

Dilbagh Singh Vs. Sardare and ors

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Court : Delhi

Decided On : Feb-10-2012

Appellant : Dilbagh Singh

Respondent : Sardare and ors

Advocate for Def. : Mr. I.A. Alvi

Advocate for Pet/Ap. : Mr. J.P. Dhanda, Mr. N.A. Usmani

Judgement :

* THE HIGH COURT OF DELHI AT NEW DELHI + CRL.REV. P. 124/2005 with Crl.M.A.2181-2182/2005 Date of Decision: 10 .02.2012 DILBAGH SINGH Appellant Through: Mr. J.P. Dhanda, Adv. with Mr. N.A. Usmani, Advocate Versus SARDARE and ORS Respondents Through: Mr. I.A. Alvi, Adv. for R-1 to R-5 CORAM: HON'BLE MR. JUSTICE M.L. MEHTA M.L. MEHTA, J..

1. This is a revision petition under Section 397 Cr.P.C. read with section 401 Cr.P.C. assailing the Judgment and Order dated 25.01.2005 passed in S.C. No. 137/2004 by the Ld. ASJ whereby the respondent no. 1, 2 and 3 were released on probation and respondents no.

4. and 5 were acquitted..

2. The case of the prosecution in brief was that on 7.7.2000 at about 6pm the petitioner Dilbagh Singh and his father Amar Singh were resting in their fields in

village Nangal Thakran beneath a jaal tree. Thereafter respondent no.

1. Sardare and his two sons, namely Kasim Ali and Hasim Ali reached there and started cutting the jaal tree, to which the petitioners objected. This led to an argument between the parties and Sardare along with his sons started beating Dilbagh Singh and his father Amar Singh with kasi, iron rod and lathi. The petitioner and his father then ran towards the village for safety. It was alleged Crl.Rev.P.124/2005 *Page 1 of 7* that Samruddin and Maman who are respondent no.

4. and 5, were coming from the opposite direction and caught hold of the petitioner and his father and Sardare and his sons started beating them again. Consequently Dilbagh Singh and his father received injuries. They were then removed to the hospital for treatment..

3. FIR No.287/2000 was registered under Section 341,308,324,325 and 34 IPC at Police Station Bawana on the same day. The Ld. ASJ examined seven witnesses in the case and recorded that Dilbagh Singh received simple injuries on his head while his father Amar Singh had suffered grievous injury on his leg due to the attack by Sadare and his sons. It was also recorded that from the facts and circumstances of the case, the attack on the petitioner and his father was not a planned one and the accused persons did not possess an intention or knowledge to kill, but only to cause grievous hurt. Hence, the three of them were held guilty under Section 324 and 325 IPC. With regard to the culpability of respondent no.

4. and 5, i.e. Maman and Samrudin, it was held that in the statements of the petitioner and his father recorded before the ACP, no allegation was leveled against them. Therefore, their roles as alleged by the prosecution could not be proved beyond doubt and hence, giving the benefit of doubt they were acquitted..

4. Having regard to the fact that Sardare Singh was a man of old age and also suffered injuries in the incident and his sons were not previous convicts and their families were dependent on them, they were given the benefit of probation for two years. The petitioner has come to this court being aggrieved by the acquittal of Maman and Samrudin and grant of probation to Sardare and his sons.

5. The counsel for petitioner has submitted that undue sympathy for the accused persons has resulted in the miscarriage of justice and has submitted that accused Maman and Samrudin played an active part in the assault on the petitioner and his father by catching hold of them while they were running back to the village. The counsel has further submitted that the life expectancy of the father of the petitioner was reduced due to the attack made on them and hence the accused persons deserved no leniency from the court..

6. Per contra, the counsel for the respondent has stated that the respondents were rightly given the benefit of probation, considering the factum of old age of Sardare and dependency of the families of Kasim Ali and Hasim Ali on them. It has been further submitted that they have never misused probation and the State has not preferred an appeal against the sentence. Regarding the prayer of conviction of Maman and Samrudin, reliance has been placed on Vimal Singh Vs. Khuman Singh and Anr. 1998 [2] JCC [SC] 243 stating that an order of acquittal cannot be converted into an order of conviction in appeal by this Court..

7. I have heard the learned counsel for the petitioner and the respondents and perused the record..

8. It is not in dispute that the petitioner and his father were attacked by the respondent no. 1, 2 and 3 and they suffered injuries as a result of such attack. But the question for consideration before this Court is whether Sardare and his sons deserved probation or not. The important factor which requires to be noted is that the respondents did not inflict any sharp edged injury on the chest or stomach or any vital organ of the petitioner and his father. It is also an established fact that the attack was not a planned one and the accused persons did not possess any intention or knowledge to kill. Sardare Singh was himself one of the accused injured in the attack. Crl.Rev.P.124/2005 Page 3 of 7.

9. Probation of Offenders Act is a benevolent legislation. Its object is to prevent first offenders from becoming hardened criminals. The Supreme Court in Sitaram Paswan v. State of Bihar 2005 CriLJ4135 , held that; "8...For exercising the power

which is discretionary, the court has to consider the circumstances of the case, the nature of the offence and the character of the offender. While considering the nature of the offence, the court must take a realistic view of the gravity of the offence, the impact which the offence had on the victim. The benefit available to the accused under Section 4 of the Probation of Offenders Act is subject to the limitation embodied in the provisions and the word "may" clearly indicates that the discretion vests with the court whether to release the offender in exercise of the powers under Section 3 or 4 of the Probation of Offenders Act, having regard to the nature of the offence and the character of the offender and overall circumstances of the case."

10. The facts and circumstances of each case have to be weighed carefully before granting probation to any person held liable for an offence. In view of the fact that the Sardare is more than 70 years of age at present and Kasim Ali and Hasim Ali are the bread winners of their family and have not misused the probation granted to them, I am of the opinion that there is no reason to interfere with the Order of the Trial Court..

11. The next question which requires deliberation is the scope of revision against the acquittal of Maman and Samrudin. The realm of power of High Court under Section 401 of Cr. P.C. is well settled. The High Court in its revisional powers cannot ordinarily interfere with judgments of trial Courts *CrI.Rev.P.124/2005 Page 4 of 7* unless there has been a manifest error or procedure. In *Vimal Singh (Supra)* the Apex Court held that : "The interference with the order of acquittal passed by the trial court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial court has no jurisdiction to try the case where the trial court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue have been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of Section 403 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt,

the High Court in exercise of its reversional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction."

12. It would be relevant to refer to the decision of the Apex Court in K. Chinnaswamy Reddy Vs. State of Andhra Pradesh and Anr. (AIR 1962 SC 1788) that : "It is true that it is open to a High Court in revision to set aside an order of acquittal even at the instance of private parties, though the State
Crl.Rev.P.124/2005 Page 5 of 7 may not have thought fit to appeal by the jurisdiction should be exercised by the High Court only in exception the procedure or there is a manifest error on a point of law and consequently there has been a flagrant miscarriage of justice. Sub-section (4) of Section 439 forbids a High Court from converting a finding of acquittal into one of conviction and that makes it all the more incumbent on the High Court to see that it does not covert the finding of acquittal into one of conviction by the indirect method of ordering retrial, when it cannot itself directly convert a finding of acquittal into a finding of conviction. This places limitations on the power of the High Court to set aside the finding of acquittal in revision and it is only in exceptional cases that this power should be exercised.....".

13. From the perusal of the record, it is evident that the prosecution could not fasten any liability to the satisfaction of the Court to Maman and Samrudin. In the statements given by the petitioner and his father to the ACP on 28.11.2000, there was no allegation made by them against Maman and Samrudin. It was also not the case of the prosecution that they had caused any injury to the petitioner and his father. The trial Court had rightly given its finding regarding them any I do not find any illegality or manifest miscarriage of justice in the order of acquittal regarding Maman and Samrudin which would require indulgence from this Court..

14. Lastly, while dismissing this revision petition, it is concurred that the petitioner and his father remained in the hospital for a long period of time and the grievous injury suffered by the father of the petitioner decreased his life expectancy. While maintaining the order of ASJ regarding release of respondents No.

1. to 3 on probation, but keeping in view the fact of the Crl.Rev.P.124/2005 Page 6 of 7 petitioners having suffered injuries and remained admitted in Hospital, I am of the view that they need to be compensated and this in terms of money is assessed at Rs.50,000/- keeping in view the provisions of section 357 Cr.P.C..

15. Having regard to these facts the respondents 1, 2 and 3 are directed to pay the compensation of the amount of Rs.50,000/- to the petitioner..

16. Petition is accordingly dismissed with the aforesaid direction. M.L. MEHTA, J.
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