

**Mawad Dan and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/751273](http://sooperkanoon.com/751273)

**Court :** Rajasthan

**Decided On :** Apr-03-1962

**Reported in :** AIR1963Raj43; 1963CriLJ228

**Judge :** D.S. Dave, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173(4); Indian Penal Code (IPC) - Sections 148, 149, 302, 323, 324 and 325

**Appeal No. :** Criminal Revn. No. 90 of 1962

**Appellant :** Mawad Dan and ors.

**Respondent :** State

**Advocate for Def. :** R.A. Gupta, Deputy Govt. Adv.

**Advocate for Pet/Ap. :** Lakhpat Raj, Adv.

**Disposition :** Revision allowed

**Judgement :**

ORDER

**D.S. Dave, J.**

1. This is an application in revision by the accused against the order of the learned Sessions Judge, Jodhpur, dated the 12th of February, 1962.

2. The facts giving rise to it are that the petitioners are undergoing trial for offences under Sections 148, 302, 325, 324 and 323 read with Section 149, I. P. C. in the court of the learned Sessions Judge, Jodhpuri.

3. On 5-2-62, the Public Prosecutor presented an application requesting the trial court to permit him to prove detailed injuries received by P. Ws. Bachna, Dhanroop and Gajja by examining Dr. A. M. Singhvi. Learned Counsel for the accused contested this application on the ground that copies of the injury reports were not supplied to his clients before the said three injured persons were examined in the court. In the alternative it was urged that if the prosecution was permitted to produce fresh evidence, the accused should be allowed an opportunity to cross-examine all the eye-witnesses again. The learned Sessions Judge allowed the Public Prosecutor to produce detailed injury reports in evidence and get them proved by Dr. A. M. Singhvi. The prayer of the accused for recalling the eyewitnesses for cross-examination was refused.

4. It is contended by learned counsel for the accused that by the time Gajja, Bachna and Dhanroop were examined as prosecution witnesses, the accused were only supplied with general injury reports which did not indicate the number or the nature of the injuries received by them and therefore they could not possibly cross examine them about the said injuries. Now when the prosecution was trying to prove that Gajja had 9 injuries of a particular character and Bachna and Dhanroop had also injuries on their person, it became necessary for the accused to cross-examine the witnesses as to which of the injuries was caused by a particular accused. It is further contended by him that the accused also want to cross examine P. Ws. Kishanlal, Bhika Ram and Mohanlal, since they have been produced as eye-witnesses.

5. I have given due consideration to the arguments advanced by petitioners' learned counsel and also to the views expressed by the learned Sessions Judge. In my opinion, the learned Sessions Judge ought not to have turned down the request of the learned counsel for the accused to recall the prosecution eye-witnesses when he had permitted the prosecution to produce injury reports, whose copies were not supplied to the accused under Section 173, Cri. P. C. The learned

Judge had the discretion to permit the prosecution to produce the said documents when he found that they could not be produced at an earlier stage on account of sufficient reasons, but at the same time it should have been appreciated that the accused had the right to cross-examine the prosecution eye-witnesses on the basis of those reports and when they were deprived of that chance when the prosecution witnesses were examined earlier, the said witnesses ought to have been recalled. In *State v. Baikunthanath Mohanta*, AIR 1960 Orissa 150 it was held that the provisions of Section 173(4) are directory and even after the commencement of the trial, the prosecution may prove additional documents in the usual way provided the accused gets a full opportunity to cross-examine the prosecution witnesses in the light of those documents. Similar view was taken in *Chandu Veeraiah v. State of Andhra Pradesh*, AIR 1960 Andh Pra 329.

6. In the present case, it cannot be said that the accused had full opportunity to cross-examine the eye-witnesses on the basis of detailed injury reports of Gajja, Bachna and Dhanroop. The accused had a right to cross examine Gajja, Bachna and Dhanroop on the basis of those reports. Learned counsel for the accused was therefore, not unreasonable in requesting the trial court to recall them for cross-examination. Learned counsel has stated in this court that he does not want to recall all the eye-witnesses, but he should be permitted to cross examine P. W. 2 Mohanlal, P. W. 6 Bhika Ram and P. W. Kishanlal who have been produced as eye-witnesses.

7. Learned Deputy Government Advocate has very candidly conceded that the request made by the petitioners learned counsel was quite reasonable and he is not in a position to oppose it

8. The revision application is therefore allowed. The case be sent back to the trial court with direction that P. Ws. Gajja, Bachna, Dhanroop, Mohanlal, Bhika Ram and Kishanlal should be recalled and the accused should be given an opportunity to cross-examine them.