

Karim Ullah Vs. Phool Chand and ors.

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Court : Allahabad

Decided On : Dec-15-1971

Reported in : 1972CriLJ930

Judge : Yashoda Nandan and ;P.N. Bakshi, JJ.

Appellant : Karim Ullah

Respondent : Phool Chand and ors.

Judgement :

P.N. Bakshi, J.

1. The accused Phool Chand was convicted by the first class Magistrate. Bulandshahr under Section 325 I P.C. by his judgment dated August 27. 1968. The Magistrate directed him to be released on probation of good conduct for a period of one year subject to his furnishing a personal bond of Rs. 500/- with two sureties of like amount. The accused filed an appeal which was allowed by the Civil and Sessions Judge Bulandshahr by his judgment dated 4th September. 1968. The Sessions Judge gave the accused the benefit of doubt and acquitted him of the charge under Section 325 I. P.C. Karim Ullah has filed the present appeal against the acquittal of the accused under Section 417 Cr. P.C.

2. The prosecution case is that on 20th June, 1967 at about 8-45 A. M. Karim Ullah and Nawab Ali were working as carpenters in the yard of the Railway Station

Dadri. It is said that Phool Chand and his Munib Bassi reached there and asked Karim Ullah to cut the logs of the wood belonging to the accused. Karim Ullah is said to have told Phool Chand that he would only cut the loss of wood belonging to him after finishing the work which he had in hand. At this Phool Chand seems to have lost his temper and attacked Karim Ullah with a piece of wood. Nawab Ali attempted to save Karim Ullah but he was intercepted by Bassi. The witnesses subsequently reached the spot and Karim Ullah was saved. Nawab Ali took Karim Ullah to Police Station Dadri and lodged a report there at 9-15 A. M. Thereafter the injuries of Karim Ullah were examined at Dadri Hospital at 9-30 A. M. The injury report disclosed that he had in all four injuries including a fracture of the right parietal bone of the skull. After being discharged from the Hospital Karim Ullah filed a complaint under Section 307 I. P.C. on 28th June. 1967 against Phool Chand and Bassi.

3. The accused pleaded not equity. Their defence was that they never beat Karim Ullah and that they have been falsely implicated in the case at the instance of Lala Chiranii Lal.

4. The submission made by the counsel on behalf of the complainant is that the statement of Karim Ullah which is supported by two other witnesses. Nawab Ali and Richchu and also by the medical evidence on the record was sufficient to establish the guilt of the accused and the Civil and Sessions Judge. Bulandshahr has fallen in error in acquitting him. Learned counsel for Phool Chand accused argues that as the prosecution has failed to prove the motive for the attack. the very basis on which the Prosecution relies is destroyed and as such the prosecution case is unreliable and unworthy of any credit and the accused have been rightly given the benefit of doubt and acquitted.

5. According to the case of the prosecution Karim Ullah and Nawab Ali carpenters were cutting the wood belonging to Lala Chiranii Lal in the yard of the Railway Station Dadri. Phool Chand reached there at that time along with his Muni Bassi and asked Karim Ullah to cut his logs of wood. Karim Ullah refused and said that he would do so only after finishing the work which he was already doing. The crucial point for determination therefore is whether there were any logs of wood

belonging to Phool Chand at the Railwayyard which Phool Chand. wanted to set hacked by Karim Ullah and Nawab Ali. In this connection the statement of Badri Prasad. who has been examined as D. W. 3 may be considered Badri Prasad had stated that in June 1967 he was Station Master at Dadri Railway Station. On 20th June 1967 he said that no wagon carrying. the wood of Panna Lal reached the Station. The wagon of Panna Lal reached on 18-6-1967 and its delivery was taken on 19-6-1967. The said statement of the Station Master was made on the basis of the Unloading and Delivery Register of which a true copy was filed by the witness showing the entries from 18th June. 1967 to 20th June. 1967. Badri Prasad had further stated that the wagon which had reached on the 18th was delivered the same morning at 9 A. M. and by 2 P. M. The complete wagon had been unloaded. On the 19th the unloaded material was all removed from the station. He has further clarified the position by saying that the 19th the material had been taken out of the railway boundary from the railway station. According to the statement of Badri Prasad no demurrage was paid on the consignment which reached Dadri on 18th June. 1967. The Station Master has clearly stated that after one day demurrage is payable on consignment. Had the logs remained in the yard upto 20th June. 1967 the appellant was bound to pay the demurrage. But this is not the case here. Nothing has been brought out in the cross-examination of this witness which could discredit his testimony. Sri Badri Prasad is a responsible Station Officer of Dadri Station and he has given his statement on the basis of the Railway records which he had brought with him. It has come in the cross-examination of Karim Ullah P. W. 1 that Panna Lal was the uncle of Phool Chand and their business was carried on under the name and style of Sham Lal Panna Lal. We. therefore, accept the testimony of Badri Prasad and hold that Panna Lal had no logs of wood in the yard of the Railway Station Dadri on 20th June. 1967 and as such there could be no occasion for the accused to ask Karim Ullah to cut his logs of wood.

6. So far as the prosecution evidence is concerned, as mentioned above. it consists of the statement of Karim Ullah P. W. 1, Nawab Ali P. W. 2 a co-worker with Karim Ullah. Richchu P. W. 3 a labourer and Rahim Ullah P. W. 5 another carpenter. The learned Sessions judge has considered the testimony of all these witnesses and he has come to the conclusion that all the aforesaid prosecution

witnesses belongs to one party. Rahim Ullah has stated that he was present at the time of the occurrence. As mentioned above Rahim Ullah is also a carpenter. The Sessions Judge was of the view that no good reason has been given as to why Phool Chand did not engage Rahim Ullah for getting his work done and insisted on beating Karim Ullah. So far as Karim Ullah and Nawab Ali P. W. 2 were concerned the Sessions Judge took the view that both of them were carpenters who were working for Lala Chirani Lal and Chirani Lal was inimical to the accused Phool Chand. As such they could both be inclined to make a false statement against Phool Chand. The testimony of Richchu P. W. 3 was rejected by the Sessions Judge on the ground that he was a mere labourer and not a man of status. The latter ground may not be sufficient for the rejection of Richchu's testimony but we have to bear in mind that in an appeal against acquittal the judgment of the court below cannot be set aside unless there are substantial and compelling reasons which warrant interference. On the appraisal of the evidence a different view maybe taken by court sitting in appeal but that by itself is not a sufficient ground for setting aside an order of acquittal. The Sessions Judge has given the benefit of doubt to the accused and has acquitted him. By his acquittal the presumption of innocence in favour of the accused is further strengthened. In this view of the case we do not feel inclined to interfere with the order of acquittal Passed by the Civil and Sessions Judge. Bulandshahr.

7. It has been vehemently argued before us by learned Counsel for the complainant that no notice was given to the complainant in the appeal decided by the Civil and Sessions Judge. Bulandshahr so that he could put forward his case before the lower appellate court. It has been submitted that in order to do justice between the parties it was necessary that the complainant's counsel should also have been heard. Learned counsel urged that Phool Chand complainant was a party before the Magistrate and he is also a party in the High Court in the appeal against the acquittal filed under Section 417 (3) Criminal P.C. It was urged that the complainant must also be deemed to be a necessary party even at the stage of the lower appellate court. and as such notice was necessary. It is further submitted that the failure to give notice of the appeal offends against the principles of natural justice. The counsel for the State, on the other hand, argues that merely because the complainant is a party at the trial stage and also in the High Court in appeal

filed against acquittal does not make him a necessary party before the lower appellate court. It is submitted that the right of the State Government to file an appeal under Section 417 (1) Cr. P.C. is absolute. whereas the right of the complainant to file an appeal against acquittal is subject to leave being granted by the Court under Section 417 (3) Cr. P.C. It is further submitted that Section 422 Cr. P.C. does not require notice of appeal to be given to the complainant. All that is required under the statute is that the appellate court shall cause notice to be given to the appellant or his pleader or to such officer as the State Government may appoint in this behalf of the time and place at which such appeal shall be heard. The argument is that the State has sole control over all proceedings connected with a crime and even though a private individual maybe the victim of a crime and may have the right to set the machinery of law in motion the paramount responsibility for criminal prosecution of the accused is that of the State.

8. In order to decide the question raised by he counsel for the parties it is necessary to analyse the various provisions of Part VII of the Criminal Procedure Code which deals with appeals references and revisions. Chapter XXXI Sections 404 to 431 of the Code of Criminal Procedure deal with appeals and other matters connected thereto. Section 404 expressly provides:

No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by anyother law for the time being in force.

This section makes it quite clear that there is no inherent right in a party to file an appeal against an order which maybe passed against him. Such a right can only be exercised if it comes within the purview of Section 404 and other subsequent sections of this Chapter which specifically provide for filing of appeals. Right of appeal therefore is a creation of statute. That being s we shall have to scan the provisions of this chapter in order to find out if the statute also permits a right of hearing. In other words right of appeal under Chapter XXXI and the right of being heard in such appeals are both creations of statute.

9. Sections 405 to 415-A Cr. P.C. deal with the provisions for filing appeals against the conviction of the accused. It lays down the conditions when an appeal can be filed. and when it cannot be filed against the orders passed under the Code

convicting the accused. Section 417 Cr. P.C. which is the relevant section and has to be considered in deciding the controversy between the parties, maybe quoted thus:

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 an 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 (XXXV 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).

This section has been substituted by the Amendment Act of 1955. This amendment has altered the former law radically. It provides appeals by (1) Government whether State or Central and (2) a complainant in a case instituted upon a complaint.

The latter right is subject to special leave being granted under Sub-section (3) mentioned above. It is obvious from a perusal of the aforesaid section that whereas the right of the Government to file an appeal is absolute and unrestricted

the right of the complainant to file the appeal is subject to special leave being granted by the High Court. Such leave may or may not be granted and if it is refused the complainant has no right to come up in appeal to the High Court. An ancillary question which may arise in this connection is whether from an order of acquittal both the State Government as well as the complainant in a case instituted upon a complaint can simultaneously file appeals in the High Court. To our mind the answer is in the affirmative. The only difference is that in one case the Public Prosecutor can present the appeal to the High Court as of right and in the other case instituted upon a complaint the appeal is subject to special leave being granted by the High Court. If the appeal filed by the State Government is pending the Court may not grant the special leave as that would be unnecessary for the whole appeal has already been pending and would be decided by this Court. On the other hand, if the special leave is granted under Sub-section (3) while the State appeal under Sub-section (1) is still pending, the proper course would be to connect them both, so that they may be considered together.

10. The above discussion of Sections 404 and 417 Cr. P.C. makes it quite clear that the right of appeal is a creation of statute while in the case of a State this right is absolute and in the case of the private complainant this right is a qualified one as mentioned above. Therefore, the right of appeal conferred on the State under Section 417 (1) and that conferred on the complainant under Section 417 (3) Criminal P.C. cannot be put at par.

11. The next Question for consideration is whether in a criminal prosecution the complainant is a necessary party to the proceedings. It cannot be doubted that prosecution of an accused for a criminal offence is the function of the State, whether the cognizance of the offence has been taken and criminal proceedings initiated on the complaint of a private individual or on the police report, makes no difference. A reference may here be made to the supplementary provisions of Part IX. Chapter XXXVIII of the Criminal Procedure Code. Under Section 492 Cr. P.C. the Central Government or the State Government is authorised to appoint, generally, or in any case, for a specified case in any local area one or more officers to be called Public Prosecutors. Under Section 493 a duty is cast on the Public Prosecutor to appear and plead before the Court in any case of which he

has charge, whether an inquiry, trial or appeal and if any private person instructs a pleader to prosecute in any court any person in any such case, the Public Prosecutor shall conduct the prosecution and the pleader so instructed shall act therein under his direction. In this connection it is necessary also to refer to two other sections of the Criminal Procedure Code. Under Section 494 Cr. P. C any Public Prosecutor may with the consent of the Court, in cases tried by any before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried: and upon such withdrawal (a) If it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences; (b) if it is made after a charge has been framed or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences. This section makes it clear that it is the Public Prosecutor alone who is entitled to apply for the withdrawal of the prosecution either before or after framing of the charge.

Under Section 495 Cr. P.C. any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the State Government in this behalf but no person other than the Advocate General, Standing Counsel, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Central Government or the State Government in this behalf shall be entitled to do so without such permission. Sub-section (2) of Section 495 Cr. P.C. runs to the effect 'Any such officer shall have the like power of withdrawing from the prosecution as is provided by Section 494, and the provisions of that section shall apply to any withdrawal by such officer.' Sub-section (3) of Section 495 Cr. P.C. mentions that any person conducting the prosecution may do so personally or by a pleader. A perusal of the entire Section 495 Cr. P. C makes it absolutely clear that it is only in special circumstances that the prosecution of the case can be conducted by a person other than the Advocate General, Standing Counsel, Government Solicitor, etc. and such a person maybe a pleader and permission has to be obtained from the Magistrate concerned. The cumulative effect of these aforesaid sections of the Criminal Procedure Code is that it is the Public Prosecutor and not the private counsel on whom the duty has been cast under the

statute to conduct a case under inquiry trial or appeal. Section 418 Cr. P.C. gives a right of appeal to the accused persons except when a trial is by a jury. the accused is entitled to appeal on a matter of fact as well as on a matter of law.

The petition of appeal is presented under Section 419 Cr. P.C. Section 420 Cr. P.C. permits an accused to present an appeal from jail to the proper appellate authority. The appellate court has been authorised under Section 421 Cr. P.C. on receiving the petition and copy under Sections 419 and 420 Cr. P. C to peruse the same and if it considers that there are no sufficient ground for inter ferine to dismiss the appeal summarily.

The proviso to the above Section 421 states:

Provided that no appeal presented under Section 419 shall be dismissed unless the appellant or his pleader has had a reasonable opportunity of being heard in support of the same.

Section 422 Cr. P.C. which deals with the notice of appeal runs thus:

If the Appellate Court does not dismiss the appeal summarily. it shall cause notice to be given to the appellant or his pleader, and to such officer as the State Government may appoint in this behalf of the time and place at which such appeal will be heard and shall on the application of such officer furnish him with a copy of the grounds of appeal:

and. in cases of appeals under...Section 417 the Appellate Court shall cause a like notice to be given to the accused.

A perusal of Sections 418 to 422 Cr. P.C. mentioned above makes it absolutely clear that in an appeal from conviction notice of hearing of the appeal is to be given only to the counsel for the accused-appellant and to such officer (Public Prosecutor) as the State Government may appoint in this behalf. There is nothing in these Sections to indicate that the complainant or his pleader should also be served with a notice so that he can plead his case before the appellate court. The reasons for this is obvious. As mentioned above. it is the State which is the Public Prosecutor. Though in the initial stage a case may be initiated on the complaint of

a private party but once a conviction has been recorded it is State acting through the Public Prosecutor who has to conduct the appeal and to see that the criminal is duly punished according to law. As such it is not possible to hold that in an appeal after the conviction of the accused the complainant is a necessary party to the proceedings. Section 417 (3) Cr. P.C. no doubt gives a qualified right to the private complainant to present an appeal before the High Court. It is only after special leave to appeal is granted by High Court that the complainant is permitted to present an appeal in Court. Therefore, for the limited purpose of an appeal against acquittal the complainant becomes a necessary party under Section 417 (3) Cr. P.C. and he is. therefore entitled to a notice of hearing. But that limited right granted under Section 417(5) can by a no means be stretched to mean that the complainant would also be deemed to be a necessary party in an appeal against conviction under Section 422 Cr. P.C.

12. Our conclusion. therefore. is that in an appeal against conviction the complainant is not a necessary party and law does not require that before such an appeal is heard notice should be issued to the complainant. When law makes no provision for issue of the notice to the complainant under Section 422 Cr. P.C. it cannot be said that because a qualified right is given to the complainant under Section 417 (3) Cr. P.C. it can be impliedly held that the complainant has a right to be heard at the appellate stage. As already held above right of appeal is a creation of statute. To our mind there can be no violation of the principles of natural justice on the ground that the complainant is not served with the notice for hearing of the appeal under Section 422 Cr. P.C. In this view of the matter we do not find any substance in the submission made by the counsel for the complainant in the present appeal.

13. The result therefore, is that this appeal is dismissed and the order of acquittal passed by the Civil and Sessions Judge Bulandshahr is upheld.