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statute, before their allotments were cancelled. This would also have required interference with the impugned order whether it be taken as the order of the Minister or that of the Additional Custodian.

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This appeal is, therefore, for the reasons stated, accepted and the order cancelling allotments of the appellants whether considered that of the Minister as made on June 23, 1950, or of the Additional Custodian as Minister's order signed by him on June 28, 1950, is quashed. In the circumstances of this case there is no order as to costs in this appeal.

Bhandari, C. J.

BHANDARI, C.J. I find myself in complete agreement with what my learned brother has said and have nothing to add to the admirable judgment delivered by him.

SUPREME COURT

Before B. Jagannadhadas, Syed Jafer Imam, and P. Govinda Menon, JJ.

GURBACHAN SINGH,—*Appellant.*

versus

THE *STATE OF PUNJAB*,—*Respondent.*

1957

Criminal Appeal No. 48 of 1957.

April, 24th

Code of Criminal Procedure (V of 1898)—Section 162—Copies of statements recorded under section 161 in a connected case—Whether are to be made available to the defence—Trial conducted substantially in the manner prescribed by the Code—Irregularity occurring in the course of such trial—Whether curable under section 537 of the Code—Principles of the applicability of section 537, stated—Code of Criminal Procedure (Amendment) Act (XXVI of 1955)—Provisions regarding supply of copies—Whether retrospective.

Held, that there is no provision in the Code of Criminal Procedure that copies of statements recorded under

section 161 in a connected case should be made available to the defence though there is nothing prohibiting. it.

Held also, that if a trial is conducted substantially in the manner prescribed by the Code of Criminal Procedure but some irregularity occurs in the course of such trial, the irregularity can be cured under section 537 of the Code, and nonetheless so because the irregularity involves a breach of one of the very comprehensive provisions of the Code.

Held further, that in judging a question of prejudice, as of guilt, Courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself.

Held also, that none of the provisions of the Code of Criminal Procedure, as amended by Act XXVI of 1955, relating to the supply of copies of statements recorded under section 161(3) have retrospective effect so as to apply to the pending trials or inquiries.

Pulukuri Kotayya and others v. *King Emperor* (1), *Willie (William) Slaney* v. *The State of Madhya Pradesh* (2), *Baliram* v. *King Emperor* (3), and *Emperor* v. *Bansidhar* (4), referred to.

(*Appeal by Special Leave from the Judgment and Order, dated the 26th September, 1956, of the Punjab High Court at Chandigarh, in Criminal Appeal No. 407 of 1956 and Murder Reference No. 59 of 1956, arising out of the Judgment and Order, dated the 1st August, 1956, of the Court of 1st Additional Sessions Judge at Ferozepore, in Sessions Trial No. 41 of 1956, and Sessions Case No. 69 of 1956*).

For the Appellant: MR. JAI GOPAL SETHI, Senior Advocate (MR. R. L. KOHLI, Advocate, with him).

For the Respondent: M/S. JINDRA LAL and T. M. SEN, Advocates.

(1) I.L.R. 1948 Mad. 1
(2) (1955) 2 S.C.R. 1140
(3) I.L.R. 945 Nag. 151
(4) I.L.R. 53 All. 458.

JUDGMENT

The Judgment of the Court was delivered by—

Govinda Menon, J.

GOVINDA MENON, J.—Special leave limited to the question whether the statements taken from the witnesses under s. 161 of the Criminal Procedure Code, in the course of investigation in the connected case under the Arms Act, should not have been supplied to the accused for the purpose of his defence in the trial and whether the result of the trial has been materially affected thereby, was granted by this court on November 19, 1956, in the petition for special leave to appeal from the judgment and order dated September 26, 1956, of the Punjab High Court in Criminal Appeal No. 407 of 1956. As a result, this appeal now comes up for final disposal.

On December 12, 1955, Mukhtiar Singh deceased, borrowed a mare from Wazir Singh (P.W. 5) for the purpose of going to Lakhewali Mandi and rode that animal. Late that night, his body was found on the boundary of a field within the area of Nand Garh, evidently having been murdered and the mare was missing. The father of the deceased made a report at the Police Station Muktsar where the complaint was recorded at 6 a.m., the next day. Pritam Singh (P.W. 26), who was the Station House Officer, Muktsar, at that time, took up the investigation and proceeded to the spot where he found near the body a bottle, containing a small quantity of liquor and a spent cartridge. It was further proved in the case by the evidence of Kalia (P.W. 10), and Bhag Singh (P.W. 11), that on the evening of the disappearance of Mukhtiar Singh they had seen the appellant drinking liquor in a field near Nand Garh and they had also been invited to join the drink. The further

evidence is that of P.W. 14 who had seen the appellant at about 2 p.m. on September 12, 1955, riding the mare which had been lent to the deceased that day. At about 5 p.m., on September 14, the appellant, riding a mare without a saddle came to the shop of Labh Singh (P.W. 20) in the village of Ghanga Kalan and asked the witness to prepare some food for him. At about that time a *Panchayat* was being held in the village of Ghanga Kalan and the Sarpanch and the members of the Panchayat had assembled. Ujagar Singh (P.W. 23) was on his way to the house of Gian Chand Sarpanch (P.W. 19) for attending the meeting of the village Panchayat when he saw the appellant sitting outside the shop of Labh Singh holding the reins of the mare at which he became suspicious at the presence of a stranger in the village in such circumstances. The matter was reported to the other members of the Panchayat, whereupon Gian Chand Sarpanch (P.W. 19), Resham Singh (P.W. 24), and Ujagar Singh (P.W. 23) went to the shop of Labh Singh and questioned the appellant suspecting that the mare was stolen. On this the appellant tried to pull something out from the fold of his trousers but was prevented from doing any harm and was seized. A country made pistol, P. 16, for firing twelve-bore shot gun cartridges, together with four live cartridges were then taken from him, who thereafter confessed that he had stolen the mare after shooting a Mazhabi of Nand Garh. The fact of the capture of the accused was thereafter recorded in the Panchayat records and the witness took the appellant to the Police Station of Jalalabad where the report of (P.W. 19) Gian Chand was recorded and a case registered against the accused under s. 19(f) of the Arms Act at 8.30 p.m. on September 14, 1956. Information was given to the Sub-Inspector of Muktsar on September 15, regarding the arrest of the accused who had

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already been sent up to the judicial lock-up. During the course of the investigation of the case of murder by the Sub-Inspector of Muktsar the cartridge recovered near the place where the dead body was found was sent along with the pistol seized from the accused for examination and the opinion of Dr. D. N. Goyal (P.W. 3) was to the effect that the cartridge recovered at the spot was fired from that pistol. There were parallel investigations by Diwan Chand (P.W. 25) and Pritam Singh (P.W. 26) regarding the cases registered in their respective Police Stations, Diwan Chand (P.W. 25) investigated the offence under s. 19(f) of the Arms Act, while Pritam Singh (P.W. 26) proceeded with the investigation of the offence of murder and robbery. At this stage it may be mentioned that P.W. 25 examined during the course of the investigation of the complaint recorded in his police station, Labh Singh (P.W. 20), Ujagar Singh (P.W. 23), Resham Singh (P.W. 24), and another person Kashmir Singh who is not now examined in this case. P.W. 26, Pritam Singh, who investigated the case of murder, apparently did not examine these witnesses.

As a result of enquiries so made, charge-sheets were filed against the accused before the court of the 1st Class Magistrate of Muktsar by the respective Police Officers. The institution of the proceedings under s. 19(f) of the Arms Act was on January 30, 1956, whereas the committal proceedings relating to the offence under s. 302 of the Indian Penal Code etc., were begun by the examination of P.W. 1, Dr. M. L. Sethi, on December 3, 1955. The trial of the offence under s. 19(f) ended by the conviction of the accused on March 16, 1956, by which he was sentenced to undergo nine months' rigorous imprisonment. The commitment proceedings ended on April 3, 1956, though the first witness for the prosecution had been examined on

December 3, 1955. An appeal against the conviction under s. 19(f) of the Arms Act was pending before the Additional Sessions Judge of Ferozepore when the murder trial commenced. The learned Sessions Judge found the appellant guilty of the offence of murder and sentenced him to the extreme penalty of the law on August 1, 1956. In appeal to the High Court of Punjab, along with the Reference under s. 374 of the Code of Criminal Procedure, the death sentence was confirmed, with a slight modification regarding the sentence under the minor charges.

The appellant denied his guilt throughout and stated that the prosecution story was false, including the circumstances under which he was arrested and produced at the Police Station of Jalalabad. His statement was that he was arrested by the Police at the house of his maternal uncle in connection with some other murder case and was sent to the Judicial Lock-up at Ferozepore after being detained at Jalalabad for 3 or 4 days.

As stated already, since special leave is limited to the question adverted to at the beginning of this judgment, the credibility or otherwise of the witnesses examined on behalf of the prosecution cannot be gone into at this stage, for the reason that under Article 136 of the Constitution, ordinarily this court will not entertain an appeal on facts. At the time of granting leave there was a direction that the statements of witnesses examined under s. 161 by the Sub-Inspector of Police of Jalalabad should be called for and made available at the time of the hearing and this has been complied with by copies of such statements having been placed before us, and what we have to decide is whether, granting that these statements were not made available to the defence at the time of the hearing in the Sessions Court when these witnesses

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were called by the prosecution, there has been an infraction of any rule of law and procedure and even if that is so, whether any prejudice has been caused to the accused which cannot be cured by s. 537 of the Code of Criminal Procedure.

According to the learned counsel for the appellant, P.Ws. 19, 20, 23 and 24 were, to use a common expression, 'stock witnesses' put up by the prosecution to speak to facts and circumstances which they did not actually witness but were merely persons who would be made to depose whatever the police wanted to be put on record. Such being the case, if the statements recorded by the Sub-Inspector of Police of Jalalabad regarding the confession to the Panchayat and the circumstances under which the accused was apprehended were available to the defence, cross-examination would have elicited discrepancies which would brand them as untrustworthy. It does not appear that any application whatever was made on behalf of the appellant during the Sessions trial for the supply of copies of the statements of the witnesses recorded in the Arms Act case, although the records of that case must have been before the court at the time of the trial, since the Sessions Judge disposed of the appeal against the conviction in the Arms Act case simultaneously with convicting the appellant of the offence of murder, i.e. both were disposed of on August 1, 1956, by the same Sessions Judge. From the judgment of the 1st Class Magistrate which is on the record before us it is seen that P.W. 19 and P.W. 24 (Gian Chand and Resham Singh) were examined before him, but there is nothing to show that P.W. 20 (Labh Singh) and P.W. 23 (Ujagar Singh) were so examined in that case. Before the Committing Magistrate in addition to P.Ws. 19 and 24, Labh Singh was a witness, while Ujagar Singh was tendered for cross-examination. It was the same Magistrate Sri I. P. Anand

(Ist Class Magistrate, Muktsar) who convicted the appellant of the offence under the Arms Act on March 16, 1956, and who passed the order of committal on April 3, 1956, and as such it is clear that in the Committing Court the entire records of the investigation by the Sub-Inspector, Jalalabad were available at the time of the enquiry.

The argument of Mr. Sethi, counsel for the appellant, is that since the defence, according to him, was not aware of what P.W. s. 19, 20, 23, and 24 were to depose at the time the trial in the Sessions Court began, the principle that the accused must be made aware beforehand of the case which he has to meet, has been violated. There is no provision in the Code of Criminal Procedure that copies of statements recorded under s. 161 in a connected case should be made available to the defence though there is nothing prohibiting it and in the instant case it would have been better to have done so especially since the statements of these witnesses were not recorded by the Sub-Inspector of Muktsar apart from what they had stated before the Sub-Inspector of Jalalabad, copies of which could have been given to the defence. The Judicial Committee in '*Pulukuri Kotayya and Others* v. *King Emperor*' (1), has laid down that if a trial is conducted substantially in the manner prescribed by the Code of Criminal Procedure but some irregularity occurred in the course of such conduct, the irregularity can be cured under s. 537 of the Code, and nonetheless so because the irregularity involves a breach of one of the very comprehensive provisions of the Code. Such being the case, where it was established that the statements of witnesses recorded by a police officer during the course of the investigation were made available only at a late stage of the trial, no prejudice was caused to the accused even

(1) I.L.R. 1948 Mad. 1.

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though the defence did not get them earlier. Their Lordships referred to two earlier cases, namely 'Baliram v. King Emperor' (1), and 'Emperor v. Bansidhar' (2) where the respective courts had refused to supply to the accused copies of statements made by witnesses to the police and had held that such a breach of the proviso to s. 162 was a matter of gravity. In the circumstances of the case before the Judicial Committee it was held that no prejudice had been caused to the defence by the late supply of the notes of examination of the witnesses by the police officer. This court in case 'Willie (William) Slaney v. The State of Madhya Pradesh' (3), elaborately discussed the question of the applicability of s. 537 and came to the conclusion that in judging a question of prejudice, as of guilt, courts must act with a broad vision and look to the substance and not to technicalities, and their main concern should be to see whether the accused had a fair trial, whether he knew what he was being tried for, whether the main facts sought to be established against him were explained to him fairly and clearly and whether he was given a full and fair chance to defend himself. The discussions are at pp. 1153, 1183 and 1189 and need not be reiterated here. We can have no doubt whatever that in the circumstances of this case the accused had a fair trial. Having perused the statements given to the police officer in the Arms Act case, we are not able to find any serious discrepancies between those statements and what had been deposed to at the present trial. But Mr. Sethi compared the statements of the witnesses with each other and brought to our notice that some of the later ones were verbatim repetitions of what the earlier witnesses had stated and that being the case he contends that he could have cross-examined the

(1) I.L.R. (1945) Nag. 151
(2) I.L.R. (1930) 53 All. 458.
(3) (1955) 2 S.C.R. 1140

four witnesses above-named and elicited the fact that they were adherents of the police. There is no special rule or direction provided in the Code of Criminal Procedure affording guidance for police officers in recording statements of witnesses and usually what is done is that when a succeeding witness gives practically an identical story as to what a previous witness has stated, it is a matter of common knowledge that the words used by the police officer would be similiar or identical.

The fact that the cross-examining counsel in the Sessions case did not have in his hands the copies of the statements of the witnesses in the connected Arms Act case, would not have made any difference. It is seen from the record that the committal proceedings which began on December 3, 1955, ended only in April, 1956, while in the Arms Act case which began on January 31, 1956, the judgment was delivered on March 16, 1956, and both proceedings were before the same Magistrate. We have no doubt, therefore, that the statements of witnesses recorded by the Sub-Inspector of Jalalabad were before the court when the Sessions trial was going on and if a request had been made, there is no doubt whatever that copies would have been given to the accused. After the completion of the hearing of this appeal, we called for the entire records of the proceedings from the Sessions Judge and satisfied ourselves that the records in the Arms Act case were before the Sessions Court when the murder trial was in progress. If the accused's counsel wanted copies of them, he would have got them and hence we feel that no prejudice has been caused at all.

It is the contention of the learned counsel for the appellant that even without an express request the court should give the copies before the trial

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began and for this purpose various provisions of the Code, as amended, were brought to our notice; we may refer to them without any elaboration. Sub-clause (3) of s. 161 is to the effect that a police officer making an investigation under Chapter XIV which relates to information to the police and their powers to investigate, may reduce into writing any statement made to him in the course of the examination under that section and if he does so, he shall make a separate record of the statements of each of such persons whose statements he records. This subsection inserted by the Code of Criminal Procedure (Amendment) Act, (II of 1945), has not undergone any change in 1955 but s. 162 has undergone considerable changes. Whereas there were two provisos in the unamended section, the Act as it now stands, contains only one proviso to subsection (1). In short, the essential change is that at present, according to the proviso it is open to the prosecution with the permission of the court to use such a statement in order to contradict a witness in the manner provided by s. 145 of the Evidence Act though before the amendment, the prosecution could not make use of any such statement to contradict a witness but could only use any part of the statement other than that used by the defence to contradict a witness, for explaining any matter referred to in cross-examination at the time of re-examination.

There is also the fact that before the amendment the accused had to request the court to refer to the statements made to the police officer and furnish him with a copy thereof in order that the same may be used for contradicting the witness, but as it now stands, no such request is necessary because there is, as will be shown later, a provision to the effect that copies should be given earlier. Section 173 relates to the report of the police officer and subsection (4) is practically a new

provision. There is also a new subsection (5) added. Subsection (4) is to the following effect:

> "After forwarding a report under this section, the officer in charge of the police station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under subsection (1) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any, recorded under section 164 and the statements recorded under subsection (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses."

It is clear from this new subsection that when the police officer after completing the investigation sends his report to the Magistrate, copies of the statements and documents referred to should be furnished to the accused. The object of this provision is to put the accused on notice of what he has to meet at the time of the inquiry or trial. The unamended subsection (4) had only laid down that a copy of the report forwarded to the Magistrate shall, on application, be furnished to the accused before the commencement of the inquiry or trial. There was no compulsion to furnish him with copies of the statements, documents etc.

We may now refer to the new provision inserted in the Code as s. 207-A relating to the procedure to be adopted in proceedings instituted on police report relating to enquiry into a case triable by a court of Session. Sub-clauses (3) and (4) are as follows:

> "(3) At the commencement of the inquiry, the Magistrate shall, when the accused

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appears or is brought before him, satisfy himself that the documents referred to in section 173 have been furnished to the accused and if he finds that the accused has not been furnished with such documents or any of them, he shall cause the same to be so furnished."

"(4) The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution he may take such evidence also."

Subsection (4) makes a radical change in the manner of recording evidence in the Committing Court, for it lays down that only witnesses to the actual commission of the offence, as may be produced by the prosecution, need be examined by a Committing Magistrate. Other witnesses, who support the prosecution story in diverse particulars, need not be examined by the Committing Court. Subsection (4) of s. 173, read with subsection (3) of s. 207A makes ample provision for the defence to be in possession of all the statements and documents before the inquiry begins, but nowhere is it stated either in s. 173(4) or s. 207A(3) that the statements in connected cases should be supplied to the accused. In this connection we may also refer to s. 251(A) inserted in Chapter XXI, relating to the trial of Warrant Cases by Magistrates. Subsection (1) of s. 251(A) corresponds to s. 207A(3). Even here there is no reference to the statements in connected cases.

In Chapter XXIII relating to trials before High Courts and courts of Sessions from s. 286 onwards, the procedure is laid down for the trial to close of cases for prosecution and defence. Nowhere is there in this Chapter any direction, or rule to the effect that in a Sessions trial the defence is to be supplied with copies of statements taken under s. 161. The reason, in our opinion, is that such statements should have been given under s. 207-A in the initial stage of the inquiry before the Committing Court. Therefore, we cannot say that there has been any non-observance of a mandatory rule guiding the conduct of the trial in the Sessions Court; but the contention is that since the initiation of the prosecution is before the committal court, the non-compliance of s. 207-A would vitiate even the trial before the Sessions court. A close examination of this argument reveals its untenability. In the Code of Criminal Procedure Amendment Act (26 of 1955), s. 116 lays down the savings, where subsection (3) says among others that s. 207-A or s. 251-A of the principal Act as amended by that Act, shall not apply to or affect any inquiry or trial before a Magistrate in which the Magistrate has begun to record evidence prior to the date of such commencement and which is pending on that date and such inquiry or trial shall be continued and disposed of as if this Act has not been passed. As stated already, the first witness for the prosecution in the committal stage was examined on December 3, 1955, i.e., before the commencement of the Amending Act on January 1, 1956. The inquiry was pending in the committal court at the time the Act came into force. It was not possible to apply s. 207-A at a time when it was not on the statute book and, therefore, it is an impossibility to invoke that provision in the instant case but Mr. Sethi contends that sub-clause (a) of s. 116 does not refer to s. 174, subsection (4) and, therefore, there has been a violation. The

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short answer to this is that even this provision has not been made to have retrospective effect and the stage at which the report of the police to the Magistrate had to be sent had long ago passed. In these circumstances, we are of the opinion that no provisions of the amended Code relating to the supply of copies of statements recorded under s. 161(3) can apply to the present case. But in view of the fact that even if they are applicable, we are satisfied that there is no prejudice caused to the accused, as stated already, and we do not think it necessary to express any final opinion on this question.

On an examination of the records in this case and of the prosecution evidence in the Arms Act case, we feel satisfied that no prejudice has been caused to the accused by his not having been supplied with the statements of witnesses recorded by the police during the investigation of the Arms Act case, when the Sessions trial was going on and hence the appeal is dismissed.

CIVIL MISCELLANEOUS.

Before Bishan Narain, J.

GENL. SHIVDEV SINGH AND OTHERS,—*Petitioners.*

versus

BADAN SINGH,—*Respondent.*

Civil Miscellaneous No. 58 of 1956.

1957

April, 24th

Punjab Tenancy Act (XVI of 1887)—Sections 41, 43 and 45—Pepsu Tenancy and Agricultural Lands Act (President's Act No. 8 of 1953)—Section 7—Effect of—Whether impliedly repeals sections 41, 43 and 45 of Punjab Tenancy Act—Landlord—Whether can evict tenant under sections 43 and 45 of the 1887 Act, after the passing of 1953 Act—Procedure to be followed—Sub-clause (5) of section 45—Inquiry under—Whether permissible—Suit filed under section 45(3), failing for want of sufficient court-fee—