
(1921) 04 AHC CK 0041
In the Allahabad High Court

Nand Ram

APPELLANT

Vs

Khazan and Another

RESPONDENT

Date of Decision : 09-04-1921

Acts Referred:

Citation : AIR 1921 All 266 : 61 Ind. Cas. 161

Hon'ble Judges : Grimwood Mears, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Grimwood Mears, C.J.—This is an application in revision against an order of acquittal. Although there is no doubt that the High Court has the power to order a re-trial, it is a jurisdiction which should be exercised only in exceptional cases and with caution. It should only be done in cases where the alleged offence is of a serious character. If, however, a Judge comes to the opinion that there has been a miscarriage of justice, where, for instance, the lower Court has misquoted the evidence or where, having evidence before it which prima facie is reasonable and credible, the Judge of that Court gives no grounds whatever for rejecting it. In instances such as that there may well arise an inference either that the Judge has not acted with that propriety and care which is required in the decision of every case, be it civil or be it criminal. In such a case it would appear to be proper, after due examination of the facts, to make an order for re-trial.

2. On the evening of the 25th of September 1920, one Nand Ram, a zamindar, was riding home. On that evening he was grievously assaulted and as a result of that assault was feature in the case is that, whilst he was un-conscious one Abhey Ram was arrested because he (Abhey Ram), according to the statement of one Harnam, was seen by him to be just behind Nand Ram on the road within a few moments of the assault. Harnam heard the cries of Nand Ram almost immediately, after. The evidence of Nand Ram shows that Abhey Ram came up from behind. At the time when Harnam saw Nand Ram on the road and Abhey Ram behind him, he did not know the name of Abhey Ram but he knew him to

be a resident of an adjacent village. Harnam gave a statement to the Police and, as a consequence, Abhey Ram and his caste-fellows of that village paraded before Harnam who without hesitation picked out Abhey Ram as the man whom he had seen on the road. He did this on the 27th of September at a time when Nand Ram was still unconscious. As a consequence, Abhey Ram was arrested. Two days later, on the 29th, Nand Ram regained consciousness and mentioned his assailants at once as being Khazan and Abhey Ram. The learned Sessions Judge does not suggest any reason whatever for disbelieving Nand Ram or Abhey Ram. Two Chamars say that, immediately before the occurrence, they saw Khazan, one of the accused, standing quite close to what became afterwards the scene of the occurrence; and another witness, Dharma, said that he saw both Khazan and Abhey Ram returning together to the village at a time which would be after the occurrence. Throughout the whole of his judgment the learned Sessions Judge gives no reason whatever for discrediting these witnesses. Nothing was said in cross-examination to impugn their veracity; and on a question of alleged enmity between Abhey Ram and Nand Ram, though in fact the cause of enmity may have been very slight, nevertheless, the learned Judge put the reason for the enmity as something which had happened a " good many years ago." That was a manifest error, because if there was any enmity it had arisen only a short time before. In these circumstances, I am of opinion, that this is one of those rare and exceptional cases where a new trial should be ordered. The accused put up as a defence a denial of all knowledge of the crime.

3. Let the matter, therefore, be retried by the Additional Sessions Judge at Meerut. All case to set out the reasons which influenced me in thinking that there should be a re trial, the learned Additional Sessions Judge must, of course, exercise the most free and independent judgment in this matter, uncoloured by the fact that the men have once been so acquitted, and equally uncoloured by the fact that the High Court has ordered a re trial. It may be that the learned Sessions Judge wholly disbelieved every thing which was said on the part of the prosecution and considered none of the witnesses worthy of credit. If so, he should have given that as a ground. The reason for a re trial is this, that on an examination of the record, as it stands, the evidence of Nand Ram and his witnesses seem to point to the fact that there has been a miscarriage of Justice in a serious case, and the judgment of the Sessions Judge does not satisfactorily review the evidence.