J.B. Roy Vs. the State

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Court : Andhra Pradesh

Decided On : Nov-16-1966

Reported in : AIR1968AP236; 1968CriLJ1035

Judge : Gopal Rao Ekbote, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 161, 161(1), 161(3), 162, 162(1), 173, 173(4), 251A(7) and 540; ;Indian Penal Code (IPC), 1860 - Sections 304A

Appeal No. : Criminal Revn. Case No. 486 of 1966 and Criminal Revn. Petn. No. 420 of 1966

Appellant : J.B. Roy

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : E. Ayyapu Reddy and ;P.C. Lakshmana Rao, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

1. This is a revision petition directed against the order of the Additional District Munsif-Magistrate, Srikakulam given on 26th July, 1966 whereby the learned

Magistrate directed the issue of summonses in the names of eight witnesses whom the prosecution wanted to examine. It appears that the Station House Officer, Srikakulam Town filed a charge-sheet against the accused under Section 304-A, I.P.C. Along with the charge-sheet, a list of witnesses also was filed according to which three witnesses were mentioned as eye witnesses. One of them died before the commencement of the trial. The prosecution therefore produced P.WS. 2 and 3, the other eye witnesses. They however were declared hostile and permission was granted to the prosecution to cross-examine them.

2. Subsequently, the prosecution filed an application under Sections 251-A (7) and 540, Cr. P.C. seeking permission to examine eight more witnesses cited in the application. It was stated that out of the eight witnesses, witnesses mentioned in Serial Nos. 1 to 4 were examined in the course of investigation while the remaining were examined by the police only after P.W. 2 had turned hostile in the Court

3. The petition was opposed by the accused. The principal contention was that since the names of the four witnesses who vyere examined during the course of investigation were not included in the list filed along with the charge-sheet and the remaining four witnesses were examined only after the charge-sheet was filed, the prosecution had no right to cite these witnesses and the Court cannot grant any permission to examine them as witnesses.

4. The learned Magistrate allowed the petition holding that Section 540 empowers the prosecution in the circumstances of the case to examine these witnesses and directed the issue of summonses to them. It is this order which is now challenged in this revision petition.

5. The principal contention of Sri. E. Ayyapu Reddy, the learned counsel for the petitioner, is that since the names of four witnesses did not find place in the list filed along with the charge-sheet and the other four were not examined during the investigation prior to the filing of the charge-sheet, these witnesses could not have been directed to be examined by the Munsif-Magistrate. In support of this contention), the learned Advocate relied upon in re, N. Krishnaswamy, AIR 1956 Mad 592.

6. Now, under Section 161, Cr.P.C., any Police Officer referred to in that section may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such a Police Officer may reduce into writing any statement made to him in the course of an examination. It is thus manifest that under Section 161, it is not at all necessary that the Police Officer should record any statements when making an investigation and indeed the law does not require any statement to be recorded by the Police in an investigation. It is left to the discretion of the investigating officer to examine orally any person or reduce his statement into writing. It is only when he decides to reduce into writing any such statement that Section 162(1) requires that no such statement reduced into writing shall be signed by the person making it and it is only to such a statement that the proviso to Section 162(1) refers to. It is not therefore obligatory on the part of the investigating officer to reduce into writing any statement made to him in the course of the investigation, nor is it necessary that he should have examined any person orally or should have reduced such person's statement into writing who is later going to be cited as a witness for the prosecution.

7. What all Section 173(4) provides for is that in order to safeguard the interests of the accused persons it directs the Police Officers and the Magistrates before whom proceedings are brought to see that all the documents necessary be given to the accused persons and all the information for the proper conduct of their defence are furnished. The said provision of Section 173 only means that if statements have been reduced into writing under Section 161(3) then the statements of such persons as the prosecution proposed to examine as witnesses' shall be given to the accused What must follow is that in case persons are orally examined during police investigation and whose statements are not reduced into writing, no question of supplying copies of any such statement can arise under Section 173(4) The right of the accused to use a statement in the manner mentioned by the proviso to Section 162 is obviously limited to the statement? reduced into writing under Section 161(3). The accused is not entitled to all the statements recorded under Section 161(3). He is entitled to only such statement of witnesses whom the prosecution has cited as witnesses. In view of Section 161 (1) and (3), the accused cannot Insist that the statements of all persons who have been examined by the Police during investigation ought to have been reduced into

writing. There is no provision in the Criminal Procedure Code which makes it obligatory on the part of the prosecution to file a list of witnesses along with the charge-sheet.

The list of witnesses usually is given by the Police along with the charge-sheet because of the prevalent practice. The practice is undoubtedly desirable but no provision of the Code compels the prosecution to furnish any such list along with the charge-sheet. Nor furnishing of such a list of witnesses along with charge-sheet can mean that the prosecution has relinquished its right to call for any other witness whost name is not mentioned in the list. Nor binds the court to record only the statements of such persons whose names appear in the list. It does not disable the prosecution or the Court from examining any other witness if it is found desirable or necessary for the purposes of the case.

8. In this respect, the language of Section 251-A (7) should be kept in view. It states that 'On the date so fixed, the Magistrate shall proceed to take all such evidence as may be produced in support of the prosecution'. It is manifest that the language of Sub-section (7) is intentionally employed wide so that the prosecution may be able to produce all such evidence as may be required to be produced in support of the prosecution. If one is to read 'all such evidence' in the sub-section to mean only such evidence as has been reduced into writing by the Police during the investigation under Section 161(3), one would be reading into it something which is not there. Such a construction will limit the operation of Sub-section (7). I do not think that Section 173(4) in any manner controls or limits the right of the prosecution under Section 251-A (7) to produce all such evidence as may be produced by it in support of the prosecution

9. A combined reading of Sections 161 (1) and (3), 173(4) and 251-A (7), Cr.P.C. leaves me in no doubt that the prosecution is not precluded from calling any witness at the enquiry or trial who has not been examined by the Police orally or whose statement has not been reduced into writing under Section 161(3) of the Cr.P.C. The prosecution cannot be confined to the evidence of only those persons whose statements had been reduced into writing under Section 161(3). Nor can it be confined to the list of witnesses which it had filed along with the charge-sheet

The prosecution is free to examine all such witnesses as may be produced in support of the prosecution. Such a freedom of the prosecution should not be confused with the probative value which ultimately the Court may attach to the testimony of a witness who has either not been examined orally or whose statement has been reduced into writing but whose name does not find place in the list appended to the charge-sheet and yet is cited as a witness by the prosecution. It is one thing to say that the prosecution has no right to produce such evidence and quite another thing to say that in the circumstances of the case, no probative value can be attached to the statement of any such witness.

10. That apart, the Court has ample powers under Section 540 of the Code to summon any material witness or examine any person who is present in the Court. That section consists of two parts. (1) Giving a discretion to the Court to examine a witness at any stage; and (2) the mandatory portion which compels a Court to examine' a witness if his evidence appears to it essential to the just decision of the case. The object of the section manifestly is to enable the court to arrive at the truth Irrespective of the fact that the prosecution or the defence has failed to produce some evidence which is necessary for a iust and proper disposal of the case. This section confers very wide powers upon a Court in the matter of summoning witnesses. It is neither confined to the persons who have been examined orally or whose statements have been reduced into writing by the Police during investigation, nor is it limited to the list filed by the prosecution along with the charge-sheet. The discretion given by the section is very wide but at the same time it must be remembered that the mere width of the discretion requires the Court to exercise it sparingly and with a good deal of caution. It should hot be exercised at the dictation of any Party nor can the exercise of such discretion be abandoned merely because the accused objects to the exercise of such discretion. The section is usually, associated with Court witnesses, that is to say, the witnesses examined by the Court on its Own behalf, but there is nothing in the section itself so to limit it and it can apply also to witnesses for the prosecution as well as witnesses for the defence. The section says:

'Any Court may. . .summon anyperson as a witness. ...'

Such a summoning may be suo motu by the Court or on its attention being invitedeither by the prosecution or the accused.The Court is not precluded from exercisingits discretion under section 540 merelybecause somebody asks it to do so or becausesomebody objects it to do so. To act underthe latter part of Section 540, the Court isbound to summon and examine any witness whose evidence appears to it essentialto the just decision of the case. The discretion which Section 540 confers on a Court is undoubtedly wide but the section is notwholly discretionary. The latter part of it imposes upon the Magistrate an obligation that the Court shall summon and examine all persons whose evidence is essential to the just decision of the case. Even if the evidence, though not essential, is yet expedient or desirable even then the Magistrate can exercise his discretion in favour of examining the witness and if he so orders, he would not be exceeding his authority under Section 540. The Magistrate of course is expected to exercise the discretion according to well-established principles for the exercise of such discretion. Once it is found that the Magistrate has properly exercised the discretion, this court will naturally be slow to interfere. I am fortified in my view by the following decisions: State v. Jagadish Pandey, : AIR1958 Cal311 , Public Prosecutor v. C.D. Naidu. : AIR 1960 AP367 , and Chandu Veeriah v. State of Andhra Pradesh. : AIR 1960 AP329 .

11. If the present case is examined in the background of the above said discussion, it will be clear that the prosecution could not have been precluded from requesting the Court to summon the 8 witnesses which it wanted to summon. Merely because four of the eight witnesses were not examined either orally or whose statements were not reduced into writing under Section 161 or because that four of the witnesses were examined during the trial by the Police, it does not fetter the right of the prosecution to adduce all such evidence which it wants to adduce in support of the prosecution under Section 251-A (7), Cr.P.C. The Magistrate in directing the issue of summonses to these witnesses therefore merely recognised the right of the prosecution to adduce such evidence and did not act inconsistently with Section 251-A (7) Cr.P.C. Moreover, the Magistrate himself has stated that because of the situation which arose during the trial of the case, there are reasonable grounds to permit the prosecution to summon the eight witnesses. One eye witness had already died. Two had turned hostile. The

prosecution had merely cited these three witnesses as eye witnesses. In this situation which could not have been contemplated by the prosecution, if the Court permits the prosecution to summon fresh evidence, it in fact acts under Section 540. Cr.P.C. Looked at from either of these points of view. I do not think that the Magistrate has committed any error in summoning the witnesses.

12. It is no doubt true that in AIR 1956 Mad 592, the learned Judge observed:

'1 am of the view that after the filing of the charge-sheet under Section 173, Cr.P.C., there can be no further investigation into the case by the police and therefore any persons examined by them cannot be put forward before the Court as witnesses for the prosecution in support of their case. In this view the prosecution cannot ask the above mentioned four persons to be examined as witnesses for the prosecution. The issue of summons to them is therefore quashed'.

While it may not be difficult to agree with the first part of the above said observation, but it is difficult to agree with the latter part of the said observation in the light of what I have stated earlier Both as a matter of principle and on authorities, I think with due respect to the learned Judge I cannot agree with the latter part of the said observation. I have already referred to the two decisions of this Court and I prefer to follow them.

13. For all these reasons, I do notfind any substance in this revision petition.The revision petition therefore is dismissed.