

Kewal Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-18-2002

Reported in : 2002(3)WLC284; 2002(2)WLN723

Judge : Sunil Kumar Garg, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : S.B. Criminal Revision Petition No. 277 of 1987

Appellant : Kewal Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Panne Singh, Public Prosecutor; M.L. Garg, Adv.

Disposition : Revision allowed

Judgement :

Garg, J.

1. This revision petition has been filed by the accused petitioner against the judgment dated 11.9.1987 passed by the learned Addl. Sessions Judge, Raisinghnagar in Criminal Appeal No. 72/83 by which he dismissed the appeal of the accused petitioner and confirmed judgment and order dated 9.6.1983 passed by the learned Addl. Chief Judicial Magistrate, Raisinghnagar in Criminal Case No.

250/80 by which the learned ACJM convicted and sentenced the accused petitioner in the following manner:-

Name of accused petitioner

Convicted u/Sec,

Sentence awarded

Kewal Ram

419 IPC

Two years RI

468 IPC

Two years Six months RI and to pay a fine of Rs. 50/-, in default of payment of fine, to further undergo 10 days SI.

471/467 IPC

Two years RI and to pay a fine of Rs. 50/-, in default of payment of fine, to further undergo 10 days SI.

All the above substantive sentences were ordered to run concurrently.

By the same judgment, the learned ACJM acquitted accused Mst. Gaura and Gangaram for the offence under Sections 419, 467, 468 read with 120-B IPC.

2. The facts giving rise to this revision, in short, are as follows:-

On 24.4.1975, one Mst. Gangi filed a complaint before the Court of Magistrate, Raisinghnagar and the same was sent under Section 156(3) Cr.P.C. to the Police Station Raisinghnagar for investigation. On that complaint, a case was registered in that Police Station and the allegation in the said complaint was for the offence under Section 376 IPC against one Dula Ram. During investigation, police came to the conclusion that Mst. Gangi was not widow of Sonu Ram, but was wife of

Uttamram and Sonu Ram was allotted land in Chak 73 N.P. One Ganga Ram said that Sonu Ram had no legal heir and got that land cancelled and he got that land allotted in his name. Later on, allotment of that land was again cancelled and land became that of the State. The allegation was that accused petitioner Kewal Ram submitted an application alongwith affidavit before the allotting authority stating that he was legal heir of Sonu Ram and, therefore, land may be allotted in his name and not only that, he entered into an agreement to sell with Krishna for the transfer of that land.

After usual investigation, police filed challan against the accused petitioner Kewal Ram, Smt. Gaura and Ganga Ram for the offence under Sections 420, 468, 467, 471 and 120 IPC in the Court.

On 18.9.1978, the learned Judicial Magistrate, Raisinghnagar framed charges for the offence under Sections 419, 467, 468, 471 IPC against the accused petitioner and for the offence under Sections 419, 467, 468/120 IPC against the accused Mst. Gaura and Gangaram.

Thereafter, the case was put up for recording evidence of the prosecution witnesses.

On 20.8.1980, no evidence was produced by the prosecution and, therefore, it was ordered by the Court that in case on the next date, the evidence was not produced by the prosecution, its evidence would be closed and the case was fixed for recording prosecution evidence on 8.10.1980 and on 8.10.1980, the Court ordered that witness Ganga had died and therefore, his evidence was closed and rest witnesses Paridevi and Mangli were summoned and the case was fixed for 6.11.1980. On 6.11.1980, evidence of Paridevi and Mangli was closed and pest witnesses were summoned for 19.12.1980 and 20.12.1980. On 19.12.1980 and 20.12.1980, witnesses were not produced by the prosecution and the case was fixed for 3.3.1981. In the order-sheet dated 3.3.1981, it was written that since the file was huge one, therefore, after perusing it, order for closing evidence of the prosecution witnesses would be passed and similar order-sheet was written on 23.3.1981 and the case was fixed for 14.4.1981. From the order-sheet dated 14.4.1981, it appears that the case was fixed for recording statements of the

accused persons under Section 313 Cr.P.C. on 21.4.1981. On 21.4.1981, the case was fixed for 25.4.1981. On 25.4.1981, the statements of the accused persons under Section 313 Cr.P.C. were recorded. Denial and admission of the documents were also done and looking to the admission and denial, it was ordered to the APP to furnish the list of those witnesses, he wanted to produce upto 27.4.1981.

Thereafter, statements of the prosecution witnesses were recorded and after recording fresh statements of the accused persons under Section 313 Cr.P.C., the learned Addl. Chief Judicial Magistrate, Raisinghnagar through his judgment and order dated 9.6.1983 acquitted the accused Mst. Gaura and Gangaram of the charges framed against them, but convicted the present accused petitioner for the offence under Sections 419, 468, 471/467 IPC and sentenced in the manner as indicated above holding inter-alia that the prosecution has proved its case beyond reasonable doubt only against the accused petitioner for the said offences.

Aggrieved from the said judgment and order dated 9.6.1983 passed by the learned Addl. Chief Judicial Magistrate, Raisinghnagar, the accused petitioner preferred an appeal before the learned Addl. Sessions Judge, Raisinghnagar. The learned Addl. Sessions Judge, Raisinghnagar also dismissed the appeal of the accused petitioner through his judgment dated 11.9.1987.

Aggrieved from the said judgment dated 11.9.1987 passed by the learned Addl. Sessions Judge, Raisinghnagar, this revision petition has been filed by the accused petitioner.

3. In this revision petition, the main contention of the learned counsel appearing for the accused petitioner is that the learned Addl. Chief Judicial Magistrate, Raisinghnagar committed grave illegality in examining the accused petitioner under Section 313 Cr.P.C. when no evidence was led before him by the prosecution and thus, that procedure was nothing, but abuse of the process of The court and since the learned ACJM had put questions under Section 313 Cr.P.C. on police papers, therefore, that procedure was also not only illegal, but without jurisdiction and thus, thereafter the whole proceedings, which were conducted against the accused petitioner, were illegal and in these circumstances, the whole

trial against the accused petitioner stands vitiated and thus, the conviction recorded by the courts below against the accused petitioner cannot be sustained. Hence, it was prayed that this revision petition be allowed and the impugned judgments and orders of the courts below be set aside and the accused petitioner be acquitted of the charges framed against him.

4. On the other hand, the learned Public Prosecutor supported the impugned judgments and orders passed by the courts below.

5. I have heard the learned counsel for the accused petitioner and the learned Public Prosecutor and perused the record of the case.

6. So far as the factual position is concerned, as stated above, no evidence was led by the prosecution and the learned Addl. Chief Judicial Magistrate gave so many opportunities to the prosecution to produce evidence and when no evidence was led by the prosecution, the case was fixed for recording statements of the accused persons under Section 313 Cr.P.C. and their statements were recorded under Section 313 Cr.P.C. and thereafter, a fresh evidence was recorded and trial started. There is no dispute in this case that after framing of the charges against the accused persons on 18.9.1978 and upto 25.4.1981 when the accused were examined under Section 313 Cr.P.C. there was no evidence led by the prosecution.

7. The question that arises for consideration is whether the above procedure adopted by the learned Addl. Chief Judicial Magistrate can be said to be without jurisdiction and illegal or not.

8. For convenience, Section 313 Cr.P.C. is quoted below:-

'313. Power to examine the accused. (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court:-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary.

(b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case :

Provided that in a summons case, where the Court has disposed with the personal attendance of the accused, it may also dispense with his examination under clause (b).

(2)

(3)

(4)

9. This section can easily be divided in two parts. The first part empowers a Court to question the accused at any stage of the proceeding without previously warning him and this part is only discretionary. The second part which is mandatory enjoins a Court to question the accused generally after the witnesses for the prosecution have been examined and before he is called upon to enter his defence. The purpose of both Clauses (1)(a) and 1 (b) is the same i.e. to give the accused opportunity to explain incriminating circumstances.

10. It is obligatory on the court to question the accused on the circumstances appearing against him in evidence given so as to enable him to explain the same. The court has to guard against cross-examination of the accused. The accused is to be questioned with regard to the circumstances appearing against him in evidence and not the inference that flows from the circumstances. The answers given by the accused have to be taken into consideration. Vide *State of Himachal Pradesh v. Wazir Chand CD*.

11. The examination of accused under Section 313 Cr.P.C. is not a mere formality. Answers given by the accused to the questions put to him during such examination have a practical utility for criminal courts. Apart from affording an opportunity to the delinquent to explain incriminating circumstances against him, they would help the court in appreciating the entire evidence adduced in the court during trial. Vide *Rattan Singh v. State of H.P. (2)*.

12. In Sub-section (1) of Section 313 Cr.P.C., it is clearly mentioned that the circumstances appearing in the evidence against him should be put to the accused person, while examining him under Section 313 Cr.P.C. '

13. The question is what is meant by 'evidence'. That question was answered by the Hon'ble Supreme Court in Kalpnath Rai v. State (3), in the following manner :-

'Section 313 is intended to afford opportunity to an accused 'to explain any circumstance appearing in the evidence against him. It is trite that an accused cannot be confronted during such questioning with any circumstance which is not in evidence. Section 313 is not intended to be used as an interrogation. No trial Court can pick out any paper or document from outside the evidence and abruptly slap it on the account and corner him for giving an answer favourable or unfavourable.'

14. Thus, from the above observations of the Hon'ble Supreme Court, it is clear that examination of the accused under Section 313 Cr.P.C. is for the purpose of enabling him to explain any circumstance appearing in evidence against him. Hence, accused cannot be confronted with any circumstance which is not in evidence.

15. Thus, in the present case, when there was no evidence led by the prosecution before the learned trial Magistrate, therefore, examining the accused petitioner under Section 313 Cr.P.C. was without jurisdiction and after examining him, the whole trial from that stage stands vitiated. The procedure adopted by the learned Addl. Chief Judicial Magistrate was not only illegal but without jurisdiction and has prejudiced the case of the accused petitioner and thus serious illegality was committed by the learned Addl. Chief Judicial Magistrate which is not curable as he was confronted with the circumstances under Section 313 Cr.P.C., which were not produced by the prosecution in evidence. Hence, the conviction of the accused petitioner recorded by learned Addl. Chief Judicial Magistrate and confirmed in appeal by the learned Addl. Sessions Judge cannot be sustained.

16. However, looking to the fact that alleged incident took place in the year 1975, it would not be proper to remand the case back for afresh trial.

17. For the reasons stated above, the findings of conviction recorded by the courts below are liable to be set aside and this revision petition deserves to be allowed and the accused petitioner is entitled to acquittal.

Accordingly, this revision petition filed by the accused petitioner Kewal Ram is allowed and the impugned judgments and orders dated 11.9.1987 passed by the learned Addl. Sessions Judge, Rais-inghnagar and dated 9.6.1983 passed by the learned Addl. Chief Judicial Magistrate, Raisinghnagar are set aside and the accused petitioner is acquitted of the charges framed against him.

Since the accused petitioner is on bail, he need not surrender and his bail bonds stand cancelled.

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