

SUPREME COURT OF INDIA

Ram Briksh Singh

Vs.

Ambika Yadav

Crl.A.No.523 of 1997

(Y.K.Sabharwal and Arijit Pasayat JJ.)

09.03.2004

JUDGMENT

Y. K. Sabharwal, J.

1. The appellants were tried for an offence under Section 302/34 of Indian Penal Code for commission of murder of one Rameshwar Yadav. The court of sessions held that the prosecution has failed to prove charge levelled against them beyond reasonable doubt and thus acquitted all of them. The judgment and order of acquittal was challenged by the informant in a revision petition. The High Court by the impugned judgment, setting aside the judgment and order of acquittal in favour of the appellants, has remitted the case for its retrial by court of sessions in accordance with law directing the court to decide the matter on the basis of evidence and material already on record and not allow parties to adduce further evidence.

2. Mr. P.S.Mishra, learned counsel for the appellants submits that the trial court had given cogent reasons and on due appreciation of evidence directed the acquittal of the accused and the impugned judgment of the High Court clearly amounts to reappreciation of evidence which is not permissible in the exercise of revisional jurisdiction. Learned counsel has taken us through the judgment and order of the trial court to buttress his submission that the evidence and material on record was duly considered by the court of sessions as a result whereof the conclusion was reached that prosecution has failed to establish its case beyond reasonable doubt. On the other hand Mr.B.B. Singh and Mr.A.P. Sahay, learned counsel appearing for the State and the informant have taken us also through the depositions of some of the witnesses to buttress their submission that the court of sessions has overlooked material evidence which has resulted in manifest illegality and gross miscarriage of justice.

3. The principles on which revisional court can set aside a judgment and order of acquittal passed in favour of the accused are well settled by catena of judgments. The difficulty, however, arises at times about the application of the said principles. It is true that there is a statutory prohibition contained in sub- section (3) of Section 401 of Criminal Procedure Code from converting a finding of acquittal into one of conviction and what is prohibited

cannot be done indirectly as well. The question, however, is has High Court indirectly done what is prohibited.

4. Sections 397 to 401 of the Code are group of sections conferring higher and superior courts a sort of supervisory jurisdiction. These powers are required to be exercised sparingly. Though the jurisdiction under Section 401 cannot be invoked to only correct wrong appreciation of evidence and the High Court is not required to act as a court of appeal but at the same time, it is the duty of the court to correct manifest illegality resulting in gross miscarriage of justice.

5. More than half a century ago, in *D. Stephens v. Nosibolla* this Court held that revisional jurisdiction when it is invoked against an order of acquittal by a private complainant is not to be lightly exercised, it could be exercised only in exceptional cases to correct a manifest illegality or to prevent a gross miscarriage of justice and not to be ordinarily used merely for the reason that the trial court has misappreciated the evidence on record. In *K. Chinnaswamy Reddy v. State of Andhra Pradesh & Anr.* a note of caution was appended so that the High Court does not convert a finding of acquittal into one of conviction by the indirect method of ordering retrial when it cannot directly convert a finding of acquittal into a finding of conviction in view of specific statutory prohibition. While noticing that it is not possible to lay down the criteria for determining exceptional cases which would cover all contingencies for exercise of revisional power, some cases by way illustration were mentioned wherein the High Court would be justified in interfering with the finding of acquittal in revision. The High Court would be justified to interfere where material evidence is overlooked by the trial court.

6. In a recent decision in *Bindeshwari Prasad Singh alias B.P. Singh & Ors. v. State of Bihar [now Jharkhand] & Anr.* (8) noticing principles laid in *Stephen's* and *Chinnaswamy Reddy* it was held that the High Court was not justified in reappreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code since it was well settled that the order of acquittal cannot be interfered with in revision merely on the ground of errors in appreciation of evidence.

7. Relying upon these decisions, Mr. Misra contends that the High Court while interfering with the judgment and order of the Court of Sessions has not kept in view the parameters of exercise of revisional jurisdiction.

8. Reverting to the facts of the case in hand, the prosecution case in nutshell is that while the informant Ambika Yadav, PW6 along with his uncle Rameshwar Yadav (deceased) was going in search of some labourers and no sooner they reached near a well situated in front of the house of accused Rambriksh Singh, the accused started uttering abuses, caught hold of Rameshwer Yadav and forcibly took him into their house. On protest, the informant was threatened and abused.

9. The dragging of Rameshwer Yadav by the appellants into their house was witnessed by others but they were also abused and chased. While dragging the deceased, the accused were

uttering that he should be taken inside the house and cut into pieces. The informant went to police station to inform the police. The police party came and after breaking open the door of the house, the police entered into the courtyard and found the mutilated dead body of Rameshwar Yadav. The statement of the informant was recorded by the police officer, formal FIR registered, investigation conducted whereafter the police submitted charge sheet against the accused who were put on trial for the offence earlier noticed.

10. The High Court has observed that the evidence of PWs 1, 2, 5, 6, 7 and 8 appears to be relevant. PW8 is the Doctor who held autopsy over the dead body and also proved the post mortem report. The injuries on the deceased show the brutal manner in which he was done away with.

11. There is no eye witness. The prosecution case depends upon circumstantial evidence. The High Court with reference to evidence of PWs 2, 5 and 6 has noticed that they had witnessed the dragging of deceased to the house. PW7, the investigating officer has, inter alia, deposed about the house of the accused having found locked on his visit, breaking opening of the door and on entry having found the body of the deceased lying in the courtyard in a mutilated condition and the conduct of the investigation. The High Court has observed that the evidence on the point of dragging of the deceased and the recovery of his dead body from the courtyard of the house of accused, Rambriksh Singh, remained unshaken and has been duly corroborated by the evidence of Doctor PW8. In this view, the High Court held that the evidence could not have been dealt with in such a manner as has been dealt with by the trial court. Fully alive to the limit of its jurisdiction under Section 401 of the Code but having regard to the facts and circumstances of the case, the High Court came to the conclusion that the case appears to be exceptional warranting interference. The revisional court can set aside an order of acquittal and remit the case for retrial where the trial court overlooking material evidence has passed the order. In the present case, the material evidence seems to have been overlooked by the trial court in relation to four circumstances, namely

- (1) the dragging of the deceased to the house of accused Rambriksh Singh which was joint house of the deceased;
- (2) the house having been found locked by the police on visit;
- (3) the breaking open of the door of the house and
- (4) the recovery of the dead body in a mutilated condition in the courtyard of the house.

12. The overlooking of evidence in relation to these circumstances warrants the remand of the case to trial court for retrial which has been directed in terms of the impugned judgment.

13. Mr.B.B. Singh relying upon the case of Ram Gulam Chaudhary & Ors. v. State of Bihar (), submits that in the present case the accused have failed to offer any explanation in respect of aspects exclusively within their knowledge and, therefore, it is an additional link which

completes the chain of circumstances. It is not necessary for us to examine this aspect. It is not relevant for the present purposes and may be addressed before the court of sessions at an appropriate stage. For the aforesaid reasons, we are unable to accept the contention that the High Court has reappreciated the evidence. The High Court has only demonstrated as to how the material evidence has been overlooked leading to manifest illegality resulting in gross miscarriage of justice. The impugned judgment of the High Court does not call for any interference. Resultantly, the appeal is dismissed.