



IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CR. REVISION NO. 273/2003

APPLICANT

: Hardeep Singh, Son of Charan Singh, aged about 40 years, R/o. Street No. 13, Quarter No. 4B, Sector 10, Bhilai, District : Durg

VERSUS

NON-APPLICANTS

- : 1. State of Chhattisgarh through P.S. Bhilainagar, Dist : Durg. (CG)
2. Kali @ Ram Kumar Roy, Son of Harilal Yadav, aged about 24 years, R/o. Vill: Jamuva, P.S. Digwara, Dist : Chapra, Bihar. Presently residing at : Sector 6, Road No. 48-A, Bhilai, Dist : Durg (CG)
- S 3. Sambhu @ Sambhunath, Son of Ram Vikas Chauhan, aged about 24 years, R/o. vill - Boghchi, P.S. Boghchi, Dist : Dewriya, U.P. At present residing at - Sector 6/29A/6F, Bhilai, Dist : Durg (CG).
- S 4. Navin Sharma, Son of Uma-Dutt Sharma, aged about 22 years, Sector 6, Road No. 19, Qtr No. 6 F, Bhilai Nagar, Dist : Durg (CG).
- S 5. Bangro @ Baghe @ Dilbag Singh, Son of Mangal Singh, aged about 23 years, R/o. Sector 6, Road No. 38, - Qtr No. 9A, Bhilai, P.S. Bhilainagar, Dist : Durg (CG).

CRIMINAL REVISION UNDER SECTION 397 READ WITH SECTION 401
OF THE CODE OF CRIMINAL PROCEDURE.

Being aggrieved by the impugned judgement dated 26/3/2003 passed by M.A. Faruqui, 10th Additional Sessions Judge (Fast Track Court), Durg in Sessions Trial No. 131/

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRR No. 273 of 2003

Hardeep Singh

Versus

State Of Chhattisgarh And Ors.

ORDER FOR CONSIDERATION

Sd/-
Prashant Kumar Mishra
Judge

HON'BLE SHRI ANIL KUMAR SHUKLA, J

I agree.

Sd/-
Anil Kumar Shukla
Judge

POST FOR ORDER ON 09th MAY, 2017

Sd/-
Prashant Kumar Mishra
Judge



13/05/17

56

1

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 273 of 2003

Order Reserved On : 16/01/2017

Order Passed On : 09/05/2017

- Hardeep Singh

---- Applicant

Versus

- State Of Chhattisgarh And Ors.

---- Non-Applicants

For Applicant : Shri Adil Minhaj, Advocate.
For Non-applicant/State : Shri Shashank Thakur, Govt. Advocate.
For Non-Applicants 2, 4 & 5 : Shri Shivraj Singh, Advocate.
For Non-Applicant No.3 : Smt. Fouzia Mirza, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra
Hon'ble Shri Justice Anil Kumar Shukla

C A V Order

The following order of the Court was passed by **Prashant Kumar Mishra, J. ***

1. The present Criminal Revision has been preferred by the first informant challenging the judgment of acquittal rendered by the Sessions Court on 26.3.2003 in ST No.131/2002 acquitting the accused persons of the charges under Section 302/34 or 302 of the IPC and under Section 25 (1-b) & 27 of the Arms Act.

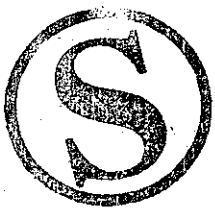


59

2. Prosecution case, in short, is that deceased Karnel Singh is the younger brother of the applicant. On 16.1.2002, several persons were playing cards at the Ispat Club, Bhilai. At about 8.30 pm deceased Karnel Singh was quarrelling with Jikara and Manoj outside the club. Therefore, hearing the commotion some persons came out of the club and separated them. Karnel Singh and Manoj went back from the club. However, at about 9-9.30 pm Karnel Singh and (PW-1) Roja again reached the club and sat on the table where (PW-2) Mohd. Shahid was playing cards. After about 5-7 minutes Karnel Singh and Roja sat on a different table where Ujjwal Tiwari, Jitendra, Shailesh, Seenu Sagar were playing cards. At about 10 pm, the accused persons entered the club and fired on the deceased causing bullet injuries on his back. The moment Karnel Singh stood up, accused No.2 Shambhu @ Shambhunath gave another blow on his back by means of piped knife (Gupti) whereas accused No.3 Navin Sharma caused injuries over his abdomen. One Bhagbati also inflicted one knife injury on the front portion of his body. One Manoj informed the applicant (PW-4) at about 10 pm that his brother has been murdered in the Ispat Club. The applicant reached the Ispat Club and saw Ujjawal Tiwari, Shammi, accused Kali and 5-6 more persons fleeing from the club. When he entered the club, his brother-in-law Balwinder, Roja, Pratap Singh @ Bittu and Rittu reached there. Roja informed the applicant that accused No.1 Kali @ Ram Kumar Rai has fired gun shots on Karnel Singh

whereas accused No.3 Navin Sharma and accused No.4 Dilbagh has injured the deceased by means of piped knife.

3. After registering mere intimation vide Ex.-P/5, FIR (Ex.-P/4) at the instance of the present applicant, upon completion of investigation including examination of witnesses and seizure of weapon, postmortem examination, etc., charge sheet was filed against the accused persons for committing offence under Section 302/34 or Section 302 of the IPC and accused Kali was also charged for committing offence under Section 25 (1-b) & 27 of the Arms Act.
4. The prosecution examined 15 witnesses to bring home the charges including (PW-1) Roja and (PW-2) Mohd. Shahid whose presence on the spot was mentioned in the FIR itself and were thus relied by the prosecution as eyewitnesses.
5. On appreciation of evidence adduced by the prosecution, the trial Court has acquitted all of them of the charges framed against them.
6. Assailing the acquittal, learned counsel for the applicant would submit that the finding recorded by the trial Judge is perverse. He would submit that the evidence of eyewitnesses (PW-1) Roja and (PW-2) Mohd. Shahid has not been appreciated properly which has resulted in perverse finding, therefore, the judgment of acquittal is vitiated. Reliance is placed on judgments in the matters of **Ram Briksh Singh**



SS

and Others Vs. Ambika Yadav and another¹, Sama Subhash Reddy Vs. S. Lalitha alias Lalithamma & Ors.², Chandra Bahadur Katwal Vs. State of Sikkim & Ors.³, B. Surenderji Vs. M. Anjaneyulu and others⁴, A. Ramanamma Vs. Nakka Neelamma and others⁵ and Ganesha Vs. Sharanappa and another⁶.

7. Per contra, learned counsel for the non-applicants would support the impugned judgment. According to them, the trial Judge has considered each and every evidence available on record and has recorded a finding which is borne out from the record, therefore, it is not a case of perverse finding. Reliance is placed on judgments of the Supreme Court in the matters of **Bindeshwari Prasad Singh alias B.P. Singh and Others Vs. State of Bihar (Now Jharkhand) and Another⁷**, **Thankappan Nadar and Others Vs. Gopala Krishnan and Another⁸**, **Sheetala Prasad and Others Vs. Sri Kant and Another⁹** and **Johar and Others Vs. Mangal Prasad and Another¹⁰**.

8. We have heard learned counsel for the parties at length and perused the record. We have also gone through the judgments on which learned counsel for the parties have placed reliance.

1 2004 CRLJ 3115

2 2011 CRLJ 28

3 2006 CRLJ 2751

4 2003 CRLJ 3783

5 2003 CRLJ 3995

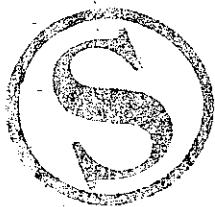
6 2014 CRLJ 1146

7 (2002) 6 SCC 650

8 (2002) 9 SCC 393

9 (2010) 2 SCC 190

10 (2008) 3 SCC 423



(6)

9. Several judgments of the High Courts and the Supreme Court have been relied by learned counsel for the parties, however, we consider it appropriate to refer to one of the recent judgment of the Supreme Court in the matter of **Bablu Kumar and Others Vs. State of Bihar and Another**¹¹, wherein after referring the earlier judgment in the matter of **K. Chinnaswamy Reddy Vs. State of A.P.**, {AIR 1962 SC 1788}, the Supreme Court considered the subsequent judgments to hold thus in paras-12 to 16:-

12. In this context, it is seemly to refer to the authority in **Ayodhya Dube v. Ram Sumer Singh**¹² wherein a three-Judge Bench explaining the decision in **Chinnaswamy** (Supra) observed that: (*Ayodhya Dube case*, SCC p. 84, para 2)

“2. ... we only wish to say that the criminal justice system does not admit of ‘pigeon-holing’. Life and the law do not fall neatly into slots. When a court starts laying down rules enumerated (1), (2), (3), (4) or (a), (b), (c), (d), it is arranging for itself traps and pitfalls. Categories, classifications and compartments, which statute does not mention, all tend to make law ‘less flexible, less sensible and less just’.”

Be it noted, in the said case this Court had affirmed the order of retrial directed by the High Court in a revision petition preferred under Section 401 CrPC on the ground that the judgment of acquittal consisted of faulty reasoning and lack of judicial approach, and accepted canons for appreciating evidence had been thrown to the wind as a consequence of which grave miscarriage of justice had occurred.

13. In **Sunil Kumar Pal v. Phota Sheikh**¹³, the Court while commenting on the unusual procedure adopted by the trial court, opined that: (SCC p. 538, para 9)

11 (2015) 8 SCC 787

12 1981 Supp SCC 83

13 (1984) 4 SCC 533

"9. ... We have no doubt that under these circumstances the trial could not be regarded as fair and just so far as the prosecution was concerned. The entire course of events shows that the conduct of the trial was heavily loaded in favour of Respondents 1 to 9. The trial must in the circumstances be held to be vitiated and the acquittal of Respondents 1 to 9 as a result of such trial must be set aside. It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law."

14. In **Bansi Lal v. Laxman Singh**¹⁴, on the question of limited revisional jurisdiction under Section 401 CrPC and the duty of the Court, a two-Judge Bench opined that such a power has to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on point of law and there has consequently been flagrant miscarriage of justice. A mere circumstance that finding of fact recorded by the trial court which may be in the opinion of the High Court is erroneous or incorrect, would not justify setting aside the order of acquittal and directing a retrial of the accused.

15. In **Satyajit Banerjee v. State of W.B.**¹⁵, it has been opined that (SCC p. 121, para 26) direction for retrial should not be made in all or every case where acquittal of the accused is for want of adequate or reliable evidence. It is only when an extraordinary situation with regard to the first trial is found so as to treat it as a farce or a "mock trial", direction for retrial would be justified. The same principle has been reiterated in **Mary Pappa Jebamani v. Ganesan**¹⁶.

16. In **Bindeshwari Prasad Singh v. State of Bihar** (Supra), while dealing with the power under Section 401 CrPC, the Court while not agreeing with the High Court interfering with the order of acquittal in exercise

14 (1986) 3 SCC 444

15 (2005) 1 SCC 115

16 (2014) 14 SCC 477



62

of its revisional jurisdiction at the instance of the informant observed thus: (SCC p. 655, para 14)

"14. ... It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself."

(Emphasis supplied)

10. It is thus fairly well settled that the power available with the High Court under Section 397/401 of the CrPC has to be exercised only in exceptional cases where there is glaring defect in the procedure or there is manifest error on point of law and there has consequently been flagrant miscarriage of justice. It is also settled that a mere circumstance that the finding of fact recorded by the trial Court which may be in the opinion of the High Court is erroneous or incorrect would not justify setting aside the judgment of acquittal and directing re-trial of the accused.

11. Learned counsel for the parties have taken this Court through relevant paragraphs of the judgment wherein the evidence of important witnesses has been discussed by the trial Court.

12. Indisputably, it is not a case where the trial suffers from any inherent defect in the sense that the trial is not fair to the complainant side. It is

also not a case where the prosecution has been denied submission of evidence which they wanted to adduce but the trial Court refused such evidence to be taken on record. It is also not a case where there is only lip service to fair trial reducing trial to a mock trial or for some fundamental defect the trial has become a farcical one. In the absence of any such defect in trial, we are left to consider the rival submission where the applicant would say that the manner of appreciation and the consequent finding in respect of evidence of eyewitnesses is perverse and the non-applicants' submission that such appreciation does not suffer from any perversity.

13. To dwell as to whether there is any perversity in the approach and appreciation undertaken by the trial Court, we have carefully gone through the relevant paragraphs that is to say paras 24 to 58 in respect of oral evidence and other part of the judgment about memorandum and seizure of weapon which has not been supported by (PW-12) S.R. Ali and (PW-13) I. Chouhan. Moreover, there is no report of the Armourer of the revolver recovered from accused Kali. We have found that the trial Court has elaborately discussed the evidence of eyewitnesses namely, (PW-1) Roja and (PW-2) Mohd. Shahid and other witnesses examined by the prosecution. While (PW-2) Mohd. Shahid has stated in para-3 of examination-in-chief that he could not see as to who fired on the deceased, other witness namely, (PW-1) Roja has made statement in favour of the prosecution which has not found to be convincing and



64

truthful by the trial Court so as to convict the accused persons. Before disbelieving the eyewitness namely, (PW-1) Roja, the trial Court has assigned reasons which are neither illogical nor suffers from any such perversity that a man of common prudence would not arrive to such conclusion. Even if another view is possible but the view taken by the trial Court also appears to be one possible view in the matter, this Court is not entitled to convert the judgment of acquittal into judgment of conviction while exercising power under Section 397/401 of the CrPC. Similarly, in the absence of any inherent defect of such nature or character which has rendered the trial vitiated, this Court is not entitled to send the matter back for re-trial.

14. For the foregoing, we do not find any reason or ground to interfere with the impugned judgment of acquittal. Accordingly, the Revision fails and is hereby dismissed.

Sd/-
Prashant Kumar Mishra
Judge

Barve

Sd/-
Anil Kumar Shukla
Judge