Supreme Court of India
Gurbachan Singh vs State Of Punjab on 24 April, 1957
Equivalent citations: AIR 1957 SC 623, 1957 CriLJ 1009, (1957) 35 MysLJ SC
Author: G Menon
Bench: Jagannadhadas, Imam, G Menon
JUDGMENT Govinda Menon, J.

1. 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 19th November 1956, in the petition for special leave to appeal from the judgment and order dated 26th September 1956, of the Punjab High Court in Criminal Appeal No. 407 of 1956. As a result, this appeal now comes up for final disposal.

2. On 12th December 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 12th September 1955, riding the mare which had been lent to the deceased that day. At about 5 p.m., on 14th September 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, where upon 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 Section 19(f) of the Arms Act at 8-30 p.m. on 14th September 1956. Information was given to the Sub-Inspector of Muktsar on 15th September regarding the

arrest of the accused who had 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 Section 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.

3. As 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 Section 19 (f) of the Arms Act was on 30th January 1956, whereas the committal proceedings relating to the offence under Section 302 of the Indian Penal Code etc., were begun by the examination of P. W. 1, Dr. M. L. Sethi, on 3rd December 1955. The trial of the offence under Section 19 (f) ended by the conviction of the accused on 16th March 1956, by which he was sentenced to undergo nine months' rigorous imprisonment. The commitment proceedings ended on 3rd April 1956, though the first witness for the prosecution had been examined on 3rd December 1955. An appeal against the conviction under Section 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 1st August 1956. In appeal to the High Court of Punjab, along with the Reference under Section 374 of the Code of Criminal Procedure, the death sentence was confirmed, with a slight modification regarding the sentence under the minor charges.

4. 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.

5. 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 Section 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 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 Section 537 of the Code of Criminal Procedure.

6. 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 the 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 1-8-1956, 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 Ujjagar Singh was tendered for cross-examination. It wag the same Magistrate Sri I. P. Anand, 1st Class Magistrate, (Muktsar) who convicted the appellant of the offence under the Arms Act on 16-3-1956, and who passed the order of committal on 3-4-1956, 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.

7. The argument of Mr. Sethi, counsel for the appellant, is that since the defence, according to him, was not aware of what P. Ws. 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 Section 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 v. Emperor I L R (1948) Mad 1 : (A I R 1947 P C 67) (A) 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 Section 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 though the defence did not get them earlier. Their Lordships referred to two earlier cases, namely 'Baliram v. Emperor' ILR (1945) Nag 151 : (A I R 1945 Nag 1) (B) and 'Emperor v. Bansidhar' 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 Section 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 elaborately discussed the question of the applicability of Section 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 dearly and whether he was given a full and fair chance to defend himself. The discussions are at pp. 1153, 1183 and 1189 (of S C R): (at pp. 122, 134-135 and 137 of A I R) 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 verbatim repetitions of what the earlier witnesses had stated and that being the case he contends that he could have cross-examined the 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 similar or identical.

8. 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 3-12-1955, ended only in April, 1956, while in the Arms Act case which began on 31-1-1956, the judgment was delivered on 16-3-1956, 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.

9. 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 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 Section 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 Sub-section inserted by the Code of Criminal Procedure [(Amendment) Act, (II of 1945), has not undergone any change in 1955 but Section 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 Sub-section (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 Section 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.

10. 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 Sub-section (4) is practically a, new provision. There is also a new Sub-section (5) added. Sub-section (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 Sub-section (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 Sub-section (3) of Section 161 of all the persons whom the prosecution proposes to examine as its witnesses."

It is clear from this new sub-section 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 Sub-section (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.

11. We may now refer to the new provision inserted in the Code as Section 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 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."

Sub-section (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. Sub-section (4) of Section 173, read with Sub-section (3) of Section 207A makes ample provision for the defence to be in possession of all the statements and documents before the inquiry begins, but no where is it stated either in Section 173 (4) or Section 207A (3) that the statements in connected cases should be supplied to the accused. In this connection we may also refer to Section 2-51 (A) inserted in chap. XXI, relating to the trial of Warrant Cases by Magistrates. Sub-section (1) of Section 251 (A) corresponds to Section 207A (3). Even here there is no reference to the statements in connected cases.

12. In chap. XXIII relating to trials before High Courts and Courts of Sessions from Section 286, onwards, the procedure is laid down for the trial to close of cases for prosecution and defence. No where 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 Section 161, The reason, in our opinion, is that such statements should have been given under Section 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 Section 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), Section 116 lays down the savings, where Sub-section (3) (Sub-clause (c)--Ed.) says among others that Section 207-A or Section 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 had not been passed. As stated already, the first witness for the prosecution in the committal stage was examined on 3rd December 1955, i.e., before the commencement of the Amending Act on 1st January 1956. The inquiry was pending in the committal Court at the time the Act came into force. It was not possible to apply Section 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 Section 116 does not refer to Section 174, Sub-section (4) and, therefore, there has been a violation. The 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 Section 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.

13. 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.