

Kasan Vs. the State

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Court : Chennai

Decided On : Aug-20-1999

Reported in : 2000CriLJ1020

Judge : A. Ramamurthy, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 324; Code of Criminal Procedure (CrPC) , 1974 - Sections 311

Appeal No. : Criminal Case No. 109 of 1999 and Cri. M.P. No. 908 of 1999

Appellant : Kasan

Respondent : The State

Advocate for Def. : N.R. Elango, Govt. Adv.

Advocate for Pet/Ap. : C. Deivasigamani, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

A. Ramamurthy, J.

1. Petitioner/accused in SC 88 of 1994 on the file of learned I Additional District & Sessions Judge-cum-Chief Judicial Magistrate, Coimbatore, has filed the revision

aggrieved against the order passed on 11-1-99.

2. The case in brief is as follows:

The petitioner is facing trial for offences under Sections 302 and 324, IPC. The prosecution evidence was completed and the examination of the accused was also over. After hearing the arguments, the case was posted for judgment on 11-1-99. On the said date, the learned Judge passed an order invoking the power under Section 311 of the Code of Criminal Procedure to recall the Investigating Officer, already examined to produce and mark the death extract relating to one Sub-Inspector Rajagopal, who is said to have investigated the case in part. Aggrieved against this only, the petitioner has come forward with the present revision.

3. Learned counsel for the petitioner contended that the reasons given by the trial Court for recalling the Investigating Officer to produce the death extract of the Sub-Inspector at the stage of delivering judgment is illegal and cause prejudice to his case. The trial Court cannot plug the loopholes of the prosecution case in the guise of recalling the witness by using the discretionary power of the Court. Several important and vital witnesses were not examined by the prosecution and the same was totally ignored by the trial Court. The trial Court ought to have drawn an adverse inference if the prosecution witnesses had failed to produce the death extract. The trial is pending before the Court for the last one year. At any rate, Section 311 of the Code of Criminal Procedure ought not to have been used by the trial Court.

4. Learned Government Advocate opposed the application, stating that Section 311 of the Code can be invoked by the Court for a just decision of the case at any time before the enquiry or trial.

5. Learned counsel for the petitioner mainly contended that after closure of the prosecution evidence and when the case was posted for judgment on 11-1-99, there was absolutely no necessity for the learned Judge to invoke Section 311 of the Code of Criminal Procedure to recall the investigating Officer to produce the death extract relating to the Sub-Inspector Rajagopal and to mark the document.

No doubt, there was already evidence relating to the death of Sub-Inspector Rajagopal, but however, the prosecution had failed to produce the death extract. Learned counsel for the petitioner stated that the Sub-Inspector has no power to investigate the case and I am of the view that it is a matter to be considered only by the trial Court. The learned Judge had exercised the power under Section 311 of the Code of Criminal Procedure in order to file the death extract of Rajagopal, Sub Inspector of Police and mark the same. It cannot be said that for the purpose of plugging the loophole, the investigation officer was recalled. It is quite probable that after going through the evidence, the learned Judge might have thought that the filing of the death extract may be necessary.

6. Learned counsel for the petitioner mainly contended that filing of a death extract would prejudice the case. I am unable to agree with the contention. It is stated that the Sub-Inspector Rajagopal died and only to prove this aspect and that too, for a limited purpose, the investigating Officer can be recalled for the purpose of marking the document and he need not be permitted to let in further evidence. By marking the document, no prejudice would be caused.

7. Learned counsel relied upon the decision in *Balwant Singh v. State of Rajasthan* 1986 Cri LJ 1374 wherein it is stated that 'witnesses recalled after stage of final arguments to explain whether weapon was used from edge side or blunt side. Held, improper use of discretion'. This decision has no application to the case on hand. He also relied on *Gava Dei v. Subashini Dei* (1998) Cur Cri R 363 : 1998 Cri LJ 3071 that 'Discretion to be exercised only after commencement of appeal-- To do justice between parties and to arrive at truth'. This decision is also not applicable. He also relied on *Chandran v. State of Kerala* wherein 'Sessions Judge allowing recalling of investigating officer for production and proof of disclosure statement, after conclusion of evidence Re-examination of Officer cannot be said to be essential for just decision'. He also relied on *Bir Singh v. State of U.P.* : 1978 CriLJ177a that the 'Appellate Court's discretionary power to take additional evidence in a suitable case. Discretion should not be exercised to fill up gaps or lacunae in the prosecution evidence'. These decisions have no application to the case.

8. The fact that the Sub Inspector died cannot be disputed; but, however, for record purpose, the death extract is absolutely necessary and only for this purpose, the Court below had recalled the Investigating Officer already examined for a limited purpose. I am of the view that there is no illegality or infirmity in the order and no interference is called for.

9. For the reasons mentioned above, the revision fails and is dismissed. It is clear that the investigating Officer can be recalled only for the limited purpose of marking the death extract of the deceased Sub Inspector Rajagopal and apart from that, he is not permitted to let in any other evidence. Consequently, Cri. M.P.No. 908/99 is also dismissed.

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