SUPREME COURT OF INDIA

State of Bihar

Vs.

Laloo Prasad Alias Laloo Prasad Yadav

(K.T. Thomas and S.N. Variava JJ.)

14.09.2001

ORDER

1. Leave granted.

2. A witness was sought to be treated as hostile by a public prosecutor on the ground that he gave answers in favour of the defence during cross-examination. The trial judge declined to permit the public prosecutor to cross examine the witness as per an order passed by him. The C.B.I. which was prosecuting the case took up the matter before the High Court. By the impugned judgment, the High Court declined to interfere. Hence, this appeal by special leave.

3. We read the copy of the deposition of PW-39 (Baleshwar Choudhary) on whose evidence the present controversy has arisen. He mentioned about a document executed in 1993 styling the same as a sale deed executed. After referring to the same in the chief-examination, the same witness further stated that he received the consideration thereof in 1983. The said last part of the chief-examination is obviously not in consonance with the prosecution case. But the public prosecutor did not choose to seek permission of the trial court to put questions to the witness which might be put in cross-examination by the adverse party. Hence, the examination proceeded to the cross-examination by the adverse party. It was in the cross-examination that the witness said further details of how he received the consideration. At the said stage, public prosecutor requested for permission (after cross-examination was over) to treat the said witness as hostile.

> "Section 154 of the Evidence Act reads thus:
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> 154. Question by party to his own witness. The court may in its discretion, permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party."

4. Learned Counsel for the appellant invited our attention to the decision of this Court in Dahyabhai Chhaganbhai Thakker v. State of Gujarat in support of his contention that it is open to the party who calls the witness to seek the permission of the court (as envisaged in Section 154 of the Evidence Act) at any stage of the examination.

5. Nonetheless, a discretion has been vested with the court whether to grant the permission or not. Normally, when the public prosecutor request for permission to put cross questions to a witness called by him, the court used to grant it. Here, if the public prosecutor had sought permission at the end of the chief examination itself, the trial court would have no good reason for declining the permission sought for. But the public prosecutor did not do so at that stage. That is precisely the reason why the trial judge declined to exercise his discretion when the permission was sought for after the cross-examination was over. The witness has said only the details in cross-examination regarding the matter which he said in the chief examination itself. It would have been a different position if the witness stuck to his version, he was expected to say by the party who called the witness, in the examination in chief, but he showed propensity to favour the adverse party only in cross-examination. In such case, the party who called him has a legitimate right to put cross question to the witness. But if he resiled from his expected stand even in chief examination, the permission to put cross-questions should have been sought then.

6. In the above situation, we are unable to hold that the trial judge has gone wholly wrong in declining to exercise the discretion envisaged under Section 154 of the Evidence Act in favour of the appellant. Be that as it may, if the public prosecutor is not prepared to own the testimony of the witness examined by him, he can give expression of it in different forms. One of such forms is the one envisaged in Section 154 of the Evidence Act. The very fact that he sought permission of the court soon after the end of the cross examination, was enough to indicate his resolve, not to own all what the witness said in his evidence. It is again open to the public prosecutor to tell the court during final consideration that he is not inclined to own the evidence of any particular witness inspite of the fact that said witness was examined on his side. When such options are available to a public prosecutor, it is not a useful exercise for this Court to consider whether the witness shall again be called back for the purpose of putting cross questions to him.

7. With the above observations, we dispose of this appeal.