
(2009) 03 AHC CK 0217
In the Allahabad High Court
Case No : Criminal A. No. 19 of 2009

Lalit Kumar Sharma and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 311, 344, 351, 482
Penal Code, 1860 (IPC) — Section 306, 366, 498A

Citation : (2009) 2 ACR 1478

Hon'ble Judges : R.M. Chauhan, J

Bench : Single Bench

Advocate : Pankaj Kumar Tyagi and Archana Tyagi, for the Appellant; A.G.A., for the Respondent

Judgement

R.M. Chauhan, J.—The Appellants-Lalit Kumar Sharma and his father Jagdeesh Sharma alias Jagveer Sharma, both residents of 216/2C, Shatabdi Nagar, P.S. Partappur, district Meerut have filed this appeal u/s 351 of the Code of Criminal Procedure (in short the "Code") against the judgment and order dated 16.12.2008, passed by Sri Yogendra Singh, Additional Sessions Judge, Court No. 7, Ghaziabad in Criminal Misc. Case No. 16 of 2008, State v. Lalit Sharma and another, u/s 344, Cr. P.C., P. S. Modinagar, district Ghaziabad, by which the learned Additional Sessions Judges has held the accused-Appellants guilty u/s 344, Cr. P.C. for giving false evidence in S. T. No. 727 of 2006, State v. Pradeep alias Teetu and others, u/s 366, I.P.C., P. S. Modinagar, district Ghaziabad. Consequently, he has convicted and sentenced the Appellant No. 1, Lalit Kumar Sharma to undergo R.I. for two months and to pay fine of Rs. 500. He has convicted and sentenced Appellant No. 2 Jagdeesh Sharma to undergo R.I. for one month and to pay fine of Rs. 500. The sentence further directs that in case the accused fail to pay the amount of fine each of them will further undergo additional imprisonment for ten days.

2. In this appeal a short legal question is involved for consideration therefore,

the appeal is being finally disposed of at the admission stage with the consent of the learned Counsel for the parties.

3. The main question for consideration before the Court is that whether the Appellant had wilfully and knowingly given false evidence in S.T. No. 727 of 2008 as mentioned above.

4. The relevant facts giving rise to the present appeal may be summarized as under:

5. The Appellant No. 2, Jagdeesh Sharma alias Jagveer Sharma, son of Harish Chandra Sharma had married his elder daughter Sabita to accused-Pradeep Sharma alias Teetu Sharma, resident of Sikari Kalan, P. S. Modinagar, district Ghaziabad. She gave birth to a female child out of her wedlock, but unfortunately, she had died on account of her illness. He thereafter, on the offer of accused-Pradeep Sharma married his younger daughter Vishakha alias Juli to him. She gave birth to a male child out of her wedlock, but unfortunately, she also met to her death under mysterious circumstances at the house of accused. When the Appellant No. 2 heard about the death of his daughter Juli, he alongwith Appellant No. 1 and other family members went to the house of the accused and found Juli lying dead there. The Appellant No. 1 Lalit Kumar Sharma thereafter lodged a written report at the police station Modinagar with the allegation that his sister had been done to death by her husband, her brother-in-laws (devar) Sandeep and Manoj and her mother-in-law Mahendri for demand of dowry. On the written report of the Appellant No. 2, the police of P. S. Modinagar registered a case under Sections 306, 498A, I.P.C. and 3/4 of the Dowry Prohibition Act, against the accused. The Investigating Officer after investigation of case submitted charge-sheet against the accused which gave rise to S. T. No. 727 of 2006, State v. Pradeep Kumar alias Teetu and others.

6. The prosecution in support of charges levelled against the accused examined Lalit Kumar Sharma the brother of the deceased as P.W. 1 Jagdeesh Sharma, the father of deceased as P.W. 2 Rajesh Sharma, the cousin brother of the deceased as P.W. 3, Jaiveer Sharma the uncle of the deceased as P.W. 4 Smt. Prakashwati, the mother of the deceased as P.W. 5, Om Dutta Sharma as P.W. 6 and Umesh alias Pallar as P.W. 7 both the independent witnesses, residents of village Sikari Kalan village, i.e., the village of the accused. Out of these witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 supported the prosecution case. The rest of the witnesses P.W. 3 to P.W. 7 did not support the prosecution case. Consequently, they were declared hostile. The accused thereafter, moved an application u/s 311, Cr. P.C. to recall Lalit Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 for further cross-examination on the ground that these witnesses could not be cross-examined on certain material facts. This application was rejected by the learned Additional Sessions Judge. The accused thereafter, moved an application u/s 482 of the Code against the rejection order of their application before this Court which gave rise to Criminal Misc. Application No. 24637 of 2006. This application was allowed by the Court vide order dated 12.10.2002

with the direction to the learned Additional Sessions Judge that in case, the accused move an application to recall P.W. 1 and P.W. 2, they will be allowed one opportunity to cross-examine them further.

7. The accused thereafter moved an application before the learned Additional Sessions Judge to recall P. Ws. 1 and 2, which was allowed by him and the witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 were recalled. These witnesses attended the Court on 18.12.2007 and were cross-examined by the defence counsel. These witnesses during their cross-examination had given inconsistent statement from their previous statement. Therefore, they were declared hostile and they were cross-examined by the State counsel.

8. The learned Additional Sessions Judge found that Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 had given false statement in their subsequent cross-examination to get the accused acquitted. He therefore, while, acquitting the accused vide his judgment and order dated 22.4.2008 thought it proper and expedient in the interest of justice that these witnesses should be prosecuted for giving false evidence. He therefore, issued notice to the witness Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 to show cause as to why they be not prosecuted for giving false evidence.

9. The witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 filed their written reply in response to the show cause notice issued by the Court. They in their reply had explained that they were badly shocked on account of the death of Juli. They being villagers were not aware of the legal technicalities and implications of their statements. They had bona fidely given their statements before the Court. These witnesses however, tendered their unconditional apology before the Court. The learned Additional Sessions Judge did not find the explanation furnished by these witnesses sufficient rather he found that these witnesses just to save the accused from conviction had given false statements in their subsequent cross-examinations. They were therefore, guilty for giving false evidence. The learned Additional Sessions Judge, consequently, held them guilty u/s 344, Cr. P.C. and sentenced them with the imprisonment and fine as mentioned above in the impugned judgment and order. The impugned judgment and order show that the learned Additional Sessions Judge, while passing the sentence took a lenient view towards Jagdeesh Sharma keeping in view of his old age. The accused feeling aggrieved by the impugned judgment and order dated 24.4.2007 has preferred this appeal.

10. The learned Counsel for the Appellant contends that in this case all the prosecution witnesses of fact except Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 did not support the prosecution case. They were therefore, declared hostile. The witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2, although supported the prosecution case in their earlier statement, but they did not support the prosecution case like the other witnesses in their subsequent cross-examination. The learned Additional Sessions Judge,

Ghaziabad after considering the evidence of Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 found that the charge levelled against the accused were not proved beyond all reasonable doubt consequently, he acquitted them. The learned Counsel for the Appellants contends that the learned Additional Sessions Judge was of the view that the prosecution witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 had given contradictory statements. It was not possible to ascertain which of their statements was true. Consequently, he acquitted the accused. Once the statements of these witnesses was found to be doubtful, it was not open to the learned Additional Sessions Judge to hold that the subsequent statements given by these witnesses in their cross-examination on 18.12.2007 was false. The prosecution witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 had given their statements bona fide. They have wrongly been held guilty by the learned Additional Sessions Judge for giving false evidence. The impugned order is therefore, illegal and is liable to be set aside.

11. The learned A.G.A. supported the impugned judgment and order and argued that the prosecution witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 have given two contradictory statements regarding the occurrence. The subsequent statements given by these witnesses after they were recalled u/s 311 of the Code was found to be false. The learned Additional Sessions Judge, has therefore, rightly held the accused guilty for giving false evidence.

12. I have given thoughtful consideration to the submissions of the learned Counsel for the Appellants as well as the learned A.G.A. I have gone through the statements of the witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 and perused the impugned judgment and order passed by the learned Additional Sessions Judge in S. T. No. 727 of 2006.

13. From a perusal of the materials available on record it appears that Lalit Kumar Sharma, P.W. 1 was examined by the prosecution on 3.10.2006. His cross-examination was concluded on that date. Jagdeesh Sharma, P.W. 2 was examined by the prosecution on 13.11.2006. His cross-examination was concluded on the same day. These witnesses were recalled by the Court on the application moved by the accused u/s 311, Cr. P.C. for further cross-examination in compliance of the order of this Court as referred to above. These witnesses in their cross-examination had given inconsistent statements from their earlier statements, which did not suit to the prosecution. These witnesses were therefore, declared hostile and they were cross-examined by the State counsel. The learned Additional Sessions Judge found that the subsequent statements given by these witnesses in their cross-examination were false. They had given their statements just to save accused from conviction.

14. The principles of law for relying upon the statement of a hostile witnesses is well-settled. A hostile witness can be safely relied upon to hold the accused guilty for the offences which he has been charged with, but the statement of

such witness can only be relied upon with due care and caution in the light of other evidence available on record. The maxim *falsus in uno, falsus in omnibus* has no application in India, where any part of a statement of a witnesses is found to be false, it does not mean that his entire statement is false. The part of statement of a witness which is found to be true may be safely relied upon excluding his false statement. The witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 had been declared hostile during their subsequent examination recorded on 18.7.2007, but the statements of these witnesses could not be thrown away by the trial court only on the ground that they had been declared hostile. The relevant aspect in this case is that the prosecution witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 had been examined and cross-examined at length on the date they were produced before the trial court. Their cross-examination had been concluded. These witnesses were declared hostile in their subsequent cross-examination. The learned Additional Sessions Judge could easily exclude their statements given in their subsequent cross-examination if found to be false. The learned Additional Sessions Judge could legally act upon on the statements given by these witnesses in their earlier statements and could hold the accused guilty if such statements were worth reliable. The learned Sessions Judge then could hold that the statements given by P.W. 1 and P.W. 2 in their subsequent cross-examination were false. If their earlier statements were not worth reliable, they could hardly be held guilty for giving false evidence in their subsequent statements. But the learned Additional Sessions Judge instead of excluding their statements given in their subsequent cross-examination found the over all statements of these witnesses doubtful to support the charge levelled against the accused. The learned Additional Sessions Judge has specifically held that these witnesses have given two contradictory statements. Therefore, it will not be possible to ascertain which of their two statements is true, i.e., whether the earlier statements given by these witnesses or the later statements given in their subsequent cross-examination. The learned Additional Sessions Judge therefore, found the statements of these witnesses to be doubtful to hold the accused guilty for the charges levelled against them. The learned Additional Sessions Judge taking into consideration the subsequent statements given by these witnesses in their cross-examination found their statements to be doubtful. Thereafter, it was not open to the learned Additional Sessions Judge to hold that the subsequent statements given by these witnesses were false. He could hold the statements of these witnesses given in their subsequent cross-examination to be false only when he would have found their earlier statements reliable to hold the accused guilty, but he has not done so rather he has found that it was not possible to hold that which of the two statements given by these witnesses at two different stages were true. The most relevant aspect of the session trial was that the prosecution witnesses P.W. 3 to P.W. 7 examined by the prosecution at the trial, as referred above, did not at all support the prosecution case. These witnesses turned hostile. These witnesses include Smt. Prakashwati, P.W. 5, the mother of deceased too. Jagdeesh Sharma, P.W. 2 had already married his elder daughter

Sabita to accused-Pradeep Sharma alias Teetu Sharma, who had died leaving behind her a female child. Jagdeesh Sharma on the proposal of accused-Pradeep Kumar had married his younger daughter Vishakha alias Juli to him. He had no grievance against the accused-Pradeep Kumar before marriage of his daughter Juli to him.

15. Keeping in view of the totality of the facts and circumstances of the case, it was difficult to hold as to which of the two statements given by the witnesses Lalit Kumar Sharma and Jagdeesh Sharma was false. The learned Additional Sessions Judge has held the witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 guilty for giving false statements only on the ground that these witnesses had given two contradictory statements at two stages but their contradictory statements themselves were not sufficient to hold them guilty for giving false evidence. The learned Additional Sessions Judge was required to take into account the entire facts and circumstances of the case, then he could ascertain whether the statements given by the witness Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 were true or false. The finding recorded by the learned Additional Sessions Judge in the impugned judgment and order appears to be self-contradictory and not based upon proper appreciation of the statements of the witnesses Lalit Kumar Sharma, P.W. 1 and Jagdeesh Sharma, P.W. 2 alongwith the statements of other witnesses as well as the facts and circumstances of the case. Considering the entire facts and circumstances of the case as well as the statements of P.W. 1 and P.W. 2 it does not appear that the Appellants had wilfully and knowingly given false statements. Thus, the impugned order is not sustainable in the eye of law. The appeal therefore, deserves to be allowed.

16. The appeal is therefore, allowed and the impugned judgment and order dated 16.12.2008 holding the accused guilty u/s 344 of the Code for giving false evidence as well as convicting and sentencing them as mentioned above is set aside. The accused-Appellants are accordingly acquitted from the offence of giving false evidence. If the Appellants have been sent to jail to serve out the awarded sentence, they will be released forthwith.