

**SUPREME COURT OF INDIA**

MANISH DIXIT AND ORS.

Vs.

STATE OF RAJASTHAN

18/10/2000

(K.T.Thomas, S.N.Variava)

**JUDGMENT**

THOMAS, J.

A jeweller of Jaipur (Gulshan Makhija) was murdered on his way back home from his jewellery mart. He was abducted by two persons who intercepted the Gypsy (Jeep) driven by him on the night of 23.2.1994 with bags of jewellery kept in the vehicle. The abductors came on a motorcycle and took the jeweller to some distance where he was shot dead. The assailants decamped with a big booty consisting of valuable jewellery. There was one more person in the gypsy - a family friend by name Michael Hens (a German national who had a short sojourn at Jaipur as a tourist). He was jostled out of the gypsy before they abducted the deceased.

Five persons were arraigned by the police for the said abduction and murder. But the trial court convicted only two among them for the aforesaid offences (A1 Sharad Dhakar and A2 Manish Dixit), and the other three were acquitted. The High Court confirmed the said conviction only as against A2 Manish Dixit, and the offence against A1 Sharad Dhakar was found to be limited to Section 411 of the Indian Penal Code.

More details of the occurrence are these: Gulshan Makhijas family was running the jewellery shop called Star of India at Ashoka Hotel building, Jaipur. He used to be in the shop everyday till it was closed in the night. On 23.2.1994 he called his mother over phone and told her that one guest would also be with him for dinner and that both would reach home soon. But the unfortunate mother could never see his son alive thereafter. Gulshan Makhija and his German friend together set out from his shop in a brand new gypsy on the night after closing his shop. He carried with him a bulk of jewellery including gold, silver and valuable stones. As they reached Janpath at Shyam Nagar (near Bansal Hospital) the jeep was blocked by the two persons who rode on a motorcycle. One of them dragged Michael Hens out of the jeep and then pointed a revolver at him. He then pushed the jeweller off the driving seat and himself occupied that seat and drove the jeep keeping the dump-founded deceased on the side seat. The jeep disappeared from the sight of the sole eye-witness and the jeep was followed by the other assailant on the motorcycle.

The German tourist (Michael Hens) somehow managed to reach the house of the deceased and divulged to the inmates thereof in his broken English of what happened. The brothers of the deceased took Michael Hens to the police station (Sodala at Jaipur) and lodged a complaint which became the basis of the FIR for offences under Section 365 and 379 of the Penal Code.

On the next morning an anonymous phone call reached the officer-in-charge of Sodala police station

that a white coloured gypsy was lying abandoned at Dayal Nagar Extension (near Gopalpur Bypass). Police then rushed to that place and found the vehicle lying on a side road. Dead body of Gulshan Makhija was seen in the vehicle with head injuries. Police noticed two bags of ornaments strewn on the road near the vehicle and some other bags of ornaments were lying inside.

On 8.3.1994 police received a phone call at Idhayakapuri police station that an attache was lying abandoned near Dhuleshwar Bagh Colony. The police traced out the spot and found the attache and a bag also which contained nearly forty-two kgs. of ornaments, besides some documents relating to Gulshan Makhija. Police lifted the fingerprints noticed on the attache and the bag.

On 14.3.1994 A1 Sharad Dhakar was arrested by the police. On the strength of information elicited from him police recovered some ornaments from a buried condition on the floor of Universal Automobile Garage. A motorcycle (RJM 6373) was also recovered pursuant to the information collected from the same accused.

After Sharad Dhakar was apprehended police was in search of Manish Dixit (A2) but he was absconding even after proceedings were taken against him under sections 82 and 83 of the Code of Criminal Procedure (for short the Code). As he was not traced out despite such steps he was published as a proclaimed offender. However, in July 1994 police got sleuth information that he was moving around in Delhi, and they made close watch to locate him. On 12.7.1994 they got some indication that he could be found at Alka Hotel in Connaught Place, New Delhi. The investigating officer made a sudden raid at that place and caught him. A revolver (.455 bore bawale mark-4, bearing No.93255) was recovered from his person along with some live cartridges. On the strength of information elicited from him the investigating team recovered three Kgs. of silver ornaments from the basement of the house of Rahul Sharma (A4).

The said arrest was followed by the arrest of three more accused who were arraigned as A3 to A5. After completing the investigation police charge-sheeted the case against all of them, Sharad Dhakar (A1) and Manish Dixit (A2) for the main offences. The trial court acquitted the last three accused and convicted A1 Sharad Dhakar and A2 Manish Dixit of the offences under Sections 302, 364 read with 120B and also Section 34 of the IPC and sentenced them to imprisonment for life on the main count and to lesser term for the other counts. Both the convicted persons preferred separate appeals before the High Court of Rajasthan. The State filed an appeal against acquittal of the three accused. Subsequently, PW30 Devender Sharma, a Tehsildar filed a petition in the High Court for expunging certain observations made against him by the trial judge in respect of the evidence given by him. All these were heard together and a Division Bench of the High Court confirmed the conviction and sentence passed on A2 Manish Dixit and dismissed his appeal. As for A1 Sharad Dhakar the Division Bench found that he could only be convicted under Section 411 of the IPC and hence he was acquitted under Sections 302 & 364 read with 120 IPC. The appeal filed by the State and the appeal filed by PW30 were dismissed. Hence these appeals by Special Leave, one by A2 Manish Dixit and the other by the State against the acquittal of A1 of the offences under Sections 302 and 364 read with 120B IPC and the third by PW3 Devender Sharma against the adverse observations made against him.

When the case was charge sheeted by the investigating officer this was not a case based on circumstantial evidence as Michael Hens was cited as the solitary eye-witness. But he was not examined by the prosecution for which we did not get any satisfactory explanation at the outset. But Shri Sushil Kumar Jain, learned counsel for the State of Rajasthan, submitted to us under instructions that prosecution could not examine that German tourist as he had already left the

country before the trial started. We feel that he should have been allowed to go back only on an undertaking that he would return to India for giving evidence in this case, he being the solitary eye witness. Why the prosecution and the State did not adopt such a precautionary measure is not explained to us satisfactorily. This lapse rendered the prosecution to transform this case to one of circumstantial evidence alone. In this context we may point out that even the High Court had observed that it was a sensational case pertaining to the robbery and murder for which various teams of police officers were constituted. The lack of alacrity shown by the State agency in a case which High Court described as sensational deserves only reprobation from us.

To obviate the said difficulty the Public Prosecutor in the trial court made a futile attempt to render the statement made by Michael Hens to the inmates of Gulshan Makhija as evidence falling within the purview of Section 6 of the Evidence Act. That attempt gained success at the trial stage as the Sessions Judge approved the contention. But the Division Bench of the High Court has very rightly repudiated such a contention. As the counsel for the State did not make even an attempt to render such statement admissible in evidence, we are relieved of the task to deal with that statement.

While dealing with the case against A2 Manish Dixit we noticed that the following circumstances were projected against him and were found established by the prosecution: (1) On 24.2.1994 he stayed at hotel Sanjay (Jaipur) in the pseudonymous name Ramesh Chander Sharma. (2) He absconded from the scene soon after A1 was apprehended. (3) On 12.7.1994 he was arrested at Connaught Place, New Delhi and the revolver (described above) was taken from his person (4) When PW-41 the ballistic expert examined the bullet recovered from the head of deceased Gulshan Makhija and the revolver together he found that the said bullet could only have been fired from the said revolver. (5) On 18.7.1994 the investigating officers recovered three bags of ornaments from the basement of the house of A4, pursuant to the information elicited from Manish Dixit. (Those ornaments were in the possession of the deceased at the time of his abduction).

If those circumstances were established by the prosecution there is little scope to contend that its cumulative result would be different from the guilt of Manish Dixit in the involvement of the murder of Gulshan Makhija. The sessions court and the High Court have concurrently held that those circumstances were well established by the prosecution with reliable evidence.

The first circumstance was proved with the help of two items of evidence. One is the Register of hotel Sanjay in which there is an entry made on 24.2.1994 that a person who styled himself as Ramesh Chander Sharma had stayed in the hotel. Second is the evidence of the hand-writing expert who said that the hand which wrote the said entry was that of Manish Dixit. Evidence of those two items has been accepted by the two courts. But Sri U.R. Lalit, learned Senior Counsel who argued for Manish Dixit contended that the said entry by itself is of no avail on the language of Section 34 of the Evidence Act.

True Section 34 contains the rider that such statement shall not alone be sufficient evidence to charge any person with liability. In the first place the provision deals only with books of accounts. It primarily pertains to pecuniary transactions. The expression books of accounts means books in which merchants, traders or businessmen generally keep their accounts i.e. statements of debits and credits or receipts and payments. A register kept at the counter of a hotel need not contain any statement of account. So until it is shown that such register also pertained to the pecuniary transactions involving the customers of the hotel the same cannot be treated as a book of accounts. In the second place, even if it is assumed that a register kept in a hotel can be treated as a book of accounts, the entry therein cannot become the sole premise to charge a person with liability. The



it would help the accused in a great measure.

According to the learned senior counsel, recovery of the revolver was in violation of Sections 165 and 166(3) of the Code. Regarding Section 165 it is admitted that for the search conducted at Alka Hotel, Connaught Place, New Delhi, no independent witness of the locality was called despite the fact that it is a very populous area of the metropolis. True no independent witness has affixed signature on Ext. P.80 - Seizure Memo. The police officer said that they made an effort to secure at least two persons from Connaught Place but none was willing to be a witness. It is no surprise that any of the traders of Connaught Place would be unwilling to offer his service as a witness to any police action if he knew that he would have to bear all the sufferings thereafter, to give evidence in a criminal court, more so, when that court would be at a far off place in a different State altogether. City people are quite conscious of such consequences and they would normally be wary to signify to such witnessing. The evidence of the police officer that nobody was willing to stand as a witness in Ext.P-80 cannot, therefore, be spurned down as improbable.

Section 166 of the Code deals with searches made outside the limits of the police station concerned. Sub-section (1) thereof enables the officer in charge of one police station to require the services of the officer in charge of another police station. It is optional on the former to do so. Sub-section (2) enjoins a duty on the latter to conduct the search on being so requisitioned by the former. Sub-section (3) and (4) are relevant as PW-35 (Umed Singh) and PW-41 (DR. P.S. MANOCHA) (Himmat Singh) (both investigating officers from Jaipur) opted to conduct the search for A2 ((Manish Dixit) at Delhi, by themselves. Those two sub-sections read thus:

(3) Whenever there is reason to believe that the delay occasioned by requiring an officer in charge of another police station to cause a search to be made under sub-section (1) might result in evidence of the commission of an offence being concealed or destroyed, it shall be lawful for an officer in charge of a police station or a police officer making any investigation under this Chapter to search, or cause to be searched, any place in the limits of another police station in accordance with the provisions of section 165, as if such place were within the limits of his own police station.

(4) Any officer conducting a search under sub-section (3) shall forthwith send notice of the search to the officer in charge of the police station within the limits of which such place is situate, and shall also send with such notice a copy of the list (if any) prepared under section 100, and shall also send to the nearest Magistrate empowered to take cognizance of the offence, copies of the records referred to in sub-sections (1) and (3) of section 165.

It is evident from sub-section (3) that it permits an investigating officer belonging to one police station to search any place falling within the limits of another police station in certain exigencies. One such exigency is when there is possibility of delay in requisitioning the services of police personnel of another police station and such delay could defeat the very purpose of the search, then the investigating officer can proceed to that other place and conduct the raid or search by himself. However, when he does so he is obliged to conform to certain requirements as prescribed in sub-section (4). One is that he shall inform the officer in charge of the other police station and send him a copy of the list prepared by him in the search. Second is that he should send the copies of the search documents to the nearest magistrate who has the competence to take cognizance of the offence.

What is the basis of the argument that the aforesaid requirements have not been complied with in respect of the search made by the investigating officers at Alka Hotel in Connaught Place, New

Delhi? PW-37 (Sanjay Aksetriya) the Circle Officer of the police station under whose leadership the raid was conducted at Alka Hotel has said in cross-examination that he had given the information to the higher officer of the area who agreed to inform the police officers of Delhi at their own level. There can be no grievance that a copy of the search has not been forwarded to the court concerned.

On the aforesaid reasons we do not find any merit in the contention that the search made at Alka Hotel was not in conformity either with Section 165 or Section 166 of the Code.

The other contention is that a revolver was found in the Gypsy on 24.2.1994 and if that was with the police the recovery of revolver from A2 at Alka Hotel on 12.7.1994 could only have been the result of a planting of the firearm at the hotel. The basis for the said contention is the testimony of PW-4 (Bhanwar Lal), PW-6 (Rajendra Kumar), PW-9 (Vijay Kumar) and PW-19 (Lala Ram Yadav).

It is unnecessary to deal with the evidence of PW-4 and PW-9 as Public Prosecutor had treated them as hostile on the ground that they tried to help the accused by stating so. PW-19 is not of much use because all that he said, that too in cross-examination, was that he had seen one revolver type object lying on the front side. He then added that it was not fully visible to him.

But the evidence of PW-6 (Rajendra Kumar) cannot be bypassed as the other three witnesses because even in chief examination itself that witness has said like this: There I saw one Gypsy being parked in which the items of gold and silver were lying and below the foot rest of the steering of the rear seat a pistol of iron colour was lying and that was seized by the police.

Shri U.R. Lalit, learned senior counsel, who argued for Manish Dixit contended that the aforesaid evidence of PW-6 is binding on the prosecution particularly because the Public Prosecutor did not declare him hostile and no effort was made by him to show what the witness said was untrue. Shri Sushil Kumar Jain, in answer to that argument, submitted that the mere lapse on the part of the Public Prosecutor for not declaring PW-6 as hostile should not be taken as a conscious admission made by the said Prosecutor that what the witness said on that score was true. Shri Sushil Kumar Jain highlighted two aspects in order to ignore the above evidence of PW-6. First is that the said witness was not an attester nor a witness in Ext.P.18 Memo which was prepared relating to the Gypsy. Second is that PW-6 was not cited nor examined to say anything about the Gypsy or its seizure. According to the learned counsel, PW-6 had overshoot by saying something which was not the point for which he was cited by the prosecution and it was a lapse on the part of the Public Prosecutor who perhaps would have inadvertently missed hearing the witness stating that fact.

We may look at this aspect from a broader angle. On 24.2.1994 a team of Rajasthan Police found a Gypsy lying on the roadside and they prepared Ext.P.18 Memo. If any firearm was then lying in the Gypsy why should the police suppress that fact in the document which they prepared contemporaneously? It should be remembered that there was a number of police officers and a number of persons looking on. In such a situation the police would most certainly have mentioned in Ext.P.18 if there was any firearm lying in the Gypsy because it is not that easy to suppress such a vital material. That apart, it is too much to assume that the police concealed that crucial weapon in Ext.P.18 with the far sighted object of using that weapon for planting it elsewhere five months later for a concocted and fake recovery. If actually a firearm was found lying in the Gypsy on 24.2.1994, it is inconceivable that the police would not have taken it into custody and forwarded it to the Forensic Science Laboratory to check up whether it was the same firearm which the assailant could have used for murdering the deceased. In this context we may note that Ext.P.18 which was



in re-examination. This was either because he did not find any need to elicit any explanation from the witness or because the Public Prosecutor was inattentive to the implications regarding the answers elicited by the cross-examiner from that witness.

But the trial court came down very harshly against the said witness and made the following castigating observations against him in the JUDGMENT

The statement of such a responsible officer like Tehsildar opposing the Ferd made by him shows either ex.P-20, 21 and 28 were written wrong or he has made wrong statement before the Court. In any circumstances, this action is highly unexpected from the responsible officer of such status. Therefore, I would like to bring to the notice of the State Government that in this regard appropriate action should be taken against him, so that any officer does not make such a false report or does not give false evidence in the Court.

When PW-30 noticed the disparaging remarks made against him he moved the High Court under section 482 of the Code to have those remarks expunged. But the Division Bench of the High Court, after dealing with the evidence given by the witness pointed out that even after refreshing his memory the witness did not reconcile with the inconsistencies in his statement with the contents of the documents prepared by him. The Division Bench thereupon made the following observations:

It is needless to mention that the role of persons who conducted test identification parade is very important. He is expected to take all necessary precautions while conducting test parade. He is also required to depose correctly before the court of law and not to deliberately make vague, confusing, inconsistent and contradictory statements against the contents of the documents prepared and order passed by him. The observations made by the learned trial judge do not amount to abuse of process of law. We therefore, do not find any valid and sufficient reason to expunge the impugned observation/remarks made by the trial court against him. Hence this Cr.Misc. Petition filed under s.482 Cr.P.C. deserve to be dismissed.

In our opinion, both the trial court and the High Court should have avoided making such unsavory comments against a witness in such a manner as to entail serious implications on his career, merely because the answers which were extracted from him through cross questions contained contradictions or inconsistencies. It should have been remembered that PW-30 (Devendra Kumar Sharma) was cited by the prosecution and the chief examination was conducted by a Public Prosecutor. Once the witness was cross-examined the Public Prosecutor had an opportunity under law to put such questions as were necessary for explanation of matters referred to in cross-examination. It is understandable to us why the Public Prosecutor did not put a single question at re-examination stage, at least for the purpose of giving him opportunity to explain such incongruities which fell from his mouth during cross-examination.

If the trial court felt that some of the answers given by that witness during cross-examination were so inconsistent or contradictory and that such answers per se required judicial castigation the court also had a duty to invoke its powers envisaged in Section 165 of the Evidence Act. The width of the powers of the court to put questions is almost plenary and no party can possibly raise an objection thereto. This can be discerned from the language employed in the first limb of the section. It reads thus:

The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or

irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question.

This Court has indicated the very wide dimension of the powers of the court under section 165 of the Evidence Act in *State of Rajasthan vs. Ani* {1997 (6) SCC 162}. We extract the following observations which would amplify the position:

The said section was framed by lavishly studding it with the word any which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words relevant or irrelevant in section 165. Neither of the parties has any right to raise objection to any such question.

In the present case when the Public Prosecutor failed to utilize the opportunity afforded by law to ask PW-30 (Devendra Kumar Sharma) such questions as are necessary for explanation of the matters referred to in cross-examination, and when the trial judge also failed to invoke the plenary powers to put such questions as he should have put regarding the answers given in cross-examination it was unfair, and we may say uncharitable to a witness to shower him with judicial reprobations in the judgment. Such disparaging remarks and the direction to initiate departmental action against him could have very serious impact on his official career.

Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW-30 (Devendra Kumar Sharma). [(*State of U.P. vs. Mohd. Naim* {1964 (2) SCR 363}, *Ch. Jage Ram vs. Hans Raj Midha* {1972 (1) SCC 181}, *R.K. Lakshmanan vs. A.K. Srinivasan* {1975(2) SCC 466}, *Niranjan Patnaik vs. Sashibhusan Kar* {1986 (2) SCC 569}, *State of Karnataka vs. Registrar General* {2000 (5) Scale 504}].

It is apposite in this context to extract the following observations made by this Court in *Dr. Dilip Kumar Deka v. State of Assam* {1996(6) SCC 234}:

We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was complete negation of the fundamental principle of natural justice.

We therefore unhesitatingly allow the appeal filed by PW-30 (Devendra Kumar Sharma) and order expunction of all the disparaging remarks made against him by the trial judge as well the High Court in the judgments impugned before us. The direction to proceed against him departmentally would also stand deleted.

The appeals are disposed of accordingly.