

State Vs. N. Somasekhar

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Court : Karnataka

Decided On : Apr-19-1993

Reported in : 1993(2)ALT(Cri)214; ILR1993KAR1527; 1992(2)KarLJ227

Judge : Jagannatha Hegde, J.

Acts : [Evidence Act, 1872](#) - Sections 154

Appeal No. : Crl. Petn. No. 347 of 1993

Appellant : State

Respondent : N. Somasekhar

Advocate for Def. : C.H. Hanumantharaya and ;C.G. Sundar, Advs.

Advocate for Pet/Ap. : Mari Gowda, HCGP

Disposition : Petition dismissed

Judgement :

ORDER

Jagannatha Hegde, J.

1. This is an application filed by the State under Section 482 Cr.P.C. challenging an order dated 11.1.1993 passed by the learned II Addl. Sessions Judge, Mysore, in Sessions Case No. 101/91 rejecting the application of the prosecution to permit

the prosecution to put any questions to Dr. Vishnumurthy, PW-20 and Dr. Shenoy, PW-32 which might be put in cross-examination by the adverse party.

2. The learned Sessions Judge after hearing both sides has rejected this application. It is settled law that Section 154 of the Evidence Act empowers the Court to permit a person, who calls a witness, to put questions to him which might be put in the cross-examination at any stage of his cross-examination, provided it takes care to give an opportunity to the accused to cross-examine him on the answers elicited which do not find place in the examination in chief (see:) : 1964 CriLJ472 Dahyabhai Chhaganbhai Thakkar v. State of Gujarat. A party will not normally be allowed to cross-examine its own witness and declare him hostile, unless the Court is satisfied that the statement of a witness exhibits an element of hostility or that he has resiled from a material statement which he made before an earlier authority or when the Court is satisfied that the witness is not speaking the truth and it may be necessary to cross-examine him to get out the truth. Before a witness can be declared hostile and the party examining the witness is allowed to cross-examine him, there must be some material to show that the witness is not speaking the truth or has exhibited an element of hostility to the party for whom he is deposing. (See) : 1977 CriLJ173 Rabindra Kumar v. State of Orissa. Before permitting the prosecution to cross examine the prosecution witness the Judge will have to examine the statement made by the witness before the Investigating Officer to find out whether the witness is really hostile to the party calling him. He may have to consider the manner in which the witness answers the questions, his demeanour while answering questions to examine whether he is attempting to tamper the case of the prosecution. The discretion of granting permission is a Judicial discretion and is required to be exercised in a Judicious way. Therefore, the witness could be regarded as hostile only if the Court is of the opinion that the witness is hostile to the party calling him and that he is not desirous of telling the truth.

3. PW-32, Dr. Shenoy, has conducted post-mortem examination over the dead body on 8.4.1991 and has issued a post-mortem report. It is stated that he is the Professor of Forensic Medicine in Mysore Medical College and is a Government Servant. The Trial Court has discussed in para-16 of its order in detail, the

deposition of PW-32 and has come to the conclusion that the prosecution had not made out any ground to hold that PW-32 has become hostile to the prosecution. Even assuming that the accused has elicited certain information from PW-32 during his cross-examination which might be taken advantage by him, it cannot be said that the witness has exhibited animus attitude towards the prosecution. After all he might have given his opinion. I have also gone through the deposition of PW-32 and I do not find any reason to differ from the view taken by the learned Sessions Judge.

4. PW-20, Dr. Vishnumurthy, had been summoned near the swimming pool where the deceased person was found dead. He had examined the dead body on the evening of 7.4.91. He is attached to a hospital which is just opposite to Nazirabad Police Station. He happens to be a psychologist also. Certain informations relating to child psychology were elicited during his cross-examination. The learned Sessions Judge after considering his entire deposition has come to the conclusion that he cannot be said to have turned hostile. This witness is also examined as an Expert. The depositions of PWs-20 and 32 do not show that they have been won over or that they are against the prosecution.

5. It may also be noted that the learned Sessions Judge had an opportunity of examining the demeanour of these two witnesses. In such a situation, the discretion exercised by him under Section 154 of the Evidence Act for refusing to permit cross-examination should not be interfered with as a matter of course. Thus, no case has been made out by the State to interfere with the impugned order passed by the learned Sessions Judge.

The Petition is, therefore, dismissed.

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