

Shyam Narayan Ram
v.
State of Uttar Pradesh & Anr. Etc.
Criminal Appeal No(s). 4287-4289 of 2024
21 October 2024
[Vikram Nath* and Prasanna B. Varale, JJ.]

Issue for Consideration

Whether the High Court fell in error in remanding the matter to Trial Court and giving liberty to the accused to cross-examine a prosecution witness and allowing the prosecution to lead further evidence in the form of formal witnesses.

Headnotes[†]

Code of Criminal Procedure, 1973 – s.294 – The High Court while allowing the appeal filed by accused persons and remanding the matter back to Trial Court recorded – Accused did not get a fair trial as their counsel had admitted the genuineness of documents filed by the prosecution and had dispensed with its formal proof.

Held: It is not for any error or oversight of defence counsel that they had admitted the genuineness of the police papers by dispensing formal proof of the same, rather the defence had repeatedly confirmed their stand of admitting the genuineness of the documents – As per Section 294(3) of CrPC – where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under CrPC without proof of the signature of the person to whom it purports to be signed – It is undisputed that the Defence Counsel admitted the genuineness of the documents presented by prosecution – While allowing the appeal Hon'ble Supreme Court differentiated *Munna Pandey vs. State of Bihar (2023) SCC OnLine SC 1103*, as the issue in the said case was fair trial and not application of Section 294 CrPC – Thus, Hon'ble Supreme Court held, Hon'ble High Court fell in error by remanding matter back to Trial Court for cross-examination of witnesses – Hon'ble

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Supreme Court does not find any error in the judgment of the Trial Court considering the defence repeatedly continued to admit the genuineness of the prosecution documents exempting them from formal proof – Appeals allowed, impugned judgment and order of the High Court is set aside and the criminal appeals before the High Court are restored, to be heard and decided afresh on merits on the basis of material on record.

Case Law Cited

Sonu alias Amar v. State of Haryana [2017] 8 SCR 151 : (2017) 8 SCC 570; *Shamsher Singh Verma v. State of Haryana* [2015] 12 SCR 234 : (2016) 15 SCC 485; *Akhtar v. State of Uttarakhand* [2009] 5 SCC 771 : (2009) 13 SCC 722 – referred to.

List of Acts

Penal Code, 1860; Code of Criminal Procedure, 1973.

List of Keywords

Remanding case back to Trial Court; Admission of documents; Fair Trial; Section 294 of CrPC.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 4287-4289 of 2024

From the Judgment and Order dated 01.11.2023 of the High Court of Judicature at Allahabad in CRLA No. 4982, 5346 and 5347 of 2019

Appearances for Parties

Divyesh Pratap Singh, Ms. Shivangi Singh, Amit Sangwan, Ms. Sneha Chandna, Advs. for the Appellant.

Ajay Kumar Misra, A.G./Sr. Adv., Garvesh Kabra, Avanish Deshpande, C B Gururaj, Animesh Dubey, Ms. Archita Prajapati, K P Singh, M/s. Gururaj & Nayak, Sunil Kumar Singh, Rakesh Kumar Srivastava, Sandeep Lamba, Rameshwar Prasad Goyal, Advs. for the Respondents.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****Vikram Nath, J.**

1. Leave granted.
2. By means of these appeals, the informant-appellant has assailed the correctness of the judgment and order dated 01.11.2023 passed by the Allahabad High Court in Criminal Appeal Nos.4982/2019, 5346/2019 and 5347/2019 whereby the High Court allowed the appeals, set aside the order of conviction passed by the Trial Court dated 15/16th July, 2019 and had remanded the matter to the Trial Court to decide the same afresh and that the matter be retried from the stage of testimony of PW 2 onwards. Further a direction was issued that the authors of the exhibited documents liable to establish the authenticity of the same would be cross-examined by the defence, and that the trial would proceed on day to day basis and shall conclude on or before 31st May, 2024. Further, the appellants before the High Court were to be released on bail on furnishing personal bonds and two heavy sureties each of the like amount to the satisfaction of the court concerned. They were further liable to give additional affidavit to the Trial Court concerned, that they would remain present on every day or as and when required by the Trial Court. It was further directed that the fine amount imposed by the Trial Court would remain stayed during the period of trial and would remain subject to final verdict to be pronounced by the Trial Court.
3. Brief facts giving rise to the present appeals are:
 - 3.1 First Information Report¹ was lodged on 22.04.1998 at 05.30 am by the appellant which was registered as FIR bearing No.27/1998, Police Station Dhanapur, District Chandauli, U.P. under section 302/34 of the Indian Penal Code, 1860² and 3(1) (v) of the SC/ST Act. According to the prosecution story, on the intervening night of 21/22.04.1998 the appellant (PW 1), Ram Dular (PW2) who were harvesting crops in the fields, on hearing gunshots, rushed to the pumping set from where the

1 FIR

2 IPC

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shots were being fired and saw that the four accused namely Radhey Shyam Lal A-1, Pratap A-2, Rajesh Kumar @ Pappu A-3 and Jagannath A-4 were assaulting the parents of the appellant namely Bodha Devi and Mohan Ram who belonged to Scheduled Caste. After brutally assaulting the two deceased, they threw their bodies into the well.

- 3.2 Upon registration of the FIR, the police came to the site and with the help of the villagers, pulled out the two dead bodies of parents of the appellant from the well. An inquest was prepared and their bodies were thereafter sent for post-mortem. The deceased Bodha Devi had suffered seven injuries all over her body including a fatal wound on the back of the chest extending upto the neck measuring 48 cm x 28 cm. The cause of death was recorded as due to the fracture in the vertebra and injury to the spinal cord. The post-mortem of the deceased Mohan Ram disclosed as many as sixteen injuries which included eleven lacerated wounds and the cause of death was reported as death due to injuries to spine and spinal cord.
- 3.3 The Investigating Officer recovered blood soaked *gamcha* (scarf) belonging to accused Pratap (A-2), licensed SBBL gun with two live cartridges. From the place of occurrence, the Investigating Officer also recovered three empty-shell-casings of 12 bore, 1 live 12 bore cartridge, cardboard and plastic rods, *tikli* and other remnants of spent cartridges, apart from other standard recoveries. The recovered articles were sent to the forensic laboratory and as per the report one out of the three cartridges has been found to have been fired from the seized licensed SBBL gun. The FSL report further confirmed that in the barrel of the seized SBBL gun, there was residue of firing. Further, the presence of lead and nitrate clearly indicated that the gun had been recently used.
4. After completing the investigation charge-sheet was submitted. The Magistrate concerned took cognizance and thereafter committed the case to the Sessions Court for trial. The charges were read out to the four accused who denied the same and claimed to be tried.
5. The prosecution examined the informant-appellant as PW 1 and the other eye-witness Ram Dular as PW 2 and also filed the relevant documents. Counsel for the defence on 28.04.2005 admitted the

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genuineness of the prosecution documents and dispensed with its formal proof. The Public Prosecutor had filed an application under section 311 of the Code of Criminal Procedure, 1973³ for summoning the formal witnesses which was opposed by the defence. The Trial Court, after recording the submissions and the admission of the prosecution documents by the defence counsel, exhibited the prosecution papers which had not been exhibited. Further, the Trial Court closed the prosecution evidence and fixed 4th May, 2005 for recording the statement of the accused under section 313 CrPC. The statements of all the accused were recorded under section 313 CrPC on 4th May, 2005 and later on because of a few incriminating circumstances which were not put to the accused, a supplementary statement was also recorded under section 313 CrPC. Despite the statement under section 313 CrPC was recorded as far back as May, 2005, the trial could not proceed further, apparently as the same was stayed by the High Court. The trial, however, further commenced in 2019.

6. At this stage also the Public Prosecutor pressed upon the court for consideration of their applications 29 *kha* and 30 *kha* for summoning Dr. S.K. Srivastava, who had conducted the autopsy on the dead bodies of the two deceased, and the Investigating Officer to prove the recovery memos etc. These applications were also seriously objected to by the defence.
7. The Trial Court, vide judgment and order dated 15/16th July, 2019 convicted all the four accused and sentenced them to life imprisonment under section 302 IPC and other ancillary sentences for the rest of the offences and all of them to run concurrently. The accused were taken into custody on the date of the judgment.
8. Aggrieved by their conviction and sentence, the four accused preferred three separate appeals before the High Court. Appeal No.4982/2019 was preferred by Rajesh Kumar @ Pappu, 5346/2019 was preferred by Radhey Shyam Lal and 5347/2019 was preferred by Pratap and Jagannath. The High Court, by the impugned judgment and order dated 1st November, 2023 recorded that the accused did not get a fair trial as their counsel had admitted the documents of the prosecution and had dispensed with its formal proof. This resulted into a serious

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and fatal illegality and as such in order to extend to the accused a fair trial, it was expedient to remit the matter back to the Trial Court for further trial from the stage of recording of evidence of PW 2 (he had not been cross-examined by the defence), after affording liberty to cross-examine PW 2. The prosecution would produce its formal witnesses and the defence would have liberty to cross-examine them also and only thereafter the trial may be concluded and decided.

9. Aggrieved by the said order of remand, the informant has preferred the present appeals.
10. The submission advanced on behalf of the appellant is to the effect that the High Court fell in error in remanding the matter and giving liberty to the accused to first cross-examine PW 2 and thereafter allow the prosecution to lead further evidence in the form of formal witnesses to prove the police papers and only thereafter proceed further with the trial, maybe by recording a further statement under section 313 CrPC.
11. According to the learned counsel for the appellant, if the judgment of the High Court is allowed to stand, it would render the provisions of section 294 CrPC redundant and otiose. It was also submitted that it is not for any error or oversight of defence counsel that they had admitted the genuineness of the police papers by dispensing formal proof of the same, rather they had repeatedly confirmed their stand of admitting the genuineness of the documents and had opposed the recall of witnesses by the Public Prosecutor on two occasions, once in 2005 and again in 2019. It was thus submitted that the High Court ought to have decided the appeal on merits on the basis of evidence led during the trial and there was no justification for remanding the matter.
12. On the other hand, learned counsel for the respondent-State of U.P. has supported the case of the appellant and submitted that despite the Public Prosecutor having repeatedly requested the Trial Court to allow them to produce the formal witnesses but on account of strong opposition by the counsel for defence, the Trial Court had rejected the said request as such there was no justification for remitting the matter back to the Trial Court for a further trial from the stage of recording of evidence of PW 2.
13. Learned counsel for the respondents accused in the three appeals supported the judgment of the High Court. There is no denial by the

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learned counsel that the stand taken by the defence counsel before the Trial Court was any different from what has been submitted by the counsel for the appellant. He only submitted that considering the principles of fair trial, this Court may not interfere with the impugned judgment and order.

14. Section 294 of the CrPC reads as follows:

“Section 294 – No formal proof of certain documents

1. Where any document is filed before any Court by the prosecution or the accused, the particulars of every such document shall be included in a list and the prosecution or the accused, as the case may be, or the pleader for the prosecution or the accused, if any, shall be called upon to admit or deny the genuineness of each such document.
2. The list of documents shall be in such form as may be prescribed by the State Government.
3. Where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed:

Provided that the Court may, in its discretion, require such signature to be proved.”

15. A bare reading of the aforesaid provision, in particular, sub-section (3) provides that where the genuineness of any document is not disputed, such document may be read in evidence in any inquiry, trial or other proceeding under this Code without proof of the signature of the person to whom it purports to be signed. That is to say that if the authors of such documents does not enter the witness box to prove their signatures, the said documents could still be read in evidence. Further, under the proviso the Court has the jurisdiction in its discretion to require such signature to be proved. In the present case, the documents filed by the investigating agency were all public documents duly signed by public servants in their respective capacities either as Investigating Officer or the doctor conducting the autopsy or other police officials preparing the memo of recoveries etc. As such the Trial Court had rightly relied upon the same and

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exhibited them in view of the specific repeated stand taken by the defence in admitting the genuineness of the said documents. In so far as the police papers which had been signed by private persons like the informant, the same had been duly proved.

16. Thus the only job left for the Court was to appreciate, analyse and test the credit-worthiness of the evidence led by the prosecution which was available on record and if such evidence beyond reasonable doubt established the charges, the conviction could be recorded. However, if the evidence was not credit-worthy and worthy of reliance, the accused could be given benefit of doubt or clean acquittal.
17. The Trial Court, after appreciating the evidence, found that the evidence of PW 1 and 2, eye-witnesses to the account, to have fully supported the prosecution story and during the cross-examination, the defence could not elicit anything which could discredit their testimony.
18. Coming back to the applicability of section 294 CrPC, reference may be had to the following judgments of this Court in the case of Sonu alias Amar vs. State of Haryana⁴ wherein this Court had held in para 30 as follows:

“30. Section 294 of the Cr.P.C. 1973 provides a procedure for filing documents in a Court by the prosecution or the accused. The documents have to be included in a list and the other side shall be given an opportunity to admit or deny the genuineness of each document. In case the genuineness is not disputed, such document shall be read in evidence without formal proof in accordance with the Evidence Act.”

19. Further, in the case of Shamsher Singh Verma vs. State of Haryana,⁵ this Court held in para 14 as under:

“14..... It is not necessary for the court to obtain admission or denial on a document under sub-section (1) to Section 294 CrPC personally from the accused or complainant or the witness. The endorsement of admission or denial made by the counsel for defence, on the document filed

4 [2017] 8 SCR 151 : (2017) 8 SCC 570

5 [2015] 12 SCR 234 : (2016) 15 SCC 485

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by the prosecution or on the application/ report with which same is filed, is sufficient compliance of Section 294 CrPC. Similarly on a document filed by the defence, endorsement of admission or denial by the public prosecutor is sufficient and defence will have to prove the document if not admitted by the prosecution. In case it is admitted, it need not be formally proved, and can be read in evidence. In a complaint case such an endorsement can be made by the counsel for the complainant in respect of document filed by the defence.”

20. Also, this Court in the case of [Akhtar vs. State of Uttarakhand](#)⁶ has held in para 21 as under:

“21. It has been argued that non-examination of the concerned medical officers is fatal for the prosecution. However, there is no denial of the fact that the defence admitted the genuineness of the injury reports and the post-mortem examination reports before the trial court. So the genuineness and authenticity of the documents stands proved and shall be treated as valid evidence under Section 294 of the CrPC. It is settled position of law that if the genuineness of any document filed by a party is not disputed by the opposite party it can be read as substantive evidence under sub-section (3) of Section 294 CrPC. Accordingly, the post-mortem report, if its genuineness is not disputed by the opposite party, the said post-mortem report can be read as substantive evidence to prove the correctness of its contents without the doctor concerned being examined.”

21. On a plain reading of section 294 CrPC and its interpretation by this Court in the above judgments, we do not find any error in the judgment of the Trial Court and particularly considering the facts of the present case where the defence repeatedly continued to admit the genuineness of the prosecution documents exempting them from formal proof.

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22. In our opinion, the High Court fell in error. Moreover, reliance by the High Court on the case of Munna Pandey vs. State of Bihar⁷ was misplaced, because in that case the issue was of fair trial and not of the application of section 294 CrPC. In the case of Munna Pandey (supra), prosecution witnesses were not confronted with their statements under section 161 CrPC for purposes of contradiction and in such a situation this Court had held that if the same be put to witnesses under section 145 of the Evidence Act, 1872 it would have a bearing and, therefore, remitted the matter to the Trial Court for further examination/cross-examination of the prosecution witnesses.
23. For all the reasons recorded above, we allow these appeals, set aside the impugned judgment and order of the High Court and restore the criminal appeals before the High Court to be heard and decided afresh on merits on the basis of material on record.
24. Considering the fact that the incident is of 1998, we request the High Court to make an endeavour to decide the appeals afresh on the basis of the evidence led during the trial as early as possible.
25. The private respondents in all the three appeals who stand convicted under the order of the Trial Court, would surrender within six weeks before the Trial Court and it would be open for them to apply for suspension of sentence before the High Court on admissible grounds in accordance to law, which application would be considered on its own merits uninfluenced by any observations made in this order. We further make it clear that the evidence has not been appreciated by us.

Result of the case: Appeals allowed.

⁷*Headnotes prepared by:* Gaurav Upadhyay, Hon. Associate Editor
(Verified by: Shadan Farasat, Sr. Adv.)