Kali Prasad And Ors. vs The State on 6 October, 1950

Equivalent citations: AIR1952ALL630, AIR 1952 ALLAHABAD 630

JUDGMENT

Agarwala, J.

1. The appcts. were convicted by the Addl. Ses. J., Bahraich, under Section 304(2) read with Section 149 & Section 147, Penal Code & sentenced to 5 years' R. I. & one year's R. I. respectively. Their appeal to this Ct. was dismissed by one of us & their conviction & sentences were upheld. They now pray that the case may be certified as a fit one for appeal to the Supreme Court under Article 134(1)(c) of the Constitution. The facts briefly are as follows :

2. The occurrence giving rise to the prosecution of the applicants took place on 13-8-1949 at about 12 A. M. in village Kani-bojhi, police station Malhipur, district Bahraich. Sardar Karam Singh, Taluqdar of the Jamunaha Estate, is the proprietor of village Kani-bojhi & held 35 bighas of Sir in this village. The Deputy Commissioner of Bahraich issued notices to various zamindars, including Sardar Karan Singh, to let out their parti lands to tenants within a fixed period & intimated that, if this was not done, panchas would be appointed to distribute the land. At about this time the tenants of the village took matters into their own hands & under the leader, ship of appct. l, Kali Prasad Misra, seized possession not only of the parti lands but also of the Sir & distributed it to various persons.

3. The prosecution case was that the land in dispute was included in the 25 bighas allotted to Hamin, Siddiq, Asghar, Bhallar alias Sattar, Sayed, Jan Mohammad, Shaukat, Mewa Lal & Ghafoor who cultivated it jointly. Kali Prasad Misra, according to the prosecution, got the land allotted by the Deputy Commissioner of Bahraich, who had by then assumed charge of the estate on behalf of the Court of Wards, to his own minor son & grandson. When Hamin, Ghafoor & others heard of this trick, they hurriedly collected their bullocks on 13-8-1949 & proceeded to the fields to plough them up so that their continued possession might be established. While Hamin & others, the prosecution story proceeded, were actually ploughing the fields & Ghafoor was sitting on one side of the field. Kali Prasad & other appets. as well as about 15 other persons came op at about 11 A. M. & asked Ghafoor why he was ploughing the field. On Ghaffor's reply that he was ploughing the field because he was in possession, an altercation ensued & Kali Prasad struck Ghaffoor on the head with a lathi. Ghafoor began running away & Hamin Khan & others ran up to intervene. Some other persons from the adjoining village also came & out of them Abad, Chheda Khan & Badal Khan also received injuries at the hands of the assailants. Ghafoor was severely beaten & expired on the spot & his companions ran away; Hamin Khan, his brother left the dead body in charge of the Mukhia, who

had arrived in the meanwhile, & lodged the F. I. R. at the police station Malhipur.

4. The appcts. & 14 others were prosecuted & committed to sessions to stand their trial for having committed offence under Sections 147, 302/149 & 323, Penal Code. All the accused pleaded not guilty. Mohan, Kesai Mohammad Ali & Razzaq pleaded alibi. Brij Bahadur, son of Kali Prasad, stated that the land was in possession of his minor brother, Ram Dhiraj & his son Ram Roop & that he himself was not present at the time of the occurrence. Kali Prasad pleaded that he was in possession of the fields & had sown crops before the occurrence took place, that on hearing that a large number of persons were ploughing his fields, he along with others went to the place & remonstrated with the persons ploughing the fields whereupon he & his party were attacked with lathis by these persons & that in self-defence he also inflicted injuries.

5. The learned Addl. Ses. J of Bahraich held that Kali Prasad Misra & his party were in possession & that they had a right of private defence of property against the trespass of Ghafoor & his companions. He, however, held that the right was exceeded inasmuch as Ghafoor was pursued & injured while he was running away. He accordingly convicted the appcts. under Sections 304(2)/149 & 147, Penal Code & sentenced them as stated above. The remaining accused were acquitted.

6. In the appeal which was argued by one counsel on behalf of all the appcts. two points were urged. (1) That it was proved that any injury caused by the applts. or any of them caused the death of Ghafoor; (2) that it was not established that the injuries were caused to Ghafoor when he was running away.

7. No question of the separate liability of appcts. 2 to 6 was raised. On behalf of the State it was urged that the finding of the learned Addl. Ses. J. that Kali Prasad was actually in possession of the land was wrong & that consequently he & his companions had no right of private defence.

8. This Ct. held that the possession of Kali Prasad over the field in dispute was established.

9. The post mortem report showed that Ghafoor had only four external injuries, one contused wound scalp deep on top of the head & three contusions--one on the chest below the neck, another on the left cheek & a third on the back. The larynx, trachea, bronchi & both the lungs were congested & the cause of death was stated to be asphyxia. It was, therefore, held that death was not caused by the external injuries found on the body of the deceased.

10. The prosecution evidence that after Ghafoor had fallen down, Kali Prasad sat on his cheat & strangled him was believed. The prosecution evidence disclosed that the injuries inflicted by the other appcts. were by means of blows by fists & kicks. It was held that all these injuries caused by Kali Prasad & the rest of the appcts. were inflict, ed while Ghafoor was running away & that, therefore, the appcts. exceeded their right of self-defence.

11. It is obvious that the appcts. other than Kali Prasad were held guilty of the offence under Section 304(2) by virtue of Section 149, Penal Code. But the point was neither argued nor considered whether in the pursuit of the common object of the unlawful assembly the offence of causing death

by strangulation was likely to be committed. This was a serious omission which no doubt prejudiced the case of the appcts. 2 to 6.

12. The question, however, is whether we should certify the case as a fit one for appeal to the S. C. Article 184 of the Constitution provides :

> '(1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court--
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> (a) has on appeal reversed an order of acquittal of an accused person & sentenced him to death; or
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> (b) has withdrawn for trial before itself any case from any Court subordinate to its authority & has in such trial convicted the accused person & sentenced him to death; or
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> (c) certifies that the case is a fit one for appeal to the Supreme Court;

Provided that an appeal under Sub-clause (o) shall lie subject to such provisions as may be made in that behalf under Clause (1) of Article 145 & to such conditions as the H. C. may establish or require.

(2) ....."

Sub-clause (1) of Article 145 provides :

> "(1) Subject to the provisions of any law made by Parliament, the S. C. may from time to time, with the approval of the President, make rules for regulating generally the practice & procedure of the Court including (d) rules as to the entertainment of appeals under Sub-clause (a) of Clause (1) of Article 134."

13. No rules made by the S. C. under Clause (d) of Article 145(1) have been brought to our notice, nor has this High Court yet laid down the conditions subject to which appeals under Article 134(1)(C) will be certified or applications for certificate will be entertained.

14. In our opinion, a certificate that a criminal case is a fit one for appeal to the Supreme Court should be granted only when the case fulfils the requirements laid down by the Privy Council in granting special leave to appeal to His Majesty in Council in criminal cases. These requirements have been stated in several cases.

15. In re A. M. Dillet, (1887) 12 A. C. 459, Lord Weston ruled that :

> "Her Majesty will not review or interfere with the course of criminal proceedings, unless it is shown that, by a disregard of the forms of legal process, or by some

> violation of the principles of natural justice, or otherwise, substantial & grave injustice has been done."

16. In Dal Singh v. King-Emperor, 44 I. A. 187 the P. C. held :

> "The prerogative right to review the course of justice in criminal cases is exercised only where injustice of a serious & substantial character has occured. The judicial Committee does not advise interference merely because they themselves would have taken a different view of the evidence. Error in procedure may be of a character so grave as to warrant interference, as for instance, where it deprives the accused of a constitutional or statutory right to be tried by a jury, or by some particular tribunal, or it may have been carried to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed. In a case of that character their Lordships will advise interference, although they think that the accused was guilty. Where, however, the error consists only in the improper admission or evidence, without which the same conclusion might properly have been arrived at, they will not so advise. The dominant question is whether substantial justice has been done."

17. In Taba Singh v. Emperor, A. I. R. (12) 1925 P. C. 69, Lord Buckmaster observed that the Board would not consider criminal appeals unless "there has been some violation of the principles of justice or some disregard of legal principles."

18. In Nazir Ahmad v. Emperor, A. I. R. (28) 1936 P. C. 253, Lord Blaneshburgh stated that it was in most exceptional circumstances that the Board entertained applications for leave to appeal in criminal cases & that one of such exceptional circumstances was "a case in which with reference to a section of the Code of Criminal Procedure, which is of vital importance to accused persons, there has been a difference of opinion in the High Courts of India which, however it be resolved, ought to be resolved so that in the future there will be no doubt as to the law declared by that section."

19. In Natha Singh v. Emperor, A. I. R. (33) 1946 P. C. 187, Sir John Beaumont observed, that where no reliance was placed in the Courts in India on a conflict between the evidence of eye-witnesses & the medical witnesses & the matter was not discussed in the judgments either in the sessions Court or the High Court nor was it included in the grounds of appeal to the H. C. it was not a fit case for leave to appeal.

20. The Federal Court also adopted the same principles in granting special leave to appeal in criminal cases, vide Kapil Deo Singh v. King, 51 Cr. L. J. 1057 (P. C.)

21. A certificate that a case is a fit one for appeal should therefore be granted only in exceptional cases where injustice of a serious nature of character has occurred not because a different view could be taken of the evidence than has been taken by the H. C. nor because there has been an error in procedure in the proper admission of evidence without which the same conclusion might properly have been arrived at, but because an error in procedure has been committed which is of so grave a

character as deprives the accused of a constitutional or statutory right to be tried in a particular way, or the error has been carried to such an extent as to cause the outcome of the proceedings to be contrary to fundamental principles which justice requires to be observed, or there has been some disregard of legal principles or natural justice or where the law upon a material point is in doubt or has been differently interpreted by the various H. Cts. in India.

22. The principles we are inclined to follow are in accord with what has been held to be the proper significance of the expression 'that the case is a fit one for appeal' occurring elsewhere in the Constitution & in other enactments. This expression is to be found in Article 138(1)(c) in connection with civil appeals and is the same in Section 109(c), Civil P. C. With regard to the latter section the rule is well settled that the test to determine whether a certificate of fitness should be granted is to see whether the point involved is "of great public or private importance." vide Banarsi Prasad v. Kashi Krishn Narain, 29 ALL. 227 & P. a Pleader, Bansi v. Judges of the H. C., Allahabad, A. I. R. (24) 1937 ALL. 167.

22a. It has been the practice of the Allahabad High Court to grant leave to appeal in case of orders suspending advocates from practice on the ground that the matter is of private importance because the future career of the applicant is concerned, vide Bahadur Lal v. Judges of High Court, Allahabad, A. I. R. (20) 1933 ALL. 18; Shiva Narain Jafa v. Judges of the High Court, Allahabad, 56 ALL. 702 : A. I. R. (21) 1934 ALL. 898; In the matter of B. a pleader, 55 ALL. 246, & P.a pleader, Bansi v. Judges of the High Court, Allahabad, A. I. R. (24) 1937 ALL. 167.

23. In all criminal cases, except in cases in which an accused person is convicted of a technical offence not involving moral turpitude & the sentence is of fine only, the conviction of an accused person is a matter of great private importance to him, a matter which cannot be measurled in money & which may have serious consequence for the accused throughout his life.

24. In our opinion, so far as the application on behalf of applicants 2 to 6 is concerned, the case fulfils the requirements of law as stated by us above.

25. Accordingly we grant the certificate prayed for by applicants 2 to 6 but we refuse the application of Kali Prasad applicant 1.

Kidwai J.

26. I agree.