Amanullah

Vs

State of U.P.

Criminal Appeal No. 31 of 1970

(I.D. Dua, K.K. Mathew JJ)

12.04.1973

JUDGMENT

DUA, J. -

1. This is an appeal by special leave. The appellant and Bashir ex-Zamindars were tried in the court of the Second Temporary Session Judge, Azamgarh on a charge under Sections 304/34, I.P.C., for the offence of culpable homicide not amounting to murder by causing the death of one Mewa a member of the Mallah community on September 19, 1964, at about 11 p.m. in village Fatehpur. Tal Narza, police station Ghosi. They were both convicted by the trial court. The appellant was convicted under section 304, I.P.C. and sentenced to rigorous imprisonment for five years whereas Bashir was convicted under Sections 304/34, I.P.C. and sentenced to rigorous imprisonment for two years. The trial court believed the testimony of Maula (P.W. 1), Shyam Pyar (P.W. 2), Jamuna (P.W. 6) and Smt. Ram Rajia (P.W. 7). It also considered the first information report lodged by the deceased Mewa himself to amount to a dying declaration and, therefore, in the nature of substantive evidence.

2. According to the prosecution story, after the abolition of Zamindari in the State of U.P. some litigation started between the ex-Zamindars in village Fatehpur Tal Narza (of which group the two accused persons in the trial court were Pairokars) on the one side and the Mallah community represented by Mewa deceased and P.Ws. Maula, etc., on the other. This litigation related to Tal. There was thus hostility between the two groups and consequently between the accused and Mewa. On the evening of September 19, 1964, when Mewa was going to purchase ration from a fair price shop in the village, he met the accused persons and there was exchange of hot words between then in respect of Tal. Bashir accused is then stated to have caught hold of Mewa deceased and Amanullah (appellant) to have beaten him (Mewa deceased) with iron rod, thereby causing him two injuries on the head and one on the hand. After thus assaulting the deceased, both the accused ran away. Mewa was taken to the police station, Ghosi where he lodged the F.I.R. at about 2.30 p.m. Thereafter, he was sent to the hospital. He died at about 3.45 p.m., on September 20, 1964. The case against the two accused persons was originally registered under section 323, I.P.C. which was later converted into one under Section 304, I.P.C. The trial court, believing the prosecution story, convicted both the accused persons as already noticed.

3. On appeal a learned single Judge of the Allahabad High Court felt that Bashir, who was about 80 years of age, was too old to have caught hold of the deceased by the waist as alleged and in any event it was difficult to believe that such an old man could have managed to escape. On this reasoning Bashir was given benefit of doubt and acquitted. The case of the appellant was, however, considered to be different. In his case the testimony of Maula (P.W. 1) and Shyam Pyar (P.W. 2) and

the F.I.R. were considered to be sufficiently convincing to establish his guilt beyond any reasonable doubt. His conviction and sentence were accordingly upheld and his appeal dismissed.

4. Before us Shri S. C. Agrawala, learned counsel for the appellant has contended that Shyam Pyar (P.W. 2) is not the person who was actually present at the spot and had witnessed the occurrence. He was produced before the court wrongly representing him to be the person mentioned in the F.I.R. The witness who was stated in the F.I.R. to have witnessed the occurrence was Ram Pyar who was apparently not willing to support the prosecution case : the prosecution, therefore, adopted the device by producing Shyam Pyar instead. This is the main argument on which the learned counsel has tried to build his challenge to the judgments of the two courts below.

5. Now Ram Pyar and Shyam Pyar are real brothers. It is no doubt true that in the F.I.R. (Ex. Ka-7) Mewa did state that Ram Pyar s/o Sadaphal and Maula s/o Paul residents of Fatehpur Tal Narza, police station Ghosi, were witnesses to the occurrence. The point now urged before us is stated to have been raised both in the trial court and in the High Court. Both the courts, it is not disputed, came to the conclusion that the name of Ram Pyar was stated in the F.I.R. by mistake and it was in fact Shyam Pyar s/o Sadaphal a brother of ram Pyar who was actually present at the time of the occurrence and had witnessed the same.

6. The trial court went into the point at some length and after considering the various aspects, it expressed its opinion on this point in these words :

> "I do not think that there could be any reason for the prosecution to produce Shyam Pyar instead of Ram Pyar. Of course it is not the case of the type in which a new addition is sought to be made at the stage of investigation and trial. There is neither any suggestion nor evidence that the two brothers namely ram Pyar and Shyam Pyar are ill-disposed towards each other and for the present Ram Pyar is getting hostile to the prosecution. As a matter of fact, if the prosecution was not bona fide in its intentions, they would have, simply to reconcile the previous mistakes, produced Ram Pyar before this Court. But it appears to me, they have come with a clean hand and they are well prepared to exposed the clerical mistake which has been committed in this case from the very start. I am, therefore, convicted that it was P.W. 2 Shyam Pyar who being in the company of P.W. 1 Maula, witnessed the scene of occurrence and it was a clerical error in the matter of misdescription of his name which appeared right from the stage of the first information report and onwards."

7. In the High Court the matter was apparently not seriously pressed because all that the High Court has said in this connection is :

> "In the F.I.R. only two persons are mentioned as eye-witnesses, namely, Maula and ram Pyar. Ram Pyar appears to have been wrongly written in place of Shyam Pyar. (P.W. 2)."

Shri S. C. Agrawala, the learned counsel for the appellant, has contended with great emphasis that the High Court has somewhat casually considered this important aspect and that its judgment is for this reason vitiated and has resulted in failure of justice. We are unable to agree with this submission. In the memorandum of appeal in the High Court only two grounds were taken. They read :

> "1. Because the conviction and sentence passed by the court below is against the weight of evidence and contrary to law.
>
> 2. because in any case the sentence is too severe".

Quite clearly if the point with respect to the production of Shyam Pyar instead of Ram Pyar was considered so vital as is represented in this Court and was intended to be pressed seriously in the High Court on appeal, a specific ground to that effect would have been expressly taken in the grounds of appeal. Section 418, Cr.P.C. provides for appeals both on matters of fact and law except in trials by jury in which case an appeal is permissible only on points of law. Section 421 of that code empowers the appellate courts, on perusal of the petition of appeal and the copy of the judgment accompanying the petition, to dismiss the appeal in limine if no sufficient ground for interference is made out. It is, therefore, expected that the various grounds in support of the appeal should be clearly specified in the petition of appeal and general grounds, howsoever convenient to those drafting them, do not serve the intended statutory purpose. The matter indeed is not res integra. This Court in Kapil Deo Shukla v. The State of Uttar Pradesh (1958 SCR 640 : AIR 1958 SC 121 : 1958 SCJ 280 : 1958 Cri LJ 262.) disapproved the practice prevailing in the Allahabad High Court of not taking specific grounds either of law or fact in the memorandum of appeal under the Code of Criminal procedure. In the reported case no doubt the appeal had been filed in the High Court by the State from an order of acquittal but the ratio would equally apply to appeals by convicted persons under the Code of Criminal Procedure because the sections which fall for determination in both cases are the same. After disposing of the objection that a memorandum of appeal which does not specifically raise points of fact or law must be rejected in limine and the judgment on appeal in such a case should be held null and void, this Court observed :

> "A memorandum of appeal is meant to be a succinct statement of the grounds upon which the appellant proposes to support the appeal. It is a notice to the Court that such and such specific grounds are proposed to be urged on behalf of the appellant as also a notice to the respondent that he should be ready to meet those specific grounds. A memorandum of appeal with a bald ground like the one quoted above is of no help to any of the parties or to the Court. It may have the merit of relieving the person responsible for drawing up the ground of appeal, of applying his mind to the judgment under appeal and its weak points, but this slight advantage, if it is so, very much outweighed by the serious disadvantage to the parties to the litigation and the Court which is to hear the appeal. Such a bold statement of the grounds leaves the door wide open for all kinds of submissions, thus, tending to waste the time of the Court, and taking the respondent by surprise. It is a notorious fact that courts particularly in the part of the country from where the appeal comes, are over-burdened with large accumulations of un-disposed of cases. The parties concerned and their legal advisers should concentrate and focus their attention on the essential features of cases so as to facilitate speedy, and consequently, cheap administration of justice. It may be that a bald ground like the one noticed above, was responsible for the inordinately long judgment of the High Court. Such a practice, if any, deserves to be discontinued and a more efficient way of drawing up grounds of appeal has to be developed. If counsel for the parties to a litigation concentrate on the essential features of a case, eliminating all redundancies, the argument becomes more intelligible and helpful to the Court in focussing its attention on the important aspects of the case".

It is a matter for regret that though this Court was categorical and firm in disapproving the practice of challenging the conclusions of the criminal court in a memorandum of appeal by taking only one or two general omnipotent grounds, such practice still continues in vogue within the jurisdiction of some High Courts. The sooner this practice is given up the better for the "speedy and consequently cheap administration of Justice". Wholehearted co-operation between vigilant bench and efficient and industrious bar can no doubt yield quick results in this respect.

8. Normally it has to be presumed that all the arguments actually pressed at the hearing in the High Court were noticed and appropriately dealt with and if the judgment of the High Court does not contain discussion on a point, then that point should be assumed prima facie not to have been argued at the bar, unless the contrary is satisfactorily shown. No doubt, in the grounds of appeal in this Court it is pleaded in so many words that the High Court ought to have held that Ram Pyar specifically mentioned in the dying declaration was a different person and impersonator called Shyam Pyar came forward to oblige the prosecution. But it is nowhere stated that this point was actually argued in the High Court but not dealt with by it in the judgment. In the absence of such an assertion capable of acceptance by this Court, we have no option but to hold that this point was presumably not argued in the High Court. Having not been pressed in the feel disinclined to permit it to be raised on appeal by special leave under Article 136 of the Constitution. New points may be permitted to be raised by this Court only in exceptional circumstances when they go to the root of the matter and the larger interests of justice demand it. However, as the learned counsel for the appellant has actually taken us through the material on the record and we have heard arguments of both sides, we would not exclude this point from our consideration but would pronounce upon it. After fully considering the matter, we feel little hesitation in agreeing with the line of reasoning and the conclusion of the trial court. There is no serious infirmity and there is certainly no failure of justice. Both the courts have taken the view that Ram Pyar had been wrongly mentioned in the F.I.R. and it was really Shyam Pyar who was a witness to the occurrence. There is no cogent ground for differing with this view.

9. This appeal, therefore, fails and is dismissed.

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