

The Public Prosecutor Vs. Vedi Alias Vathan

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Court : Chennai

Decided On : Sep-10-1929

Reported in : 122Ind.Cas.463

Judge : Curgenvan, J.

Appellant : The Public Prosecutor

Respondent : Vedi Alias Vathan

Judgement :

ORDER

Curgenvan, J.

1. This revision petition is presented by the Public Prosecutor against an order passed by the Sessions Judge of Salem in the following circumstances. In C. C. No. 103 of 1928 on the file of the Sub-Divisional Magistrate of Hosur, certain of the prosecution witnesses had been examined and cross-examined. Application was then made on behalf of the accused under Section 162 of the Criminal Procedure Code for copies of the statements which these witnesses had made to the Police, The learned Sub-Divisional Magistrate refused the request on the ground that the proper occasion for making it had gone by. The learned Sessions Judge, however, pointed out that the accused would have a right of further cross examination after the framing of a charge, and in view of this circumstance ruled that copies should be given.

2. The point not dealt with by the learned Sessions Judge, but raised here is whether an accused person can apply for, and be granted, such copies, (where not already applied for and granted) at any time before the cross-examination after charge takes place, or whether he must wait until at least the witness is in the box and the cross-examination due to begin. Mr. Ganapathi for the learned Public Prosecutor contends that this latter condition must be satisfied.

3. So far as appears-and I have not had the advantage of hearing the other side-this precise point has not been dealt with in any reported case. In *In Re: Perarnasami Royudu* : AIR1926 Mad183 *Krishnan and Wallace, JJ.*, held that, since the purpose of furnishing the copy is to contradict the witness, the witness must already have made a statement which lays him open to contradiction. Accordingly, an application can only be made, and a copy granted when the witness is under cross examination. This, however, only lays down the procedure so far as the first cross-examination is concerned. The question was answered in very much the same way by a Calcutta Bench in *Madari Sikdar v. Emperor* : AIR1927 Cal614 . The learned Judges say not only that the witness must be under cross-examination but that 'the cross-examination' must lay the foundation for the suggestion that the evidence given by the witness in Court is contradicted by his statement recorded under Section 161 of the Code of Criminal Procedure and it is only then that the accused is entitled to ask the Judge to refer to the writing and grant him copies.' I find it not a little difficult to understand how a cross-examining Counsel can found a suggestion of contradiction between two statements one of which he has not seen; and this part of the decision has been criticized by Rankin, C.J., in a later case [*Babarali Sardar v. Emperor* : AIR1929 Cal182 , That case left it open whether the proper time to apply was when the witness appears in the box or when the cross-examination commences. In *Emperor v. Shaikh Usman* 107 Ind. Cas. 57 : 52 B. 195 : 29 Bom. L.R. 1581 : A.I.R. 1928 Bom. 23 : 29 Cri.L.J. 221 : 9 A.I.Cri.R. 476 the later stage was deemed to be the appropriate one, having regard to the terms of Section 145 of the Evidence Act.

4. Accepting then, that so far as proceedings before charge are concerned, copies should not be granted until the stage of cross-examination is reached, I am inclined to the view that if that stage is allowed to go by without application being

made, an accused must wait until the witness is again about to be subjected to cross-examination before he can claim grant of a copy. For, in the first place, until the witness so appears there is no certainty that he will be available for cross-examination, and, therefore, no certainty that the statement can be used for the only purpose for which the accused may possess it. But further, if the law requires that grant of the copy for use in the original cross-examination should be contingent upon that cross-examination being due to begin, the same principle would seem to apply to cross-examination after charge. Under Section 146 of the Evidence Act if it is intended to contradict a witness by a writing, 'his attention must, before the writing can be proved, be called to those parts of it which are to be used for the purpose of contradicting him.' Until the occasion arises for putting the statement to the witness it cannot legally be used for any purpose whatsoever, and I see no reason why it should be placed in the accused's hands until that stage in the trial has been reached when he may so use it.

5. Whether adherence to this rule would give rise to inconvenience in practice is scarcely a relevant consideration if it is the correct rule. Equal inconvenience, if any, would attach to the application of the rule to the earlier cross-examination as to the later. Upon a request for a copy being made, the Court must necessarily afford the accused a reasonable opportunity for obtaining it before he is deprived of the opportunity to cross-examine upon it. But with a little contrivance that ought not to result in serious delay.

6. I allow the criminal revision petition, set aside the order of the Sessions Judge and the Sub-Divisional Magistrate and direct the Sub Divisional Magistrate to proceed in accordance with the above observations.