

In Re: Boya Chinna Lingappa

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Court : Chennai

Decided On : Sep-28-1950

Reported in : AIR1951Mad685; (1950)2MLJ766

Judge : Somasundaram, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 162

Appeal No. : Criminal Appeal No. 836 of 1949

Appellant : In Re: Boya Chinna Lingappa

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : V. Chinnappa Reddi and ;P. Ramakrishnan, Advs.

Disposition : Conviction set aside

Judgement :

Somasundaram, J.

1. The applt in this case was accused 1 in sessions case No. 18 of 1949 on the file of the Ct of Session, Anantapur. He & another were tried for an offence under Section 307 I. P. C. Accused 2 was acquitted, but the applt alone was convicted & was sentenced to R. I. for two years & to pay a fine of Rs. 100.

2. This appeal has to be allowed on a question of law. The occurrence is said to have taken place at about 11 p.m. on 1-2-1949. Information was given at about 1 a.m. on 2-2-1949. It was recorded by P. W. 7, who was the station writer of the police station, where the information was given. He said in his evidence that he investigated into the case & recorded statements of witnesses. He examined P. W. 1 & he also examined P. Ws. 3 to 6 & recorded their statements. These statements constitute statements under Section 162, Cr. P. C. The learned Ses. J. finds in para 6 of his judgment that these statements were not made available to the accused for cross-examination; but he rests content with remarking that 'the police in this case did not play the game well'. In my opinion the objection goes to the root of the case. It has been pointed out by the P. C, in 'Pulukuri Kotayya v. Emperor', 1947-1 MLJ 219 : AIR 1947 P C 67: 48 Cr L J 533 as follows :

'The right given to an accused person by this section (referring to Section 162) is a very valuable one & often provides important material for cross-examination of the prosecution witnesses. However slender the material for cross-examination may seem to be, it is difficult to gauge its possible effect. Minor inconsistencies in his several statements may not embarrass a truthful witness, but may cause an untruthful witness to prevaricate, & may lead to the ultimate break down of the whole of his evidence; & in the present case it has to be remembered that the accused's contention was that the prosecution witnesses were false witnesses. Cts in India have always regarded any breach of the proviso to Section 162 as matter of gravity. 'Baliram v. Emperor', ILR 1945 Nag 151 : AIR 1945 Nag 1 : 46 Cr L J 448 where the record of statements made by witnesses had been destroyed & 'Emperor v. Bansidar : AIR1931 All262 , where the Ct had refused to supply to the accused copies of statements made by witnesses to the police, afford instances in which failure to comply with the provisions of Section 162 have led to the convictions being quashed . Their Lordships would, however, observe that where, as in those two cases, the statements were never made available to the accused, an inference, which is almost irresistible, arises of prejudice to the accused.'

In this case the statements were not made available to the accused, & as pointed out by the P. C., an irresistible inference arises that prejudice has been caused to the accused. Denial of these statements to the accused has resulted in the

exclusion of evidence which could be used by him under Section 145, Evidence Act. In the circumstances the accused cannot be said to have had a fair trial.

3. I, therefore, set aside the conviction & sentence & acquit the applt. The fine if paid will be refunded.

4. I must say that this is not the only case in which I have come across such conduct on the part of the police in the Dist of Anantapur. The police in this Dist seem to adopt a peculiar technique of saying that they embody the statements in what is called a special report & refuse to give copies of such statements to the accused. This is contrary to the provisions of Section 162 Cr. P. C. & this often results in conviction being quashed. I would like to invite the attention of the Inspector General of Police to the conduct of the police in this case & in this Dist, so that such irregularities may, not occur again in future.

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