

Adam Ahmed Vs. State

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Court : Gujarat

Decided On : Feb-02-1968

Reported in : AIR1970Guj185; 1970CriLJ1350; (1969)GLR659

Judge : N.G. Shelat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 539-B

Appeal No. : Criminal Appeal No. 178 of 1966

Appellant : Adam Ahmed

Respondent : State

Advocate for Def. : H.V. Bakshi, Asstt. Govt. Pleader

Advocate for Pet/Ap. : N.N. Dave, Adv.

Judgement :

1-4. x x x x x

5. Mr. Dave, the learned advocate for the appellant, has pointed out that at the request of the accused during the course of the trial the learned Magistrate had inspected the place of incident and that he has kept no notes whatever about the same on the record of the case. According to him, therefore, he has violated the mandatory provisions contained in Section 539-B of the Criminal P.C. On that basis, he further urged that the defence of the accused is materially prejudiced

and the appreciation of the evidence could not be made in a proper manner by the learned Magistrate. It appears no doubt true that an application was presented by the accused on 20-1-1966 to the Court requesting the Court to take local inspection of the place of the incident and other places referred to in the evidence. From the order passed therebelow, it appears that the learned Magistrate granted that request and fixed 22-1-1966 for going for local inspection. From the proceedings it appears that it was on 29-1-1966 that the local inspection of the site was taken and then he adjourned the case to 2-2-1966. The arguments in the case were heard on 9-2-1966 and the judgment was thereafter delivered on 15-2-1966 in the case. From the record and proceedings of this case it further appears clear that no notes of the local inspection made by the learned Magistrate have been kept on the record of this case. At the same time he has made no reference whatever about the same in his judgment. Now, S. 539-B of the Criminal P.C. provides as under:-

'539B. (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial, and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

(2) Such memorandum shall form part of the record of the case. If the Public Prosecutor, complainant, or accused so desires, a copy of the memorandum shall be furnished to him free of cost.

x x x x x'

It follows therefrom that if any local inspection is made by the learned Magistrate in relation to any case before him under Section 539-B of the Criminal P.C., it is required of him to record the memorandum of any relevant facts observed at such inspection without unnecessary delay and any such memorandum made by him would form part of the record of the case. The learned Magistrate has, however, not chosen to keep any record of what he observed in the local inspection made by him under Section 539-B of the Code. This section, however, does not lay down

the effect that would flow therefrom when no such memorandum has been kept on the record of the case. Non-compliance thereof cannot have therefore, the effect of vitiating any trial or the proceeding unless it is shown that it has resulted in any failure of justice in the circumstances of the case. Unless therefore, any prejudice is caused to the accused in his defence, or has resulted in failure of justice on that account, the decision in the case, otherwise arrived on appreciation of evidence cannot be set aside. It is not an illegality so committed as to vitiate the trial.

6. Now it was after the local inspection was made by the learned Magistrate that the matter was set down for arguments and the arguments were heard. The learned advocate appearing for the accused in that Court made no request whatever to have the notes of inspection placed on record. Nor is there any material to show that the learned Magistrate has made use of any observation to the disadvantage in appreciating the evidence in the case. It is not suggested and at any rate it does not appear that no cross-examination was done of the witnesses, as the local inspection was to be made. On the other hand, the grievance of Mr. Dave is that the learned Magistrate has not at all chosen to appreciate the evidence and has given no reasons in coming to the conclusion that he arrived at in the case. According to him, except narrating the facts in judgment, no reasons have been given which led him to accept the evidence led by the prosecution and for coming to the conclusion that he did in the case. That criticism levelled by Mr. Dave cannot be said to be altogether without any force, but that does not in any way affect the decision in the case. At any rate, I am not show how the appreciation of evidence by the learned Magistrate has been so affected by reason of his not keeping notes of inspection made by him in the case.

x x x x x x

7. Appeal dismissed.