
(2007) 02 AHC CK 0203
In the Allahabad High Court

Narendra alias Rinku and Gaurav

APPELLANT

Vs

State of U.P. and Kanchhid Singh

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 302

Citation : (2007) 02 AHC CK 0203

Hon'ble Judges : Barkat Ali Zaidi, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Barkat Ali Zaidi, J.—In a Sessions Trial before the Addl. Sessions Judge, Bulandshahar, two prosecution witnesses were examined and cross-examined by the counsel for the accused-applicants. Thereafter, on the next date, an application was moved from the side of the accused to the effect that the two prosecution witnesses P.W. 1 and P.W. 2 be recalled for further cross examination because they were cross-examined by a junior counsel and a Senior Counsel has now been engaged.

2. The Trial Court rejected the application and that is what brings the accused to this Court u/s 482 Cr.P.C.

3. I have heard Sri Sunil Kumar, learned Counsel for the applicants and Sri R.K. Muarya, Addl. Government Advocate for the State.

4. The Trial Judge has written a very good and comprehensive order. It has been mentioned in his order that the suggestion from the side of the complainant is that this is a subterfuge to make the witnesses reverse their statement because it is not unlikely that they may have been won over and there is likelihood that arrangements have been made for the witnesses to turn hostile in their subsequent cross-examination.

5. The Trial Court further noted in its order that 9 pages cross examination of

P.W.1 and 5 pages cross-examination of P.W.2 was conducted by the counsel on the date when P.W.1 and P.W.2 were examined. The Trial Court also referred to the Case of Zahira Shekh and Ors. v. State of Guirat IL 2004 ACC 239 where it was emphasized that the rights of the victim are also as important as those of the accused and also that the judge is not supposed to be an idle spectator but an active participant in the proceedings. That shows that the Trial Judge was conscious of his responsibility in a Sessions Trial and if there had been any manifest lacuna in cross-examination, he was likely to have intervened.

6. It is also to be noticed that it was not specified in the application given from the side of the accused, about which matter further cross-examination was necessary and which were left untouched by the pervious counsel. There is only a general and vague statement that the previous cross-examination was not conducted in a satisfactory manner. This was an out of the way special request and the counsel should have explained as to what was the point on which further cross-examination was required and should have satisfied the Court about the same.

7. The mere statement that the further cross-examination is necessary could not be considered sufficient.

8. The counsel for the applicant has referred to the case of Sompappa Hanamantappa v. State of Karnataka, decided on 12.3.1986 in Criminal Appeal No. 162 of 1914 by Karnataka High Court, where cross-examination had been conducted by a junior lawyer and subsequently, his senior moved an application for recalling of witnesses, which was allowed. This case was against an order of conviction of the accused u/s 302 I.P.C. and in the particular facts and circumstances of the case, the Court may have found that the cross-examination was inadequate but the case cannot be used or utilized as general proposition and as a guide-line in similar situation in other cases.

9. The counsel for the applicant has further referred to the case of Vijai Bahadur Singh v. State, decided on 5th April, 1996 by this Hon"ble Court in Jail appeal No. 3049 of 1983, where earlier cross -examination was conducted by an Amicus curie but the accused later on engaged a private counsel and he applied for recalling of the witnesses who were cross-examined earlier by the Amicus Curie. This judgment mentions that the lower court rejected the application without giving any reasons which is not the case here because very sound and cogent reasons have been given by the Trial Judge in rejecting the application of the applicant. The judgment does not contain any reason and there is very brief order for acceptance of the request for recalling of witnesses.

10. The issue involved here is a question of fact and not one strictly of law and the decision of courts in other cases for recalling of witnesses cannot furnish a general formula to be followed for recalling of witnesses for further cross-examination. Every case depends upon its own facts and circumstances and a decision in the case has to be taken on the facts of the particular case and earlier

decisions cannot be understood to lay down a legal proposition or guide-line. The Supreme Court has explained this in a number of cases itself and has provided guide-lines relating to interpretation of judgment of Superior courts.

11. In the case of Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, it was observed by the Supreme court, as follows:

These observations would undoubtedly be entitled to great weight, but as pointed out by this Court in his highness, H.H. Maharajadhiraja Madhav Rao Jivaji Rao Scindia Bahadur of Gwalior and Others Vs. Union of India and Another, "an obiter cannot take the place of ratio, Judges are not " Oracles". These observations do not, therefore, have any binding effect and they cannot be regarded as conclusive on the point. Moreover, it may be remembered, that when we are considering the observations of a High Judicial Authority, like this Court, the greatest care must be taken to relate the observations of a judge to the precise issues before him, and to confine such observations, even though, expressed in broad terms, in the general compass of the question before him, unless he makes it clear, that he intended his principles to have a wider ambit. It is not possible for judges, always, to express their judgments so as to exclude entirely, the risk that in subsequent cases, their language may be mis-applied, and any attempt at such perfection of expression, can only lead to the opposite result of uncertainty, and even of obscurity, as regards the case in hand.

12. In the case of State of Orissa v. Sudarshan Sheikhar Misra AIR 1968 SC 674 it was observed that a decision is only an authority for what it actually decides, and what is the essence of the decision is the Ratio, and not every stray observation found therein, nor what may logically follow from various observations mad therein.

13. In the case of Rajendra Prasad Vs. State of Uttar Pradesh, it was observed by the Supreme Court that:

Judgments are not Bible for every line to be venerated.

14. The findings given in the two cases, referred to above, by the counsel for the applicants must, therefore, be deemed confined to the particular facts of the case and it cannot be inferred therefrom that any general principle had been laid down about the matter involved.

15. Since no serious infirmity in the cross-examination conducted by the previous counsel has been pointed out and since the complainant harbours apprehension of a plan to destabilize the evidence hither to recorded, the Trial Court was justified in rejecting the application. The petition must, therefore, fail.

16. Petition fails and is dismissed.