

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :13.07.2007

CRL. REV. P. 110/1998

BALESHWAR GEHLOT & ANR

...Petitioners

- versus -

SIRI CHAND & ORS.

...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Ashok Aggarwal with Mr Salas M Khan

For the Respondent : Mr R. D. Rana with Mr Vikas Tanwar

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

- | | | |
|----|---|-----|
| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in Digest? | YES |

BADAR DURREZ AHMED, J

1. This criminal revision petition has been filed by the complainant party impugning the judgment and or order passed by the learned Additional Sessions Judge on 29.08.1997 in Session Case No.42/1993, whereby respondent Nos. 1-4 who were all accused, have been acquitted by giving benefit of doubt. The case arises from FIR No.248/1992 registered under Section 302/307 read with Section 34 of the Indian Penal Code, 1860 (hereinafter referred to as “the IPC”) registered at Police Station Tuglak Road.

2. On behalf of the petitioners, it was pointed out that a letter dated 26.11.1997 was received by the petitioner No.1 from the Government of NCT in connection with filing of an appeal against the impugned judgment dated 29.08.1997. In that letter the petitioner No.1 had been informed that the Government of NCT of Delhi had decided to file an appeal against the said judgment and the record of the case had been forwarded to the concerned SDM for filing the appeal through the government advocate. Despite such a letter, no appeal had been filed by the Government of NCT and, therefore, the petitioners were constrained to file this criminal revision petition against the judgment of acquittal.

3. The allegations against accused were that Siri Chand and Jai Parkash were the owners of quarter No.62, NDMC Quarters, Prithivi Raj Road, New Delhi. They had constructed one jhuggi on their roof and had let out the same to accused Dharambir @ Birey. Baleshwar (the petitioner No.1) and Rajinder (deceased) along with their other family members were living in quarter No.63. It is alleged that there were common latrines and bathrooms for quarter Nos. 61, 62, 63 and 64 which were being used by the occupants of the said quarters and by their guests. It was further alleged that accused Siri Chand and Jai Parkash had put a lock on the common bathroom and latrine. About 15 days prior to 25.10.1992, Baleshwar's grandfather had come to their quarter. As he was seriously ill, Baleshwar and his family members requested the

accused Siri Chand and Jai Parkash to open the lock which they had put on the bathroom and latrine. But, they refused to do so. And, it is alleged that an altercation between Siri Chand, Jai Parkash and Samir on the one hand and Baleshwar and his family members on the other hand, took place. The allegations go further that thereafter Baleshwar and Rajinder opened the lock put on the latrine and bathroom. Thereupon accused Siri Chand, Jai Parkash and Samir threatened Baleshwar and Rajinder by stating that they would take revenge for the same.

4. The further case of the prosecution was that on 25.10.1992, on the day of Diwali, after performing pooja, Rajinder and his wife Usha and their two year old son along with Baleshwar went to the roof of their quarter No. 63 to light crackers and other fireworks. It was alleged that Baleshwar stood on the corner of the roof and at that time, accused Dharambir was sitting on the cot in front of the jhuggi. After some time, the three accused persons Siri Chand, Jai Parkash and Samir also came there. It was alleged that accused Jai Parkash and Dharambir made some objectionable remarks against Usha. On hearing these remarks, Rajinder rebuked them and thereafter all the four accused persons (Siri Chand, Jai Parkash, Samir and Dharambir) started beating Rajinder and when Baleshwar came to his rescue, he was also given a beating by the accused persons. On seeing this, Usha rushed to the ground floor and informed her mother and father-in-law that the accused were beating Rajinder and

Baleshwar. At that point, Siri Parkash (father of Rajinder and Baleshwar) went upstairs. Brijesh and Chander Pal who were neighbours also accompanied him. When they reached the roof, they saw that accused Samir brought out a knife from Dharambir's jhuggi and gave knife blows to Rajinder and Baleshwar. Jai Parkash had caught hold of Baleshwar and after inflicting injuries all the accused persons ran away from there. It is alleged that Siri Parkash , Brijesh and Chander Pal had also seen the accused persons inflicting injuries upon Rajinder and Baleshwar.

5. Constable Krishan Kumar on receiving information about the quarrel reached the spot and both Rajinder and Baleshwar were removed to Safdarjung Hospital where Rajinder was declared as having been brought dead. On receipt of information from Constable Krishan Kumar, DD No.46-B was recorded and a copy thereof was handed over to SI S. K. Meen, who along with Constable Hanuman Sahai went to the spot from where they came to know that the injured had already been removed to the hospital. The said SI S. K. Meena along with Constable Hanuman Sahai went to the hospital after leaving Constable Krishan Kumar at the spot to safeguard the same. Upon the Investigating Officer coming to know that Rajinder had been declared as having been brought dead, he moved an application for recording the statement of Baleshwar and the doctor declared him fit for making such a statement. The

Investigating Officer recorded the statement (Ex.PW6/A) of Baleshwar and got the case registered through Constable Hanuman Sahai.

6. As per the prosecution case, the Investigating Officer along with Baleshwar, Brijesh and Raju, who had met him in the hospital, returned to the spot of the incident and prepared the site plan on the pointing out of Baleshwar. The scene of occurrence was photographed and blood samples were seized from the spot so also the clothes, that is, trouser (Ex.P-1), shirt (Ex.P-2) belonging to Baleshwar and trouser (Ex.P-3) of the deceased Rajinder, blood stained shirt (Ex.P-6) of Brijesh and Kurta (Ex.P-4) and pyjama (Ex.P-5) of Raju. Thereafter, the Investigating Officer completed the inquest proceedings and sent the dead body for *post mortem*. Further proceedings were conducted by the Investigating Officer. Thereafter, the case was committed to the Court of Sessions and a charge under Section 302 and 307 read with Section 34 IPC was framed against the accused persons on 09.07.1993. Since all the accused pleaded not guilty, the matter proceeded for trial. 21 prosecution witnesses were examined and after review of the evidence, the learned Additional Sessions Judge, by virtue of the impugned judgment found that the evidence was insufficient to return a finding of guilt beyond reasonable doubt. Accordingly, giving benefit of doubt to the accused, the learned Additional Sessions Judge acquitted them of the charges.

7. The learned counsel for the petitioners submitted that accused Siri Chand and Jai Parkash are brothers. Samir is the son of Siri Chand and Dharambir @ Birey was the tenant of Siri Chand and Jai Prakash in the said jhuggi. The two eye witnesses Baleshwar (PW6) and Prakash Gehlot (PW7) are the injured brother and father of the deceased Rajinder respectively. PW4 Chander Pal and PW5 Brijesh are neighbours, who were supposedly eye witnesses but later on became hostile. The learned counsel for the petitioners submitted that the sole object of the Trial Court was to show that key witnesses were not present and in doing so, the Trial Court completely misdirected itself as also overlooked vital evidence. With regard to PW4 Chander Pal, the learned counsel submitted that although this eye witness had turned hostile his deposition was relied upon by the Trial Court for holding that PW7 Siri Parkash (father of the deceased Rajinder) was not an eye witness. He submitted that the deposition was also relied upon for the purposes of disbelieving the presence of injured eye witness PW6 Baleshwar. The deposition of PW5 Brijesh Kumar has also been dealt with by the Trial Court in similar fashion.

8. As regards the evidence of PW6 Baleshwar, who is the injured brother of the deceased Rajinder, the learned counsel for the petitioners submitted that his evidence has been overlooked except for wrongly inferring from a statement in his deposition that PW7 Siri Parkash was not an eye witness to the incident. With regard to PW7 Siri Parkash, who was also an

alleged eye witness of the occurrence, the learned counsel for the petitioner submitted that his testimony has been wrongly disbelieved. With regard to PW8 Usha, he submitted that she testified to the start of the quarrel leading to the incident and she was also the person who informed PW7 Siri Parkash about the quarrel, which resulted in his rushing upstairs. The learned counsel submitted that the testimony of PW8 Usha has been overlooked, except for wrongly inferring from a sentence in her deposition that the injured eye witness PW6 Baleshwar and PW7 were not present at the spot at the time of occurrence. He submits that PW8A Satpal, who testified that he took the PW6 Baleshwar in an injured condition to the hospital, has not been discussed at all.

9. With regard to PW9 Raju, the learned counsel submitted that this witness proved that he and PW5 took the deceased Rajinder to hospital. He was also a witness to the handing over of the clothes of the deceased Rajinder, PW6 Baleshwar and PW5 Brijesh. He also apparently proved the seizure of blood from the site. The learned counsel submitted that this witness's testimony has also been overlooked by the Trial Court except for the purposes of wrongly inferring from a sentence in his deposition that the statement of the witness PW6 Baleshwar was not recorded at the hospital, thereby casting doubts on his presence in the hospital.

10. He also pointed out that there is an anomaly in the judgment of the Trial Court where the Trial Court says that although the MLC of Baleshwar has not been proved by the prosecution, it shows that Baleshwar was admitted in the hospital at about 10.30 pm. It was the contention of the learned counsel for the petitioners that if the MLC could not be looked into then how could the Trial Court establish that Baleshwar was admitted in the hospital at 10.30 pm. He further submitted that the accused ran away and there is no explanation as to why they ran away.

11. Before the Trial Court the defence had argued that from the entire evidence on record led by the prosecution, the presence of PW6 Baleshwar at the spot at the time of the alleged incident does not stand proved and that the prosecution has also failed to prove that Baleshwar had received any injury. It was also argued that the presence of PW7 at the spot at the time of the incident was also not proved. It was also contended that the prosecution had failed to prove that there was any common latrine and bathroom and, therefore, the prosecution failed to prove and /or establish any motive of the accused persons in committing the murder of the deceased Rajinder or in inflicting any injury upon PW6 Baleshwar. It was also contended on behalf of the defence that there were major contradictions and discrepancies in the testimonies of the witnesses examined on behalf of the prosecution and, therefore, the statements of such witnesses could not be relied upon to convict the accused. The defence had

also argued that the prosecution had suppressed material facts and had also attempted to shift the place of occurrence which in itself suggested that the prosecution had falsely implicated the accused in this case. It was lastly submitted on behalf of the defence that the accused had given a plausible explanation about the alleged blood stains appearing on their clothes inasmuch as they had stated that they tried to intervene when the deceased Rajinder and his companions were quarreling on the roof and during that scuffle their clothes might have received blood stains.

12. The learned counsel appearing on behalf of the petitioners referred to the decision of the Supreme Court in the case of **State of U. P v. Noorie: (1996) 9 SCC 104**. He submitted that in this case, the Supreme Court laid down the principles that have to be kept in mind while assessing and evaluating the evidence of eye witnesses. He submitted that the Supreme Court had pointed out that while doing so, the Court should not enter into the realm of conjecture and speculation. Particularly, the Supreme Court observed that while assessing and evaluating the evidence of eye witnesses the Court must adhere to two principles, namely, whether in the circumstances of the case it was possible for the eye witness to be present at the scene and whether there is anything inherently improbable or unreliable. The Supreme Court further observed that credibility of a witness has to be decided by referring to his evidence and finding out how he has fared in cross-examination and what

impression is created by his evidence taken in the context of the case and not by entering into the realm of conjecture and speculation.

13. The learned counsel appearing on behalf of the respondent Nos. 1-4 (the acquitted persons) straightaway referred to the decision of the Supreme Court in the case of **Bindeshwari Prasad Singh v. State of Bihar: AIR 2002 SC 2907** to explain the scope of a revision petition against an acquittal, by a private party. The Supreme Court distinguishing between the scope of an appeal against acquittal under Section 374 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr. P. C”) and a revision petition under Section 401 Cr. P.C, observed that the jurisdiction of the High Court in the former is much wider than the jurisdiction in the latter. The Court specifically observed that all grounds that may be urged in support of the revision petition may be urged in the appeal, but no vice versa.

14. In the case before the Supreme Court, it was found that there was no legal infirmity either in the procedure or in the conduct of the trial and, therefore, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction in respect of an order of acquittal. The Supreme Court observed that it has been repeatedly held that the High Court should not re-appreciate the evidence to reach a finding different from the Trial Court. It made it clear that, in the absence of manifest illegality resulting in grave

miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted. The Court also noted that it may be quite possible 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, would be no justification for exercise of revisional jurisdiction under Section 401 Cr. P. C against a judgment of acquittal. There must be some defect of procedure or perversity of grave magnitude resulting in miscarriage of justice.

15. In the background of the observations made by the Supreme Court in ***Bindeshwari Prasad Sinlgh*** (*supra*), the learned counsel for the respondent Nos. 1-4 submitted that the State has not filed any appeal and that the Trial Court had examined the entire evidence in detail. The Trial Court had also seen the demeanour of the witnesses. He submitted that the roofs over the specific quarters of the complainant party and the accused party were well demarcated and that PW6 himself had distinguished the areas of the roof so also PW8. With regard to the purported motive for the alleged crime, the learned counsel submitted that that was also missing. He submitted that the motive was based on the premise that the occupants of the various quarters had common latrines and / or bathrooms and that the accused had put their locks on the same. He submitted that this fact of a common latrine is belied by looking at the cross-examination of PW6 himself where he stated that there were independent

latrines attached to individual quarters. The exact words used by him in cross-examination are as under:-

“It is correct that a few years before this occurrence an independent latrine is attached to individual quarter has been built and that occupant of a quarter used the latrine attached to their quarter.”

He submitted that PW8 Usha also did not state the names of the persons who had allegedly stabbed Rajinder inasmuch as in her examination-in-chief she stated that after her father-in-law reached the roof, she heard hue and cry that Rajinder had been stabbed with a knife by “somebody”. With regard to Baleshwar's claim that he remained in the hospital and was taken to the spot by the police, the learned counsel for the respondent Nos. 1-4 submitted that his father PW7 and brother PW9 both denied it. Moreover, neither the clothes of Baleshwar nor of PW7 were taken into possession and this would cast serious doubts on the testimony of these witnesses. PW7 had stated in cross-examination that he did not show the blood stains on his clothes to the police. He also stated that he did not request the police to take those clothes into possession. He further stated that the police did not ask anything about the blood stains which were on his clothes which he was wearing at that time and those clothes remained with him. The sum and substance of the contentions of the learned counsel for the respondent Nos. 1-4 was that there were material contradictions in the testimonies of the purported eye witnesses. He further submitted that two of the purported eye witnesses had turned hostile. In this

background the Trial Court had doubts about the prosecution case and, therefore, giving the benefit of doubt to the accused, they have been acquitted. Thus, according to him, no error of such a nature as would be correctable in a revision petition had been committed by the Trial Court.

16. In rejoinder, the learned counsel for the petitioners referred to the decision of the Supreme Court in the case of **Gurnam Kaur v. Bakshish Singh: AIR 1981 SC 631**. The said decision was referred to for the purpose that while discarding the testimony of eye witnesses, the Court should not look into trivial, unimportant and inconsequential circumstances and magnifying the same to an extent that they assumed the shape of dark, forbidding storm clouds instead of the little specks of dust that they were. He submitted that minor contradictions have been magnified by the Trial Court to signal dark clouds of doubts and this was not permissible. The learned counsel for the petitioners also submitted that the revisional court should definitely interfere with an order of acquittal in the following circumstances:-

- (i) Where the probative value of the FIR is ignored;
- (ii) Where reliable testimony of eye witnesses is ignored and material evidence is discarded;
- (iii) Where evidence is misquoted;
- (iv) Canons for appreciating evidence are ignored;
- (v) The entire judgment is full of inconsistencies.

He submitted that many of these circumstances exist in the present case and, therefore, even though the Trial Court has returned a judgment of acquittal and the present petition has been filed by a private party, this Court ought to interfere and direct retrial. It was also submitted that the testimony of PW6, PW7 and PW8, though consistent in material particulars, has not been given due credence. Had that been done, according to the learned counsel, there would have been no option for the Court but to convict the accused of the offences for which they were charged.

17. In a recent decision in the case of **Baldev Raj v. Chander Prakash and Others: Criminal Revision Petition No. 695/2002** decided on 02.07.2007 I had considered the scope of powers of the High court in a revision petition by a private party against a judgment of acquittal. Various decisions of the Supreme Court starting from **D. Stephens v. Nosibolla: AIR 1951 SC 196** and including **K. Chinnaswamy Reddy v. State of Andhra pradesh and Another: AIR 1962 SC 1788**, **Dhirendra Nath Mitra and Anr. v. Mukanda Lal Sen: AIR 1955 SC 584**, **Mahendra Pratap Singh v. Sarju Singh: (1968) 2 SCR 287**, **Ramu v. Jagannath: 1995 SCC (Cri) 181**, **Vimal Singh v. Khuman Singh and Another: 1998 SCC (Cri) 1574** and **Hydru v. State of Kerala: (2004) 13 SCC 374**, were considered and it was observed that powers of the High Court in exercise of its revisional jurisdiction under Section 401 Cr. P. C in a revision petition by a private party against a judgment of acquittal are very limited.

The revisional Court does not function as a court of appeal and cannot reappraise evidence. It cannot also interfere with an order of acquittal unless it is an exceptional case of some procedural irregularity or overlooking of material evidence or misreading of the same, which is manifest and which results in a flagrant miscarriage of justice.

18. Insofar as the present case is concerned, I find that none of the aforesaid circumstances exist so as to enable this Court to direct a retrial. The Trial court has, as indicated above, considered the evidence in detail. It has found itself unable to return a clear finding of guilt, as in the mind of the learned Additional Sessions Judge, there were grave doubts about the prosecution case. These doubts had arisen because two of the purported eye witnesses had turned hostile; presence of the other two eye witnesses at the scene of alleged crime was also not beyond doubt; there were contradictions in their testimonies, which may individually be of a minor nature but cumulatively tend to cast serious doubts on the prosecution case. The Trial Court found itself unable to return a finding of guilt because of these doubts and I see nothing wrong in such a conclusion. It must be remembered that this Court does not exercise the powers of a Court of appeal and cannot re-appreciate evidence. Thus, even if this Court, on appreciation of the evidence on record were to reach a conclusion different from that of the Trial Court, that by itself would be no justification for exercise of the revisional jurisdiction under Section 401 Cr.

P.C. It cannot be said that the judgment of the Trial court suffers from any perversity or defect of procedure or manifest illegality of such a nature as would result in grave miscarriage of justice or would vitiate the trial itself.

19. In these circumstances, if this Court were to agree with the contentions of the learned counsel for the petitioners, it would amount to this Court arriving at a different conclusion merely on the basis of re-appreciation of evidence. This is not permissible unless the other ingredients for invoking the revisional jurisdiction are present. And, that is not so. Accordingly this revision petition is dismissed.

**BADAR DURREZ AHMED
(JUDGE)**

July 13 , 2007
SR