

STATE OF TRIPURA
v.
RAM BIR SINGH AND ORS.

MAY 8, 2007

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Code of Criminal Procedure, 1973:

Appeal before High Court against conviction—Appreciation of evidence—In a case of indiscriminate firing by CRPF personnel injuring and killing local police personnel, trial court recording conviction of accused CRPF personnel—Acquittal by High Court—Held, High Court has not considered evidence and material on record in a satisfactory manner—Prosecution unequivocally proved that CRPF personnel committed the offence—Matter remanded to High Court for hearing appeal afresh after considering evidence and material on record properly—Penal Code, 1860—ss. 302/355 r/w s. 34.

Judgment—High Court recording acquittal in a case of conviction by trial court u/s 302/355 r/w s. 34 IPC—Judgment of High Court stating that for reasons to be recorded later, appeal allowed and accused acquitted—At the same time giving reason for acquittal in the same judgment—Held, High Court committed irregularities—Impugned judgment appears to be ante dated—Practice and Procedure.

Respondents-accused, who were CRPF personnel, were prosecuted under sections 302/353/307 read with Section 34 IPC. Thee prosecution case was that on the day of incident, the respondents, in a function, entered the Hall without tickets and when the local police tried to drive them out they manhandled the police personnel and one of them dealt a blow on the police officer and left the Hall, after threatening the police personnel with dire consequences. After some time, they again returned to the hall with firearms and started firing indiscriminately. In the firing one police personnel received serious injuries. The respondents did not allow the Fire Brigade staff to remove the Victim to the hospital. The injured died at the spot. The trial court convicted the accused under ss. 302/34 and 353/34 IPC. Appeal of the accused having been allowed by the High Court, the State filed the instant appeal.

A Allowing the appeal and remanding the matter to the High Court, the Court

B HELD: 1. It appears that the order allowing the appeal was passed by the High Court earlier and the reasons for the judgment were recorded later. This was a very unsatisfactory way of disposing of the case. The High Court committed two irregularities in delivering the judgment—(i) It passed the operative portion of the judgment in the criminal appeal earlier but purported to record the reasons later and (ii) The date of the judgment giving reasons is mentioned as 31.7.2003, which does not appear to be correct as in para 7 of the judgment it is mentioned that the reasons will be given after 31.7.2003, Thus, the impugned judgment appears to be ante dated. These observations on the unsatisfactory way of disposing of cases are made in the hope that this mistake will not be repeated by the courts in this country.

[Para 11, 14 and 15] [121-A-F]

D 2.1. Besides, the High Court has not considered the evidence and material on record in a satisfactory manner. The incident in question was a very serious matter and hence it required very careful consideration of the evidence and material on record. In the instant case, attacked the local police mainly because the local police asked the CRPF personnel to vacate some seats in a function for which the CRPF personnel the CRPF personnel did not have any tickets. The only question which remains is the identity of the persons who assaulted the police personnel. In this connection, the High Court has not dealt with the matter at all in a satisfactory manner. The matter in this regard has been dealt with in a great detail by the trial court but the High Court has not probably adverted to the points which had been considered by the trial court in this connection. The prosecution had produced the Arms Issue Register of the CRPF Authority to prove that the said Authority had issued arms and ammunitions to the accused persons, and the Investigating Officer had seized those Self Loading Rifles from the CRPF personnel. The CFSL also corroborated the fact after examining those Self Loading Rifles that those were used very recently and were used for firing purpose.

[121-F-G; 122-B-E] [Paras 16, 17 and 19]

G 2.2. The trial court has observed that all the eye witnesses of the prosecution clearly, categorically and emphatically stated that the accused CRPF personnel had opened fire indiscriminately from their self-loading rifles and the defence had not specifically denied this. This is another point which should have been considered carefully by the High Court but that has not been

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done. [Para 20] [122-F-G]

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3. The judgment of the High Court is set aside, High Court shall hear the appeal afresh and shall consider all the evidence and material on record properly and then pronounce its judgment. [Para 23] [123-F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 927 of 2004.

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From the Final Judgment and Order dated 31.07.2003 of the Gauhati High Court, Agartala Bench in Cri. A. No. 03 of 2001.

Rituraj Biswas (for Gopal Singh) for the Appellant.

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S.B Sanyal, Azim H. Laskar, Anand and Abhijit Sengupta for the Respondents.

The Judgment of the Court was delivered by

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MARKANDEY KATJU, J. 1. This appeal has been filed against the impugned judgment of the Gauhati High Court, Agartala Bench dated 31.7.2003 in Criminal Appeal No.03 of 2001.

2. Heard learned counsel for the parties and perused the record.

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3. The prosecution case in brief is that on 8.7.1996, some police personnel of Dharmanagar Police Station led by Sub-Inspector of Police, Sri Kamal Kar Chowdhury, who is the informant in the FIR, passed through the Town Hall of Dharmanagar for law and order duty. In the course of doing their duty, some organizer of a function approached the informant complaining that some CRPF personnel had gate crashed their function and forcibly occupied the seats in the hall. They were asked to vacate the seats but they refused to do so. Thereupon, the informant entered the hall and managed to remove the said CRPF personnel from the Hall. However, they returned to the hall and occupied the rear side seats of the hall by evicting the ticket holders. This was reported again to the informant, who again drove them out. This time, there was some scuffling between the informant and the said CRPF personnel in which one of them dealt a blow over the left eye of the informant due to which the latter sustained serious injury. Thereafter, the said CRPF personnel left the hall, but after threatening the police personnel with due consequences.

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4. It is the case of prosecution that after the above incident, the CRPF

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A personnel again returned to the hall with their fire arms and started firing indiscriminately. One of the police personnel, namely Sukumar Ghosh, fell on the ground sustaining bullet injuries. The informant and his party could not immediately remove the injured due to the ongoing indiscriminate firing by the said CRPF personnel. The said CRPF personnel did not even allow Fire Brigade personnel to move into the place of incident for shifting the victim to the hospital. The said CRPF personnel also went to the police station in search of the informant. After sometime, it was found that the injured had succumbed to his injuries at the place of occurrence.

C 5. On receipt of the information about the incident the Dharmanagar Police Station registered the FIR vide No.63/1996 under Section 302/307/34 of I.P.C. and launched investigation of the case. In the course of investigation, the police recorded the statement of witnesses, seized alamath and also arrested the accused. Thereafter, the police filed the charge-sheet against them.

D 6. The case was ultimately committed to the Ld. Sessions Judge, North Tripura, Kailassahar for trial. The learned Sessions Judge framed the charges against the appellants under Section 302/353/307 read with Section 34 of I.P.C., to which the respondents pleaded not guilty and claimed to be tried. Thereafter, the learned Sessions Judge transferred the case to the learned Addl. Sessions Judge, North Tripura, Dharmanagar for disposal of the case.

E 7. At the trial, the prosecution examined as many as 24 witnesses and exhibited documents along with alamath to bring home the charges against the appellants.

F 8. The trial court after consideration of the evidence convicted the accused under Section 302 read with Section 34 I.P.C. and under Section 353 read with Section 34 I.P.C. and also imposed a fine.

G 9. Aggrieved the accused filed an appeal in the Gauhati High Court, which allowed the appeal, and hence the State Government of Tripura has filed this appeal by Special Leave.

10. Before dealing with the impugned judgment and the material on record, we would like to mention that it has been stated in para 7 of the impugned judgment of the High Court that :

H"By the order dated 31.7.2003, for reasons to be recorded later, we

allowed the appeal and acquitted all the appellants of the charges framed against them. The following are reasons for their acquittal.” A

11. Thus it appears that the order allowing the appeal was passed earlier and the reasons for the judgment were recorded later. In our opinion this was a very unsatisfactory way of disposing of the case.

12. Moreover, while it is stated in para 7 of the impugned judgment that by order dated 31.7.2003 the appeal was allowed and the accused acquitted, but it was also stated therein that the reasons will be recorded later. However, the appeal was allowed and all the accused were acquitted by the impugned judgment dated 31.7.2003 containing reasons. We find it difficult to believe that reasons were recorded on 31.7.2003, when an order allowing the appeal (but without giving reasons) was said to have been passed on the same day. B C

13. We went through the entire record and could not find the date on which the reasons for the impugned judgment were recorded.

14. Thus the learned Judges of the Gauhati High Court appear to have committed two irregularities in delivering the judgment - (i) It passed the operative portion of the judgment in the criminal appeal earlier but purported to record the reasons later and (ii) The date of the judgment giving reasons is mentioned as 31.7.2003, which does not appear to be correct as in para 7 of the judgment it is mentioned that the reasons will be given after 31.7.2003. Thus the impugned judgment appears to be ante dated. D E

15. We are only making our observations on this unsatisfactory way of disposing of cases in the hope that this mistake will not be repeated again by the courts in this country.

16. Apart from the above, we would also like to observe that the High Court has not considered the evidence and material on record in a satisfactory manner in the impugned judgment. The incident in question was a very serious matter and hence it required very careful consideration of the evidence and material on record. In this case the CRPF personnel attacked the local police mainly because the local police asked the CRPF personnel to vacate some seats in a function for which the CRPF personnel did not have any tickets. In our opinion the local police was absolutely right in insisting that the CRPF personnel who did not have tickets for the seats they were occupying, should vacate the same, and the CRPF personnel committed a gross illegality and misconduct in attacking the police personnel as a consequence. The F G H

A CRPF personnel who are responsible for this incident deserve severe punishment both on the criminal side as well as in departmental proceedings. No one can be allowed to take the law into his own hands. If that is permitted the rule of law and democracy will collapse.

B 17. The only question which remains is the identity of the persons who assaulted the police personnel. In this connection, in our opinion the High Court has not dealt with the matter at all in a satisfactory manner. It was a very serious incident in which CRPF personnel attacked the local police with arms and in which one of the local police personnel was killed. Hence, the matter should have been dealt with very carefully by the High Court but we regret to say that has not been done.

C 18. The prosecution had produced as many as 24 witnesses. The prosecution had proved unequivocal that the CRPF personnel had committed the offence, and we are in full agreement with the same.

D 19. As regards the identity of the accused, the matter has been dealt with in great detail by the trial court but we are afraid that the High Court has not probably adverted to the points which had been considered by the trial court in this connection. For instance, the prosecution had produced the Arms Issue Register of the CRPF Authority to prove that the said Authority had issued arms and ammunitions to the accused person, and the Investigating Officer had seized those Self Loading Rifles from the CRPF Authority on production of the same by them. The C.F.S.L. also corroborated the fact after examining those Self Loading Rifles that those were used very recently and were used for firing purpose.

E F 20. The trial court has observed that all the eye witnesses of the prosecution clearly, categorically and emphatically stated that the accused CRPF personnel had opened fire indiscriminately from their self loading rifles and the defence had not specifically denied this. This is another point which should have been considered carefully by the High Court but that has not been done.

G H 21. As regards the point which has been emphasized by the High Court in great detail, namely, that there was an opportunity to show the accused to the witnesses before they were put up in the Test Identification Parade, the High Court has not considered the fact that the accused had been kept in police custody in a different police station and not in the police station to which the witnesses belonged. The accused persons were arrested from

Panisagar Police Station, and they were produced before the officer-in-charge of the said police station. However, it has come on record that the Investigating Officer had produced them before the Chief Judicial Magistrate, North Tripura, Kailashahar and then they were kept in Kailashahar Police Station, which is different from Panisagar Police Station. This being so, the High Court should have considered whether there was opportunity to show the accused to the witnesses before the Test Identification Parade.

22. Learned counsel for the respondent has invited our attention to the evidence of PW-18, who was the Magistrate before whom the Test Identification Parade was held on 20.7.1996. He has mentioned that in the second Test Identification Parade, held that day, the accused Bedmoni Misra was mixed up with CRPF personnel of the same face feature, health and height etc., during the test identification parade and witness Krishnapada Bhowmik identified the suspect, Rajkumar Singh and could not identify any other suspect. In our opinion there was an obvious mistake here in the evidence of the learned Magistrate, and it was not Rajkumar Singh whom Krishnapada Bhomick identified. This mistake becomes obvious when we see the report of the Test Identification Parade and also from the fact that since mention has been made in the Magistrate's evidence that it was Bedmoni Misra with whom 11 CRPF personnel were mixed up. Hence, obviously Rajkumar Singh could not be the person identified by Krishnapada Bhowmik, and it was Bedmoni Misra who was identified by him.

23. It is not necessary for us to further dilate on the impugned judgment of the High Court since we are of the opinion that the same deserves to be set aside and the matter should be considered afresh by the High Court. In the circumstances, we set aside the impugned judgment of the High Court and remand the matter to the High Court which shall hear the appeal afresh and shall consider all the evidence and material on record properly and then pronounce its judgment. Since the matter relates to an incident of 1996, we request the High Court to consider the feasibility of deciding the appeal as expeditiously as possible.

24. Any observation made in this judgment shall not influence the High Court in deciding the appeal.

25. The appeal is allowed. The impugned judgment of the High Court is set aside and the matter is remitted to the High Court for a fresh decision.