

RMM LAW COLLEGE SAHARSA

CODE OF CRIMINAL PROCEDURE

IIIrd Part

Paper -3

TOPIC- CHAPTER XVIII -TRIAL BEFORE A COURT OF SESSION

Lecture Notes by- **BINOD KUMAR JHA**

Date:- 16/05/2020

232. Acquittal –

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the judge shall record an order of acquittal.

Comments

Once a co-accused has been discharged or acquitted, he ceases to be a co-accused and there is no impediment to summon him as a witness. He can be a witness for the prosecution as well as for the defence; Sarbeswar Panda v. State of Orissa, (1997) 2 Crimes 534 (Ori).

233. Entering upon defence -

(1) Where the accused is not acquitted under section 232 he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof.

(2) If the accused puts in any written statement, the Judge shall file it with the record.

(3) If the accused applies for the issue of any process for compelling the attendance of any witness or the production of any document or thing, the Judge shall issue such process unless he considers, for reasons to be recorded, that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice.

234. Arguments –

When the examination of the witnesses (if any) for the defence is complete, the prosecutor shall sum up his case and the accused or his pleader shall be entitled to reply:

Provided that where any point of law is raised by the accused or his pleader, the prosecution may, with the permission of the Judge, make his submissions with regard to such point of law.

235. Judgment of acquittal or conviction -

(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360 hear the accused on the question of sentence, and then pass sentence on him according to law.

Comments

(i) By virtue of section 235 (2) conviction and sentence cannot be passed on the same day; *Matloob v. State (Delhi)*, (1997) 3 Crimes 98 (Del).

(ii) When accused has been sentenced to undergo life imprisonment it is held to be minimum sentence does not require to give opportunity of hearing; *State of Gujarat v. Gandabhai S/o. Govind Bhai*, 2000 Cr LJ 92 (Guj).

236. Previous conviction -

In a case where a previous conviction is charged under the provisions of sub-section (7) of section 211, and the accused does not admit that he has been previously convicted as alleged in the charge, the Judge may, after he has convicted the said accused under section 229 or section 235, take evidence in respect of the alleged previous conviction, and shall record a finding thereon:

Provided that no such charge shall be read out by the Judge nor shall the accused be asked to plead thereto nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under section 229 or section 235.

237. Procedure in cases instituted under section 199 (2) -

(1) A Court of Session taking cognizance of an offence under sub-section (2) of section 199 shall try the case in accordance with the procedure for the trial of warrant-cases instituted otherwise than on a police report before a Court of Magistrate: Provided that the person against whom the offence is alleged to have been committed shall, unless the Court of Session, for reasons to be recorded, otherwise directs, be examined as a witness for the prosecution.

(2) Every trial under this section shall be held in camera if either party thereto so desires or if the Court thinks fit so to do.

(3) If, in any such case, the Court discharges or acquits all or any of the accused and is of opinion that there was no reasonable cause for making the accusation against them or any of them, it may, by its order of discharge or acquittal, direct the person against whom the offence was alleged to have been committed (other than the President, Vice-President or the Governor of a State or the Administrator of a Union Territory) to show cause why he should not pay compensation to such accused or to each or any of such accused, when there are more than one.

(4) The Court shall record and consider any cause which may be shown by the person so directed, and if it is satisfied that there was no reasonable cause for making the accusation, it may, for reasons to be recorded, make an order that compensation to such amount not exceeding one thousand rupees, as it may determine, be paid by such person to the accused or to each or any of them.

(5) Compensation awarded under sub-section (4) shall be recovered as if it were a fine imposed by a Magistrate.

(6) No person who has been directed to pay compensation under sub-section (4) shall, by reason of such order, be exempted from any civil or criminal liability in respect of the complaint made under this section:

Provided that any amount paid to an accused person under this section shall be taken into account in awarding compensation to such person in any subsequent civil suit relating to the same matter.

(7) The person who has been ordered under sub-section (4) to pay compensation may appeal from the order, in so far as it relates to the payment of compensation, to the High Court.

(8) When an order for payment of compensation to an accused person is made, the compensation shall not be paid to him before the period allowed for the presentation of the appeal has elapsed or, if an appeal is presented, before the appeal has been decided.