

Court No. - 81

Case :- CRIMINAL REVISION No. - 1579 of 1985

Revisionist :- Budhraj Singh

Opposite Party :- Prem Kumar @ Balli And Toehrs

Counsel for Opposite Party :- I.M. Khan

Hon'ble Mrs. Jyotsna Sharma,J.

1. None responds for the revisionist. Learned A.G.A. for the State is present.
2. The revisionist died about three years ago as mentioned in the previous order sheet dated 05.02.2023.
3. This revision has been filed challenging the acquittal of the accused person in Sessions Trial No. 5 of 1984 under sections 148, 302, 301 read with section 149 and 307 read with section 149.
4. Learned A.G.A. has today filed a copy of the order passed in Government Appeal No. 2390 of 1985 (State of U.P. vs. Prem Kumar) which is taken on record.
5. From the papers on record, it is revealed that challenging the aforesaid order acquitting the accused persons, the State filed a Government Appeal in the year 1985 itself. The Bench of the High Court, seized of the matter took up the Government Appeal No. 2390 of 1985 for hearing on 12.04.2018 and passed an order dismissing the appeal in peculiar facts and circumstances of the case as the record could not be made available. The Court took shelter of the judgment given by the Supreme Court in **State of U.P. Versus Abhay Raj Singh & Another reported in 2004 Supreme Court Cases (Cri) 901**, wherein certain guidelines were framed for disposal of cases where it was impossible to have the most important papers/record.

The Supreme Court had observed as below:

".....If only reconstruction is not possible to facilitate the High Court to hear and dispose of the appeals and the further course of retrial and fresh adjudication by the Sessions Court is also rendered impossible due to loss of vitally important basic records - in that case and situation only, the direction given in the impugned judgment shall operate and the matter shall stand closed. The appeals are accordingly disposed of." "

6. This Court in the connected Government Appeal No. 2390 of 1985, further referred to certain other judgments. Relevant part of the judgment is as below:

"In a similar case where lower court record was not available and reconstruction of record was not possible, a division Bench of this Court (Sita Ram and others Vs. State; 1981 Crl.L.J 65), acquitted the accused in view of the fact that the lower court record could not be reconstructed. This aspect of Sita Ram case (supra) was again considered by another division Bench of this Court in the case of Ram Nath Vs. State 1982 (19) ACC 128 (decided on 3.11.1981) wherein also following observations were made :-

After making the aforementioned observations and in view of the fact that the court was not in a position to have the record of the case re-constructed, the Bench directed acquittal of the accused in that case. The principle laid down in Sita Ram's case fully applies to the facts of the present

case. As all attempts to have the record re-constructed have failed, this Court is not in a position to affirm the conviction recorded by the trial court. So far as the question of ordering a re-trial is concerned, we find that in the instant case the incident in connection with which the accused were prosecuted, took place as far back as 13th of September, 1970, that is, more than eleven years earlier. In such circumstances it will not be desirable to direct a re-trial. In this view of the matter we have no option but to allow Criminal Appeal No.857 of 1976 and to set aside the conviction and sentence of Ram Nath and to acquit him of the offence with which he has been charged."

In similar circumstances another division Bench of this Court in the case of **Brahmanand Shukla Vs. State of U.P. 2010 (69) ACC 749** made following observation in Para 10:-

"In the present case, as we have mentioned in the earlier part of the judgment only a copy of the Trial Court's judgment is available and no other documents like FIR, post-mortem report, copies of the documents which had been filed by the prosecution and were exhibited during trial, the statement of the witnesses recorded under section 161, Cr.P.C. are available despite various attempts to reconstruct the record. The incident is of the year 1979 i.e., the incident took place about 30 years back. In these circumstances, no fruitful purpose would be served by ordering retrial as the same cannot be conducted at all in absence of these documents." "

7. This is quite clear that the record of this case is not available and could not be constructed. The Government Appeal failed for lack of record.

8. This revision has been filed with the contentions that the F.I.R. was lodged promptly; the witnesses who were produced and examined, had supported the prosecution case. They gave reliable evidence; the Sessions Judge went against the evidence on record and acquitted the accused persons in an arbitrary manner. It is further contended in the revision memo that the infirmities of the investigation cannot be categorized as fatal to the prosecution case.

9. With dismay, I notice that the revisional court is certainly handicapped in appreciating the contentions of the revisionist for lack of record. The Government Appeal failed precisely for the same reason. The delays in court proceeding has taken its toll and loser is 'justice' and 'justice' alone, an abstract meaning word- 'Which the courts are supposed to uphold'.

10. With this admission and expression of regret, the matter is closed. Let the file be consigned.

Order Date :- 12.10.2023

Sumit Kumar