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Asaram Vs. State

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Court : Madhya Pradesh

Decided On : Mar-15-1956

Reported in : 1957CriLJ193

Judge : Dixit, J.

Appellant : Asaram

Respondent : State

Advocate for Pet/Ap. : Mr. Kak

Judgement :
ORDER

Dixit, J.

1. The applicants are being tried by, the Additional Sessions Judge of Shajapur on charges under Sections 148, 149 and 302 1. P, O, During the trial when the prosecution had closed their evidence, the accused persons made an application under Section 510 of the Criminal Procedure Code as amended by Act No. XXVI of 1955 for summoning the chemical examiner, who had made a report about certain blood stains. The learned Sessions Judge granted the prayer directing the accused persons to bear the expenses of summoning the chemical examiner and to examine him as their witness.

2. In this revision petition it is urged by Mr. Kak learned Counsel for the applicant that the applicants should not have been saddled with the cost and expenses of summoning the chemical examiner and that the witness should have been examined as a witness of the prosecution. So far as the direction of the Additional Sessions Judge Shajapur with regard to the expenses of summoning the witness is concerned, it cannot clearly be upheld. The cost of summoning defence witnesses in the sessions trial has to be borne by the State. Learned Government Advocate did not dispute the responsibility of the State for bearing these expenses.

As to the contention that the chemical analyser should be examined as a witness on behalf of the prosecution, I am unable to see how that can be done when it is at the request of the accused persons that the witness is being summoned. The settled rule with regard to the examination of witnesses is that it is the party calling the witness who examines him in chief and then the opposite party cross-examines him and then the witness is re-examined by the party calling him.

There is nothing in Section 510(2) to indicate any departure from this rule and to pursuade me to hold that whenever the accused applies for summoning a chemical examiner, he must be examined as a prosecution witness or as a court witness. Section 510(2) when it says that the court may, If it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person mentioned in Sub-section (1) only means that the court can in its discretion and of its own account, summon and examine any person referred to in Section 510 if it thinks fit, but that the court is bound to summon any such person if the prosecution or the accused make an application for the purpose.

The words 'the court may summon and examine any such person' cannot be taken as meaning that the person must be examined as a court witness whenever the prosecution or the accused desire to summon and examine him.

3. As at present advised, I am inclined to think that under Section 510 (2) when an accused makes an application for summoning and examining any such person as is referred to in Section 510(1), he must be examined as a witness on behalf of the accused.

4. For these reasons the direction given by the learned Additional Sessions Judge with regard to the expenses of summoning the chemical examiner is set aside. To this extent only this revision petition is accepted.

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