

**PATNA HIGH COURT**

Sahdeo Tanti

Vs

Bipti Pasin

Criminal Revn. No. 187 of 1968

(K.B.N. Singh, J.)

11.02.1969

**ORDER**

**K.B.N. Singh, J.**

1. This application in revision is directed against an order of the learned Assistant Sessions Judge, permitting the prosecution to cross-examine P. W. 10.
2. The case of the complainant-opposite party was that she was married to one Gultain Pasi of village Chatneshwar but she later developed intimacy with the petitioner and started residing with him since about one year before the filing of the complaint. Thereafter she became pregnant. Her further case is that the petitioner wanted her to agree to abortion, which she refused. Thereafter, the petitioner gave blows with his foot on the abdomen of the complainant and after she fell down, he further assaulted her and after retaining her box containing her belongings worth Rs. 525/-, he ousted her from the house. After cognizance was taken on the complaint filed by the opposite Party, the petitioner was committed to the Court of Session for trial under Sections 312, 403 and 511 of the Indian Penal Code.
3. At the trial before the Assistant Sessions Judge, Jadu Pasi (P. W. 10) was tendered on behalf of the prosecution and was cross-examined on behalf of the petitioner on the 19th December, 1967. The prayer of the prosecution to cross-examine this witness was, however, rejected. Subsequently, a petition was filed on behalf of the prosecution by the Assistant District Prosecutor on the 20th December, 1967, for permission to cross-examine P. W. 10, which has been allowed by the order giving rise to the present application.
4. Mr. Parmeshwar Prasad Sinha, on behalf of the petitioner, has urged that the learned Assistant Sessions Judge, having rejected the prayer for cross-examination of P. W. 10 on the 19th December, 1967, should not have allowed the same prayer on the 13th January, 1968, on the same set of facts. It is true that the learned Assistant Sessions Judge rejected the prosecution prayer for cross-examining P. W. 10 on the 19th December, 1967, which he has allowed on the 13th January 1968, for the reasons stated in the order. The order passed by the Assistant Sessions Judge on the 19th December, 1967, not being a judgment within the meaning of Section 369 of

the Code of Criminal Procedure, no error seems to have been committed by the learned Assistant Sessions Judge in ordering for recall of the witness for his cross-examination. After all, the earlier order being in the nature of an interlocutory order it was open to the court below, in the ends of justice, to order for cross-examination of P. W. 10.

5. Mr. Sinha next urged that as P. W. 10 was not examined at any earlier stage and before the Sessions Court also he was only tendered, there was no previous statement of the witness from which it could be said that he had been gained over and there was no occasion for declaring him hostile. It will be relevant at this stage to refer to Section 154 of the Evidence Act, which lays down :-

"The Court may, in its discretion, permit the person who calls a witness to put any questions to him which might be put in cross-examination by the adverse party."

From a bare reading of the aforesaid section it is apparent that there is nothing in Section 154 of the Evidence Act to warrant an inference that only when any previous statement of the witness is available and if he is alleged to have departed from that that the court can declare that witness hostile. To accept this extreme submission of the learned counsel is to read in the section such limitation, on the power of the court to allow cross-examination of a witness, by the party calling the witness, which is not there. This will very much limit its scope. In the instant case, P. W. 10, in cross-examination on behalf of the petitioner on the 19th December, 1967, stated that the complainant was living with the petitioner only for the last about six months and prior to that she was living with her husband Gultain Pasi. It was on this account that the prosecution prayed to the court for cross-examining this witness.

6. Learned Counsel has urged that if is to do away with the effect of the statement which is advantageous to petitioner that permission has been sought on behalf of the prosecution to cross-examine this witness. Simply because permission has been granted to cross-examine a witness by itself, is not enough to discredit the witness. It will be useful to refer in this connection to the case of *Sarjug Prasad v. The State*<sup>1</sup>, wherein the legal position in this regard has been enunciated as follows :-

"When a public prosecutor declared a prosecution witness to be hostile and cross-examines him after taking the Court's permission, it merely amounts to a declaration by him that the witness is adverse or unfriendly to the prosecution and not that the witness is untruthful. Reference may be made in this connection to *Emperor v. Haradhan*<sup>2</sup>, The true rule is that either party may rely upon the evidence of such a witness, and the Court can come to its own conclusion after a consideration of the whole of his evidence."

That a party can cross-examine even a witness tendered by it cannot be disputed in view of the Bench decision of this Court in the case of *Manzurul Haque v. State of Bihar*<sup>3</sup>,

<sup>1</sup> AIR 1959 Pat 66

<sup>3</sup>1958 Pat LR 18 : (AIR 1958 Pat 422)

<sup>2</sup> AIR 1933 Pat 517

7. No other point was urged.

8. In the result, there is no merit in this application and it is accordingly dismissed.

Application dismissed.