In Re: Seeni Ammal

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Court : Chennai

Decided On : Apr-27-1960

Reported in : 1960CriLJ1641; (1960)IIMLJ507

Judge : Ramaswami and; Anantanarayanan, JJ.

Appellant : In Re: Seeni Ammal

Judgement :
ORDER

Ramaswami, J.

1. This is a revision petition preferred1 against the acquittal of the accused in S. C. No. 136 of 1959 on the file of the learned Additional Sessions-Judge of Tirunelveli. That prosecution related to the murder of a man named Ramaswami Naicker, who undoubtedly received gunshot injuries at the spot of offence (Nadu Street in Varaganur village)' at about sunrise on 17-4-1959. and succumbed to-those injuries. The revision proceeding is preferred' before me by Seeni Ammal (P.W.I), the wife of the victim, Under Section 439 Cr.PC

In view of the importance of clarifying the procedure with respect to the petitions of this character particularly in the context of the restriction of out powers Under Section 439 (4) Cr.PC, we have directed the issue of notice to the learned Public Prosecutor for the State and heard both the learned Public Prosecutor and learned Counsel for the revision petitioner extensively, even at the present stage of

admission of this petition,

2. Before proceeding into the facts of the case to any extent, it is necessary to make clear certain implications of the situation itself. The growth of criminal jurisprudence has been a progressive substitution of the idea that grave crime primarily affects the social fabric, since it imperils that fundamental security of person and property without which society is impossible, for the idea that such Crime is a wrong inflicted upon individuals, to be redressed by vengeance. Historically speaking, it Is only gradually that the lex talionis or the rule of an eye for an eye and a tooth for a tooth, has been superseded by an impersonal scheme of punishment for grave crime, the prosecution for which is primarily the concern of the agencies of the State, precisely as the detection of which is the concern of one limb of the administration, the Department of Police.

But, even at present, there are anomalies. The machinery of the State, adequate as it is for most cases, may function imperfectly or eccentrically in a particular case. That is why, under the Criminal Procedure Code as it stands today, even a prosecution under a grave crime may be as a result of a Complaint preferred by a private party. Further, where the accused has been improperly acquitted In a prosecution for grave crime, it is again beyond Controversy that the State should be primarily concerned, for the fact that a guilty person escapes the retribution of justice even where the material for convicting him is true and adequate, is one which affects public interest and the welfare of the State, equally with a wrongful conviction.

Nevertheless, it may happen that an erroneous acquittal does not always lead to a prompt action by the agencies of the State, it may be for a Variety of reasons. Hence, in Section 417 (3) Cr.PC, as now enacted (Amendment Act XXVI of 1955), provision has been made for the private complainant to obtain Special leave to appeal from an acquittal. But, an appeal from an acquittal and a proceeding in revision differ in this essential respect. Even if we are fully convinced that the acquittal was erroneous, and that there has been a miscarriage of justice, our powers Under Section 439 (4) Cr.PC are circumscribed, in the sense that while we might certainly order a retrial of the case, we cannot, in the .exercise of revisional

jurisdiction, convert a finding of acquittal into one of conviction, and pass an appropriate sentence.

3. In Harihar v. State of West Bengal : AIR 1954 SC266 , their Lordships of the Supreme Court said down the law following D. Stephens v. Nosibolla : 1951 CriLJ510 that the revisional jurisdiction conferred on the High -Court Under Section 439 Cr.PC was not to be lightly exercised, particularly when it is invoked by a private complainant against an order of acquittal, against which the Government also has a right of appeal Under Section 417 Cr.PC

In such cases, it must be established clearly that the interests of public justice require interference in order to prevent a gross miscarriage of (justice. The jurisdiction is not to be merely invoked because the trial court did not appreciate the evidence properly, and hence a different view is possible. In Direndranath v. Mukundlal (S) : 1955 CriLJ1299 , it is again stressed that merely because a different view of the evidence can bo taken, interference in revision would not be justified, when there is an application by a private party to set aside an order of acquittal But this deci- sion appears to be prior to the amendment of Section 417 Cr.PC pointed out earlier as the decision states the law to be that a private party has no right of appeal against an acquittal as such.

4. But there is a further difficulty, apart from the undeniable fact that this is an extraordinary power, that our power is further circumscribed by the terms of Section 439(4) Cr.PC as we have point-- ed out. In : 1951 CriLJ510 , the Supreme Court ' limited its observations to the exceptional nature of the revisional jurisdiction. But in Logendranath Jha v. Polai Lai, : [1951]2SCR676 , their Lordships of the Supreme Court made certain observations exposing another very real difficulty, which might even amount to a dilemma, in the exercise of this jurisdiction. Tile following passage renders this explicit:

No doubt, the learned Judge formally complied with Sub-section 4 by directing only a retrial of the offence without convicting them, and warned that the court retrying the accused should not be influenced by any expression of opinion contained in his judgment. But there can be little doubt that he loaded the dice against the appellants, and it might prove difficult for any subordinate judicial

officer dealing with the case to put aside altogether the strong views expressed in his judgment, as to the credibility of the prosecution witnesses and the circumstances of the case in general.

5. The difficulty emerges clearly from these observations. In order to justify interference in revision against an acquittal at all, even it may be by a direction for retrial, the grounds have to be necessarily stated, and stated at some length. The power itself being extraordinary, and not to be invoked merely because a different view of the merits is possible, but because, in effect, there has either been an illegality vitiating the trial, or a gross miscarriage of justice, the exercise of this extraordinary power must be justified by reasoning and discussion of the facts. But, on the contrary, the court holding the retrial must be free, in the interests of justice, to try the case without prejudice or pre-judgment l and arrive at its independent conclusions, untrammelled by the observations of this Court.

This is to steer between Scylla and Charybdis; end we doubt whether such delicate navigations-could always be successful. Hence our conclusion is that, from every point of view, it would be far more satisfactory to be seized of the subject matter of an erroneous acquittal amounting to a gross miscarriage of justice, in the form of an appeal against that acquittal, and not a revision proceeding. We do not desire to be understood as holding the view that a revision against the acquittal Under Section 439 Cr.PC Is inconceivable; particularly where it U upon a ground of manifest illegality, it may not present certain of the difficulties that we have referred to.

But, where the accused have been erroneously acquitted in a grave crime under such circumstances that the acquittal itself is a gross miscarriage of justice, it is clearly far more satisfactory that, we shall be seised of this subject matter in the form of an appeal against the acquittal, which would at once avoid the embarrassment of directing a retrial without making observations upon the merits which

I might be prejudicial, and also further enable us to ' convict the accused, if that course is justified.

6. Consequently, we are of the view that the following procedure will be in the best interest of the parties and of the State, in all such cases, and. we have consequently no hesitation in commending it. As the law stands at present, it is permissible for a party to appeal by special leave against the acquittal Under Section 417 Cr.PC, though he is a private party and not the State.

But if the party prefers, instead, to come by way of revision Under Section 439 Cr.PC it would be advisable for such a proceeding to be instituted within two months of the date of the acquittal. It will thus be possible for us to order immediate notice to the learned Public Prosecutor for the State, when before admitting the revision petition, as we have done in the present case. The learned Public Prosecutor could peruse the records on such notice, and satisfy himself whether it is in the interests of justice to press for interference with the acquittal, or otherwise. If he is of the former conviction, he may then consider the institution of a regular appeal against the acquittal by the State itself, which could enable us to convict and sentence the accused, setting aside the order of acquittal, if we arrive at I &e; conclusion that this is essential in the interests of justice.

7. We shall make very few observations upon the prima facie merits of the present revision proceeding. We propose to be as qualified and guarded in our remarks here as possible, as at this stage, we are merely admitting this proceeding in revision, and directing the issue of notice to the accused concerned. We have heard Sri S. Mohan Kumaramangakm, for the revision petitioner, who has taken us through the foots of the record, and we have also heard the learned Public Prosecutor for the State. It is sufficient to observe, at this stage, that there seems to be much to be said for the view that proof of guilt, at least as far as the shooting of the victim by one of the accused is concerned, does not merely 4epend upon direct evidence, which may be tainted, in the context of bitter factions.

There is considerable circumstantial evidence, both relating to bloodstains recovered at the spot, the recovery of the gun (M. O. 1), of certain bullets or pellets which could have been fired from this gun, and of the testimony of the ballistics expert (P.W. J. 5), with regard to all of which we are not at all satisfied that the total rejection of the evidence is justified. But if this circumstantial evidence has to

be taken info account, in corroborating the evidence of direct witnesses, it is sufficient for us to observe, at present, that the case might take on a different complexion altogether.

8. For these reasons, we admit the revision petition, and direct the issue of notice to the concerned accused. It is for the consideration of the learned Public Prosecutor, to view of his representations about this case, and of the procedural clarification that we have made above, whether he , should not institute a petition for appeal against the ' acquittal by the State, along with a petition to condone the delay, if any bar of limitation was supervened. If such an appeal against the acquittal is instituted and is admitted, it will then be heard along with the present revision proceeding, as the course most likely to subserve the interests of justice. It is needless for us to add. that our observations are not intended, in any way whatever, to affect the merits of the acquittal itself, after duly hearing the accused, or even the admission of any appeal against acquittal which may be instituted in this Court.