

SPECIAL BENCH.

*Before Sir Lawrence H. Jenkins, K.C.I.E., Chief Justice, Mr. Justice Doss
and Mr. Justice Teunon.*

1910
May 10.

EMPEROR

v.

TRIPURA SHANKAR SARKAR.*

Sanction for prosecution—Witness—False statement before the committing Magistrate retracted, and true evidence given, at the trial—Contradictory statements—Consideration of circumstances under which false evidence was given and repudiated—Criminal Procedure Code (Act V of 1898) s. 195.

It would be dangerous to hold that the mere fact of contradictory statements having been made by a witness would justify the Court in granting sanction to prosecute him for giving false evidence. It is necessary to consider the circumstances under which they were made and repudiated.

Where a witness was arrested and, after pointing out the spot where the stolen property was concealed, as alleged, by one of the accused, was released, but stayed with the police and was examined the next day in Court, before the date fixed for the hearing of the case, the question having been put by a police officer in violation of section 495 of the Criminal Procedure Code, and the evidence so given was false and was retracted at the trial, when he gave true evidence, alleging that he had been tutored and threatened by the same officer before his deposition in the lower Court :—

Held, that having regard to the events leading up to the examination before the committing Magistrate, the conditions under which it was conducted, and the fact that the witness did not persist in his false statements but gave true evidence at the trial, sanction should not be granted.

THIS was an application by the Advocate-General, at the instance of the Deputy Inspector-General of Police, for sanction, under section 195 of the Criminal Procedure Code, to prosecute Tripura Shankar Sarkar for giving false evidence in the following circumstances.

In the early morning of the 28th October 1909, a dacoity was committed at the house of one Kaluram Agarwalla, a cloth merchant, at Haludbari Bazar, in the subdivision of Kushtea, and was followed immediately after by another dacoity at the shop of one Sitanath Saha, a short distance away. Sailendra Kumar Das and nine others were arrested in connection with

* Application for sanction to prosecute under s. 193, Indian Penal Code.

these dacoities and placed before Mr. Ezechiel, the District Magistrate of Nadia, who held an inquiry against them under section 3 of Act XIV of 1908. Tripura was arrested by Inspector Nishi Kanto Banerjee on the 15th December, and on the next day was taken by Nishi Kanto and a Police Superintendent, to the village of Belesishi, and he was said to have pointed out a spot under a tree where the property stolen at the dacoities was found buried. He was thereupon released, but accompanied the police to the Mirpur thana and stayed with them till he gave evidence. He was examined before the Magistrate on the 17th, though the case was not fixed for hearing on such date, and gave evidence connecting the accused Bidhu Bhusan Biswas with the concealment of the property. The Magistrate ultimately committed the ten accused to the High Court under sections 395 and 397 of the Penal Code.

The trial of these persons before a Special Bench constituted under section 11 (1) of Act XIV of 1908, and consisting of Jenkins C.J. and Doss and Teunon JJ., commenced on the 4th April 1910. Tripura was examined on the 11th as a witness for the Crown, when he resiled from his previous statements made before the committing Magistrate, alleging that they were false and were made at the suggestion of the Superintendent by whom he was tutored and threatened. He further stated that his deposition was taken by the Magistrate in the presence only of the Superintendent who put the questions to him, and that it was not read over or explained to him by any one, though he admitted having signed it. Three of the accused were acquitted, and seven, including Susil Kumar Biswas who had pleaded guilty, were convicted and sentenced by the Special Bench to various terms of imprisonment.

An application was then made before the learned Judges composing the Special Bench, who subsequently sat as a Bench specially constituted to hear the same. The petition on which it was based contained the following assignments of perjury:—

(i) That, on the 17th December 1909, Tripura Shankar Sarkar was examined as a witness for the Crown at the inquiry before the District Magistrate, and stated as follows:—“*Susil asked me whether I knew where the things were kept*” —while, on the 11th April 1910, when examined as a prosecution witness before

1910
EMPEROR.
F.
TRIPURA
SHANKAR
SARKAR.

1910
 EMPEROB
 v.
 TRIPURA
 SHANKAR
 SARKAR.

the Special Bench, he stated, in answer to the question whether he had not said so to the District Magistrate, "No, Susil did not ask me that;" one of which statements he either knew or believed to be false, or did not believe to be true.

(ii) That he stated in the course of the said inquiry on the same date "He (meaning thereby Bidhu Bhusan Biswas) brought out a small earthen vessel, the mouth of which was covered with a white cloth," and, on the 11th April 1910, at the trial before the Special Bench, he stated, "I did not see him bringing out any such earthen vessel;" one of which, etc.

(iii) That on the 11th April 1910, when examined before the Special Bench, he stated as follows:—"It (meaning thereby his deposition before the said Magistrate) was not read over or explained to me;" and further, in answer to the question, "You see that it is written by the Magistrate 'read over to the witness in Bengali and explained to him,'" he stated in evidence "This is false. He never read it to me:" which statements he either knew or believed to be false, or did not believe to be true.

The Advocate-General (Mr. Kenrick, K.C.) instructed by Mr. Hume, Public Prosecutor, for the Crown.

JENKINS C.J., DOSS AND TEUNON JJ. An application has been made to us by the Advocate-General, under section 195 of the Criminal Procedure Code, for sanction to prosecute Tripura Shankar Sarkar under section 193 of the Indian Penal Code.

The application is based on a petition presented, apparently, at the request of the Deputy Inspector-General of Police, and the Advocate-General has relied solely on the allegations contained in that petition and has placed before us no other materials. But it would be a very inadequate treatment of the case were we to dispose of it on these allegations alone, and to arrive at a just determination other matters must be considered. It may be conceded that a comparison of Tripura's deposition before the committing Magistrate with his evidence given in this Court, discloses contradictory statements; but it would be a dangerous doctrine to hold that this alone would justify us in granting a sanction to prosecute for giving false evidence. It is necessary for us to consider how it has come about that there are these contradictions, and how it is that Tripura has resiled in this Court from the statements he made before the Magistrate.

Tripura was examined as a witness before us, and we are thus in the best possible position for the purpose of appreciating the truth of what he stated before us.

After careful consideration of his evidence, and bearing in mind all that we observed when he was in the witness box, we have no doubt that in relation to the matters now in question he gave in the main a true version in this Court and a false one before the Magistrate.

What, then, is the explanation of this? A bare narrative of the facts as disclosed by the evidence given before us will best furnish the answer as to how Tripura came to give false evidence before the Magistrate, directed to establishing the guilt of his friend and host, the accused Bidhu Bhusan Biswas.

Tripura was arrested by Inspector Nishi Kanto Banerjee on the 15th December at 5 P.M., and on the next day he was taken by Nishi Kanto and a Superintendent of Police to the village of Belesishi, and then, according to the prosecution theory, he pointed out the place where he was supposed to have seen the accused Bidhu conceal the property. After the property was found, he is said to have been released from custody at this same village, and the form was observed of taking from him a bond to appear and give evidence. But in spite of the release and notwithstanding the bond, Tripura adhered to the police and went back with them to the Mirpur thana and stayed with them till he gave his evidence. This he did on the 17th, and he was then examined before the committing Magistrate, notwithstanding that the case before the Magistrate was at that time standing adjourned to the 20th, and the 17th was not a day fixed for hearing. The only explanation Inspector Banerjee could give of this was, "I thought it better." Up to this point we have narrated that which rests on police evidence.

We will now take up Tripura's story. The only persons present at the examination besides Tripura were the committing Magistrate and the Superintendent, and the prosecution at this stage was conducted by the Superintendent in the sense that he examined the witness. We would here point out that if this be true, the examination of Tripura was in breach of the provisions of section 495 of the Criminal Procedure Code, for there can be no question that the Superintendent

1910
EMPEROR
v.
TRIPURA
SHANKAR
SARKAR.

1910
 EMPEROR
 v.
 TRIPURA
 SHANKAR
 SARKAR.

had taken part in the investigation of the offence. What is stated by Tripura beyond this is contradicted by Inspector Banerjee. Tripura declares that while he was at the Mirpur thana he was tutored by the police, and that he gave the answers he did before the Magistrate, because he was told by the Superintendent that he would have to give his answers as the Superintendent put his questions. Inspector Banerjee denies the tutoring, and there the matter rests. This, then, is how matters stand. The Court is convinced that of the contradictory statements now under consideration those made in this Court were true, but those before the Magistrate were false; and on a careful consideration of the events leading up to the examination before the committing Magistrate, and of the conditions under which that examination was conducted, we are clearly of opinion that the sanction sought should not be given. Had Tripura repeated here the false story he told before the Magistrate, no such application as the present would have been made: is it to be granted because he had told the truth here? Certainly not.

We do not mean to say that in no case would it be right to grant a sanction when a witness has told a false story before the committing Magistrate and a true story at the trial; there may be exceptional conditions in which sanction should be granted, but we are clear that to give sanction in circumstances such as we have here would only tend to defeat, and not to further, the ends of justice.

So far we have dealt with the application as based on Tripura's conflicting statements; but sanction is also sought for his prosecution in respect of his statement that the deposition was not read over to him. The Advocate-General, however, has not placed before us any affidavit or other material that would justify us in holding that in this respect Tripura had given false evidence. The result then is that we must decline to give the sanction sought, and we must dismiss the application.