

Nanda and ors. Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/760396

Court : Rajasthan

Decided On : Sep-23-1988

Reported in : 1988(2)WLN190

Judge : Surendra Nath Bhargava and; Shyam Sunder Byas, JJ.

Appeal No. : D.B. Cr. Appeal No. 234.of 1988

Appellant : Nanda and ors.

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Shyam Sunder Byas, J.

1. The eight appellant viz. Nanda, Madan, Prahlad, Birdhi, Manna, Ballabh, Khema and Surajmal have been convicted under Sections 302/149, 148 and 449 I.P.C., and each has been sentenced to imprisonment for life with a fine of Rs. 100/- under Section 302/149 I.P.C. and to various other terms of imprisonment under the remaining two sections by the Additional Sessions Judge No. 1. Kota by his judgment dated May 31, 1988. They have filed this joint appeal and challenge their convictions.

2. At about 1.30 p.m. on 5-3-1985 PW 1 Jamna Bai appeared at police station Kanwas, district Kota and verbally lodged report Ex. 1-1. It was stated therein by her that at about 8 or 9.00 on that day the appellants accompanied with Bhura and Ram Gopal went to the house of Shaitan situate in village Khodiya Khedi to find out whether Devi Lal was there or not Devi Lal was not found there. the culprits made an assault on Shaitan. Shaitan took shelter in his house the culprits however did not leave him and went behind him. They forcibly brought him out and inflicted blow with Gandasies, Lathies etc. Shaitan fell down. meanwhile, Babu came there to intervene. the culprits did not spare him also Babu took shelter in the house of one Chaturbhuj and closed the shutters of the door the culprits broke open the door and inflicted blows to Babu. as result of beating Shaitan and Babu did not survive and passed away. The police registered a case under Section 302, I.P.C. and proceeded with the investigation. After usual investigation, the police presented a challan against the eight appellants and Bhura and Ram Gopal in the court of Munsif and Judicial Magistrate, Sangod who in his turn committed the case for trial to the court of Sessions. The case came up for trial before the Additional Sessions Judge No. 1 Kota, who framed charges, under Sections 147, 149, 449 and 302/149, I.P.C. against the appellants and Bhura. Ram Gopal was found to be a child and his case was therefore, referred to the Children Court. Bhura passed away during the pendency of trial. The appellants refuted the charges and claimed absolute innocence. In support of its case, the prosecution examined 18 witnesses and filed some documents. In defence, one witness was examined. On the conclusion of trial, the learned Additional Sessions Judge held the charges duly brought home to the appellants. They were consequently convicted and sentenced as mentioned at the very outset. Aggrieved against their convictions and sentences the convicts have taken: this appeal.

3. We have heard learned Counsel for the appellants and the learned Public Prosecutor. We have also gone through the case file carefully.

4. Learned counsel for, the appellants launched a blistering attack on the judgment of the court below and contended that it was no' judgment in the eye of law. It was argued that the judgment was in clear violation and contravention of the, provisions of Section 354', Cr. P.C. No reasons have been advanced by the

learned Additional Sessions Judge as to how he took the offences proved against the appellants. No evidence of the witnesses has been discussed. 'Section 354, Cr. P.C. requires' that the judgment shall contain the points for determination, the decision thereon and the reasons for the decision. The impugned judgment, contains no reasons at all. It was further argued that this defect is not curable under Section 465, Cr. P.C. The illegality committed by the Additional Sessions Judge goes to 'the very root and vitiates the entire judgment. It was prayed that the impugned judgment be set aside and the case be remitted back to the trial court for, rewriting of the judgment. It was argued that Section 386, Cr. P.C. gives power to the appellate court for remitting the case for re-writing of the judgment.

5. Learned Public Prosecutor had a difficult situation to meet. He frankly conceded that the impugned judgment does not fulfil the requirements of Section 354 Cr. P.C. and it was bad on account of not recording the reasons for conviction. He also conceded that the evidence of the prosecution eye-witnesses has not been assessed, evaluated and sifted. The submission of the learned Public Prosecutor, however is that this court has no power to remit the case to the trial court for re-writing of the judgment under Section 386 or under any other section, of the Criminal Procedure Code. It was argued that this court hearing the appeal under Section 386 is empowered to hear the appeal on facts. This court should, therefore, read the entire evidence, make its appreciation of the evidence and decide the case on merits.

6. The question involved is quite interesting as there is no pronouncement of this court on this point. The clinching question before us is whether this court under Section 386 or any other section of the Criminal Procedure Code can set aside the judgment and remit the case back to the trial court for rewriting of the judgment. The question is baffling one and there are conflicting views on the point.

7. Section 386 of the new Code corresponds to Section 423 of the Code of 1898 with some modifications. One view taken by some High Courts of the country is that under Section 386 the appellate court has no power to remit the case for writing out a proper judgment. Where there is no properly written judgment, the duty of the

appellate court is to examine and go into the whole facts fully and dispose of the case. It is not proper to remand the case for fresh decision in accordance with the law. This view has been expressed by the High courts of Calcutta in (1966) 3 Cr. L.J.119 and Patna in 1968 Cr. L.J.1524.

8. The other view is that where the trial court has not written a judgment in conformity with the provisions of Section 354 (section 367 of the old code) it is open to the appellate court to remand the case with directions for hearing *denovo* and writing a fresh judgment in accordance with the provisions of Section 354 Cr. P.C. This view has been shared by the high Court of Orissa, Madras, Sindh and Allahabad in AIR 1969 Orissa 75, 1972 Cr. LJ.403 AIR 1920 Madras 171, 1995 Cr. LJ. 1555 AIR 1940 Sindh 113 and (1912) 13 Cr. LJ. 859. The reasoning adopted in these decisions is that a judgment not in conformity with the provisions of Section 354 Cr. P.C. is a nullity. The omission of recording reasons for a finding is a defect, which goes to the root of the matter and is not curable under Section 465 Cr. P.C.

9. We have given our thoughtful consideration to the rival view and Sub-mission. Section 354 Cr. P.C. speak about the contents of judgment. This section is a combination of Section 367 and 368 of the criminal Procedure code of 1898. It lays down in Clause (b) of Sub-section (i) that the Judgment shall contain the points for determination the decision thereon and the reasons for the decision. The recording of reasons is an essential requirement because the recording of reasons can alone show whether the court has applied its mind to all the facts and circumstances relevant to the points in dispute, recording of reasons necessarily implies the appreciation and consideration of evidence. In a contested case e.g. where the accused does not plead guilty, the absence of recording of reasons in itself is sufficient to show that the evidence of the parties has not been assessed, evaluated sifted and scrutinised. A judgment written in a proper manner containing reasons for finding by the trial court is of considerable help to the appellate court. We may point out that according to the settled norms when a finding of fact is based upon the credibility of evidence the view of the trial court is entitled to great weight and is not lightly interfered with in appeal. That being the position, it is all the more necessary for the trial court that reasons should be recorded for decision

by it. A judgment which does not fulfil these basic and essential requirements is not only a defective or cryptic judgment it is in fact no judgment in the eye of law. It is only the reasons in the judgment which enable the appellate court to judge the correctness, legality and propriety of the findings. The absence of reasons is not a mere irregularity but a patent illegality, which in our opinion, cannot be cured under Section 465 Cr. P.C.

10. we may next deal with the powers of the appellate court as to whether the appellate court can remit a case for writing a judgment in the proper manner in accordance with the provisions of Section 354 Cr. P.C. It would be useful to read Section 386(b)(i) Cr. P.C. which as under:

The appellate court may....

(a)....

(b) in an appeal from a conviction:

(i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of Competent jurisdiction Subordinate so such appellate Court or committed for trial.

The use of the expression 'order him to be retried' in our opinion authorises the appellate court to order a remand. The power of remand is thus implicit in the expression 'order him to be retried'. The retrial should generally be ordered from the stage where an illegality has been committed. The word 'retried' in our opinion vests a discretion in the appellate court to order the retrial from that particular stage where the illegality has occurred.

11. For the reasons recorded above, we are unable to subscribe the view taken by the High Courts of Calcutta and Patna. We share the view taken by the High Courts of Allahabad, Orissa, Sindh and Madras.

12. In the instant case, the judgment is highly defective and is clearly violative of the requirements of Section 354 Cr. P.C. As many as eight accused persons have been convicted. The evidence of the eye witnesses has not at all been discussed,

sifted or evaluated. When more than one accused is there, the evidence in respect of each of them should be scrutinised and sifted. Learned Additional Sessions Judge did not take the trouble even to make a reference to the evidence of eye witnesses. He has not at all discussed as to what is the evidence of eye witnesses, whether it stands to credibility and should or should not be accepted. In addition to the accused-appellants, two more culprits, namely Kalu and Smt. Ram Bharoshi have been implicated by the eye witnesses. The role assigned to the appellants by the prosecution witnesses has not been discussed at all. The judgment of the trial court is thus completely violative and repugnant to the provisions of Section 354 Cr. P.C. We have no alternative other than that of remitting the case with the direction to rehear the parties and decide the case afresh.

13. In the result, we allow the appeal and set-aside the impugned judgment of the learned Additional Sessions Judge No. 1, Kota dated May 31, 1988. The case is remitted back to him with directions to hear the arguments of the parties and thereafter dispose of the case afresh keeping in view the observations made above by us.

14. The record of the trial court be at-once sent to it with, the copy of this order. The case will be taken up for hearing by the learned Additional Sessions Judge No. 1, Kota on 4-10-1988.