

Amarjit Singh Vs. the State and ors.

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Court : Delhi

Decided On : Mar-09-1981

Reported in : 19(1981)DLT443

Judge : M.L. Jain, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(5)

Appeal No. : Criminal Miscellaneous Appeal No. 40 of 1981

Appellant : Amarjit Singh

Respondent : The State and ors.

Advocate for Pet/Ap. : B.G. Singh,; Harish Gulati and; D.R. Sethi, Advs

Judgement :

M.L. Jain, J.

(1) On July 28, 1980, one Dewan Singh was attacked by Kulbir Singh and Kuldip Singh- at the instance of Avtar Singh. He succumbed to the injuries. The Police after investigation challaned the assailants under S. 302 I.P.G. An application was made before the Addl. Sessions Judge. on. January 3,1981, by the counsel for the complainant through .the, Addl. Public Prosecutor for permission to produce photostat copies of the two applications which the deceased is said to have submitted to the police of Ghaziabad and Delhi in January and February 1980,

apprehending danger of life at the hands of the accused. They are alleged to have been discovered after the challan was filed. It was also prayed that the prosecution should be allowed to examine witnesses to prove these documents at appropriate time.

(2) The learned Addl. Sessions Judge by his order of January 17. 1981, rejected this application, on the ground that the documents lacked authenticity as they were mere photostat copies bearing no attestation. They can also not be treated as a part of a supplementary challan in the absence of verification from the concerned investigating agency. He further held that the documents cannot be brought on record even under S. 311 Cr. P.C because the stage for additional evidence has not yet reached. For purposes of framing of the charge, only the documents filed along with the report under S. 173 Cr. P.C. could be considered. Hence, this petition.

(3) Shri Sethi for the accused submitted that the prosecution had no light to submit these documents because under S. 173 Cr. P.O., sub-section (5), when a police Officer forwards a report, he 'shall' forward along with it all documents on which the prosecution proposes to rely besides those already sent to the Magistrate during investigation; and the statements recorded under S. 161 Cr. p. e. of all the persons whom the prosecution proposes to examine as its witnesses. There is no provision in the code permitting filing of additional documents except by way of a supplementary challan.

(4) The learned Addl. Public Prosecutor and Bawa Gurcharan Singh maintain that the order of the learned Addl. Sessions Judge is wrong in law because the photostat copies of the documents were relevant and admissible under Sec. 32 of the Evidence Act. After examining *In re Shantilal and others*, : AIR 1959 MP290 . *Public Prosecutor v. C.S.Pachiappa Mudaliar*, A.I.R. 1958 Mad 95; and *State, v. Raghunath* ; the learned Addl. Sessions Judge did think that these rulings very much permitted the adducing of the documents by the prosecution after supplying copies thereof to the accused yet he rejected the application of the prosecution. ,

(5) I have considered the matter. The Supreme Court in *Narayan Rao v. State*, of Andhra Pradesh : 1957 CriLJ1320 , held that the word 'shall' in sub-section (4) of

S. 173 Cr. P.G. (old) is not mandatory but directory. It therefore appears to me quite clear that the provisions of sub-section (5) of S. 173 of the Code are only directory and not mandatory in nature and they do not indicate an intention that no documents or witnesses can be produced once the challan is filed unless it is by way of a supplementary one under sub-section (8) thereof. I am in respectful agreement with the views propounded in C.S.Pachiappa (supra), that in the course of the trial, if the prosecution thinks it necessary to file additional documents or statements of witnesses on whom it proposes to rely, nothing in S. 173 prevents it from doing so. The only requirement is that copies thereof must be given in advance to the accused. -The trial court cannot be rendered helpless in the matter of receiving any material relevant and admissible evidence at any stage which the police has not forwarded with its report or does not propose to rely upon. or was not available at the time of the report or even if available, their copies were not supplied to the accused; Baghunath (supra). . In Jhagru Tivari v. State of West Bengal and another, 63 C.W.N. 454, it was held that there is nothing in law which would prevent the prosecution from producing or the court from examining as a witness in the case a person whose name has not been included in the police report made or whose statement has not been so furnished. In the State (Rameshwar Tewari) v. Jagadish Pandey, : AIR1958 Cal311 , it was observed that the court in the discharge of its judicial function must always be left free to exercise its discretion in the matter allowing parties to produce evidence. The procedure should be constructed in such a manner as not to deprive the court of that discretion. Neither in S. 173 nor in any other provision of the code is there any such disabling provision as prevents the prosecution from filing additional documents or statements of witnesses on whom it proposes to rely. What value is to be attached to such additional documents which are produced at a late stage will always depend upon the peculiar circumstances of each case ; vide In re Shantilal and Others, (supra).

(6) I, therefore, accept this petition and quash the order of the learned Addl. Sessions Judge and direct him to allow the disputed documents to be filed. He will also allow witnesses to be produced to prove them at appropriate stage in accordance with law.

