

APPELLATE CRIMINAL

Before Mr. Justice Devadoss.

KUPPU MUDALI AND SIX OTHERS (ACCUSED) PETITIONERS.*

1925,
April 17.

*Criminal Procedure Code (Act V of 1898)—Sec. 360 (1)—
Deposition must be read out to witness immediately after
recording—Practice of examining a number of witnesses and
afterwards reading out their depositions, illegal.*

The requirements of section 360(1) of the Code of Criminal Procedure (Act V of 1898) are not complied with unless the deposition of each witness is read out to him as soon as it is completed. To record the depositions of a number of witnesses and read them over to them at the same time afterwards, is not a proper compliance with the section and is illegal, the direction contained therein being mandatory.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the Judgment of R. H. COURTENAY, Sessions Judge of Salem in Criminal Appeals Nos. 68 and 69 of 1924, preferred against the Judgment of K. C. MANAVEDAN RAJA, Subdivisional First-class Magistrate of Sankari, in C.C. No. 28 of 1924.

The facts of the case are set out in the Judgment.

Dr. S. Swaminathan and A. V. K. Krishna Menon for
Petitioners.

Public Prosecutor for the Crown.

JUDGMENT.

This is an application to revise the order of the Sessions Judge of Salem. The point urged on behalf of the petitioners is that the depositions of witnesses were not read over to them as soon as their examination was over. In other words, the terms of section 360 of

* Criminal Revision Case No. 739 of 1924.

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the Criminal Procedure Code were not complied with. Report was called for from the Magistrate who tried the case, and in his report he says :

“ In cases where the depositions are long and would take a considerable time of the Court if they were then and there read over and interpreted to the witnesses, what is done is to keep all the witnesses aside as soon as each of them is examined so as not to give them an opportunity to mingle with those that are not examined and the place so allotted is within the view of the accused and their pleader. The depositions of these witnesses are read over and interpreted to them after the work in connection with the case for the day is over. ”

This practice, though it may facilitate the work of the Court, is not one which is sanctioned by section 360 (1) of the Criminal Procedure Code. Clause 1 of section 360 reads thus :

“ As the evidence of each witness taken under section 356 or 357 is completed, it shall be read over to him in the presence of the accused, if in attendance, or of his pleader if he appears by pleader, and shall if necessary be corrected. ”

The direction here is mandatory and not directory. As each witness' evidence is completed, it should be read over to him in the presence of the accused or his pleader. It is not proper for the Magistrate to examine a number of witnesses and ask them to be in a room and then have the depositions read over to them. The learned Public Prosecutor contends that this is only an irregularity and not an illegality and that it is not shown that the accused have been prejudiced by such a procedure being adopted. This is not merely an irregularity. I hold it as an illegality for, the terms of the section being mandatory, any violation or departure from the practice or procedure enjoined upon the Court is not merely an irregularity but an illegality. By having recourse to this practice, the witness whose evidence was taken, say at 11 o'clock, or who closed his evidence at 12 o'clock, and whose

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evidence is being read over to him at 5 o'clock after the day's work is over, might be able to improve upon his evidence and try to get his evidence altered. It is not also fair to an honest witness not to have his deposition read over soon after he made it, for, if the Magistrate has incorrectly recorded the deposition and if it is read over to the witness some hours after, the question would arise whether the witness is correct in his statement that he did not make such a statement but some other statement and whether the correction should be accepted or not. It is, I think, fair both to the witness, as well as to the Magistrate who takes down the deposition as well as to the accused to have the deposition read over as soon as the examination of the witness is over. It would avoid any conflict between the recollection of the accused's pleader, the recollection of the prosecuting counsel and the recollection of the Court as well as the recollection of the witness. Seeing there are four different persons to be considered in this connection, I think the provision of section 360 (1) is not only a salutary provision but is a provision intended for furtherance of justice. That being so, the procedure adopted by the Magistrate is an illegal procedure and I have no other course but that of setting aside the conviction, and directing the Magistrate to retry the case.

D.A.R.