SUPREME COURT OF INDIA

Dwarka Das

Vs.

State of Haryana

Crl.A.No.1143 of 2002

(U. C. Banerjee and Y. K. Sabharwal JJ.)

13.11.2002

JUDGEMENT

U.C.Banerjee, J.:

1. Leave granted.

2. While there cannot be any denial of the factum that the power and authority to appraise the evidence in an appeal, either against acquittal or conviction stands out to be very comprehensive and wide, but if two views are reasonably possible, on the state of evidence: one supporting the acquittal and the other indicating conviction, then and in that event, the High Court would not be justified in interfering with an order of acquittal, merely because it feels that it, sitting as a trial Court, would have taken the other view. While reappreciating the evidence, the rule of prudence requires that the High Court should give proper weight and consideration to the views of the trial Judge. But if the judgment of the Sessions Judge was absolutely perverse, legally erroneous and based on a wrong appreciation of the evidence, then it would be just and proper for the High Court to reverse the judgment of acquittal, recorded by the Sessions Judge, as otherwise, there would be gross miscarriage of justice so said Pattanaik, J. in *Hariram and others v. State of Rajasthan*[1].

3. Two earlier decisions of this Court ought also to be noticed in this context, namely, *Ramesh Babulal Doshi v. State of Gujarat*[2] wherein in paragraph 7 of the Report this Court observed:

> "7. Before proceeding further it will be pertinent to mention that the entire approach of the High Court in dealing with the appeal was patently wrong for it did not at all address itself to the question as to whether the reasons which weighed with the trial Court for recording the order of acquittal were proper or not. Instead thereof the High Court made an independent reappraisal of the entire evidence to arrive at the above-quoted conclusions. This Court has repeatedly laid down that the mere fact that a view other than the one taken by the trial Court can be legitimately arrived at by the appellate Court on reappraisal of the evidence cannot constitute a valid and sufficient

ground to interfere with an order of acquittal unless it comes to the conclusion that the entire approach of the trial Court in dealing with the evidence was patently illegal or the conclusions arrived at by it were wholly untenable. While sitting in judgment over an acquittal the appellate Court is first required to seek an answer to the question whether the findings of the trial Court are palpably wrong, manifestly erroneous or demonstrably unsustainable. If the appellate Court answers the above question in the negative the order of acquittal is not to be disturbed. Conversely, if the appellate Court holds, for reasons to be recorded, that the order of acquittal cannot at all be sustained in view of any of the above infirmities it can then and then only reappraise the evidence to arrive at its own conclusions. In keeping with the above principles we have therefore to first ascertain whether the findings of the trial Court are sustainable or not."

4. The other decision, though slightly earlier in point of time, happens to be that of Tota Singh [*Tota Singh and another v. State of Punjab*[3]] wherein this Court in paragraph 6 of the Report stated as below :

"6. The High Court has not found in its judgment that the reasons given by the learned Sessions Judge for discarding the testimony of PW 2 and PW 6 were either unreasonable or perverse. What the High Court has done is to make an independent reappraisal of the evidence on its own and to set aside the acquittal merely on the ground that as a result of such reappreciation, the High Court was inclined to reach a conclusion different from the one recorded by the learned Sessions Judge. This Court has repeatedly pointed out that the mere fact that the appellate Court is inclined on a reappreciation of the evidence to reach a conclusion which is at variance with the one recorded in the order of acquittal passed by the Court below will not constitute a valid and sufficient ground for setting aside the acquittal. The jurisdiction of the appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the appellate Court cannot legally interfere with an order of acquittal even if it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous."

5. The law thus seems to be well settled on this score, as noticed above in a long catena of cases and we need not dilate thereon any further.

6. Presently, we are faced with a rather singularly singular instance and a plain look at the order would however justify such an attribute. The order impugned reads as below :

"We have gone through the records with the help of the learned counsel for the parties. We are prima facie of the opinion that the acquittal of the persons mentioned in paragraph No. 45 of the judgment for the reasons given in paragraph No. 44 thereof was not called for and that the matter requires reconsideration by this Court.

We accordingly direct the Advocate General, Haryana to file an application for leave to appeal against the acquittal of the persons mentioned in paragraph No. 45 of the judgment. We also direct that the persons aforementioned shall be served expeditiously as the present appellants are in custody and the prayer made today by Mr. Ghai for their release on bail has been declined by us. The application for leave to appeal be filed within two weeks from today. Adjourned to July 18, 2001.

A copy of this order be supplied to the counsel for the parties by the Reader of this Court after due attestation under his signatures."

7. Significantly this order was passed in an appeal from the order of Additional Sessions Judge, Sirsa, dated 18th August, 2000 wherein the learned Sessions Judge passed order of conviction against two of the accused persons, namely (i) Krishan; and (ii) Somnath and sentenced the abovenoted to undergo imprisonment for life for the commission of an offence punishable under Section 302 read with 120-B of the Indian Penal Code and to pay a fine of Rs. 10,000 each. Further the periods of imprisonment as also fines were also imposed for various other offences as mentioned in the order.

8. The factual score records that the two accused persons named above as against the order of conviction and sentence as above, moved the High Court of Punjab and Haryana in Crl. A. No. 418 of 2000 and it is in that appeal the High Court thought it fit to pass the order as above.

9. Mr. UR Lalit, the learned Senior Advocate appearing in support of the appeal not only very emphatically submitted that the High Court ought not to have acted in the manner as noticed above, but he in fact expressed a sense of being lost in the wilderness, if the law Courts arrogate itself to such an exercise of power exercise of judicial power, Mr. Lalit contended shall have to be within the limits and boundaries of law. The view expressed by this Court in Hariram (supra) as a matter of fact has been taken recourse to as the correct exposition of law.

10. Incidentally, the right of appeal stands granted in the State under Section 378 but the State Government has chosen not to exercise that right and thereby abandoned the right as conferred on to the State by and under the provisions of law. In the similar vein the right of appeal stands conferred within a certain period of time. The issue thus arises as to whether the High Court while exercising the criminal appellate jurisdiction under Section 374(2) of the Code of Criminal Procedure can issue a directive to the State Government to file an appeal against those persons who have been acquitted by the learned Sessions Judge.

11. Before proceeding further in the matter, be it noted herein that the High Court does not have authorisation by and under the existing legal system to exercise any advisory jurisdiction. The Government has its agencies to advise and in the event the Government feels it expedient to obtain the advise from such agency or agencies, it is for the Government to decide and not for the High Court to suggest. Direction to file appeal not only stands as an excessive user of jurisdiction but indicates exercise of advisory jurisdiction which the High Court does not possess and is unknown to law.

12. This Court sometime back has had to examine though a reverse case as in *Mohinder Singh and others v. State of Punjab and another*[4] wherein Fazal Ali, J. speaking for the Bench was pleased to observe in paragraph 2 of the report as below:

> "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 others 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 file appeal against all the 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 as regards Mohinder Singh against his acquittal under Section 302, IPC."

13. Needless to remind ourselves that the criminal jurisprudence of the country proceeds on the basis that a person is innocent and the burden rests on the prosecution to prove beyond all reasonable doubts as regards the guilt of the accused persons. It is with this background that the Code of Criminal Procedure has conferred on to the hierarchy of the Courts' specific powers to deal with the matter as it seems just and proper. The word 'just and proper' used herein does not however, mean and imply an arbitrary exercise of power powers are circumscribed and have to be exercised in accordance with the provisions of law and not dehors the same : Even discretionary powers shall have to be exercised in a manner and in consonance with the known principles of law and not otherwise the State Government has been directed to file an appeal much beyond the period of limitation: What about the rights of an accused for presentation of appeal beyond the period of limitation while it is true an appeal barred by limitation does not confer a right but it amounts to extinguishment of a

right. In criminal jurisprudence however extinguishment of right confers a benefit to an accused and it is in this perspective further question would arise as to whether the High Court would be within its jurisdiction to take away such a benefit as conferred by reason of extinguishment of right. The answer cannot possibly be in the negative.

14. The State we suppose is otherwise capable of managing its own affairs in a manner conducive to the people at large and the State itself has got its own law Officer/Officers to advise in its legal affairs : State Government in the contextual facts did not seek any opinion from the High Court as to the methodology of dealing with the matter. The methodology of filing an appeal lay with the State and the High Court has no authority or jurisdiction to issue such a directive. The mandate issued by the High Court is wholly without any jurisdiction or in excess of jurisdiction and hence our inability to record our concurrence.

15. Obviously the learned Judges of the High Court were swayed by the nature of incident namely the deaths of about 20 people by reason of consumption of illicit country liquor and it is on this score the learned Sessions Judge upon the appreciation of evidence found it imperative to convict seller and the vendor of the liquor and acquit the other persons who, it has been alleged to have supplied the same.

16. It is at this juncture however paragraphs 49 and 50 of the Sessions Court judgment may be noticed for proper appreciation of the merits. The same read as below:

> "It is proved beyond all shadows of reasonable doubt that accused Krishan Lal son of Ram Chand and Som Nath son of Lachhu Ram had participated in the public auction for running country liquor vend at a place called Kalanwali for the year 1980-81 and that they had proved the highest bidders in the public auction. The Excise and Taxation Commission, Haryana had accepted the bid and had released the contract in favour of the two accused. It is also established that the above named accused Krishan and Som Nath had accepted the terms and conditions for running the liquor vend at Kalanwali and had actually started the business of sale of country liquor by purchasing the liquor from Haryana Distillery Nagar. However, they sold spurious liquor from their outlet at Kalanwali and Baraggudh on December 1 and December 2, 1980. The methyl alcohol contained methanol poison which resulted in the death of 44 persons and it rendered 68 others permanently blind. The accused are thus convicted for the commission of offence punishable under Sections 302 and 328 read with Section 120-B of the Indian Penal Code and under Section 61(1)(a) of the Punjab Excise Act, 1914. However, charges under Section 420 of the Indian Penal Code do not stand proved.
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> However, the prosecution has failed to prove its charges against the remaining accused namely Mukhtiar Singh, Moti Ram, Gajjan Singh, Dwarka Dass, Jagdish Kumar, Sewa Singh, Jagdish Rai, Labh Chand, Dharam Pal, Mahabir Parshad, Satish Kumar, Bhushan Kumar, Gurcharan Singh, Shivkirpal Singh, Bhagwan Dass and Hardayal, who are consequently acquitted of the charges framed against them. The

bail bonds of these accused shall stand discharged. Proceedings are dropped against the accused who are dead."

17. As noticed above it is not for the High Court but for the Government to decide as to whether there is any social evil. In the event of a positive reply it is the Government's responsibility to proceed with the matter further not for the High Court to advise. The High Court has not only exceeded its jurisdiction but has transgressed all limits of jurisdiction. This is neither fair nor reasonable and thus cannot be sustained.

18. On the wake of the aforesaid, this appeal succeeds, the order of the High Court stands set aside and quashed. The High Court would do well to deal with the pending appeal and decide the issue in accordance with the records available before the High Court expeditiously without however being inhibited by any observation of the High Court.

Appeal allowed.

[1]*(2000 (9) SCC 136)*
[2]*(1996 (9) SCC 225)*
[3]*(1987 (2) SCC 529)*
[4]*(1985 (1) SCC 342)*