

A.F.R.

Neutral Citation No. - 2023:AHC:198223

Court No. - 75

Case :- CRIMINAL REVISION No. - 2431 of 1999

Revisionist :- Yaspal Singh

Opposite Party :- State of U.P. and Others

Counsel for Revisionist :- Shamsher Singh

Counsel for Opposite Party :- Govt.Advocate,Jagdev Singh

Hon'ble Umesh Chandra Sharma,J.

1. None responded for the revisionist even on the revised call and also none appeared on behalf of opposite party nos. 2 to 5. Since a criminal revision has to be decided on merit, therefore, heard Sri Mithilesh Kumar learned A.G.A. for the State, perused the record and thereafter revision is decided on merit.

2. This revision has been preferred against the judgment and order of acquittal dated 7.10.1999 passed by learned Additional Sessions Judge, IIIrd, Bijnor, in S.T. No. 122 of 1999 arising out of Case Crime No. 94 -A of 1996, under Section 307, 504 & 506 I.P.C., Police Station Noorpur, District- Bijnor.

3. In brief, facts of the case are that informant, Yashpal Singh, moved a complaint to P.S. Noorpur to lodge an F.I.R. on 19.4.1996 that due to enmity when the informant with his son Narendra Singh and nephews Jaipal and Gopal was on his field, the accused Hukum Singh, Chandrapal Singh, Tikam Singh and Digvijay Singh armed with illegal gun and country made pistol reached there. Hukum Singh exhorted other accused persons to kill them on which all the accused persons fired towards them. They laid down on the ground and saved themselves. Pratap Singh and

Sukhpal Singh and others witnessed the incident. On being challenged by them, accused persons left the place with a threat to kill them.

4. The complaint, Ex. Ka-1, was entertained and an F.I.R. bearing Case Crime No. 94-A of 1996 under Section 307, 504 and 506 was lodged and chik, Ex. Ka-2, was prepared. The I.O. was deputed who recorded the statements of the victim and other witnesses, prepared site plan, Ex Ka-3 and submitted charge-sheet Ex.Ka-4 against the accused persons and charge-sheet, Ex.Ka-5, against Digvijay Singh. After preparation of chik F.I.R., carbon copy G.D., Ex. Ka-6, was prepared.

5. The accused persons appeared in the Court and were enlarged on bail. The learned trial Court framed the charge on 18.5.1999 under the aforesaid sections.

6. The prosecution examined following **witnesses** to prove its case:

1	Yashpal Singh, informant	PW1
2	Veeerbhan Singh	PW2

7. The prosecution closed the evidence as from the side of defence, execution of documentary evidences were accepted and they were exhibited. The statements of the accused persons under Section 313 Cr.P.C. were recorded wherein they denied the prosecution version, evidence and stated that they were falsely implicated on account of political rivalry.

8. In defence, accused persons submitted a carbon copy of the chik F.I.R. of Case Crime No. 94 of 1996 under Section 307 & 506 I.P. C. and certified copy of its charge-sheet, site plan, injury reports of Tikam Singh, Yashpal Singh, Chandrapal Singh and concerned G.D. were produced.

9. After hearing the arguments of the parties, the impugned judgment of acquittal was passed.

10. Being aggrieved, the present revision has been preferred by the informant-revisionist on the **following grounds:**

- (a) that the trial court has acquitted the accused persons without considering the evidence on record which is bad in the eye of law;
- (b) the trial court has erred in discarding the evidence of eye witnesses without any reasonable explanation, the findings are perverse and illegal.
- (c) the trial court has not given any finding as to which party was aggressor;
- (d) the incident occurred near the field of the revisionist which shows that the accused persons were aggressor and this fact is also established from the site plan;
- (e) the opposite party nos. 2 to 5/accused persons are inimical with the revisionist due to village politics that is why they have reached on the field of the revisionist with their weapons and opened fire on him and his relatives while they were working on their field;
- (f) there is no explanation of the presence of the accused persons on the spot at the time of the incident;
- (g) the trial court has wrongly acquitted the accused persons without giving any specific finding;
- (h) the opposite party nos. 2 to 5 were aggressor so this court may graciously be pleased to set aside the acquittal order passed in favour of the opposite party nos. 2 to 5.

Findings:

About the place of occurrence.

11. According to the revisionist when he and his family members were working on their field, the opposite party no. 2 to 5 reached there and committed the alleged crime in which no injury has been caused to any of the members of the revisionist's side. Contrary to that according to the opposite party no 3, the informant along with Veerpal Singh came and opened fire with the intention to kill them. The place of occurrence alleged by the defence is accurately proved rather the place of occurrence proposed by the prosecution. Even though the formal proof of the prosecution documents have been dispensed with and exhibited the same is not sufficient to prove the veracity of the prosecution case. When the opposite parties/accused persons were present at the government tubewell, no injury has been received by the revisionist or his family members but two persons of the opposite party namely Tikam Singh and Chandrapal Singh received fire arm injury.

The description of the injuries read as such:

(a) **Tikam Singh** was examined at emergency ward in Pd. Deen Dayal Hospital just after the incident and the doctor found **following injury**;

Fire arm wound of entry 0.4 cm. X 0.4 cm rounded over the (L) side forehead 3.5 cm above the vertical end of (L) eyebrow surrounded by swelling in area of 2 cm X 1.5 cm, clotted blood present.

X-ray of forehead was advised.

(b) A **supplementary report** of the injury of Tikam Singh was prepared and in the X-ray following injury was noted:

“Single radioopic metallic density shadow seen”

(c) At the same time accused **Chandra Pal Singh** was also examined by the concerned doctor and **following injury** was noted;

Firearm wound of entry 0.3 cm X 0.3 cm. On the (L) lateral aspect of chest 15 cm below (L) Nipple at 5 (0) clock rotation

clotted blood present. No tatooing, no blackening & no scorching visible. Wound is surrounded by traumatic swelling 1.5 cm X 1 cm.

X ray was advised.

(d) In the **supplementary report**/ X-ray following injury was noted:

“ Single radioopic metallic density shadow seen”

12. The learned trial Court has recorded the finding that the revisionist side had no injury and no independent witness has been examined in this regard by the prosecution. In absence of any injury and also that no independent witness had deposed in favour of the prosecution, the learned trial Court did not believe the testimonies of the P.W.1 and P.W.2.

13. It has also been recorded by the learned trial Court that the prosecution could not give any explanation of the injuries caused to the accused persons which makes the prosecution story suspicious. The learned trial Court also noted that if no visible injury was caused to the accused persons, the prosecution would not be under the obligation to explain the same but since the visible fire-arm injury were caused to two of the accused persons, in that case it was mandatory for the prosecution to explain such injuries as to how it had occurred, if no attack was made by the revisionist's side.

14. The learned trial Court has also recorded certain variations in the statements of the witnesses and the contents of the F.I.R. According to the F.I.R., accused Hukum Singh and Digvijay Singh were armed with countrymade pistol but the informant P.W.1 has deposed that two persons had countrymade pistol and two were armed with lathis. According to Yashpal Singh, informant, P.W.1, accused Digvijay Singh and Tikam Singh were armed with countrymade pistol whereas Hukum Singh and Chandrapal Singh were armed with lathi. Contrary to that

P.W.2, Veerbhan Singh has deposed that all the persons were armed with countrymade pistol and none of them were having lathi. The learned trial Court has rightly considered the above contradictions and has rightly concluded that the story has falsely been concocted as a counter blast to the case already lodged from the side of defence.

15. The learned trial Court has also concluded that if four accused persons had fired on the revisionist and his family members why none of the person has not sustained any gun shot injury which falsifies the prosecution story.

16. The learned trial court has not tried the cross-case Crime No. 94 of 1996 under Section 307, 506 I.P.C. P.S. Noorpur Bijnor together in which the revisionist's side has been accused and of which F.I.R. was lodged prior to the F.I.R. of the revisionist.

17. The learned trial Court reiterated the principle that enmity is a double edged weapon due to which an offence may be caused and a person can also be falsely implicated in a false case.

18. Certainly at the time of the incident, enmity was existing between both the parties in connection of political rivalry. According to this Court in comparison to the case of the revisionist, the case of opposite party nos. 2 to 5/accused persons is stronger in which two members of opposite parties have received two fire-arm injuries and after investigation a charge-sheet under Section 307, 504 & 506 I.P.C. had been submitted against the revisionist and other persons of his side.

19. It is matter of concern that if two cases are the cross-cases of each other, both the cases should be decided together to avoid difference of opinion and also to conclude as to which party was the aggressor and which party acted in exercise of private defence.

20. It appears that in this matter when the judgment and order of acquittal was passed on 7.10.1999, the trial of cross-case was pending otherwise the opposite party nos. 2 to 5 would have produced the judgment of the same in this revision to get the benefit of the same.

21. According to this Court it is a wrong practice not to decide two cross cases together by the same Court.

(a) Though, there is no provision in Cr.P.C. or in the Indian Evidence Act regarding the trial of cross-cases, however, in some judicial precedents the trial Courts have been guided by the Apex Court and High Court as well to decide the cross-cases together to avoid any inconvenience and difference of opinion.

(b) In **Nathilal and Others Vs. State of U.P., 1990 Supp SCC 145**, the Apex Court has issued guidelines that the same judge should try both the cases and the learned judge should hear one case after the other. Para 2 of the judgment is as under:

"We think that the fair procedure to adopt in a matter like the present where there are cross cases, is to direct that the same learned Judge must try both cross cases one after the other. After the recording of evidence in one case is completed, he must hear the arguments but he must reserve the judgment. Thereafter he must proceed to hear the cross case and after recording all the evidence he must hear the arguments but reserve the judgment in that case. The same learned Judge must thereafter dispose of the matters by two separate judgments. In deciding each of the cases, he can rely only on the evidence recorded in that particular case. The evidence recorded in the cross case cannot be looked into. Nor can the judge be influenced by whatever is argued in the cross case. Each case must be decided on the basis of the evidence which has been placed on record in that particular case without being influenced in any manner by the evidence or arguments urged in the cross case. But both the judgments must be pronounced by the same learned Judge one after the other

(c) Similarly in **State of M.P. Vs. Mishri Lal, (2003) 9 SCC 426**, where both the parties had lodged F.I.R. against each other in respect of the same incident, the Apex Court has made following observations which are as under:

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“It would have been just fair and proper to decide both the cases together by the same court in view of the guidelines devised by this Court in Nathilal's case (supra). The cross- cases should be tried together by the same court irrespective of the nature of the offence involved. The rational behind this is to avoid the conflicting judgments over the same incident because if cross cases are allowed to be tried by two courts separately there is likelihood of conflicting judgments.”

In this case it has also been emphasized by the Apex Court that the investigating officer in cross-cases should be the same.

(d) Further this Court has observed in the matter of **Pradeep Kumar Dubey Vs. State of U.P. And Another, Application U/S 482 Cr.P.C. No. 20241 of 2021** that in an event of cross-cases both the cases should be tried by the same Court to avoid technical and other difficulties arising out of the order of one and another.

22. Therefore, it is imperative to issue a direction to all the criminal courts of the State of U.P. to decide the cross-cases together after recording the evidence.

23. On the basis of above, this Court is of the view that the prosecution has miserably failed in proving the charge against the opposite party nos.2 to 5 beyond reasonable doubt. Therefore, the order of acquittal passed in favour of the opposite party nos. 2 to 5 is just and proper and needs no interference by this Court in exercise of its revisional jurisdiction.

24. Accordingly, this revision being devoid of merit is dismissed. The impugned order of acquittal is affirmed.

25. The Registrar General of this Court is directed to circulate the directions contained in **paragraphs 19, 21 & 22** of the judgment to all the criminal courts of the State of U.P. for compliance.

Order Date :- 13.10.2023

S.Verma

{Umesh Chandra Sharma, J.}