

State Vs. Tula Ram and ors.

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Court : Allahabad

Decided On : Mar-09-1960

Reported in : AIR1960All585; 1960CriLJ1276

Judge : D.N. Roy and ;D.P. Uniyal, JJ.

Acts : [Constitution of India](#) - Article 134(1); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 417

Appeal No. : Supreme Court Criminal Misc. Case No. 50 of 1960 in Criminal Appeal No. 2069 of 1959

Appellant : State

Respondent : Tula Ram and ors.

Advocate for Def. : L.S. Saran, Adv.

Advocate for Pet/Ap. : B.N. Katju, Asst. Govt. Adv. and ;K.L. Misra, Adv. General

Disposition : Petition dismissed

Judgement :

ORDER

1. This is an application by the State of U. P. under Article 134(1)(c) of the [Constitution of India](#) for a certificate of fitness for appeal to the Supreme Court. It arises out of Criminal Appeal No. 2069 of 1959 of this Court connected with which

was Referred No. 133 of 1959, decided by us on 8-1-1960. The appeal was by the opposite-parties against their conviction and sentence for rioting under Section 147 I. P. C. and for the murder of one Babu Deepchand a practising Mukhtar of Sodabad in the district of Mathura under Section 302 with the aid of Section 149/34, I. P. C. The reference was made by the Sessions Judge for the confirmation of the death sentence of Tula Ram and Bhagwan.

2. The circumstances relating to the murder, and the evidence bearing upon the alleged crime of the accused, were dealt with by us in our judgment of 8-1-1960 and need no re-statement for the disposal of this application. That Babu Deepchand had been murdered admitted of no doubt. The question was whether the murder was committed by the opposite-parties Tula Ram and Bhagwan Singh, Chandravir Singh, Shyamvir Singh, Yogvir Singh and Rajpal. The learned Sessions Judge relied upon the evidence of three witnesses Brij Lal, Saheb Singh and Bahori Teli in coming to the conclusion that all these six accused were the perpetrators of the crime.

These three witnesses implicated the six accused inclusive of Yogvir Singh equally in the crime and they assigned particular role having been played by them. The accused denied their guilt and pleaded that they had been falsely implicated. Yogvir Singh raised a plea of alibi, and he produced a volume of evidence in support of that plea. The learned Sessions Judge rejected the evidence of alibi. When we heard the appeal we went into the evidence with care with the assistance of learned counsel for the parties and we came to the conclusion that the evidence of alibi was wrongly rejected and that that evidence was so complete and reliable that the participation of Yogvir Singh in the crime was a matter of impossibility. We also came to the conclusion that the eye-witnesses were not witnesses of truth and we observed :

'In a case of this nature where Brij Lal, Saheb Singh and Bahori Teli witnesses are demonstrably false witnesses with regard to Yogvir Singh we would not be justified in accepting their evidence with proper measure of confidence with respect to the others. Undoubtedly there is nothing, to distinguish their evidence in the case of Yogvir Singh from the case of the others. It would be extremely unsafe to rely

upon their evidence.'

3. In that view of the matter we acquitted all the accused.

4. A preliminary objection has been taken before us by the other side, namely, that Article 134 of the Constitution cannot be availed of by the State; and reliance has been placed upon a decision of the Supreme Court in *State Govt. M. P. v. Ram-krishna*, AIR 1954 SC 20. In that case it was observed that Article 134 does not provide for an appeal from a judgment, final order or sentence in a criminal proceeding of a High Court, if the High Court has on appeal reversed an order of conviction of an accused person and has ordered his acquittal, and that, in other words, there is no provision in the Constitution corresponding to Section 417, Cr. P. C. and such an order is final, subject, however, to the over-riding powers vested in the Supreme Court by Article 136 of the Constitution.

4a. That decision was subsequently noticed by the Supreme Court in *State of Madras v. Gurviah Naidu and Co., Ltd.*, (S) AIR 1956 SC 158. In that case it was contended before the Supreme Court that the appeal was not maintainable as the High Court had no jurisdiction to grant a certificate of fitness for appeal against acquittal under Article 134 in view of the earlier decision of the Supreme Court referred to above. The Supreme Court, in effect, doubted the earlier decision and observed that the earlier decision was a decision by a Bench of three Judges and not that of a Constitution Bench, that there the appeal was by special leave, and that the observation in the earlier decision that there was no provision in the Constitution corresponding to Section 417, Cr. P. C. was obviously made to emphasise that the Supreme Court should not in an appeal by special leave, interfere with an order of acquittal passed by the High Court merely for correcting errors of facts or law.

The Supreme Court preferred not to express any opinion as a Constitution Bench as to the validity of the certificate given by the High Court in that case, and observed that even if it had assumed, without deciding, that the certificate was wrongly given, the Supreme Court would be willing, if it were necessary, to regularise the appeal by giving special leave to appeal.

5. The decision in (S) AIR 1956 SC 158, came to be noticed by the Supreme Court in State of Madras v. Vaidyanatha Iyer, AIR 1958 SC 61, where it was observed that the decision in (S) AIR 1956 SC 158, referred to above, negated the contention that under Article 136 interference by the Supreme Court with findings of High Courts in judgments of acquittal is not intended and that that decision merely emphasised that the Supreme Court should not in appeal by special leave interfere with the order of acquittal passed by the High Court merely for correcting errors of fact or law.

6. That being the existing position so far as the Supreme Court is concerned in relation to the scope of Article 134(1)(c) of the Constitution as applicable to an appellate order of acquittal by a High Court, we have for ourselves examined the scope of that Article and we have also examined Section 417, Cr. P. C. Article 134 as far as is relevant for our purposes provides as follows :

'134 (1) An appeal shall lie to the Supreme Court from any judgment, final order or sentence in a criminal proceeding of a High Court in the territory of India if the High Court

(a)

(b)

(c) certifies that the case is a fit one for appeal to the Supreme Court : Provided that an appeal under Sub-clause (c) shall lie subject to such provisions as may be made in that behalf under cl. (1) of Article 143 and to such conditions as the High Court may establish or require'.

7. Upon a plain reading of these provisions it is clear that even after the judgment of acquittal passed in appeal by the High Court, the High Court may, in a fit case where a substantial question, of law is involved, grant a certificate to the State under Article 134(1)(c). There is nothing in these provisions which forbids the High Court from granting the certificate of fitness in a case where a substantial question of law has been decided by it and where the question is such that an authoritative decision by the Supreme Court over it becomes necessary either because of

conflict of existing decisions by different courts or because of any other factor which the High Court may deem as substantial or of great general importance.

The proviso to Article 134(1)(c) of the Constitution does not regulate the grant of a certificate by High Court except that it envisages that while granting a certificate the High Court may lay down certain conditions; and when an appeal is filed before the Supreme Court, the appeal shall be subject to the conditions as the High Court may establish or require.

8. Section 417 Cr. P. C. is as follows :

'417. Appeal in case of acquittal. -- (1) Subject to the provisions of Sub-section (5), the State Government may, in any case, direct the Public Prosecutor to present appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case in which the offence has been investigated by the Delhi Special Police Establishment constituted under the Delhi Special Police Establishment Act, 1946 (XXV of 1946), the Central Government may also direct the Public Prosecutor to present an appeal to the High Court from the order of acquittal.

(3) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(4) No application under Sub-section (3) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order of acquittal.

(5) If, in any case, the application, under Sub-section (3) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under Sub-section (1).'

9. The section provides for an appeal to the High Court from original or appellate order of acquittal passed by any court other than a High Court, and it lays down the conditions where such an appeal can be made. Section 417 does not at all apply to the case of an appeal to the Supreme Court from an original or an appellate order of acquittal passed by the High Court. Clearly, therefore, considerations relevant for Section 417 Cr. P. C. have got no applicability to the considerations relevant for Article 134(1)(c) of the Constitution.

It cannot therefore be said that because Article 134(1)(c) of the Constitution does not contain any provisions corresponding to Section 417, Cr. P. C., Article 134(1)(c) does not empower the High Court to grant the necessary certificate from an appellate order of acquittal passed by the High Court even where the case is considered a fit one for a certificate. We are therefore of the opinion that AIR 1954 SC 20 does not lay down that the High Court is not empowered to grant a certificate under Article 134(1)(c) of the Constitution from an appellate order of acquittal passed by it, in a case where the High Court thinks that the matter is fit enough to go to the Supreme Court. The preliminary objection must therefore be overruled.

10. To support the present application four grounds have been stated in it. The first ground challenges our finding that Yogvir Singh was on the date of occurrence at Udaipur and not at the place of occurrence and that he could not therefore have participated in the crime. This ground has not, however, been pressed by the learned Advocate General. Indeed, he conceded that the evidence on the plea of alibi has rightly been accepted by this Court. On the other points raised in the petition the learned Advocate General, however, made a threefold submission :

(a) That the success of Yogvir Singh in establishing his plea of alibi should have resulted in his acquittal alone and not in the acquittal of other accused persons;

(b) the eye-witnesses cannot be said to have departed from the path of truth and it is quite possible that when they deposed about the participation of Yogvir Singh in this crime, they have made genuine mistake about his identity; and

(c) the maxim falsus in uno, falsus in omnibus is not applicable to India and this raises a substantial question of law for consideration by the Supreme Court.

11. The maxim falsus in uno, falsus in omnibus has never been held to apply to India; and it is not a question which has for the first time to go before the Supreme Court for re-affirmation.

12. The murder of Babu Deepchand was alleged by the eye-witnesses to have taken place just before sunset. The eye-witnesses further stated that they had known all the six accused from before. They assigned particular role having been played by them. For instance, Brij Lal stated :

'The six accused present in court and two others whose names I do not know were holding Babu Deepchand to the ground'.

12a. He also stated : 'Yogvir accused was present and participated in the murder'.

13. To similar effect had been the statement of Saheb Singh and Bahori Teli. Bahori Teli had stated :

'I saw the six accused present in court and two others whom I did not know. One unidentified person had a cycle and the remaining seven dragged Deepchand deceased to the arhar field of occurrence. They threw him down on the ground. Tula Ram was holding him down by his hand while two unidentified persons and Bajpal were holding the deceased down by his feet and the remaining four accused were holding him down by his head and hands'.

13a. Saheb Singh had stated :

'We rushed shouting. On our arrival we saw that at the scene of occurrence in the arhar fields the six accused present in court and two others whom I do not know were holding Babu Deepchand to the ground. Tula Ram shouted to finish Deepchand deceased soon. Then Bhagwan Singh accused gave a gandas blow on the neck of the deceased,'

13b. Further on he stated :

'The backs of the assailants were not on my side. The six accused present in court had not covered their faces. None of the assailants had covered their faces.'

14. In view of the statements reproduced above, and in view of the plea of alibi established by Yogvir Singh, it cannot be urged that Yogvir Singh's name had been taken by the witnesses on account of any mistaken identity and that the witnesses did not depart at all from the path of truth.

15. In *Vadivelu Thevar v. State of Madras*, (S) AIR 1957 SC 614, their Lordships of the Supreme Court classified witnesses into three categories, namely, (1) wholly reliable, (2) wholly unreliable, and (3) neither wholly reliable nor wholly unreliable. Under the first category of proof, the court should not have any difficulty in coming to its conclusion either way. It may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interest, incompetence or subornation.

Again, there is no difficulty in the second category of proof and the statement of a witness wholly unreliable must be rejected for all purposes. It is in the third category of proof, namely, where the witness is neither wholly reliable nor wholly unreliable that the difficulty arises. And in such cases the court seeks corroboration from some independent evidence or from circumstances. As has been observed by the Supreme Court in this decision, as a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

Where the nature of the testimony of a witness who is not wholly reliable requires corroboration courts, as a rule of prudence, insist on corroboration from independent evidence. There can be no corroboration of a false or doubtful witness by another witness of the same character. And where independent corroboration was lacking, as in the present case, the State cannot urge that the three eye-witnesses although not worthy of belief in the case of Yogvir Singh whose alibi was proved to the hilt should be believed in the case of the other five accused despite the witnesses having implicated all the six accused equally in the crime.

We have indicated our reasons at some length in order to justify our conclusion that it is not at all a fit case where a certificate under Article 134(1)(c) of the Constitution should be granted. The ease depended only upon determination of facts in the light of evidence produced. It did not involve any question of law, much less any substantial question or of general importance. Consequently we reject this petition.

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