

Sanapala Krishna Murthy and ors. Vs. State Represented by the Addl. Public Prosecutor

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Court : Andhra Pradesh

Decided On : Mar-17-1971

Reported in : 1972CriLJ935

Judge : Madhava Reddy, J.

Appellant : Sanapala Krishna Murthy and ors.

Respondent : State Represented by the Addl. Public Prosecutor

Advocate for Pet/Ap. : Mr. Poorniah

Judgement :

ORDER

Madhava Reddy, J.

1. This Criminal Revision case is directed against an order of the learned 1st class Magistrate. Ichapuram rejecting Cri. M. P. No. 71/70 for summoning other eye-witnesses to the incident in P. R. C. 1/70 on his file.

2. P. Ws. 1 and 2 who are said to be direct witnesses to the occurrence were examined and the accused wanted that the other so called eye witnesses also should be examined. That petition having been dismissed. they moved the learned

Additional Sessions Judge-cum-Addl. District Magistrate Srikakulam to refer the matter to the High Court. That petition having been dismissed they have filed this criminal revision case.

The case against the six accused is for offences under Sections 147, 323 and 380 I. P.C. It was originally taken up as calendar case but was later converted into a P. R. C. proceedings. Among several eye witnesses two witnesses were examined. The learned Magistrate having found that the evidence of these two witnesses who according to their statements were present at the time of occurrence is supported by the wound Certificate regarding injuries to P. W. 1 did not think it necessary in the interest of justice to examine other witnesses to the occurrence and dismissed the petition.

3. It is argued by Mr. Poorniah, the learned Counsel for the petitioners that it is the duty of the Magistrate to examine all the witnesses to the occurrence in serious offences and reliance for this is placed on the decision of the Supreme Court in *Kirpal Singh v. State of Uttar Pradesh* : 1965 CriLJ636 in which their Lordships observed as follows:

Examination of witnesses to the actual commission of the offence should in inquiries for committal on charge for such serious offences, be the normal rule. The Prosecutor is expected ordinarily to examine all witnesses to the actual commission of the offence: if without adequate reasons he fails to do so, the Magistrate is justified and in inquiries on charges for serious offences, is under a duty to call witnesses who would throw light upon the prosecution case.

Their Lordships further observed:

With a view to shorten delays in the Proceedings, Preliminary to bringing the accused to trial the Legislature has by enacting Section 207A conferred a discretion upon the Magistrate in the matter of examination of witnesses not produced by the prosecutor. Exercise of that discretion must be judicial: it is not to be governed by any set of rules or standard but must be adjusted in the light of circumstances of the case. The Magistrate is again not to be guided by the attitude of the prosecutor. He must of course consider the representations relating to the

examinations of witnesses by the prosecutor. but in considering whether it is necessary in the interests of justice to take evidence of alone or more of the other witnesses for the prosecution he must have due regard to the nature and gravity of the offence the interest of the accused, and the larger interest of the Public and the defence if any disclosed by the accused. A Magistrate failing to examine witnesses to the actual commission of the offence because they are not produced without considering whether it is necessary in the interest of justice to examine such witnesses in our judgment fails in the discharge of his duties.

It was further observed:

It is the duty of the Magistrate to examine all such witnesses as may be produced by the prosecutor as witnesses to the actual commission of the offence alleged but his duty does not end with such examination. He must apply his mind to the documents referred to in Section 173 and testimony of witnesses. if any produced by the prosecutor and examine and consider whether in the interest of justice it is necessary to record the evidence of other witnesses. In inquiries relating to charges for serious offences like murder. normally the Magistrate should insist upon the examination of the Principal witnesses to the actual commission of the offence.

Following that decision my learned brother Venkateswara Rao in CrI. R. C. No. 779 of 1969 (Andh. Pra) which was a case of double murder. directed all the witnesses to the occurrence to be examined in P. R. C. proceedings. The principle however deducible from the pronouncement of the Supreme Court is that ordinarily the prosecutor is expected to examine all witnesses to the actual commission of the offence and in inquiries for committal on charges in case of serious offences. it is the duty of the Magistrate to call witnesses who throw light upon the prosecution case. In this matter the Magistrate is not to be guided by the attitude of the public prosecutor. He must have due regard to the gravity and the nature of the offence, the interest of the accused and the larger interest of the Public and the defence if any disclosed by the accused. In inquiries relating. to charge for serious offences like murder normally the Magistrate should insist upon examining all the principal witnesses to the actual commission of the offences.

Their Lordships however did not lay down any inflexible rule that all the witnesses to the occurrence must necessarily be examined by the Magistrate in inquiries as to committal. Their Lordship observed that the Magistrate must apply his mind to the documents referred to in Section 173 and the testi many of the witnesses if any produced by the prosecutor and examine and consider whether in the interest of justice it is necessary to record the evidence of the other witnesses. Thus it is a judicial discretion that has to be exercised by the Magistrate and not as a matter of course insist upon the public Prosecutor to tender the evidence of all the eve-witnesses or mechanically proceed to record the evidence of all such witnesses who are said to be the direct witnesses to the occurrence. Whether or not in a particular case an examination of all the witnesses is necessary is a matter entirely left to the judicial discretion of the Magistrate concerned. It cannot be laid down as an inflexible rule that the Magistrate making inquiries for committal should necessarily examine all the direct witnesses to commission of the offence.

4. In the instant case the Magistrate having recorded the evidence of P. Ws. 1 and 2 who are direct witnesses to the offence found that their versions fully corroborated by the wound certificate and in those circumstances did not think it necessary to examine the other witnesses. After all what the Magistrate at that stage has to see is whether there is sufficient evidence for commitment and not whether there is sufficient evidence for conviction. In those circumstances it cannot be validly contended that the Magistrate failed to exercise judicial discretion in rejecting the petition for examining the remaining eve witnesses to the occurrence. I do not think that the exercise of this discretion was arbitrary calling for interference in revision. The criminal revision case is therefore dismissed.