Supreme Court of India
Shabir Hussein Bholu vs State Of Maharashtra on 28 September, 1962
Equivalent citations: 1963 AIR 816, 1963 SCR Supl. (1) 501
Author: M R.
Bench: Mudholkar, J.R.

PETITIONER:
SHABIR HUSSEIN BHOLU

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT:
28/09/1962

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
IMAM, SYED JAFFER
AYYANGAR, N. RAJAGOPALA

CITATION:
1963 AIR 816 1963 SCR Supl. (1) 501
CITATOR INFO :
E 1964 SC 725 (9)
E 1966 SC1863 (1,6)
F 1968 SC1422 (4)
RF 1973 SC2190 (5)

ACT:
Criminal Trial-Perjury by witnesses-Prosecution of-Order for prosecution made after conclusion of trial-Legality of Committal proceedings-If a stage of Sessions trial-Code of Criminal Procedure, 1898 (Act V of 1898), ss. 476 and 479-A.

HEADNOTE:
The appellant appeared as a witness in a jury trial for murder. Before the Court he gave a statement contradictory to the one he had given before the committing court. After the conclusion of the trial and delivery of judgment the Sessions judge passed a separate order for prosecution of the appellant for intentionally giving false evidence.
Held, that the provisions of s. 479A had not been complied with and no cognizance could be taken of the offence, Two conditions were laid down for the exercise of the powers under s. 479A, (i) the court must form an opinion that the person has committed one of the two categories of offences

referred to in s. 479A, and (ii) the Court must come to the conclusion that for the eradication of the evils of perjury etc. and in the interests of
502
justice it is expedient that the person be prosecuted. This opinion and conclusion must be arrived at the time of the delivery of the judgment or final order in the trial; the court cannot later on resort to s. 476 and make a complaint against the witnesses. The provisions of ss. 476 to 479 were totally excluded where the offence is of the kind specified in s. 479A, and if in such a case action is not taken under s. 479A no action can be taken under ss. 476 to 479.
Purshotam, Lal v. Madan Lal, A. 1. R. (1959) Punj. 145 and Amolak v. State, A. 1. R. (1961) Raj. 220, approved.
Durga Prasad Khosla v. State of U. P., A. 1. R. 1959 All. 744, Lal Behari v. State,, A. I. R. 1962 All. 251, Jaibir Singh v. Malkhan Singh, A. I. R. (1958) All. 364 and State of Bombay v. Premdas Sukritdas Gadhewal Koshti, A. 1. R. 1960 Bom. 483, disapproved.
Badullah v. State, A. 1. R. 1961 All. 397, distinguished.
The provisions of s. 479A were applicable to the present case. The fact that the trial was with the aid of a jury did not preclude the Sessions Judge from recording the findings required by s. 479A. While considering whether action should be taken under s. 479-A it was open to the Sessions judge to say whether the evidence tendered at the trial was true or false.
The committal proceedings are a stage in the judicial proceedings before the Sessions Judge, and even if the statement made by the appellant before the committing Court was false the Sessions judge could take action under s. 479A.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION. Criminal Appeal No. 92 of 1961.

Appeal by special leave from the judgment and order dated January 18, 1961, of the Bombay High Court in Cr. Revision Application No. 91 of 1961 (by State) converted from Cr. A. No. 1131 of 1960.

Miss Kapila and Y. Kumar, for the appellant. D. R. Prem, R. H. Dhebar and R. N. Sachthey, for respondent.

1962. September 28. The judgment of the Court was delivered by MUDHOLKAR, J.-In this appeal by special leave from the judgment of the Bombay High Court the question which-arises for consideration is whether the Chief Presidency Magistrate, Bombay, could not take cognizance of a complaint against the appellant for an offence under s. 193, Indian Penal Code, because the

Additional Sessions judge, Bombay, who filed that complaint had failed to follow the procedure laid down in s. 479A of the Code of Criminal Procedure. The appellant was a witness for the prosecution at the trial of one Rafique Ahmed before the Additional Sessions judge, Greater Bombay, for offences of murder and abetment of murder, along with two other persons. When the appellant had been examined as a witness before the committing magistrate he deposed that in his presence Rafique Ahmed had stabbed the deceased Chand while he was running away. When, however, he was examined at the trial before the Court of Sessions three months later the appellant stated that while he was standing on the threshold of his house he saw Rafique Ahmed and his two associates coming from the direction of the Muhammaden burial ground. According to him one of them had a dagger while the others had only sticks with them. He, however, did not see anything more because, as his children were frightened, he closed the door and remained inside. He disclaimed knowledge of what happened subsequently and in cross-examination stated that it was not true that he actually saw Rafique Ahmed stabbing the deceased.

In his charge to the jury the learned Additional Sessions judge who tried the case has brought out the fact that the appellant had made two widely divergent statements in regard to a certain part of the incident. The jury, after considering the entire evidence, returned a verdict of not guilty against Rafique Ahmed in respect of the offence under s. 302, I.P.C. but found him guilty under s. 304, first part.

It also found the other two accused persons guilty under s. 304, first part, read with s. 109, I. P.C. After the trial was over the learned Additional Sessions judge came to the conclusion that proceedings should be taken against the appellant for intentionally giving false evidence. He, therefore, recorded a separate order which runS thus::

> "I direct that the Registrar, Sessions Court for Greater Bombay should take necessary steps for prosecution of witness Shabir Hussein Bholu for the offence of perjury in view of his deposition before the Committing Magistrate and his deposition in this Court, both of which are on oath but are at variance with each other".

In pursuance of this order a notice was issued against the appellant requiring him to show cause why he should not be prosecuted under s. 193, I.P.C. for making contradictory statements regarding the same incident. In pursuance of that notice the appellant appeared before the Additional Sessions Judge and his counsel submitted that the contradictory statements were ascribable to the fact that the appellant was illiterate and that his mind was in a state of confusion. These contentions were rejected by the additional Sessions judge who made the notice absolute and ordered the complaint to be filed. Accordingly a complaint was filed under his signature before the Chief Presidency Magistrate, Bombay. The statements which were regarded by him as contradictory were also set out in that complaint. At the trial of the appellant before the Chief Presidency Magistrate an objection was raised on his behalf that the provisions of s. 479-A, Code of Criminal Procedure had not been complied with by the Additional Sessions judge and that consequently the Chief Presidency Magistrate could not take cognizance of the offence. The objection was upheld by the Chief Presidency Magistrate and the appellant was ordered to be discharged. The State preferred an application for revision before the High Court which granted that application, set aside the

discharge of the appellant and remanded the case for trial by the Chief Presidency Magistrate.

It may be mentioned that in its order the High Court has observed that though the provisions of s. 479-A, Cr. P. C. had not been complied with, it was still open to the Chief Presidency Magistrate to take action on the complaint under ss. 476 to 479 of the Code of Criminal Procedure. Chapter XXXV of the Code of Criminal Procedure deals with "Proceedings in case of certain offences affecting the administration of "justice". Section 476 (1) provides that when any civil, revenue or criminal court is of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in s. 195 (1), cl. (b) or (c) which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, if it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding Officer of the Court and forward it to a Magistrate of the first class having jurisdiction to deal with the case. The offences referred to in cls. (b) and (c) of sub-s. (1) of s. 195 are those under ss. 193, 194 to 196, 199, 200, 205 to 211, 228, 463/ 471, 475 or 476, 1. P. C. By s. 89 of Act 26 of 1955, s. 479-A was added in ch. XXXV of the Code of Criminal Procedure. The heading of that section is "'Procedure in certain cases of false evidence". This section provides that notwithstanding anything contained in ss. 476 to 479, inclusive, when any Civil Revenue or Criminal Court is of opinion that any per-son appearing before it as a witness has intentionally given false evidence in any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding, and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which appears to have been committed by him, the Court shall at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect stating its reasons therefore and may, if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint thereof in writing and forward it to a Magistrate of the first class having jurisdiction to deal with the offence. Sub-section (6) of s. 479-A provides that no proceedings shall be taken under ss. 476 to 479, inclusive, for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under s. 479-A. Thus bearing in mind the non obstante clause at the commencement of s. 479-A and the provisions of sub-s. (6), it would follow that only the provisions of sub- s. (1) of s. 479- A must be resorted to by the Court for the purpose of making a complaint against a person for 'intentionally giving false evidence or for intentionally fabricating false evidence at any stage of the proceeding before it. No doubt, Parliament when it enacted s. 479-A did not amend cls. (b) and (c) of s. 195 (1) of the Code of Criminal Procedure and s. 193, 1. P. C. which makes giving false evidence in a judicial proceeding punishable, ss. 194 'and 195 which make giving or fabricating false evidence with intent to procuring the conviction of a person for committing certain offences punishable and s. 463 and s. 467 which deal. with offences of forgery and using forged documents as genuine, are still to be found in cls. (b) and

(c) of sub-s. (1) of s.195, Cr. P.C. In view of this, Mr. Prem who appears for the State contended that Parliament by not amending s. 195(1), cls. (b) and (c) has made it clear that the procedure to be followed in s. 479-.A is only an alternative procedure to be followed in what he calls "flagrant cases". In support of his argument he has relied on the decision in Durga, Prasad Khosla v. The State of U. P.(1). In that case it was held that s.479-A was enacted to give additional power to the Court

authorising it to deal speedily with the more flagrant or serious cases of intentionally giving false evidence or intentionally fabricating evidence in judicial proceedings. It was also held there that the intention of Parliament in enacting s. 479-A was to deal with offences of' perjury of a more serious type and that less serious type of offences which cannot be brought under the new provision will, therefore, have to be dealt with under s. 476 of the Code of Criminal Procedure. The Court, therefore, took the view that s. 479- A, Cr.P.C. has not impliedly repealed s. 476 of the Code in respect of all cases of witnesses giving or fabricating false evidence in judicial proceedings and so the provisions of s. 476 of the Code are still available for proceeding against witnesses whose cases cannot be brought under s. 479 A for one reason or another. He also referred to the decision in Lal Behari v. State(2) where the same view was taken. The learned judges who decided the case dissented from the view taken in Jaibir Singh' v. Malkhan Singh(3) to the effect that s. 479-A was a complete code in itself for dealing with all offences which fall within its ambit. Learned counsel further relied on the decision in Badullah v. State(4) where it was held that the provisions of ss. 476 and 479-A are not co-extensive and s. 479-A was added in ch. XXXV with the intention of arming the Courts with another weapon with which to deal with the growing evil of perjury in a more effective manner. It may be mentioned, however, that in this case the question which arose for consideration was whether a Court was required to proceed against a witness under s. 479-A where the evidence given by him before that Court was contradictory to the evidence given by that witness in a previous but separate judicial proceeding. As we shall show presently, this case is distinguishable from the one (1) A.I.R. (1959) All. 744 (3) A.I.R. (1959) All. 364. (2) A.I.R. (1962) All. 251. (4) A.I.R. (1961) All. 397.

before us. Learned counsel then referred to the decision in state of Bombay v. Premdas Sukritdas Chadhewal Koshti(1) in which it was held that s. 479-A does not contain an exhaustive and self-contained procedure relating to all classes of perjury but only applies to a case where the Court acts suo motu at the time of declaring its judgment and records a finding that a person appearing before it as a witness had intentionally given false evidence or has intentionally fabricated false evidence. According to the court, while s. 479-A applies only to certain kinds of cases of giving false evidence, namely, serious, flagrant and patent cases of perjury where the judge records a finding under s. 479-A(1) and that s. 476 applies to all other cases of false evidence where the judge has not recorded a finding under s. 479-(1). The conclusion arrived at by the Court was that sub-s. (6) of s. 479-A does not exclude cases of perjury from the operation of' ss. 476 to 479. On behalf of the appellant reliance was placed before us on the decisions in Parshotam, Lal v. Madan Lal(2) where it was held that the provisions of s. 479-A override the provisions of ss. 476 to 479 in so far as they relate to the giving of false evidence or fabricating false evidence by a person who gives evidence during the course of the judicial proceedings. It was pointed out in this case that this section was enacted for enabling the courts to deal with the specified offences more expeditiously and effectively and that the provisions were meant to be fair to both sides, that is, to bring a Criminal to book promptly and not to harass him after a long time. Reliance was also placed on the decision in Amolak v. State(3) where more or less the same view was taken and it was further pointed out that where a case is of a class which falls squarely within the ambit of s. 479-A(1) of the Code, the provisions of s. 476 to s. 479 are inapplicable.

(1) A. I. R. (1960) Bom. 483.

(2) A. I. R. (1959) Punjab 145.

(3) A. I. R. (1961) Raj. 220.

We cannot, said Miss Kapila, ignore the opening words of s. 479-A or the provisions of sub-s. (6) of, s. 479-A. The inevitable effect of these provisions is to exclude the provisions of ss. 476 to 479 in respect of offences which are dealt with specifically in sub-s.(1). Restricting ourselves to a case where the offence consists of intentionally giving false evidence "in any stage of judicial proceeding" it is no doubt true that as under s. 476 it is the Court which disposes of such judicial proceeding which primarily has to act under s. 479-A. There does not appear to be any real distinction between s. 476 and s. 479-A as to the Court which can take action. Under s. 476 the action may proceed suo motu or on application while under s. 479-A no application seems to be contemplated. But there is nothing in this provision which makes a distinction between flagrant offences and offences which are not flagrant or between serious offences and offences which are not serious. For exercising the powers conferred by this section, the Court has in the first instance, to form an opinion that the person against whom complaint is to be lodged has committed one of the two categories of offences referred to therein. The second condition is that the Court has come to the conclusion that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice it is expedient that a witness should be prosecuted for an offence which appears to have been committed by him. Having laid down these conditions, s. 479-A prescribes the procedure to be followed by the Court. If the Court does not form an opinion that the witness has given intentionally false evidence or intentionally fabricated false evidence no question of making a complaint can properly arise. Similarly, where the Court has formed an opinion that though the witness has intentionally given false evidence or intentionally fabricated false evidence the nature of the perjury or fabrication committed by him is not such as to make it expedient in the interests of justice to make a complaint it has a discretion not to make a complaint. But it does not follow from this that it can later oil resort to s. 476 and make a complaint against the witness. For, even under s. 476 the Court must, before making a complaint, be satisfied that it was. expedient in the interests of justice to make an enquiry into the offence committed by the witness. It could not be urged ,that where the Court wilfully refuses to record at the time of delivering the judgment or final order disposing of the proceedings before it that for the eradica- tion of the evil of perjury and in the interests of justice it was expedient that the witness should be prosecuted for the offence which appears to have been committed by him it Could later resort to the provisions of s. 476. The position must be the same where it falls to take action though it is open to it to do so. It is not as if, as the learned counsel for the respondent suggests that the Court has an option to. proceed tinder either s. 479-A or under s. 476 and that if it does not take action under s. 479-A it can do so under s. 476. The jurisdictions of the Court to make a complaint against a person arises only from the fact that that person has given false evidence or fabricated false evidence at any stage of the proceeding disposed of by it. The conditions required to be fulfilled by the Court and the procedure to be followed by it for the purpose of exercising its jurisdiction and making a complaint are not to be equated with the conditions which give the court jurisdiction to make a complaint. From this it would follow that whereas s. 476 is a general provision dealing with the procedure to be followed in respect of a variety of offences affecting the administration of justice in so far as certain offences falling under ss. 193 to 195 and s. 471, 1. P. C. are concerned the Court before which that person has appeared as a witness and which disposed of

the case can alone make a complaint.

In our opinion, therefore, the view taken in the decisions relied upon by Mr. Prem is not correct and that the view taken in Parshotam Lal's case(1) and Amolak's case(2) to the effect that the provisions of ss. 476 to 479 are totally excluded where an offence is of the kind specified in s. 479-A (1) is correct.

Mr. Prem then contended that there are two reasons why the provisions of s. 479-A, Cr. P.C. would not apply to the case before us. The first reason, according to him, is that the trial was held by the Additional Sessions judge with the aid of jury and that consequently there can be no opportunity to the Additional Sessions judge to record in his judgment a finding of the kind required by s. 479-A (1) and give his reasons for that finding. The second ground is that the complaint made by the Additional Sessions judge mentions that contradictory statements were made in the case, one before him and a different one before the Committing Magistrate. Where such is the case the only provision, according to Mr. Prem, under which a complaint could be lodged is that contained in s. 476, Cr. P.C. As regards the first point it has to be borne in mind that though it is for the jury to give its verdict regarding the guilt or the innocence of the accused it is open to the Judge to accept or reject the verdict and, therefore, it is necessary for him to record a short judgment either accepting or rejecting the verdict. Where he rejects the verdict the law requires him to refer the case to the High Court under s. 307, Cr. P.C. In either case he gets an opportunity of recording the kind of finding which is required by s. 479-A In so far as the second contention is concerned reliance is placed by Mr. Prem on Badullah's case (3). There, as already stated, it was held that when contradictory statements are made in two different proceedings it cannot be predicated with certainty that the statement made in one of them..is false (1) A. I. R. (1959) Punjab 145. (2) A. I. R. (1961) Punj.

229. (3) A. I. R. (1961) All. 397.

unless of course there is sufficient material before the Court to come to a conclusion that the statement made before it is false so as to attract the application of s. 479-A. It is also held there that when the Court is inclined to the opinion that the statement made in the previous several judicial proceeding is false and the statement made before itself is likely to be true, the Court has no power to proceed under s. 479-A. In his charge to the jury the learned Additional Sessions judge placed before them the evidence given by the appellant at the trial and also the evidence of the appellant before the Committing Magistrate and asked them to decide whether to accept one or the other of the testimonies given by the appellant or whether to reject both. He also asked them to consider whether the reference made by the appellant to Chand, before the Committing Magistrate, was really to the deceased Abu Kana. The jury, as already stated, returned the verdict of guilty under s. 304, Part 1. of course, it cannot be said that the jury in arriving at the verdict placed reliance upon the evidence of the appellant tendered before the Court or rejected it. But it was open to the learned Additional Sessions judge, after having accepted the verdict to say whether the evidence tendered at the trial was true or false. He has not chosen to do so. But, for considering the applicability of s. 479-A(1) what has to be borne in mind is that in a jury trial it is possible for the judge to come to a conclusion that the statement made at the trial is false. If he comes to that conclusion then, as

rightly observed in Badullah's case, (1), he has no option but to proceed under s. 479-A(1), Cr. P. C. The question then is whether he could act, under this provision if he is unable to form an opinion one way or the other as to whether the evidence tendered at the trial is false or the evidence before the committing Magistrate is false. What would be the position in such a case ? If the proceedings before the committing Magistrate must be held to be entirely (1) A. I. R. (1961) All 397, separate proceedings then we agree with the Allahabad High Court that s. 479-A(1) would not apply. Could that be said about evidence given at the committal stage ? Now, s. 479- A(1) speaks of false evidence given "in any stage of the judicial proceeding." The committal proceedings are a stage of the judicial proceedings before the Sessions judge. It seems to us therefore that where false evidence is given before the Committing Magistrate by a person who was later examined at the trial, the evidence given by him before the Committing Magistrate cannot properly be said to have been given in an independent proceeding. The scheme of the Code is that before a person is tried for a grave offence by a Court of Sessions an enquiry is to be made by a Magistrate for finding out whether there is a prima facie case against the accused and if he find that there is such a prima facie case to frame a charge against that person and commit him for trial before the Court of Sessions. No doubt, the evidence recorded before the Committing Magistrate is not deemed to be evidence recorded at the trial but the fact remains that the evidence recorded by the Committing Magistrate can be transferred in certain circumstances to the record of the trial and taken into consideration in the same way in which evidence tendered at the trial can be taken into consideration. In view of these features which characterise the commitment proceedings we are of opinion that those proceedings can be regarded as part of the same judicial proceeding which culminated in the decision of the court of Sessions. Upon that view it would follow that even when the Sessions judge is unable to say which of the two contradictory statements is false or even where he is of opinion that the statement before the Committing Magistrate is false it is for him and him alone to act under s. 479- A(1). We, therefore., reject both the aforesaid contentions of Mr. Prem.

For these reasons we hold that the learned Chief Presidency Magistrate was right in discharging the appellant and that the High Court was in error in setting aside the order of discharge and directing the Chief Presidency Magistrate to proceed on the basis that the complaint was made after following the procedure laid down in ss. 476 to s.479, Code of Criminal Procedure. Appeal allowed.