

Laxminarain Vs. State and Ramesh Etc.

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Court : Rajasthan

Decided On : Nov-28-2000

Reported in : 2001(1)WLC508; 2001(1)WLN665

Judge : Arun Madan and; Mohd. Yamin, JJ.

Acts : [Arms Act, 1959](#) - Sections 3, 25 and 27; [Indian Penal Code \(IPC\), 1860](#) - Sections 302 and 323; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : D.B. Cr. Revision Petition No. 747 of 1999

Appellant : Laxminarain

Respondent : State and Ramesh Etc.

Advocate for Def. : Rajendra Yadav, Public Prosecutor

Advocate for Pet/Ap. : Biri Singh, Adv.

Judgement :
ORDER

Madan, J.

1. The complainant has preferred this revision petition assailing the judgment whereby the learned Additional Sessions Judge, Jhalawar acquitted Ramesh Chand and Gopal alias Ramgopal (respondent No. 2 & 3) of the offences under

Sections 302, 323 IPC, 3/25 & 3/27 of the Arms Act.

(2). FIR No. 189/97 was registered at Police Station Aktera (Jhalawar) on the basis of Parcha Bayan of complainant Laxminarain recorded at Purana Hospital Aklera on 22.6.97, according to which, at 11 O'clock in the night of 22.6.97 when he and his elder brother Babulal were talking about engine goods while sitting on the cart in the field of Nemichand Mehar in the village, one Babulal was hurling abuses in a state of intoxication, to which his uncle Gopal asked Babulal not to abuse in the presence of ladies living nearby whereupon scuffle ensued between Babulal, Mohan and Gopal, to which the complainant tried to intervene. Meanwhile Ramesh also rushed there and started inflicting blows with 'sal' on the mouth thereby Gopal fell down. Thereafter Ramesh went back to his house but returned by taking double barrel gun in his hand and fired pointing towards the temporal region of Mohan (younger brother of the complainant), who fell down and later on succumbed to the injuries in the hospital.

(3). After usual investigation, police submitted charge sheet against respondent No. 1 & 2 (accused) and they were charged with offences under Sections 302, 323 IPC, 3/25 & 3/27 of the Arms Act, to which they pleaded not guilty and claimed trial. The prosecution produced as many as 17 witnesses citing Kishanlal, Mohan Jagannath, Shetan Singh and Bharat Singh as eye witnesses in support of its case. The accused respondents were examined under Section 313 Cr. P.C. and they produced certain documents in their evidence. After hearing the parties, the learned trial court, under the impugned judgment acquitted both the accused respondents of all the offences charged as indicated above. Hence this revision petition.

(4). We have heard learned counsel for the complainant and the learned Public Prosecutor. One and the only contention urged by the learned counsel for the complainant is that despite there being admitted case of free fight, the respondents (accused) have neither been held guilty of the impugned offences nor made responsible for their individual act proved in the prosecution evidence as to the event of Ramesh having gone to his house, returned back duly armed with double barrel gun and then having fired gun shot at the temporal region of the

deceased.

(5). Having considered the contention of the learned counsel for the complainant so also the findings recorded in the impugned judgment of acquittal, we are of the view that no doubt, it is a case of free fight in which members of both parties viz. complainant as well as accused are purported to have participated in the occurrence but as is well settled law, in a case of free fight where no specific role or individual act has been assigned by the prosecution attributing to the accused, all the participants cannot be held responsible and at best they could be held guilty of their individual role and act, if proved by the prosecution by reliable evidence on record. In our considered view, it is a case of free fight where the occurrence had taken place without any premeditation muchless common intention between the parties and the circumstances are such, which do not suggest complicity of any of the accused in the occurrence, inasmuch as the prosecution has completely failed to establish beyond reasonable doubt the complete chain of circumstances connecting the accused with the crime. Moreover, as per the evidence discussed by the trial Court in its judgment under challenge herein, the prosecution has adduced the evidence of Bherulal S/o Kalu (PW 2), Ramlal (PW 3), Laxminarain (PW 4), Babulal (PW 5) and another Bherulal (PW 6) - all of whom being close relatives of Mohan (deceased) are interested witnesses inasmuch as on closure scrutiny of their evidence it stands established beyond doubt that they have made not only contradictory but also inconsistent statements which did not connect the accused with the alleged crime nor proved their individual role and act in the impugned occurrence on the basis of the inconsistent prosecution evidence. In our considered view, the trial Court has rightly concluded that the prosecution has failed to link the accused with the gun shot injury which had proved fatal on the person of the deceased, as there is no evidence of ballistic expert as to the test firing of the recovered gun, so as to establish, whether the gun was in a position of being fired, and that apart there is no evidence as to the recovery of the empty cartridges if fired from the recovered gun. Thus, the recovered gun has not at all been connected with the occurrence, because the prosecution has even failed to establish the recovery of gun at the instance of the accused. Further, the prosecution has failed to explain the injuries found on the person of the accused on their medical examination as to how and in what circumstances those injuries

were sustained in the impugned occurrence despite their being a case of free fight.

(6). In this view of the matter, we are of the opinion that the finding arrived at by the trial Court acquitting the accused is not illegal or perverse because such finding of acquittal is based on due appreciation of the evidence on record and the well canons of criminal jurisprudence. Once the trial Court found serious discrepancies and glaring inconsistencies on material particulars between the versions of the eye witnesses so also other witnesses besides medical evidence and further the trial Court had considered it unsafe to rely upon such discrepant & inconsistent testimony of the eye witnesses so also other prosecution witnesses, we are of the view that the trial Court has rightly held that the prosecution had failed to prove its case beyond reasonable doubt. The revisional powers of this Court is much more restricted in its scope, because as laid down in *Banshilal vs. Laxmah Singh* (1) by the Apex Court, on an independent scrutiny and appreciation of the evidence, this Court might not be inclined to agree with the findings of acquittal arrived at by the trial Court on its appreciation of evidence, but that by itself would not furnish any justification for this Court not only even in an appeal but also in revision for interfering with the order of acquittal.

(7). Hence, we are not prone to transgress the limits of revisional jurisdiction to reverse the impugned acquittal because we do not find any illegality or perversity in the impugned finding of fact arrived at by the trial Court in the instant case and that apart even in an appeal this Court, while exercising its appellate power should not have interfered with an acquittal merely because different view is possible. It is only in glaring cases of injustice resulting from some violation of fundamental principles of law by the trial Court that this Court is empowered to set aside the order of acquittal and direct a retrial of the acquitted accused.

(8). Thus, it is trite law that the High Court when approached by private party while the State having failed to file an appeal, for exercising its power of revision from an order of acquittal, is not only prohibited from converting an acquittal into a conviction, but also refrain from interfering except when there is a glaring legal defects or errors of serious nature which have resulted in grave failure of justice. Applying these canons of law to the present case, we find that the learned counsel

for the complainant has failed to show any legal glaring defect of serious nature in the impugned order of acquittal so as to call for interference by this Court in its power of revision.

(9). Resultantly, this revision petition being devoid of merit is hereby dismissed.

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