
(2007) 02 AHC CK 0075
In the Allahabad High Court

Dinesh Singh

APPELLANT

Vs

State of U.P., Om Vir Singh and Pramod Singh

RESPONDENT

Date of Decision : 19-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 162, 311, 482
Evidence Act, 1872 — Section 145

Citation : (2007) 4 ADJ 142

Hon'ble Judges : Vinod Prasad, J

Bench : Single Bench

Judgement

Vinod Prasad, J.—I have heard Sri Jagdish Singh Sengar learned Counsel for the applicant as well as Sri Jitendra Kumar and learned A.G.A. for the opposite parties and have gone through the entire record of the case.

2. The prosecution in its zeal to secure the conviction against the accused and to prove its case sometimes resorted to devices which is that of a persecutor and not that of a prosecutor. Many times the accused also with an idea of getting the acquittal succumbed to such tactics, which cannot be said to be fair. The present application has its genesis in the said methodology.

3. S.T. No. 158/04 State v. Om Veer Singh and Ors. is pending before the Additional Sessions Judge, Court No. 1, Etawah. It is needless to say that both the rival parties wanted to get the said trial decided in their favour. I am not listing detail facts of the trial as the controversy is circumscribed within the periphery of legal submissions only. After 313 Cr.P.C. statements of the accused were recorded in the trial, accused filed five applications being application Nos. 75B, 76B, 77B, 80B and 66-C before the trial court. Application 75-B was filed for summoning of the prosecution witness Constable 2159 Indrapal Singh who was a witness of recovery in the crime in question. Application 76-B was for the requisitioning of the record dated 15.7.99 of Forensic Science Laboratory Field Unit, Etawah, application No. 77-B was for summoning the I.O. of C.B.C.I.D. Narayan Singh Rana because the statements of witnesses recorded by this I.O.

contradicted the statements of the eye witnesses P.W.1 Dinesh Singh and P.W.2 Mukesh Singh, application 65-B was to recall P.W.3, Dr. Balveer to prove the articles which were taken into custody by him at the time of conducting the autopsy on the dead body of the deceased and application 66-C was for conducting the spot inspection by the court. All these applications were objected to by the prosecution but for last application 66-C for spot inspection, which was not contested by the prosecution.

4. The objection regarding the application 76-B and 77-B i.e. for summoning of the record and photographs of Forensic Science Labrotary Field Unit Etawah, and for summoning of I.O. Narayan Singh Rana who had recorded the statement of Arvind Kumar Toma, Sudhir pathak and Rameshwar Dayal, were that these witnesses were not examined in the trial by the prosecution and therefore contradiction in their statements cannot be put to the I.O. who recorded their statements and Section 311 Cr.P.C. does not takes into its purview documentary evidences.

5. The learned Sessions Judge, Court No. 1, Etawah, who is seized of the Sessions Trial, vide his impugned order dated 16.8.05, allowed applications 77-B, 66-B, 75-B, 76-B and 77-B but rejected the application No. 80-B and thereby summoned Constable Indrapal Singh witness of Fard recovery who was posted in the District Kanpur Nagar on the date of occurrence i.e. 15.7.99, through the S.S.P., Kanpur alongwith G.D. of the concerned Police Station, the photographer of Forensic Science Laboratory Field Unit Etawah along with the negatives of the photographs paper No. 14-C/I to 14-C/13 which were taken on the date of occurrence and the record of Field Unit Forensic Scientific Laboratory, Etawah, and I.O. Narayan Singh Rana for their examination in the court on 9.6.05. It also allowed application for spot inspection which was uncontested.

This application u/s 482 Cr.P.C. has been filed by informant Dinesh Singh against the allowing summoning of aforesaid witnesses.

6. A Counter affidavit has been filed to which learned Counsel for the applicant do not propose to file any rejoinder affidavit.

7. The questions which are involved in this application are mainly legal questions which are being decided by this order.

8. Sri J.S. Sengar, learned Counsel contended that the applications which were filed by the accused were very belated and therefore should have been rejected by the trial court. The contention of the learned Counsel is that the accused had ample opportunity to get Indrapal Singh and Narayan Singh Rana summoned at the defense stage, but they did not avail the said opportunity and the prosecution cannot be compelled by the court to examine the particular witness in the garb of Section 311 Cr.P.C., therefore, and the trial court should not have summoned those witnesses u/s 311 Cr.P.C.

9. Learned Counsel further contended that Section 311 Cr.P.C. does not deal with

documentary evidence and it does not empower the court to call for any documentary evidence as documentary evidence is not within the purview of Section 311 Cr.P.C. Learned Counsel, therefore, contended that the impugned order dated 18.8.2005 passed by the trial court suffers from patent error of law and deserves to be set aside.

10. Learned A.G.A. on the other hand contended that so far as the application No 75-B and 76-B are concerned, the same have been rightly allowed by the trial court for recording of the statements of Constable Indrapal Singh and evidence of photographer along with negatives was just a proper.

11. After hearing both the counsels and going through the entire records of the case, it is crystal clear that Indrapal Singh was said to be an independent witness who was a witness of fard recovery and on the date of occurrence he was posted at some police station in the District Kanpur Nagar. The defense wanted to show that investigation is tainted as Indrapal Singh was on duty in another district, therefore, he could not be present on the spot at the time of investigation to be as witness of recovery. Thus the defence wanted to show that the prosecution case is cooked up and investigation is unfair.

12. In this view of the matter, I am of the opinion, that the accused must be dealt with fairly and by a fair trial to bring out the truth of the matter which cannot be thwarted on the premium of technicalities. It is the responsibility of the Court to do justice for which alone it exists. I am of the view that the trial court has not faulted in any way in allowing application No. 75-B and 76-B filed by the accused and the impugned order passed by the trial court does not suffer from any error of law in respect of those applications.

13. Coming to the application 77-B, it is to be noted that the I.O. Narayan Singh Rana of CBCID was desired to be examined to contradict the statements of P.W.1 and P.W.2. by proving contradictions occurred in the statements of Arvind Kumar Tromar, Sudhir Pathak and Rameshwar Dayal witnesses who were not examined during the investigation. Any statement of any witness recorded u/s 161 Cr.P.C. during the investigation can be utilized only to contradict the said witness when he is examined during the trial. If a witness is not examined during the trial his 161 Cr.P.C. statement cannot be utilized for any purpose at all. This aspect of law is clear from a joint reading of Section 161 162 Cr.P.C. and Section 145 of the Evidence Act. If a witness has not been examined in the trial the I.O. who has recorded the statement of that witness during investigation u/s 161 Cr.P.C. cannot be examined and questioned at all in respect of statements of those witnesses recorded u/s 161 Cr.P.C. Admittedly, in this case Narain Singh Rana I.O. CBCID was desired to be examined to bring out contradictions in the statements of P.W. 1, and P.W.2 by proving contradictory statements of Arvind Kumar Tomar, Sudhir Pathak and Rameshwar Dayal. These three witnesses were not examined in the trial and hence the I.O. Narain Singh Rana of CBCID could not have been summoned to testify the contradictions in the statements of those three witnesses against the statutory bar provided u/s 162 Cr.P.C. Further the

statement recorded u/s 161 Cr.P.C. cannot be utilized as a substantive piece of evidence and can not be utilized for any other purpose other than contradicting the evidence of the said witnesses when the witness comes in the witness box to testify for prosecution or the accused and such a statement cannot be utilized for no other purpose.

14. In this view of the matter since the aforesaid three witnesses were not examined in the case, therefore, there was no justification for the court to summon Narayan Singh Rana I.O. CBCID.

15. Resultantly, application 77-B has been wrongly allowed by the trial court and the summoning of Narain Singh Rana I.O. CBCID is illegal and to that extent the impugned order is set aside.

16. Thus, this application is allowed in part. Impugned order is sustained in respect of examination of Indra Pal Singh and photographer of Central Forensic Science Laboratory but it is dismissed in respect of examination of Narain Singh Rana I.O. CBCID. In respect of applications 80-B and 66-C also the impugned order is maintained.

17. With the aforesaid observations, this application is allowed in part. It is expected that the trial court will expedite the trial, as it is a very old sessions trial.