Baldeo vs Deo Narain And Ors. on 17 November, 1952

Equivalent citations: AIR1954ALL104

ORDER

Beg, J.

1. This is a revision against acquittal. It has been filed on behalf of one Baldeo who was the complainant in the case out of which these proceedings have arisen. The prosecution case, as stated by Baldeo, was as follows: On 15-9-1949, at about 8 or 9 o'clock in the morning his brothers, Chini Prasad, Maldhi, Bansi and Panch Ratan, were repairing the boundary wall of their grove when six persons, named Deo Narain Singh, Lal Bahadur Singh, Lal Saheb, Jagannath, Indrapal Singh and Amarnath Singh came to the spot armed with lathis. They tried to stop his brothers from repairing the said boundary wall. His brothers insisted on doing it. Then Deo Narain Singh abused them and shouted out to ais companions to beat them. Thereupon all the accused persons started beating Maldhi and others. Maldhi's arm was fractured. Panch Ratan received lathi injuries. Bansi and Chini Prasad also got injuries. On hearing the alarm Jokhan came on the scene. He was also beaten -by the accused and received injuries including one on his head. Nirpat, Dangar and other persons came to the scene and saw the incident. He went to the thana to make the report. He found the accused present there and talking to the 'daroga ji'. Panch Ratan asked the 'daroga' to take down the report. 'Daroga Ji' refused to do it. In the evening when the complainant's party was about to return from the thana then a report was taken down by the 'daroga'.

2. The injured persons were examined by the doctor on the next day by the Medical Officer, Handia Dispensary. (After a description of the various injuries on the bodies of Maldhi, Jokhan and Panch Ratan the judgment proceeded.) All the above injuries were caused by some blunt weapon.

3. Baldeo appeared in Court and stated the prosecution case mentioned above. In support of the said case four other witnesses, named Maldhi, Nirpat, Jokhan and Sat Narain were examined. These witnesses corroborated the story narrated by Balder. The prosecution also examined the Medical Officer who proved the injury report prepared by him. This injury is Ex. P. 1 in the case. On the above facts all the afore-mentioned six accused were charged under Sections 147 and 325, Penal Code.

4. The accused pleaded not guilty and alleged that their prosecution was the result of enmity with the complainant.

5. The case was tried by a Court of Bench Magistrates, Allahabad. The trial Court pronounced its judgment on 30-5-1951, giving the benefit of doubt to the accused and acquitting them of all the

charges. The complainant went up in revision against the said order of acquittal. His revision having been dismissed by the District Magistrate this revision application was filed by him in the High Court.

6. Having heard the learned counsel for the parties, I have come to the conclusion that this revision must be allowed. The most important ground given for acquitting the accused by the trial Court is that the prosecution has failed to prove the first information report and has, in fact, made no effort to get it proved. On this point the observation of the trial Court is as follows: "The absence of the P. I. R. therefore from the original records of the police and the failure of the prosecution to make genuine efforts for its whereabouts is really material factor in the case which cannot be easily overlooked. This thing has given a fatal blow to the prosecution case and we are not willing to minimise its importance especially when the other aspects of the case also do not materially help the prosecution.'

7. A reference to the file, however, discloses that there is absolutely no foundation whatsoever for the above remarks. The carbon copy of the first information report was produced on behalf . of the prosecution by Maldhi who stated that the first information report was made at the police station. His statement was not challenged in cross-examination. It was further stated by the complainant that the police were trying to create difficulties in his way. This first information report was made at the police station Sarai Mamrez. It would appear that at first the prosecution by mistake summoned the head moharrir of police station, Handia instead of head moharrir, Sarai Mamrez when, however, the head moharrir appeared in the witness-box, the mistake was realised by the prosecution. Accordingly, on 28-12-1950, an application was given on behalf of the prosecution for summoning the head moharrir of Sarai Mamrez which was the police station where the first information report of the case was actually lodged. This witness was summoned with the original records for proving the first information report. The note at the back of the application shows that the summons were ordered to be issued as prayed. On 2-2-1951 another application was made for summoning the head moharrir of police station Sarai Mamrez with the Roznamcha and Register of cognizable and non-cognizable offences for 8-2-1951 the next date for the hearing of the case, The note at the back of this application also indicates that summons were ordered to be issued as prayed in the application.

On 8-2-1951 this witness appeared in Court in response to the summons issued by the Court and the prosecution filed an application in which it was stated that the head moharrir of Sarai Mamrez had already been summoned by the Court for the purpose of proving the first information report, that he was present in the Court room in person and that the witness might be examined by the Court. This application was opposed on behalf of the accused. The Court did not reject this application but merely passed on it an order "File' It is, therefore, obvious that in spite of the fact that the head moharrir was present in Court, his evidence was not taken by the Court for reasons not disclosed by it in its order. Not satisfied with this state of affairs the complainant again put in a third application on 16-2-1951 stating that he did not want to close his case until the head moharrir of Sarai Mamrez was examined and that the evidence of the said witness was essential for the purpose of proving the first information report. On this application also the Court merely passed an order "Pile". The above facts clearly indicate that the complainant was making repeated efforts to prove the first information

report and yet the Court did not allow it to he done even though the Court had issued summons to the witness and the said witness was actually present in Court with relevant papers to prove it. It is difficult to understand how in the face of the above facts it was open to the trial Court to make a remark to the Effect that the complainant did not make any effort to prove the first information report and that this conduct on the part of the complainant was fatal to the prosecution case.

8. Apart from the above fact, the judgment of the trial Court seems to be full of errors which indicate that when writing the judgment either the trial Court had forgotten the evidence on the record or had deliberately shut its eyes to patent facts. The judgment of the trial Court states that: "The complainant has examined besides himself three witnesses namely Maldhi, Nirpat and Dan-gar to prove the actual story of marpit excluding of course that formal witness like the Doctor and the Head Constable."

A reference to the file shows that this statement is also incorrect as it omits to mention the names of two eye-witnesses, namely Jokhan and Sat Narain, who were also examined as eye-witnesses by the prosecution. Out of them Jokhan was an injured person and had received two injuries. His injuries were examined by the doctor and proved by him. He was, therefore, an important witnesb. Thus there can be no justification whatsoever for the omission by the Court to mention the names of the aforesaid witnesses. This omission can only lead to the conclusion that their evidence was-completely overlooked or ignored by the trial Court.

9. Similarly, the trial Court again seems to have fallen into a serious error when dealing with the medical evidence produced on behalf of the prosecution. As mentioned above the prosecution produced the Medical Officer in-charge Handia Dispensary to prove that Maldhi, Jokhan and Panch Ratan had received injuries at the hands of the accused. Maldhi had received four injuries out of which one was grievous. Jokhan had received two injuries and Panch Ratan had received five injuries. The duration of these injuries given by the doctor indicated that they were caused about the date and time which is alleged to be the date and time of the incident by the complainant. This important evidence was summarily brushed aside by the trial Court with the remark that "there are no identifying marks to fix the identity of the persons examined". This observation of the trial Court is also unwarranted in view of the fact that the doctor had noted the names, the percentage as well as the addresses of the injured persons in the report and he was not cross-examined on the point at all.

10. The criticism of evidence by the trial Court also discloses serious misapprehension of evidence on its part. With reference to prosecution evidence it observes that:

> "All the prosecution witnesses are of one family and they are admittedly inimical with the accused."

No part of this statement in the judgment of the trial Court is borne out by the record. Neither all the witnesses for the prosecution are "of one family" nor are all of them "admittedly inimical". The learned counsel appearing for the applicant characterised it as incorrect and the learned counsel appearing for the opposite parties was constrained to admit that this part of the judgment could not

be supported as correct.

11. Next, the learned Magistrates go on to observe that all the prosecution witnesses were tutored to tell lies. They have not given a single reason for these severe strictures on prosecution evidence. They have not even cared to examine the statement of any of these witnesses individually. They have further in their judgment branded the prosecution case as highly improbable yet they have not cared to point out a single improbability which they had in their minds. The learned Magistrates have also observed that the prosecution case was full of material discrepancies and contradictions which shattered the prosecution case . The entire judgment of the learned Magistrates has been read out to me and I find that they have not pointed out a single contradiction or discrepancy in it. The mere 'ipse dixit' of the Court to the effect that a case is full of improbabilities or contradictions is not enough unless it is backed by reasons. The improbability of a case or its contradictory nature is merely a conclusion from certain specific set of facts and unless these facts are disclosed the reasons for judgment must be considered to be wanting. It would appear that the Court has in its judgment built a massive structure of sweeping remarks without laying any foundation for the same.

12. Lastly, it may be mentioned that an affidavit has been filed by the complainant stating that he had filed an application for the transfer of the case before the District Magistrate who had passed an order summoning the file of the case. This order of the District Magistrate was communicated to the trial Court by his counsel. On receipt of this information the trial Court instead of staying the proceedings took out the Judgment from its pocket and pronounced an order acquitting the accused. This is the order sought to be impugned in these proceedings.

13. Whatever the insinuation behind this affidavit might be, I feel that a Judgment full of such palpable defects and serious mistakes cannot be allowed to stand, and must fall by the unsupport able weight of its own errors and irregularities. Whilst setting aside the order of acquittal, I should not be taken to have expressed any opinion on the merits of the case.

14. The learned counsel appearing for the opposite parties has cited a ruling of the Supreme Court reported in -- 'Logendranath v. Poai Lal'. AIR 1951 SC 316 (A). That case merely lays down that in the absence of a legal error, it is not open to revisional Court to re-appraise evidence and reverse pure findings of fact based on the appreciation of evidence of the case by the trial Court. In this case, however, the revisional Court has not reappraised the evidence nor has it reversed any findings of fact. The question is whether the trial Court has itself appraised the evidence at all in the manner laid down by law. The case raises to my mind a serious question of law. Under Section 367, Criminal P. C. every judgment must contain:

(1) the points for determination;

(2) the decision thereon; and (3) the reasons for such decision.

I Where the reasons given by the trial Court are such as cannot be supported by the evidence on record, they are not reasons for the decision, out reasons against the decision. To constitute a legal appreciation of evidence, the Judgment should be such as to indicate that the Court has applied its

mind to it. Every portion of the Judgment of the trial Court seems to indicate non-application of mind by the Court to the evidence on record. The third requirement laid down in Section 367, Criminal P. C. viz., the reasons for the decision, is an important ingredient of a Judgment. Compliance with law in this regard should not be merely formal but substantial and real, for it is this part of the judgment alone which enables the higher Court to appreciate the correctness of the decision, the parties to feel that the Court has fully and impartially considered their respective cases and the public to realise that a genuine and sincere attempt has been made to mete out even-handed Justice. It is in the way the Court discharges its duty in this regard that it is able to instil confidence in its justice and to inspire that respect and reverence in public mind which is its due. Reasons form the substratum of the decision and their factual accuracy is a guarantee that the Court has applied its mind to the evidence in the case. Where the statement of reasons turn out to be a mere hollow pretension of a baseless claim of application of mind by the Court, the Judgment is robbed of one of its most essential ingredients and forfeits its claim to be termed a Judgment in the eye of law.

15. Lastly, the learned counsel for the opposite parties has argued that the order of acquittal having been once passed by the trial Court it should not be set aside. There is no doubt that once an accused is acquitted a certain amount of sanctity is attached to an order of acquittal, and the higher Courts should be most reluctant to interfere with such an order. But under the garb of this sanctity it is not open to the trial Court to violate those salutary and fundamental principles of strict adherence to the evidence on record and scrupulous accuracy in the presentation of facts which constitute vital criteria of Judicial honesty and truth and lie at the root of the entire system of judicial administration in our country. The judg-ment pronounced by the trial Court provides an instructive instance of a flagrant breach of the aforesaid principles.

16. The circumstances disclosed in this case have a constraining force, and, to my mind, the order of acquittal cannot be sustained. I accordingly allow this revision, set aside the order of acquittal and direct a fresh trial of the case by some other Court competent to try it according to law.