Pakalapati Narayana Gajapathi Raju And ... vs Bonapalli Peda Appadu And Anr. on 25 July, 1975

Equivalent citations: AIR1975SC1854, (1975)4SCC477, 1975(7)UJ580(SC), AIR 1975 SUPREME COURT 1854, (1975) 4 SCC 477, 1976 SC CRI R 23, 1976 3 CRI LT 35, 1976 78 PUN LR 12, 1975 2 SCWR 210, 1975 ALLCRIC 281, 1975 SCC(CRI) 543, ILR 1976 KANT 233

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Bench: P.N. Bhagwati, R.S. Sarkaria, Y.V. Chandrachud

JUDGMENT

Y.V. Chandrachud, J.

1. The narrow question for consideration in this appeal by special leave is whether in the exercise of its revisional powers under Section 439 of the CrPC, the High Court of Andhra Pradesh was justified in ordering a re-trial of the appellants. The revision application before the High Court was filed by a private party in a case which was not instituted upon a complaint.

2. It is alleged that on the night of June 26, 1972 the appellants committed the murder of one Tata and caused grievous injuries to seven others. The Learned First Addl. Sessions Judge, Visakhapatnam, acquitted the appellants of all the charges leveled against them. As against the order of acquittal. Peda Appadu, a brother of the deceased filed a revision application in the High Court. Taking the view that the learned Sessions Judge had wholly overlooked the evidence of P.Ws. 5, 7, 8 and 12 to 15 and that he had wrongly treated the First Information Report, as a piece of substantive evidence in the case, the High Court set" aside the acquittal and directed a retrial of the appellants.

3. Section 439(1) of the CrPC provides that in exercise of revisional jurisdiction, the High Court may exercise any of the powers conferred on a court of appeal. This provision is made expressly subject to Sub-section (4) of Section 439 under which nothing contained in the section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction. Section 439 has been interpreted in several decisions of this Court which have taken the view that, the revisional jurisdiction, when invoked by a private complainant against an order of acquittal, ought not to be exercised lightly and that it can be exercised only in exceptional cases where the interests of public justice require interference for the correction of a manifest illegality or the prevention of a gross miscarriage of justice. (See Satyendra Nath Dutta v. Ram Narain , Akalu Ahir v. Ramdeo Ram , Changanti Kotaiah v. Goginoni Venkateshwara Rao It is clear from these decisions that the

revisional jurisdiction cannot be invoked merely because the lower court has not appreciated the evidence properly. The High Court has in its Judgment referred to the decisions of this Court but in applying those decisions it has transgressed the limits of its revisional powers.

4. The first reason given by the High Court for ordering a re-trial of the appellants is that the Sessions Court had wholly overlooked the evidence of P.Ws. 5, 7, 8 and 12 to 15. This is factually incorrect. After setting out the salient features of the evidence of these witnesses, the Sessions Court has analysed and discussed that evidence in paragraphs 37, 41 and 46 of its Judgment. It held that these witnesses, on their own showing, had not seen the occurrence and therefore their evidence could, not assist the prosecution in proving the charges against the accused. The learned Sessions Judge further held that the injuries alleged to have been received by these witnesses during the course of the incident were simple in nature and therefore it was surprising that they were not examined by the Investigating Officer at the time when the Inquest Panchnama was made. The learned Judge was influenced by the consideration that the injured witnesses were themselves arraigned as accused in a counter case which rendered their evidence suspect. It may perhaps be that the evidence of these witnesses may bear a closer scrutiny but that is a far cry from saying, as the High Court has done, that the Sessions Court had wholly overlooked that evidence.

5. The High Court is also incorrect in the second reason which it has given for ordering a re-trial of the appellants. The High Court thought that the Sessions Court had used the FIR as a substantive piece of evidence. We have been taken through the best part of the Judgment of the Sessions Court which occupies over 50 cyclostyled pages of the paper book, but we are unable to agree that any portion of the FIR has been treated by the Sessions Court as if it constituted substantive evidence in the case. Though the learned Sessions Judge has referred to the contents of the FIR at more than one place in his Judgment and though he could have expressed himself differently, it is clear that the references to the FIR are directed mainly towards pointing out the inconsistencies in the prosecution case.

6. Apart therefore from the circumstances that interference with the order of acquittal passed by the trial Court was not called for in the exercise of the revisional jurisdiction of the High Court, the two reasons given by the High Court in support of its order are misconceived.

7. Accordingly, we allow the appeal, quash the Judgment of the High Court and confirm that of the Sessions Court.