

(2002) 09 SHI CK 0023

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No's. 103, 105, 110, 115, 120 and 122 etc. etc. of 2002

State of Himachal Pradesh

APPELLANT

Vs

Surat Singh and etc. etc.

RESPONDENT

Date of Decision : 09-09-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 353, 465

Citation : (2003) CriLJ 386 : (2003) 1 RCR(Criminal) 529

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : K.D. Batish, A.A.G and B.B. Sharma, Asstt. Advocate General, for the Appellant; R.K. Gautam, J.R. Poswal, Vinod Sharma, T.S. Chauhan, Ravinder Thakur and Prakash Thakur for Dinesh Bhanot, Bhupender Gupta Rakesh Thakur, Neeraj Gupta and Basudha Vaid, for the Respondent

Judgement

R.L. Khurana, J.—The above-noted 14 revision petitions have been taken up by this Court in exercise of suo motu revisional powers u/s 397 read with Section 401, Code of Criminal Procedure.

2. In all these cases a common question of law is involved as to what is the effect of a judgment recorded and pronounced by a Magistrate and such Magistrate failed to sign the same before his death? Therefore, all the above-noted cases are being disposed of by this single Judgment.

3. The respondent, Surat Singh in Cr. R. No. 105 of 2002, was tried for the offences under Sections 273, 337 and 201, Indian Penal Code and u/s 184, Motor Vehicles Act. He was acquitted of such offences on 17-10-2001.

4. In Cr. R. No 103 of 2002, the twelve respondents, Hari Dutt and others, were tried for the offences, under Sections 147, 148, 353 and 332 read with Section 149, Indian Penal Code. They were acquitted of such offences on 22-8-2001.

5. Respondent Smt. Nirmala Devi in Cr. R. No. 104 of 2002 was tried for the

offences under Sections 341, 323 and 506, Indian Penal Code, and she was acquitted of such offences on 11-9-2001.

6. Beli Ram and five others, the six respondents in Cr. R. No. 106 of 2002, on having been tried for the offences under Sections 147, 447, 504 and 506 read with Section 149, Indian Penal Code, stand acquitted of such offences on 5-9-2001.

7. Harbans Singh son of Babu Ram, respondent in Cr. R. No. 109 of 2002, upon having been tried for the offence u/s 325, Indian Penal Code, was acquitted on 24-8-2001.

8. In Cr. R. No. 110 of 2002, the respondent Mehar Singh was tried for the offences under Sections 447, 323 and 325, Indian Penal Code. He was acquitted of such offences on 5-9-2001.

9. Respondent Ajayab Singh in Cr. R. No. 112 of 2002 upon having been tried for the offences under Sections 279, 337, 304 and 201, Indian Penal Code, was acquitted of such offences on 6-9-2001.

10. Tulsi Ram and others, the four respondents, in Cr. R. No. 114 of 2002 were tried for the offences under Sections 323 and 325 read with Section 34, Indian Penal Code and acquitted of such offences on 12-9-2001.

11. The respondent in Cr. R. No. 115 of 2002, namely, Budhi Singh son of Nanku, was tried for the offence u/s 61(l)(a), Punjab Excise Act and acquitted on 18-10-2001.

12. The two respondents, Km. Anu Sharma and Nikka Ram alias Vikram Prakash, in Cr. R. No. 116 of 2002 upon having been tried for the offences under Sections 323, 324 and 326 read with 34, Indian Penal Code, stand acquitted of such offences on 6-10-2001.

13. In Cr. R. No. 117 of 2002, the respondent Jagdish Kumar was tried for the offences u/s 279, Indian Penal Code, and u/s 185, Motor Vehicles Act. He was acquitted on 5-10-2001.

14. S/shri Bhagat Ram and others, the seven respondents in Cr. R. No. 119 of 2002 were tried for the offences under Sections 147, 148, 452, 323 and 506 read with Section 149, Indian Penal Code. They were acquitted on 17-10-2001.

15. The three respondents, Shivanand, Sanjay Sharma and Mohan Lal in Cr. R. No. 120 of 2002 on having been tried for the offences under Sections 147, 148, 452, 323, 325 and 506 read with Section 34, Indian Penal Code, stand acquitted of such offences on 9-10-2001.

16. In Cr. R. No. 122 of 2002 the two respondents therein, Ramesh Chand and his wife Smt. Lila Devi, were tried for the offences under Sections 341, 323 and 506 read with Section 34, Indian Penal Code, and acquitted of such offences on 4-10-2001.

17. The learned Judicial Magistrate, namely, Shri Piar Chand Chauhan, who recorded the judgments of acquittal in all the above-noted cases died on 20-11-2001. The judgments in all the above-noted cases could not be signed by him either for the reason of late transcriptions of the judgments or for some other reason.

18. When the matter was brought to the notice of this Court on the administrative side by the successor-in-office of the deceased Magistrate, the records of all the cases were summoned and ordered to be taken up on the judicial side in exercise of the suo motu revisional jurisdiction for examination of the question as to the effect of a judgment recorded, pronounced/delivered by a Magistrate which have remained unsigned due to the death of such Magistrate.

19. Notices were issued to the parties. Counsel for the parties were heard.

20. Section 353, Code of Criminal Procedure, 1973 (for short, the Code), deals with judgment of a trial Court of original jurisdiction, insofar as it is relevant for the purpose of the present cases, provides :

"(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,--

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under Clause (a) of Sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in open Court.

(3) Where the judgment or the operative part thereof is read out under Clause (b) or Clause (c) of Sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in Clause (c) of Sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) to (7)

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of Section 465."

Section 362 of the Code, which prohibits the Court not to alter judgment, lays down:--

"Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

21. Section 465 of the Code, which deals with "Finding or sentence when reversible by reason of error, omission or irregularity," provides :--

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered; by a Court Of appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons,, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanction for the prosecution, unless in the opinion of that Court, a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

22. In "A Treatise on the Law of judgments" (second edition), Henry Campbell Black, the author of Black's Law Dictionary, said thus :

"The rendition of a judgment is the judicial act of the Court in pronouncing the sentence of law upon facts in controversy as ascertained by the pleadings and the verdict. The entry of a judgment is a ministerial act, which consists in spreading upon the record, a statement of the final conclusion reached by the Court in the matter, thus furnishing external and incontestable evidence of the sentence given, and designed to stand as a perpetual memorial of its action. It is the former, therefore, that is the" effective result of litigation. And not only entered at all, still it is none-the-less a judgment."

23. Referring to the requirement as to the signature of the Judge in the judgment, the learned author has said :--

"The impression not uncommonly prevails that at the common law a judgment required the signature of the Court in order to be valid. This notion -- arising probably from the ambiguous use of the phrase "signing judgment" -- is erroneous; and the ancient practice furnishes but slight aid in determining the same question in modern law."

24. In *Saru Smelting and Refining Corpn. Ltd. Vs. State*, a final order disposing of the criminal revision could not be signed by the Hon"ble Judge of the

Allahabad High Court before his death, which took place just four days after the order was dictated in Court. The order sheet also did not bear the signatures of the Hon"ble Judge. After the death of the Hon"ble Judge, the Registry put up the case again for orders under the impression that unsigned judgment was not a judgment in law. Notices were issued to the parties. A contention was raised on behalf of the revision petitioner that since the judgment was not signed, the same was not a judgment in law and the revision petition would be deemed to be pending.

25. Considering the provisions contained in Section 369, Code of Criminal Procedure, 1898 (for short, the old Code) corresponding to Section 362 of the Code, it was held that the deceased Hon"ble Judge could certainly have altered the judgment or review it at any time before his death, but this is something totally different from saying that the judgment, was not a valid judgment until signed. The unsigned judgment was, therefore, held to be a valid and binding judgment.

26. A similar question also arose before the Hon"ble Supreme Court in *Surendra Singh and Others Vs. The State of Uttar Pradesh*, The case arose out of a prosecution of three accused for the murder of one "B". One of the three accused was convicted for the offence of murder and sentenced to death, while the remaining two accused were convicted and sentenced for the offence u/s 225, Indian Penal Code. All the three appealed to the Allahabad High Court (Lucknow Bench). The appeal was heard by Kidwai and Bhargava, JJ. Before judgment could be delivered, Bhargava, J. was transferred to Allahabad and while there, he dictated a judgment, signed every page as well as at the end and without dating it sent it to Kidwai J. who pronounced it in open Court, signed and dated it. But before it was pronounced, Bhargava J. had died. The question before the Hon"ble Supreme Court was whether the judgment was valid.

27. Referring to the judgment of Privy Council in AIR 1938 292 (Privy Council) the Hon"ble Supreme Court allowed the appeal of the accused by holding that the judgment of the High Court was not valid. It was held :--

"In our opinion, a judgment within the meaning of these sections is the final decision of the Court intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there, that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest -- the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing, all the rules designed to secure certainty about its content and matter can be cured; but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed

after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

An important point, therefore, arises. It is evident that the decision which is so pronounced or intimated must be a declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But, however, it is done it must be an expression of the mind of the Court at the time of delivery. We say this because that is the first judicial act touching the judgment which the Court performs after the hearing. Everything else up till then is done out of Court and is not intended to be the operative act which sets all the consequences which follow on the judgment in motion. Judges may, and often do, discuss the matter among themselves and reach a tentative conclusion. That is not their judgment. They may write and exchange drafts. These are not the judgments either, however, heavily and often they may have been signed. The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment".

Now up to the moment the judgment is delivered Judges have the right to change their mind. There is a sort of "*locus poenitentiae*" and indeed last minute alterations often do occur. Therefore, however, much a draft judgment may have been signed before hand, it is nothing but a draft till formally delivered as the judgment of the Court. Only then does it crystallise into a full-fledged judgment and become operative. It follows that the Judge who "delivers" the judgment, or causes it to be delivered by a brother Judge, must be in existence as a member of the Court at the moment of delivery so that he can, if necessary, stop delivery and say that he has changed his mind. There is no need for him to be physically present in Court but he must be in existence as a member of the Court and be in a position to stop delivery and effect an alteration should there be any last minute change of mind on his part. If he hands in a draft and signs it and indicates that he intends that to be the final expository of his views it can be assumed that those are still his views at the moment of delivery if he is alive and in a position to change his mind but takes no steps to arrest delivery."

28. The Hon^{ble} Court further went on to hold that as soon as the judgment is delivered, that becomes operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain, the rules regarding which may differ but they do not form the essence of the matter and if there is irregularity in carrying them out, it is curable.

29. Pointing out the distinction between judgments which have not been delivered and so have not become operative and those which have been delivered and become operative, the Hon^{ble} Supreme Court observed as under :--

"After the judgment has been delivered provision is made for review. One

provision is that it can be freely altered or amended or even changed completely without further formality except notice to the parties and a rehearing on the point of change should that be necessary, provided it has not been signed. Another is that after signature a review properly so-called would lie in civil cases but none in criminal; but the review, when it lies, is only permitted on very narrow grounds. But in this case the mere fact that a Judge is dead and so cannot review his judgment does not affect the validity of the judgment which has already been delivered and has become effective. For this reason, there is a distinction between judgments which have not been delivered and so have not become operative and those which have. In the former case, the alteration is out of Court. It is not a judicial act. It is only part of a process of reaching a final conclusion; also there is no formal public declaration of the Judges mind in open Court and consequently there is no "judgment" which can be acted upon. But after delivery the alteration cannot be made without notice to the parties and the proceedings must take place in open Court, and if there is no alteration there is something which is final and conclusive and which can at once be acted upon. The difference is this. In the one case, one cannot know, and it would be against public policy to enquire, whether the draft of a judgment is the final conclusion of the Judge or is only a tentative opinion subject to alteration and change. In the second case, the Judge has publicly declared his mind and cannot, therefore, change it without notice to the parties and without hearing them afresh when that is necessary; and if there is no change the judgment continues in force. By change we mean an alteration of the decision and not merely the addition or subtraction of part of the reasoning."

30. The above said ratio was followed and reiterated by the Hon"ble Supreme Court in Vinod Kumar Singh Vs. Banaras Hindu University and Others, It was held that pronouncement of the judgment in Court whether immediately after the hearing or after reserving the same to be delivered later should ordinarily be considered as the final act of the Court with reference to the case, that is, as soon as the judgment is delivered that becomes the operative pronouncement of the Court and to be operative the judgment does not await the signing thereof by the Court. The Hon"ble Supreme Court further observed :--

"Ordinarily judgment is not delivered till the hearing is complete by listening to submissions of counsel and perusal of records and a definite view is reached by the Court in regard to the conclusion. Once that stage is reached and the Court pronounces the judgment, the same should not be reopened unless there be some exceptional circumstance or a review is asked for and is granted. When the judgment is pronounced, parties present in the Court know the conclusion in the matter and often on the basis of such pronouncement, they proceed to conduct their affairs. If what is pronounced in Court is not acted upon, certainly litigants would be prejudiced. Confidence of the litigants in the judicial process would be shaken. A judgment pronounced in open Court should, be acted upon unless there be some exceptional feature and if there be any such, the same should appear from the record of the case....."

31. In *Iqbal Ismail Sodawala Vs. The State of Maharashtra and Others*, the accused-appellant therein was convicted on 12-5-1972 by the Sessions Judge for the offences under Sections 392 and 397, Indian Penal Code, and sentenced to undergo rigorous imprisonment for seven years. Though the accused was committed to jail to undergo the sentence, no copy of the judgment dated 12-5-1972 was supplied to him. He was informed that the copy of judgment would be sent to him through jail authorities. The copy of the judgment, after repeated communications received from the jail authorities, was supplied to the accused only on 19-2-1973. In the meanwhile, the accused-petitioner had sent two petitions to the Hon"ble Supreme Court respectively on 12-1-1973 and 22-1-1973 in the form of writ of habeas corpus. It was pleaded that the judgment was not pronounced by the Sessions Judge and that only the Clerk of Court (Bench Reader) had apprised him of the decision in the case. No judgment could have been pronounced till it was complete. Further case put up by the accused-petitioner was that he could not be detained for a period of seven months without being supplied a copy of judgment.

32. One of the questions arising for consideration of the Hon"ble Supreme Court was -- whether the failure of a trial Judge to sign the judgment at the time of its pronouncement because of its having not been transcribed is a procedural irregularity curable u/s 537 of the old Code (corresponding to Section 465 of the Code). It was held that non-compliance with procedural requirement in the matter of signing of the judgment was only an irregularity which would not vitiate the conviction of the accused-appellant and that the procedural irregularity was curable u/s 465 of the Code.

33. In *Kuldip Singh Vs. Prabhjot alias Silky*, a petition for maintenance was filed by the wife against her husband u/s 125 of the Code. The learned Magistrate heard the parties on 6-11-1991 and fixed the date for pronouncement of the judgment as 11-11-1991. The learned Magistrate actually dictated the judgment, it was typed and then pronounced on the date fixed. The learned Magistrate, who unfortunately died on 15-11-1991, however, though made some corrections in the typed judgment, could not sign the same. The wife sought to execute the said judgment allowing maintenance in her favour by taking out execution proceedings. The husband approached the High Court of Punjab and Haryana by way of a petition u/s 482, of the Code. It was pleaded that the unsigned judgment was no judgment and the execution proceedings were ipso facto illegal. Following the ratio laid down by the Hon"ble Supreme Court in *Iqbal Ismail Sodawala Vs. The State of Maharashtra and Others*, it was held that the judgment pronounced though unsigned was valid and that non-appending of the signatures to the judgment by the learned Magistrate was only a procedural irregularity.

34. In all the cases before this Court, it is not denied that the judgments were pronounced by the learned Magistrate on the relevant dates recording the acquittal of the accused-respondents of the offences charged against them.

Unfortunately such judgments could not be signed by the learned Magistrate before his death which took place on 20-11-2001. The non-signing of the judgment, in view of the above-stated settled law, is only a procedural irregularity curable u/s 465 of the Code and would not vitiate the acquittal of the accused-respondents.

35. A contention was raised by the learned counsel for the parties that in case the unsigned judgments, as recorded and pronounced by the learned Magistrate (since dead) are held to be valid and binding, a direction may be issued to ensure the authenticity of such judgments so that there is no possibility of tampering therewith. The contention so raised has merit and it is desirable that some directions need be issued in this behalf.

36. It is, therefore, directed that the successor Magistrate shall get the Court seal affixed on each page of such unsigned judgment. He shall also put his initials on each of the pages of the judgment and shall record a certificate on the last page of the judgment under his signatures and date-line of the date recording the certificate, in the following terms :--

"Certified that the above judgment was dictated and pronounced in open Court by Shri Piar Chand Dhauhan, Judicial Magistrate 1st Class, (since dead) on....."

37. The other zimini orders, documents and other proceedings may be signed by the successor Magistrate for the purpose of procedural compliance to enable the completion of records for the purpose of consignment in the record room.

38. The recording of the certificate above will apart from ensuring authenticity to the unsigned judgment, would also facilitate the grant of certified copies to the parties either for the purpose of appeal/revision and/or record.

39. All the above revision petitions stand disposed of in the above said terms.