

(2000) 02 MAD CK 0066
In the Madras High Court
Case No : Criminal RC. No. 106 of 2000

Subramanian Siva @ Paramasivan

APPELLANT

Vs

State by Inspector of Police, Tirunelveli Bridge Police Station,
Tirunelveli

RESPONDENT

Date of Decision : 02-02-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 207

Citation : (2000) 2 LW(Cri) 535

Hon'ble Judges : I. David Christian, J

Bench : Single Bench

Advocate : K. Ravi Ananthapadmanabhan, for the Appellant;

Final Decision : Allowed

Judgement

I. David Christian, J.—This criminal revision is filed by the accused 1 and 2 in S.C.No.27 of 1998 on the file of the Second Additional Sessions Judge, Tirunelveli. Accused 1 and 2 filed Crl.M.P.No.449 of 1999 in S.C.No.28 of 1998 with a prayer before the Court to send for three documents and by Order dated 06.12.99. the same was dismissed by the learned Second Additional Sessions Judge, Tirunelveli as against which this revision has been preferred.

2. The accused have filed a petition stating that the documents mentioned in the petition are indispensable for cross-examination of the prosecution witnesses and therefore they may be sent for by the Court to allow the accused to have an effective cross-examination of the side of the prosecution.

3. The accused are charged for committing the murder of one Dharmaraj on 30.06.1997 at 5 a.m. The accused have committed the murder of Dharmaraj by stabbing him with a knife, as a result of which Dharmaraj, who after being admitted in Tirunelveli Medical College Hospital, died at about 8 a.m. The occurrence is said to have taken place in Nadar Street in Tirunelveli junction. On the information lodged by P.W.1, a case has been registered and investigation

has been taken up by Tirunelveli Bridge Police Station and the charge sheet has been laid. After committal, the case has come up for trial before the learned Second Additional Sessions Judge in S.C.No.27 of 1998. While the case was posted for trial, the abused have filed the above petition.

4. The accused wanted the court to summon (1) General Diary maintained by Tirunelveli Bridge Police station dated 29.06.1997 and 30.06.1997, (2) Pocket Note book of Grade I.P.C.1293 for the month of June, 1997 and (3) General Diary of Tirunelveli Medical College Hospital, Outpost police station, Palayamkottai dated 29.06.1997 and 30.06.1997. Learned Magistrate has dismissed the application and has refused to send for these documents on the only ground that the accused are not entitled to these documents. There is no question of entitlement of the accused of these document. They do not form part of the records referred to u/s 207 Cr.P.C.

5. These records are to be summoned for the purpose of showing the improbability of the prosecution case and in support of the defence version. The occurrence is said to have taken place on 30.06.1997 at 5 a.m. when the deceased was in his shop and when the shop is said to be kept open. The F.I.R. is said to have been lodged by the father of the deceased at 8 a.m. It is the case of the defence that it is improbable that the shop could have been opened at an early hours. Perhaps, according to them, the murder has taken place either in the earlier hours or later hours. The defence seems to contend that the F.I.R. could not have been lodged at 8 a.m. as alleged.

6. The General Diary that is sought for relates to the assignment of duties and other functioning of police station where the case was registered. The General Diary wanted is in respect of date of occurrence. If the complainant has appeared in the police station at the time alleged by him. There would have been entry in the General Diary or if it is not so, that would show the falsity of the case. Similarly pocket note book of Grade I.P.C. 1293, is sought for, perhaps to prove that F.I.R. could not have been handed over to the investigation officer, Inspector of police and to the Judicial Magistrate at the time claimed by the prosecution. The third document is the General Diary of Tirunelveli Medical College Hospital outpost police station dated 29.06.1997 and 30.06.1997. The case of the prosecution is that the injured was fatally stabbed by these accused while he was in the shop and after receipt of injuries, the injured was taken to Tirunelveli Medical College Hospital Palayamkottai and some time after his admission in the hospital he has succumbed to injuries. Because the injured has been taken immediately after the occurrence to the hospital, no report has been filed before the police and it is probable that the report could have been filed only after receipt of intimation about the admission of the injured in the Tirunelveli Medical College Hospital which naturally would be sent to the outpost police station Therefore it is the relevant document on which the accused can rely upon for the purpose of proving improbability of the prosecution case.

7. These documents have been sent for by the accused and the learned Session

Judge was not correct in dismissing the prayer of the accused on the only ground that they are not entitled to these documents. As already stated, there is no question of entitlement of the accused to these documents. These documents are maintained by the police in the usual course i.e. on the date of occurrence and on the prior date. Learned Sessions Judge shall send for these documents and he can make it available to the counsel for the accused to enable him to effectively cross-examine and the witnesses to be examined on the side of the prosecution. Hence the criminal revision is allowed.