

HIGH COURT OF CHHATTISGARH, BILASPURCriminal Revision No.558 of 2003

1. Bodh Ram, S/o Kalachand, aged 38 years,
2. Shanti Bai, W/o Kalachand, aged 56 years,
3. Laxmin, D/o Kalachand, aged 28 years,

All R/o Village Padigaon, P.S. Pussore, District Raigarh (C.G.)
 ---- Applicants/
 (Complainants)

Versus

1. Vijay Bhushan, S/o Dileshwar Gupta, aged about 36 years,
Occupation Teacher,
2. Sugyat Gupta, S/o Dileshwar Gupta, aged 30 years,
Occupation Agriculture,
3. Hemansh Bhushan, S/o Dileshwar Gupta, aged 27 years,
Occupation Agriculture,
4. Akshya Bhushan Gupta, S/o Dileshwar Gupta, aged 25 years,
Occupation Student,
5. Khiti Bhushan Gupta, S/o Dileshwar Gupta, aged 23 years,
Occupation Student,

All R/o Padigaon, Tahsil & District Raigarh (C.G.)
 --- Non-applicants/
 (Accused persons)

For Applicants/victims: Mr. Akhilesh Kumar, Advocate.

For Non-applicants/accused: None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

26/08/2015

1. In a charge-sheet preferred by the jurisdictional police against the non-applicants herein for offence under Sections 147, 148, 323 & 325 read with Section 149 of the IPC, the trial Court convicted the non-applicants and sentenced them by jail

sentence as well as fine sentence.

2. Feeling dissatisfied against the judgment of conviction and order of sentence awarded, the non-applicants preferred an appeal under Section 374 (3) of the CrPC before the appellate Court and the appellate Court by the impugned judgment acquitted them finding that the prosecution has failed to prove the offences beyond reasonable doubt. Aggrieved against the judgment of acquittal, the victims have preferred this revision before this Court.
3. Mr. Akhilesh Kumar, learned counsel appearing for the applicants/victims, submits that the judgment of acquittal recorded by the appellate Court is absolutely perverse and contrary to the evidence available on record and, therefore, the judgment of acquittal be set aside.
4. None present for the non-applicants though served.
5. I have heard learned counsel appearing for the applicants and perused the record with utmost circumspection.
6. In order to comprehend the challenge to the attack made to the judgment of acquittal, it would be profitable to have a quick look over the legal parameters laid down by Their Lordships of the Supreme Court for interfering with the judgments of acquittal.
7. In **Bindeshwari Prasad Singh alias B.P.Singh and others v. State of Bihar (Now Jharkhand) and another**¹, the Supreme Court has clearly held that the High Court should not re-appreciate the evidence on record and come to a different conclusion by interfering in a revision with the order of

¹ AIR 2002 SC 2907

acquittal except in cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. Paragraph 12 of the decision states as under:

“12. We have carefully considered the material on record and we are satisfied that the High Court was not justified in re-appreciating the evidence on record and coming to a different conclusion in a revision preferred by the information under Section 401 of the Code of Criminal Procedure, Sub-section (3) of Section 401 in terms provides that nothing in Section 401 shall be deemed to authorize a High Court to convert a finding of acquittal into one of conviction. The aforesaid sub-section, which places a limitation on the powers of the revisional Court, prohibiting it from convert a finding of acquittal into one of conviction, is itself indicative of the nature and extent of the revisional power conferred by Section 401 of the Code of Criminal Procedure. If the High Court could not convert a finding of acquittal into one of the conviction directly, it could not do so indirectly by the method of ordering a re-trial. It is well settled by a catena of decisions of this Court that the High Court will ordinarily not interfere in revision with an order of acquittal except in exceptional cases where the interest of public justice requires interference for the correction of a manifest illegality or the prevention of gross miscarriage of justice. The High Court will not be justified in interfering with an order of acquittal merely because the trial Court has taken a wrong view of the law or has erred in appreciation of evidence. It is neither possible nor advisable to make an exhaustive list of circumstances in which exercise of revisional jurisdiction may be justified, but decisions of this Court have laid down the parameters of exercise of revisional jurisdiction by the High Court under Section 401 of the Code of Criminal Procedure in an appeal against acquittal by a private party. (See AIR 1951 SC 196 : D. Stephens vs. Nosibolla; AIR 1962 SC 1788 : K.C. Reddy vs. State of Andhra Pradesh; (1973) 2 SCC 583 : Akalu Ahir and other vs. Ramdeo Ram : AIR 1975 SC 1854 : Pakalapati Narayana Gajapathi Raju and others vs. Bonapalli Peda Appadu and another and AIR 1968 SC 707 : Mahendra Pratap Singh vs. Sarju Singh).”

8. Thereafter, in **Venkatesan v. Rani and another**², the Supreme Court, considering its earlier decision in paragraphs 8 and 9, clearly laid down as to cases in which the High Court should interfere with the finding of acquittal. Paragraphs 8 and 9 of the decision state as under:

“8. Specifically and for the purpose of a detailed illumination on the subject, the contents of paras 8 and 10 of the judgment in *Akalu Ahir v. Ramdeo Ram*, (1973) 2 SCC 583, may be usefully extracted below: (SCC pp. 587-88)

“8. ... This Court, however, by way of illustration, indicated the following categories of cases which would justify the High Court in interfering with a finding of acquittal in revision:

- (i) Where the trial court has no jurisdiction to try the case, but has still acquitted the accused;
- (ii) where the trial court has wrongly shut out evidence which the prosecution wished to produce;
- (iii) where the appellate court has wrongly held the evidence which was admitted by the trial court to be inadmissible;
- (iv) where the material evidence has been overlooked only (either) by the trial court or by the appellate court; and
- (v) where the acquittal is based on the compounding of the offence which is invalid under the law.

These categories were, however, merely illustrative and it was clarified that other cases of similar nature can also be properly held to be of exceptional nature where the High Court can justifiably interfere with the order of acquittal.

* * *

10. No doubt, the appraisal of evidence by the trial Judge in the case in hand is not perfect or free from flaw and a court of appeal may well have felt justified in disagreeing with its conclusion, but from this it does not follow that on revision by a private complainant, the High Court is entitled to reappraise the

evidence for itself as if it is acting as a court of appeal and then order a retrial. *It is unfortunate that a serious offence inspired by rivalry and jealousy in the matter of election to the office of village Mukhia, should go unpunished. But that can scarcely be a valid ground for ignoring or for not strictly following the law as enunciated by this Court.*”

9. The observations in para 9 in *Vimal Singh v. Khuman Singh*, (1998) 7 SCC 223, would also be apt for recapitulation and, therefore, are being extracted below: (SCC pp. 226-27)

“9. Coming to the ambit of power of the High Court under Section 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case or where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.””

9. Thus, after having ascertained the legal position with regard to scope of interference in revision with the order of acquittal, reverting back to the facts of the present case, it appears that the learned trial Magistrate on the basis of evidence of Shanti

Bai (PW-1), Bodhram (PW-2) & Laxmin Bai (PW-3), convicted the non-applicants for the aforesaid offences. In appeal, the appellate Court held that the testimonies of aforesaid three witnesses are not supported by independent prosecution witnesses and no seizure has been made and, therefore, the appellate Court acquitted all the accused persons, the non-applicants herein.

10. After perusal of record and after hearing learned counsel for the applicants, I find that the prosecution story that the non-applicants caused grievous injuries to the injured persons namely Shanti Bai (PW-1), Bodhram (PW-2) & Laxmin Bai (PW-3), has not been proved by independent prosecution witnesses; other independent prosecution witnesses have been declared hostile; and the weapon by which it is stated that injuries were caused to the injured persons, has not been seized. Serious discrepancies have been pointed out by the first appellate Court in detail and there is no reason to disagree with the findings recorded by the appellate Court for acquitting the non-applicants, particularly in view of the fact that the incident is of the year 1995 i.e. 10-7-1995. Thus, the prosecution has failed to prove the offence under Sections 147, 148, 323 & 325 read with Section 149 of the IPC beyond reasonable doubt against the non-applicants. Therefore, this Court is of the opinion that there is no manifest legal error in the judgment of acquittal recorded by the appellate Court. Keeping in view the parameters laid down by the Supreme Court in the aforesaid cases, I do not consider it a fit case

where this Court should re-appreciate the entire evidence on record or it is not the case where the view taken by the appellate Court is so arbitrary or bears manifest error requiring interference.

11. As a fall out and consequence of aforesaid discussion, the revision is held to be devoid of merit and is, therefore, dismissed.

Sd/-
(Sanjay K. Agrawal)
Judge

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