

Amar Singh And Another ... vs State Of Uttarakhand on 6 June, 2022

Author: Ravindra Maithani

Bench: Ravindra Maithani

HIGH COURT OF UTTARAKHAND AT NAINITAL

Criminal Revision No. 164 of 2009

Amar Singh and another

.....Revisionists

Vs.

State of Uttarakhand

..... Respondents

Present : None is present for the revisionists.
 Mr. V.K. Jemini, Deputy Advocate General for the State.

JUDGMENT

Hon'ble Ravindra Maithani, J. (Oral) Instant revision is preferred against the following:-

- (i) Judgment and Order dated 20.09.2007, passed in Criminal Case No. 1758 of 2006, State vs. Amar Singh and another, by the court of Judicial Magistrate, Roorkee, District Haridwar (for short, "the case"). By the impugned judgment and order the revisionists have been convicted under Sections 326 read with 34 and 506 IPC and sentenced to three years rigorous imprisonment and a fine of `5,000/- and;
 - (ii) Judgment and Order dated 30.09.2009, passed in Criminal Appeal No. 67 of 2007, Amar Singh and another vs. State, by the court of Additional Sessions Judge/1st Fast Track Court, Roorkee, District Haridwar. By this judgment and order, the conviction and sentence of the revisionists recorded on 20.09.2007 in the case has been affirmed.
2. The revisionists earlier did not appear in this matter and on 25.06.2013, by a detailed order, the revision was dismissed. The revisionists challenged the judgment dated 25.06.2013 of this Court before the Hon'ble Supreme Court in Criminal Appeal No.1898 of 2014, Amar Singh and another vs. State of Uttarakhand. The Hon'ble Supreme Court allowed the appeal and directed the Court to decide the revision afresh after affording an opportunity of hearing to the revisionists. The Hon'ble

Supreme Court observed as hereunder:-

"..... Therefore, without going into the merits of the contentions of the parties, we set aside the impugned order and the matter is remitted back to the High Court for hearing afresh. We only request the High Court to dispose of the Criminal Revision as expeditiously as possible after giving due notice to the parties. It is needless to state that the appellants should now make an alternative arrangement for their appearance before High Court on the next date of hearing. Since the appellants were on bail during the pendency of the revision before the High Court, they shall be released on bail to the satisfaction of the trial court in connection with C.C. No.1758 of 2006 arising out of F.I.R. No.3 of 1996 of P.S. Roorkee, District Haridwar, Uttarakhand. Appeal is disposed of."

3. Thereafter, on 16.01.2015, the revisionists were represented before the Court but, the matter was adjourned at their request. On 14.05.2015, Mr. Deep Prakash Bhatt, Advocate filed Vakalatnama signed by the revisionist Amar Singh. Again on 23.03.2017, Vakalatnama was filed by Advocate Mr. Deep Prakash Bhatt for the revisionist. Again in the year 2017, Advocate Mr. Kishor Kumar filed Vakalatnama for both the revisionists, which is mentioned in the order-sheet dated 31.07.2020 as hereunder:-

"Mr. Kishore Kumar, learned counsel for the revisionist.

Mr. A.K. Sah, learned A.G.A. along with Ms. Mamta Joshi, learned Brief Holder for the State.

It is argued by learned counsel appearing on behalf of the revisionist that he has filed Vakalatnama before two days in this matter, but he did not receive any paper book till yet. Registry is directed to prepare paper book and supply the same to the learned counsel for the parties, as per rule.

List this matter on 27.08.2020.

In the meantime, learned Counsel for the revisionist will furnish translated copy of the FIR as well as statements of witnesses."

4. Thereafter, again on few occasions, the revisionists were not represented and the Court ordered issuance of bailable warrants against them.

5. On 10.09.2020, again the revisionist were represented and an application was filed on their behalf for recalling the bailable warrants, which have been recalled. But, again the revisionists remain unrepresented.

6. Pursuant to the judgment of Hon'ble Supreme Court dated 01.09.2014, the revisionists have been given due notice of the revision. In fact, Vakalatnamas were filed by the Advocates on their behalf.

Not only this, bailable warrants were issued against them, which were subsequently recalled.

7. This is admitted revision. It has to be decided on merits. In the case of Praban Kumar Mitra vs. State of West Bengal and another, 1959 Supp (1) SCR 63, the Hon'ble Supreme Court observed, ".....The petitioner in the High Court may have been an accused person who has been convicted and sentenced, or he may have been a complainant who may have been directed under Section 250 of the Code to pay compensation to an accused person upon his discharge or acquittal. Whether it was an accused person or it was a complainant who has moved the High Court in its revisional jurisdiction, if the High Court has issued a rule, that rule has to be heard and determined in accordance with law, whether or not the petitioner in the High Court is alive or dead, or whether he is represented in court by a legal practitioner. In hearing and determining the case under Section 439 of the Code, the High Court discharges its statutory function of supervising the administration of justice on the criminal side. Hence, the consideration applying to abatement of an appeal, may not apply to the case of revisional applications." In the case of Madan Lal Kapoor vs. Rajiv Thapar and others, (2007)7 SCC 623, the Hon'ble Supreme Court held that a criminal revision cannot be dismissed in default.

8. In the matters of criminal appeals, if the appellant does not appear, the consequences have been interpreted by the Hon'ble Supreme Court in a series of cases. In the case of K.S. Panduranga vs. State of Karnataka, (2013)3 SCC 721, the Hon'ble Supreme Court observed as hereunder:-

"18. In Bani Singh v. State of U.P. [(1996) 4 SCC 720 :

1996 SCC (Cri) 848 : AIR 1996 SC 2439] , a three-Judge Bench was called upon to decide whether the High Court was justified in dismissing the appeal filed by the accused- appellants therein against the order of conviction and sentence issued by the trial court for non-prosecution. The High Court had referred to the pronouncement in Ram Naresh Yadav [AIR 1987 SC 1500 : 1987 Cri LJ 1856] and passed the order. The three-Judge Bench referred to the scheme of the Code, especially, the relevant provisions, namely, Section 384 and opined that since the High Court had already admitted the appeal following the procedure laid down in Section 385 of the Code, Section 384 which enables the High Court to summarily dismiss the appeal was not applicable. The view expressed in Shyam Deo case [(1971) 1 SCC 855 : 1971 SCC (Cri) 353 : AIR 1971 SC 1606] was approved with slight clarification but the judgment in Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] was overruled. The three-Judge Bench proceeded to lay down as follows : (Bani Singh case [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] , SCC pp. 726-27, paras 15-16) "15. ... It is the duty of the appellant and his lawyer to remain present on the appointed day, time and place when the appeal is posted for hearing. This is the requirement of the Code on a plain reading of Sections 385-386 of the Code. The law does not enjoin that the court shall adjourn the case if both the appellant and his lawyer are absent. If the court does so as a matter of prudence or indulgence, it is a different matter, but it is not bound to adjourn the matter. It can dispose of the appeal after perusing the record and the judgment of the trial court.

We would, however, hasten to add that if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-

accused if his lawyer is not present. If the lawyer is absent, and the court deems it appropriate to appoint a lawyer at State expense to assist it, there is nothing in the law to preclude it from doing so. We are, therefore, of the opinion and we say so with respect, that the Division Bench which decided Ram Naresh Yadav case [AIR 1987 SC 1500 : 1987 Cri LJ 1856] did not apply the provisions of Sections 385-386 of the Code correctly when it indicated that the appellate court was under

an obligation to adjourn the case to another date if the appellant or his lawyer remained absent.

16. Such a view can bring about a stalemate situation.

The appellant and his lawyer can remain absent with impunity, not once but again and again till the court issues a warrant for the appellant's presence. A complaint to the Bar Council against the lawyer for non-appearance cannot result in the progress of the appeal. If another lawyer is appointed at State cost, he too would need the presence of the appellant for instructions and that would place the court in the same situation. Such a procedure can, therefore, prove cumbersome and can promote indiscipline. Even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. This would apply equally if the accused is the respondent for the obvious reason that if the appeal cannot be disposed of without hearing the respondent or his lawyer, the progress of the appeal would be halted."

(emphasis supplied)

19. From the aforesaid decision in Bani Singh [(1996) 4 SCC 720 : 1996 SCC (Cri) 848 : AIR 1996 SC 2439] , the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits; 19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent; 19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so; 19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court; 19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-

accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and 19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

9. In Criminal Appeal No.512 of 2020, Rajpal and others vs. State of Uttarakhand, the Hon'ble Supreme Court on 07.08.2020 observed as hereunder:-

"5. The main submission of the learned senior counsel for the appellants is that the revision petition filed by the appellants before the High Court was decided in their absence, without giving them an opportunity for hearing. On the other hand, counsel for the State submitted that the High Court has rendered a well-reasoned judgment after perusing the records and considering the appellants' submissions in their revision petition.

6. This Court has had occasion to rule on the appropriate course of action open to a Court seized with a criminal appeal when the appellant does not appear. This Court in *K. S. Panduranga v. State of Karnataka*, (2013) 3 SCC 721, relying upon an earlier three Judge Bench decision of this Court in *Bani Singh v. State of U.P.*, (1996) 4 SCC 720, held that the Court is not bound to adjourn the matter if an appellant or her counsel is absent, but it can choose to do so as a matter of prudence or indulgence. At the same time, the Court has the power to dispose of the appeal after perusing the record and the judgment of the Trial Court. Once the Court decides the matter on merits in the absence of the counsel, the situation can be remedied by the higher Court, whether by remanding the matter or by taking up the matter itself, which would depend on the facts and circumstances of the case.

7. While the present matter deals with the exercise of appellate powers by the High Court in its revisional jurisdiction under Sections 397 and 401, Code of Criminal Procedure, the above legal precedent is still instructive as to the legal parameters within which this Court should decide the present matter."

10. The Court could also adjourn the matter and seek assistance of the Amicus Curiae but, having considered this matter, this Court is of the view that this matter may be decided in the absence of revisionist or his learned counsel. The chronology of the events, as stated hereinabove, makes it clear that the revisionists are playing with the Court's system. They are absenting on the dates of hearing, so as to delay the hearing of this matter. It has to stop somewhere. This Court has once decided this revision but, on behalf of the revisionists, it was challenged on the ground that they did not get opportunity of hearing. Subsequent thereto, two advocates have appeared on behalf of the revisionists. Their bailable warrants have been recalled. Now, there is no reason to adjourn the matter for future date. Accordingly, the Court proceed to decide the revision.

11. The facts briefly stated are as follows. There was an enmity between PW1, the injured Thakur Joginder Singh and the revisionists. On 03.01.1996 at 06:00 PM, when PW1 Thakur Joginder Singh was returning home, he was abused and assaulted with sharp edged weapon by the revisionists in front of the house of PW4 Chandra Kala. PW3 Jogendra Singh, PW4 Smt. Chandra Kala and other people saved him. The injured was rushed to hospital. On the next day on 04.01.1996, when the injured was still in the hospital, FIR was lodged by the wife of the injured, who is PW2 Smt. Kashmiri Devi.

12. This injured PW1 Thakur Joginder Singh was examined by PW7, Dr. S.S. Shukla on 03.01.1996 at 09:15 PM. He found the following injuries on his persons:-

- "1. Incised wound 1 cm x 1 cm x scalp to skull deep on back side of skull, obliquely placed 9 cm above right ear, bleeding present. X-Ray advised.
2. Lacerated wound 2 cm x 0.5 cm x scalp deep, irregular in shape with mild swelling around, 2 cm above midial end of left eyebrow.
3. Abraded contusion 8 cm x 2 cm on right gluteal region, obliquely placed.
4. Abraded contusion 5 cm x 2 cm on right outer side of right knee.
5. Contusion 3 cm x 2 cm on back of lower end of right arm just above elbow Reddish.
6. Contusion 3 cm x 2 cm on medial marital of left ankle swelling. Reddish X-Ray opinion: Inquiry no. (1) caused by sharp edged object while others by hard blunt object and friction Nature of (1) and (6) kept under observation. Others are simple. Duration fresh."

13. PW6 Dr. Ajay Kumar, Radiologist conducted X- Ray and found fracture on the parietal bone and frontal bone of the skull of PW1 Thakur Joginder Singh. The Investigating Officer prepared site plan and submitted a charge sheet under Sections 326 read with Section 506 IPC. On 16.12.1996, charge under Section 308 read with Section 34 and Section 504 IPC was framed against the revisionists. But subsequently, the charge was amended and on 13.08.1999, the charge under Sections 326/34 and 504 IPC were framed against them.

14. In order to prove its case, the prosecution examined eight witnesses namely, PW1 Thakur Joginder Singh, PW2 Smt. Kashmiri Devi, PW3 Jogender Singh, PW4 Smt. Chandra Kala, PW5 Faizu, PW6 Dr. Ajay Kumar, Radiologist, PW7 Dr. A.S. Shukla and PW8 Sub Inspector Ramsewak Azad.

15. After hearing the parties, by the judgment and order dated 20.09.2007, the revisionists were acquitted of the charge under Section 504 IPC. But, they were convicted and sentenced under Sections 326/34 IPC. Aggrieved by it, the revisionist preferred the appeal, which was dismissed by the Judgment and Orders 30.09.2009, hence the revision.

16. As stated, none represented the revisionists. The Court perused the memo of revision. Mainly the following grounds have been taken to assail the impugned judgment and order:-

- (i) FIR is delayed.
- (ii) Charges were framed by the court of Sessions

and thereafter, the matter was transferred under Section 228 of the Code. Therefore, the court of Magistrate was under influence of the superior court because the charges were framed by the superior court. Due to this reason, the trial court convicted the revisionists.

(iii) There have been contradictions in the statements of the witnesses.

(iv) The opinion of experts was not rightly appreciated.

(v) Supplementary Medical Report has not been proved.

(vi) The impugned judgment and order suffers from manifest errors of law and lots of irregularities.

(vii) No prima facie case is made out against the revisionists.

17. This is a revision. The jurisdiction is much restricted. In revision, the Court cannot sit as a Court of appeal. The revision only touches upon the correctness, legality or propriety of the judgment and as to regularities of any proceedings. In the case of Amit Kapoor vs. Ramesh Chander and another, (2012)9 SCC 460, the Hon'ble Supreme Court interpreted the provision of Section 397 of the Code and observed as under:-

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits."

18. PW1 Thakur Joginder Singh has stated about the incident. According to him, on 03.01.1996, he was assaulted by the revisionists. Revisionist Amar Singh attacked on his head with the sharpened edged weapon "Palkati" and revisionist Manjeet assaulted him with "lathi". He was mercilessly assaulted. His wife raised an alarm and thereafter, Chandra Kala Jatani, Noor Hassan, Azim and others intervened and saved him. This witness has been cross-examined extensively. He has stated about the place of incident. It occurred in front of the house of PW4 Smt. Chandra Kala Jatani. Site plan proves it.

19. PW2 Smt. Kashmiri Devi is the wife of the injured PW1 Thakur Joginder Singh. PW3 Joginder Singh was accompanying the injured PW1 Thakur Joginder Singh, when he was assaulted. They both have corroborated the statement of PW1 Thakur Joginder Singh, the injured.

20. PW4 Smt. Chandra Kala is the witness, in front of whose house, the incident took place. She has also corroborated the statement of PW1 Thakur Joginder Singh, the injured. All these witnesses have stated that the revisionist Amar Singh had Palkati, a sharp edged weapon and the revisionist Manjeet had a lathi by which, they assaulted and attacked.

21. The reason for assault is also recorded in the FIR as has been stated by the witnesses, as well. PW2 Smt. Kashmira Devi has stated that she had given revisionist Amar Singh her house on rent but, since the revisionist Manjeet Singh was not well accepted in the society, they asked them to vacate the house, due to which, they were inimical to this witness.

22. PW1 Thakur Joginder Singh, the injured has stated about the multiple cases, which have been lodged against him by the revisionists. According to him, the parties were inimical.

23. PW6 Dr. Ajay Kumar, Radiologist has proved the X-Ray report of PW1 Thakur Joginder Singh. He had found fracture on the skull bone. PW7 Dr. A.S. Shukla examined the injured, PW1 Thakur Joginder Singh on 03.01.1996 and found the injuries, which have already been quoted, hereinabove. He has proved the injury report. PW8 is the Investigating Officer.

24. The Court has gone through the cross-examinations of the witnesses but, nothing has been elicited in their cross-examination, which could doubt the credibility of the witnesses.

25. PW1 Thakur Joginder Singh has stated that his clothes were blood stained and he had shown it to the police (statement of PW1 Thakur Joginder Singh at page

5) but, PW8 SI Ram Sewak Azad had not supported this part of statement. It also does not per se create any doubt on the prosecution. FIR in the incident case is not prompt but, the FIR itself gives explanation to it. PW1 Thakur Joginder Singh was assaulted on 03.01.1996 at 06:00 in the evening. He was medically examined on the same day at 09:15 PM. He had multiple injuries, he was admitted to the hospital. Thereafter, the report was lodged. The delay has been sufficiently and reasonably explained.

26. It is true that in this case, earlier charge under Section 308/34 and 504 IPC were framed but, subsequently the court of Sessions amended the charge on 30.08.1999. On 05.05.2000, the court of Sessions passed an order that since charge under Section 326/34 and 504 IPC are triable by the court of Magistrate, the case should be transferred to the court of Magistrate under Section 228 of the Code. Accordingly, the case was transferred to the court of Magistrate. This has been done under Section 228 of the Code, which authorizes the court of Sessions to transfer a case for trial to the Chief Judicial Magistrate, if the case is not exclusively triable by the court of Sessions. The court of Sessions has first to frame the charge and thereafter, only it could transfer the case for trial to the court of the Chief Judicial Magistrate under Section 228 of the Code. This is what is done in the case. There is no illegality or irregularity in doing so.

27. In the memo of revision, it is stated that supplementary injury report has not been proved. It makes no difference because the injuries on the persons of PW1 Thakur Joginder Singh has been

proved by PW7 Dr. A.S. Shukla and fracture has been proved by PW6 Dr. Ajay Kumar, Radiologist.

28. Having considered the entirety of facts, this Court is of the view that, in fact, prosecution has been able to prove its case beyond reasonable doubt. There is no error, illegality or impropriety in the impugned judgment and orders. The impugned judgment and orders are based on the admissible evidence. All the relevant material has been considered and no irrelevant material has been considered by the court. Therefore, there is no reason to make any interference. Accordingly, the revision deserves to be dismissed.

29. The revision is dismissed.

30. The revisionists are on bail. Their bail are cancelled and sureties are discharged. Let the revisionists be taken into custody to serve out the remaining sentence.

31. Let a copy of this judgment be forwarded to the court below along with the LCR for necessary compliance.

(Ravindra Maithani, J.) 06.06.2022 Sanjay