

BINDESHWARI PRASAD SINGH

v.

STATE OF BIHAR

AUGUST 13, 2002

[M.B. SHAH AND BISHESHWAR PRASAD SINGH, JJ.]

Code of Criminal Procedure, 1973; Sections 374 and 401:

Revision—Jurisdiction and power of High Court under Section 401 Cr.P.C.—Murder—Accused acquitted on benefit of doubt—Confirmed by the High Court in appeal—Revision—Reversal and order for retrial thereof by the High Court—Correctness of—Held, Section 401(3) prohibits revisional Court from converting a finding of acquittal into conviction—High Court not justified in re-appreciating evidence—Not to interfere with order of acquittal except for correction of manifest illegality or prevention of gross miscarriage of justice—Otherwise it give rise to an incongruous situation that an accused acquitted by trial Court might have to face a second trial for the same offence—Penal Code; Sections 302 and 302/114.

Revisional and appellate jurisdiction of High Court—Distinction between—Held, Appellate jurisdiction of High Court is much wider than its revisional jurisdiction against an order of acquittal since grounds urged in Revision may be urged in the appeal but not vice-versa.

Dismissal of appeal against acquittal—Effect of—Held, dismissal of appeal against acquittal puts a seal of finality on judgment of trial Court and it is not appropriate for the High Court to exercise revisional jurisdiction in such cases.

According to the prosecution, on the fateful day, there was a quarrel between accused-appellants and PW4, which took an ugly turn when son of PW4 intervened in the altercation and accused assaulted him with an iron rod hitting him on his head, resulting in his death. PW4, father of the deceased, lodged F.I.R.

The accused were tried for offences under Section 302 and 302/114 I.P.C. but were acquitted by the trial Court on the ground that the prosecution failed to prove its case beyond reasonable doubt. The appeal of the State was

- A** dismissed by the High Court on ground of limitation. In revision preferred by the informant, High Court set aside the order of acquittal and remitted the case to the Sessions Court for re-trial. Hence this appeal.

Allowing the appeal, the Court

- B** **HELD: 1.1.** High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in revision under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 places a limitation on the powers of the Revisional Court by prohibiting it from converting a finding of acquittal into one of conviction which is indicative of the nature and extent of the revisional power conferred by Section 401 Cr.P.C.
- C** If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial.

[499-G-H; 500-A]

- D** **1.2.** It is well settled law that High Court would ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. High Court would not be justified in interfering with an order of acquittal merely because the trial Court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 Cr.P.C. in an appeal against acquittal by a private party. [500-B-D]

- F** *D. Stephens v. Nosibolla*, AIR (1951) SC 196; *K.C. Reddy v. State of Andhra Pradesh*, AIR (1962) SC 1788; *Akalu Ahir and Ors. v. Ramdeo Ram*, [1973] 2 SCC 583; *Pakalapati Narayana Gajapathi Raju and Ors. v. Benapalli Peda Appadu and Anr.*, AIR (1975) SC 1854 and *Mahendra Pratap Singh v. Sarju Singh*, AIR 1968 SC 707, relied on.

- G** **1.3.** In the instant case, judgment of the trial Court was not perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence; nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted. [500-E-F]

- H** **2.1.** This Court has repeatedly observed that in exercise of revisional

jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate Court which has a much wider jurisdiction to go into questions of fact and law, and to convert an order of acquittal into one of conviction. [501-B]

2.2. Jurisdiction of High Court in dealing with an appeal against acquittal preferred under Section 374 Cr.P.C. is much wider than the jurisdiction of Revisional Court exercising jurisdiction under Section 401 Cr.P.C. against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial Court. In such a case, it may not be a proper exercise of discretion to exercise revisional jurisdiction under Section 401 Cr.P.C. against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal, may have to face a second trial for the same offence of which he was acquitted. [501-D-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 808 of 2002.

From the Judgment and Order dated 6.6.2001 of the Jharkhand High Court in Crl. R. No. 48 of 1994.

P.S. Mishra, S.K. Sinha, S. Chandrashekhar, Vishnu Sharma, Upendra Mishra and Tathagat H. Vardhan for the Appellants.

R.D. Upadhyay, Vishwajit Singh and Tripurari Roy, for the Respondent.

The Judgment of the Court was delivered by

BISHESHWAR PRASAD SINGH, J. Special leave granted.

The appellants herein were tried by the learned Sessions Judge, Dhanbad in Sessions Trial No. 193 of 1992 charged of the offence under Sections 302 and 302/114 of the Indian Penal Code. The learned Sessions Judge by judgment and order dated 21st January, 1994 acquitted the appellants of the charges levelled against them, finding that the prosecution had not proved its case beyond reasonable doubt.

A The appeal preferred by the State against the acquittal of the appellants was dismissed by the High Court by its order dated 22nd November, 1994. No doubt the appeal was dismissed on the ground of limitation.

B A revision was preferred by the informant to the High Court under Section 401 of the Code of Criminal Procedure which has been allowed by the impugned judgment and order dated 6th June, 2001 in Criminal Revision No. 48 of 1994. The judgment of acquittal was set aside and the case was remitted to the Sessions Judge for re-trial in accordance with law.

C From the evidence on record it appears that an occurrence took place on 20th July, 1989 at about 4.00 p.m. The informant and appellant No.1 entered into an altercation in connection with removal of creepers which had climbed up to the balcony of the informant. The informant as well as appellant 2 to 5 herein reside in the same building. The altercation took an ugly turn and abuses were exchanged between appellant No.1 and the informant. In the meantime son of the informant, namely Kumud came down and asked the appellants as to why they had not removed the creepers. The case of the prosecution is that appellant No. 1 and other appellants shouted and ordered assault on Kumud. In the assault that followed, deceased Kumud was hit on the head with an iron rod, as a result of which he sustained a serious injury. He was taken to the Bokaro General Hospital, where he was declared dead.

E The matter was reported to the police. Thereafter the case was investigated and the appellants were put up for trial before the Sessions Judge, Dhanbad.

F The prosecution relied upon the testimony of three eye witnesses, namely PWs. 1, 3 and 4, who were the mother, sister and father respectively of the deceased. The First Information Report was lodged by PW.4, the father of the deceased. The prosecution also relied upon the medical evidence on record, which according to the prosecution, corroborated the evidence of the witnesses. The learned Sessions Judge after a consideration of the evidence on record, acquitted the appellants of the charges levelled against them.

G The State's appeal having been dismissed, a criminal revision was filed by the informant, PW.4 under Section 401 of the Code of Criminal Procedure before the High Court.

H In the revision before the High Court it was sought to be urged on behalf of the informant that there was no reason to discard the testimony of PWs. 1, 3 & 4. The medical evidence on record corroborated their testimony.

Therefore, on the basis of the evidence on record, it should have been held that the prosecution had proved its case beyond reasonable doubt. A

On the other hand it was high-lighted by the appellants that the trial court had recorded its reasons for their acquittal. In the First Information Report a clear allegation was made against appellant No.1 of having assaulted Kumud (deceased) on his head with an iron rod. However, other witnesses in the course of their deposition attributed the assault on Kumud to appellant No.2, Anuj. The informant also, in his deposition before the Court, changed his version and in line with other witnesses deposed that it was Anuj, appellant No.2 who gave the blow with an iron rod on the head of the deceased resulting in his death. The medical evidence on record discloses that there were two external injuries only, the first being a lacerated wound over the middle part of the left parietal area and the other being an abrasion on the back of the right elbow. B C

A mere perusal of the judgment of the High Court would disclose that the High Court re-appreciated the evidence on record and came to the conclusion that the learned Sessions Judge was not justified in recording the order of acquittal. The evidence of eye witnesses was consistent and so far as the informant is concerned, no doubt in the First Information Report he had attributed the fatal injury to appellant No.1 but he later changed his version and deposed that the injury was caused by appellant No. 2. The High Court was impressed by the argument that the First Information Report not being a substantive piece of evidence, at best the evidence of the informant was not corroborated by the First Information Report. The High Court further found that the presence of eye witnesses was natural and the mere fact that they were related was no ground to discard their testimony. Rejecting the argument urged on behalf of the appellants that there was no mention in the First Information Report about the presence of the wife and the daughter of the informant as eye witnesses who witnessed the occurrence from the balcony, the learned Judge observed that it was not expected that every detail would be mentioned in the First Information Report. On such reasoning, the High Court set aside the order of acquittal and ordered re-trial of the appellants. D E F

We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the informant under Section 401 of the Code of Criminal Procedure. Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. G H

- A The aforesaid sub-section, which places a limitation on the powers of the revisional court, prohibiting it from converting a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 SC 196 : *D. Stephens v. Nosibolla*; AIR (1962) SC 1788 : *K.C. Reddy v. State of Andhra Pradesh*; [1973] 2 SCC 583 : *Akalu Ahir and Ors. v. Ramdeo Ram*, AIR (1975) SC 1854 : *Pakalapati Narayana Gajapathi Raju and Ors. v. Bonapalli Peda Appadu and Anr.*, and AIR (1968) SC 707 : *Mahendra Pratap Singh v. Sarju Singh*).

- E The instant case is not one where any such illegality was committed by the trial court. In the absence of any legal infirmity either in the procedure or in the conduct of the trial, there was no justification for the High Court to interfere in exercise of its revisional jurisdiction. It has repeatedly been held that the High Court should not re-appreciate the evidence to reach a finding different from the trial court. In the absence of manifest illegality resulting in grave miscarriage of justice, exercise of revisional jurisdiction in such cases is not warranted.

- G We are, therefore, satisfied that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional jurisdiction at the instance of the informant. It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial Court in the instant case was perverse. No defect of procedure has been pointed out.

There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself. At best the High Court thought that the prosecution witnesses were reliable while the trial court took the opposite view. This Court has repeatedly observed that in exercise of revisional jurisdiction against an order of acquittal at the instance of a private party, the Court exercises only limited jurisdiction and should not constitute itself into an appellate court which has a much wider jurisdiction to go into questions of facts and law, and to convert an order of acquittal into one of conviction. It cannot be lost sight of that when a re-trial is ordered, the dice is heavily loaded against the accused, and that itself must caution the Court exercising revisional jurisdiction. We, therefore, find no justification for the impugned order of the High Court ordering re-trial of the appellants.

The High Court has noticed the fact that the State had preferred an appeal against the acquittal of the appellants. That appeal was dismissed by the High Court on the ground of limitation. In principle that makes no difference, because the dismissal of the appeal even on the ground of limitation is a dismissal for all purposes. As observed earlier, the jurisdiction of the High Court in dealing with an appeal against acquittal preferred under Section 374 of the Code of Criminal Procedure is much wider than the jurisdiction of revisional court exercising jurisdiction under Section 401 of the Code of Criminal Procedure against an order of acquittal at the instance of a private party. All grounds that may be urged in support of the revision petition may be urged in the appeal, but not vice versa. The dismissal of an appeal preferred by the State against the order of acquittal puts a seal of finality on the judgment of the trial court. In such a case it may not be proper exercise of discretion to exercise revisional jurisdiction under Section 401 of the Code of Criminal Procedure against the order of acquittal at the instance of a private party. Exercise of revisional jurisdiction in such a case may give rise to an incongruous situation where an accused tried and acquitted of an offence, and the order of acquittal upheld in appeal by its dismissal, may have to face a second trial for the same offence of which he was acquitted.

For these reasons we allow this appeal and set aside the impugned judgment and order of the High Court.

S.K.S.

Appeal allowed.