the Civil Judge is correct. It did not make any difference by the charge being in the alternative. The accused in the present proceedings could only be charged on the definite allegation that the accused had intentionally given false evidence before the Extra Magistrate and the offence in the alternative in respect of the statement before the Civil Judge made in the other proceedings could not be the subject of the charge.

5. The other ground does not require any decision but in view of the arguments addressed and in view of the fact that the case has been referred by a Single

Judge to a Division Bench, we wish to point out that Section 236 Illustration B of the Cr. P. C. permits a charge in the alter-native of intentionally giving false evidence with reference to two statements made on oath by the accused although it cannot be proved which of the contradictory statements was false.

The Illustration is however subject to the language used in the section and it refers to two sets of circumstances (1) where there is a single act but it is doubtful which of several offences the facts will constitute and (2) where there is a series of acts and it is doubtful which of the facts will constitute the offence. We are here concerned with the second circumstance.

The several acts for which a charge in the alternative can be framed must however form a series of acts, which means that the facts should have something in common between them. There must be a common link to connect the one fact with the other. A common example of a series of acts in respect of a charge under Section 193 I. P. C. would be where a prosecution witness makes a statement under Section 164 Cr. P. C. implicating a certain accused person but gives a contrary statement at the trial and thereafter the witness is prosecuted on the alternative charge under Section 193 in respect of the two statements.

The two facts form one series of acts. There is a common link between the two for the statement under Section 164 was obtained for the purpose of being used at the trial in case the witness attempted to go back on that statement.

6. In the present case the statement before the Civil Judge was made in Civil proceedings which were wholly unconnected with the subsequent statement in the case started on complaint by Dr. Kapoor for an offence under Section 332 I. P. C. The two statements being wholly unconnected did not form a series of acts mentioned in Section 236 Cr. P. C. and a charge in the alternative in respect of the two statements could not be made in the present case.

Reference in this connection may be made to Purshottam Ishvar Amin v. Emperor, AIR 1921 Bom 3 (FB) (A), Saieh Shah v. Crown AIR 1924 Smd 1 (B) and Emperor v. Sultanshah Sidisha, AIR 1940 Bom 385 (C).

7. We, therefore, direct that the learned Sub-Divisional Magistrate will amend the charge so as to restrict the trial to the specific allegation in the complaint that the statement made by the accused on 21-7-1953 in case State v. Laxmandass was false and he intentionally gave false evidence in a judicial proceeding.

8. Learned counsel next urged that the only evidence in the case in support of the complaint, that the accused intentionally gave false statement before the Extra Magistrate, was the previous statement of the accused given before the Civil Judge and if the latter statement could not be made the subject of a charge, there was no evidence on which the court could convict and in such circumstances the charge should be quashed.

The argument advanced by learned counsel for the appellant involves a contention that the previous statement is not admissible in evidence. This is not correct. Section 18 of the Evidence Act permits a previous statement made by the accused being tendered in evidence against him in the course of a criminal trial. It depends upon the court trying the accused as to what value should be attached to that statement when proved.

The accused has also the opportunity to explain the earlier statement or to prove irrespective of what he may have said earlier that his present statement, which is the subject of the charge, was true and therefore he did not commit any offence so far as his statement before the Extra Magistrate was concerned.

9. We, therefore, allow the revision andsend the case back to the Sub-Divisional Magistrate with direction as aforesaid to amend thecharge and then to proceed further according tolaw.