

In Re: Royappan

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Court : Chennai

Decided On : Mar-03-1955

Reported in : AIR1955Mad512; 1955CriLJ1200; (1955)2MLJ315

Judge : Balakrishna Ayyar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 161(3)

Appeal No. : Criminal Revn. Case No. 151 of 1955 and Criminal Revn. Petn. No. 146 of 1955

Appellant : In Re: Royappan

Advocate for Pet/Ap. : S. Arputharaj, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Balakrishna Ayyar, J.

1. The third Presidency Magistrate, Saidapet, Madras, has convicted the petitioner under Section 325, I. P. C. and sentenced him to undergo rigorous imprisonment for six weeks and to pay a fine of Rs. 75 and in default to undergo further rigorous imprisonment for three weeks.

2. The evidence of P. W. 1 makes it perfectly clear that the petitioner hit her on the head with a tamarind post. Naturally she put up her hands to protect her head and one of the blows fractured the metacarpal bones of one hand. P. W. 2 who was grazing a buffalo near-by heard a cry of 'Ayyo' and saw the petitioner beating P. W. 1. Likewise P. W. 3 who was working in a house a few yards away. P. W. 4 did not actually see the petitioner beat P. W. 1, but he testified that she heard an alarm and saw the petitioner running away. These are natural witnesses and it is clear that there was sufficient evidence before the learned Magistrate to justify the conviction.

3. Learned counsel for the petitioner, however, urged one point Section 161(3), Criminal P. C. provides:

'The Police Officer may reduce into writing any statement made to him in the course of an examination under this section, and if he does so, he shall make a separate record of the statement of each such person whose statement he records.'

It was stated that in the present case the police officer recorded the statement of only P. W. 1 and in respect of the other witnesses merely noted that they corroborated P. W. 1. His omission to record separately the statement of each of the witnesses he examined, it was contended, is an illegality which vitiates the trial. Support for this contention was sought in -- 'K. Venkataratnam v. State', 1951 MWN 82 (A); -- 'Narayana Reddi v. State' : AIR1952 Mad821 (B) and -- 'Gangi Reddi v. State of Andhra', : AIR1955 Mad303 (C).

There is nothing in the first of these three cases to support the contention that the violation of the mandatory provision of Section 161(3) vitiates the trial. All that Somasundaram J. did in that case was to emphasise the duty of investigating officers to conform to the provisions of that section. In the second of these cases, Somasundaram J. no doubt observed:

'The failure to record separately the statements of P. Ws. 4 and 5, who are the most important eyewitnesses in the case, is a serious irregularity considerably prejudicing the accused and is by itself enough to make the evidence tainted.'

Even here, the learned Judge did not say that the failure to record separately the statements of the witnesses would vitiate the entire trial. Moreover, the observations of Somasundaram T, must be read in the context in which they were made. About the case as a whole he observed:

'This case may legitimately be described as a symposium of all the irregularities and illegalities that can be thought of in connection with a criminal case both under the Criminal Procedure Code and under the Evidence Act.'

He also observed:

'It is quite clear as pointed out by the learned Sub-Magistrate that the entries in the case-diary were not made, contemporaneously, with the examination and have been fudged.'

As already remarked, even here the learned Judge did not say that the violation of the provisions of Section 161(3) itself vitiates the trial. In the third of these cases, Chandra Keddi J. no doubt did commit himself to this statement:

'It follows that the contravention of this Section 161 (3), which is a mandatory one, is a serious irregularity, which vitiates the whole trial.'

With respect to the learned Judge, I am unable to share this view. Whether the failure of the investigating officer to conform to the requirements of Section 161(3), Criminal P. C. would vitiate the entire trial, or not must depend, it seems to me, upon the facts of each case. To say as a general rule that the violation of the provisions of Section 161(3) vitiates the entire trial would produce very startling results. It would mean that if an investigating officer has omitted to take down separately the statements of the witnesses he has examined, there can be in law no trial at all of the accused person since ex hypothesi the entire trial would be vitiated and to go through the mere form of a trial which stands vitiated at the very outset would be an idle farce. While I agree that we must insist on compliance with the provisions of Section 161(3), I am certainly not prepared to agree that in every case where that section has not been complied with, the trial stands vitiated even before its commencement and that there can be no conviction at all in such

circumstances.

4. On the evidence in the case, the conviction was correct. Mr. Arputharaj pleaded that the sentence is excessive. I do not think so and dismiss the revision petition.

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