Supreme Court of India
Mahendra Pratap Singh vs Sarju Singh & Anr on 20 November, 1967
Equivalent citations: 1968 AIR 707, 1968 SCR (2) 287
Author: Hidayatullah
Bench: Hidayatullah, M.

PETITIONER:
MAHENDRA PRATAP SINGH

Vs.

RESPONDENT:
SARJU SINGH & ANR.

DATE OF JUDGMENT:
20/11/1967

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
VAIDYIALINGAM, C.A.

CITATION:
1968 AIR 707 1968 SCR (2) 287
CITATOR INFO :
R 1973 SC1274 (17)
RF 1973 SC2145 (4,8)
R 1975 SC 580 (4)

ACT:
Code of Criminal Procedure (Act 5 of 1898), s. 439--Sessions Court acquits-Revision--Power of High Court.

HEADNOTE:
In a revision filed by a private party, the High Court in its powers under s. 439, Code of Criminal Procedure directed the retrial of the appellant, who had been acquitted by the Sessions Judge. In doing so. the High Court, went into the evidence very minutely, questioned every finding of the Sessions Judge, gave its own interpretation of the evidence de novo.
HELD: In setting aside an acquittal in a revision and ordering a retrial, there must exist a manifest illegality in the judgment of acquittal or a gross miscarriage of justice. An interference in revision with an order of acquittal can only take place, if there is a glaring defect of procedure such as that the Court has no jurisdiction to court had shut out some material evidence which was admissible or attempt to take into account evidence which

was not admissible or had overlooked some evidence. Although the list given is not exhaustive of all the circumstances in which the High Court may interfere with an an, acuital in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court. [290 A,D--E]
D. Stephens v. Nosibolla, [1951] S.C.R. 284, Logendranath ]ha and others v. Shri Polailal Biswas, [1951] S.C.R. 676 and K. Chinnaswamy Reddy v. State of Andhra Pradesh, [1963] 3 S.C.R. 412, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 23 of 1965.

Appeal by special leave from the judgment and order dated July 17, 1964- of the Patna High Court in Criminal Revision No. 597 of 1963.

Nur-ud-din Ahmed and D. Goburdhan, for the appellant. R.C. Prasad. for respondent No. 1.

The Judgment of the Court was delivered by Hidayatullah, J. This is an appeal against the judgment. July 17, 1963. of a learned single Judge of the High Court at Patna setting aside the acquittal of the appellant ordered by the 1 st Additional Sessions Judge. Gaya and directing his retrial.

The only question in this appeal is whether the High Court in exercising its revisional powers under s. 439 of the Code of Criminal Procedure acted in accordance with the principles settled by this Court for interference with acquittal by way of revision filed by a private party. To apply those principles, certain facts first be stated.

The appellant was tried on three charges levelled against him First was under s. 302 of the Indian Penal Code for intentionally causing the death of one Kuldip Singh with a fire-arm on December 18, 1961 in village Gajra Chatar; the second was attempt murder Kuldip Shigh's companion Sarju Singh by shooting at him with the same weapon; and the third was the unlawful possession of the weapon (a revolver) which is an offence under the Arms Act. It appears that there was some iII-feeling between the appellant and Kuldip Singh, not directly, but because the appellant, who is a lawyer, was conducting cases on behalf of his sister in prolonged litigation started by Kuldip Singh and his party.The litigation concerned the possession of land and it is admitted before us that all the cases had in fact ended in favour of the appellant's sister.

The occurrence is stated to have taken place when an inquiry into a case under s. 107 of the Code of Criminal Procedure was taking place. A notice had been issued to Kuldip Singh's party to show cause why they should not be proceeded against and asked to furnish interim bail. The prosecution story is that the deceased Kuldip Singh accompanied by Sarju Singh the injured man, and one Musafir Singh (P. W. 12) were proceeding towards village Nawadah via Tilaiya Railway Station.' They had started early in the morning and had taken an hour and a half to reach village Gajra Chatar where the

incident is said to have taken place. When they reached near a garden. they found two persons sitting under a tree and approaching them they recognised the appellant but the other was unknown. These persons began to shadow Kuldip Singh and his companions, and after they had proceeded a little further towards the garden, one of them fired at Kuldip on his back. The prosecution case is that Sarju immediately turned round and attempted to catch hold of the appellant who had fired with a revolver, but 'the appellant shot Sarju on his leg behind the knee. Thereafter. the appellant and his companion ran away.

The report of the incident was made by Kuldip Singh himself who seems not to have lost his consciousness and in that report he named the appellant. Subsequently, Kuldip made two dying declarations in which he again named the appellant as the assailant. describing the weapon of attack as a revolver. Kuldip died and the case was started against the appellant as stated already.

The, learned Sessions Judge on an appraisal of the evidence found it unsatisfactory. He began by stating that the medical evidence as also the evidence of 'the ballistic expert (P.W. 17) clearly disclosed that the assault was not committed with a revol vet but with a shot gun. He also could not believe the evidence.

that Sarju could be shot from behind when he was grappling with the appellant. He felt that this created doubt as to whether the injured persons and Musafir who all consistently described the weapon as a revolver had in fact been able to see the weapon or to identify the assailant. Having found this unworthy of credit, the learned Sessions Judge went into a number of other circumstances which in his opinion tended to show that the prosecution case was not free from concoction and hence not free from doubt. He felt that the attack was from an ambush and the deceased and 1he witnesses had named the appellant with whom they had deep enmity but they had not seen the real assailant. He accordingly gave the benefit of doubt to the appellant and ordered his acquittal.

In revision, the learned Judge in 'the High Court went into the evidence very minutely. He questioned every single finding of the learned Sessions Judge and gave his own interpretation of the evidence and the inferences to be drawn from it. He discounted the theory that the weapon of attack was a revolver and suggested that it might have been a shot gun or country made pistol which the villagers in the position of Kuldip and Sarju could not distinguish from a revolver.He then took up each single circumstance on which the learned Sessions Judge had found some doubt and interpreting the evidence de novo held, contrary to the opinion of the Sessions Judge that they were acceptable: All the time he appeared to give the benefit of the doubt to the prosecution. The only error of law which the learned Judge found in the Sessions Judge's judgment was a remark by the Sessions Judge that the defence witnesses who were examined by the police before they were brought as defence witnesses ought to have been cross examined with reference to their previous statements recorded by the police, which obviously is against the provisions of the' Code.Except for this error, no defect of procedure or of law was discovered by the learned Judge of the High Court in his appraisal of the judgment of the Sessions Judge. As stated already by us,he seems to have gone into the matter as if an appeal against acquittal was before him making no distinction between the appellate and the revisional powers exercisable by the High Court in matters of acquittal except to

the extent that instead of convicting the appellant he only ordered his retrial. In our opinion the learned Judge was clearly in error in proceeding as he did in a revision filed by a private party. against the acquittal reached in 1he Court of Session.

The practice on the subject has been stated by this Court on more than one occasion. In D. Stephens v. Nosibolla(1), only two grounds are mentioned by this Court as entitling the High Court set aside an acquittal in a revision and to order a retrial. They [1915] S.C.R. 284.

are that there must exist a manifest illegality in the judgment of the Court of Session ordering the acquittal or there must be a gross miscarriage of justice. In explaining these two propositions, this Court further states that the High Court is not entitled to interfere even if a wrong view of law is taken by the Court of Session or if even there is misapprehensions of evidence. Again, in Logendranath Jha and others v. Shri Polailal Biswas(1), this Court points out that the High Court is entitled in revision to set aside an acquittal if there is an error on a point of law or no appraisal of the evidence at all. This Court observes that it is not sufficient to say that the judgment under revision is "perverse" or "lacking in true correct perspective". It is pointed out further that by ordering a retrial, the dice is loaded against the accused, because however much the High Court may caution the Subordinate Court, it is always difficult to reweigh the evidence ignoring the opinion of the High Court. Again in K. Chinnaswamy Reddy v. State of Andhra Pradesh(2), it is pointed out that an interference in revision with an order of acquittal can only take place if there is a glaring defect of procedure such as that the Court had no jurisdiction to try the case or the Court had shut out some material evidence which was admissible or attempted to take into account evidence which was not admissible or had overlooked some evidence. Although the list given by this Court is not exhaustive of all the circumstances in which the High Court may interfere with an acquittal in revision it is obvious that the defect in the judgment under revision must be analogous to those actually indicated by this Court. As stated',' not one of these points which have been laid down by this Court was covered in the present case. In fact on reading the judgment of the High Court it is apparent to us that the learned Judge has reweighed the evidence from his own point of view and reached inferences contrary to those of the Sessions Judge on almost every point. This we do not conceive to be his duty in dealing in revision with an acquittal when Government has not chosen to file an appeal against it. In other words, the learned Judge in the High Court has not attended to the rules laid down by this Court and has acted in breach of them.

We have had the two judgments read out to us and we are of opinion that there is much that can be said in favour of the judgment of the Sessions Judge who probably felt that the identity of the real assailant not having been found, the persons chose to name the most likely persons or one who was responsible for their discomfiture in the litigation which was going on for years. That the appellant might have hired some assassins or might even have himself been present at the occurrence may be true but the question (1) [1951] S.C.R. 676. (2) [1963] 3 S.C.R. 412.

was whether the Sessions Judge was not within his rights in rejecting the prosecution case on a proper appraisal of the evidence which he found to be unsatisfactory. Looking to all the circumstances that have been brought to our notice, we are satisfied that the Sessions Judge acted within his rights in deciding the case which to us appears also to be somewhat doubtful in many

respects and the High Court was therefore in error in taking upon itself the l duty of hearing a revision application as if it was an appeal and setting aside the acquittal not by convicting the accused but reaching the same result indirectly by ordering a retrial. In our opinion, the judgment of the High Court cannot be allowed to stand.

The appeal succeeds and the order of retrial is therefore revoked and the acquittal is restored.

Y.P. Appeal allowed.