

**State Vs. Gundicha Bhoi and ors.**

**State Vs. Gundicha Bhoi and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/527922](http://sooperkanoon.com/527922)

**Court :** Orissa

**Decided On :** Jun-29-1961

**Reported in :** AIR1962Ori172; 28(1962)CLT262

**Judge :** G.C. Das, Actg. C.J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207A and 207A(4)

**Appeal No. :** Criminal Ref. No. 8 of 1961

**Appellant :** State

**Respondent :** Gundicha Bhoi and ors.

**Advocate for Pet/Ap. :** G.N. Misra, Adv. for ;Govt. Adv.

**Judgement :**

ORDER

G.C. Das, Actg. C.J.

1. This is a reference under Section 438 of the Code of Cr. procedure by the learned Session Judge, Puri, recommending to quash the commitment made by the Magistrate, 1st Class, in G. R. Case No. 695/60. The main ground for this reference appears to be a decision of this Court in the case of State v. Anadi, ILR 1958 Cut 89 : (AIR 1958 Orissa 241). It was decided in that case that the Magistrate had committed a serious illegality when there were witnesses to the

actual commission of the offence and they had not been examined by him under Section 207A (4) of the Code of Criminal Procedure before commencing the enquiry.

It was further observed that without examining any witness during the commitment enquiry, the Magistrate examined the accused persons under Section 342 of the Code of Criminal Procedure. Sub-section (6) of Section 207-A of the Code says that such examination of the accused should be made for the purposes of enabling him to explain any circumstances appearing in the evidence against him. Statement made before the police officer during investigation is not evidence, and unless independent evidence is taken against him before the committing Magistrate, it would not be proper for the Magistrate to examine him, under Section 342 and question him about the materials collected during the police investigation. The accused is bound to be prejudiced by such examination.

2. The prosecution case was that the deceased persons, Bana Bhoi and Naran Bhoi used to work in the disputed garden, as labourers under Sashimani Dei. On August 25, 1960, one Mangulia Bhoi, father-in-law of the deceased Naran Bhoi ploughed a portion of that garden and when he was returning at about 4 P.M. the accused challenged him and also gave a lathi blow on his right hand causing fracture. When he raised an alarm, the deceased Bana and Naran who ran from the nearby field challenged the accused as to why he beat Mangulia Bhoi. Then all the eight accused persons surrounded them and beat them mercilessly with lathis even after they fell down senseless. Some persons who came to intervene were also assaulted by one or more of the accused persons. The deceased persons Bana and Naran were then taken to Balanga dispensary, where Naran expired the same night and Bana expired on the next morning.

On these allegations, the eight accused persons were charge-sheeted by the Police under Sections 302/149 and, 323/149, 147 and 325 of the Indian Penal Code. The learned Magistrate examined five witnesses out of whom two were eye-witnesses to the occurrence, although six witnesses were mentioned in the first information report. The learned Magistrate having believed the evidence of these witnesses came to the conclusion that there was a prima facie case against all the

accused persons and accordingly she charged them as stated above, and submitted the records to the Court of Session for trial.

3. The learned Sessions Judge while making the reference to this Court seems to think that all the six witnesses to the occurrence should have been examined by the learned Magistrate before she could commit them for trial by the Sessions Court relying upon a decision of this Court as referred to above.

4. In the meanwhile the case of this Court referred to above came to be considered by the Supreme Court in the case of *Shri Ram v. The State of Maharashtra*, AIR 1961 SC 674 and the learned Judges of the Supreme Court in that case noticed the conflicting opinions expressed by different High Courts in India including this Court. At this place, it would be necessary to quote the relevant sub-section of Section 207-A of the Code of Criminal Procedure that is Subsection (4) which reads as follows :

'(4) The Magistrate shall then proceed to take the evidence of such persons if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged, and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also.'

The controversy that was there between the different High Courts in India as to what is the precise meaning of the above sub-section, has now been set at rest by the Supreme Court in the above case, wherein it has been laid down that under Section 207A in a proceeding instituted On a police report, the Magistrate is bound to take evidence of only such eye-witnesses as are actually produced by the prosecution in Court. The Magistrate if he is of opinion that it is in the interest of justice to take evidence, whether of eye-witnesses not produced by the prosecution or others, has a duty to do so. If the Magistrate is not of that opinion and if the prosecution has not examined any eye-witnesses, he has jurisdiction to discharge or commit the accused to sessions merely on the basis of the documents referred to in Section 173. The discretion of the Magistrate under sub-section (4) is a judicial discretion and therefore, in appropriate cases the order of discharge or committal, as the case may be is liable to be set aside by a superior

Court. The learned Judges of the Supreme Court in paragraph 8 have stated.

'Now let us look at the relevant provisions of Section 207A of the Code to ascertain its intendment Sub-section (4) is the most important section vis-a-vis the taking of evidence. It is in two parts, the first part provides for the examination of witnesses produced by the prosecution and the second part for the examination of other witnesses. One of the fundamental rules of interpretation is that if the words of the statute are in themselves precise and unambiguous 'no more is necessary than to expound those words in their natural and ordinary sense, the words themselves in such case best declaring the intention of the legislature.'" The First part of the sub-section reads; 'The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged.' The word 'shall' imposes a peremptory duty on the Magistrate to take the evidence, but the nature of the said evidence is clearly defined thereafter. The clause 'as may be produced by the prosecution as witnesses to the actual commission of the offence alleged' governs the words 'such persons' with the result that the duty of the Magistrate to take evidence is only confined to the witnesses produced by the prosecution .....The phrase 'if any' between the words 'such persons' and the aforesaid clause emphasises that the prosecution may not produce any such persons, in which case 'the obligation to examine such witnesses cannot arise. The wording of the second part of the sub-section is also without any ambiguity and it reads; 'and if the Magistrate is of opinion that it is necessary in the interests of justice to take evidence of any one or more of the other witnesses for the prosecution he may take such evidence also.' No doubt, the word 'may' in the clause 'he may take evidence' imposes a duty upon the magistrate to take other evidence, but that duty can arise only if he is of opinion that it is necessary in the interests of justice to take the evidence. The fulfilment of the condition that gives rise to the duty is left to the discretion of the magistrate. The duty to take evidence arises only if he is of the requisite opinion. Doubtless the discretion being a judicial one, it should be exercised reasonably by the Magistrate. If he exercises it perversely, it may be liable to be set aside by the Superior Court.'

5. In this case, out of the six witnesses, two witnesses as were produced by the prosecution were examined by the learned Magistrate. The above being now the settled view of the law, the order of reference of the learned Sessions Judge relying upon a decision of this court which has been overruled by the above decision of the Supreme Court is clearly wrong.

In the result, the commitment as has been made by the learned Magistrate, 1st Class, Puri, stands and the Reference is discharged.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**