

Santosh Vs. State of Chhattisgarh

Santosh Vs. State of Chhattisgarh

SooperKanoon Citation : sooperkanoon.com/496512

Court : Chhattisgarh

Decided On : Aug-29-2001

Reported in : 2002CriLJ1180; 2001(4)MPHT63(CG)

Judge : R.S. Garg, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 91, 161(3), 161, 162, 162(1), 174 and 207; [Evidence Act, 1872](#) - Sections 145

Appeal No. : Criminal Revision No. 287/2001

Appellant : Santosh

Respondent : State of Chhattisgarh

Advocate for Def. : Ranveer Singh, Govt. Adv.

Advocate for Pet/Ap. : R.N. Jha, Adv.

Disposition : Criminal revision allowed

Judgement :
ORDER

R.S. Garg, J.

1. The applicant being aggrieved by the order dated 6-7-2001 passed by the learned Third Additional Sessions Judge, Jagdalpur in Sessions Trial No. 297 of

2001 rejecting the applicant's application filed under Section 91 of the Code of Criminal Procedure, has come to this Court.

2. During the course of the trial the applicant/accused made an application before the Trial Court inter alia submitting that the evidence collected during the course of the inquest has not been filed by the prosecution along with the charge-sheet and as the same is required to be filed for just and proper disposal of the trial and the said statements may be required for the purposes of cross-examination the prosecution agency be directed to produce the said documents before the Court. The said application was opposed by the prosecution mainly on the ground that the prosecution agency was not obliged to file each and every document but was required to file those documents on which they were placing reliance. It was also submitted before the Court below that when an inquest is made under Section 174 of the Code of Criminal Procedure the evidence collected or the statements recorded during the course of the said inquest are neither required to be filed nor can be termed as evidence, therefore, the same were not required to be filed.

3. Learned Trial Court after hearing the parties held that in accordance with Section 174 of the Code of Criminal Procedure if the evidence is collected or the statements are recorded the same is not required to be produced in the Court. The Trial Court was also of the opinion that only those documents are required to be filed before the Court on which the prosecution was placing reliance and the statements recorded under Section 161 of the Code of Criminal Procedure alone are required to be filed along with the charge-sheet.

4. Shri R.N. Jha, learned counsel for the applicant, submits that the statements when are recorded under Section 161, Cr.PC then the action of the prosecution agency shows that the statements are being recorded during the course of the investigation. He submits that when an inquest or enquiry is made by the prosecution into the cause of the death and if certain statements are recorded during the course of the inquest then such statements being the previous statements of the witnesses are required to be filed in the Court. According to him the prosecution agency is required to bring the entire case before the Court and is not authorised to pre-judge the issue.

5. Shri Ranveer Singh, learned Govt. Advocate, for the State submits that the Court below had discretion to grant or reject the application, therefore, there is no scope for interference.

6. Section 174 of the Code of Criminal Procedure reads as under :--

'174. Police to enquire and report on suicide, etc.-- (1) When the officer-in-charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-Divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood, shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any); such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall forthwith be forwarded to the District Magistrate or the Sub-Divisional Magistrate.

[(3) When-

(i) the case involves suicide by a woman within seven years of her marriage; or

(ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or

(iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or

(iv) there is any doubt regarding the cause of death; or

(v) the police officer for any other reason considers it expedient so to do,

he shall], subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed in this behalf by the State Government, if the state of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-Divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

7. Section 174 requires the officer-in-charge of a police station or any police officer specially empowered by the State Government to make an enquiry into all suspicious death. The investigating officer is required to make an inquest or enquiry into the cause of the death, the circumstances which led to the death and the manner in which the offence took place. While preparing an inquest memo or spot Panchanama the officer is not required to record the statements of the witnesses but during the inquest he is entitled to record the statements of the witnesses. Such statements recorded during the course of the inquest provide a foundation for registration of a cognizable offence. The statements recorded during the inquest if make out a case for registration of the offence then the officer is obliged to register the case but if the said statements do not make out commission of a crime or do not provide necessary foundation for registration of a cognizable offence then such officer is required to make a further report to the empowered Magistrate.

8. Section 161 of the Code of Criminal Procedure provides that any police officer making an investigation under Chapter XII may examine orally any person supposed to be acquainted with the facts and circumstances of the case. Such witness shall be bound to answer truly all questions relating to such case put to

him by such officer, other than questions the answers to which would have a tendency to expose him (witness) to a criminal charge or to a penalty or forfeiture. The police officer may reduce into writing the statements of the witness.

9. Section 162 of the Code of Criminal Procedure provides that the statements recorded under Section 161 of the Code are not required to be signed by the person giving such statements. Proviso appended to Sub-section (1) of Section 162 provides that when any witness is called for the prosecution in trial whose statement has been reduced into writing, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act.

10. A conjoint reading of Sections 161 and 162 of the Code of Criminal Procedure would make it abundantly clear that during the course of the investigation a police officer is entitled to record the oral statement of a witness and if such witness is summoned by the prosecution in support of its case then the accused would be entitled to use the previous statement of the said witness for the purposes of proving contradictions or to prove such omissions which amount to contradictions.

11. Section 174 of the Code of Criminal Procedure when authorises a police officer to prepare the Panchanama and record the statements of the witnesses then it does not put embargo on the powers of the police officer from obtaining the signatures of the witnesses on their respective statements but the said statements recorded during the course of the inquest continue to remain the previous statements of such witnesses.

12. In a given case if the witnesses do speak against the accused then it provides a foundation in favour of the prosecution but if in the first statements the witnesses do not say even a single word against the accused and in their subsequent statements they start levelling allegations against the accused then the accused would be entitled to confront the witnesses or contradict them with their earlier statements.

13. True, it is that proceedings under Section 174 of the Code of Criminal Procedure have a very limited scope but that does not mean that the statements recorded during the proceedings under Section 174 of the Code of Criminal Procedure cannot be used for the purposes of proving the contradictions. The statements recorded during the inquest report, as those are the previous statements recorded by the police would be covered under Section 162 and certainly can be used for the purposes of proving contradictions. The inquest report is not a piece of substantive evidence but can be utilised for contradicting the witnesses of the inquest. In the matter of Suresh Rai v. State of Bihar (AIR 2000 SC 2207) the Supreme Court has observed that such statements can always be used for contradicting the witness of the inquest.

14. In the matter of State of Kerala v. Babu, (1999) Vol. 4 SCC 621, a prayer was made by the accused that in some other case during the course of the investigation a witness had made a particular statement and as his statement was running contrary to the statement on basis of which the applicant accused was facing trial, such statement recorded during the course of another investigation be requisitioned. The Supreme Court observed in the said matter that any previous statement recorded during the course of any enquiry, investigation or trial would be termed as a previous statement and can always be used for contradicting the witness or to prove the omissions amounting to contradictions. The Supreme Court observed that on a reading of Section 162 of the Code and bearing in mind the object of the said section and Section 145 of the Evidence Act, it is clear that an accused in a criminal trial has the right to make use of the previous statements of a witness including the statements recorded by the investigating agency during the course of an investigation for the purpose of establishing a contradiction in the evidence of a witness or to discredit the witness. The Supreme Court further observed that in a case where the statements are before the Court then there would be no difficulty because an accused is entitled under Section 207 of the Code for the supply of free copies of documents referred in the said section which includes the previous statement recorded Sub-section (3) of Section 161 of the Code, but the accused does not have such a right as a matter of course in regard to other previous statements; more so, in regard to the statements recorded by the investigating agency under Section 161 in a case other than the one that is being

tried by the Court.

15. If the accused has a right to summon the statements recorded during the course of another investigation then in a case like present he would not stand on a worse footing. The accused is certainly entitled to make a submission to the Court that each and every previous statement of the witness must be filed along the charge-sheet irrespective of the fact that such statements support or do not support the prosecution allegations.

16. It would be contrary to law to hold that the prosecution agency is entitled to file only those statements or document on which they are placing reliance. If such an authority is given to the police/prosecution agency it would lead to a judicial anarchism. The prosecution agency under such an authority would be entitled to suppress material documents and would not permit such evidence to see the light of the day which tends to support or help the case and cause of the accused. The police, the investigating agency and the prosecution agency are not the judges, they simply have to make investigation and submit the challan honestly before the Court. It is for the Court to decide in accordance with law after taking into consideration the evidence which is brought on the record. A Court is not entitled to say that it would not permit use of the statements recorded under Section 174, Cr.P.C. A previous statement of a witness recorded during the course of the enquiry, investigation and/or trial continues to be a previous statement and in accordance with Section 145 of the Indian Evidence Act the accused is entitled to contradict the maker of such statement with his previous statement.

17. At this stage it would again be necessary to refer to Section 145 of the Indian Evidence Act. The said Section provides that a witness may be cross-examined as to previous statements made by him in writing or reduced into writing, and relevant to matters in question, without such writing being shown to him, or being proved; 'but, if it is intended to contradict him by the writing, his attention must before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him'. Section 145 covers a very larger field. When a person is authorised under Section 145 of the Indian Evidence Act to contradict a witness with his earlier statements whether written by him or reduced into writing

then by no stretch of imagination it can be said that the statements recorded during the inquest under Section 174 and reduced into writing would not come under the mischief of previous statements.

18. The learned Court below, in the opinion of this Court without application of mind has rejected the application and erred in observing that the statements recorded under Section 161 of the Code of Criminal Procedure only are required to be filed.

19. This Court time and again has required the prosecution agency to file each and every document which came into existence during the course of the enquiry or investigation and has also cautioned the Courts that while trying a case they must see that the accused does not suffer any prejudice to his defence because of the suppression of material documents.

20. The order passed by the Court below is bad in the eyes of law. It deserves to be and is accordingly set aside.

21. The application filed by the accused is allowed. The prosecution agency is hereby directed to produce each and every document which came into existence during the course of the inquest, enquiry or trial barring the daily diary written by the concerned investigating officer.

22. The petition is allowed.

23. Criminal Revision allowed.