

APPELLATE CRIMINAL.

Before Mr. Justice Darwood.

SULAIMAN MOHAMED BHOLAT

v.

KING-EMPEROR.*

1928

Aug. 6.

Criminal Procedure Code (Act V of 1898), s. 162—Witnesses' statements to the police— Record of statements in police diaries— Right of accused to obtain copies of such statements.

If a police officer records statements of witnesses in his diary or inserts them in his diary from original notes which he destroys, the accused is entitled to ask the Court to refer to them and, subject to the proviso of s. 162 of the Criminal Procedure Code, he is entitled to copies of the statements for the purpose of contradicting such prosecution witnesses.

McDonnell for the appellant.

Tun Byu (Assistant Government Advocate) for the Crown.

DARWOOD, J.—The facts of this case have been set out at length in the judgment of the learned District Magistrate and are not really in dispute save in one respect. It is alleged by the prosecution that the appellant was the person who used a knife upon the complainant. This allegation is strenuously denied. The appellant has produced evidence to prove that at the time the fracas began in the complainant's flat he was in his shop which is below the flat. The case really resolves itself into a question of the credibility of evidence.

Before deciding this, it is necessary to consider a point raised by Mr. McDonnell for the appellant. He states, correctly, that he asked the District Magistrate to be allowed to have copies of the statements made:

* Criminal Appeal No. 696 of 1928 against the order of the District Magistrate of Rangoon in Criminal Regular Trial No. 63 of 1928.

by some of the witnesses to the Police, in order to cross-examine them on those statements. It appears from the evidence of the investigating officer that he took down notes of what each witness knew and saw. From these notes he compiled his diary and then he thinks he destroyed the notes. This, he says, is the standing practice. If this is true, it looks very much as if the practice were a deliberate attempt to defeat the provisions of section 162, Criminal Procedure Code, and to deprive the accused of the very valuable right to be supplied with a copy of such statements in order to contradict the witnesses in the manner provided by section 145, Evidence Act. The learned District Magistrate refused Mr. McDonnell's request on the ground that he could not claim to see the case diaries. It is quite true that the accused is not entitled to see the police diaries, but his counsel's request was not to see the diaries but for copies of the statements of the witnesses, and in my opinion he was entitled to have these copies in spite of the fact that the statements were recorded in a police diary. Section 162, Criminal Procedure Code, says that no "such statement or any record thereof, *whether in a police diary or otherwise* or any part of such statement or record be used for any purpose (save as hereinafter provided) at any inquiry or trial"

Under the proviso when any witness is called for the prosecution in any such enquiry or trial, whose statement has been reduced into writing as aforesaid, the Court shall on the request of the accused refer to such writing and direct that the accused be furnished with a copy thereof, for the purpose of contradicting the witness.

It is clear from the language of the section that when the statement of a prosecution witness has been reduced into writing, whether in a police diary or

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otherwise, the accused is entitled to ask the Court to refer to it and to be furnished with a copy of it.

The learned District Magistrate was therefore wrong in refusing to allow the accused to have copies of the statements he required. What effect this refusal has had upon the trial cannot be gauged unless this Court examines the police diaries and also examines the investigating officer to make sure whether he has actually destroyed the original statements. If he has, and his evidence certainly indicates this or he would have been in possession of the original statements, his procedure cannot be too strongly condemned. It is obviously not in the interests of public justice that police officers who are charged with the duty of investigating crimes should be in a position to take the statements of witnesses, extract as much as they think is relevant or important for entry in their diaries and then destroy the original statement. If such a practice as the investigating officer speaks of really exists it should be stopped at once. It is illegal in so far as it deprives the accused of an important right and it may result in the destruction of valuable evidence in favour of an accused person.

I have been asked by the Assistant Government Advocate to adopt the procedure which was followed in the case of *Dadan Gazi v. Emperor* (1) and to satisfy myself whether there is anything in the statements of the prosecution witnesses recorded by the investigating officer, which would justify their being cross-examined on those statements.

That case was decided before section 164, Criminal Procedure Code was amended by Act XVIII of 1923 and under the then existing law it was only if the Court deemed it expedient in the interests of justice.

that it directed the accused to be furnished with a copy of the statements referred to.

Under the present law the Court is bound to refer to such a statement at the request of the accused and is bound to furnish him with a copy thereof provided that, if the Court is of opinion that any part of such statement is not relevant to the subject matter of the enquiry or trial, or that its disclosure to the accused is not essential in the interests of justice, it shall record such opinion and shall exclude such part from the copy of the statement furnished to the accused. The conditions therefore are not the same as they were when *Dadan Gazi's* case was decided.

In my view the appellant had an unquestionable right to test the credibility of the prosecution witnesses by reference to their statements to the police. It is impossib'le to say how far he has been prejudiced by being deprived of that right.

I therefore direct that appellant or his counsel be furnished with copies of the statements recorded by the police, which were asked for at the trial. As soon as these have been furnished, appellant's counsel will inform this Court whether or not he wishes to cross-examine the witnesses on them.

[Counsel did not cross-examine the witnesses. His Lordship upheld the conviction under section 324 of the Indian Penal Code, but altered the sentence of imprisonment into one of fine.]

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