

Sawa and ors. Vs. the State

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Court : Rajasthan

Decided On : Nov-14-1973

Reported in : 1973(6)WLN839

Judge : J.P. Jain, J.

Appeal No. : S.B. Criminal Revision No. 689 of 1073

Appellant : Sawa and ors.

Respondent : The State

Disposition : Appeal allowed

Judgement :

J.P. Jain, J.

1. Sawa and four others have filed this revision application challenging the order dated 11-4-1972 of the Sessions Judge, Pali, by which he ordered the prosecution of the petitioners for having committed perjury in criminal sessions case No. 29/1971 State v. Birsingh decided on 1-2-1972 by him. Mst. Daapu was the wife of one Jugti Dan Jugtidan was murdered. His widow Mst. Dhapi and her suspected paramour Roop Singh were tried for the murder of Jugti Dan but they were ultimately acquitted Mst. Dhapu remarried Roop Singh After some time Roop Singh was also murdered by some person who could not be traced by the police

and his murder remained unpunished Some time in July, 1971 Mst. Dhapu was also found killed in the field of her second husband Roop Singh For the murder of Mst. Dhapu Bar Singh was tried by the learned Sessions Judge, Pali and it was this case which was registered as sessions case No 29/1971. Ber Singh was acquitted on 1-2-1972. In this case petitioners Sawa,Pema,Mana,Beeja & Daukhal were examined as prosecution witnesses. Their statements were got recorded by the police under Section 164 Cr.P.C before the Sub Divisional Magistrate, Pali. When these witnesses were examined at the commuting stage, they resiled from their statements and all of them stated that their statements under Section 164 Cr.P C. were recorded under coercion of the police At the trial they stuck to their statements which they made before the committing court. The learned Sessions Judge while acquitting the accused Ber Singh recorded in para 29 of his judgment as follows:

In concluding my judgment, I cannot remain mum without expressing condemnation about the altitude adopted by the prosecution witnesses who have gone hostile;& specially Sivia PW 6, Pema PW 7, Vijiya PW 13, Dauda PW,12 and Manaram PW.14 who deliberately suppressed the facts in order to help the culprit to go scot-free of the commission of a most cruel murder committed of a lady in the broad day light, and have thus perjured themselves by resiling from their statements given on oath as referred in the foregoing paras In my view, such persons should be prosecuted and punished for giving false evidence on oath in order to eradicate the evils of perjury and fabrication of false evidence in the interest of justice, and I, therefore, order that Sivia, Pema, Vijiya, Dauda and Manaram should be prosecuted for the offence of perjury which they appear to have committed Let an extract of the judgment be drawn for serving notice to the above said witnesses as to why they should not be prosecuted for committing perjury,

2. In pursuance of this order notices were issued to these petitioners to show cause as to why they should not be prosecuted under Section 193 I.P.C. In answer to this notice they filed a joint reply on 11-4-1972 and it was submitted on their behalf that whatever they stated before the committing court and at the trial was truthful. They are illiterate persons and the police gave them beating and

forced them to give their statements against their will before the Sub-Divisional Magistrate, Pali and accordingly they gave their statements under Section 164 Cr. P.C. as directed by the police. Their statements before the committing court as well as before the Sessions Judge, according to them, were the correct statements. The learned Sessions Judge in a very brief order was not satisfied with the reply made by these petitioners and recorded the order that separate complaints be made against them for having given false evidence. It is this order that has been challenged by these petitioners in this Court.

3. After having heard Mr. Shishodia for the petitioners and Mr. Mathur for the State I am clearly of the opinion that in the circumstances of the case it shall not be in the interest of justice to prosecute the petitioners under Section 193 I.P.C. Learned Counsel for the State has not been able to point out that the statements of these witnesses at the trial were in any way inconsistent to those made before the committing court. The basis of the impugned order is that these witnesses made certain statements earlier under Section 164 Cr.P.C. implicating the accused Bersingh whereas they refused to implicate him in the committing court and at the trial. It is conceded by Mr. Mathur that there is no material on record to warrant the inference that the statements made by the petitioners later in the courts either at the committing stage or at the trial were false. On behalf of the petitioners reliance has been placed on Ningappa Ramappa Kurbar and Anr. v. Emperor AIR 1941 Bom 408 It shall be useful to extract the following observations of their Lordships of the Bombay High Court which were made through Beaumont C J:

Now to my mind, in determining that question it is absolutely essential that the Court should make up its mind whether it was the statement before the Magistrate under Section 564 or the statement subsequently made in Court, which was false. I gather from the judgment of the learned Additional Sessions Judge that he is disposed to think that it was the statement made under Section 164 which was false; but there is really no evidence to enable us to determine which of the two statements was false If the statement in Court was false, then I agree that in the interests of justice there should be a prosecution; but supposing it was the statement under Section 164 which was false, what then? No doubt, a man

making a statement on oath before a Magistrate under Section 164 should speak the truth; but if he does not, the least he can do is to tell the truth when subsequently he goes into the witness box. To prosecute a man who has resiled from a false statement made under Section 164 is to encourage him in the belief that it pays to tell a lie and stick to it. It is far better that a man should escape punishment for having made a false statement under Section 164 than that he should be induced to believe that it is to his interest, however false the statement may have been, to adhere to it and thereby save himself from prosecution. The danger of such a course leading to the conviction of innocent persons is too great to be risked.

4. Subbarao, J. as he then was In re Madiga Narasigadu son of Peddanra and Ors. AIR 1949 Mad 502 quoted with approval the observations of of Beaumont CJ It was a case where a witness resiling from his statement under Section 164 Cr.P.C. was made the ground for prosecuting him under Section 193 I P.C. The learned Judge observed:

It is not expedient in the interest, of justice to prosecute a person under Section 193, Penal Code, who in the witness box resiles from his statement made under Section 164, Criminal P.C. and says that he was forced by the police to make that statement, specially when the person is an illiterate Madiga and it is impossible to rule out the possibility that he was forced to make the statement.

5. With great respect I agree with the observations made by the learned Judges of the Bombay and the Madras High Court. These observations fully apply to the facts and circumstances of the present case.

6 In the result, the revision application is allowed and the order dated 11-4-1972 passed by the learned Sessions Judge, Pali, ordering the prosecution of the petitioners is set aside and the notices issued by the Sessions Judge, Pali shall stand discharged.