

**RAM CHARAN & ORS.**

v.

**STATE OF U.P.**

March 1, 1968

[S. M. SIKRI, J. M. SHELAT AND V. BHARGAVA, JJ.]

*Code of Criminal Procedure (Act 5 of 1898), s. 164—Statement of witness recorded under section—Evidence given by him in Court—Weight of.*

The statements of eye witnesses to a murder were recorded under s. 164, Criminal Procedure Code, and a certificate was appended to each of the statements to the effect, that the deponent was warned that he was making the statement before a Magistrate and that it might be used against him.

On the question as to the weight to be attached to the evidence given by the witnesses in court,

**HELD :** It did not follow from the endorsement that any threat was given to the witnesses or that it necessarily made their evidence in court suspect or less believable. [357 G]

If a witness, in his evidence in court sticks to the version given by him in the statement under s. 164, Cr. P.C. the mere fact that the statement was previously recorded under the section is not sufficient to discard his evidence. The only inference that can be drawn is that there was a time when the police thought the witness may change his evidence. The Court, however, ought to receive the evidence with caution. [358 D]

Observations in *Parmanand v. Emperor*, A.I.R. 1940 Nag. 340, 344 and *In re : Gopiseti Chinna Venkatasubbiah*, I.L.R. [1955] A.P. 633, 639, approved.

Observations *contra* in *Emperor v. Manu Chik*, A.I.R. 1938 Patna 290, 295, disapproved.

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 175 of 1967.**

Appeal by special leave from the judgment and order dated May 17, 1967 of the Allahabad High Court, Lucknow Bench in Criminal Appeal No. 72 of 1967 and Capital Sentence Reference No. 9 of 1967.

*S. P. Sinha* and *M. I. Khowaja*, for the appellants.

*G. N. Dikshit* and *O. P. Rana*, for the respondent.

The Judgment of the Court was delivered by

**Sikri, J.**—This appeal by special leave by Ram Charan, Dularay and Ram Bux is directed against the judgment of the Allahabad High Court, Lucknow Bench, confirming the convictions under s. 302, read with s. 34, I.P.C. Ram Charan and Dularay were sentenced to death while Ram Bux was sentenced to imprisonment for life.

- A The relevant facts in brief are as follows : On December 24, 1965, at about 8 a.m. four persons started for Lucknow on two cycles; Shanker Singh and Radhey Shyam were on one cycle and Surat Singh and Bachchu Lal on another. Radhey Shyam had some business in Lucknow, including consulting Sri Pal Singh, Advocate, P.W. 20, regarding the preparation of a reply to a
- B notice received by him. After the work was finished the four left Lucknow. It appears that Radhey Shyam was sitting on the carrier of the cycle driven by Shankar Singh, and Bachchu Lal was sitting on the carrier of the cycle driven by Surat Singh. Radhey Shyam carried a leather bag in which he had kept money which he had received as the sale proceeds of *jau* sold by him in Lucknow. For some reasons which need not be detailed, Shankar
- C Singh and Radhey Shyam went ahead of Surat Singh and Bachchu Lal, and the distance between them when they came near about the scene of occurrence was, according to Surat Singh, between 1½ and 2 furlongs. When Shankar Singh and Radhey Shyam reached near the drain of Rastogi, they met Ram Charan, accused. Radhey Shyam got down from the cycle and started walking with
- D Ram Charan, while Shankar Singh followed a little behind. Then the attack on Radhey Shyam took place and is described thus by Shankar Singh :

- E “When we reached the grove of Durga Maharaj then Ram Bux and Dularey accused were sitting at the well. Then Ram Charan by extending his hands (Kantiya Kar) caught hold of Radhey Shyam and threw him down on his face and after drawing his hands towards his back sat down catching him. Dularey and Ram Bux came up running. Dularey had a Banka and Ram Bux had a lathi. Ram Charan told Dularey, ‘Bring the Banka, why are you delaying it.’ Thereupon I cried
- F out. Then Dularey gave 5-6-7 Banka blows to Radhey Shyam on his neck. As I was crying so Ram Charan said ‘Beat Thakurwa. He will go to the village and tell that such and such persons had hacked Radhey Shyam.’ At this Ram Bux gave 5-6 Lathi blows to me. By that time Surat Singh and Bachoo Mahraj also came there and Rupan also came.”

- G Surat Singh corroborates this statement. He says that he saw all this from a distance of 1½ furlongs. Bachchu Lal, P.W. 7, also corroborates this version. He says that on seeing the attack he and Surat Singh ran towards the scene of occurrence. He further adds that when they were at a distance of about 30-35 paces, the accused ran away.

- H The First Information Report was lodged at the police station four miles from the scene of the occurrence at 17.30 hours by Shanker Singh.

The learned counsel for the appellants says that the First Information Report was written much later than the time mentioned above. He relies first on the fact that the first page of the First Information Report was written very closely and the second page written not so closely. He suggests that the draft was prepared sometime later and then it was copied into the Register in which first information reports are written; the writer having left only two pages for the report to be transcribed wanted to be quite certain that the report would finish in two pages. This suggestion is, however, denied by Liaqat Hussain, P.W. 6, who was posted as Head Moharrir at the police station Kakori in 1965. He says that he wrote on the first page of the report closely, because he wanted that the whole matter should be completed on that page and that there was no other reason; after finishing the first page when he started writing on the second page then he did not write closely as the report had come to an end. He denied the suggestion that two pages were left for writing this report. This explanation seems to be true. The special report of this case was sent, according to this witness, on December 24, 1965, at 7.55 p.m. through Abdul Rashid, Constable, who was called as Court Witness. He says that he delivered the special report at the place of S.S.P. 1 at 9.10 a.m. on December 25, 1965. The special report was sent to S.S.P. D.M., Additional S.P.C.O., S.D.M., and D.C.R.R.S. on Invoice Book at No. 54 which was exhibited in Court. The learned counsel criticizes his evidence on the ground that there is no reason why he should have slept on the way. The reason given by Abdul Rashid for breaking his journey on the way is that the *ekka* drivers and *riksha* drivers were charging too much. In our view, there is no force in this contention of the learned counsel for the appellants.

The second ground of attack against the First Information Report is that the report itself discloses that it could not have been dictated by Shanker Singh. He says that Shanker Singh was literate and yet the First Information Report bears his thumb mark. He further says that it mentions the names of the fathers of Radhey Shyam, Ram Charan, Mata Pershad, Dayal, Lallu and Ram Bux, but in cross-examination Shanker Singh admitted that he did not know the names of Ram Charan's father and Ram Dayal's father, and also he did not know the name of Ram Bux's father. He, however, further added in cross-examination that at the time he gave the First Information Report, the names of the fathers of Ram Charan and Ram Dayal were then in his memory. Another fact relied on by the learned counsel is that the First Information Report contains the word "*sazish*" while in cross-examination Shanker Singh admitted that he did not know the meaning of this word. He urges that looking at all these circumstances it is clear that the First Information Report was either

A

B

C

D

E

F

G

H

A written at the scene of occurrence after the Investigating Officer had gone there or that a draft was first written on a piece of paper some people supplying the names of the fathers of the various persons and suggesting words.

B We are, however, unable to accede to this contention. It may well be that the *chowkidar* who accompanied Shanker Singh supplied the name of the father of a particular person and the *Head Moharrir* may have substituted a word or two of his own, without changing the meaning. The Investigating Officer went straightaway to the scene of the occurrence and started investigation. None of these facts, in our opinion, cast doubt on the prosecution story. It may be that Shanker Singh is able to sign C but he put his thumb impression not only on the First Information Report but on his statement under s. 164, Cr. P.C., and his statement before the Committing Magistrate. It may be that it was felt safer to have his thumb impression which he could not effectively deny later. But the fact that the special report was sent on December 24, 1965, in the evening, dispels any doubt D about the fact that the First Information Report was lodged at 5.30 p.m. on December 24, 1965.

Dealing with the eye-witnesses, the learned counsel drew our attention to the endorsement which was made by the Magistrate who took down the statements under s. 164, Cr. P.C. Below the statements is appended a certificate in the following form :

F "Certified that the statement has been made voluntarily. The deponent was warned that he is making the statement before the 1st class Magistrate and can be used against him. Recorded in my presence. There is no police here. The witness did not go out until all the witnesses had given the statement."

F This certificate appears below the statements of Shanker Singh, Surat Singh and Bachchu Lal. The learned counsel rightly suggests that the endorsement is not proper. But we are unable to say that it follows from this endorsement that any threat was given to these witnesses or that it necessarily makes the evidence G given by the witnesses in Court suspect or less believable.

The learned counsel further relies on the following passage from the judgment of Dhavle J., in *Emperor v. Manu Chik*<sup>(1)</sup>

H "There is yet another circumstance which calls for remark, and that is the examination of Ladhu and Rebi among other witnesses under s. 164, Criminal P.C. It was pointed out by Prinsep, J., in the well-known case in *Queen Empress v. Jadub Das*<sup>(2)</sup> that a statement of a

(1) A.I.R. 1938 Pat 290-295.

(2) 27 Cal. 295.

witness obtained under this section always raises a suspicion that it has not been voluntarily made, and that the section was not intended to enable the police to obtain a statement from some person (in that case it was an incriminating statement) and as it were to put a seal on that statement by sending in that person to a Magistrate practically under custody, to be examined before the judicial inquiry or trial, and therefore compromised in his evidence when judicial proceedings are regularly taken."

A

B

These observations were dissented from by the Andhra Pradesh High Court in *In re : Gopisetti Chinna Venkata Subbiah*<sup>(1)</sup>, and Subba Rao, C.J., preferred the following observations of the Nagpur High Court in *Parmanand v. Emperor*<sup>(2)</sup>

C

"We are of the opinion that if a statement of a witness is previously recorded under section 164, Criminal Procedure Code, it leads to an inference that there was a time when the police thought the witness may change but if the witness sticks to the statement made by him throughout, the mere fact that his statement was previously recorded under section 164 will not be sufficient to discard it. The Court, however, ought to receive it with caution and if there are other circumstances on record which lend support to the truth of the evidence of such witness, it can be acted upon."

D

E

We agree with Subba Rao, C.J., that the observations of the learned Judges of the Nagpur High Court lay down the law correctly.

In the result the appeal fails and is dismissed.

F

V.P.S.

*Appeal dismissed.*

(1) I.L.R. [1955] A.P. 633-38.

(2) A.I.R. 1940 Nag. 340.