Ram Badan Devi Vs Jamun Sah and Others

Court: Patna High Court

Date of Decision: Aug. 20, 1999

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 304, 307, 386, 389, 390
Penal Code, 1860 (IPC) â€" Section 147, 148, 149, 302, 323

Citation: (2000) 1 PLJR 805

Hon'ble Judges: Narayan Roy, J

Bench: Single Bench

Advocate: Ganesh Prasad Singh, Bishnu Kant Dubey and Sunil Kumar Singh 1, for the Appellant; Mithlesh Kumar Khare and Mr. Ram Krishna Prasad for the State, for the Respondent

Final Decision: Dismissed

Judgement

Narayan Roy, J.
Heard learned counsel for the petitioner and learned counsel for the opposite parties. This revision application is directed

against the judgment and order dated 9th August, 1994 passed by the 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 184 of 1987

under Sections 302, 148, 147, 302 / 149, 323 and 324 of the Indian Penal Code.

2. The prosecution case, in short, is that informant Ram Badan Devi P.W.5 on 6.3.1986 at about 12 noon was at her home. At that time Ram

Janam Rai deceased and Shivadhari Rai were preparing bamboo split at the Darwaja for repair of their house. In the meantime, she-goat of Jamun

Sah opposite party no. 1 went in the mustard oil crop land of the informant and an altercation took place between the wife of opposite party no. 1

Jamun Sah and the wife of Shivadhari Rai. In the meantime, Ram Charitar Sah opposite party no. 6 came from his brinjal field and asked Jamun

Sah and Mukund Sah to kill Ram Janam Rai as he was the person who had killed his brother. Thereafter Mukund Sah brought bamboo from his

house and Jamun Sah armed with Farsa and Mukund Sah gave one bamboo blow on the head of Ram Janam Rai due to which he fell down.

Thereafter Jamun Sah gave one gransa blow to one Ram Janam Rai. In the meantime, opposite party no. 3 Ram Nihora Sah armed with gransa,

Siyaram Sah armed with lathi and Ram Nagina Sah arrived there. Further case of the prosecution is that Ram Nihora Sah also assaulted Ram

Janam Rai. Siyaram Sah and Ram Nagina Sah assaulted Shivadhari Rai and his wife with lathis. In the meantime, Ram Chandra Jha came there

and snatched gransa from Jamun Sah and assaulted Ram Janam Rai. On hearing hulla villagers Baran Rai, Bikau Rai, Ram Rekha Rai and Jagdeo

Rai came there and saw the occurrence. It is further alleged that when Ram Janam Rai died aforesaid accused persons and other unknown persons

came there and thereafter they fled away.

3. On the basis of the statement of the informant P.W.5 Ram Badan Devi, a fardbeyan Ext.2 was lodged before the police on the basis of which a

formal first information report was drawn up and case u/s 302 read with other ancillary sections of the Indian Penal Code was registered and after

investigation the police submitted chargesheet against the accused-opposite parties and the learned Chief Judicial Magistrate took cognizance of

the offence and the case was committed to the Court of Session and ultimately, it was tried by the 1st Additional Sessions Judge, Sitamarhi and the

impugned judgment of acquittal was passed.

4. Learned counsel for the petitioner submitted that the learned trial court has not appreciated the evidence of the prosecution in correct

perspective of the case and has discarded evidence of material witnesses. Learned counsel further submitted that the learned trial court shut out the

evidence led by the prosecution and thus, disbelieved the prosecution version of the case. Learned counsel also submitted that evidence of the

doctor and the Investigating Officer which fully supports the prosecution version of the case could not have been doubted in view of the evidence

of the eye-witnesses to the occurrence including the informant P.W.5. Learned counsel, therefore, submitted that the learned trial court has

committed procedural error and also on the point of law and consequently, there has been a flagrant miscarriage of justice.

5. On the other hand, learned counsel appearing on behalf of the opposite parties contended that the learned trial court has discussed and analysed

the evidence of the parties and has not discarded or shut out the evidence of the prosecution rather the learned trial court finding contradictory

evidence doubted the prosecution version of the case and thus, held that the prosecution failed to prove the charges against the accused persons

beyond all reasonable doubt and thus, acquitted them. Learned counsel further submitted that there is neither procedural or legal error manifest on

the face of the impugned judgment nor there has been flagrant miscarriage of justice.

6. Section 401 of the Code of Criminal Procedure (hereinafter referred to as ""the Code"") confers upon the High Court power of revision. Section

401 of the Code reads as under :

401. High Court''s powers of revision.Ã¯Â¿Â½(1) In the case of any proceeding the record of which has been called for by itself or which otherwise

comes to its knowledge, the High Court may, in its discretion exercise any of the powers conferred on a Court of Appeal by Sections 386, 389,

390 and 391 or on a Court of Session by Sec. 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case

shall be disposed of in the manner provided by Sec. 392.

(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard

either personally or by pleader in his own defence.

(3) Nothing in this section shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction.

(4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the

party who could have appealed.

(5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is

satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to

do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.

7. From bare reading of the aforesaid provision it is manifest that the revisional jurisdiction has been conferred upon the criminal courts in order to

correct miscarriage of justice, arising from misconception of law, irregularity of procedure and similar infirmities. So far as the revisional jurisdiction

against the judgment of acquittal is concerned, it is well settled that the revisional jurisdiction of the High Court u/s 401 should not be exercised

except in exceptional cases where the trial court has no jurisdiction to try the case but has still acquitted the accused and the order under revision

suffers from glaring illegality or has caused miscarriage of justice or the trial court has illegally shut out the evidence which otherwise ought to have

been considered or where the material evidence which clinches the issue have been overlooked. It is also settled that the revisional jurisdiction of

the High Court is not to be ordinarily invoked merely because the lower court has taken a wrong view of the law or misappreciated the evidence

on record and even if the High Court is convinced that the accused deserves conviction. High Court would not be justified in substituting an order

of acquittal into one of the conviction.

8. In the case of K. Chinnaswamy Reddy Vs. State of Andhra Pradesh, , the Apex Court held that the revisional jurisdiction of the High Court is

not to be lightly exercised when it is invoked by a private party against an order of acquittal. It could be exercised only in exceptional cases where

the public justice requires interference for the correction of illegality or prevention of miscarriage of justice. This jurisdiction is not ordinarily to be

invoked or used merely because the lower court has taken a wrong view of the law or misappreciated the evidence on record. The Apex Court,

thus, held :

It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties though the State may not

have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some

glaring defect in the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-

section (4) of S. 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on

the High Court to see that it does not convert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot

itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside a finding

of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for

determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our

opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be : where the trial court has no jurisdiction to try

the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or

where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been

overlooked either by the trial court or by the appeal court or where the acquittal is based on a compounding of the offence, which is invalid under

the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably

interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not

do directly in view of the provisions of S. 439 (4). We have therefore to see whether the order of the High Court setting aside the order of

acquittal in this case can be upheld on these principles.

9. In the case of Kishan Swaroop Vs. Govt. of NCT of Delhi, , the Apex Court has reiterated the same view as held in the case of K.

Chinnaswamy Reddy (supra).

10. This question again fell for consideration before the Apex Court in the case of Vimal Singh Vs. Khuman Singh and Another, and the Apex

Court while considering the power of the High Court u/s 401 of the Code specially in case of revision against the judgment of acquittal observed as

under:

Coming to the ambit of power of High Court u/s 401 of the Code, the High Court in its revisional power does not ordinarily interfere with

judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of

acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or

has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial Court has illegally shut

out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked.

These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates

that the High Court shall not convert a finding of acquittal into one conviction. Thus, the High Court would not be justified, in substituting an order

of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisonal

power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of

acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. In fact, sub-section (3) of

Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the revisional

power of the High Court, the High Court in the present case committed manifest illegality in convicting the appellant u/s 304, Part-I and sentencing

him to seven years'' rigorous imprisonment after setting aside the order of acquittal.

11. Noticing legal propositions as pronounced by the Apex Court from time to time, as referred to above, it must be held that revisional power of

the High Court should only be exercised in exceptional cases where there is some glaring defect in the procedure or there is a manifest error on

point of law and consequently, there has been a flagrant miscarriage of justice.

12. In the case at hand it appears that the learned trial court has discussed the evidence in detail and has critically analysed the same and on the

basis of the evidence has come to the conclusion that the prosecution has miserably failed to bring home the charges against the accused-persons.

The trial court has critically examined the evidence of the informant P.W.5, eye-witnesses, namely, Ram Kishun Rai P.W.1, Shivadhari Rai P.W.2

and Jaiman Devi P.W.3. So far as the medical evidence is concerned, the learned trial court has duly considered the same and has discussed in the

impugned judgment and at the same time has also scrutinised evidence of the Investigating Officer of the case. The learned trial court, however, on

scrutiny of evidence of the eye-witnesses, namely, P.Ws. 2 and 3, has doubted their credibility in the light of the evidence of the Investigating

Officer, P.W.11.

13. I have carefully examined the impugned judgment and to me it appears that the learned trial court has discussed each and every evidence and

has come to a definite conclusion and thus, has recorded finding of acquittal. At the face of the impugned judgment, it does not appear that the

learned trial court has either discarded the prosecution evidence or has misappreciated the same.

14. The finding arrived at by the learned trial court, thus, in my opinion, requires no interference in exercise of power u/s 401 of the Code as there

is no glaring defect in the procedure nor there is any manifest error on the point of law nor there has been a flagrant miscarriage of justice. In the

result, there is no merit in the revision application which is, accordingly, dismissed.