Bindeshwari Prasad Singh @ B.P. Singh ... vs State Of Bihar (Now Jharkhand) on 13 August, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2907, 2002 (6) SCC 650, 2002 AIR SCW 3315, 2002 AIR - JHAR. H. C. R. 973, 2002 CRILR(SC&MP) 874, 2002 (4) SLT 731, (2002) 6 JT 22 (SC), 2002 (2) UJ (SC) 1234, 2002 (8) SRJ 170, 2002 (2) ALL CJ 1558, 2002 (5) SCALE 564, 2002 SCC(CRI) 1448, 2002 (3) BLJR 1893, 2002 (6) JT 22, 2002 CRILR(SC MAH GUJ) 874, (2002) 4 ALLCRILR 374, (2003) SC CR R 944, (2002) 3 CRIMES 130, (2002) 3 ALLCRILR 995, (2002) 23 OCR 476, (2002) 4 ALLCRILR 863, (2002) 2 CURCRIR 162, (2002) 2 CAL HN 576, (2002) 3 EASTCRIC 119, (2002) MAD LJ(CRI) 939, (2003) 1 MAHLR 37, (2002) 4 PAT LJR 64, (2002) 3 RAJ CRI C 781, (2002) 4 RECCRIR 61, (2002) 3 SCJ 733, (2002) 3 CURCRIR 156, (2002) 5 SUPREME 332, (2002) 3 ALLCRIR 2585, (2002) 5 SCALE 564, (2002) 45 ALLCRIC 1043, (2002) 3 BLJ 462, (2002) 3 CHANDCRIC 28, (2002) 4 CAL HN 189, 2002 (2) ANDHLT(CRI) 298 SC, (2002) 2 ANDHLT(CRI) 298, 2002 (2) ALD(CRL) 404

Author: Bisheshwar Prasad Singh

Bench: M.B. Shah, Bisheshwar Prasad Singh

CASE NO.:
Appeal (crl.) 808 of 2002

PETITIONER:
BINDESHWARI PRASAD SINGH @ B.P. SINGH AND OTHERS

Vs.

RESPONDENT:
STATE OF BIHAR (NOW JHARKHAND)

DATE OF JUDGMENT: 13/08/2002

BENCH:
M.B. SHAH & BISHESHWAR PRASAD SINGH.

JUDGMENT:

Bisheshwar Prasad Singh, J.

Special leave granted.

The appellants herein were tried by the learned Sessions Judge, Dhanbad in Sessions Trial No. 193 of 1992 charged of the offence under Sections 302 and 302/114 of the Indian Penal Code. The learned Sessions Judge by judgment and order dated 21st January, 1994 acquitted the appellants of the charges levelled against them, finding that the prosecution had not proved its case beyond reasonable doubt.

The appeal preferred by the State against the acquittal of the appellants was dismissed by the High Court by its order dated 22nd November, 1994. No doubt the appeal was dismissed on the ground of limitation.

A revision was preferred by the informant to the High Court under Section 401 of the Code of Criminal Procedure which has been allowed by the impugned judgment and order dated 6th June, 2001 in Criminal Revision No. 48 of 1994. The judgment of acquittal was set aside and the case was remitted to the Sessions Judge for re-trial in accordance with law.

From the evidence on record it appears that an occurrence took place on 20th July, 1989 at about 4.00 p.m. The informant and appellant No.1 entered into an altercation in connection with removal of creepers which had climbed up to the balcony of the informant. The informant as well as appellant 2 to 5 herein reside in the same building. The altercation took an ugly turn and abuses were exchanged between appellant No.1 and the informant. In the meantime son of the informant, namely Kumud came down and asked the appellants as to why they had not removed the creepers. The case of the prosecution is that appellant No. 1 and other appellants shouted and ordered assault on Kumud. In the assault that followed, deceased Kumud was hit on the head with an iron rod, as a result of which he sustained a serious injury. He was taken to the Bokaro General Hospital, where he was declared dead.

The matter was reported to the police. Thereafter the case was investigated and the appellants were put up for trial before the Sessions Judge, Dhanbad.

The prosecution relied upon the testimony of three eye witnesses, namely PWs. 1, 3 and 4, who were the mother, sister and father respectively of the deceased. The First Information Report was lodged by PW.4, the father of the deceased. The prosecution also relied upon the medical evidence on record, which according to the prosecution, corroborated the evidence of the witnesses. The learned Sessions Judge after a consideration of the evidence on record, acquitted the appellants of the charges levelled against them.

The State's appeal having been dismissed, a criminal revision was filed by the informant, PW.4 under Section 401 of the Code of Criminal Procedure before the High Court.

In the revision before the High Court it was sought to be urged on behalf of the informant that there was no reason to discard the testimony of PWs. 1, 3 & 4. The medical evidence on record corroborated their testimony. Therefore, on the basis of the evidence on record, it should have been held that the prosecution had proved its case beyond reasonable doubt.

On the other hand it was high-lighted by the appellants that the trial court had recorded its reasons for their acquittal. In the First Information Report a clear allegation was made against appellant No.1 of having assaulted Kumud (deceased) on his head with an iron rod. However, other witnesses in the course of their deposition attributed the assault on Kumud to appellant No.2, Anuj. The informant also, in his deposition before the Court, changed his version and in line with other witnesses deposed that it was Anuj, appellant No.2 who gave the blow with an iron rod on the head of the deceased resulting in his death. The medical evidence on record discloses that there were two external injuries only, the first being a lacerated wound over the middle part of the left parietal area and the other being an abrasion on the back of the right elbow.

A mere perusal of the judgment of the High Court would disclose that the High Court re-appreciated the evidence on record and came to the conclusion that the learned Sessions Judge was not justified in recording the order of acquittal. The evidence of eye witnesses was consistent and so far as the informant is concerned, no doubt in the First Information Report he had attributed the fatal injury to appellant No.1 but he later changed his version and deposed that the injury was caused by appellant No. 2. The High Court was impressed by the argument that the First Information Report not being a substantive piece of evidence, at best the evidence of the informant was not corroborated by the First Information Report. The High Court further found that the presence of eye witnesses was natural and the mere fact that they were related was no ground to discard their testimony. Rejecting the argument urged on behalf of the appellants that there was no mention in the First Information Report about the presence of the wife and the daughter of the informant as eye witnesses who witnessed the occurrence from the balcony, the learned Judge observed that it was not expected that every detail would be mentioned in the First Information Report. On such reasoning, the High Court set aside the order of acquittal and ordered re-trial of the appellants.

We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the

law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 SC 196 : D. Stephens vs. Nosibolla; AIR 1962 SC 1788 : K.C. Reddy vs. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and others vs. Ramdeo Ram; AIR 1975 SC 1854 : Pakalapati Narayana Gajapathi Raju and others vs. Bonapalli Peda Appadu and another and AIR 1968 SC 707 :

Mahendra Pratap Singh vs. Sarju Singh).

The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdictional against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction. We, therefore, find no justification for the impugned order of the High Court ordering re-trial of the appellants.

The High Court has noticed the fact that the State had preferred an appeal against the acquittal of the appellants. That appeal was dismissed by the High Court on the ground of limitation. In principle that makes no difference, because the dismissal of the appeal even on the ground of limitation is a dismissal for all purposes. As observed earlier, the jurisdiction of the High Court in dealing with an appeal against

acquittal preferred under Section 374 of the Code of Criminal Procedure is much wider than the jurisdiction of revisional court exercising jurisdiction under Section 401 of the Code of Criminal Procedure against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in the appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial court. In such a case it may not be proper exercise of discretion to exercise revisional jurisdiction under Section 401 of the Code of Criminal Procedure against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal by its dismissal, may have to face a second trial for the same offence of which he was acquitted.

For these reasons we allow this appeal and set aside the impugned judgment and order of the High Court.