

Maharaj Bux and ors. Vs. Rex

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Court : Allahabad

Decided On : Apr-25-1949

Reported in : AIR1952All433

Judge : Desai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367

Appeal No. : Criminal Revn. No. 161 of 1948

Appellant : Maharaj Bux and ors.

Respondent : Rex

Advocate for Def. : S.M. Yusuf, Adv. Holding brief of ;Asst. G.A.

Advocate for Pet/Ap. : Hyder Husain, Adv.

Disposition : Application allowed

Judgement :

ORDER

Desai, J.

1. The applicants were prosecuted alongwith Abu Turab under Sections 147 325 and 323, PenalCode. The trial Court, S. D. M. Sultanpur, convictedthe applicants and acquitted Abu Turab. Theyappealed against that decision to the

Sessions Judge of Fyzabad who refused to interfere with their conviction of sentences, so they have come up to this Court in revision.

2. The ground which forms the backbone of the revision is that the learned Sessions Judge has not written a proper judgment in appeal. This ground is well founded and is sufficient to invalidate the judgment.

3. The case for the prosecution in brief was as follows: There are two step brothers Zargham Ali Khan and Abu Turab who live in village Baharpur. There is no love lost between them. Zargham Ali Khan let out some plots to Anand Bahadur Khan who sublet them on 'betai' to Behari. On 18-3-1948, Anand Bahadur Khan and his father Jang Bahadur Khan went to receive their share in the produce from Behari. They were waylaid by the 16 applicants and Abu Turab Khan who attacked them with lathis. The defence was that Zargham Ali Khan and his men damaged Abu Turab's arhar, that Abu Turab protested and that Zargham Ali Khan assumed the aggressive and attacked him. So there was a fight between the party of Zargham Ali Khan and that of Abu Turab and the latter acted in self-defence.

4. The judgment of the learned Sessions Judge covers three and a half pages. More than three pages are devoted to a statement of the case of the prosecution and the accused and a gist of the evidence given by the prosecution witnesses. There is no discussion and no reasoning in these pages. Then follow the following paragraphs:

'I have carefully perused their evidence and find that they have fully proved the prosecution case. The defence story is altogether false. No damage done to Abu Turab's field is proved and none of the accused received even a scratch. They did not get themselves examined medically and from the numerous injuries grievous and simple, found on the bodies of the four victims, it is established beyond doubt that the aggressors were the appellants (accused) and not the victims.

Having carefully considered the evidence and the probabilities of the case, I hold that the offence has been brought home to all the appellants beyond reasonable doubt.'

And the appeal was accordingly dismissed. It will be clear that in the whole judgment there is no discussion of the evidence of the prosecution witnesses. There is some discussion of the evidence of the defence witnesses, but even that is meagre. The learned Sessions Judge had to find out whether the prosecution evidence established any case against the applicants or not. Unless some case had been established, there was no need to look into the defence evidence because the onus lies upon the prosecution to prove its case and it does not lie upon the accused to prove his innocence. It is only when the prosecution has proved its case that the onus lies upon the accused to rebut it by evidence. It was not sufficient for the learned Sessions Judge to observe that he had carefully perused the evidence of the prosecution witnesses. If he had carefully perused the evidence he should have given inherent proof of it in the judgment itself. Instead of saying that he had carefully perused the evidence it was better for him to leave it to the Superior Court to decide whether he had done so or not. It would be a mistake on the part of a Judge to think that by simply making a claim that he has carefully perused the evidence, but without giving any indication of having done so in the judgment he would prevent the superior Court from thinking that he has not done so and from setting aside his findings of fact. The Superior Court will not confirm his findings of fact simply because he has made a claim of having carefully considered the evidence. Vaunting that it has given most anxious or careful consideration to the case does not come with good grace from subordinate courts, serves no purpose and is better eschewed (sic.) by all subordinate Courts.

5. The judgment must contain the points for determination, the findings on them and the reasons for the findings; otherwise it is no judgment in law. The learned Sessions Judge should have therefore addressed himself on the points for decision in the appeal and given reasons for his decision. Where the evidence is clear and one-sided, and there is little dispute about it, it may not be necessary for a Court to deal with it in detail and it may rest content with saying that it has given due consideration to it, but the present case was certainly not such a case. Here, there were two versions put up by the two parties, there was contradictory evidence, and the evidence for prosecution called for scrutiny. Moreover the learned Sessions Judge had to deal with cases of 16 accused. He had to deal with them individually and consider what part was played by each of them. He has not dealt with them

individually at all; he had not given any thought to the question whether there is any who did not participate in the riot at all.

6. In *in re Veerdiah A. I. R. (36) 1949 Mad.22* emphasis was laid on the duty of the Court of considering the evidence against each of the accused separately in a case under Section 147, Penal Code, and giving a definite finding regarding the persons and part played by each. In *Mohammad Hussain v. Emperor A.I.R. (32) 1945 Nag. 116*) the High Court set aside the appellate judgment because it did not discuss the evidence of defence witnesses, state the points for decision and contain a detailed scrutiny of the prosecution evidence.

7. The rule that reasons must be given for the decision is nothing but an extension of the well-known principle that Justice must not only be done but also be seen to be done. If a Judge after hearing a case passes an order without giving reasons, it may be the correct order and he may have done full justice in the case but it cannot be said that he is seen to have done justice. In order to be seen to have done justice he must have given the reasons for his decision so that any person can see how he arrived at the decision. He must satisfy the parties to the case that he has applied his mind to the facts and the arguments advanced before coming to the decision. If he does not give the reasons the party against whom the decision goes cannot be certain that he applied his mind to the arguments advanced by him and the facts which support his case. In other words though the justice may have been done, it has not been seen to be done.

8. The giving of reasons for a decision is so important that it was suggested by the Committee on Minister's powers (United Kingdom) that the communication by a tribunal of the reasons of its decision to the parties concerned should be treated as a principle of natural justice. If Allen disputes whether it is a rule of natural justice that parties should always be given reasons for decisions (*Vide Law and Order* by A. C. K. Allen, 1st Edn., pp. 72-73) or if Paton considers that this principle cannot be regarded as a rule of law (*vide Paton's Jurisprudence*, 1st Edn., p. 277), it does not in any way minimize its importance. A Civil servant giving evidence before the Donoughmore Committee in England strongly urged that the giving of reasons should be made voluntary. This provoked the following questions from two

of the members of the Committee:

Professor Laski :

Would you not agree that to give a decision always without reasons is the very definition of autocracy, and that the giving of decisions without giving the reasons, upon which they are based is as near autocracy as you can get?

Miss Ellen Wilkinson :

Would not the Shah of Persia in his mediaeval days strongly approved of the view you are putting forward now?

9. It is said that the civil servant had no answer to these pointed questions. Allen describing this interview writes on p. 167 168 of his book 'Law and Order':

'It is always an unhealthy thing when a Judge or quasi-Judge is reluctant to explain why he has arrived at this decision and for my part, I should apply that principle to petty Sessions, where I believe that the popular maxim 'You're sure to be wrong if you give your reasons' is seldom in the best interest of justice.'

10. A superior Court is entitled to assistance of the inferior Court in coming to a decision. If the inferior Court has given no grounds for its decision, it gives absolutely no assistance to the Superior Court.

11. The giving of reasons for its decision by a Court is of particular importance when there is no further appeal on facts. In the present case the judgment of the learned Sessions Judge is final. In revision this Court will not interfere with findings of fact save in exceptional cases which may be ignored. But when the lower appellate Court has not given reasons for its findings of fact it is not possible for this Court to adhere to this rule. It was suggested that I should treat this revision as an appeal and go into the facts myself. 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 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 amount to their being deprived of their chance of acquittal at the hands of the lower appellate Court. I must, therefore, remand the case for rehearing.

12. I have dwelt at length on the necessity of subordinate Courts giving reasons for their decision because not only is the matter important but also it frequently happens that lower appellate Courts instead of giving reasons for their decision simply content themselves with making a claim that they have given due consideration to the evidence and the pleas urged before them by the appellants, as in the present case. Sometimes a Subordinate Court fills pages of its judgment with extracts from the evidence of the witnesses one by one without any discussion of the evidence or with very little of it. This practice also is to be deprecated because what a judgment should contain is the decision together with the reasons thereof and not extracts from the evidence. The evidence is on the record and it is quite unnecessary for a Court to reproduce extracts from it in the judgment.

13. I allow this application, set aside the judgment of the lower appellate Court and remand the appeal to the Sessions Judge, Lucknow, for rehearing and disposal. The applicants will remain on bail.

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