

Ayodhya Dube and Others

Vs

Ram Sumer Singh

Criminal Appeal No. 370 of 1976

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

24.04.1981

JUDGMENT

CHINNAPPA REDDY, J. -

1. In connection with the murder of two persons, Ram Pyare Singh and Awadh Bihari Singh and injuries caused to some others, 21 persons were tried by the learned Sessions Judge of Basti for offences under Sections 147 and 149 read with 309 etc. etc. Nine out of the 21 accused persons were convicted on various counts while the remaining accused including the present appellants were acquitted. The nine convicted accused preferred an appeal to the High Court while one Ram Sumer Singh (first informant in the case) filed a criminal revision case against the acquitted accused. The High Court dismissed the appeal preferred by the convicted accused through the sentence of death passed on four of them was altered to imprisonment for life. The criminal revision case filed by Ram Sumer Singh was allowed and, having regard to the limitations of revisional powers, the acquittal of the appellants was set aside and a retrial was ordered. The appellants have appealed to this Court against the judgment of the High Court setting aside their acquittal and ordering a retrial. A perusal of the judgments of the High Court and the Sessions Judge shows that the High Court was fully alive to the scope and extent of its revisional powers when dealing with orders of acquittal. The High Court referred to the judgment of this Court in *K. Chinnaswamy Reddy v. State of A.P.* (AIR 1962 SC 1788), after referring to the decision of this Court the High Court said :

In the instant case we find that this is a case of non-application of mind on the part of the court below. The probative value of the First Information Report (Ex. Ka-19) has been entirely ignored. The individual testimony of the eye-witnesses has not been discussed and their reliable testimony has been ignored, from which it follows that material evidence has not been considered and it has been overlooked. The entire judgment is full of inconsistencies. The court below has misquoted the evidence at some places, for example, while dealing with the copy of statement (Ex. Ka-18). The judgment consists of faulty reasoning and lack of judicial approach. Accepted canons for appreciating evidence have been thrown to the wind. The conclusions on the question of motive are against the weight of overwhelming evidence in the case. In our opinion, the view expressed by the court below has resulted in grave miscarriage of justice so far as the opposite parties Uma Shanker, Girja Shanker, Gauri Shanker, Achhaibar, Jhabbar, Bansu, Ram Katal, Ayodhya Dube and Vindhyaachal are concerned. The above, in our opinion, are exceptional circumstances which compel us to order retrial of the aforesaid opposite parties.

2. In our view the High Court has given adequate reasons for interfering with the acquittal and

ordering a retrial of the appellants. We may add that the High Court also expressed the view that the instances mentioned by this Court in *K. Chinnaswamy Reddy v. State of A.P.* (AIR 1962 SC 1788) as justifying interference with orders of acquittal in the exercise of revisional powers were illustrative and not exhaustive. We agree with the view expressed by the High Court and we only wish to say that the criminal justice system does not admit of 'pigeon-holing'. Life and the law do not fall neatly into slots. When a court starts laying down rules enumerated (1), (2), (3), (4) or (a), (b), (c), (d), it is arranging for itself traps and pitfalls. Categories, classifications and compartments, which statute does not mention, all tend to make law 'less flexible, less sensible and less just'.

3. The appeal is dismissed but we wish to observe that the Court retrying the appellants may do so uninfluenced by any observations that the High Court or we may have made.

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