

Emperor Vs. Sailendra Kumar Das

Emperor Vs. Sailendra Kumar Das

SooperKanoon Citation : sooperkanoon.com/885088

Court : Kolkata

Decided On : May-10-1910

Reported in : 6Ind.Cas.476

Judge : Lawrence Jenkins, C.J., ;Doss and ;Teunon, JJ.

Appellant : Emperor

Respondent : Sailendra Kumar Das

Judgement :

1. An application has been made to us by the Advocate-General under Section 195 of the Criminal Procedure Code for sanction to prosecute Tripura Sankar Sarkar under Section 193 of the Indian Penal Code.
2. The application is based on a petition, presented apparently at the request of the Deputy Inspector-General of Police, and the Advocate-General has relied solely on the allegations contained in that petition and has placed before us no other materials. But it would be a very inadequate treatment of the case were we to dispose of it on these allegations alone, and to arrive at a just determination other matters must be considered.
3. It may be conceded that a comparison of Tripura's deposition before the Committing Magistrate with his evidence given in this Court discloses contradictory statements; but it would be a dangerous doctrine to hold that this alone would justify us in granting a sanction to prosecute for giving false evidence. It is

necessary for us to consider how it has come about that there are these contradictions and how it is that Tripura has resiled in this Court from the statements he made before the Magistrate.

4. Tripura was examined as a witness before us and we are thus in the best possible position for the purpose of appreciating the truth of what he stated before us.

5. After careful consideration of his evidence and bearing in mind all that we observed when he was in the witness-box, we have no doubt that in relation to the matters now in question he gave in the main a true version in this Court and a false one before the Magistrate.

6. What then is the explanation of this? A bare narrative of the facts as disclosed by the evidence given before us will best furnish the answer as to how Tripura came to give false evidence before the Magistrate directed to establishing the guilt of his friend and host, the accused Bidhu Bhusan Biswas.

7. Tripura was arrested by Inspector Nishi Kanta Banerjee on the 15th of December at 5 p.m. On the 16th he was taken to the village of Bebsishi by the Police Superintendent Shamsul Alim and Inspector Nishi Kanta Banerjee being of the party, and then, according to the prosecution theory he pointed out the place where he was supposed to have been the accused Bidhu conceal the property. After the property was found he is said to have been released from custody in this same village and the form was observed of taking from him a bond to appear and give evidence. But in spite of the release and notwithstanding the bond. Tripura adhered to the Police and went back with them to the Mirpur thana and stayed with them till he gave his evidence. This he did on the 17th and he was then examined before the Committing Magistrate, notwithstanding that the case before the Magistrate was at that time standing adjourned to the 20th and the 17th was not a day fixed for hearing. The only explanation Inspector Banerjee could give of this case was, I thought it better. Up to this point, we have narrated that which rests on Police evidence.

8. We will now take up Tripura's story. The only persons present at the examination besides Tripura were the Committing Magistrate and Superintendent Shamsul Alim and the prosecution at this stage was conducted by Superintendent Shamsul Alim in the sense that he examined the witnesses. We would here point out that if this be true, the examination of Tripura was in direct breach of the provisions of Section 495 of the Criminal Procedure Code, for there can be no question that the Superintendent Shamsul Alim had taken part in the investigation of the offence. What is stated by Tripura beyond this is contradicted by Inspector Banerjee. Tripura declares that while he was at the Mirpur¹ thana he was tutored by the Police, and that he gave the answers he did before the Magistrate, because he was told by Superintendent Shamsul Alim that he would have to give his answers as the Superintendent put his questions. Inspector Banerjee denies the tutoring and there the matter rests. This then is how matters stand. The Court is convinced that of the contradictory statements now under consideration those made in this Court were true, but those before the Magistrate were false and on a careful consideration of the events leading up to the examination before the Committing Magistrate and of the conditions under which that examination was conducted, we are clearly of opinion that the sanction sought should not be given.

10. Had Tripura repeated here the false story he told before the Magistrate, no such application as the present would have been made; is it to be granted because he had told the truth here? Certainly not.

11. We do not mean to say that in no case would it be right to grant a sanction when a witness has told a false story before the Committing Magistrate and a true story at the trial,--there may be exceptional conditions in which sanction should be granted--but we are clear that to give sanction in circumstances, such as we have here, would only tend to defeat and not to further the ends of justice.

12. So far we have dealt with the application as based on Tripura's conflicting statements; but sanction is also sought for his prosecution in respect of his statement that the deposition was not read over to him. The Advocate-General, however, has not placed before us any affidavit or other material that would justify us in holding that in this respect Tripura had given false evidence. The result then

is that we must decline to give the sanction sought and we must dismiss the application.

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