

(1963) 07 AP CK 0002

In the Andhra Pradesh High Court

Case No : Second Appeal No. 962 of 1959

Malakala Surya Rao and Others

APPELLANT

Vs

Gundapuneedi Janakamma

RESPONDENT

Date of Decision : 05-07-1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 162
Evidence Act, 1872 — Section 145

Citation : AIR 1964 AP 198 : (1964) CriLJ 504

Hon'ble Judges : Jaganmohan Reddy, J

Bench : Single Bench

Advocate : D. Narasaraju, General and M. Kondalarao, for the Appellant; K.B. Krishnamurthy and M.S.R. Subrahmanyam, for the Respondent

Final Decision : Allowed

Judgement

Jaganmohan Reddy, J.—This second appeal raises an interesting question of law, viz., whether the statements recorded in a criminal investigation u/s 163 Criminal Procedure Code could be used in a civil proceeding for purposes of cross-examination u/s 145 of the Evidence Act. Both the lower Courts had disallowed the proof of these statements and also did not permit the appellants to use them for purposes of discrediting the witnesses by allowing them to use them in cross-examination u/s 145 of the Evidence Act.

2. Respondent had filed a suit for recovery of Rs. 3,000/- as damages for cutting away her plantain garden and for Rs. 1000/- towards the value of the she-buffalo and calf belonging to the respondent which the respondent alleged that the appellants had taken away. The first appellant is the son of the 2nd appellant and the 4th and 5th respondents are the sons of the 3rd appellant and they are all related to appellants 1 and 2. It was averred by the respondent that she owns a land known as Chatla-Manyam in Government Medapadu, that she raised a plantain garden in one acre in 1956, that one night a week prior to the Deepavali of 1956, all the appellants in a body assisted by some others entered the

plantain garden and cut away the trees and when the respondent's husband and servants attempted to obstruct them, the appellants threatened them with violence. She put the value of the garden at Rs. 3000/-.

It was also staged that the appellants had committed theft of a she-buffalo and a calf belonging to the respondent worth Rs. 1000/-. Immediately after the alleged cutting away and the theft, the respondent filed a complaint before the police. During the course of the investigation. Section 162 statements were recorded. The appellants denied the allegations. The lower Court granted a decree against the appellants for Rs. 2500/- towards damages for the plantain garden and Rs. 500/- being the cost of the she-buffalo and calf with proportionate costs and dismissed the rest of the suit claim without costs. As against this, appellants 1 to 5 alone filed an appeal and the respondent filed a memo of cross-objections in respect of the portions disallowed by the lower Court. The first appellate Court also dismissed the appeal and the memo of cross-objections confirming the decree of the lower Court.

3. Now it is contended in this second appeal that both the Courts below were wrong in not allowing the appellants to use the Section 162 statements for purposes of cross-examining the plaintiff's witnesses and also in rejecting the application for calling the Inspector who recorded the statements to prove them.

Learned advocate for the respondent, on the other hand, contends inter alia that these statements cannot be used for purposes other than in a criminal trial or enquiry and certainly not in a civil suit and secondly, that the appellants did not put any questions to the witnesses regarding the previous depositions, but only as an afterthought after the trial had closed the appellants put in an application to call the Inspector to prove the statements made by the prosecution witnesses, P. Ws. 2, 6 and 7, which petition was rightly rejected by the lower Court as being belated.

4. Before I deal with the legal aspect of the matter, it is necessary to see whether any question does arise in this case for determination. The application made by the appellants on the 9th January, 1958, under Order 17, Rule 1, Section 151 CPC praying for the grant of an adjournment till 20-1-1958 for enabling the appellants to summon the Sub-Inspector of Police to prove the statements was rejected by the District Munsif on the same day with the following observations :

"As the Section 162 Criminal Procedure Code statements sought to be marked through the Sub-Inspector of Police could be used only for the limited purpose of an inquiry or trial in a criminal case and as the application for summoning the Sub-Inspector of Police is belated, being one after the evidence for plaintiff and defendants almost over, this petition stands dismissed."

It may be stated that before this application was made P. Ws 2, 6 and 7 were asked certain questions which were disallowed by the District Munsif. P, W. 2 was asked in cross-examination about his statements to the Sub-Inspector and his

answers were as follows : -

"I do not remember if I stated to the Sub-Inspector of Police, Biccavole that I went to my field at about 9 a.m. Head Constable also examined me. I do not remember if I stated to him that I went to my field at 6 p.m. after taking food. I did not state to the Head Constable that I watered my field that night till 10 p.m."

Again later he said.

"I do not remember if I stated before the Head Constable that the moon did not rise by the time of the offence."

P. W. 6 was also similarly questioned and his reply was:

"I did not tell the Sub-Inspector of Police that I have been farm servant under plaintiff's husband for the last 5 or 6 years. (The vakil for the defendants 3 to 5 wants to get the 162 Criminal Procedure Code statement of the witness noted. I disallowed the same as the witness denied having been examined by the Police) I did not state before Head Constable that I got up on hearing the cries I did not tell the Sub-Inspector of Police that K. Ramudu and C. Audiah also came to the scene of occurrence. (The request for exhibiting the same is refused). I did not state to the Sub-Inspector of Police that I could not identify the accused. (The request for exhibiting the same is refused.)"

P. W. 7 said:

"Immediately after the occurrence, I gave a report to Biccavole Police. The Sub-Inspector of Police, Biccavole, visited the plantain garden but he did not examine me. I told him what had happened. He did not reduce my statement into writing before me The Head Constable came there that day The Head Constable came on the second or the third day after his first visit. The Head Constable did not examine either me or any of my witnesses even in the second visit I do not remember if I stated in my report that such and such a witness saw the occurrence I was not examined by the Sub-Inspector of Police of Biccavole on 4-11-1956. I did not tell the Sub-Inspector of Police that I was sleeping in the shed for the last 25 days because nobody was willing to watch this plantain garden."

The learned District Munsif made this note at the end during the course of the cross-examination : -

"The contradictions in 162 statements sought to be marked by the defence counsel refused. The plaintiff's counsel objects for the use of statements recorded u/s 162 for cross-examination of the witnesses as it can be used not (sic) only for the restricted purpose of 162 Criminal Procedure Code."

From these excerpts as well as the orders of the District Munsif, it is abundantly clear that the attempt of the appellant's advocate to contradict witnesses (P. Ws. 2, 6 and 7) by showing those parts of their statements recorded u/s 161 Criminal Procedure Code was repelled and he was not permitted to summon the Sub-

Inspector of Police or the Head Constable to prove these statements.

It may be stated that Section 145 of the Evidence Act permits cross-examination of a witness as to his previous statement made in writing or reduced into writing and relevant to matters in question without such writing being shown to him or being proved. If the witness admits having made any such contradictions in his previous statement, then there is no necessity to show writing or prove it. But if he denies having made any such statement and it is intended to contradict him by the writing, his attention must be drawn to those parts of the statement before the writing can be proved for the purpose of contradicting him. This is apparent from a reading of Section 145 of the Evidence Act which is as under:

"A witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him or being proved but, if it is intended to contradict him by the writing, his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him."

This section in the Evidence Act does nowhere exclude statements made by witnesses in writing or reduced to writing, or relevant matters in question, during investigation, enquiry or trial of a criminal case. In other words, a plain reading of the section does not limit the cross-examination only to statements of witnesses made during the investigation of a criminal case or its enquiry or trial. In so far as the statements made by a person to a police officer in the course of investigation under Chapter XIV are concerned, Section 162 prohibits their use for any purpose at any enquiry or trial for an offence under investigation except under the proviso to that section. Those statements can be used for purposes of contradiction u/s 145 of the Evidence Act and where any part of such statement is so used, any part of it may also be used for purposes of any matter referred to in his cross-examination. The policy of the legislature in so far as the statements made to police officers are concerned, has been to exclude them in toto subject of course to certain exceptions as in Section 27 of the Evidence Act or under the proviso to Section 162 Criminal Procedure Code.

The history of exclusion of statements made to police officers and recorded by them has been set out, if I may say so with respect, with great clarity by Subba Rao, J., delivering the majority judgment of their Lordships of the Supreme Court in *Tahsildar Singh and Another Vs. The State of Uttar Pradesh*, at paragraphs 9 and 10. After stating the historic retrospect of Section 162, the conclusion was stated at p. 1020 as below:

"It is, therefore, seen that the object of the legislature throughout has been to exclude the statement of a witness made before the police during the investigation from being made use of at the trial for any purpose, and the amendments made from time to time were only intended to make clear the said object and to dispel the cloud cast on such intention. The Act of 1898 for the first time introduced an exception enabling the said statement reduced to writing to

be used for impeaching the credit of the witness in the manner provided by the Evidence Act. As the phraseology of the exception lent scope to defeat the purpose of the legislature by the Amendment Act of 1923, the Section was redrafted denning the limits of the exception with precision so as to confine it only to contradict the witness in the manner provided u/s 145 of the Evidence Act. If one could guess the intention of the legislature in framing the section in the manner it did in 1923, it would be apparent that it was to protect the accused against the use of the statements of witnesses made before the Police during investigation at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence. Both the section and the proviso intended to serve primarily the same purpose i.e., the interest of the accused."

We are not here concerned with the rest of the judgment because that is really confined to the procedure to be adopted in contradicting witnesses with those statements and the manner in which they should be proved and what constitutes contradictions, i.e., whether omissions on material matters would be contradictions so that the whole of the statement could be marked. I do not find anything in the judgment of the Supreme Court or in any of the judgments of any Courts brought to my notice to warrant a conclusion that statements made by witnesses to a police officer" and reduced to writing cannot be used for contradicting witnesses in a civil proceeding u/s 145 of the Evidence Act. Where the policy of the legislature in enacting Section 162 was to throw a solicitous protection round the accused, that very legislature has permitted the use of these statements for the purposes of contradiction u/s 145 of the Evidence Act. Much more so, such statements can be used in civil cases to achieve the same purpose, where neither Section 145, nor any other provision of law specifically precludes their use.

The words used in Section 145 are, "or reduced into writing" need not necessarily mean, that they are reduced into writing by someone authorised by law to reduce them into writing, such; as a Magistrate or a Judge etc. In *Ramkishun Sao and Others Vs. Emperor*, a Bench of the Patna High Court took a similar view that in order that a previous statement reduced to writing may be used in cross-examination u/s 145 Evidence Act, it is not necessary that the writing must be by a person having jurisdiction to reduce the statements to writing. In that case the statements recorded were recorded by a Special Magistrate appointed under the Special Magistrate Ordinance which later was held to be illegal, so that the appointment of the Magistrate in fact had no validity. The Sessions Judge had disallowed the use of these statements for the purpose of contradiction. Varma, J., speaking for the Bench observed at p. 625 (of ILR : (At p. 83 of AIR):-

""..... Previous statements reduced to writing are used in cross-examination u/s 145 of the Evidence Act, but the section does not lay down that the writing which is to be used for the purposes of cross-examination must be by a person

having jurisdiction to reduce the statement to writing. This procedure adopted by the Assistant Sessions Judge has certainly been prejudicial to the accused who wanted to make out either that they were not there, or, if they were there, they were mere sight-seers; that is to say to establish that they were not guilty."

Such writing may be letters, account books, deeds, written statements, depositions, admissions, affidavits etc.

The case in *Thanubuddi Venkatappa Reddi and Another Vs. Gopavarapu Brahmayya and Others*, which was cited in support of the proposition that statements made to police officers can be used to contradict does not support that proposition, because the statements made therein were not statements made to a police officer, but was a deposition of the plaintiff in a prior criminal case between the parties. It was held that the deposition is not admissible u/s 33, but u/s 145 attention of the plaintiff should be drawn to the deposition made by him as required by that Section 145.

The case of *Pulikonda Venkatasubbayya Vs. Maddi Venkata Lakshmayya*, is also not in point. It is an authority" for the proposition that the statements taken down by the police officers in a theft case can be used in cross-examination by confronting the witnesses in an assault cases Of course, if those statements can be used also in a different criminal case, but the point which is sought to be stressed by the learned Advocate-General is what their Lordships of the Madras High Court held, namely, that when the statement has not been made in the course of investigation in respect of the offence, neither the main Section 162 nor the proviso has any application. It follows, once it is not applicable in a different criminal case, it would not be applicable for a civil case.

5. For the aforesaid reasons, In my view, the statements recorded by a police officer u/s 162, could be used in a civil proceeding u/s 145 of the Evidence Act and since the trial Court had not permitted the use of those statements, which might have materially affected the case depending upon the contradictions which would have been elicited and the material nature of those contradictions, the judgments of the Courts below will have to be set aside and the appellants permitted to recall P. Ws. 2, 6 and 7 and confront them with the statements and also, if need be, to summon the officers who took down the statements to prove those statements.

6. In this view, the judgments and decrees of both the lower Courts are set aside and the case is remanded to the lower Court. Costs will abide the result. There will be a certificate for refund of court-fee. No leave.