

Mania Vs. State of Rajasthan

Mania Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/767532

Court : Rajasthan

Decided On : May-06-1987

Reported in : 1987(2)WLN219

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Cr. Appeal No. 93 of 1987

Appellant : Mania

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Kishore Singh Lodha, J.

1. The appellant Mania had appeared as a prosecution witness in Sessions Case No. 9/81 before the learned Addl. Sessions Judge, Sirohi. During the examination he said to have resiled from a statement made by him under Section 164 Cr. P.C. and, therefore, he was declared hostile. It is alleged that in the statement under Section 164 Cr. PC he had stated that the deceased had been throttled by the accused but before the Court he denied throttling. He, however, admitted having stated so before the police but explained that he had been detained by the police and it was on account of the pressure of the police that he had stated so, although

it was not true. At the conclusion of the trial, the learned Addl. Sessions Judge also came to the conclusion that it was not a case of throttling and the medical evidence also did not support the prosecution story so far as the question of throttling was concerned. According to the opinion of the doctor the cause of death was drowning and not throttling. However, the learned Addl. Sessions Judge observed that as the petitioner has resiled from his previous statement and one of the two statements was bound to be false, it was necessary to make an enquiry and file a complaint against the appellant for offence under Section 193 IPC. in pursuance of that observation an enquiry was made. As the court of the Addl. Sessions Judge had been up-graded into the court of the Sessions Judge, Sirohi, this enquiry was made by the learned Sessions Judge and he came to the conclusion that it was expedient and in the interest of justice to make a complaint against the petitioner. Accordingly, a complaint has been filed before the learned Munsif & Judicial Magistrate, Sirohi for offence under Section 193 IPC against the petitioner. The petitioner, has come up in appeal against that filing of the complaint.

2. I have heard the learned Counsel for the appellant and the learned P.P. and have also gone through the certified copies of the statements of the appellant under Section 164 Cr. PC as also before the court and the statement of doctor.

3. It is true that the appellant Mania had stated before the police that the accused had throttled the deceased but he did not stick to this version of the story before the trial court and stated that he had made that statement under Section 164 Cr. P.C. on account of the pressure of the police. It further appears that from the other material on record and specially the medical evidence the statement made by the appellant before the learned Sessions Judge that it was not a case of throttling and that he had not seen the accuse throttling the deceased appears to be correct. The doctor has categorically stated that cause of death was drowning and not throttling He has also stated that there was no congestion in larynx and trachea and in a case of throttling these parts are expected to be congested.

4. The question which, therefore, arises is whether in these circumstances when the statement before the court appears to be correct and the statement under

Section 164 Cr. PC is not correct and a proper explanation is given by the witness, will it be expedient and in the interest of justice to prosecute him under Section 193 IPC. It has already been held by this Court in *Sawa v. The State* 1974 RLW 19 that it will not be expedient to prosecute such witness. Reliance was placed on *Ningappa Ramappa Kurbat v. Emperor* AIR 1941 Bom 408 and *In re Madiga Narasigadu son of Peddanna v. The Crown* AIR 1949 Mad 502. In *Ningappa's* case (supra) Beaumont, C.J. observed as under:

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 164, or the statement subsequently made in Court, which was false. I gather from the judgement of the learned Additional Sessions Judge 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.

5. The Madras High Court in *In re Narasigadu's* case (supra) had taken the view that in such circumstances it is not expedient and in the interest of justice to prosecute the witness for giving false evidence. It was a case almost similar to the present case In that case also the witness was an illiterate person and the possibility that he had been forced by the police to make a particular statement under Section 164 Cr. P.C. could not be ruled out. In the present case also we are concerned with an illiterate person whose explanation is that he had been

detained by the police and had been forced to state before the Magistrate under Section 164 Cr. PC that it was a case of throttling I am in respectful agreement with this view and, therefore, I am of the opinion that it will not be expedient and in the interest of justice to prosecute the petitioner Mania for offence under Section 193 IPC in these circumstances.

6. I, therefore, allow this appeal and direct that the complaint filed against the appellant under Section 193 IPC be withdrawn.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com