

**In Re: Guruswami thevar**

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**Court :** Chennai

**Decided On :** Feb-26-1951

**Reported in :** AIR1951Mad902; (1951)1MLJ549

**Judge :** Balakrishna Ayyar and ;Basheer Ahmad Sayeed, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367(1)

**Appeal No. :** Referred Trial No. 1 of 1951 & Cr. Appeal No. 14 of 1951

**Appellant :** In Re: Guruswami thevar

**Advocate for Pet/Ap. :** C. Rajaraman, Adv.;Public Prosecutor

**Disposition :** Retrial ordered

**Judgement :**

**Balakrishna Ayyar, J.**

1. The Ses. J. of Ramanathapuram has convicted the applt. of the murder of his concubine & sentenced him to death.

2. Mr. Rajaraman, the learned advocate for the applt. has raised this preliminary objection. The evidence in the case was heard by Mr. H. A. Ayyar who also appears to have actually written the judgment in the case. He handed over charge of his office as Ses. J. on the forenoon of 14-12-1950 & the judgment which he

wrote was pronounced by his successor in office, Mr. Sankaran Nambiar. This procedure, Mr. Rajaraman contends, is illegal because what Mr. H. A. Ayyar wrote cannot be called a judgment, in law it can only be regarded as an expression of his opinion on the merits of the case. After he ceased to be the Ses. J. of Ramanathapuram he became functus officio in the matter & he had no power to write a judgment in the case. When thereupon Mr. Sankaran Nambiar purported to pronounce judgment he was only reading out the opinion of his predecessor & was not pronouncing the judgment in the case.

In a Sessions case, he contended, the judgment must be written & pronounced by the very same officer who heard the evidence in the case. In support of this objection he refd. us to the decision in Allikhan In re, I. L. R. 1947 Mad. 365. In that case what happened was this. The evidence was heard by Mr. Nainar when he was Ses. J., Chittoor. After he handed over charge to Mr. A. S. P. Ayyar, he wrote what purported to be the judgment of the case & it was pronounced by Mr. A. S. P. Ayyar. It was held by a bench of this Ct. that the judgment so pronounced was really a nullity. The learned Judges say :

'We must hold that unless the Cr. P. C., expressly provides for the pronouncement of the judgment by a Judge other than he who recorded the evidence, a succeeding Judge would have no power to do so ..... We are, therefore, driven to conclude that the presiding officer refd. to in Section 367(1), Cr. P. C., in both cases means the presiding officer at the trial, who is assumed in the section to have written & pronounced the judgment by still holding the same office.'

We find that in the decision reported as Jogesh Chandra v. Surendra Mohan, 35 C. W. N. 838, a Bench of the Calcutta H. C. took the same view. The head-note of the case reads as follows :

'A judgment delivered by a Ses. J. which was written by his predecessor after the latter had ceased to be a Ses. J. of the Dist. concerned having, under orders of transfer, made over charge previous to that date, is not a judgment as contemplated by Cri. P. C.'

2a. On the other side Mr. V. T. Rangaswami Ayyangar, the learned Public Prosecutor, has drawn our attention to a number of decisions & to these we refer briefly.

3. The earliest of these is reported in Shankara Pillai In re, 18 M. L. J. 197. In that case the judgment was written by the Mag. who heard the evidence. But he left the station before it was delivered. His successor in office read out his predecessor's judgment & signed & dated it in open Ct. A Bench of this Ct. held that the course was not illegal being of the view that Under Section 367, Cr. P. C. it is not necessary that the presiding officer of the Ct. who wrote the judgment should be the same person as the presiding officer who is required to date, sign & pronounce it We may point out that this case was consid. by the learned Judges of the Calcutta H. C. in Jogesh Chandra Roy v. Surendra Mohan Roy Chowdhury, 35 C. W. N. 838, & they distinctly stated that they were not prepared to follow it.

4. The second case cited by the learned Public Prosecutor is reported in Chinna Somayya, In re, : AIR1933 Mad251 & is the decision of a single Judge. He took the view that the trial of a criminal case is over as soon as a Mag. has determined the issue of the guilt or innocence of the accused.

'Mere pronouncement of the judgment is not part of the trial & there is no illegality or irregularity in a succeeding Mag. pronouncing a judgment written by his predecessor.'

5. The third decision refd. to was delivered by Govinda Menon J. In Surya Rao v. Sathiraju, 1948 M. W. N. Cr. 65. That was a case Under Section 145, Cr. P. C. & what the learned Judge decided was that a proceeding under that section of the Code is not a trial, that an order issued by the Mag. under Sub-clause (6) of Section 145 is not a judgment & that therefore the provisions of SECTIONS 366 & 367, Cr. P. C. were not applicable to it; if at all, the only provision that would apply was Section 350, Cr. P. C.

6. The last of the decisions refd. to by the learned Public Prosecutor 13 reported in Moham-mad Sattar v. Beharilal Jain, I. L. R. 1948 ALL 222, where a Bench of the Allahabad H. C. held that where one Mag. had heard the entire evidence &

arguments & had written a judgment which was pronounced by his successor, there was only an irregularity which is cured by Section 537, Cr. P. C.

7. Now we notice that all the decisions cited by the learned Public-Prosecutor relate to instances of judgments written by one Mag. & pronounced by another Mag.; they do not refer to judgments of Ct. of Sessions. So far as trials by Mags. are concerned Section 350(1), Cr. P. C. explicitly provides :

'Whenever any Mag. after having heard & recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein, & is succeeded by another Mag. who has & who exercises such jurisdiction, the Mag. so succeeding may set on the evidence so recorded by his predecessor, or partly recorded by his predecessor & partly recorded by himself .....

Now, as explained by Horwill J. In Allikhan In re, I. L. R. 1947 Mad. 365, Section 350 (1), Cr. P. C. does not apply to Sessions trials & there is no corresponding provision which can be invoked by Ses. JJ. The decisions cited by the learned Public Prosecutor are not therefore exactly in point; they involve an extension of the procedural rule enacted in Section 350 (1), Cr. P. C which is available only to Mags. We consider that the decision in Allikhan In re, I. L. R. (1947) Mad. 365, is right & must be followed. This means that the judgment pronounced by Mr. Nambiar on behalf of Mr. H. A. Ayyar is a nullity. We therefore set aside the conviction & sentence imposed upon the applt. & direct that he be tried afresh according to law.

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