

MOHANLAL SHAMJI SONI V UNION OF INDIA 1991 Supp (1) SCC 271: (AIR 1991 SC 1346)

KEY CONCEPTS	
Calling of witnesses by court	Judicial officer an umpire
Active role by judicial officer	

The appeal revolved around the fact that at the trial the judge in the Gujarat High Court had allowed witnesses to be recalled and new witnesses called after closure of the Union's case. The appellant argued that this enabled the prosecution to bolster up its case by filling up the lacuna and plugging the loopholes which would be detrimental and prejudicial to the appellant. The question, therefore, raised by the Supreme Court of India was whether the presiding officer of a Court should simply sit as a mere umpire at a contest between two parties and declare at the end of the combat who has won and who has lost or is there not any legal duty of his own, independent of the parties, to take an active role in the proceedings to discover the truth and administer justice?

This case is of particular relevance where the state or defence does not call a witness, the evidence of which would have a substantial bearing on the facts of the case. Should the presiding officer simply accept the lacuna in the evidence left as a result of the witness not being called or should the presiding officer themselves call the witness to clarify the issue.

The Union Supreme Court held that it is a well-accepted and settled principle that a Court must discharge its statutory functions, whether discretionary or obligatory, according to law in dispensing justice because it is the duty of a Court not only to do justice but also to ensure that justice is being done. In order to enable the Court to find out the truth and render a just decision, any Court by "exercising its discretionary authority at any stage of enquiry, trial or other proceeding can summon any person as a witness or examine any person in attendance though not summoned as a witness or recall or re-examine any person in attendance though not summoned as a witness or recall and re-examine any person already examined who are expected to be able to throw light upon the matter in dispute; because if judgments happen to be rendered on inchoate, inconclusive and speculative presentation of facts, the ends of justice would be defeated."

The principle of law that emerges from the views expressed by this Court in the above decisions is that the Criminal Court has ample power to summon any person as a witness or recall and re-examine any such person even if the evidence on both sides is closed.