

## APPELLATE CRIMINAL.

*Before Mr. Justice Reilly.*

1928,  
September  
20.

RAMALINGA ODAYAR (ACCUSED), PETITIONER.\*

*Code of Criminal Procedure (V of 1898), sec. 231—Right of accused under to recall prosecution witnesses, after alteration of charge, such alteration not affecting his defence—if section applicable to cases under sec. 228.*

Under section 231 of the Code of Criminal Procedure, the accused has a right to recall prosecution witnesses after the alteration of the charge, even if such alteration does not affect his defence; and that section applies to cases falling under section 228 of the Code.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Additional District Magistrate of Tanjore, dated 26th May 1928, in Calendar Case No. 10 of 1928.

*V. L. Ethiraj, K. S. Desikan and M. Ranganatha Sastri for petitioner.*

*Public Prosecutor for the Crown.*

## JUDGMENT.

I do not agree with the Additional District Magistrate that the provisions of section 231 of the Code of Criminal Procedure are inapplicable to cases to which section 228 applies. Under section 231 of the Code of Criminal Procedure, the accused had the right to recall prosecution witnesses after the alteration of the charge, even if that alteration could not affect his defence, as the Magistrate supposes, and the Magistrate had no discretion in the matter. The witnesses whom the accused wishes to recall will be recalled.

B.C.S.

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\* Criminal Revision Case No. 471 of 1928.