

**Faulad and anr. Vs. State**

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**Court :** Allahabad

**Decided On :** Oct-31-1960

**Reported in :** AIR1961All326; 1961CriLJ797

**Judge :** V.G. Oak and ;Kailash Prasad, JJ.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 369 and 561A; High Court Rules; High Court Orders; Allahabad Court Rules, 1950 - Rules 1 and 4

**Appeal No. :** Criminal Appeal No. 233 of 1960

**Appellant :** Faulad and anr.

**Respondent :** State

**Advocate for Def. :** B.N. Katju, Adv.

**Advocate for Pet/Ap. :** C.S. Saran and ;D. Bahri, Adv.

**Judgement :**  
ORDER

**B. Dayal, J.**

1. This is an application trade on behalf of Faulad and Kalloo on the 6th of October, 1960 stating that Criminal Appeal No. 233 of 1960 has been compromised between the parties and there-lore permission to compound the

offence be granted.

2. The facts, which have given rise to this application may be shortly stated. The applicants Faulad and Kalloo were convicted by the learned Addl. Sessions Judge of Allahabad on the 30th of January, 1960 under Sections 308 and 397, I. P. C., and sentenced to different terms of imprisonment which it is not necessary to mention for the purpose of this application. Both the applicants appealed to this Court against their conviction which was heard by me on the 23rd September, 1960. I, after hearing the appeal, dictated judgment in open Court on that very date.

As a result, I allowed the appeal of Kalloo and set him at liberty while I converted conviction of Faulad into one under Section 325, I. P. C. and under that section sentenced him to three years Rule I. This judgment was not placed before me for signatures by the time this application was presented. The contention of the learned counsel for the applicants is that a judgment pronounced in Court does not dispose of an appeal until it is signed and, sealed, under the rules of this Court. Therefore an application for permission to compromise is still competent.

In view of the filing of this application I have refrained myself from signing the judgment but since I am not satisfied with the arguments of the learned counsel and I feel that this is a matter which needs a more authoritative pronouncement, I wish to refer the question of law for decision to a larger Bench. The rulings placed for consideration before me also indicate some confusion of thought and also conflict of decisions.

3. The relevant rule of this Court is contained in Ch. VII, Rule 4 of the Rules of Court framed in 1952, Sub-rule (1) whereof provides, 'When the transcript of the judgment or order prepared by the judgment clerk has been filed with the paper-book of the case, the Bench Reader shall submit it to the Judge or Judges who delivered it. It shall then be signed or initiated by such Judge or Judges after such corrections as may be considered necessary. Thereafter it shall be sealed with the seal of the Court by the Bench Reader'. Sub-rule (2) of this Rule goes on to provide that in case of death, illness, retirement or any other cause on account of which the Judge or Judges by whom the judgment was delivered, is not available,

the transcript be submitted to the Chief Justice and it may be sealed under his orders.

4. From this Rule it will be seen that it does not affect the disposal of the appeal at all. The appeal is disposed of by the pronouncement of the judgment in Court under Sub-rule 1. of Rule 1 which provides, 'after a case has been heard, judgment may be pronounced either at once or on some future date which shall be notified in the Cause List. No other notice to the parties shall be necessary'. Then Rule 2 provides for the recording of the judgment if it has been delivered orally in Court and thereafter Rule 4, as quoted above, provides for the necessary correction by the same Judge, sealing of the judgment and placing of it on the record.

To my mind this Rule gives no authority whatsoever to a Judge to change his judgment after it has been pronounced in open Court. The procedure of placing the judgment before the same judge is merely for the purpose of making such corrections as may be necessary. These corrections obviously are corrections of language grammar or of clerical nature. There is nothing in this Rule to indicate that the whole judgment may be altered after it has been pronounced in open Court without proper procedure of review being followed,

5. The Rules which had been framed in this Court in January, 1898 as they stood in the year 1937, also materially provided for the same procedure. Rule 6 of Ch. VII in the old Rules provided for the recording of judgments pronounced orally in Court and Rule 7 thereof provided as follows:

'When a judgment or order recorded by a judgment clerk has been filed the Bench Reader shall submit it for inspection, supervision and correction by the Judge or Judges who delivered or passed it, unless such Judge or Judges shall have otherwise ordered, shall have resigned or proceeded on leave, or be absent on account of illness or any other cause.'

Then Rule 8 provided for sealing of the judgment after it was signed by the judge before whom it was placed for signatures. In those Rules there was no procedure for placing the judgment before the Chief Justice in the absence of the Judge or

Judges who pronounced the judgment and for sealing the same by the order of the Chief Justice It may also be noted that Rule 7 provided that the judgment would be placed before the Judge or Judges who pronounced it for signatures etc., unless otherwise ordered by them so that the Judge or Judges who pronounced the judgment could direct that it was not necessary to place the judgment for his signatures.

6. On a reading of these Rules, it is abundantly clear that the case is disposed of immediately upon the pronouncement of the judgment and signing and sealing of the judgment is merely a procedure because the Court is a Court of record and all the judgments must be kept in a proper way on record. If this is so, after the judgment in the instant case was pronounced in open Court on the 23rd of September, 1960, the appeal was disposed of and there was nothing to be compromised and the application presented on the 6th of October, 1960 was incompetent.

7. There is another aspect of this matter. This appeal if it is not disposed of by delivery of the judgment in open Court on 23-9-1960, remained an appeal against the applicant's conviction under Sections 308 and 397, I. P. C. These offences are not compoundable under the Cr. P. C. This application purports to be an application for leave to compound the offences under Sections 308 and 397, I. P. C., and is therefore a misconceived application upon its own allegations. This purports to be an application on behalf of both Faulad and Kalloo applicants which necessarily means that this application does not take into consideration the judgment which had been pronounced by this Court acquitting Kalloo and holding him not guilty of any offence.

8. It was, however, pointed out by the learned counsel for the applicants that there is ample authority by this Court to the effect that a judgment unless signed and sealed by the Judge, does not dispose of the appeal and in case the appeal is still pending the parties are competent to say that the offence although held to be one under Section 308 and 397, I. P. C., by the learned Sessions Judge, yet is not one under those sections and is an offence under the sections which are compoundable and if the counsel for the applicants is able to convince the Court

that it is so, the application would be competent.

9. For the proposition that an appeal is not disposed of till the judgment is signed and sealed, learned counsel has relied upon the case of Govind Sahai v. Emperor, AIR 1916 All 183. In that case after the opinion of the Division Bench had been received back, a learned single Judge of this Court observed as follows: 'A Bench of this Court has held that as the order passed by me on the 22nd July, 1915 was not sealed, this application for revision must be deemed to be still pending'.

He thereupon heard the case afresh. That Hon'ble Judge seemed to have been of the view that the Division Bench decided something to the effect that unless the judgment was sealed, the application for revision must still be deemed to be pending. But I am unable to see how he arrived at that conclusion. The Division Bench did not say anything of that kind in the order by which the reference was disposed of.

The Division Bench expressly agreed with the decision of the Calcutta case: In the matter of the petition of F. W. Gibbons, ILR 14 Gal 42 (FB), and observed as follows:

'No dissent has ever been expressed from this decision in this Court and we can see no reason whatsoever when the Legislature has not in express terms given this Court statutory power to review its judgment in criminal cases, to differ from the above mentioned ruling.'

The Bench then goes on to refer to two decisions of this Court in Queen Empress v. Lalit Tiwari, ILR 21 All 177 and Emperor v. Kallu, ILR 27 All 92 and to observe 'That in view of these rulings it is only the Judge concerned who can deal with this matter'..

The Judges did not observe that the revision itself should be deemed pending and undisposed of as long as the judgment was not sealed. In view of those cases mentioned above, the Division Bench clearly meant to say that the Judge who had pronounced the judgment was still competent to correct any mistake in his judgment and the matter was therefore in the hands of the Judge who decided the

case.

10. Learned counsel for the applicants also drew my attention to the case of Sam Smelting and Refining Corporation Ltd. Meerut v. State : AIR1951 All709 . The question that arose for disposal in the case was that the judgment which had been pronounced in open Court by Hon. Seth, J., was not signed and sealed by him before his death. An application under Section 561-A, Cr. P. C., was then presented and was placed before Hon Mr. Justice Brij Mohan Lall before whom a preliminary objection was raised on behalf of the State that the revision had been effectively disposed of by Hon, Seth, J., and no application under Section 561-A, Cr. P. C., lay. Several earlier rulings reported in ILR 21 All 177 and ILR 27 All 92, already mentioned as well as the case of ILR 38 All 134 : (AIR 1916 All 183), were considered.

11. The case of Mohan Singh v. Emperor, AIR 1944 Pat 209, was also considered which has also been cited before me. His Lordship came to the conclusion that the effect of these cases was that the Judge who pronounced the judgment could himself change his judgment at any time before it had been sealed. But such a power could not be exercised by any other Judge and since the revision had been effectively disposed of by pronouncing of the judgment in open Court, the application was incompetent and the preliminary objection was allowed.

12. Learned counsel has relied upon the observation made in this case that the Judge who pronounced the judgment could alter his judgment or review it at any time before it was sealed and this inference has been drawn from the rulings mentioned above. As stated above, I find myself unable to agree with this proposition. In my view, after a judgment has been pronounced in open Court, it disposes of the appeal and all that can, be done by the same Judge at the time of signing the judgment is to correct mistakes of a clerical nature. Since there is a conflict of opinion on the powers of the Judge and also applications for review have to be distinguished from such applications which ask the Court to give permission to compromise a case, I refer the following question for decision by a Division Bench:

'After this Court pronounced a judgment orally in open Court disposing of a Criminal Appeal and before the judgment has been signed and sealed, does an application for permission to compromise the offence lie?'

13. Let the papers be laid before Hon. the Chief Justice for Constitution of a Bench, if it is considered proper.

**Oak, J.**

14. The following question of law has been referred to this Bench:

'After this Court pronounced a judgment orally in open Court disposing of a Criminal Appeal and before the judgment has been signed and sealed, does an application for permission to compromise the offence lie?'

15. The reference has arisen under the following circumstances: Two persons were convicted by the Additional Sessions Judge of Allahabad under Sections 308 and 397, I. P. C. Their appeal to this Court came up before a learned single Judge on 23-9-1960. On that day the learned Judge dictated a judgment in open Court. That judgment was to the effect that Kalloo's appeal should be allowed, and Faulad's conviction should be recorded under Section 325, I. P. C.

16. On 6-10-1960 an application was moved before the Application Judge for compounding the offence. That application was listed for disposal on 7-10-1960 before the learned Judge, who had previously dictated the judgment on 23-9-1960 partly allowing the appeal. The learned single Judge entertained doubt whether he could take any action upon the application for permission to compromise the offence. The learned Judge was inclined to hold that, he could not take any action on the application for permission to compromise the offence. He, therefore, referred the question of law quoted above for decision by a Division Bench.

17. The learned counsel for the appellants relied on a number of decisions in support of his contention that a judgment may be altered before it is signed and sealed. In ILR 21 All 177 it was held by a Division Bench of Allahabad High Court that having regard to the Rules of the Court, a judgment is not complete until it is

sealed. Until a judgment is sealed it may be altered by the Judge concerned without the necessity of having recourse to any formal procedure by way of review of judgment.

18. In AIR 1916 All 183 it was held that an order of a High Court dismissing an application for revision requires under the Rules' of the Allahabad High Court to be sealed.

19. In ILR 27 All 92 a certain order was signed by the Judge who passed it, but was not sealed with the seal of the Court. It was held that the Judge who had passed the order, was not precluded from entertaining an application for revision presented by a counsel in relation to the same matter. The Court followed the previous decision in ILR 21 All 177.

20. In : AIR1951 All709 , it was held by Brij Mohan Lall, J., that it is open to a Judge to alter his view and modify his judgment, if necessary, before the judgment is sealed.

21. In State of Bombay v. Geoffrey Manners and Co., : AIR1951 Bom49 , it was held that, when an oral judgment is delivered by the High Court in its criminal appellate jurisdiction the order made receives its finality when it is recorded and a writ in terms of the order is issued under the seal of the Court. The recording of the order and issuing a writ in terms thereof under the seal of the Court invests that order with finality, which cannot thereafter be altered or reviewed.

22. In AIR 1944 Pat 209, it was held that, there is nothing in Section 369 or any other section. of the Cr. P. C., to bar a Court from altering a judgment, which has not been signed. The signature of the judge completes the judgment; but before the signature has been appended to it the judgment is not complete. The High Court is, therefore, competent to re-hear the appeal and to pass such judgment as is thought proper despite the pronouncement of the former judgment.

23. In Firm Gokal Chand-Jagan Nath v. Firm Nand Ram Das-Atma Ram , it was found that, a Judge after giving judgment went on leave without signing the judgment. It was held by their Lordships of the Privy Council that, the defect was a



mere irregularity not affecting the merits.

24. Mr. B.N. Katju, appearing for the State strongly relied upon *Surendra Singh v. State of Uttar Pradesh* : 1954 CriLJ475 . In that case the facts were these. The appeal was heard at Lucknow on 11-12-1952 by Kidwai, J., and Bhargava, J. Judgment was reserved. Bhargava, J., prepared a judgment on behalf of both the Judges, and signed it. The judgment was not dated by Bhargava, J. He forwarded the judgment to Kidwai, J., at Lucknow. Bhargava, J., died on 24-12-1952 before the judgment so prepared was delivered. After the death of Bhargava, J., the judgment so prepared was delivered by Kidwai, J., on 5-1-1953.

The judgment was signed and dated by Kidwai, J. It was held by their Lordships of the Supreme Court that, the judgment delivered by Kidwai, J., on 5-1-1953 was not a valid judgment, because the other member of the Bench had died before the judgment could be delivered. It will be noticed that, in *Surendra Singh's case* : 1954 CriLJ475 , the judgment was reserved by the Bench. That was not a case of a judgment delivered in open Court immediately after hearing arguments. So, the effect of a judgment delivered orally in open Court did not directly arise for consideration in *Surendra Singh's case* : 1954 CriLJ475 .

25. However, certain observations made by their Lordships in *Surendra Singh's case* : 1954 CriLJ475 , throw some light on the validity of judgments. In paragraph 10 of the judgment in *Surendra Singh's case* : 1954 CriLJ475 , their Lordships observed:

'In our opinion, a judgment within the meaning of these sections is the final decision of the 'Court intimated to the parties and to the world at large by formal 'pronouncement' or 'delivery' in open Court. It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter, but the substance of the tiling must be there; that can neither be blurred nor left to inference and conjecture, nor can it be vague. All the rest--the manner in which it is to be recorded, the way in which it is to be authenticated, and signing and the sealing, all the rules designed to secure certainty about its content and matter--can be cured; but not the hard core, namely, the formal intimation of the decision and its contents formally declared in a

judicial way in open Court .....

In paragraph 12 it was observed:

'Now, up to the moment the judgment is delivered, Judges have the right to change their mind.'

In paragraph 14 it was observed:

'As soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain ..... Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication.'

In paragraph 15 of the judgment their Lordships observed thus:

'After the judgment has been delivered, provision is made for review. One provision is that it can be freely altered or amended or even changed completely without further formality, except notice to the parties and a re-hearing on the point of change, should that be necessary, provided it has not been signed. Another is that after signature a review properly so-called would lie in civil cases but none in criminal; but the review, when it lies, is only permitted on very narrow grounds.'

This last passage indicates that, the scope for review of a judgment before signing the judgment is wider than the scope for review after the judgment has been signed. Nowhere in *Surendra Singh's case*. : 1954 CriLJ475, did their Lordships expressly lay down that it is not open to a Judge to alter a judgment after the judgment has been dictated in open Court but before he has signed the judgment.

26. Chapter XXVI, Cr. P. C., deals with judgments. Section 366, Cr. P. C., provides for judgments of trial Courts. Section 367, Cr. P. C., lays down that, every such judgment shall be dated and signed by the presiding officer in open Court at the time of pronouncing it. Section 369, Cr. P. C., lays down that, no Court, when it

has signed its judgment, shall alter or review the same, except to correct a clerical error. It is true that the provisions of Ch. XXVI of the Code do not in terms apply to the appellate judgments of High Courts. But Section 369, Cr. P. C., contains an indication that, alteration of a judgment is permissible so long as the judgment has not been signed.

27. Judgments of this Court are governed by Ch. VII of the Rules of Court. Sub-rule (1) of Rule 1 of Ch. VII lays down that, after a case has been heard, judgment may be pronounced either at once or on some future date. Although Rule 1 deals with pronouncement of judgment, there are further provisions in this Chapter dealing with the same matter. Rule 4 of Ch. VII runs thus:

'(1) When the transcript of the judgment or order prepared by the Judgment Clerk has been filed with the paper-book of the case, the Bench Reader shall submit it to the Judge or Judges who delivered it. It shall then be signed or initialled by such Judge or Judges after such corrections as may be considered necessary. Thereafter it shall be sealed with the seal of the Court by the Bench Reader'

28. It will be seen that, Sub-rule (1) of Rule 4 of Ch. VII of the Rules of Court contemplates two stages. The first stage is the signing of the judgment by the Judge. The second stage is sealing of the judgment by the Bench Reader, Affixation of the seal of the Court by the Reader is a ministerial act. But signature by the Judge is a judicial act. There are decisions of Allahabad High Court to the effect that, a judgment is not complete until it has been sealed by the seal of the Court, Greater weight ought to be attached to the signature by the Judge than to the seal to be affixed by the Bench Reader.

29. There is considerable authority in support of the view that, a Judge may alter the judgment before it is signed and sealed. We were not referred to any case, which lays down that a Judge may not alter the judgment before he has signed it. If Rules 1 and 4 of Ch. VII of the Rules of Court are read together, the position appears to be this. Under Rule 1 a judgment may be dictated in open Court. But subsequently there must be a transcript of the judgment.

That judgment has to be signed by the Judge, and has to be sealed by the Bench Reader. The judgment dictated under Rule 1 is provisional. In most cases the judgment so dictated in open Court will become final in due course. But in exceptional cases the judgment so dictated under Rule 1 may have to be altered. After dictating a judgment in open Court, a Judge may go home, read a commentary on the law of evidence, and discover that a certain confession was wrongly admitted in evidence.

Again, a counsel may point out to the Court on the following day that, the judgment previously dictated in open Court was passed on a wrong assumption. In all such cases it will be open to the Court to re-hear the parties, and reconsider the case. If the Judge finds that the judgment previously dictated was erroneous, it will be open to him to alter the judgment, and dictate a fresh judgment.

30. The matter may be looked at from another angle. The application for permission to compromise the offence may be treated as an application under Section 561-A, Cr. P. C. In *Raj Narain v. The State* : AIR1959 All315 , a Full Bench of this Court enumerated the circumstances, under which a review Of a judgment under Section 561-A, Cr. P. C., is permissible. One of the conditions recognised by the Full Bench was:

'for otherwise securing the ends of justice.'

It is true that the review sought in *Raj Narain's* case : AIR1959 All315 , arose out of a criminal revision. But Section 561-A, Cr. P. C., draws no distinction between appeals and revisions. The special powers conferred on the High Court by S, 561-A, Cr. P. C., may be utilised in appeals as well as in revisions. In *Emperor v. Kale*, ILR 45 All 143: (AIR 1923 All 473(2)), it, was held that, the High Court has no power to review its own order dismissing a criminal appeal and confirming the conviction and sentence. That was a decision given in the year 1922. Section 561-A was introduced in the Cr, P. C., by Act No. XVIII of 1923. After the introduction of Section 561-A, Cr. P. C., the decision in *Kale's* case, ILR 45 All 143: (AIR 1923 All 473(2)), can no longer be good law.

31. We express no opinion as to whether the present case is fit for review under Section 561-A, Cr. P. C. That is a matter for the discretion of the learned single Judge. We merely point out that, it is possible to look upon the application dated 6-10-1960 as an application under S, 561-A, Cr. P. C.

32. Thus we find that, on any view of the matter, the application for permission to compromise the offence does lie; in spite of the judgment delivered in open Court by the learned single Judge on 23-9-1960. Our answer to the question of law referred to us is in the affirmative.

**B. Dayal, J.**

33. The opinion of the Division Bench having been received that the application for compromise lies even after the judgment in the appeal has been pronounced in open Court but the judgment has not been signed. Now in view of the fact that I have come to the conclusion in the judgment of the aforesaid Criminal Appeal dictated on the 23rd of September, 1960 in open Court that the applicants were not guilty of the offences either under Section 303 or 397, I. P. C., I think, it is a fit case in which permission should be granted to the parties to compromise the matter. They are close neighbours and relations.

34. I, therefore, grant permission to the applicants and the complainant to compromise the offence and since they have filed an affidavit stating that they have already compromised among themselves, I direct that the appeal be allowed and the appellants be acquitted of the offences under which they have been convicted by the learned Sessions Judge, They are on bail. They need not surrender. Their bail bonds are hereby discharged.

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