Basanta and ors. Vs. State

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Court : Allahabad

Decided On : Aug-21-1963

Reported in : AIR1965All120; 1965CriLJ267

Judge : Gyanendra Kumar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 423, 435 and 439; ; Indian Penal Code (IPC), 1860 - Sections 107, 108 and 116

Appeal No. : Criminal Revn. No. 1636 of 1962

Appellant : Basanta and ors.

Respondent : State

Advocate for Def. : K.N. Srivastaya, AGA.

Advocate for Pet/Ap. : Ramesh Sharma, Adv.

Disposition : Revision application dismissed

Judgement :
ORDER

Gyanendra Kumar, J.

1. Eight accused persons had filed this revision. The application on behalf of the other six persons was dismissed by this Court on 22-11-1962 but the revision

application of Ranjit and Jal Singh applicants alone was admitted.

2. Two points have been urged by the learned counsel for these applicants. Firstly, that P. W. Vikram Singh had stated that Ranjit and Jal Singh applicants had bhalas, the edges of which were round, while P. W. Baru Singh and Chhatter Singh stated that Jal Singh and Basanta had ballams while Ranjit had a bhala. The medical evidence shows that there was no injury from a pointed weapon. According to Dr. Prem Prakash, P. W. Baru Singh had 24 injuries out of which 2 were incised wounds. P. W. Chhatter Singh had seven injuries out of which only one was incised wound. P. W. Vikram Singh had three injuries all of which were caused by some blunt weapon. P. W. Vikram Singh who had received only lathi injuries might not have precisely observed the nature of the weapon in the hands of the applicants.

When spears and ballams are being plied and are in motion, it is very difficult to watch and notice whether they had only pointed edges or had sharp edges on both sides of the blade. At any rate the presence of both the accused either with bhala or spear on the scene of occurrence and their participation in the marpit is proved not only by the injured witnesses but also by others. They have been convicted for causing injuries to the complainant party with the aid of Section 148, I. P. C. Therefore, even if the applicants had not actually plied their weapons, they would he vicariously responsible for the injuries caused to the complainant party. The contention advanced on behalf of the defence has thus no force.

3. The other point urged by the learned counsel for the defence was that the Sessions Judge had not considered the defence evidence, even though he had considered the arguments and the contentions advanced on behalf of the defence. It appears that in the appeal before the Sessions Judge, the learned counsel for the applicant had only placed certain points and contentions for the consideration of the Judge, hut had not invited his attention to the defence evidence as such. That is why the Sessions Judge had dealt with the arguments of the defence counsel one by one but had not expressed his opinion about the credibility or otherwise of the defence witnesses.

4. In the revisional jurisdiction I am prepared to examine the defence evidence and weigh its worth. It was, however, pointed out by the learned counsel for the applicants that in Maharaj Bux v. Rex, AIR 1952 All 433, Desai, J. (as he then was) had held differently in somewhat similar circumstances when he was asked to treat the revision before him as an appeal and go into the facts himself. The relevant portion of the observations of Desai, J. is as Follows:

'No doubt this can be done but the question is why I should deprive the applicants of their right to have the facts scrutinised properly by another Court They had a right to have the facts and the law examined thoroughly by the lower Court, and to expect that their convictions would be quashed by it. They are expected to come to this Court only on their failure to get the desired relief from it. If I assume the functions of the lower appellate Court and go into the facts myself it would amountto their being deprived of their chance of acquittal at the hands of the lower appellate Court. I must, therefore, remand the case for re-hearing.'

5. It may be observed here that in Maharaj Bux's case. AIR 1952 All 433 supra the learned Sessions Judge in appeal bad given some discussion of the evidence of the defence witnesses, but he had not at all discussed the prosecution evidence. In a criminal ease it is the prosecution which has to establish its allegations against the accused, independently of the defence evidence. So fat as the prosecution evidence was concerned, the learned Sessions Judge had contented himself by saying that he had carefully perused the evidence of the prosecution witnesses and found that they had fully proved the prosecution case.

He further observed that having considered the evidence and the probabilities of the ease, he was of the opinion that the offence had been brought home to all the appellants beyond reasonable doubt. It was under those circumstances that Desai, J. held that the learned Sessions Judge should have properly discussed the prosecution evidence and then recorded his finding together with reasons for those findings. The rule that reasons must be given for the decision was nothing but the extension of the well known principle that justice must not only be done but also be seen to be done. Where there were two versions of the occurrence put up by the complainant and the accused, there was bound to be contradictory

evidence. It was, therefore, necessary that the evidence of the prosecution, on whom, lies the burden of proof, must necessarily be scrutinised. It was not sufficient for the Sessions Judge to observe that he had carefully perused the evidence of the prosecution witnesses and came to the conclusion that the offence had been established. If the Sessions Judge had carefully perused the evidence he should have given inherent proof of it in the judgment itself.

6. It is thus evident that the principle laid down by Desai, J. referred to a case where the Sessions Judge in appeal had omitted to discuss the evidence of the prosecution witnesses. The present is a converse case, where the Sessions Judge in appeal had discussed the prosecution evidence but omitted to discuss the evidence of the defence witnesses. It was under the facts and circumstances of that particular case that Desai, J. considered it just and proper to remand the case to the Sessions Judge for the scrutiny of prosecution evidence. However, it the observations of Desai, J. were meant to lay down a general proposition that the High Court in its revisional jurisdiction should never consider facts and appraise the evidence, which the Sessions Judge had omitted to scrutinise, I disagree with him with all respect. There was no question of depriving the accused of their right to have the facts scrutinised properly by the lower Court or denying them a chance of acquittal at the hands of the lower appellate Court and thereby creating a prejudice to their cause

Once the case had already come before the High Court in revision, I think it would be in the interest of the accused themselves that the High Court, in a proper case, went into facts and evidence and decided the case finally, because in that event the accused shall have the advantage of scrutiny of facts and evidence by the highest tribunal in theState. There is one cardinal principle of law that delay and multiplicity of proceedings should he avoided as far as possible. In the event of remand of the case to the Sessions Judge, the accused would naturally be put to additional trouble and expense; and if after examination of the facts and evidence by the Sessions Judge, their conviction were to be maintained, they shall have to run to the High Court again for re-dress. Furthermore, in such a contingency, the accused would remain in a state of suspense for a much longer period than if the matter had been finally deckled by the High Court itself, in its revisional

jurisdiction.

7. The revisional powers of the High Court are contained in Sections 435 and 439 of the Cri. P. C. Section 435, Cri. P. C. authorises the High Court to call for 'and examine the record' of any proceeding before any inferior criminal Court within the local limits of its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by such inferior Court. The examination of the record includes the examination of the evidence on record led on behalf of the prosecution or on behalf of the defence. Under Section 439, Cri. P. C. the High Court may, in its discretion, exercise any of the power conferred on a Court of appeal by Section 423. One of the powers conferred on a Court of appeal evidently is to scrutinise facts and evidence on record Therefore, in its revisional jurisdiction also the High Court should, in a proper case, itself scrutinise the defence evidence, just as well as the appellate Court could have clone.

8. In Ramgopal Ganpatrai Ruia v. State of Bombay, AIR 1958 SC 97 their Lordships observed that in its revisional jurisdiction under Sections 435 and 439, Cri. P. C. the High Court could exercise any of the powers of the Court of appeal enumerated in Section 423, Cri. P. C. and after scrutinising the record examine the correctness, legality or propriety of any order passed by any subordinate Court, and if it finds that the order passed by the subordinate Court is either incorrect, illegal or improper, then it should itself pass a correct and proper order. The same principle was reiterated in Moti Ram v. Suraj Bhan, AIR 1960 SC 655 para 10.

9. In my revisional jurisdiction I have, therefore, examined, weighed and scrutinised the evidence of D. WS. Ghasitoo and Nathu, who were produced on behalf of the accused. In their examination-in-chief both of them had stated that their place of work was near the field where the recurrence had taken place. They further deposed that on the day in question no incident occurred between the complainant party and the accused persons it may be mentioned here that the complainant party in the instant case are Jats. D W 1 Ghasitoo in his cross-examination admitted that the Jats were Badnmshes and drunkards and had got a false case instituted against him through the agency of Chamars. Thus D W

Ghasitoo has grievance and bias against the complainants, who, as already stated, are Jars by caste. His tainted testimony is therefore not work of credence, particularly when we find that three persons on the side of the complainants had received as many as 34 injuries, three of which were incised wounds. The existence of these numerous injuries on the person of the complainant party cannot be explained on any other hypothesis than the one advanced by the prosecution. Apart from the testimony of the injured persons, there is also the reliable evidence of the other witnesses who fully support the prosecution case

10. D. W 2, Nathu who had also denied the occurrence admitted in his cross-examination that he did not always stay near the place of occurrence and used to go out on work Sometimes he returned there at 10 A.M. and sometimes after the sunset Such a witness could not have possibly deposed about the non-occurrence of the incident inasmuch as, according to his own admission he might very, well have been away from that place on the day and time in question. His testimony was also rightly rejected by the trial Magistrate.

11. Applicant Ranjit is 20 years of age while Jal Singh is 25 years old ft cannot be said that these two accused were either minors or of very immature age and understanding. They were armed with dangerous weapons. There is no extenuating circumstance in their favour The sentences imposed on them, in the circumstances of this case cannot be considered to be excessive.

12. The revision has no force and is accordingly dismissed, the conviction and sentences of the applicants being maintained as modified by the Sessions Judge.