

Saddiq and ors. Vs. State

Saddiq and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/477924

Court : Allahabad

Decided On : Oct-03-1980

Reported in : 1981CriLJ379

Judge : B.N. Katju, ;J.P. Chaturvedi and ;M.P. Saxena, JJ.

Appellant : Saddiq and ors.

Respondent : State

Judgement :

B.N. Katju, J.

1. The question that has been referred to us for decision is:

Can an injury report filed by the prosecution which has been admitted to be genuine by the accused, be read as substantive evidence under Section 294(3), Cr.P.C.?

2. Section 294, Cr. P.C. runs as follows:

294(1) Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.

(2) The list of documents shall be in such form as may be prescribed by the State Government.

(3) Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person by whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.

3. The word 'document' is not defined in the Code of Criminal Procedure, but in view of Section 2(y), Cr. P.C. words and expressions used in the Code, which are not defined in the Code, but defined in the Indian Penal Code, have the meanings respectively assigned to them in that Code. The word 'document' is defined in Section 29, I.P.C., which is as follows:

The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation I.- It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not....

4. The word 'any' appearing before the word 'document' means an indefinite number and makes Sub-section (1) of Section 294, Cr. P.C. applicable to all documents filed by the prosecution or the accused irrespective of their nature and character. Sub-section (1) of Section 294, Cr. P.C. therefore, requires that particulars of all documents, which are to be filed by the prosecution or the accused, must be mentioned in a list and the opposite party, or their pleaders, shall be called upon to admit or deny the genuineness of such documents.

5. It is clear from a plain reading of Sub-section (3) of Section 294, Cr. P.C. that it is applicable only to those documents filed by the prosecution or the accused under Sub-section (1) of Section 294 Cr. P.C. whose genuineness is not disputed by the Opposite party and such documents may be read in evidence under that Sub-section. If the genuineness of a document filed by the prosecution or the

accused under Sub-section (1) of Section 294(3) of Section 294, Cr. p. C. does not apply and such a document cannot be read in evidence under that Sub-section.

6. The meaning of the word 'genuine' given in Black's Law Dictionary, Revised Fourth Edition, Page 816 is as follows:

As applied to notes, bonds, and other written instruments, this term means that they are truly what they purport to be, and that they are not false, forged, fictitious simulated, spurious, or counterfeit.

7. The meaning of the word 'genuine' given in Corpus Juris Secundum, Volume 38 at page 770 is as follows:

True, real, authentic, not false, fictitious, simulated, spurious, or counterfeit.

8. In our opinion, if the prosecution or the accused does not dispute the genuineness of a document filed by the opposite party under Sub-section (1) of Section 294, Cr. P.C. it amounts to an admission that the entire document is true or correct. It means that the document has been signed by the person by whom it purports to be signed and its contents are correct. It does not only amount to the admission of it being signed by the person by whom it purports to be signed but also implies the admission of the correctness of its contents. Such a document may be read in evidence under Sub-section (3) of Section 294, Cr. P.C. Neither the signature nor the correctness of its contents need be proved by the prosecution or the accused by examining its signatory as it is admitted to be true or correct. The phrase 'read in evidence' means read as substantive evidence, which is the evidence adduced to prove a fact in issue as opposed to the evidence used to discredit a witness or to corroborate his testimony. It may be mentioned that the phrase 'used in evidence' has been used in Sub-section (1) of Section 293, Cr. P.C. with respect to the reports of the Government scientific experts mentioned in Sub-section (4) of Section 293, Cr. P.C. and the phrase 'read in evidence' has been used in Sub-section (1) of Section 296, Cr. P.C. with respect to the affidavits of persons whose evidence is of a formal character. The phrases 'used in evidence' and 'read in evidence', in our opinion, have the same meaning, namely, read as substantive evidence.

9. It is open to the prosecution or the accused to dispute the genuineness of a document filed by the opposite party under Sub-section (1) of Section 294, Cr. P.C. In such a case the signatory of the document must be examined by the party filing the document to prove his signature and also the correctness of its contents and the evidence of the signatory will be the substantive evidence and the document may be used to corroborate or discredit his testimony. But where the genuineness of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the opposite party, Sub-section (3) of Section 294, Cr. P.C. is applicable and such a document may be read as substantive evidence. Section 294, Cr. P.C. is a new section as it had no equivalent in the Code of Criminal Procedure 1898. It is based on the rule of evidence that facts admitted need not be proved contained in Section 58, Evidence Act. The object of enacting this section appears to be to avoid the time of the Court being wasted by examining the signatory of the document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. to prove his signature and the correctness of its contents if its genuineness is not disputed by the opposite party. If the signature and the correctness of the contents of a document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. whose genuineness is not disputed by the opposite party are still required to be proved by examining the signatory of the document, the very object of enacting Section 294, Cr. P.C. will be defeated. We are, therefore, of the opinion that all documents filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. whose genuineness is not disputed by the opposite party may be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C.

10. An injury report filed by the prosecution is obviously a document as defined in Section 29, I.P.C. Before the Code of Criminal Procedure, 1973 came into force an injury report could not be read in evidence as it was only a writing of the doctor made at the time of the examination of the injuries of the injured person. It contained his observations regarding the nature, dimension and location of the injuries and also his opinion regarding their duration and the instrument with which they were caused. The doctor who prepared the injury report was required to enter the witness box during the inquiry or trial to prove the injuries of the injured person.

He could refresh his memory under Section 159, Evidence Act by referring to the injury report prepared by him and the injury report was proved by him under Section 67, Evidence Act and it corroborated his deposition in Court under Section 157, Evidence Act. Under Sub-section (3) of Section 294, Cr. P.C. an injury report filed by the prosecution under Sub-section (1) of Section 294, Cr. P.C. may be read as substantive evidence in place of the deposition of the doctor who prepared it if its genuineness is not disputed by the accused. If its genuineness is disputed then the doctor who examined the injured person must appear in the witness box to prove his injuries and also to prove the injury report and in such a case the statement of the doctor would be the substantive evidence and the injury report may be used to corroborate or discredit his testimony.

11. In *Jagdeo Singh v. State* 1979 Cri LJ 236 a Division Bench of this Court held 'it was not permissible to exhibit the post-mortem report under Section 294, Cr. p. C. and even if it was done the report could not be used as substantive piece of evidence until and unless the doctor concerned was examined in Court. Documents that Section 294, Cr. P.C. contemplates reading in evidence upon admission about genuineness by the opposite party are only such documents which when formally proved speak for themselves. It does not refer to any document, which even if exhibited cannot be read in evidence as substantive evidence'. With great respect, we are unable to agree with the view taken by this Court in the above-mentioned case. As mentioned earlier, there is no restriction placed on documents in Sub-section (1) of Section 294, Cr. P.C. and it applies to all documents filed by the prosecution or the accused. If the genuineness of any document filed by the prosecution or the accused under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the opposite party Sub-section (3) of Section 294, Cr. P.C. is applicable and it may be read as substantive evidence. It is true that prior to the coming into force of the Code of Criminal Procedure, 1973 the post-mortem report after it was proved was not substantive evidence but only corroborated the statement of the doctor made in Court and even now if the genuineness of the post-mortem report is disputed by the accused, the doctor must be examined to prove the injuries found on the body of the deceased and also the post-mortem report and the post-mortem report may only be used to corroborate or discredit his testimony which is the substantive evidence. This, however, cannot lead to the

conclusion that the post-mortem report cannot be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C. if its genuineness is not disputed by the accused. As already mentioned, the very object of enacting Section 294, Cr. P.C. would be defeated if the signature and the correctness of the contents of the post-mortem report are still required to be proved by the doctor concerned even if its genuineness is not disputed by the accused. Section 294, Cr. P.C. is clear and unambiguous. It is only when the genuineness of the post-mortem report filed by the prosecution is not disputed by the accused that Sub-section (3) of Section 294, Cr. P.C. is applicable and the post-mortem report may be read as substantive evidence and the signature and the correctness of its contents need not be proved by the doctor concerned. We are, therefore, clearly of the opinion that if the genuineness of the post-mortem report filed by the prosecution under Sub-section (1) of Section 294, Cr. P.C. is not disputed by the accused, it may be read as substantive evidence under Sub-section (3) of Section 294, Cr. P.C.

12. In *Ganpat Raoji Suryavanshi v. State of Maharashtra* 1980 Cri LJ 853 (Bom) it was also held that the post-mortem report even if admitted to be genuine by the accused cannot be read as substantive evidence under Section 294, Cr. P.C. For the reasons already given we are, with great respect, unable to agree with the view taken in that case.

13. It may be mentioned that even if the genuineness of a document filed by the prosecution or the accused under Sub-section (1), Cr. P.C. is not disputed by the opposite party the Court may require the proof of the signature of the person by whom it purports to be signed under the Proviso to Sub-section (3) of Section 294, Cr. P.C. In such a case the signatory of the document must appear in Court and prove his signature and the document will thereafter be read as substantive evidence.

14. Before concluding we consider it necessary to point out that the medical evidence in a criminal case is of the utmost importance as the correctness, of both ocular and circumstantial evidence produced by the prosecution is tested on its basis. Even if the genuineness of the injury report or the post-mortem report is not disputed by the accused and the reports are read as substantive evidence, it may

still be necessary to examine the doctor concerned to clarify his opinion mentioned in the reports or to obtain his opinion on questions of a medical nature which may be involved in the case. This may be done by the trial court by examining him under Section 311 Cr. P.C.

15. For the reasons given above, our answer to the question referred to us for decision is that an injury report filed by the prosecution under Sub-section (1) of Section penal, Cr. P.C. whose genuineness is not disputed by the accused may be read as substantive evidence under Sub-section (3). of Section penal, Cr. P.C.

16. Let our answer be placed before the Court concerned.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com