1954

The State of Rajasthan v. The Mewar Textile Mthis Ltd., Bhilwara and Others.

Ghulam Hasan J.

and a District Judge could only mean a Judge of the High Court for Rajasthan established under the Rajasthan High Court Ordinance 1949 and a District Judge of or in Rajasthan within the meaning of section 5(ix) of Ordinance No. IV of 1950. Accordingly we hold that the appointment of Shri Sukhdeo Narain was perfectly valid.

We accordingly set aside the order of the High Court but without costs, as the respondent is not represented.

Agent for the appellant : *R. H. Dhebar.*

HEM RAJ

v.

THE STATE OF AJMER

(And Connected Appeal)

1954

March 17.

[MEHR CHAND MAHAJAN C. J., VIVIAN BOSE and GHULAM HASAN JJ.]

Constitution of India, art. 136(1)—Principles governing the exercise of powers by the Supreme Court under art. 136(1)—Confessions—Whether can be corroborated by evidence already in possession of police.

Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of the decision appealed against, the Supreme Court does not exercise its overriding powers under art. 136 (1) of the Constitution and the circumstance that the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for.

The contention that confession cannot be corroborated by the use of materials already in the possession of the police is devoid of force. A confession made and recorded even during a trial can be corroborated by the evidence already recorded. It may be made and recorded in the court of committing magistrate and materials already in the possession of the police may be used for purpose of corroboration.

1954

Hem Raj v. *The State of Ajmer*

Mahajan C. J.

Queen v. *Thompson* ([1893] 2 Q.B. 12) and *Mata Din* v. *The Emperor* (A.I.R. 1931 Oudh 166) referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 58 and 87 of 1953.

Appeal by Special Leave granted by the Supreme Court on the 30th June, 1953, from the Judgment and Order dated the 25th April, 1953, of the Court of the Judicial Commissioner at Ajmer in Criminal Appeal No. 13 of 1953 and Criminal Reference No. 19 of 1953 arising out of the Judgment and Order dated the 18th March, 1953, of the Court of the Sessions Judge at Ajmer in Sessions Trial No. 1 of 1953.

Appeal by Special Leave granted by the Supreme Court on the 27th October, 1953, from the Judgment and Order dated the 25th April, 1953, of the Court of the judicial Commissioner at Ajmer in Criminal Appeals Nos. 14 and 15 of 1953 and Criminal Reference No. 15 of 1953 arising out of the Judgment and Order dated the 18th March, 1953, of the Court of the Sessions Judge at Ajmer in Sessions Trial No. 1 of 1953.

Bakhshi Tek Chand (*Bhagwan Singh* and *Rajinder Narain,* with him) for appellant in Criminal Appeal No. 58 of 1953.

B. D. Sharma for respondent in Criminal Appeal No. 58 and appellant in Criminal Appeal No. 87 of 1953.

K. N. Agarwala for respondent in Criminal Appeal No. 87 of 1953.

1954. March 17. The Judgment of the Court was delivered by

MAHAJAN C. J.—Criminal Appeals Nos. 58 and 87 of 1953 relate to the same occurrence, and arise out of a common judgment delivered by the Judicial Commissioner of Ajmer. Both of them are before us by special leave granted by this court on different occasions.

Unless it is shown that exceptional and special circumstances exist that substantial and grave injustice has been done and the case in question presents features of sufficient gravity to warrant a review of

the decision appealed against, this court does not exercise its overriding powers under article 136(1) of the Constitution and the circumstance that because the appeal has been admitted by special leave does not entitle the appellant to open out the whole case and contest all the findings of fact and raise every point which could be raised in the High Court. Even at the final hearing only those points can be urged which are fit to be urged at the preliminary stage when the leave to appeal is asked for. The question for consideration is whether this test is satisfied in either of these two appeals. After hearing the learned counsel in both the appeals we are satisfied that none of them raise any questions which fall within the rule enunciated above.

On the 16th of July, 1952, Mangilal deceased, partner of firm Rambhajan Mangilal of Bijainagar, received by express delivery post a letter Exhibit P-5 in a closed cover Exhibit P-6. This letter was actually delivered to Mangilal's son Laduram who, on reading it, found that it purported to have been sent by "Bhayankar Daku Dal" demanding payment of Rs. 5,000 at 6-30 p.m. on the 17th of July at the crossing near the 27th milestone on the Ajmer-Bijainagar road and saying that "if you cheat or do 420 or in case you inform the police, no other punishment except that of death will be meted out to you and you will be shot dead and made to lie on the ground." Laduram took the original letter with the envelope to his uncle Ramjas at Ajmer and both of them saw the Superintendent of Police and gave him the letter and the envelope and asked for immediate protection and investigation. The Superintendent of Police, however, took no action in this behalf. Mangilal failed to comply with the demand to pay. On the 17th of July about 9-30 p.m. when he was sitting at his shop and his munim Gajanand was writing the accounts, two persons came from the neighbouring street. One of them was dressed in a khaki suit and the other in a blue suit. The man in blue demanded from Mangilal a reply to the letter, while the man in khaki entered the shop and removed Mangilal's gun which was hanging in a canvas case from a

1954

Hem Raj
v.
The State of Ajmer

Mahajan C. J.

peg on the wall of the shop. On Mangilal's replying that his son Laduram had taken the letter to Ajmer, the person dressed in blue fired from a Mauser pistol and shot Mangilal dead. The two assailants then ran away. On the way they threw the Mauser pistol and khaki clothes in the street at a short distance from the shop. Mangilal died shortly afterwards. The first information report was lodged by Nand Lal (P. W. 1) immediately after the occurrence at 9-45 p.m. In this report Nand Lal described the occurrence in the following terms :

"From the lane two men, one of whom was wearing khaki clothes having a hat on the head and the other wearing blue clothes with a blue cap on the head came near Mangilalji and stood there. The man with khaki clothes said something to Mangilal and the man with blue clothes went straight inside the shop and picked up Mangilal's gun from behind the door shutter and brought it out and stood near the khaki clad man, and at that time shot Mangilal with a pistol he had."

The prosecution challaned four persons, *viz.,* Hem Raj, appellant in Criminal Appeal No. 58 of 1953, Hukum Singh, respondent in Criminal Appeal No. 87 of 1953, Milap Singh and Abdul Hakim. It was alleged that all the four of them had acted in conspiracy and realised money from rich persons through threatening letters and in pursuance of the conspiracy Exhibit P-5 was sent. Hem Raj and Hukum Singh were arrested on the evening of the 26th July at Bijainagar and were sent to jail on the 28th of July, 1952. On the 30th of July, 1952, Hem Raj made a confession in jail before a Magistrate. On the 5th of September, 1952, at the first hearing of the case before the committing Magistrate, the confession was retracted by means of an application made through counsel and a number of grounds were given why the confession was inadmissible and not of any value. All the accused persons denied the charge. Milap Singh and Abdul Hakim were acquitted by the learned Sessions Judge who however convicted Hem Raj and Hukum Singh of the different offences with which they had been charged. Hem Raj and Hukum Singh appealed to the Judicial

Commissioner at Ajmer. Hukum Singh's appeal was allowed but that of Hem Raj was dismissed. As stated already, Hem Raj's appeal before us is by special leave and the State has also appealed against the acquittal of Hukum Singh and that also by special leave.

Dr. Tek Chand for Hem Raj raised three points before us: (1) That the confession was inadmissible in evidence, the prosecution having failed to establish affirmatively that it was free and voluntary and that it was not preceded by any inducement to the prisoner to make a statement held out by a person in authority. It was said that as no direct or circumstantial evidence of any kind was available, the police was straining every nerve to get any one of the four persons arrested confess, so that he may be given pardon and made an approver. The police was particularly keen to make somebody an approver because of their own negligent conduct in not giving protection to the deceased when Laduram, his son, had approached the Superintendent of Police with the threatening letter received by him and that the police also had not been able to discover how the pistol had been stolen from its owner. It was contended that Hem Raj was actually arrested on the 25th July and illegally kept in custody, that even after remand by the Magistrate he was not immediately sent to jail but was taken to the house of the Superintendent of Police and kept there for more than four hours, that all these circumstances raised a strong suspicion against the voluntary character of the confession and showed that the police was making efforts by threats and inducements to extort a confession from him. It was further suggested that while Hem Raj was in jail the Superintendent of Police paid him a visit. There is no relevant evidence to establish this fact.

(2) That the Magistrate who recorded the confession did not disclose his identity that he was a Magistrate to Hem Raj and that instead of recording the confession in his court room he recorded it in jail without any sufficient grounds for doing so and this circumstance also vitiated the confessions.

1954

Hem Raj
v.
The State of Ajmer

Mahajan C. J.

(3) That there was no independent corroboration of any of the material facts contained in the confession and that whatever material has been considered as corroboration by the courts below was already in the possession of the police before the confession was recorded and therefore the confession was merely a recital of facts already in possession of the police and was modelled on it and that the police discovered nothing in pursuance of the confession and their knowledge about the material facts of the case was not enriched in any manner by the confession and therefore there was no evidence whatsoever in the case on which the conviction of the appellant could stand.

The learned Judicial Commissioner as well as the learned Sessions Judge considered all these contentions and negatived them and there were valid reasons for doing so. On the question whether the confession was voluntary, there are concurrent findings of the courts below and there are no grounds for going behind these findings. On the question whether material particulars of the confession have been corroborated, there are again concurrent findings. All the arguments addressed to us relate to the re-appreciation of evidence which had been believed by the courts below and do not warrant interference by us in the decisions of the courts below. We have, however, also examined these arguments independently and we have no hesitation in endorsing the views of the courts below.

As regards the voluntary nature of the confession, the significant fact is that the confession was made on the 30th of July, that is, two days after Hem Raj had been lodged in jail, and was not in police custody or amenable to police influence. He had more than 36 hours to make up his mind whether to make a confession or not. He is not a rustic but runs a cycle shop in Bijainagar. It is noteworthy that Hukum Singh was similarly situated and about whom an application had been made that he was willing to confess. When the Magistrate approached him he said that he would only make a statement after consulting his lawyer and declined to make any statement. Further from the 30th of July till the 5th of September no

steps were taken by Hem Raj to resile from his confession. There was ample time at his disposal to make an application to the Magistrate or to the District Magistrate that the confession had been extorted from him by threats and inducement. On the 5th of September when an application was made by his counsel retracting the confession it was more in the nature of an argument than in the nature of a detailed statement of the facts and circumstances in which the confession had been made. When examined under section 342, Criminal Procedure Code, he said that he made the confession under threats held out by the Superintendent of Police and Sri Ram Chandra, Sub-Inspector. He further said that the Superintendent of Police told him "that if I made a confession of my guilt, I would be made an approver; the Superintendent of Police said that he was a Vaishya and as I too was a Vaishya he would help me. I told the Superintendent of Police that I would do as he asked me to do. About 10-30 a.m. on the 30th of July Sub-Inspector Ram Chandra came to jail and compelled me to make a confession." The last portion was clearly a lie as there is no evidence whatsoever that Ram Chandra visited him at the time the Magistrate recorded his confession.

The Magistrate who recorded the confession has been examined, and he states that he told the prisoner that he was a Magistrate and that he complied with all the requirements of law in recording the confession. The memorandum made by him shows that the following questions were put to Hem Raj: "Do you wish to make a confession?", to which Hem Raj replied "Yes". "Are you making it of your own free will and without the compulsion of anybody?"; the answer was "Yes". The third question was "You are not bound to make a confession. Do you understand this?" The answer was "Yes". The fourth question was: "If you make a confession it may be used in evidence against you. Do you realize this?" The answer was "Yes". The last question was "Shall I record your confession?" The answer was "Yes". It was after these queries that a confession covering about 21 pages and full of details which are precise and cannot be

1954

Hem Raj
v.
The State of Ajmer

Mahajan C. J.

described as vague was recorded. The police could not even dream of these details or make an effort to tutor such a detailed confession to the prisoner and it is absolutely unthinkable that such a tutored confession could be narrated by Hem Raj to the Magistrate after 36 hours of any possible attempt made to tutor him. As a matter of fact, some of the facts contained in the confession and indicated later were not even known to the police then. The confession contained the usual endorsement that the confession was voluntary and all the necessary matters had been explained to the prisoner before he made the confession. It is significant that the confession was not retracted till Hem Raj took legal advice and even then it was not stated who supplied all the details contained in the confession to Hem Raj. The allegations made by the prisoner have been denied by the police officers examined and we are not inclined to accept those allegations as true. The circumstances relied upon by Dr. Tek Chand regarding the conduct of the police before Hem Raj was lodged in jail do not, in our opinion, affect the voluntary character of the confession. The contention that the Magistrate did not tell the prisoner that he was a Magistrate is also belied by the Magistrate's evidence. No doubt the confession was recorded in jail though ordinarily it should have been recorded in the court house, but that irregularity seems to have been made because nobody seems to have realized that that was the appropriate place to record it but this circumstance does not affect in this case the voluntary character of the confession. Dr. Tek Chand drew our attention to a quotation from Taylor's Evidence, 11th Edn., page 588, para. 872, and to the decision in *Queen* v. *Thompson*(1), in which it had been emphasized that in order that evidence of a confession by a prisoner may be admissible, it must be affirmatively proved that such confession was free and voluntary and that it was not preceded by any inducement to the prisoner to make a statement held out by a person in authority, or that it was not made until after such inducement had clearly been removed. The

(1) [1893] 2 Q. B. 12.

principle laid down in that case is well settled, but we do not think that Dr. Tek Chand is right in contending that that principle has not been borne in mind by the courts below. The mere bald assertion by the prisoner that he was threatened, tutored or that inducement was offered to him, cannot be accepted as true without more. There is no material whatsover to hold that the prisoner was threatened or beaten. As a fact it has been found by the cours below that that assertion was untrue. The story of tutoring, on the face of it, is incredible. It was not possible for the police or anyone to teach the prisoner all that is contained in the confession. As regards inducement, again, there is no material whatsoever and the circumstances relied upon are not such which raise a suspicion that the confession was extorted by inducement. Even if some suspicion of this character could be raised in this case, it has to be held that the confession was made after the inducement had clearly been removed.

As regards the question whether the confession made by Hem Raj has been corroborated in material particulars, we are satisfied that there is sufficient evidence on the record to justify the Judicial Commissioner's conclusion. P. W. 34, Gajanand, an eyewitness of the occurrence, deposed that the man in blue had the pistol and fired the fatal shot. This is in line with what had been stated by Nand Lal in the First Information Report though later on he made a different statement. The courts below accepted the evidence of Gajanand in preference to the statement of Nand Lal. That being so, Gajanand's evidence fully corroborates the confession of Hem Raj that it was he who fired the fatal shot and that he was dressed in blue uniform.

On the 18th of July, 1952, certain articles were recovered from Hem Raj's house—a hat, a mask, a bush shirt and a pistol. These recoveries are good independent evidence in corroboration of the confession. On the 25th July, 1952, certain other items were admittedly recovered from Hem Raj's house and these also corroborate the confession. Hem Raj also

1954

Hem Raj
v.
The State of Ajmer

Mahajan C. J.

delivered to the police a black pair of socks, a slate coloured muffler, a blue pair of shorts and a torch. These deliveries further support the confession. Then certain recoveries were made, as stated in the confession, from the roof of Bansilal's shop on 27th of July, 1952. These were a revolver and a number of cartridges. Lastly there is the recovery of the gun case and the gun. The learned Judicial Commissioner, in these circumstances, was justified in holding that the confession had been corroborated in respect of clothes worn by the assailant, and in respect of the arms and ammunition and that it was also corroborated by the removal of the latch from the shop of Hukum Singh.

Dr. Tek Chand contended that the recovery of clothes and delivery of arms and ammunition by Hem Raj to the police had been made before the 30th of July, when the confession was made, and that facts within the knowledge of the police before the confession was made, could not be used as evidence corroborating the confession. For this proposition he placed reliance on a decision of the Oudh Chief Court in *Mata Din* v. *The Emperor*(1), wherein it was observed that a true confession made by a person who takes part in a murder invariably adds something to the knowledge already possessed by the investigating officer and that is the greatest test of its truth.

In our opinion, the contention raised by the learned counsel is not well founded. In the first instance, it is not correct to say that all the facts mentioned in the confession were known to the police at the time when the confession was made. The police did not know anything about the existence of 30 bore cartridges. They did not know as to who had written the letter Exhibit P-5 and did not know who had gone to Beawar to post it. The police also did not know that death had been caused by a shot from a Mauser pistol Exhibit P-19. Be that as it may, we see no validity in the contention that a confession can only be corroborated by evidence discovered by the police after a confession has been made and any material that is

(1) A.I.R. 1931 Oudh 166.

already in their possession, cannot be put in evidence in support of it. The decision in *Mata Din's* case(1) does not support the view contended for. That decision merely concerns itself with the value of a confession and does not relate to the nature and character of evidence that can be led to corroborate it. It does not lay down the proposition that a confession cannot be corroborated by use of materials already in possession of the police. A confession can be made even during a trial and the evidence already recorded may well be used to corroborate it. It may be made in the court of the committing Magistrate and materials already in possession of the police may well be used for purposes of corroboration. The contention therefore that evidence in possession of the police before the confession was made cannot be used to corroborate the confession, must be repelled.

The result is that the evidence in conjunction with the confession satisfactorily estabilshes the charge under section 302/34, Indian Penal Code, against Hem Raj and also satisfactorily proves the offence under section 386, Indian Penal Code. Dr. Tek Chand very strongly criticized the conclusion reached by the Judicial Commissioner that the letter Exhibit P-5 was posted by Hem Raj. He contended that from the mere circumstance that Hem Raj was in Beawar on the date the letter was posted it could not be inferred that it was posted by him. We think that the criticism is not valid and the inference drawn in the circumstances of this case by the courts below could not be said to be unreasonable.

As regards the State's appeal against Hukum Singh, clearly the confession of Hem Raj cannot be used as substantive evidence against him. The learned public prosecutor contended that Hukum Singh was the writer of the letter Exhibit P-5 and the evidence furnished by the key Exhibit P-12 found in his trouser pocket, coupled with the breaking of the door latch, and the circumstance that he was seen together with Hem Raj, was sufficient material for his conviction. We are unable to agree. We are of the opinion that the learned Judicial Commissioner was perfectly right

(1) A.I.R. 1931 Oudh 166.

1954

Hem Raj v. *The State of Ajmer.*

Mahajan C. J.

in holding that this evidence by itself was insufficient to uphold his conviction and that Hukum Singh was entitled to the benefit of the doubt in respect of both the charges found against him. There is hardly any material on the record to justify our interference with an order of acquittal in an appeal by special leave. In the result both these appeals fail and are dismissed.

Appeals dismissed.

1954

March 18.

M. S. SHERIFF

v.

THE STATE OF MADRAS AND OTHERS.

[MEHR CHAND MAHAJAN C. J., MUKHERJEA, S. R. DAS, VIVIAN BOSE and GHULAM HASAN JJ.]

Criminal Procedure Code (Act V of 1898), s. 476B—Whether appeal competent to the Supreme Court from an order of Division Bench of High Court directing the filing of a complaint for perjury.

Held that an appeal is competent to the Supreme Court under s. 476B of the Code of Criminal Procedure from an order of a Division Bench of a High Court directing the filing of a complaint for perjury.

Also held. that the simultaneous prosecution of civil and criminal proceedings regarding the same matter is likely to embarrass the accused and so *ordinarily,* and in the absence of special circumstances, the criminal proceedings should be given precedence and the civil proceedings should be stayed pending the termination of the criminal.

CRIMINAL APPELLATE JURISDICTION : Case No. 281 of 1951.

Appeal under article 132 of the Constitution of India from the Judgment and Order dated the 1st August, 1951, of the High Court of Judicature at Madras in Criminal Miscellaneous Petitions Nos. 1261 and 1263 of 1951.

K. Rajah Iyer (*R. Ganapathy Iyer* and *M. S. K. Aiyangar,* with him) for the appellant/petitioners.