A.F.R.

Neutral Citation No. - 2024:AHC:71334

Reserved on 16.04.2024

Delivered on 24.04.2024

Court No. - 84
Case :- CRIMINAL REVISION No. - 3857 of 2004
Revisionist :- Jag Mohan Singh And Another
Opposite Party :- State of U.P. and Another
Counsel for Revisionist :- ,Arvind Srivastava Iii
Counsel for Opposite Party :- Govt. Advocate,Ayush Mittal,Vishnu Pandey

Hon'ble Mrs. Jyotsna Sharma,J.

1. Heard Sri Arvind Srivastava III, learned counsel for the revisionists, Sri Vishnu Pandey, learned counsel for private respondent and learned AGA for the State.

2. This criminal revision has been filed by the revisionists namely, Jag Mohan Singh and Ajendra Singh, putting up a challenge to a judgment and order dated 01.06.2004 passed by the Special Judge (SC/ST Act), Mainpuri in Sessions Trial No. 247 of 2001, under sections 352, 302 IPC acquitting the accused Devendra (the respondent no. 1), giving him benefit of doubt.

3. Before the grounds taken by the revisionist are mentioned, I find it appropriate to briefly refer to the prosecution case.

4. The first informant Ajendra Singh lodged an FIR by giving a handwritten application to the concerned police station, alleging that Smt. Kamlesh, the aunt (bua) of the first informant's wife was married to one Vijendra Singh. Vijendra Singh died four months after his marriage, leaving no issue. Kamlesh, wife of Vijendra Singh has been working as a nurse at P.H.C., Mohammadabad and had adopted a child. Since child was adopted by her, her devar (Devendra Singh-the instant accused) became inimical to her. A day before the incident i.e. on 15.04.2001, the deceased Kamlesh had come to her village, asking for her share in the crops but Devendra Singh refused to give her, her share. Next day, when the first informant was going to drop her at the Mainpuri Bus Station, carrying her on his two-wheeler (Vikky) and when he reached near Bhairav Mandir, the accused Devendra Singh came riding on his scooter and deliberately hit his two-wheeler from behind, toppling the first informant and Kamlesh. Instantly, the accused took out a knife and attacked Kamlesh leaving her severely injured. He immediately fled away on his scooter towards Mainpuri. Smt. Kamlesh died on the spot. The incident was witnessed by one Shiv

Veer Singh S/o Ram Shankar of the same village. Leaving the dead body at the place of occurrence, the first informant went to lodge the first information report. As per prosecution case, the FIR of the incident (which took place at 09.30 am in the morning of 16.04.2001) was lodged the same day at 10.30 am. The inquest on the dead body was conducted the same day. In the inquest report, 10 injuries on the body of the deceased were noted down. Samples of blood soaked and plain earth was gathered from the place of occurrence. The two-wheeler of the first informant, on which the first informant was allegedly carrying the deceased for dropping her to the bus stand, was found on the spot. From the place of occurrence, certain articles like a pair of slippers and a bag were taken into possession and a memo thereof was prepared by the investigating officer. The bag contained clothes like sari, petticoat, blouse, keys, some money, some clothes wearable by a small child, which included half t-shirt, pant, underwear etc. The accused was taken on police remand and on his pointing out, a knife was recovered. Blood spots were found on the knife. The articles collected from the spot and the blood soaked clothes of the deceased were sent for forensic examination. On a number of articles human blood was found.

5. After committal of the case, the accused was charged under sections 352 and 302 IPC.

6. The prosecution produced eye-witnesses i.e., the first informant Ajendra Singh as PW1, Sant Bakhsh Singh (a witness of inquest, motive and certain prosecution papers) as PW2, Varnam Singh (a witness of certain prosecution papers) as PW3, Constable Jaiveer Singh (a witness who proved the chik FIR, the copy of Kayami GD) as PW4, Dr. N.K. Sharma (who conducted post-mortem) as PW5, Sub-Inspector R.C. Sharma (who is a witness of recovery of the weapon of offence) as PW6, Inspector Shrikant Dixit (the investigating officer who conducted the investigation, prepared the spot inspection paper and certain other prosecution papers and also witness of the statement given by the accused admissible under section 27 of the Indian Evidence Act) as PW7.

7. Most important and strong contentions of the revisionists are:- first, that the testimony of the eye-witness Ajendra Singh has been discarded by the trial court, without giving any cogent or satisfactory reason. The evidence given by him proved the guilt of the accused and was fully reliable, however strange reasons have been given for disbelieving him. Secondly, the prosecution has been able to prove the motive behind commission of this ghastly crime

but the same has been wrongly disbelieved by the court below for irrelevant reasons. Thirdly, the court below has taken into consideration the statements given under section 161 Cr.P.C., which are inadmissible. The trial court also relied upon an affidavit, which could have never been taken into consideration by it. Fourthly, the court below disbelieved the recovery which was a strong evidence pointing towards the guilt and complicity of the accused. The court below has based its judgment on conjectures and has given benefit of doubt to the accused, though there has not been any doubt as regard his guilt. The prosecution fully proved its case and the judgment of acquittal has been pronounced on the basis of irrelevant material and is not sustainable in the eye of law. The trial court utterly failed to appreciate the prosecution case and the evidence given by it. Certain observations and findings given by the trial court are perverse and wholly uncalled for.

8. The revisionist has drawn my attention to certain portions of the judgments and has vehemently argued that the trial court appears to have disbelieved the wholly reliable testimony of the eye-witness, the existence of the motive for commission of the crime and all other facts and circumstances of the case including the recovery of the knife, on pointing out of the accused himself, an evidence which was admissible under section 27 of the Indian Evidence Act, giving such kind of reasoning, which no rational or prudent man shall, much less a judge, shall otherwise may give. The trial court has disbelieved the motive for the crime on the premise that the adoption of the child was not proved and that the prosecution should have proved that a child was duly adopted and that the adoption deed was executed and that the prosecution failed to prove that when, at which place, and in which manner the child was adopted.

9. I perused the impugned judgment. I find it rather conspicuous that the trial court has given undue importance to the lack of documentary evidence or otherwise for proving the adoption. In my opinion, the criminal court here was not at all adjudicating upon the validity of the adoption. The reasons given by the trial court for disbelieving the motive part of the prosecution case are, in my view, far from satisfactory.

Further the trial court appears to have conveniently ignored the legal position that where eye-witness account is available, it is not at all necessary for the prosecution to prove the motive. At the same time, it may be mentioned that if motive forms part of the prosecution case, it may further fortify the same, but proof of motive is not indispensable.

10. The revisionist has drawn attention of this Court to the reasonings given by it for disbelieving the statement given by eye-witness (PW1). It appears that core value of the eye-witness account given by PW1 as regard the incident has not been appreciated. The opinion of the trial court for discarding the evidence of PW1 is based on an affidavit given by a witness Shiv Veer Singh. It may be noted that Shiv Veer Singh has not been examined on oath. His affidavit has been taken into consideration in disregard of all canons of law. The trial court didn't stop here and has further relied upon certain statements given under section 161 Cr.P.C. The law in this regard is well settled that any part of the statement given under section 161 Cr.P.C. cannot be used for any purpose at the trial court, except to contradict that very witness, in the manner provided under section 145 of the Indian Evidence Act.

11. In the instant case, the trial court has given a finding of discrepancies in the statement given by PW1 comparing the same with the affidavit of Shiv Veer Singh and the statement given by a witnesses under section 161 Cr.P.C., ignoring all the provisions of section 162 Cr.P.C. and section 145 of the Indian Evidence Act. Besides ignoring the provisions of law, the trial court has given undue importance to minor extraneous circumstances which essentially had no bearing on the case.

12. On the other hand, on the basis of several judgments referred to by the respondent, it is argued that the impugned judgment is well founded and there is no scope for interference by this revisional court and that the revisional court has no power to convert a judgement of acquittal into conviction.

13. From the side of the respondents, a judgment given by the Supreme Court in ***Venkatesan vs. Rani and Another, 2013 Cri.L.J. 4208***, has been referred to. The Supreme Court in para no. 7 of the judgment observed as below:-

> ***"7. The above consideration would go to show that the revisional jurisdiction of the High Courts while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the Trial Court had committed a manifest error of law or procedure or had overlooked and ignored relevant and material evidence thereby causing miscarriage of justice. Re-appreciation of evidence is an exercise that the High Court must refrain from while examining an order of acquittal in the exercise of its revisional jurisdiction under the Code. Needless to say, if within the limited parameters, interference of the High Court is justified the only course of action that can be adopted is to order a re-trial after setting aside the acquittal. As the language of Section 401 of the Code makes it amply clear there is no power vested in the High Court to convert a finding of acquittal into one of conviction."***

14. Second case which has been referred to by the private respondent is ***Vimal Singh vs. Khuman Singh and Another, 1998***

AIR SCW 3326, wherein the Supreme Court observed in para no. 7 as below:-

> ***"7. Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its reversional power does not ordinarily interfere with judgment 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 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 403 mandates that the High Court shall not convert a finding of acquittal into one of 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 accoused deserves conviction. No doubt, the High Court in exercise of its reversional 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. Infect, 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 reversional power of the High Court, the High Court in the present case under Section 304 Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal."***

15. The defence further relies upon a judgment given by the Supreme Court in ***Ballu @ Balram @ Balmukund vs. State of Madhya Pradesh, AIRONLINE 2024 SC 201,*** wherein it has been observed in para no. 9 as below:-

> *"9. Apart from that, it is to be noted that the present case is a case of reversal of acquittal. The law with regard to interference by the Appellate Court is very well crystallized. Unless the finding of acquittal is found to be perverse or impossible, interference with the same would not be warranted."*

16. The Supreme Court in ***Sadhu Saran Singh vs. State of U.P. (2016) 4 SCC 357*** has held as below:-

> *"In an appeal against acquittal where the presumption of innocence in favour of the accused is reinforced, the appellate Court would interfere with the order of acquittal only when there is perversity of fact and !aw. However, we believe that the paramount consideration of the Court is to do substantial justice* ***and avoid miscarriage of justice which can arise by acquitting the accused who is guilty of an offence. A miscarriage of justice that may occur by the acquittal of the guilty is no less than from the conviction of an innocent. Appellate Court, while enunciating the principles with regard to the scope of powers of the appellate Court in an appeal against acquittal, has no absolute restriction in law to review and relook the entire evidence on which the order of acquittal is founded."***

17. Further, the Supreme Court in ***Harljan Bhala Teja vs. State of Gujrat (2016) 12 SCC 665***, has observed as below:-

> ***"No doubt, where, on appreciation of evidence on record, two views are possible, and the trial court has taken a view of acquittal, the appellate court should not interfere with the same. However, this does not mean that in all the cases where the trial court has recorded acquittal, the same should not be interfered with, even if the view is perverse. Where the view taken by the trial court is against the weight of evidence on record, or perverse, it is always open far the appellate court to express the right conclusion after re- appreciating the evidence If the charge is proved beyond reasonable doubt on record, and convict the accused."***

18. In the instant case, the PW1 is the eye-witness of the incident. His testimony has not been appreciated and has been discarded by giving such reasonings which which are based on material which are irrelevant. It is not uncommon that conviction is recorded on the basis of a single eye testimony provided it is found reliable. Further, there are few more piece of evidence including prompt FIR, the recovery of weapon of offence etc. but those pieces of evidence have not been appreciated at all. The principles and provisions of law have been totally disregarded. I find the judgment given by the trial court bordering on perversity and the interest of justice demands interference by this court of revision. In the leading case of ***Shivaji Sahebrao Bobade v. State of Maharashtra, (1973) 2 SCC 793***, this Court held that even where a case hangs on the evidence of a single eye witness it may be enough to sustain the conviction given sterling testimony of a competent, honest man although as a rule of prudence courts call for corroboration. *"It is a platitude to say that witnesses have to be weighed and not counted since quality matters more than quantity in human affairs."*

19. In ***Anil Phukan v. State of Assam, (1993) 3 SCC 282 : JT 1993 (2) SC 290***, the Court observed as below:-

> *"Indeed, conviction can be based on the testimony of a single eye witness and there is no rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eye-witness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eye witness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in* ***the prosecution, then the courts generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eye witness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect."***

20. The court cannot acquit an accused for the sole reason that only one witness has been produced. Of course- where there is a single witness, the court has to carefully weigh his testimony before relying upon the same. But it cannot insist upon plurality of a witness.

21. The trial court appears to have observed in its judgment that all the witnesses were relatives of the first informant therefore, they cannot be relied upon. The Supreme court, in ***Harbans Kaur and Another Vs. State of Haryana 2005 AIR (Supreme Court) 2989, decided on 01.03.2005*** has observed on para no.7 as below:

> ***"There is no proposition in law that relatives are to be treated as untruthful witnesses. On the contrary, reason has to be shown when a plea of partiality is raised to show that the witnesses had reason to shield actual culprit and falsely implicate the accused. No evidence has been led in this regard. So far as the delay in lodging the FIR is concerned, the witnesses have clearly stated that after seeing the deceased in an injured condition immediate effort was to get him hospitalized and get him treated. There cannot be any generalization that whenever there is a delay in lodging the FIR, the prosecution case becomes suspect. Whether delay is so long as to throw a cloud of suspicion on the seeds of the prosecution case, would depend upon the facts of each case. Even a long delay can be condoned if the witnesses have no motive of implicating the accused and have given a plausible reason as to why the report was lodged belatedly. In the instant case, this has been done. It is to be noted that though there was cross-examination at length no infirmity was noticed in their evidence. Therefore, the trial Court and the High Court were right in relying on the evidence of the prosecution witnesses."***

22. In ***Bhagwan Jagannath Markad and Others Vs. State of Maharashtra 2016 AIR (SCW) 4531, decided on 04.10.2016***, the Apex Court has observed in para no.19 as below:

> ***"19. While appreciating the evidence of a witness, the court has to assess whether read as a whole, it is truthful. In doing so, the court has to keep in mind the deficiencies, drawbacks and infirmities to find out whether such discrepancies shake the truthfulness. Some discrepancies not touching the core of the case are not enough to reject the evidence as a whole."***

In my opinion, this briefly worded observation by the Supreme Court clinches the issue and gives an excellent guideline to be followed by all the trial courts.

23. This is settled that while exercising powers of revision, revisional court is not empowered to convert a finding/judgment of aquittal in a judgment of conviction. The revisional court definitely has power to remand the matter to the trial court, if it is found that the trial court has taken into consideration irrelevant material or that it has refrained from appreciation of facts and misapplied the law. The court of revision is obligated to see that substantial justice is done and that justice is not miscarriaged. It is the duty of trial court to make every effort to disengage the truth from falsehood and to sift the grain from the chaff rather than to adopt an easy course of rejecting the entire prosecution case merely because there were some circumstances or embellishments. The powers of the court of revision are definitely limited, but this does not mean that in all the cases where acquittal has been recorded, the same shall not be interfered at, even though the judgment of the trial court suffers from glaring illegalities and infirmities.

24. In ***Rattan Singh Vs. State of Punjab, (Punjab and Haryana) (DB), 1995 (3) R.C.R. (Criminal) 508 : 1995 (3) AICLR 285***, a judgment passed by the High Court of Punjab and Haryana, it has been observed in para 16 as below:

> ***"16……..Certain discrepancies here and there are bound to occur in criminal cases and no criminal is free from minor discrepancies. The main thing to be seen is whether those inconsistencies go to the root of the matter or pertain to the insignificant aspects thereof.***

Further in para 17, it has been observed as the regard point of motive, as below:

> ***"17. Similarly, on the point of motive, it is not a sine qua non for the success of the prosecution case that the motive must be proved. It has been held in Krishna Pillai Sree Kumar and another v. State of Kerala, 1981 Cri.L.J. 743, that so long as the other evidence remains convincing and it is not open to reasonable doubt, a conviction may well be based on it."***

25. In my opinion this is one case, where the revisional court must interfere to prevent the miscarriage of justice. Hence the impugned order is set-aside and the revision is **allowed**. The matter is remanded to the trial court to decide it afresh after lawful appreciation of evidence.

26. At the same time, this Court also finds it necessary to give direction to the trial court concerned to decide this old criminal case expeditiously, after giving the parties an opportunity for placing their arguments, without giving any unnecessary adjournment to any of the sides. The learned trial court may also ask for submission of written arguments, so that any further delay can be avoided. As a note of abundant caution it is being categorically impressed upon that trial court shall remain uninfluenced by any of the observations made by this revisional court on any factual matrix of the case.

27. The accused **Devendra Singh** is directed to appear before the trial court concerned **within next 15 days**. He shall also file an undertaking and furnish two sureties of **Rs. 1,00,000/-** each and a personal bond of like amount, binding himself to the condition that he shall appear and keep appearing before the trial court in-person, till the judgment is pronounced. In case, any default is made in appearance, the trial court shall proceed to forfeit the bonds and initiate legal proceeding in accordance with law.

28. Let a copy of this order be immediately transmitted to the court concerned.

Order Date :- 24.4.2024
#Vikram/Sumit