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The State Vs. Sohansingh

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Court : Madhya Pradesh

Decided On : Aug-02-1954

Reported in : 1955CriLJ814

Judge : Samvatsar, J.

Appellant : The State

Respondent : Sohansingh

Judgement :
ORDER

Samvatsar, J.

1. This is a reference by the Second Additional Sessions Judge Indore.

2. The facts of the case briefly are as follows:

The non-applicant Sohansingh, son of Budha-singh Sikh, and others are being prosecuted by Gautampura Police in the Court of the Sub-divisional Magistrate Hatod. In the course of the trial the prosecution tendered, one witness by name Zunzarsingh. The witness Zunzarsingh happened to be present in the Court room when the other prosecution witnesses were being examined in the case. When his turn came and he was called in the witness-box an objection was raised on behalf of the accused that this witness could not be examined as he was present in Court

and was hearing the evidence given by the other prosecution witnesses The trial Court upheld this objection of the defence and cancelled the evidence of this witness. Aggrieved by the order of cancellation of this evidence, the State preferred a revision in the Court of the Additional Sessions Judge Indore and the learned Judge being of the opinion that the order of the Magistrate was absurd and untenable has referred this case to the High Court Under Section 438, Criminal P. C.

3. The Government Advocate for the State and Mr. Patel for the accused were heard.

4. In my opinion the order of the Magistrate cannot be supported and must be set aside. If the witness was present in Court he should have been asked to go out when the evidence of other witnesses is being recorded. If this could not be done because his presence was not noticed, the Court should have examined him and recorded his statement with a not that he was present in Court when other witnesses were being examined. If necessary the Court should have asked the explanation of the witnesses on this point. But there is in law no justification for cancellation of the evidence. The Court should also have considered. when the whole prosecution evidence was recorded, what value should be attached to the testimony of this witness because he happened to be present in Court when the other witnesses were being examined. But the weight to be attached to the evidence is different from its admissibility.

5. Under the Circumstance I Accept the reference set aside the order of the learned Magistrate and direct that he should record the evidence of Zunazarsigh and proceed to dispose of the case according law.

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