

Mohinder Singh and Others

Vs

State of Punjab and Another

Criminal Appeals Nos. 335-36 and 523 of 1982

(Syed Fazal Ali, A. Varadarajan JJ.)

20.12.1984

JUDGMENT

FAZAL ALI, J. -

1. In these appeals by special leave four persons, namely, Mohinder Singh, Gurcharan Singh, Bharpur Singh and Jagvinder Singh were tried by the Session Judge for offences under Section 302/34 and 307/34, IPC and also under Section 27 of the Arms Act. After recording the entire evidence the trial court convicted Mohinder Singh under Section 303 Part I IPC and sentenced him to 7 years rigorous imprisonment. The other three accused were acquitted by the Sessions Judge. Mohinder Singh Filed an appeal before the High Court of Punjab and Haryana against his conviction and sentence. The state Government also filed an appeal against Gurcharan Singh, Bharpur Singh and Jagvinder Singh so far as their acquittal was concerned and against Mohinder Singh so far as his acquittal under Section 302 IPC was concerned. The High Court without making any real attempt to anneals and appreciate the evidence led in the support of the prosecution came to a general conclusion that the judgment of the learned Session Judge was not the accordance with the law and that he had not dealt with some points or omitted to consider some points, and remanded the case back to the trail court for the writing a fresh and proper judgment. So far as the acquitted accused were concerned although the appeal was filed by the Public Prosecutor as the directed by the State Government yet the High Court on its own or perhaps at the instance of the acquitted accused on a petition filed by them held that there was no proper direction by the Government for filling the appeal except in case of Mohinder Singh.

2. There was undoubtedly a direction to the Public Prosecutor to file appeal against acquitted accused as indicated above. The High Court, however, at the instance of the acquitted accused tried to reopen the matter in order to find out the manner and various stages through which the sanction to file an appeal was channelised. With due respects to the learned Judges we feel that this was not at all proper for the High Court to do. Whenever a Government seeks opinion it consults various, agencies, namely, the Advocate-General, Public Prosecutor, legal Remembrancer and other and thereafter the order is passed by the Government through the Secretary-in-Charge. In the instant case it was not disputed that the Public Prosecutor was directed by the Under-Secretary to the Government in charge to the file appeal against all appellants. The High Court however, seems to have gone deeper into the matter by making a roving inquiry into What had happened when the matter was under consideration of the Government and how things shaped and held after making this roving inquiry, that the authority given to the public Prosecutor was only in respect of Mohinder Singh and not others. Therefore, the High Court was of the opinion that direction to file appeal against acquitted accused Gurcharan Singh, Bharpur Singh and Jagvinder Singh was non est and hence appeal filed by the State was not properly presented so far as they are concerned. It appears

that a clear direction has been given to the Public Prosecutor to file appeal against all the four accused. three of them against acquittal and the regards Mohinder Singh against his acquittal under Section 302 IPC.

3. Having gone through the entire record we are unable to agree with the High Court that there was any interpolation with respect to acquitted accuses. It may be that various agencies may have expressed different views but by and large the final decision taken by the Under-Secretary prevailed as a result of which the Public Prosecutor was authorised to file an appeal before the High Court against the all the acquitted accused. In such a situation, therefore, the High Court erred in holding that the appeal presented by the State was not properly presented as against the said three accused, and it should have heard the appeal on merits along with the case of Mohinder Singh. As we intend to send the case back to the High Court for fresh decision in accordance with law after taking into consideration the fact that the appeal by the State was properly constituted it is not necessary for us to give further details. We might, however, mention that the High Court instead of analysing and appreciating evidence, remanded the case back to the Session Judge for writing a proper judgment. In the first place, assuming the High Court was right in thinking that the judgment suffered from some infirmities and there were certain facts which were not taken into the consideration they would not be grounds for remanding the case of the Sessions Court to write a proper judgment. The High Court itself was a final court of facts and it was its duty to satisfy itself regarding the correctness and acceptability of the evidence. Thus, it was entirely open to the High Court to reappraise the evidence once again to consider the facts which may have been overlooked by the Sessions Judge and it should have decided the appeal itself instead of remanding the case to the Session Court. It being a moot point, we refrain from expressing any opinion on the question whether the first appellate court of fact can in a criminal case send the case back to the Sessions Court for writing a fresh judgment. The proper order in such a case should be either to decide the case itself or to send it for retrial. The question of retail does not arise the in view we have taken in this case.

4. We, therefore, allow, one Appeal 523 of 1982 and the other appeals in the part set aside the order of the High Court and direct to rehear the appeals on merits according to law. We think it proper and expedient in the interest of justice that this appeal should be heard by the different bench of the High Court.

</html