

Bansi Lal and Others

Vs

Laxman Singh

Criminal Appeal No. 320 of 1986

(M. M. Dutt, V. Balakrishna Eradi JJ)

15.07.1986

JUDGMENT

BALAKRISHNA ERADI, J. –

1. Special leave granted.

2. Heard both sides.

3. The five appellants were tried by the court of Additional Sessions Judge, Delhi on a charge of murder under Section 302 read with Section 34 of the Indian Penal Code. After a very detailed consideration of the evidence adduced in the case, the learned Additional Sessions Judge acquitted the appellants giving them the benefit of doubt. The respondent herein, who is a son of the deceased victim of the murder preferred a criminal revision petition before the High Court of Delhi under Section 397/401 Criminal Procedure Code challenging the order of acquittal passed by the learned Additional Sessions Judge. A learned single Judge of the High Court allowed that revision petition, set aside the acquittal of the appellants and remitted the case to the trial court for retrial.

4. Aggrieved by the said judgment of the High Court the appellants have come up to this Court with this appeal and the main contention raised by them is that the learned single Judge of the High Court has transgressed the bounds of his revisional jurisdiction in reappreciating the evidence and setting aside their acquittal.

5. After hearing counsel appearing on both sides we have unhesitatingly come to the conclusion that the aforesaid contention of the appellants is well founded and has to be upheld.

6. Briefly stated, the prosecution case was that on the midnight of June 3 and 4, 1980 while Laxman Singh (PW 1) was sleeping on the terrace of his house in the DESU Colony, Delhi along with his cousin Moti Lal (PW 7), they heard the noise of a quarrel and loud shouting from the lane below and on looking down from the terrace they found that deceased Ram Chander was being beaten by accused 1 and 4 (appellants 1 and 4). Thereupon they rushed to the place of the incident. One Babu Lal who was residing in the adjoining quarter also came there and when all the three tried to intervene and separate deceased Ram Chander and the two accused, the first accused called out to Bhagwat (second accused), who was looking down from his adjacent quarter asking him why he was just watching while Ram Chander was assaulting them. In response to the said call it is alleged that Bhagwat along with the remaining accused came there carrying lathis in their hands. There appears to have been a free for all fight. It is said that Ram Chander wielding an iron handle of a hand-pump was giving blows to the accused and he in turn was being beaten by lathis by the

remaining persons. It is the case of the prosecution that Ram Chander was administered lathi blows on his head by accused 1 and 2, as a result of which he fell down bleeding and died on the spot. Thereafter all the five accused are said to have run away from the scene with their lathis.

7. In support of the prosecution story, three persons were examined as eye-witnesses namely, PW 1, PW 2 and PW 7. PW 2 however, turned hostile and did not support the prosecution version in his deposition before the trial court. The learned Additional Sessions Judge discussed at length the testimony given by PW 1 and PW 7 as well as the medical evidence adduced in the case. He found that there were serious discrepancies and glaring inconsistencies between the versions spoken by PW 1 and PW 7 and that the medical evidence also did not support their version of the incident. In the result he found that the testimony of these eye-witnesses could not be safely relied on and the prosecution had failed to prove its case beyond reasonable doubt.

8. The learned single Judge of the High Court has thought it fit to re-appreciate the evidence of the two eye-witnesses as well as the testimony given by the medical doctor who conducted the post mortem on the body of the deceased Ram Chander. By such a process of elaborate re-examination of the evidence the learned single Judge was inclined to reach a conclusion different from that recorded by the learned Additional Sessions Judge regarding the acceptability of the testimony of PW 1 and PW 7. It is on this basis that the learned Judge has proceeded to set aside the acquittal of the appellants and order a retrial of the case after virtually recording findings in regard to the credibility of the evidence given by the witnesses relied on by the prosecution.

9. Even in an appeal against an order of acquittal no interference will be made with judgment of the trial court except in rare and exceptional cases where there has been some manifest illegality in the approach to the case or the appreciation of the evidence or where the conclusion of fact recorded by trial Judge is wholly unreasonable so as to be liable to be characterised as perverse and there has been a resultant miscarriage of justice. The revisional jurisdiction of the High Court while dealing with an order of acquittal passed by the trial court is more narrow in its scope. It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial court, that the High Court is empowered to set aside the order of the acquittal and direct a retrial of the acquitted accused. From the very nature of this power it should be exercised sparingly and with great care and caution. In *K. C. Reddy v. State of A.P.* ((1963) 3 SCR 412 : AIR 1962 SC 1788 : 1963 (1) Cri LJ 8), this Court had occasion to consider the scope of the revisional jurisdiction conferred on the High Court in relation to orders of acquittal passed by the trial court and after referring to two earlier decisions of this Court reported in *D. Stephens v. Nosibolla* (1951 SCR 284 : AIR 1951 SC 196 : 52 Cri LJ 510) and *Logendra Nath Jha v. Polailal Biswas* (1951 SCR 676 : AIR 1951 SC 316 : 52 Cri LJ 1248), the legal position was explained thus :

These two cases clearly lay down the limits of the High Court's jurisdiction to interfere with an order of acquittal in revision; in particular, *Logendra Nath Jha* case (1951 SCR 676 : AIR 1951 SC 316 : 52 Cri LJ 1248) stresses that it is not open to a High Court to convert a finding of acquittal into one of conviction in view of the provisions of Section 439(4) and that the High Court cannot do this even indirectly by ordering retrial. What had happened in that case was that the High Court reversed pure findings of facts based on the trial court's appreciation of evidence but formally complied with sub-section (4) by directing only a retrial of the appellants without convicting them, and warned that the court retrying the case should not be influenced by any expression of opinion contained in the judgment of the High Court. In that connection this Court observed that there could be little doubt that the dice was

loaded against the appellants of that case and it might prove difficult for any subordinate judicial officer dealing with the case to put aside altogether the strong views expressed in the judgment as to the credibility of the prosecution witnesses and the circumstances of the case in general.

This decision was subsequently followed by this Court in *Akalu Ahir v. Ramdeo Ram* ((1974) 1 SCR 130 : (1973) 2 SCC 583 : 1973 SCC (Cri) 903 : AIR 1973 SC 2145), where this Court observed : (SCC pp. 586-87, para 8)

The unrestricted right of appeal from acquittal is specifically conferred only on the State and a private complainant is given this right only when the criminal prosecution was instituted on his complaint and then also subject to special leave by the High Court. It is further provided in Section 439(5), CrPC that where no appeal is brought in a case in which an appeal is provided, no proceedings by way of revision would be entertained at the instance of the party who could have appealed. The State Government, therefore, having failed to appeal, cannot apply for revision of an order of acquittal. Again, on revision, the High Court is expressly prohibited from converting an acquittal into a conviction. Considering the problem facing the court in this case in the background of this scheme, the High Court when approached by a private party for exercising its power of revision from an order of acquittal, should appropriately refrain from interfering except when there is a glaring legal defect of a serious nature which has resulted in grave failure of justice. It is not expected to act under Sections 435/439, CrPC as if it is a hearing on appeal in spite of the wide language under Section 435 which empowers it to satisfy itself as to the correctness, legality or propriety of a finding, sentence or order and as to the regularity of any proceeding and also in spite of the fact that under Section 439 it can exercise inter alia the power conferred on a court of appeal under Section 423, CrPC. The power being discretionary, it has to be exercised judiciously and not arbitrarily. Judicial discretion, as has often been said, means a discretion which is informed by tradition, methodised by analogy and disciplined by system. In *Amar Chand Agarwalla v. Shanti Bose* (AIR 1973 SC 799 : (1973) 4 SCC 10 : 1973 SCC (Cri) 651), this Court said that normally the jurisdiction of the High Court under Section 439, CrPC is to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on point of law and there has consequently been flagrant miscarriage of justice. In the background of the position just stated a private complainant can only claim a right, in common with all aggrieved parties in a criminal proceeding, to invoke the revisional jurisdiction of the High Court for redress against miscarriage of justice arising from an erroneous order of acquittal.

The same position has been reiterated by this Court in *Satyendra Nath Dutta v. Ram Narain* ((1975) 2 SCR 743 : (1975) 3 SCC 398 : 1975 SCC (Cri) 24).

10. It is unfortunate that the High Court did not keep in mind the principles laid down in the aforesaid rulings regarding the limits of its revisional powers while dealing with an order of acquittal passed by the subordinate court. The mere circumstance that a finding of fact recorded by the trial court may in the opinion of the High Court be wrong, will not justify the setting aside the order of acquittal and directing a retrial of the accused. In the present case the judgment of the learned Additional Sessions Judge did not suffer from any manifest illegality. The dominant justification of the order of acquittal recorded by the trial court is the view it took of the evidence of the two eyewitnesses. Having carefully gone through the records of the case we are satisfied that it was a possible view and it cannot be characterised as illegal or perverse. It may well be that the learned single Judge of the High Court was not inclined to agree with the said view on the basis of his independent scrutiny and appreciation of the evidence adduced in the case but that would not

furnish any justification for interference in revision with the order of acquittal passed by the learned Additional Sessions Judge. Even in an appeal the appellate court would not have been justified in interfering with an acquittal merely because it was inclined to differ from the findings of fact reached by the trial court on the appreciation of the evidence. The revisional power of the High court is much more restricted in its scope. We accordingly hold that the High Court has clearly transgressed the limits of its revisional jurisdiction under Section 439(4) of CrPC in setting aside the order of acquittal passed by the Additional Sessions Judge and direction a retrial of the case.

11. The appeal is therefore allowed, the judgment of the High Court is set aside and the order of the acquittal passed by the trial court will stand restored.

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