Vimal Singh vs Khuman Singh & Anr on 8 October, 1998

Equivalent citations: AIR 1998 SUPREME COURT 3380

Author: V.N. Khare

Bench: M.M.Punchhi, V.N.Khare

PETITIONER:
VIMAL SINGH

Vs.

RESPONDENT:
KHUMAN SINGH & ANR.

DATE OF JUDGMENT: 08/10/1998

BENCH:
M.M.PUNCHHI, V.N.KHARE.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T V.N. KHARE,J.

Leave granted.

This Criminal Appeal is directed against the judgment and order dated 5.11.96 passed by the High Court of Madhya Pradesh whereby the High Court, while allowing the Criminal Revision filed by the complainant, Khuman Singh, set aside the order of acquittal passed by the trial court and convicted the appellant herein for the offence under Section 304 Part I, IPC and sentenced him to seven years' rigorous imprisonment.

In brief the prosecution case was that on 2.4.87 at about 10 A.M., the deceased Vijay Singh was coming from Khalihan when accused Vimal Singh, the appellant herein, quarreled with him and was said to have given a knife blow to deceased Vijay Singh. Next morning while Vijay Singh deceased,

Khuman Singh (PW-3) and Narayan Singh (PW-4) were going to the Police Station Satpada in a bus for lodging the First Information Report in respect of the previous days' incident the appellant who was sitting on the bonnet of the bus got the bus stopped and threatened Vijay Singh not to lodge any report in respect of the previous days' incident. This led to a quarrel in the bus and in that process it is alleged that the appellant gave a knife blow to Vijay Singh, who died later on.

The First Information Report in respect of that incident was lodged at Vidisha by Khuman Singh. Post mortem on the dead body of the deceased was performed by the doctor. Thereafter, the charge-sheet was submitted against the appellant under Section 302 IPC. The appellant pleaded not guilty and denied the charge. He also stated that he had not given the knife blow to Vijay Singh during the quarrel inside the bus. The prosecution in support of its case examined number of witnesses. The witnesses who were alleged to be present at the sense of occurrence are, Sumer Singh (PW-2), Khuman Singh (PW-3), own brother of the deceased, Naryan Singh (PW-4), own brother-in-law of the deceased, Shafi Mohd. (PW-10), the conductor of the bus, and Nalhu Ram (PW-13), the driver of the bus. The trial court after assessing all the evidence on record came to the conclusion that the prosecution has failed to prove the charge beyond reasonable doubt and as such acquitted the appellant.

The State did not file any appeal against acquittal of the appellant herein. However, Khuman Singh (PW-3), sent a letter to the High Court against acquittal of the accused

- appellant, which was treated as a Revision Petition against the order of acquittal and the same was registered as Criminal Revision No. 130 of 1989. The High Court after being of the view that the finding of the trial court discarding the prosecution evidence is totally perverse and has resulted in miscarriage of justice, entered into the domain of reappraisal of evidence. The High Court after reappraising the evidence accepted the prosecution case and set aside the order of acquittal passed by the trial court and held that the appellant is guilty of the offence under Section 304 Part-I I.P.C. and sentenced him to seven years' rigorous imprisonment.

Learned counsel for the appellant urged that the judgment under appeal is illegal and nullity as the High Court while setting aside the order of acquittal passed by the trial court, convicted the appellant under Section 304 Part I IPC and sentenced him to 7 years' rigorous imprisonment in total disregard to the provisions of sub-section (3) of Section 401 of the Code of Criminal Procedure (hereinafter referred to as the 'Code'). It was also argued that the High Court has entered into the realm of reappraisal of the evidence while setting aside the order of acquittal passed by the trial court which it was not authorised to do so in view of the settled principles of law in this regard.

The legal position as to the powers of the High Court in revision in the matter of interference with the order of acquittal is no longer res inlegra, as the law in this regard is very well settled. Suffice it to refer in this regard a decision of this Court in K.Chinnaswamy Reddy vs. State of Andhra Pradesh and anr. (AIR) 1962 Sc 1788) wherein it was held, thus :

> "It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State may not have thought fit to

> appeal by the jurisdiction should be exercised by the High Court only in exception the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not covert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the finding of acquittal in revision and it is only in exceptional cases that this power should be exercised..... Where the appeal Court wrongly ruled out evidence which was admissible, the High Court would not be justified in interfering with the order of acquittal in revision, so that the evidence may be reappraised - after taking into account the evidence which was wrongly ruled out as inadmissible. But the High Court should confine itself only to the admissibility of the evidence and should not go further and appraise the evidence also".

Coming to the ambit of power of High Court under Section 401 of the Code, the High Court in its reversional power does not ordinarily interfere with judgment of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 403 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accoused deserves conviction. No doubt, the High Court in exercise of its reversional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial. Infect, Sub-section (3) of Section 401 of the Code forbids the High Court in converting the order of acquittal into one of conviction. In view of the limitation on the reversional power of the High Court, the High Court in the present case under Section 304 Part - I and sentencing him to seven years' rigorous imprisonment after setting aside the order of acquittal.

Coming to the next question as to whether this case fell within the parameters which could enable the High Court to interfere with the order of acquittal passed by the trial court, a perusal of the judgment of the High Court shows that it was of the view that the trial court has discarded the evidence of Sumer Singh (PW-2), who was an independent witnesses, as well as the evidence of Khuman Singh (PW-3), Narayan Singh (PW-4), Shafi Mohammad (PW-10), and Nathuram (PW-13). After being of that view the High Court reassessed the evidence and came to the conclusion that the appellant is guilty of offence under Section 304 Part I IPC. This view of the High Court is palpably wrong. We have carefully gone through the judgment of the trial court and do not find that

the trail court assessed the statements of witnesses and thereafter came to the conclusion that, the prosecution has failed to prove its case beyond reasonable doubt. So far as the evidence of Sumer Singh (PW-2) is concerned, the trial court found that he only mentioned that some quarrel had taken place inside the bus but he could not identify the actual assailant and the persons who were quarreling. Subsequently, this witness was declared hostile in the cross-examination. After appreciating the evidence, the trial court came to the conclusion that the statement of Sumer Singh (PW-2) is of no help to the prosecution case. Thus, it is quite evidence that the High Court was not right in its view that evidence of Sumer Singh was discarded by the trial court. So far as the evidence of Khuman Singh (PW-3) and Narayan Singh (PW-4) are concerned, the trial court on assessment of the evidence found that there were contradictions in their statements on material points. The trial court further found that the medical evidence did not support the version of Khuman Singh (PW-3) that he received injury by knife inside the bus. The trial court also found that Narayan Singh (PW-4) did not support Khuman Singh (PW-3) with regard to his injury and both the witnesses (PW-3 & 4) were interested witnesses and made reservation in their statements. The trial court, in view of the medical evidence found that no injury was cased in Vijay Singh on the previous days' incident which is alleged to be the cause for going to the police station for lodging the FIR, next day or was motive to inflict injury that day to the deceased inside the bus by the appellant. From the above facts it is apparently clear that the trial court did not shut out or discard the evidence led by the prosecution. On the contrary, the trail court assessed the entire evidence on record and came to the conclusion that the prosecution has failed to prove its case beyond reasonable doubt and as such acquitted the accused appellant. In fact, the High Court has entered into the domain of reappraisal of evidence which it was not authorized to do in exercise of its reversional power. Under such circumstances, the order under appeal is not sustainable in law and deserves to be quashed. We accordingly set aside the judgment and order of the High Court dated 5.11.1996 and restore that of the trial court. While issuing notice on the petition for special leave to appeal, this court suspended the operation of the judgment under appeal and the appellant was exempted from surrendering. Consequently, the appellant was not sent to jail. In view of that order no further order is required. The appeal is allowed.