

The State Vs. Atma Ram

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Court : Himachal Pradesh

Decided On : Dec-01-1964

Reported in : AIR1966HP18,1966CriLJ262

Judge : Om Parkash, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 164 and 339(3)

Appeal No. : Criminal Misc. Petn. No. 1 of 1964

Appellant : The State

Respondent : Atma Ram

Advocate for Def. : Kirti Ram, Adv.

Advocate for Pet/Ap. : Inder Singh, Special Public Prosecutor

Disposition : Petition dismissed

Judgement :

ORDER

Om Parkash, J.

1. This is a petition, under Section 330(3) Cr. P. C., requesting this Court to accord sanction to the prosecution of the respondent, for an offence, under Section 194 I. P. C, The facts, giving rise to the petition, are as follows:

2. Paras Ram, brother of Jamna Dass P. W. 2 and Muni Lal P W. 4, was residing at Chindi, Tehsil Karsog, District Mandi. He was found dead, in his room, on the morning of the 25th December, 1962. The dead body was cremated by Paras Ram's relatives.

3. There were rumours that Paras Ram had not died a natural death but had been murdered. On the 1st January, 1963, Bodh Raj P. W. 1 made the application Ex. PB. to the Station House Officer, Karsog, stating that Paras Ram had died in suspicious circumstances and that he had some enmity with Hari Saran, as both were carrying on illicit connection with Shmt. Binti. The police registered a case under Section 302 I. P. C. During the course of investigation, Hari Saran, the respondent and other persons were arrested on the 15th January, 1963. The respondent was tendered pardon by the District Magistrate, Mandi, on the 1st February, 1963, on the condition of making a full and true disclosure of the whole of the circumstances of the case. On the 2nd February, 1963, the statement Ex. P1) of the respondent, was recorded by Shri M.S. Bragta P. W. 14, under Section 164 Cr. P. C. The respondent had stated that he, Hari Saran and three other persons had gone to the residence of Paras Ram on the night of the 24th December, 1962, that he had remained standing outside the room, that Hari Saran and the three other persons had entered the room and had strangled Paras Ram to death.

4. Hari Saran and others were challaned under Section 302 I P C. The respondent was produced as a witness in the Committing Court. He resiled from his statement Ex. PD and deposed that he did not know Hari Saran and others and knew nothing about the death of Paras Ram. So far as the statement Ex. PD was concerned, the respondent stated that he had made that statement under police coercion. The Committing Magistrate committed Hari Saran and others to the Sessions. The respondent was examined as a witness in the Court of Sessions. He made the same statement which he had made in the Committing Court.

5. The only other evidence, bearing on the death of Paras Ram, adduced by the prosecution, consisted of the statements of witnesses that blue marks were seen on the dead body of Paras Ram, at the time of giving it bath, before cremation,

and that both Paras Ram and Hari Saran had illicit connection with Shmt. Binti. There was no other evidence, connecting Hari Saran and other persons, with the death of Paras Ram.

6. The learned Sessions Judge did not believe the evidence of the prosecution witnesses that blue marks were discovered on the dead body of Paras Ham and that Hari Saran or Paras Ram had illicit connection with Shmt. Binti. He held that there was no evidence to establish that Paras Ram had died as a result of violence and that Hari Saran and others had anything to do with his death. In the result, he acquitted Hari Saran and others.

7. The learned Special Public Prosecutor, who had conducted the case, in the Sessions Court, granted a certificate, that, in his opinion, the respondent had wilfully concealed essential facts and had not complied with the condition on which pardon was tendered. The present petition, has been made to this Court, for according sanction to the prosecution of the respondent, under Section 339(3) Cr. P. C.

8. It is well-settled that the discretion vested in the High Court, by Section 339(3) Cr. P. C., to sanction the prosecution of an approver for the offence of giving false evidence must be exercised with extreme caution and that the cardinal question, for consideration, in such a case, is whether the incriminating statement, made by the approver, was or was not true, vide *Emperoro v. Mathura*, AIR 1934 All 43. It was said in that case:

'It is obvious that if an approver resiles from a previous statement made by him incriminating himself and certain other persons and makes a statement directly contradictory to the one previously made by him one of his two statements must be false, and, as such, he must necessarily be guilty of giving false evidence. But the fact, that the legislature has prohibited the prosecution of an approver for the offence of giving false evidence without the sanction of the High Court, demonstrates that the mere fact that the two statements are contradictory cannot in every case be a warrant for directing the prosecution of the approver.'

9. So, the mere fact that the respondent had made two contradictory statements cannot be a warrant for directing his prosecution. The crucial question is whether the statement Ex. PD, made by the respondent, under Section 164, was true. In this connection, it is to be noted that there was practically no evidence, in support of the case of the prosecution, excepting the statement Ex. PD. made by the respondent. There were no eye witnesses of the occurrence. The real brothers of Paras Ram and his other relatives had cremated the dead body, without suspecting any foul play/ They had not noticed any blue marks on the dead body. The application Ex. PB, on which investigation was initiated, was made by a third person, about a week after the occurrence. The evidence of the witnesses that both Paras Ram and Hari Saran were carrying on illicit connection with Shmt. Binti was all hearsay and was rightly rejected by the Sessions Judge. The aforesaid circumstances indicate that pardon was tendered to the respondent and he was induced to make the statement Ex PD to bolster a weak case.

It cannot be said that the statement Ex PD was voluntarily made and was true and that the subsequent statements, made by the respondent, in the Committing Court and the Court of Sessions, were false. It was observed in *State v. Dial Singh*, AIR 1958 Punj 310, that it sometimes happens that, when an Investigating Officer is confronted with a weak case, he in his misplaced zeal attempts to bolster it by getting hold of an approver and that if there is any such indication in the circumstances of a particular case, sanction ought not to be given under Section 339(3) Cr P C. As already discussed circumstances of the present case indicate that the respondent was tendered pardon and was induced to make the statement Ex PD to bolster a weak case. It will not, therefore, be proper to accord sanction for his prosecution. The petition is dismissed.