

Court No. - 11

Case :- CRIMINAL REVISION No. - 523 of 2016

Revisionist :- Rajesh Singh And 2 Others

Opposite Party :- State Of U.P. And Anr.

Counsel for Revisionist :- Ravindra Kumar Yadav, Dharm Trivedi, Lakshmi Kant Tripathi, Pragya, Rajesh Chandra Mishra, Surendra Kumar Mishra

Counsel for Opposite Party :- Govt. Advocate

Hon'ble Abdul Moin, J.

1. Heard learned counsel for the revisionists as well as Shri Abhay Singh, learned Additional Government Advocate and perused the record.

2. The instant criminal revision under Section 401 of Criminal Procedure Code (Cr.P.C.) has been filed against the judgment and order dated 09.05.2016 passed by learned Additional Sessions Judge, court No.3, Sitapur by which the learned appellate court has allowed the Criminal Appeal No.27 of 2014 in Re: State Vs. Naseer & Others arising out of Criminal Case No.91 of 2014 in Crime No.242 of 2002, under Sections 379, 411 of I.P.C. and Section 04/10 of the U.P. Protection of Trees Act, 1976, Police Station Kotwali, District Sitapur, filed by the State and quashed the acquittal order dated 31.03.2014 passed by the learned trial court and remanded back the matter to the learned trial court for deciding the matter on merits after considering entire prosecution evidence.

3. Briefly, the facts as set forth by learned counsel for the revisionists are that an incident took place in the intervening night of 17/18.02.2002 which pertained to the cutting of a Chandan tree and thieves having carried away the trunk of the tree. The F.I.R. has been lodged on 18.02.2002 at 01:30 A.M.

The recovery of the Chandan wood is said to have taken place on 19.02.2002 at 02:45 A.M. and the accused including the revisionists herein are said to have been caught with the said wood. There were 10 witnesses to the Chandan wood being recovered from the possession of the revisionists herein and three other persons. The revisionist along with three other persons have been charged for the offences under Sections 379 & 411 of the I.P.C. r/w Sections 4/10 of The U.P. Protection of Trees Act, 1976.

4. Trial commenced against the revisionists vide Criminal Case No.91 of 2014 in Re: State of U.P. Vs. Naseer and 5 Others.

5. During the course of trial, despite there being 10 prosecution witnesses, only one prosecution witness namely Constable Virendra Kumar Mishra was produced by the prosecution. However, the said witness was neither produced for cross-examination by the defence nor did he identify the recovered wood in court. None of the other 9 prosecution witnesses were produced by the prosecution witnesses. The same thus resulted in the learned trial court passing the judgment and order dated 31.03.2014, a copy of which is part of the revision, whereby the revisionists were acquitted.

6. Being aggrieved, the State had filed a Criminal Appeal No.99 of 2014 in re: State of U.P. Vs. Naseer and five Others. The learned appellate court, vide judgment and order dated 09.05.2016, which is part of the revision, has allowed the appeal and has remitted back the matter to the learned trial court to decide the matter afresh after considering entire prosecution evidence.

7. Being aggrieved, the instant revision has been filed.

8. This Court, vide order dated 27.05.2016, had admitted the appeal and had summoned the lower court record. The lower court record has been received as per the office note dated 14.07.2021.

9. Learned counsel for the revisionists states that as the records are before this Court, consequently, the learned trial court has not proceeded further with the matter and despite the incident being of year of 2002 and one of the accused person having died leaving behind five others accused persons and more than 22 years having been lapsed since the said incident took place, the matter is still pending.

10. Accordingly, the Court proceeds to hear and decide the matter finally.

11. The contention of learned counsel for the revisionists is that the incident is said to be of the intervening night of 17/18.02.2002 of which the F.I.R. has been lodged on 18.02.2002 at 01:30 A.M. The alleged recovery of the Chandan wood has been made from the accused / revisionists. The argument is that a perusal of the judgment passed by the learned trial court dated 31.03.2014 would indicate that there were 10 prosecution witnesses of which only one witness has been produced and he was not permitted to be cross-examined by the defence despite ample opportunities having been accorded to the State for the said purpose and neither the said witness verified the recovered wood. No reasons emerge as to why all the said prosecution witnesses were never produced by the prosecution and considering this aspect of the matter and a period of almost 12 years having lapsed since the incident, the learned trial court has acquitted the revisionists vide judgment and order dated 31.03.2014 which aspect of the matter has not been considered by the learned appellate court while remanding

back the matter inasmuch, the learned appellate court has only opined that nothing prevented the learned trial court from having directed for appearance of Shri Virendra Kumar Mishra, the sole prosecution witness, for his cross-examination and to have compelled the State to produce other prosecution witnesses for their examination / cross-examination.

12. The argument is that (a) no reasons have emerged as to why the prosecution itself failed to produce their witness namely Virendra Kumar Mishra before the learned trial court for the purpose of his cross-examination (b) as to why the said prosecution witness did not identify the recovered material / wood in court and (c) as to why the other nine prosecution witnesses were suppressed / not produced before the learned trial court for their examination / cross-examination.

13. It is further contented that as period of almost 22 years have elapsed as of date of the alleged incident consequently there would not be any occasion for remitting back the matter to the learned trial court for taking a fresh decision and thus, delay in trial / pendency of proceedings may itself be considered for quashing of the proceedings against the revisionists.

14. On the other hand, Shri Abhay Singh, learned A.G.A. has supported the order passed by the learned appellate court by contending that it was always open for the court to have compelled the prosecution witnesses to be produced before the learned trial court for the examination / cross examination which modus was not adopted by the learned trial court without assigning any reasons thereof and considering this, the learned appellate court has rightly remitted back the matter to the learned trial court for a fresh decision.

15. Heard the learned counsels for the parties and have perused

the record.

16. From the arguments as raised by learned counsels for the parties as well as perusal of record, it emerges that the incident of cutting of a chandan tree occurred on the intervening night of 17/18.02.2002. The F.I.R. in this regard against unknown persons was lodged at 01:30 A.M. on 18.02.2002. Subsequent thereto the six accused persons of which three are the revisionists herein are said to have been apprehended along with the trunk of the chandan tree on 19.02.2002. The criminal prosecution was started against them vide Criminal Case No.91 of 2014. The learned trial court only had the occasion of statement of one prosecution witness namely Virendra Kumar Mishra, who is said to have been one of the ten witnesses who had apprehended the three revisionists herein and three other persons along with the wood at 02:45 A.M. on 19.02.2002. However, before the learned trial court only one prosecution witness namely Virendra Kumar Mishra was produced for his examination but was never produced for his cross-examination by the defence despite the learned trial court having given ample opportunity to the prosecution for production of the said witness. The learned trial court also gave repeated opportunity to the prosecution for producing the other witnesses but the prosecution, for the reasons best known, failed to produced any other witnesses in order to prove the case against the accused persons. This prevailed on the learned trial court while passing the judgment and order dated 31.03.2014 in acquitting the accused persons of the alleged offence. It is pertinent to mention that a period of more than 12 years had lapsed since the alleged incident which took place in February, 2002 and the learned trial court having acquitted the accused persons in March, 2014.

17. Be that as it may, the State carried the matter in the appeal. The learned appellate court, vide judgment and order dated 09.05.2016, was of the view that nothing prevented the learned trial court from having compelled the prosecution to produce the other witnesses and that in case there has been an error, the said error could very well have been examined at the end of the learned trial court. It was also opined by the learned appellate court that the learned trial court could have adopted the procedure prescribed under Section 311 of the Cr.P.C. for production of the witness.

18. A perusal of the order passed by the learned appellate court would indicate that the learned appellate court has failed to appreciate that a period of more than 12 years had lapsed since the date of the alleged incident and the learned trial court, after giving ample opportunity to the prosecution to produce its witnesses, ultimately acquitted the alleged persons of the alleged offence. The learned trial court has categorically recorded that the prosecution has failed to produce any of the other witnesses in support of the charges against the accused persons. The sole prosecution witnesses which was produced by the prosecution namely Shri Virendra Kumar Mishra also did not appear for his cross-examination despite ample opportunities having been granted to the State. The said prosecution witness also failed to verify the wood which is alleged to have been recovered from the possession of the accused persons. Once a substantial period of time had lapsed and ample opportunities having been given by the learned trial court to the prosecution for producing its witnesses but the prosecution, for reasons best known, failed to produce them, as such, it cannot be said that the prosecution should be given an opportunity in infinity for producing the witnesses to the detriment of accused persons who were already facing trial for a

period of more than 12 years and it cannot be a case that in case the prosecution failed to produce its witnesses then an opportunity should be repeatedly given to them to remove the lacuna in this regard.

19. Keeping in view of the aforesaid discussion, the impugned judgment and order dated 09.05.2016 passed by learned Additional Sessions Judge, court No.3, Sitapur in Criminal Appeal No.27 of 2014 in Re: State Vs. Naseer & Others cannot be said to be legally justified in the eyes of law. Accordingly, the impugned judgment is quashed.

20. Consequences to follow.

21. Let the lower court record be remitted back to the court concerned by the office.

Order Date :- 12.8.2024
S. Shivhare