Umrao Lal vs State on 5 October, 1953

Equivalent citations: 1954CRILJ860, AIR 1954 ALLAHABAD 424

ORDER

Desai, J.

1. This is an application in revision by Umrao Lal from his conviction and sentence under Section 193, I, P. C. One Babu Ram was prosecuted for demanding a bribe from the applicant and the applicant was the principal witness in the case against him. He was examined-in-chief on 17-11-1950 and made the following statement:

> I had a talk with Babu Ram at the house of Matru Lal. Babu Ram demanded 200/- Rs. from me in consideration of his getting the case relating to the money order hushed up. Matru Lal settled the transaction for Rs. 50/-. I paid Rs. 40/- which I had with me then to Matru Lal who gave them to Babu Ram.
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> He was cross-examined under Section 256 of the Code of Criminal Procedure on 8-12-1950 and in the course of the cross-examination he made the following statement:
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> The talk about the payment of the bribe had taken place between me and Matru Lal. The accused never demanded a bribe from me. He did not hear the talk about the payment of the bribe. When I paid Rs. 40/- to Matru Lal, he was not present.
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> The Magistrate who tried the case against Babu Bam was of the opinion that the above two statements made by the applicant were so contradictory to each other that one of them was necessarily false.
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> He considered it expedient in the interests of Justice to prosecute him for committing perjury in respect of either of them and made a complaint for his prosecution under Section 193, I. P. C. Thereupon he was tried under Section 193 and has been convicted of the same offence by the Courts below.

2. The following contentions were raised on his behalf:

> 1. That he could not be convicted under Section 193, I. P. C. unless it was found which of the two statements was false.
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> 2. That the two statements were made in one deposition in the course of a trial.

3. That the applicant had 'locus paenitentlae' and could correct the previous false statement which was wrong.

These contentions are all unsound.

Whoever being legally bound by an oath or by an express provision of law to state the truth....makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

See Section 191, I. P. C. Whoever gives false evidence at any stage of a judicial proceeding" is punishable under Section 193, I. P. C. Under Section 236 of the Code of Criminal Procedure an accused may be charged in the alternative with having committed some one of two or more offences.

If a witness bound by an oath or law to speak the truth, makes two statements one of which is necessarily false and the prosecution is unable to prove which one of them is false, he can be charged in the alternative with having made one or the other statement falsely. Illustration (b)' to the section shows that he can also be convicted in the alternative. If the prosecution succeeds in proving that an accused in the witness box deliberately made two statements which are so contradictory to, and irreconcilable with, each other, that both cannot possibly be true, he can be convicted of perjury even without its being proved which one of them was not true. It has been held in - 'Queen-Empress v. Ghulet', 7 All 44 (A); - 'Habibullah v. Queen-Empress', 10 Cal 937 (B) and - 'Taj Mahomed v. Emperor' AIR 1928 Lah 125 at p. 128 (C) that an accused who is proved to have made two wholly irreconcilable statements can be convicted of perjury without its being shown which one of them was false.

3. Really the question is whether it is proved or not that the accused committed perjury; If he has made two statements which are so contradictory and irreconcilable that both cannot possibly be true, it means that one of them is false and if the other ingredients of the offence are made out, he can be convicted. It is only when the prosecution charges him with making a particular statement falsely, that it has to prove that that statement is false and not the other. In that case the mere fact and that he made the other statement conflicting with it would not suffice because it may very well be that the other statement was false and not the statement with which he was charged. When all that is proved is that one of the two statements is false, it means that it is not proved that a particular statement is false. If the accused is charged with making that statement falsely, naturally the charge must fail.

In - 'R. v. Wheatland', '(1838) 8 Oar & p 238 (D), the accused made one statement before a Magistrate and a wholly contradictory statement at the Quarter Sessions, he was prosecuted for perjury in respect of the latter statement and it was proved that the falsity of the latter statement could not be proved merely by the fact that it was contradicted by the earlier statement.

4. 'Mens rea' is an essential ingredient of the offence of perjury; the mere fact that a statement made by a witness turns out to be wrong or inaccurate does not make him liable to punishment. He must make the statement deliberately and must know or believe it to be false or must not believe it to be

true. It is not difficult to imagine a witness's making two statements which are contradictory to each other and one of which he does not know or believe to be false. In - 'K. v. Bankat Ram Lachhi Ram', 28 Bom 533 (E) the question was whether the joint family property had been partitioned among the members and the accused on one occasion deposed that it had been partitioned and on another occasion that it had not been partitioned and it was held that he might have honestly held the two views and he was held not to have committed perjury by making the conflicting statements. A witness may innocently make a statement which is incorrect or wrong and may later correct himself; simply because he has made two contradictory statements it cannot be said that he has committed perjury. It was remarked by Roberts, J, in - U.S. v. Norris' (1937) 81 Law Ed 808 (P) that this is not to say that the correction of an innocent mistake, or the elaboration of an incomplete answer, may not demonstrate that there was no wilful intent to swear falsely.

In - 'Fakir Chand v. Emperor' AIR 1925 Lah 646 (1) (G), the accused who had made a certain statement, on being warned by the Magistrate that he had told a lie at once corrected himself and it was held that he had not intentionally made the earlier statement falsely and should not be convicted of perjury. In 1847 the Indian Law Commissioners, dealing with this question stated:

> It is possible, indeed, that the first statement may have been false through an error or mistake, which has been corrected by subsequent information, and that the second contradicts the first because it contains the truth which had come to the knowledge of the party in the meantime. But when there is no such allegation or any explanation of the contradiction to negative the inference that the party at one time or the other has been guilty of stating on oath as true What he knew to be false in order to deceive a Court of justice, on a point material to the question to be decided by the Court, we think the law should be so framed that he should not be able to escape from the punishment he would well deserve" (quoted from - 'In the matter of palani Palagan', 26 Mad 55 (H)).
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> There are authorities, which will be mentioned later holding that when a witness admits having made a previous statement incorrectly and corrects himself later, it is not expedient to prosecute him for perjury. When, however, a witness makes two contradictory statements intentionally, there is nothing to show that the earlier statement was wrong and was corrected by the subsequent statement and he does not admit that he had committed a mistake in making the earlier statement and when the prosecution charges him in the alternative with making one of the two statements falsely, he must be convicted of perjury. In the present case the two statements made by the applicant were so contradictory to each other that they could not be reconciled with each other and, could not both be true. One of them was bound to be false. The applicant deposed about matters Which were within his knowledge and there was. no scope for his making any mistake. It is not his case that the first statement made on 17-11-50 was incorrect; in his statement as an accused he stated that both the statements were correct. Salt is not a case of his having made the earlier statement wrongly under a mistake and of his subsequently correcting himself by making the second statement. It is clearly a case of making both the statements deliberately and

> when they are found to be irreconcilable, he must be convicted.

5. It is not true to say that it has not been proved that any particular statement is false. The learned Magistrate has given a finding in the following words:

> It leaves me in no doubt that Umrao Lal. perjured himself later in order to screen away Babu Ram from punishment.
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> He was thus satisfied that it was the earlier statement that was correct and the subsequent statement that was false. But even in the absence of such a finding the applicant was bound to be convicted.

6. Coming to the second contention I find that it is quite immaterial that the two contradictory statements were made in the course of one deposition in one trial. If the first statement is false, the applicant committed the offence of perjury as soon as he made it. Whether he made it deliberately and whether he knew or believed it to be false or did not believe it to be true is to be seen with reference to the time at which he made it. If the requirements of Section 191 are fulfilled, he committed the offence of perjury as soon as he made it. The completion of the offence does not remain in abeyance for a short time in order to give him an opportunity of repenting and correcting himself. It does not remain in abeyance so long as the trial is not over or so long as he has not been cross-examined under Section 256 of the Code or so long as he has an opportunity of being recalled and making the correct statement later. What he does subsequently has absolutely no bearing on the offence already committed by him. The offence is not purged or wiped off by subsequent repentance or retraction or correction. Of course, on account of the subsequent repentance and admission of mistake, the Court may say that he had not made the earlier statement deliberately knowing or believing it to be false or not believing it to be true; but that would mean that he had not committed the offence at all by making the earlier statement and not that he had committed it and the commission is purged or wiped off by the subsequent repentance and confession. Section 191 does not take into consideration the fact that the false statement was, subsequently in the same deposition or in the same trial, admitted to be incorrect and replaced by the correct statement or that the deposition was not finished before the accused corrected himself.

In the case of - 'Palani Palagan (H)' the facts were exactly similar to those in the present case and the conviction of the witness for perjury was maintained. Benson, J. stated at page 61 that there was nothing to justify the distinction suggested between two contradictory statements made in two separate trials and two contradictory statements made in the same trial in the same Court. On page 65 he observed:

> The essence of the offence lies in the Intention to give false evidence, and that intention may, I think, just as well exist when the contradiction is in various stages of the same deposition as where it is in different stages of the same proceedings....To consider whether the false statement was made in the course of one deposition or in the course of two separate depositions seems to be irrelevant, and calculated to obscure the real question.

> There also the accused had not pleaded that his former statement was made under any misapprehension and had not attempted to reconcile the two statements or to explain them in any manner consistent with an honest intention on his part, In - 'Habibullah's case (B)', the accused was cross-examined on one day and re-examined on the following day, he made contradictory statements on the two days and yet he was convicted of perjury, Tottenham, J. said on page 941 that :
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> The essence of the offence is the intention, and that may exist where the contradiction is in various stages of a single deposition, as well as where it is manifested in two distinct proceedings.
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> Wilson, J, concurring with him, said on p. 946:
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> I can see no sufficient distinction in principle between such contradiction in one deposition and in two. If it is an offence under Section 193 to make two contradictory statements, one or other of which must be false, and to do so with a guilty intention, on two distinct occasions, I think it must be equally an offence to make them on one occasion.

7. No question of 'locus paenitentiae' should arise when an accused is prosecuted for making two contradictory statements. It is impossible to lay down that a witness, who deliberately makes a false statement, is entitled to purge the offence by repentance and retraction. The offence of perjury once committed cannot be purged.

In - '(1937) 81 Law Ed 808 (P)' N made a certain statement which was false. He heard evidence of other witnesses later and then made an application to the Court for permission to be re-examined. In the re-examination he admitted having made the previous statement falsely and made a correct statement. Still his conviction for perjury was maintained by the Supreme Court and his plea that he was entitled to 'locus paenitentiae' was rejected. Roberts, J. said at p. 813:

> The implications and results of such a doctrine prove its unsoundness. Perjury is an obstruction of justice; its perpetration well may affect the dearest concerns of the parties before a tribunal. Deliberate material falsification under oath constitutes the crime of perjury and the crime is complete when a witness's statement has once been made. It is argued that to allow retraction of perjured testimony promotes the discovery of the truth and, if made before the proceeding is concluded, can do no harm to the parties. The argument overlooks the tendency of such a view to encourage false swearing in the belief that if the falsity be not discovered before the end of the hearing it will have its Intended effect but, if discovered, the witness may purge himself of crime by resuming his role as witness and substituting the truth for his previous falsehood. It ignores the fact that the oath administered to the witness calls on him freely to disclose the truth in the first Instance and not to put the Court and the parties to the disadvantage, hindrance, and delay of ultimately extracting the truth by cross-examination, by extraneous investigation or other collateral means.

> He has pointed out that there is no respectable body of authority under the Common Law or statute in England or United States to support the claim of 'locus paenitentiae', and said on page 814:
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> The plain words of the statute and the public policy which called for its enactment alike demand we should hold that the telling of a deliberate lie by a witness completes the crime defined by the law. This is not to say that the correction of an innocent mistake, or the elaboration of an incomplete answer, may not. demonstrate that there was no wilful intent to swear falsely.

8. It is stated in Corpus Juris Secundum, Volume 70 under the title "Perjury", paragraph 2, that-

It has been variously held that the crime is complete when the false statement is once made.

It is stated in paragraph 8 (c) that the retraction or correction of false testimony before the close of the cause or proceeding in which the testimony is given does not, 'ipso facto', exculpate the witness of perjury.

and that the principle applies with even greater force when perjury follows truthful testimony, and thus constitutes the last and unrecanted choice of the author.

It is further stated that even where it is held that perjury will not be predicated on false statements corrected before submission of the case in which made, especially where the statement as originally made was more incomplete than literally untrue, this does not require the tribunal to remain open for any particular length of time to permit the witness to purge himself of perjury.

Further in paragraph 17 (b) (6) it is stated that the correction of an innocent mistake may demonstrate that there was no wilful intent to swear falsely, that an attempt to correct testimony knowingly falsely given has no effect on the existence of" perjury in knowingly giving the false testimony and that if the witness withdraws the false testimony of his own Volition and without delay, the false statement and its withdrawal may be found to constitute one inseparable incident out of which an Intention to deceive cannot rightly be drawn.

9. The questions that are in issue when a person is prosecuted for perjury are quite different from those that arise in proceedings under" Section 476 of the Code. In the latter the Court has to see whether it is expedient in the interest of justice to prosecute the witness for committing" perjury whereas in the former the Court has only to see whether the ingredients of the offence of perjury are proved by the prosecution and is not at all concerned with the question of the expediency. Naturally after the witness is put on trial, it is too late to consider the question of expediency. A Court may refuse to hold that it is expedient to prosecute a witness who has deliberately made two contradictory statements, at least one of which is false, but cannot refuse to convict him of perjury when that is proved. No accused can be acquitted of the charge of perjury on the ground that it was not expedient to prosecute him. Therefore the decision in-'Dasondha Singh v. Emperor', 12 Cri LJ 405 (I); - 'Maharaj Prasad v. Emperor' AIR 1924 All 83 (J); - 'Paragi v. Emperor' AIR 1936 Oudh 373

(K); -'Tecomal v. Pir Ali Muhammad' AIR 1937 Sind 116 (L); - 'Local Government v. Gambhir Bhujua' AIR 1927 Nag 189 (M); - 'Tara Chand v. Emperor' AIR 1929 Nag 279 (N); - 'Chedi Lal v. Emperor' AIR 1924 Oudh 373 (O) and - 'Hit Narayan Singh v. Emperor' AIR 1926 Pat 517 (P) all of which dealt with the question of expediency, are of no help and are to be distinguished.

In - 'Dasondha Singh's case (I)', the Court said that he had at once admitted having made the statement falsely and so should not be prosecuted. In - 'Maharaj Prasad's case (J)' he made one statement at first and then on being confronted with a document corrected himself and it was stated by Kanhaiya Lal, J. that he must be allowed 'locus paenitentiae' to correct himself.

In - 'Tara Chand's case (N)', he, in cross-examination, resiled from the previous statement made in examination-in-chief, admitting it to be false and it was observed by Findlay, J. C. that at the most it was an attempt to commit perjury in examination-in-chief and that it was not desirable to prosecute him. He observed that for the offence of perjury to be complete that of misleading and deceiving the Court - the deponent must leave the Court under the lie with which he began by deceiving it. It cannot be said that the applicant in the present case did not leave the Court on 17-11-1950 with a lie on his lips.

In - 'Chedi Lal's case (O)' he made three conflicting statements in quick succession and it was held to be a case of correcting himself.

In the case of - 'Hit Narayan Singh (P)' in cross-examination, the accused resiled from the earlier statement made in examination-in-chief saying that it was false and he was held entitled to 'locus paenitentiae'. The Court doubted if it was a fit case for prosecution. It was not satisfied that he deliberately meant to perpetuate a fraud or had any dishonest intention when he made the first statement at all. So it was a case in which the Court held that no offence of perjury was committed at all by making the earlier statement.

In - 'Habibullah's case (B)' it was said that no Court would sanction prosecution unless satisfied that the false statement was deliberately and intentionally made. In the present case the applicant has himself not claimed 'locus paenitentiae'. During the trial he maintained that both the statements were correct. Therefore, even the issue of expediency could have been decided against him.

In the case of -- 'Paragi (K)' it was observed that witnesses should be free to speak the truth in Sessions Court regardless of what they had said in the Magistrate's Court.

In -- 'Teoomal's case (L)' also it was observed that witnesses should be encouraged to speak the truth but within reasonable time. Witnesses should certainly be encouraged to speak the truth but not by ignoring perjury committed by them or by refusing to punish them for it. They should not be encouraged to tell lies. I have already pointed out that the offence of perjury is committed as soon as the false statement is deliberately made. Contradictory statements, whether made in the same trial or on the same day or in the same deposition are not always made in the same circumstances and one rule cannot govern all cases of contradictory statements. A subsequent statement may show that the previous statement was untrue but was not made deliberately with the intention of deceiving the

Court; in that case no offence of perjury is at all committed by making the previous statement and there does not arise any question of 'locus paenitentiae'.

If the previous statement is made deliberately with intention to deceive the Court then no amount of repentance will purge the offence. The question whether it is expedient in the interests of justice to prosecute him or not is at the discretion of the Court and it may decide not to prosecute him. But if he is prosecuted and all the ingredients of the offence are proved, the trying Court has no discretion in the matter and is bound to convict him. It cannot acquit him on the ground of repentance. There is no reason why a perjurer should be allowed 'locus paenitentiae' and not any other offender. There are many offences besides that of perjury which are punished for doing a certain act with a dishonest intention even if the dishonest intention has not been carried "out. If persons committing those offences are not entitled to 'locus paenitentiae', there is no justification for saying that a perjurer is entitled to it.

Moreover, it cannot be assumed that the previous statement was false and that the subsequent statement was not only correct but also made out of repentance. It may very well be that the previous statement was correct and the subsequent statement was false and the doctrine of 'locus paenitentiae' cannot be blindly applied to such a case. In the instant case there was absolutely nothing to suggest that the previous statement was false. The applicant did not himself allege that it was false. It. is quite likely, as actually found by the learned Magistrate, that the subsequent statement was false.

10. There is thus no force in the contention that a witness who has committed perjury must be allowed sometime to purge himself of the offence. If he admits having committed the perjury and makes the true statement the fact may be considered in mitigation of the punishment to be inflicted upon him but he remains liable to punishment.

11. The applicant has been rightly convicted under Section 193, I. P. C. The sentence passed upon him was unnecessarily lenient. An offence of perjury is a serious offence and is not adequately punished with an imprisonment of six months only. Ordinarily a sentence of one year should be inflicted.

12. The applicant's conviction and sentence are maintained and the application is dismissed.