

Naresh and Others

Vs

State of Uttar Pradesh

Criminal Appeals Nos. 197 and 198 of 1981

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

24.04.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. We are afraid we have to voice our grave concern and express our serious displeasure at the course of events in the High Court in the present case. We consider it our duty to do so. We are not (sic) a little disturbed by what has been done in the High Court. The High Court, some weeks after pronouncing its judgment in a criminal appeal, altered a conviction under Section 302, Indian Penal Code which it had confirmed to one under Section 304, Indian Penal Code, ostensibly exercising its power to correct clerical errors but ignoring Section 362 of the Code of Criminal Procedure, 1973 which expressly provides "Save as otherwise provided by this Code or by any other law for the time being in force, no court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error".

2. Naresh, one of the appellants, was convicted by the trial Court of an offence under Section 302, Indian Penal Code and the rest of the appellants were convicted under Section 302 read with Section 149, Indian Penal Code. All of them were sentenced to imprisonment for life. The accused preferred appeals to the High Court, J.P. Chaturvedi and R.C. Shrivastava, JJ. who heard the appeals, while discussing the question of the culpability of the appellant Naresh observed as follows : "It may be pointed out that Bahadur (deceased) had a single injury on his head. This blow was inflicted by Naresh (appellant) and it resulted in fractures of frontal and parietal bones into eight pieces. The blow was very effective and powerful and as such, so far as Naresh (appellant) is concerned, we have no doubt that he intended to kill Bahadur and therefore, committed an offence punishable under Section 302, Indian Penal Code". After recording this categorical finding about the culpability of Naresh, the High Court proceeded to discuss the case against the rest of the accused. Then, in the ultimate paragraph of the judgment, which we may call the operative part of the judgment, the High Court again said about Naresh : "His conviction under Section 302, Indian Penal Code and sentence of imprisonment for life awarded thereunder are affirmed". The judgment of the High Court was pronounced on February 25, 1980. There after on an application filed by the appellant Naresh, the High Court made the following order on April 14, 1980 :

The application is allowed as there is a clerical mistake in the operative part of the judgment in Criminal Appeal 674 of 1975 regarding the conviction and sentence of appellant Naresh. The sentence "but his conviction under Section 302, IPC and sentence of imprisonment for life awarded thereunder are affirmed" be substituted by the sentence : "He is convicted under Section 304 (Part I), IPC instead of Section 302, IPC and sentenced to undergo rigorous imprisonment for seven years".

We are entirely at a loss to understand the order dated April 14, 1980. In their judgment dated February 25, 1980, while discussing the case against Naresh the learned Judges had given a specific and express finding that he intended to kill the deceased Bahadur and, therefore, had committed an offence punishable under Section 302, Indian Penal Code. The operative part of the judgment also said the same thing. We do not understand what the learned Judges mean when they state in their order dated April 14, 1980, "there is a clerical mistake in the operative part of the judgment". The High Court was wholly wrong in altering the judgment pronounced by them disposing of the criminal appeals. That was clearly in contravention of the provisions of Section 362, Code of Criminal Procedure. What was worse, the High Court acted in purported exercise of the power to correct the clerical mistakes when to fact there was none. The conviction under Section 302, Indian Penal Code was perfectly correct and the conviction had been rightly affirmed by the High Court in the first instance. There was no occasion at all for the purported exercise of power to correct a clerical mistake and alter the conviction under Section 302 to one under Section 304, Indian Penal Code. We are greatly concerned that the High Court should have committed this grievous error. There is, however, nothing that we can do about it at this juncture as the State has not chosen to file any appeal against the order dated April 14, 1980.

3. Shri S.P. Singh has taken us through the relevant evidence. We are unable to find any reason to reject the evidence of the four eyewitnesses. Their evidence has been accepted by both the trial Court and the High Court. The questions raised relate to appreciation of evidence and we find no ground for interference under Article 136 of the Constitution. Criminal Appeals Nos. 197 and 198 of 1981 are accordingly dismissed.

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