

CHAPTER 24

Sessions Cases

PART A.—COMMITMENT.

1. All cases punishable with death or in which a witness has accented a tender of pardon under section 337 of the Code of Criminal Procedure shall be committed to the Court of Sessions except the cases mentioned in sub-section (2B) of section 337, which have to be sent without any further inquiry to the Court of the Special Judge appointed under the Criminal Law Amendment Act. 1952. (XLVI of 1952). In view of the recent amendments of section 30 of the Code all cases relating to offences punishable with Imprisonment for life or with imprisonment for a term exceeding seven years should be committed to a Court of Sessions when the Magistrate cannot award adequate punishment.

What cases are committed to Sessions.

2. The District Magistrate should see that all cases triable by Magistrate with enhanced powers under section 30 are disposed of by such Magistrate including himself when he is so invested and that only those cases should be committed to the Court of Sessions which a section 30 Magistrate is not competent to try. Ordinarily a section 30 Magistrate should not try cases in which he takes action on his own knowledge or information or in which special grounds exist for rendering a committal desirable.

Cases which Section 80 Magistrate should not try.

3. (1) Section 207A, inserted in the Code by Act No. 26 of 1955, lays down a different procedure in inquiries Preparatory to commitment where the proceeding has been instituted on a police report. When the Magistrate receives the police report forwarded under section 173, he shall fix a date for the inquiry under section 207A which shall not ordinarily be later than fourteen days from the date of receipt of the report. If a later date is fixed, the Magistrate must

Inquiry in cases instituted on police report. Preliminary matters.

record his reasons for doing so. The officer conducting the prosecution can apply to the Magistrate at any time before this date for the issue of a process to compel the attendance of witness(es) to give evidence and/or produce any document or thing at the said inquiry. The Magistrate shall issue such process unless, for reasons to be recorded, he deems it unnecessary to do so.

Commencement of the inquiry. The Accused to be furnished with documents.

(ii) At the commencement of the inquiry, when the accused appears or is brought before the Magistrate, he shall satisfy himself that the accused has been furnished with the documents mentioned in section 173; if this has not been done, he shall, subject to the provisions of subsection (5) of that section, cause these documents to be furnished to the accused.

Not obligatory to examine other than the eye witnesses.

(iii) The Magistrate shall then proceed to examine the witnesses produced by the prosecution as witnesses to the actual commission of the offence. It is not obligatory to examine the other witnesses but if the Magistrate is of the opinion that it would be in the interest of justice to do so, he may examine any one or more of the prosecution witnesses. The parties have the usual rights of cross and re-examination of these witnesses. Section 207A does not anywhere provide for the examination of the witnesses for the defence during the inquiry preparatory to commitment though in proceedings instituted otherwise than on a police report, the evidence produced on behalf of the accused has also to be examined under section 208 of the Code.

Examination of evidence and accused etc. to decide whether charge should be framed.

(iv) After the prosecution evidence referred above has been taken the magistrate shall examine it and the documents mentioned in section 173. He should also examine the accused to enable him to explain any circumstances appearing in the evidence against him and give the parties an opportunity of being heard.

Order of discharge.

(v) If the Magistrate is of the opinion that such documents and evidence, etc., disclose no grounds for committing the accused for trial, he may discharge the accused after recording his reasons for this order,

unless the Magistrate is of the opinion that the person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly.

(vi) If after proceeding in the manner laid down in sub-para (iv) above the Magistrate is of the opinion that the accused should be committed for trial, he shall frame a charge under his hand, declaring with what offence the accused is charged. The charge shall then be read and explained to the accused and a copy thereof shall be given, free of cost, whether the accused asks for it or not.

Charge and copy to accused etc.

4. In all cases committed for trial by a Court of Session, the State should be entered as prosecutor, and the complainant as a witness. The charge should be framed with care, and in strict accordance with the provisions of section 221 of the Code of Criminal Procedure and should describe the offence with which the accused is charged as nearly as possible in the words of the law which creates that offence, so that the accused may have full knowledge of the offence charges against him. If it is intended to prove a previous conviction at the trial, such previous conviction should be set out in the charge in the manner described in Chapter I, of this Volume, "Practice in the Trial of Criminal Cases."

Heading and charge in Sessions Cases.

Note.—The word State will be rendered in the vernacular as "Sarkar".

5. (i) The names of complainants and other prosecution witnesses and in cases instituted otherwise than on a police report, also of the witnesses on behalf of the defence who have appeared before the committing Magistrate and whose attendance before the Court of Sessions or High Court is necessary shall be entered in a calendar which such Magistrate should prepare and shall be bound over to be in attendance when called upon at the trial.

Calendar of witnesses.

(ii) The Committing Magistrate shall call upon the accused to give, orally or in writing a list of the persons (if any) whom he wishes to be summoned on his trial.

List of defence witnesses.

Defence witnesses to be summoned by the Committing Magistrate.

(iii) After this list has been furnished by the accused, the Magistrate shall summon such of the witnesses included in the list as have not appeared before himself to appear before the Court to which the accused has been committed.

Provided that, where the accused has been committed to the High Court, the Magistrate may, in his discretion, leave such witnesses to be summoned by the Clerk of the State and such witnesses may be summoned accordingly.

Magistrate may refuse to summoned certain defence witnesses or call upon accused to deposit their expenses.

Provided, also, that if the Magistrate thinks that any witness is included in the list for the purpose of vexation or delay, or of defeating the ends of justice the Magistrate may require the accused to satisfy him that there are reasonable grounds for believing that the evidence of such witnesses is material, and if he is not so satisfied, may refuse to summon the witness (recording his reasons for such refusal), or may before summoning him require such sum to be deposited as such Magistrate thinks necessary to defray the expense of obtaining the attendance of the witness and all other proper expenses.

Production of witnesses not entered in the calendar.

(iv) The prosecution is entitled to have entered in the calendar the names of such witnesses only as have been examined by the Committing Magistrate. The prosecution is not debarred from producing other witnesses in the Court of Session but is not entitled to have process issued for the attendance of such witnesses.

Instructions for the recording of medical evidence.

6. The attention of Committing Magistrates is drawn to section 208(1) which enables them in cases instituted otherwise than on a police report to call for and examine any witnesses not examined by the prosecution or by the defence. If, on an examination of the police diaries, it appears to the Committing Magistrate that any material witness has not been cited by the prosecution nor examined by the defence, he should examine such witness and record his statement.

Duty of Committing Magistrate to call for other material witnesses.

7. Where a Magistrate decides under section 207A (4) or finds it necessary under section 208(1).

to record the medical evidence during commitment proceedings, he should observe the following instructions:—

- (i) The medical evidence should be recorded with care and precision in the English language when the Magistrate is acquainted with that language, and should be translated into the vernacular-and read over to the accused, in order that he may have an opportunity to cross-examine. Under section 509 of the Code of Criminal Procedure, the evidence of a medical witness duly taken by the Committing Magistrate can be tendered before the Court of Session without the witness being actually called. The medical witness should not therefore be ordinarily bound over to appear before the Court of Session. It should be noted that section 509 requires that the evidence should not only be taken but also attested in the presence of the accused. The Magistrate should, therefore, append a certificate in the following form:-

Medical evidence.

"Taken before me and signed by me in the presence of the accused.

(Signature of Magistrate.)"

- (ii) A Magistrate recording medical evidence should not content himself with merely taking down, in the presence of the accused, the statement of the Civil Surgeon or other Medical Officer as spontaneously made by that officer, but should, if necessary examine him further in view of the detailed instructions contained in Chapter 18 of this volume "Medico Legal Work," in which suitable questions to be put to medical officers in certain classes of cases are suggested.

Duty of Magistrate to examine medical witnesses thoroughly.

- (iii) In all cases in which the medical evidence is that the body of a person alleged to have been murdered reached the witness

Inquest reports.

in a state of decomposition, evidence of the condition of the body when first discovered should be recorded and formal proof obtained of the "inquest report" "*Surat hal*," where there is one. In almost all cases of homicide, it is desirable that the police officer who first viewed the body and prepared the "*Surat hal*" should be required to put in and prove that document.

Completion of record.

(iv) Further, Committing Magistrate must insist on the proper filing and placing on the record of all documents referred to, or which may be required for reference by medical witnesses, as, for example, correspondence between medical officers and the Police relating to the cause of death, the forwarding of the corps, its condition and so forth, as well as correspondence between Medical Officers and the Chemical Examiner and notes of *post-mortem* examinations. The Chemical Examiner should always be requested to return, if possible any article sent to him for examination which is likely to be required at the trial.

8. In proceedings instituted otherwise than on a police report the following points should be kept in mind while the evidence is being recorded.

Other material circumstances to be proved.

(i) Circumstances connected with the finding of the body, or of the property, or with the state of locality, or the department, etc., of the accused must be proved by the evidence of witnesses who saw what they describe; or by the police officer who conducted the investigation.

Identity of the body and Clothes, etc.

(ii) In case of homicide, evidence should be taken to identify the body of the person killed; to prove the custody of the body from the moment it is discovered to the time of its delivery to the Medical Officer for

post-mortem, examination, and to show that it has not been tampered with during its conveyance from the scene of death to the place of examination. Clothes and ornaments found on the body should similarly be identified by proper witnesses, and their removal from the body and custody, until produced in Court, proved in evidence.

- (iii) Similar care is often required in tracing the custody of poisonous substances, poisoned food, blood-stained clothes, etc. The evidence should never leave it doubtful as to what person or persons have had charge of such articles throughout the various stages of the inquiry, if such doubt can be cleared up. This is especially necessary in the cases of articles sent to the Chemical Examiner. The person who packs, seals and dispatches such articles should invariably be examined.
- (iv) Clothes, weapons; money, ornaments, poisonous substances, food and every article which forms a part of the circumstantial evidence should be produced in Court. and their connection with the case and identity should be proved by witnesses.
- (v) A great deal of evidence, such as is mentioned in the foregoing paragraphs is formal in character but it is necessary that such evidence should be forthcoming at the trial. A committing Magistrate is bound as a rule to record all material witnesses produced before him or those for whose attendance he has issued process under section 208 of the Criminal Procedure Code. Where the prosecutor does not examine before a Committing Magistrate a witness, whom he proposes to call at the trial, he should be required to state the nature of such evidence so as to indicate to the accused the case he has to meet and thus to obviate the necessity of an adjournment in the Court of Session. Attention

Custody of other articles to be proved.

Every article re circumstantial evidence should be produced.

Completion of record. Supplementary witnesses. Evidence produced to be called at the trial but not produced before Committing Magistrate.

is invited to the provisions of section 219 of the Criminal Procedure Code which enables- a Committing Magistrate to examine supplementary witnesses even after the order of commitment, If he summons and examines any such supplementary witnesses, he should bind them to appear and give evidence at the trial and also furnish a copy of their statements free of costs to the accused at his or their request.

Plans. (vi) In Cases in, which a plan is necessary, and has been prepared by or under the directions of the Police, its correctness should be proved by the person who prepared it, and it should be marked and recorded as an exhibit.

Plans. 9. (i) In all cases where a plan of the locality is material such a plan, should be sent up with the record of commitment. The Inspector-General of Police has been requested to direct his subordinates to have such plans prepared, but it must be remembered that plans as well as Police reports are not evidence until they have been sworn to in Court by the persons who prepared them or who of their personal knowledge can depose to their correctness.

Plans. (ii) In all cases where the decision turns upon topography, or the position and construction of a dwelling, a plan, drawn to scale, and proved as accurately representing the place or dwelling indicated, should be filed with the proceedings.

Plans. (iii) In cases instituted on police report the costs of preparing all such plans shall be borne by the Police (Punjab Government, (Home), circular letter No. 9299-J-55/3688, dated the 24th January, 1956).

Police responsible for proper custody and production of all material articles.

10. Magistrate should impress on Police officials that such officials are responsible for the proper custody and production at the trial of all such articles and substances as are mentioned above from the time of their first discovery until the close of the trial,

whether or not they have been sent to the Chemical Examiner for report.

11. All exhibits should be marked with a letter or number. Articles which are produced in evidence should have a label attached to them bearing a number, and that number should be quoted throughout the record whenever any such article is referred to and should be distinctly marked as "admitted or not admitted". If the exhibits have already been assigned numbers by the Police, that series of numbers should be retained, as exhibits are sometimes referred to in Police diaries by numbers, and if a new set of numbers is made by the Committing Magistrate confusion will arise.

Exhibits,
Articles to bear
numbers.

The Committing Magistrate should see that all articles to be produced at the trial in the Court of Session are carefully packed and sealed and should have them placed in the custody of the Court Inspector or other proper officer, who should himself produce them at the trial in the state in which he has received them. All exhibits in the nature of documents including photographs and *bahis* proved in evidence, should be marked with a letter and placed on the record & list of all exhibits should be prepared and placed on, the record. Where a weapon is used in the commission of an offence, it should be labeled, packed, sealed, and placed in proper custody, and a rough sketch -of it should be drawn and its measurement and weight recorded thereon, and the sketch should be marked as *a* exhibit and placed on the record after being duly proved. The Magistrate should add his signature and the date to the mark placed on each exhibit.

Packing and
making over of
articles to Court
Inspectors. Sketch
of weapons.

A printed label should be affixed or attached to each exhibit. It should contain the following particulars:—

Printed labels
for exhibits.

Number of exhibit _____
Produced by _____
Admitted (Signature of Magistrate).
Date _____
Case _____

Description of exhibit

The Committing Magistrate should see that these entries are properly made.

Statements liable to be transferred to the Sessions

All depositions or statements which are ordinarily liable to be transferred to the record of the Court of Session should be recorded on separate sheets of paper of foolscap size. Every deposition and statement should bear the date on which it is recorded and should be signed by the Magistrate.

List of defence witnesses. Right of accused to produce witnesses not mentioned in the list.

12. As soon as a charge has been framed, the accused shall be required at once to give in, orally or in writing a list of the persons whom he wishes to be summoned to give evidence on his trial, and the Magistrate may allow the accused to give in a further list of witness subsequently. The accused is entitled to examine at the trial witnesses other than those mentioned by him in these lists but he is not entitled to the process of the Court for the attendance of such witnesses.

Calendar.

13. The form of calendar as prescribed (*see* Form No. 143 in Part B-III, Rules and Orders, Volume VI, Part B) is printed at the end of these instructions and should be used after necessary modifications. It has been filled in as if the proceedings had been instituted otherwise than on a police report. The entries would be very much simpler for proceedings instituted under section 207A on a police report.

Reasons for commitment to be recorded.

14. The reasons for commitment required by the Code of Criminal Procedure should be written on a separate sheet or sheets of paper and attached to the calendar. In the case of commitments made by Magistrates who are not acquainted with English the calendar should be written in the vernacular of the Court and so submitted. The Committing Magistrate is responsible for seeing that the calendar is correctly prepared.

Marshalling of evidence by Committing Magistrate.

15. In preparing the "Reasons for Commitment" the Committing Magistrate should give a concise but intelligent statement of the facts and should marshal

the evidence in the order in which it should come under judicial consideration. In cases instituted on police report there would normally be only the direct evidence of the perpetration of the crime and the circumstantial evidence for the Committing Magistrate to deal with but in other case the marshalling of the evidence may be in the following order:

- (a) the medical evidence, if any;
- (b) the evidence as to the identity of the body or property and the direct evidence of the perpetration of the crime;
- (c) the evidence as to the discovery of the offender and his arrest;
- (d) the circumstantial and other evidence.

16. The witnesses should be numbered in the order in which they are marshalled; an official should be designated by his title and a female by words like 'Kumari' or 'Shrimati'. If there be more than one witness of the same name, the parentage of each should be given. If any of the witnesses are relatives of the accused, or connected with the deceased or the party in whose interest the Government prosecute this should be stated.

Numbering of witnesses and necessary particulars.

17 The Committing Magistrate as soon as he decides to commit a case, should inform the Session Judge, sending him a brief statement showing the section under which the accused is charged and the number of witnesses and giving his own estimate of the time likely to be required for the trial.

Committing Magistrates to send timely information to Sessions Judge of the case to be committed.

18 When a commitment is made, the Magistrate should notify the fact and transmit the following papers to the Court of Session:—

Papers and articles to be sent to the Sessions Court by the Committing Magistrate.

- (a) The record of the original enquiry, including the order of commitment made under section 207A (10) of section 213(1) of the Code of Criminal Procedure and a copy of the original charge framed under section 207A (7) of section 210 of the said Code.

- (b) The original charge framed under section 207 (A) or section 210 of the Code of Criminal Procedure.
- (c) The calendar as required by paragraph 13 of this Chapter.
- (d) The reasons for commitment prescribed by section 207A (10) or section 213 of the Code of Criminal Procedure and paragraph 14 of this Chapter, whether endorsed on the calendar or separately recorded.

Besides these, any weapon or other article of property necessary for production in evidence should be forthcoming at the trial.

19. Whenever a case in which a death sentence may be inflicted is not completed in a Committing Court and the records required by rule 18 despatched to the Sessions Court within three months from the date of the arrest of the accused, the Committing Magistrate should attach to the record an explanation, of the delay signed by himself.

(High Court letter No. 5844-R/XII D-2, dated 16th July, 1941.)

FORM OF CALENDAR

Form of Calendar (Paragraph 13)

CASE COMMITTED TO THE COURT OF THE SESSION OF AMRITSAR DIVISION BY A.B., MAGISTRATE OF THE
IST CLASS ON THE IST DAY OF JULY, 1894

Prisoner's name, parentage, caste, residence and age	Offence charged with law, applicable and date of commission	Date of apprehension	Whether in prison or on bail	Witnesses for prosecution with a brief indication of the nature of evidence shown against name of each	Material evidence i.e., weapon, clothes, etc.	Documentary evidence	Witnesses for defence
1	2	3	4	5	6	7	8
<p>I. Sona Singh, son of Rodu, caste Rajput, residence Aliwal, Amritsar District, age 42</p> <p>II.- Aja Singh, son of Lehna Singh, Caste Jat, residence Tung, Amritsar District, age 40</p> <p>III.- Bulaki, son of Gulaba, Caste Jutlea, residence Aliwal of Amritsar District, age 30</p>	<p>Against I and II</p> <p>Murder of Nika Singh on 25th June, 1894, Section 302, Indian Penal Code</p> <p>Against III.</p> <p>Furnishing false information to a public servant on 25th June, section 177, Indian Penal Code</p>	<p>I-</p> <p>25th June</p> <p>II and III- 26th June</p>	<p>I and II-</p> <p>In prison</p> <p>III-</p> <p>On bail</p>	<p>1. Dr.A.B., Civil Surgeon- to cause of death</p> <p>2. Devi Ditta, son of deceased- eye-witness of murder; identifies body</p> <p>3. Partap Singh to finding of ear-ring, and finding and identify of bloody knife, and identity of body</p> <p>4. Gurbaksh</p> <p>5. Gulab, son of Muhammada</p> <p>6. Bahadur</p> <p>7. Dial Singh</p> <p>8. Ahmad Baksh, Constable</p>	<p>Bloody knife, ear-ring bloody garment</p>	<p>...</p>	<p>Fact</p> <p>Prisoners</p> <p>I and II</p> <p>Sheo Bhagat; Ganga Pershad, Devi Din</p> <p>Character, Budh Singh</p> <p>Muhamda</p>

