

KUNWAR BHADUR SINGH  
v.  
SHEO BARAN SINGH AND ORS.

A

NOVEMBER 29, 2000

[SYED SHAH MOHAMMED QUADRI AND S.N. PHUKAN, JJ.]

B

*Criminal Trial:*

*Reconstruction of record—Accused prosecuted under ss. 148/302/149 IPC—Convicted and sentenced by trial court—Appeals by accused before High Court—Record of trial court and High Court found missing—High Court directing trial court to reconstruct the record—Trial court after issuing notices to parties and to their counsel reconstructed the record from carbon copies of statements of witnesses examined in the case and other documents copies whereof had been supplied to accused—Recorded statements of the officials including the Reader of the trial court who had recorded the statements of witnesses—Reconstructed file alongwith necessary papers sent to High Court—High Court without going into merits of case allowed appeal on grounds that carbon copies of statements of witnesses were not countersigned by the Reader of trial court and there was no endorsement thereon as contemplate in the circulars of High Court and that a slight variation in evidence would change entire complexion of case—Held, in view of the steps taken to reconstruct the records, after due verification, there is no valid reason to doubt genuineness of reconstructed record and the Sessions Judge concerned had reconstructed the file in best possible manner—A distinction must be made where trial court reports that construction of file is impossible or reconstructed file is scanty or incomplete and a case where trial court after due verification reconstructs the file—In former case declining to go into merits may be justified but in latter case it is impermissible—In the instant case, there is properly reconstructed file—High Court erred in not going into merits of the case and acquitting the accused—Order of High Court set aside—High Court to consider and decide appeals on merits on basis of reconstructed records—Appeal—Deciding of on basis of reconstructed record—Practice and Procedure.*

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 1078-1082 of 2000.

H

A From the Judgment and Order dated 17.9.98 of the Allahabad High Court in CrI. M.A. No. 2050/98 in Cr. A. Nos. 546, 547, 548 and 589 of 1982.

WITH

CrI. A. Nos. 1083-1086 of 2000.

B

Sushil Kumar and Rakesh Dwivedi, Sr. Advs., R.B. Misra, K. Mishra, Ms. Sangeeta Sharma, Pramod Swarup, Ms. Pareena Swarup, Praveen Swarup, Vishwajit Singh, N.S. Gahlot, R.K. Singh, Prakash Kumar Singh and Ravi Kumar Verma for the appearing parties.

C

The following Order of the Court was delivered :

Delay is condoned.

Leave is granted.

D

Against the judgment and order of the High Court of Judicature at Allahabad, Lucknow Bench, in Criminal Appeal Nos. 546, 547, 548 and 589 of 1982 dated September 17, 1998 and CrI. Misc. Application No. 2050 of 1998 dated October 5, 1998 the de facto complainant filed appeals arising out of SLP (CrI.) Nos. 1459-1463 of 1999 and the State of U.P. filed appeals arising out of SLP (CrI.) Nos. 1928-31 of 1999.

E

These appeals raise a common question as to whether the High Court erred in law in not disposing of the said appeals filed by the respondents on merits on the basis of the re-constructed records.

F

The following facts need to be mentioned here.

The respondents were tried in S.T.No. 43 of 1982 by the learned IInd Additional Sessions Judge, Rae Bareilly and by his judgment and order dated July 16, 1982, they were convicted and awarded punishment for various offences as follows:

G.

“Accused Hari Shanker Singh, Bhagwat Singh, Shiv Baran Singh and Shiv Prasad Singh are found guilty of the offence punishable under Sections 148/303/149 and 395 I.P.C. Each of them is convicted and sentenced to undergo R.I. for one year under Section 149 I.P.C. Life imprisonment under sections 302/149 I.P.C. R.I. for six months under Section 323/149 I.P.C. and R.I. for five years under Section 395 I.P.C.

H

Accused Badri Singh, Amar Bahadur Singh, Sardar Bahadur Singh, Sharda Bux Singh, Jitendra Bahadur Singh, Indra Bahadur Singh alias Dhunni Singh, Shiv Narain Yadav and Indra Bahadur Singh son of Shitla Bux Singh are found guilty of the offences punishable under Sections 147, 302/149 and 395 I.P.C. Each of them is convicted and sentenced to undergo R.I. for nine months under Sections 147 I.P.C., for life imprisonment under Sections 302/149 I.P.C., for six month R.I. under Sections 323/149 I.P.C. and to five years R.I. under Sections 396 I.P.C.

All the sentences of all the accused would, however, run concurrently."

Aggrieved by the said judgment and order of the Sessions Court, they filed appeals in the High Court. Criminal Appeal No. 546 of 1982 was filed by Shiv Baran Singh, Badri Singh, Amar Bahadur Singh, Shiv Prasad Singh, Jitendra Bahadur Singh, Indra Bahadur Singh @ Dhunni Singh, Shiv Narain Yadav and Indra Bahadur Singh. Criminal Appeal No. 547 of 1982 was filed by Sardar Bahadur Singh and Sharda Bux Singh. Criminal Appeal No. 548 of 1982 was filed by Hari Shanker Singh and Criminal Appeal No. 589 of 1982 was filed by Bhagwat Singh.

In regard to hearing of the appeals, on September 30, 1983, the High Court passed an order to expedite the preparation of records and to list the appeals for final hearing in the month of January or February, 1984.

It appears that before actual hearing of those appeals, all the records including those which were called for from the trial court, were found missing in the High Court. While ordering inquiry into the matter, the High Court directed the trial court to reconstruct the record. This was done on May 11, 1984. This order of the High Court was communicated by the Deputy Registrar, High Court of Allahabad, Lucknow bench to the IInd Additional District & Sessions Judge, Rai Barelli.

On May 17, 1984 the learned IInd Additional District & Sessions Judge noted that orders were received from the High Court for reconstruction of records and issued notices to all the accused-applicants to appear in the Court on May 31, 1984. He also ordered notice to learned APP in the said case. On May 31, 1984, the then learned APP, Shri Anjan Kumar Srivastava, appeared before him and stated that Sri Karan Bahadur Singh, Advocate and some other advocates were representing the complainant in the said case and the copies of the statements of the witnesses would be with him. He further

A stated that the original case diary was also sent to the High Court along with the original file which was missing. Shri Karan Bahadur Singh who was appearing for the complainant was called to the Court and he stated that the copies of the statements of the witnesses were obtained by him on behalf of the complainant but he did not remember whether the file of the case containing the said copies, was still with him or had been handed over to the complainant after the trial. He sought time to go over to his office to search the file and if it was with him to get it for reconstructing the records and sought for two days for this purpose. Shri Surendra Pratap, the learned APP, was asked to obtain copies of the case diary from the police office within two days. The Court was informed that Shri L.S. Srivastava, Advocate of Rai Barelli and Shri C Kunwar Prakash, Advocate of Lucknow were representing the accused before the Trial Court so they were also called to the Court. Shri Srivastava appeared before the Court and informed that after the conviction of the accused persons by the Court all the papers pertaining to the trial were taken from him by the accused persons for filing appeal through Shri Kunwar Shanti Prakash, Advocate. While recording that the efforts were on to reconstruct the file, the D learned Sessions Judge noted that a letter be sent to the High Court, Lucknow Bench, to request Shri Kunwar Shanti Prakash, Advocate to procure the documents so that the file may be reconstructed. On June 2, 1984, at the request of Mr. K.B. Singh, Advocate, time was granted to search the record and the case was adjourned to June 5, 1984.

E On June 5, 1984 both Shri C.B. Mishra and Shri Karan Bahadur Singh, Advocates, appeared before the court along with the complainant and informed that the copies of the FIR statements and documents received by him were with him but he was not prepared to part with the same because in case the file was again lost, he would be without any documents. That was accepted F by the Court.

The injury reports of the four accused persons prepared by the jail doctor were summoned and steps were also taken for summoning the case diary.

G On June 5, 1984, the learned Sessions Judge wrote to the learned District Judge that he was able to lay his hands on the carbon copies of the statement of the witnesses examined in the aforesaid case and the other documents, the copies of which were supplied to the accused and that the copies of the statements of the witnesses ran into 170 pages and the other H documents ran into 26 pages. He reported that clear photostat copies of those

statements could not be obtained and, therefore, the work might be entrusted to the Copying Department of the learned District Judge for reconstruction of the said file. Thus, copies of the statements of the witnesses and other documents were prepared. To ensure the authenticity of the copies of the statements and other material documents from which the record was being reconstructed, the learned Sessions Judge recorded the statement of the clerk/typists Shri Suresh Kumar Srivastava, Somchand Jaiswal, Ram Asrey Verma, Fateh Bahadur Singh and Vishram Singh. Shri Adya Saran (Peshkar) Reader had prepared the carbon copies along with the originals at the time of recording the deposition of the witnesses at the trial. So his Statement was also recorded.

The Statements of the Peshkar-Reader-Shri Adya Saran recorded by the IInd Additional District & Sessions Judge, Rai Barlli, discloses, inter alia, that he was posted on the post of peshka (Reader) in the Court of IInd Additional Sessions Judge from February 1982 to June 1982 and that he had recorded the statements of witnesses in Case ST No. 43 of 1982 titled *State v. Harishanker & Ors.* on the dictation of the Presiding Officer in the open Court. One copy of each of the statements was also delivered to the Officer. The Officer handed those copies over to the present Presiding Officer in connection with the reconstruction of these files. He had identified the carbon copies of the statements of PW 1 to PW 11 and DW1 and DW2. He stated that all those statements were under his hand, which were prepared by using carbon paper along with the original ones out of which the last lines of the statement of DW1, Dr. R.N. Sharma, were recorded by the Presiding Officer Shri N.B. Asthana under his hand in English which bear his signatures.

In the proceedings of the learned Sessions Judge, It is noted that on June 19, 1984 one of the accused, Indra Bahadur Singh, appeared before the Court and Stated that the copies submitted by the complainant were not correct. His statements was also recorded on that date. He admitted that the copies of the statements of witnesses would also be with him. He was, therefore, given time till July 10, 1984 to file copies of the statements of the witnesses. But he did not file the same nor did he appear thereafter.

On the basis of statements recorded by him in the course of reconstruction of records, the learned Sessions Judge concluded that the copies of the statements of witnesses supplied to the complainant were in the handwriting of one of the Reader of his Court, Shri Adya Sharn who in his statement identified the originals having been prepared by him and that the

A copies were also in his handwriting. Accordingly, he submitted the reconstructed file to the High Court along with all other necessary papers on July 13, 1984.

B On September 17, 1988 when the case came up for hearing, the High Court without going into the merits of the case allowed the appeals filed by the respondents herein who were convicted by the trial court, acquitted them of all the charges by the impugned judgment and order. Hence, these appeals.

C Mr. Sushil Kumar, the learned senior counsel appearing for the complainant, submits that the copies produced by the complainant were the copies issued by the Peshkar (Reader) of the Court. The same fact was verified by the learned Sessions Judge on examining the Peshkar (Reader), therefore, reconstructed file, by the trial court, was reliable: merely because a doubt was expressed about the authenticity of the reconstructed records by the learned counsel for the convict-appellants before the High Court, the reconstructed file could not have been brushed aside as being unreliable and the appellants therein ought not to have been acquitted without considering the merit in the appeals.

D Mr. Praveen Swarup appearing for the state of U.P. adopted the arguments of Mr. Sushil Kumar.

E Mr. Rakesh Dwivedi, learned senior counsel appearing for the respondents-accused (who were convicted by the Sessions Court) on the other hand, contends that since it is a matter of life and liberty of the citizens, the High Court has rightly declined to take into consideration the reconstructed file, and therefore, having regard to the facts of this case, it would be appropriate for this court not to interfere in these appeals.

F A perusal of the Judgment of the High Court, impugned in these appeals, discloses two reasons for not deciding the case on merits, allowing the appeals by setting aside the conviction and sentences ordered by the trial court and acquitting the respondents of all the charges. The first is that the carbon copies of the statements of the witnesses were not counter-signed by the Reader of the Court and that there was no endorsement on the carbon copies as contemplated in the circulars of the High Court so it was doubted that the copies were supplied to the complainant. The Second is that even a seemingly slight variation in the evidence recorded at the trial with the alleged carbon copies can change the entire complexion of the case.

H From the above narration of the steps taken to reconstruct the records,

we are satisfied that there is no valid reason to doubt the genuineness of the copies of the statements of witnesses examined at the trial and that the learned Additional District & Sessions Judge had reconstructed the file in the best possible manner. The fact that the copies of the statements and other documents were given to the complainant, had been spoken to by the advocates of the parties before the learned Sessions Judge. That fact was corroborated by verifying the authenticity of the carbon copies of the statements of the witnesses produced by the appellant appearing along with his advocate. To dispel the doubt expressed by one of the respondents who appeared before the learned Sessions Judge time was granted to him to produce copies of the statements which he admitted to be in his possession. In the absence of such copies being filed the Sessions Judge satisfied himself about the correctness of the copies produced by the complainant by examining all those persons connected with the reconstructed records. He gave notice to both the learned counsel for the prosecution as well as of the accused to render necessary assistance in the construction of the file. The learned counsel rendered assistance to the extent they could. In view of the facts afore-mentioned, the reason given by the High Court for doubting the authenticity of the reconstructed records, is untenable.

However, Mr. Dwivedi argues that as the respondents herein did not have an opportunity to cross-examine the Peshkar (Reader) and that before the accused appeared in Court the Statement of the Peshkar was already recorded so it cannot be relied upon in verification of the copies furnished by the complainant to reconstruct the record.

We are afraid, we cannot accept the contention of the learned counsel for the simple reason that before recording the statement of the Peshkar (Reader) notice was already issued to all the accused to appear on May 31, 1984. The statement of the Peshkar (Reader) was recorded on June 15, 1984. It is a fact that one of the respondents-accused Inder Bahadur Singh, appeared on June 19, 1984 and stated that as he was out of station so he could not appear earlier. It is true that the Peshkar (Reader) was examined in the Court before the said respondent appeared in Court so he could not be cross-examined. But the advocate of the respondents who appeared before the Court did not come forward to cross-examine the Peshkar (Reader). It may also be pointed out that after appearing on June 19, 1984, he promised to get the copies of the statements of the witnesses given to him at the trial but thereafter neither did he appear nor produced the copies which were admittedly received by him, nor made an application to cross-examine the Peshkar

A (Reader). In view of these facts, mere suspicion or doubt expressed by the advocates of the respondents (appellants before the High Court) cannot destroy or discredit the authenticity of the record reconstructed by the learned Sessions Judge.

B A distinction must be made between a case where the trial court reports that the reconstruction of file is impossible or the reconstructed file is scanty and incomplete lacking in material documents of which no extracts are to be found in the judgment of the trial court and a case where the trial court after due verification reconstructs the file. In the former case declining to go into the merits may be justifiable but in the latter case it is impermissible. There can be no doubt that jurisprudentially an accused is presumed to be innocent till he is found to be guilty by a competent court. In giving its verdict the court will give benefit of doubt arising on consideration of evidence brought on record by the prosecution or on account of absence of material evidence which ought to have been adduced but is not brought on record, to the accused person and acquit him of the offence charged against. But a doubt arising on the basis of surmises and conjectures should never be allowed to influence the verdict of the court as in such cases giving benefit of doubt to the accused but will be counter productive and destructive of system of delivery of justice in criminal cases having repercussions on existence of every civilised and peaceful society. The courts will have to be cautious and prudent to secure the ends of justice.

E From the above discussion, it follows that in the instant cases there is properly reconstructed file, therefore, the High Court erred in not going into the merits of the case and acquitting the convict appellants before it by allowing the appeals. Ergo we set aside the impugned order and restore the aforementioned criminal appeals to the file of the High Court to be heard and disposed of on merits. The High Court shall now consider and decide the appeals on merits on the basis of the reconstructed records.

F It is needless to mention that while examining the merits of the case, it would be open to the High Court to examine the copies of statements in the reconstructed record on the basis of intrinsic inconsistency between the reconstructed records as the contents of the judgment of the learned Sessions Judge or with reference to any irrefragible evidence placed before it by the appellants therein.

The appeals are accordingly allowed.

H R.P.

Appeals allowed.