
(1973) 11 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Rev. No. 390 of 1971

Mohar Ali and others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-11-1973

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435, 439

Citation : (1973) 11 AHC CK 0001

Hon'ble Judges : H.N. Kapoor, J

Bench : Single Bench

Judgement

H.N. Kapoor, J.—Applicants Mohar Ali, Juddi, Farid and Wahid have been convicted u/s 324/34 IPC and sentenced to undergo six months" R.I. and to pay a fine of Rs. 25/- each. The order of conviction has been confirmed by the II Temp. Sessions Judge of Pratapgarh by his judgment dt. 5-2-1971.

2. The prosecution case is that the fields of Smt. Zamirul (PW 1) and Mohar Ali Applicant situate in village Ramnagar, P.S. Patti in the distt. of Pratapgarh were adjacent to each other. Mohar Ali Applicant directed flow of water to his field through the field of Smt. Zamirul. Abid Ali (PW 2) son of Smt. Zamirul blocked the flow of water. This enraged Mohar Ali who went to the house of Smt. Zamirul on 7-8-1969 at about 7 a.m. and asked Abid Ali to go with him to his field for settling the matter through panchayat. Abid Ali accompanied him. Smt. Zamirul also followed then when they reached the field, it was found that the other Applicants were already present there. Juddi was armed with a kanta while the others had lathis with them. All the four Applicants started beating Abid Ali with lathis and Kanta. Both Smt. Zamirul and Abid Ali raised alarm which attracted Abdul Wahid (PW 3), Lalta Singh, Pudah Pandey and Khalil. They reached there and intervened. The Applicants then left the place. Abid Ali had fallen on the ground having" sustained kanta and lathi injuries. He was then taken to Katra Gulab Singh hospital where he was examined by Dr. J.N. Saxena at 9-30 a.m. He found 18 injuries on his person out of which injury No. 1 was an incised wound

3" X 4/10" X scalp deep over head and injury No. 10 was a lacerated wound 4/10" X 1/10" X 2/10" on left leg. The rest of the injuries were abrasions and contusions. Smt. Zamirul lodged the FIR (Ex. Ka-1) the next day i.e. on 8-8-1969 at 4.40 p.m. after about thirty-four hours. The report was taken down Under Sections 323 and 324/149 IPC. Some other persons were also named as accused. S.I. Mahendra Bahadur Singh (PW 4) made investigation of the case. After making the investigation, he submitted the charge sheet u/s 324/34 IPC against the four Applicants only, while final report was submitted against the remaining persons.

3. The Applicants pleaded not guilty and stated that they were falsely implicated in the case on account of enmity. No witness was examined in defence. Both the courts below after making appraisal of evidence arrived at the conclusion that the prosecution case was proved against all the four Applicants.

4. Learned Counsel for the Applicants has argued that due weight has not been attached by the lower courts to the circumstance that the FIR was lodged after much delay. The delay has been explained away by saying that there was no male member and Smt. Zamirul was busy in looking after her only son Abid Ali who had received serious injuries and as such the FIR could not be lodged promptly. It was, however, argued that this circumstance could have explained delay for a few hours but not delay of thirty-four hours specially when the police station was very close to the hospital.

5. It was further argued that an important circumstance has been overlooked that there was no witness of the locality and Abdul Wahid, was only a chance witness of a distant place and not an independent witness. There were only three eye-witnesses of the occurrence, namely, Smt. Zamirul (PW 1), Abid Ali (PW 2) and Adul Wahid (PW 3). Both the, Courts below have considered Abdul Wahid as an., independent witness. It was argued that the courts below have omitted to take into consideration the statement of Abdul Wahid (PW 3) to the effect that the accused persons were with the children of his uncle. Who had litigation with him. He stated: "mukadma chala tha aur ismen mulzim madad kar rahe the." It was emphatically argued that the lower appellate court has obviously misread the evidence of Abdul Wahid when it observed that no enmity was alleged or shown by the accused persons against that person, beyond the suggestion by the defence counsel to him that the accused persons were insisting that he should give share to his other cousins in his property. It does appear that the lower appellate court has failed to take into consideration the admission made by this witness on the point that the accused persons were with the children of his uncle in the litigation. If the lower appellate court had taken into consideration this important admission, it, would have scrutinised the evidence of this witness more carefully specially when he was a chance witness and specially when there was a delay, of thirty four hours in lodging the FIR. In that case it is possible that the lower appellate, court might have tried to seek corroboration against each accused by various circumstances such as incised wound or motive etc. In such a

case when the occurrence took place in broad-day light, there could be no doubt about the injured person and the other interested witnesses naming the actual assailants, but at the same time it is also probable that the might have tried to rope in some innocent persons also wrongly due to enmity. In such a case the circumstance that the FIR was lodged after a considerable delay also assumes importance.

6. Shri Abdi, learned Asstt. Govt. Advocate has argued that this Court should not interfere in revision unless there is a glaring defect in procedure or there, is a manifest error on point of law and consequently there has been a flagrant miscarriage of justice, as was held in a recent decision by the Supreme Court in the case of Amar Chand Agarwalla Vs. Shanti Bose and Another, etc., . Shri A.D. Giri, learned Counsel for the Applicants has, argued that these observations of the Supreme Court should be deemed to be limited to the facts of that case only. In that case charges had been framed by the Chief Presidency Magistrate Under Sections 120-B and 409 IPC and sufficient evidence had been led even after the charges, the High Court on a revision by a private party interfered and quashed the proceedings at that late stage. Learned Counsel for the Applicants has argued that Section 215 Code of Criminal Procedure provided that commitment u/s 213 Code of Criminal Procedure could be quashed by the High Court on the point of law only. According to him, the Supreme Court applied the same analogy to, commitment u/s 207 Code of criminal Procedure. The Supreme Court has not referred to Section 215 Code of criminal Procedure. Moreover, it appears that the case was not being tried as an enquiry base u/s 207-A, Code of Criminal Procedure but was being tried as a regular warrant trial before the Presidency Magistrate. The Supreme Court made the following general observation:

The jurisdiction of the High Court is to be exercised normally u/s 439 Code of criminal Procedure, only in exceptional cases, when there is a glaring defect in the procedure or there is a manifest error of point of law and consequently there has been a flagrant miscarriage of justice.

It cannot be said that these observations are limited to the facts of that case only.

7. The next question that arises for determination is as to how far the jurisdiction of the High Court has been limited by these observations. Similar words, had been used by the Supreme Court with regard to the powers of the High Court in a revision against acquittal in the case of K. Chinnaswamy Reddy v. State 1963 AWR 56. While explaining as to what was actually meant by these words, the Supreme Court observed as follows:

It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however, indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be where, the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or

where the approval court has wrongly, held evidence which was admitted by the trial court to be inadmissible, or where, material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal, is based on a compounding of the offence which is invalid under the law. These and other cases of Similar nature can properly be, held to be cases of exception nature where the High Court can justifiably interfere with an order of acquittal.

It may be observed that the instances given cannot be considered to be exhaustive as there could still be cases of similar nature. A point for consideration naturally arises whether the Supreme Court has made No. distinction in a revision against acquittal and in a revision against conviction. In my opinion the Approach, will be different for the simple reason that it is not possible for the High Court to pass a final order in a revision against acquittal It can only remand the case to a trial court for a fresh trial or to the appellate court for hearing of the appeal. A retrial naturally can be ordered only when a glaring effect in procedure has been noticed. The case can be remanded to the appellate court when any of the defects enumerated above is present. In a revision against-conviction the High Court can itself pass a final order after considering the various defects enumerated above and defects of similar nature.

8. In a recent decision of the Supreme Court in the case of Pratap Vs. State of U.P. and Others, the scope of interference in a revision has been given by his Lordship Mr. Justice Dua in his judgment His is the minority, judgment but it cannot be said that there was any difference of opinion with regard to those observations of the Hon'ble Judge. He observed as follows:

The power of revision, in criminal cases vesting in the High Court, though wide and also exercisable suo motu is a power which generally speaking, is narrower and more limited than its appellate power, though in certain respects it has a somewhat wider scope. It is discretionary and cannot be invoked as of right such as is the case of Appellants power. Broadly stated, the object of conferring revisional power on the High Court u/s 435 and Section 439, Code of Criminal Procedure is to clothe the highest court in a State with a jurisdiction of general supervision and superintendence in order to correct, grave failure or miscarriage of justice arising from, erroneous or defective order. The, error or defect may arise from misconception of law irregularity of procedure, misreading of evidence misapprehension or misconception about law or facts, mere perversity or even undue hardship or leniency. The real core of this power is that its exercise is Justified only to set right grave failure, of justice and not merely to rectify, every error however inconsequential. Merely because the lower court has taken a wrong view of law or misapprehended the evidence on the record cannot by itself justify interference on revision unless it has also resulted in grave injustice. It is no doubt not possible and is also not practicable, to lay down any right test of uniform application and the matter has to be left to the sound, judicial discretion of the High Court in each case to determine if it should, exercise, its extraordinary power of revision to set right injustice.

It would thus, appear that the, words, "a glaring defect in the procedure on manifest error on the point of law" have been further explained. These defects included even "misreading of evidence and misapprehension or mis-conception, about law or facts and mere perversity.

9. Sometimes it becomes necessary for the High Court to examine evidence in order to find out if it is self (sic) or intrinsically (sic). In the case of Nirmaljit Singh Hoon Vs. The State of West Bengal and Another, Magistrate had dismissed a complaint, u/s 203 Code of criminal Procedure. The High Court too had dismissed the revision against that order of dismissed the Supreme Court allowed the appeal and set, aside the order of to High Court after holding, that, a prima facie case had been made out against the accused by the evidence led before the Magistrate which was not "self contradictory or intrinsically untrustworthy and as such process could not have been, refused. It is true that in that case the evidence was examined at the earlier stage that is at the stage of Section 203 Code of criminal Procedure. But it cannot be said that the evidence cannot be examined with this view after the final order of conviction has been passed. In case even process cannot be issued when the evidence is "self contradictory or intrinsically untrustworthy", certainly no conviction could be sustained on the basis of such evidence. No doubt, when a pure finding of fact has been recorded on the appraisal of evidence, it is not possible to interfere in revision as was held in the case of Narayan Tewary Vs. State of West Bengal, . But it does not mean that the High Court cannot look into the evidence even if it is found to be "self contradictory or intrinsically untrustworthy.

10. In the case of Mohd. Ayub v. State of U.P. 1952 CriLJ 407 a Division Bench of this Court consisting of Waliullah and Wanohoo (as he then was) JJ. observed as follows:

It has been urged, however, that the question of the reliability of the evidence must be left entirely to the discretion of the Magistrate, unless there is some illegality or perversity in the Magistrate's order and that this Court should not interfere when the Magistrate has come to some conclusion on the evidence produced before him. I am, however, of the opinion that it is open to this Court to interfere also in cases where the order of the Magistrate is improper for Section 435 Code of Criminal Procedure itself provides that the High Court should satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. These words are very wide and give full power to this Court to interfere in any case where it thinks that interference is called for. In the present case, I am " of the opinion that the Magistrate has not correctly appreciated the evidence that was produced and his finding is consequently incorrect and calls for an interference by this Court.

11. Even if it is held that the scope of interference in a revision is not so wide as held in that, case, in view of the subsequent decisions of the Supreme Court, it is certainly possible to correct an error or defect which may arise from" "misconception of law, irregularity of procedure, misreading of evidence,

misapprehension or misconception about law or facts, mere perversity or even undue hardship or leniency as has been held by the Supreme Court in the case reported in Pratap Vs. State of U.P. and Others, .

12. After applying these principles to the facts of the present case, I am satisfied that grave miscarriage of justice has resulted by ignoring the aforesaid important admission by Abdul Wahid and thus misreading his evidence. I accordingly set aside the order of the appellate court and remand the case to the Sessions Judge, Pratapgarh for rehearing of the appeal and deciding it on the evidence and material already on record, according to law. The learned Sessions Judge may decide it himself or send it to some other Addl. Sessions Judge under him. The Applicants shall remain on bail as here in the High Court. Case remanded.