

Ratan Singh and ors. Vs. the State

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Court : Rajasthan

Decided On : Aug-01-1967

Reported in : AIR1968Raj148; 1968CriLJ801

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

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

Appeal No. : Criminal Revn. No. 384 of 1966

Appellant : Ratan Singh and ors.

Respondent : The State

Advocate for Def. : C.K. Garg, Dy. Govt. Adv.

Advocate for Pet/Ap. : P.N. Dutta, Adv.

Judgement :

ORDER

D.S. Dave, C.J.

1. This is an application in revision by three accused, namely Ratansingh, Gordhan Singh and Ramchandra who are being prosecuted by the police in the Court of Additional Munsiff Magistrate No. 3, Kotah. for an offence under Section 307 I. P. C While the said Magistrate was making an enquiry in order to determine whether the case was fit to be committed to the Court of Session, learned counsel

for the accused submitted to him on 29-6-66 that all the witnesses cited by the prosecution should be examined by him This request was opposed by the prosecuting Sub-Inspector. After hearing the arguments of both the parties, it was ordered by the Magistrate that 'in the interest of justice. it will be better if at least all the eye-witnesses are examined in this Court' It may be noted here that before this date, two witnesses Heeralal and Onkarlal were examined and five more eye-witnesses had remained to be examined Out of them, three eye-witnesses namely, Shankerlal, Abdul Wahid and Mangilal were examined by the court. The remaining eye-witnesses Suraimal and Mithu Shah were also present on 13-8-66 when Shankerlal, Abdul Wahid and Mangilal were examined, but these witnesses were not examined by the court on that day On 20-8-66 Mangilal's statement was completed. The remaining two witnesses Surimal and Mithu Shah were also present on that day. The counsel for the accused requested the court that they should also be examined, hut that request was turned down and the case was ordered to be put up for arguments on 3-9-66 Aggrieved by this order the accused presented a revision application in the Court of learned Sessions Judge Kotah, but it was dismissed by him on 26-8-66 on the ground that he did not see good grounds to interfere with the discretion of the Magistrate Thereafter the accused approached this Court and their application was admitted by another learned Judge on 2-9-66.

2. It is strenuously urged by learned counsel for the accused-petitioners that the Magistrate having once decided to call allthe eye-witnesses, he had no discretion left thereafter to examine some and drop out others. It is, therefore, prayed that the order of the Magistrate dated 20-8-66 should be set aside and he should be directed to examine witnesses Surajmal and Mithu Shah before hearing arguments for committing the accused.

3. In support of his argument, learned counsel has referred to Shriram v. State of Maharashtra, AIR 1961 SC 674 After analysing the provisions of Section 207-A Cr. P. C. their Lordships summarised their views as follows:--

'Our view could now be expressed in the following propositions (1) 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. (2) The Magistrate, if he is of opinion that it is in the interest of justice to take evidence whether of eye-witnesses or others, has a duty to do so. (3) 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 on the basis of the documents referred to in Section 173 of the Code (4) 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.

Before closing we would like to make some observations. Rarely we come across cases where the prosecution does not examine important eye-witnesses for such a procedure would entail the danger of the said witnesses being tampered with by the accused, with the result that there will not be any evidence taken by the committing Magistrate which could be used as substantive evidence under Section 288 of the Code Even if the prosecution takes that risk, the Magistrate shall exercise a sound judicial discretion under the second part of Sub-section (4) of Section 207-A in forming the opinion whether witnesses should be examined or not, and any perverse exercise of that discretion can always be rectified by a superior Court. But there may be a case where the Magistrate can make up his mind definitely on the documents referred to in Section 173 without the aid of any oral evidence and in that event he would be within his rights to discharge or commit the accused, as the case may be. '

Their lordships had occasion to examine the provisions of Section 207-A. Cr P C. again in *Kripalsingh v. State of Uttar Pradesh*, AIR 1965 SC 712 After referring to *Shriram Dayaram v. The State of Maharashtra* AIR 1961 SC 674 cited above then Lordships proceeded to observe as follows:--

'There it nothing in the decision of this Court in *Shriram Davaram v. The State of Maharashtra*, AIR 1961 SC 674 which may support the view that in the matter of examination of witnesses.especially in the inquiry relating to serious charges like murder and culpable homicide, the Magistrate is to be guided by the prosecutor. It is the duty of the Magistrate to examine all such witnesses as may be produced by

the prosecutor as witnesses to the actual commission of the offence alleged, but his duty does not end with such examination. He must apply his mind to the documents referred to in Section 173, and the testimony of witnesses, if any, produced by the prosecutor and examined, and consider whether in the interest of justice it is necessary to record the evidence of other witnesses. In inquiries relating to charges for serious offences like murder, normally the Magistrate should insist upon the examination of the principal witnesses to the actual commission of the offence. Failure to examine the witnesses may be justified only in exceptional cases. This is so because the Magistrate in committing a person accused of an offence for trial has to perform a judicial function which has a vital importance in the ultimate trial and a slipshod or mechanical dealing with the proceeding must be deprecated.'

It is clear from the said observations that according to Section 207-A, Sub-section (4) Cr. P. C., as interpreted by their lordships, it is incumbent upon the Magistrate making the enquiry that he must record the evidence of all such persons as may be produced by the prosecution as witnesses to the actual commission of the offence alleged. In other words, if certain eye-witnesses are cited by the prosecution and some of them are produced, the Magistrate cannot refuse to record the evidence of those eye-witnesses who are produced before him. Then there may be certain eye-witnesses who are cited by the prosecution but not produced or called by the prosecution before the Court. With regard to such witnesses, it was urged before their Lordships in *Shriram Dayaram's case*, AIR 1961 SC 674 referred to above, that the Magistrate was bound to examine such witnesses as well. This argument was not allowed by their Lordships and it was observed that 'to accept this interpretation is to substitute the word 'cited' in place of the word 'produced', such a construction is not permissible, especially, when the plain meaning of the words used by the legislature is clear and unambiguous, and the acceptance of that meaning does not make the section otiose'. It was held that 'the second part of the sub-section confers, a discretionary power on the Magistrate to examine any one or more of witnesses of all categories, including the eye-witnesses who have not been produced by the prosecution within the meaning of the first part of the said subsection'. Thus, according to their lordships, if there are certain eye-witnesses who are cited by the prosecution but not

produced by it, it is within the discretion of the Magistrate to examine any one or more out of them. In Kirpalsingh's case, AIR 1965 SC 712 referred to above, it was further clarified that examination of witnesses to the actual commission of the offence, that is examination of eye-witnesses, should in inquiries for committal on charges for serious offences be the normal rule. The prosecutor is expected ordinarily to examine in the Court of the committing Magistrate all witnesses to the actual commission of the offence. If without adequate reasons he fails to do so, the Magistrate is justified and in enquiries on charges for serious offences, is under a duty to call witnesses who would throw light upon the prosecution case.

4. It is thus obvious that in a case like the present one where more than one eye-witness are cited by the prosecution and some of them are produced but others are not produced, the Magistrate should, in the case of those witnesses who are cited but not produced by the prosecution, exercise his judicial discretion because he is under a duty to call those witnesses who would throw light on the prosecution case. In enquiries relating to charges for serious offences, his duty does not end with the examination of only those eye-witnesses who are produced by the prosecution. He must apply his judicial mind and see if it is necessary to record the evidence of the remaining eye-witnesses who are cited but not produced by the prosecution.

5. Now, in the present case, the Magistrate after hearing the arguments of both the parties at length, decided on 29-6-66 to examine all the seven eye-witnesses who were cited by the prosecution and they were all ordered to be summoned. On 13-8-66 Surajmal and Mithu Shah, who were cited by the prosecution as eye-witnesses, were present in the Court but they were not examined because the cross-examination of witness Magilal remained incomplete, as some document was needed for his effective cross-examination. On that day it was observed by the Court that it did not consider it proper to examine these two witnesses, namely, Surajmal and Mithu Shah at that stage. It was not clarified in what manner that stage of the proceedings interfered with their examination. When the case came up on the next date, that is, 20th August, 1966, and when Mangilal's cross-examination was complete, the accused requested the Court to examine Surajmal and Mithu Shah, but that request was turned down on the ground that their

examination was not necessary.

6. It was certainly within the discretion of the Magistrate to examine or not to examine those eye-witnesses who were only cited by the prosecution and not produced by it, but such discretion was to be exercised after due thought and consideration. Having once decided on 29-6-66 to examine even Suraj Mal and Mithu Shah, the Court ought to have given an indication of its mind as to why their examination was not considered necessary at a later stage. It may be observed that the Magistrates should not be capricious in their attitude in summoning and examining such witnesses and specially in cases involving serious offences. Since the Magistrate, in the present case, has not given any reason, not to say of good reasons, to dispense with the examination of Surajmal and Mithu Shah, when they appeared in the Court on being summoned by himself it seems proper that he should be directed to record their statements before proceeding to hear the arguments about the committal of the accused.

7. The revision application is, therefore, allowed and the order of the Magistrate dated 20-8-66 in so far as it relates to the refusal of the examination of the witnesses Surajmal and Mithu Shah is concerned, is set aside. The file be sent back to the Magistrate with direction to record their statements and proceed with the case in accordance with law.

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