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be applied in India is where the requirements of 53A are satisfied. Quite clearly, s. 53A does not apply to the facts of the present case. It must therefore be held that the considerations of equity cannot confer on Nagayya or his heirs any title in the lands which under the statute could be conferred only by a registered instrument.

Our conclusion therefore is that the High Court was right in holding that Nagayya or his heirs had acquired no right in the property. The appeal is accordingly dismissed. In the circumstances of the case, we make no order as to costs.

Appeal dismissed.

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May 10]

KIRPAL SINGH

v.

STATE OF U.P.

(B. P. SINHA C. J., J. C. SHAH & N. RAJAGOPALA AYYANGAR JJ.)

Criminal Law—Committal proceedings—Powers and duties of the Magistrate—Desirability to examine all the witnesses to the actual commission of the offence—Code of Criminal Procedure, 1898 (Act 5 of 1898), as amended by Act 26 of 1955, ss. 173, 207A (4).

The appellant was convicted by the Sessions Judge of the offence of murder of K and sentenced to death, and the conviction and sentence were confirmed by the High Court. The committal proceedings disclosed that the Magistrate committed the accused to the Court of Session without recording the evidence of the witnesses to the actual commission of the offence.

Held that under s. 207A of the Code of Criminal Procedure, 1898, as amended by Act 26 of 1955, a Magistrate has

been given a discretion in the matter of examination of witnesses not produced by the prosecutor. The prosecutor is expected ordinarily to examine in the court of the committing Magistrate all witnesses to the actual commission of the offence, but if without adequate reasons he fails to do so, the Magistrate is justified and, in enquiries on charges of serious offences like murder, is under a duty to call witnesses who would throw light upon the prosecution case. A Magistrate failing to examine witnesses to the actual commission of the offence because they are not produced, without considering whether it is not necessary in the interests of justice to examine such witnesses, fails in the discharge of his duties.

The Megistrate must apply his mind to the documents referred to in s. 173 of the Code and the testimony of witnesses, if any, produced by the prosecutor and examined, and consider whether in the interests of justice it is necessary to record the evidence of other witnesses.

A Magistrate in committing a person accused of an offence for trial has to perform a judicial function which has a vital importance in the ultimate trial, and a slipshod or mechanical dealing with the proceeding must be deprecated.

Shriram Daya Ram v. *The State of Bombay*, [1961] 2 S.C.R. 890, considered.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 54 of 1963.

Appeal by special leave from the judgment and order dated September 13, 1962, of the Allahabad High Court in Criminal Appeal No. 877 of 1962 and Referred No. 79 of 1962.

O. P. Rana, for the appellant.

G. C. Mathur and *C. P. Lal*, for the respondent.

1963. May 10. The Judgment of the Court was delivered by

SHAH J.—The appellant Kirpal Singh and his two brothers Arjun Singh and Sarwan Singh, *Shah J*

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were tried by the Sessions Judge, Pillibhit for causing the death of one Karam Singh with gunshot injuries in the evening of March 26, 1961 at Village Shanti Nagar. The Sessions Judge acquitted Arjun Singh and Sarwan Singh and convicted the appellant Kirpal Singh of the offence charged against him and sentenced him to suffer the penalty of death subject to confirmation by the High Court. The High Court of Allahabad confirmed the order of conviction and sentence. With special leave, Kirpal Singh has appealed to this Court.

The case for the prosecution was as follows :

The appellant and his father-in-law Rakkha Singh were refugees from West Pakistan. A block of agriculturaltland, allotted by the Government to Rakkha Singh and the appellant was partitioned but no boundary marks were erected on the line dividing the lands. In December 1960 there was a dispute between Rakkha Singh on the one hand and the appellant and his brothers on the other about the harvesting of sugarcane planted in the land. This dispute was settled on the intervention of one Sardar Ajit Singh, and Rakkha Singh agreed to give seven hundred maunds of sugarcane to the appellant and his brothers. The appellant and his brothers went to the house of Rakkha Singh on March 22, 1961 and complained that they were not given four hundred maunds of sugarcane out of the seven hundred maunds promised to them. There was a quarrel on that occasion between Karam Singh—eldest son of Rakkha Singh—and the appellant, the former saying that the appellant and his brothers were 'behaving like dishonest persons'. Rakkha Singh intervened and nothing untoward happened on that occasion. On March 26, 1961 at about 6 p.m. when Rakkha Singh and his two sons Karam Singh and Manjit Singh and their neighbour Sardar Anokh Singh were sitting in a thatched hut, the appellant

armed with a gun, and his two brothers armed with *lathis* arrived near the hut, and the appellant shouted to Karam Singh asking him to come out of the hut. On Karam Singh's emerging from the hut the appellant told him that since he (Karam Singh) "did not settle the dispute regarding the sugarcane he would settle his account just then", and opened fire causing injuries to Karam Singh on the chest which resulted in death instantaneously. On hearing the report of gun fire Rakkha Singh, his son Manjit Singh and Sardar Anokh Singh came out of the thatched hut. Manjit Singh tried to catch hold of the appellant and his brothers but without success. Rakkha Singh then went to the police station Puranpur and lodged the first information at 7-45 a.m. At the trial of the appellant and his brothers before the Court of Session, Manjit Singh, Anokh Singh and Rakkha Singh were examined as persons who were present at the scene of offence and witnessed the assault on Karam Singh. Manjit Singh and Anokh Singh however did not support the prosecution case. They stated that at about 8 or 9 p.m. on March 26, 1961 when they were in their respective houses they heard report of gun fire and on coming out came to learn from some person that Karam Singh was fired upon by 'some Sardar who was wearing a mask'. The witnesses were cross-examined by the prosecutor with leave of the Court in the light of their statements recorded by the sub-inspector of police in the course of his investigation but they denied having made the statements that the appellant and his two brothers had come to Shanti Nagar at 6 p.m. on the day of occurrence and that the appellant had killed Karam Singh by causing him gunshot injuries. But Rakkha Singh supported the prosecution case. He spoke about the dispute about sugarcane, and also about the quarrel between Karam Singh and the appellant on March 22, 1961. He then stated that on March 26, 1961 at about 6 p.m. the appellant and his two brothers had

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come near his hut, that the appellant had called out Karam Singh and after shouting that as Karam Singh was not settling the matter of sugarcane they "were going to settle his matter" had fired a shot killing Karam Singh instantaneously. In cross-examination he stated that from the hut in which he was sitting he could not see the faces of the assailants but on hearing the report of gun fire he came out of the hut and saw the assailants running away, and that he was able to recognise them by "their gait and voice".

The learned Sessions Judge accepted the testimony of Rakkha Singh and, in so for as it inculpated the appellant, convicted him of the offence of causing the death of Karam Singh. He however held that the two brothers of the appellant were not proved to be guilty of the offence charged against them and acquitted them. The High Court of Allahabad agreed with the finding recorded by the Court of First Instance and confirmed the sentence of death passed against the appellant.

The conclusion recorded by the Court of First Instance and affirmed by the High Court is based upon appreciation of evidence and no question of law arises therefrom. Normally this Court does not proceed to review the evidence in appeals in criminal cases, unless the trial is vitiated by some illegality or irregularity of procedure or the trial is held in a manner violative of the rules of natural justice resulting in an unfair trial or unless the judgment under appeal has resulted in gross miscarriage of justice. Rakkha Singh deposed that he had been able to recognise the appellant from his "voice and gait". Rakkha Singh was the father-in-law of the appellant, and had during the last few days before the death of Karam Singh seen the appellant frequently. Only four days before the incident there was a quarrel between Karam Singh and the appellant about the

delivery of sugarcane crop and the appellant and his brothers had retired from the scene at the intervention of Rakkha Singh, greatly annoyed. It is true that the evidence about identification of a person by the timbre of his voice depending upon subtle variations in the overtones when the person recognising is not familiar with the person recognised may be somewhat risky in a criminal trial. But the appellant was intimately known to Rakkha Singh and for more than a fortnight before the date of the offence he had met the appellant on several occasions in connection with the dispute about the sugarcane crop. Rakkha Singh had heard the appellant and his brothers calling Karam Singh to come out of the hut and had also heard the appellant, as a prelude to the shooting referring to the dispute about sugarcane. In the examination, in-chief Rakkha Singh has deposed as if he had seen the actual assault by the appellant, but in cross-examination he stated that he had not seen the face of the assailant of Karam Singh. He asserted however that he was able to recognize the appellant and his two brothers from their 'gait and voice'. It cannot be said that identification of the assailant by Rakkha Singh, from what he heard and observed was so improbable that we would be justified in disagreeing with the opinion of the Court which saw the witness and formed its opinion as to his credibility and of the High Court which considered the evidence against the appellant and accepted the testimony.

Manjit Singh and Anokh Singh have tried to shield the appellant by deposing that the assault took place at about 9 p.m. and that they were informed that the assailant had put on a mask. Their statements recorded in the course of investigation were inconsistent with the tenor of their evidence in Court. It is true that there was some delay in lodging the first information, the offence took place according to Rakkha Singh at 6 p.m. on March 26, 1961 and

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information at the police station, Puranpur was lodged at 7.45 a.m. on March 27, 1961. The distance betbeen the police station and the village Shanti Nagar, as the crow flies, is about 15 miles but by the public transport system one has to take a long detour to reach Puranpur Police Station. Rakkha Singh says that to avoid delay and to secure the presence of a Police Officer he secured a jeep from Sampurna Nagar Union and proceeded to the police station and brought the sub-inspector of police to Shanti Nagar in the same jeep. We do not think, having regard to the circumstances, that there has been any such gross delay in lodging the first information as would justify us in throwing doubt on the truth of the story of Rakkha Singh. It appears that there are two police outposts near Shanti Negar—one at a distance of about two miles and another at a distance of five miles but the officer in charge of the police outposts had, it is conceded by counsel for the appellant, no authority to record a first information. Rakkha Singh desired to lodge a complaint about the commission of the offence of murder, he was not apprehensive of any violence at the hands of the appellant and his brothers, and if he did not contact the officer at the police outposts, who could not record his complaint, no fault can be found against him.

The post-mortem examination of the stomach contents of Karam Singh disclosed that there was 8 ozs. of half-digested food and that indicated that the death was caused some two hours after the last meal was taken by Karam Singh. Counsel for the appellant said that the condition of the stomach supported the version of Manjit Singh and Anokh Singh, but Rakkha Singh has deposed that Karam Singh had taken at about 4 p.m. tea and *pakadas*. That explains the presence of half-digested food in the stomach. The case for the prosecution undoubtedly depends for its support upon the testimony of a single witness, who did not claim to have identified

the assailant by seeing his face. But we do not think that is a circumstance which would justify us in departing from the rule normally followed by this Court. The offence was committed when there was sufficient day-light: the assailant was intimately known to Rakkha Singh and the witness had heard the appellant's voice speaking about the dispute which was pending between him and the appellant. We do not think that the circumstance that Rakkha Singh had not seen the face of the appellant when the latter was running away is a ground for discarding his testimony. The conviction of the appllant must therefore be confirmed. Sentence passed by the Trial Court is, in the circumstances of the case, the only appropriate sentence.

Before parting with the case, we think it necessary to observe that the committing Magistrate in this case erred in committing the accused to the Court of Session without recording the evidence of all the witnesses to the actual commission of the offence. Under the Code of Criminal Procedure as amended by Act 26 of 1955, the Magistrate holding committal proceedings is required 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 interest of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also: s. 207A (4). The Magistrate has in the enquiries relating to charges for serious offences like murder the power and indeed a duty in the interest of the accused, as well as in the larger interest of the public to record the evidence of other witnesses who throw light on the case. Examination of witnesses to the actual commission of the offence should in inquiries, for committal on charges for such serious offences, be the normal rule. The prosecutor is expected ordinarily to examine in the Court of the

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committing Magistrate all witnesses to the actual commission of the offence: if without adequate reasons he fails to do so, the Magistrate is justified and in enquiries on charges for serious offences is under a duty to call witnesses who would throw light upon the prosecution case. Before the Code was amended by Act 26 of 1955 it was necessary for the Magistrate holding the inquiry to record the evidence of all the important witnesses. With a view to shorten delays in the proceeding preliminary to bringing the accused to trial, the Legislature has by enacting s. 207A conferred a discretion upon the Magistrate in the matter of examination of witnesses not produced by the prosecutor. Exercise of that discretion must be judical: it is not to be governed by any set rules or standards, but must be adjusted in the light of circumstances of the case. The Magistrate is again not to be guided by the attitude of the prosecutor. He must of course consider the representation relating to the examination of witnesses by the prosecutor, but in considering whether it is necessary in the interest of justice to take evidence of any one or more of the other witnesses for the prosecution, he must have due regard to the nature and gravity of the offence, the interest of the accused and the larger interest of the public, and the defence if any disclosed by the accused. A Magistrate failing to examine witnesses to the actual commission of the offence because they are not produced, without considering whether it is necessary in the interest of justice to examine such witnesses, in our judgment, fails in the discharge of duties.

There is nothing in the decision of this Court in *Sriram* v. *The State of Bombay* (1), which may support the view that in the matter of examination of witnesses, especially in the inquiry relating to serious charges like murder and culpable homicide, the Magistrate is to be guided by the prosecutor. It is

(1) [1961] 2 S.C.R. 890.

the duty of the Magistrate to examine all such witnesses as may be produced by the prosecutor as witnesses to the actual commission of the offence alleged, but his duty does not end with such examination. He must apply his mind to the documents referred to in s. 173, and the testimony of witnesses, if any, produced by the prosecutor and examined, and consider whether in the interest of justice it is necessary to record the evidence of other witnesses. In inquiries relating to charges for serious offences like murder, normally the Magistrate should insist upon the examination of the principal witnesses to the actual commission of the offence. Failure to examine the witnesses may be justified only in exceptional cases. This is so because the Magistrate in committing a person accused of an offence for trial has to perform a judicial function which has a vital importance in the ultimate trial, and slipshod or mechanical dealing with the proceeding must be deprecated.

The appeal fails and is dismissed.

Appeal dismissed.