SUPREME COURT OF INDIA

Sheetala Prasad

Vs.

Sri Kant

Crl.A.No.2420 of 2009

(R.V.Raveendran and J.M.Panchal JJ.)

17.12.2009

JUDGEMENT

J.M.Panchal, J.

1. Leave granted.

2. This appeal is directed against judgment dated May 25, 2007, rendered by the learned single Judge of High Court of Judicature at Allahabad in Criminal Revision No. 5819 of 2006, by which the finding recorded by the learned Additional Sessions Judge, Jaunpur in Sessions Trial Case No.271 of 2000, decided on September 7, 2006 that the appellants are not guilty under Section 308 IPC but are guilty under Section 324/149 IPC and are entitled to be released on probation of good conduct, is set aside and the case is remanded to the Court of learned Additional Sessions Judge with a direction to pass fresh order of conviction of the appellants in the light of observations made in the judgment and impose sentence on them in accordance with law.

3. The facts emerging from the record of the case are as under: - The respondent No. 1, i.e., Kant Pandey, resides at village Tikara, District Jaunpur. On May 16, 1999, the appellants formed an unlawful assembly, common object of which was to cause injuries to Varun and Manoj, who are sons of Kant Pandey. At about 11.30 a.m., the appellants, in furtherance of their common object, assaulted Varun and Manoj who were ploughing their field with a tractor and caused injuries to them and when Kant Pandey tried to save his sons, he was also assaulted and his licensed gun was broken.

> "The First Information Report was lodged by Kant Pandey, on the basis of which investigation was conducted. At the conclusion of investigation, the appellants were charge-sheeted in the court of learned Magistrate for commission of offences punishable under Sections 147, 148, 308, 323, 325, 427, 504, 506 read with Section 149 IPC. As offence punishable under Section 308 IPC is exclusively triable by a Court of Sessions, the case was committed to the Court of Sessions, Jaunpur, for trial."

4. Since the appellants did not plead guilty, the prosecution examined seven witnesses to prove its case against the appellants. After evidence of the prosecution witnesses was over, the learned Additional Sessions Judge explained to the appellants the circumstances appearing against them in the evidence of prosecution witnesses and recorded their further statements under Section 313 of the *Code of Criminal Procedure, 1973*. In their further statements, the case of the appellants was that of total denial. They also examined three witnesses in support of their defence.

5. On appreciation of evidence adduced by the parties, the learned Additional Sessions Judge held that no case for commission of offence punishable under Section 308 IPC was made out against the appellants, but it was proved by the prosecution that the appellants had committed offences punishable under Sections 148, 324 read with Section 149 IPC and Section 429 read with Section 149 IPC. Having regard to the age, character, antecedents of the appellants and to the circumstances in which the offences were committed, the learned Judge was of the opinion that it was expedient that the appellants should be released on probation of good conduct.

> "Therefore, instead of sentencing them at once to any punishment, the learned Judge by judgment dated September 7, 2006 directed release of the appellants on each of them entering into a bond for a sum of Rs.10,000/- with two sureties for the like amount to appear and receive sentence when called upon during the period of two years and in the meantime to keep the peace and be of good behaviour."

6. It is relevant to notice that neither the acquittal of the appellants under Section 308 IPC nor their release on probation after finding them guilty under Section 324 read with Section 149 IPC was challenged by the State of UP before the higher forum. However, acquittal of the appellants under Section 308 IPC and their release on probation after their conviction under Section 324 read with Section 149 IPC was made subject- matter of challenge before the High Court by the original informant by filing Criminal Revision No. 5819 of 2006.

7. The learned Single Judge, who heard the revision application, appreciated the evidence on record and prima facie came to the conclusion that offence punishable under Section 308 read with Section 149 IPC, was made out against the appellants. The learned Single Judge arrived at a firm finding that in view of the injuries sustained by Varun and the first informant, the appellants could not have been convicted under Section 324 IPC with the aid of Section 149 and, therefore, the conviction of the appellants under Section 324 read with Section 149 IPC and direction to release them on probation, were liable to be set aside. In view of these findings, the learned Single Judge, by the impugned judgment, has confirmed the finding recorded by the learned Additional Sessions Judge that the appellants are guilty but thereafter has set aside the acquittal of the appellants under Section 308 IPC as well as their conviction under Section 324 read with Section 149 IPC and also the direction to release them on probation. The learned Judge has further remitted the matter to the Court of learned Additional Sessions Judge, Jaunpur to pass fresh order of conviction and sentence on the appellants, keeping in view the observations made in the body of the judgment. Having

regard to the facts of the case, this Court feels that the finding recorded and directions given by the High Court should be reproduced verbatim, which read as under: - "Consequently, this revision is hereby allowed. Those findings of impugned judgment, whereby the accused-respondents have been found guilty, are upheld, but the finding recorded in para 32 thereof with regard to the offence under Section 308 IPC as well as the conviction of the accused-respondents under Section 324/149 IPC and order of releasing them on probation of good conduct are hereby set aside.

> "Session Trial No.271 of 2000 is sent back to the Court of Additional Sessions Judge/Special Judge (E.C. Act), Jaunpur, who is directed to pass fresh order of conviction and sentence of the accused- respondents in accordance with law, keeping in view the observations made in the body of this judgment."
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> The above finding and directions have given rise to the instant appeal."

8. This Court has heard the learned counsel for the parties at length and considered the evidence forming part of the record.

9. The High Court was exercising the revisional jurisdiction at the instance of a private complainant and, therefore, it is necessary to notice the principles on which such revisional jurisdiction can be exercised. Sub-Section (3) of Section 401 of Code of Criminal Procedure prohibits conversion of a finding of acquittal into one of conviction. Without making the categories exhaustive, revisional jurisdiction can be exercised by the High Court at the instance of private complainant (1) where the trial court has wrongly shut out evidence which the prosecution wished to produce, (2) where the admissible evidence is wrongly brushed aside as inadmissible, (3) where the trial court has no 9 jurisdiction to try the case and has still acquitted the accused, (4) where the material evidence has been overlooked either by the trial court or the appellate court or the order is passed by considering irrelevant evidence and (5) where the acquittal is based on the compounding of the offence which is invalid under the law. By now, it is well settled that the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, cannot be exercised lightly and that it can be exercised only in exceptional cases where the interest of public justice require interference for correction of manifest illegality or the prevention of gross miscarriage of justice. In these cases, or cases of similar nature, retrial or rehearing of the appeal may be ordered.

10. Applying the above stated principles to the facts of the case on hand, this Court finds that after discussing medical evidence and evidence of injured witness in great detail the High Court has prima facie come to the conclusion that case 10 under Section 308 IPC is made out against the appellants. Such a conclusion could have been recorded only in a properly constituted appeal, filed by the State Government. The High Court has further concluded that no offence punishable under Section 324 IPC is committed by the appellants. This finding could have been recorded only in an appeal filed by the appellants.

> "In the face of prohibition contained in Section 401(3) of the Code of Criminal Procedure, it was all the more incumbent upon the High Court to see that it does not

convert the finding of acquittal into one of conviction by the indirect method. Further, the matter is remitted to the learned Additional Sessions Judge for the purpose of passing fresh order of conviction and imposition of sentence on the appellants in the light of what is observed in the impugned judgment. In the impugned judgment, the High Court has concluded that the appellants are guilty under Section 308 read with Section 149 11 IPC and not under Section 324 read with Section 149 IPC. Therefore, on remand the Trial Court is left with no judicial discretion but to convict the appellants under Section 308 read with Section 149 IPC and impose punishment on them.

Normally, when High Court decides to interfere with the judgment of the Trial Court in exercise of revisional jurisdiction, the retrial of the case is ordered based on certain well settled principles.

However, after recording guilt of an accused under particular provision of Indian Penal Code, the matter could not have been remitted to the Sessions Court for passing appropriate order of conviction and punishment."

11. On the facts and in the circumstances of the case, this Court is of the view that the High Court has exercised revisional jurisdiction with material illegality and irregularity resulting into miscarriage of justice to the appellants and, therefore, the appeal deserves to be allowed.

12. For the reasons stated in the judgment, the appeal succeeds. The judgment dated May 25, 2007, rendered by the learned Single Judge of the High Court of Judicature at Allahabad in Criminal Revision No. 5819 of 2006 remanding the case to the Court of learned Sessions Judge for passing proper order of conviction of the appellants and imposing punishment on them is hereby set aside.

13. The judgment dated September 7, 2006, delivered by the learned Additional Sessions Judge, Jaunpur in Sessions Trial Case No. 271 of 2000 convicting the appellants under Sections 148, 342 read with Section 149 and Section 427 read with Section 149 IPC and directing their release on probation for a period of two years is restored.