A BABLU KUMAR AND ORS.

v.

STATE OF BIHAR AND ANR.

B (Criminal Appeal No.914 of 2015)

JULY 20, 2015

**[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]**

C *Code of Criminal Procedure, 1973: s.401 – Revisional jurisdiction – Power of High Court to set aside order of acquittal – Informant alleged that appellants killed the victim-deceased – Trial court ordered issue of summons to the witnesses and warrants against the informant – Trial court* D *after numerous dates ultimately recorded that witnesses were not present and ordered acquittal – High Court held that there was no service report or execution of warrant against the informant and there was no service report to show that either summons were served on other witnesses or* E *warrants issued against witnesses were executed and it remanded the matter to trial court for retrial – On appeal, held: The Court is under legal obligation to see that the witnesses who have been cited by prosecution are produced by it or if summons are issued, they are actually served on* F *the witnesses – If the Court is of opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence – In the instant case, High Court upon perusal of record held that notices were not served on the witnesses – High Court would be justified to* G *interfere with an order of acquittal if the trial court has wrongly shut out the evidence which the prosecution wishes to produce – The order of High Court cannot be regarded as faulty.*

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*Criminal trial: Concept of fair trial – Obligation of courts – Held: It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding – The court is duty bound to see that neither the prosecution nor the defence take unnecessary adjournments and take the trial under their control and to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses – Public Prosecutor who conducts the trial, has a statutory duty to perform – The Court also is not expected to accept the version of the prosecution as if it is sacred – Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.*

**Dismissing the appeal, the Court**

**HELD: 1. A scrutiny of the orders passed by the trial Judge from time to time showed that the trial Judge has really not taken pains to verify whether the summons were actually served on the witnesses or not. The High Court rightly observed that the trial court did not also try to verify from the record whether the warrants had been executed or not. He had directed the prosecution to produce the witnesses and mechanically recorded that the witnesses were not present and proceeded to direct the prosecution to keep them present. Eventually, the trial Judge passed an acquittal order under Section 232 CrPC. [Para 6] [520-E-G]**

*K.Chinnaswamy Reddy v. State of Andhra Pradesh* **AIR 1962 SC 1788: 1963 SCR 412 – relied on**

*Abinash Chandra Bose v. Bimal Krishna Sen* **(1963) 3 SCR 564: AIR 1963 SC 316 – distinguished.**

*Ayodhya Dube v. Ram Sumer Singh* **1981 Supp. SCC**

A 83; *Sunil Kumar Pal v. Phota Sheikh* **(1984) 4 SCC 533;** *Bansi Lal v. Laxman Singh* **1986 (3) SCR 191: (1986) 3 SCC 444;** *Satyajit Banerjee & Ors. v. State of W.B. & Ors.* **2004 (6) Suppl. SCR 294: (2005) 1 SCC 115;** *Mary Pappa Jebamani v. Ganesan & Ors.* **2013 (11) SCR1042: 2013 (15) SCALE**
B **154;** *Bindeshwari Prasad Singh alias B.P. Singh and others v. State of Bihar (now Jharkhand) and another* **2002 (1) Suppl. SCR 495: (2002) 6 SCC 650;** *Manu Sharma v. State (NCT of Delhi)* **2010 (4) SCR 103: (2010) 6 SCC 1;** *Rattiram v.*
C *State of M.P.* **2012 (3) SCR 496: (2012) 4 SCC 516;** *Natasha Singh v. CBI* **2013 (5) SCR 539 : (2013) 5 SCC 741;** *J. Jayalalithaa v. State of Karnataka* **(2014) 2 SCC 401;** *NHRC v. State of Gujarat* **2009 (7) SCR 236 : (2009) 6 SCC 767;** *State of Karnataka v. K. Yarappa Reddy* **1999 (3) Suppl. SCR**
D **359: (1999) 8 SCC 715;** *Ram Bali v. State of U.P.* **2004 (1) Suppl. SCR 195: (2004) 10 SCC 598;** *Kamel Singh v. State of M.P.* **1995 (2) Suppl. SCR 629: (1995) 5 SCC 518;** *Dayal Singh v. State of Uttaranchal* **2012 (10) SCR 157: (2012) 8 SCC 263;** *Zahira Habibulla H. Sheikh and Another v. State*
E *of Gujarat and others* **2004 (3) SCR 1050: (2004) 4 SCC 158 – referred to.**

**2. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the**
F **community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the prosecution nor the accused play truancy with the criminal trial or corrode**
G **the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a 'mock trial'. It is a serious concern of the**
H **society. Every member of the collective has an inherent**

interest in such a trial. No one can be allowed to create a dent in the same. The court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court that it does not intend to cite the witnesses. In the case at hand, it is luculent that the High Court upon perusal of the record came to hold that notices were not served on the witnesses. The agonised widow of deceased was compelled to invoke the revisional jurisdiction of the High Court against the judgment of acquittal as the trial was closed after examining a formal witness. The whole trial was nothing, but comparable to an experimentation conducted by a child in a laboratory. It is neither permissible nor allowable. [Paras 18, 19] [527-F; 528-A-H; 529-A-B]

Case Law Reference

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|---|---|---|---|
| 2004 (3) SCR 1050 | referred to | Para 3 | |
| (1963) 3 SCR 564 | distinguished | Para 4 | G |
| 1963 SCR 412 | referred to | Para 6 | |
| 1981 Supp. SCC 83 | referred to | Para 8 | |
| (1984) 4 SCC 533 | referred to | Para 9 | H |

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|---|---|---|---|
| A | **1986 (3) SCR 191** | **referred to** | **Para 10** |
| | **2004 (6) Suppl. SCR 294** | **referred to** | **Para 11** |
| | **2013 (11) SCR 1042** | **referred to** | **Para 11** |
| B | **2002 (1) Suppl. SCR 495** | **referred to** | **Para 12** |
| | **2010 (4) SCR 103** | **referred to** | **Para 13** |
| | **2012 (3) SCR 496** | **referred to** | **Para 14** |
| C | **2013 (5) SCR 539** | **referred to** | **Para 15** |
| | **(2014) 2 SCC 401** | **referred to** | **Para 16** |
| | **2009 (7) SCR 236** | **referred to** | **Para 17** |
| D | **1999 (3) Suppl. SCR 359** | **referred to** | **Para 17** |
| | **2004 (1) Suppl.SCR 195** | **referred to** | **Para 17** |
| | **1995 (2) Suppl. SCR 629** | **referred to** | **Para 17** |
| E | **2012 (10) SCR 157** | **referred to** | **Para 17** |

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 914 of 2015

F From the Judgment and Order dated 13.12.2011 in Criminal Revision No. 919 of 2008 of the High Court of Judicature at Patna, Bihar

K.C. Dua for the Appellants.

G Devendra Kumar Singh, Prem Sunder Jha, Puja Singh, Shishir Pinaki, Aditya Narayan Singh and Samir Ali Khan for the Respondents.

The Judgment of the Court was delivered by

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**DIPAK MISRA, J.** 1. The pivotal issues, quite disturbing and disquieting, that emanate in this appeal by special leave for scrutiny, deliberation and apposite delineation, fundamentally pertain to the role of the prosecution and the duty of the court within the requisite paradigm of fair trial which in the ultimate conceptual eventuality results in appropriate stability of criminal justice dispensation system. The attitude of callousness and non-chalance portrayed by the prosecution and the total indifferent disposition exhibited by the learned trial Judge in shutting out the evidence and closing the trial after examining a singular formal witness, PW 1, in a trial where the accused persons were facing accusations for the offences punishable under Sections 147, 148, 149, 341, 342 and 302 of the Indian Penal Code (IPC), which entailed an acquittal under Section 232 of the Criminal Procedure Code, 1973 (CrPC), are really disconcerting; and indubitably cause discomfort to the judicial conscience. It seems that everyone concerned with the trial has treated it as a farce where the principal protagonists compete with each other for gaining supremacy in the race of closing the case unceremoniously, burying the basic tenets of fair trial, and abandoning one's duty to serve the cause of justice devoutly. It is a case where the prosecution has played truant and the learned trial Judge, with apathy, has exhibited impatience. Fortunately, the damage done by the trial court has been rectified by the High Court in exercise of the revisional jurisdiction under Section 401 CrPC; but what is redemption for the conception of the fair trial has caused dissatisfaction to the accused persons, for they do not intend to face the retrial. It is because at one point of time, the High Court had directed for finalization of trial within a fixed duration and the learned trial Judge, in all possibility, harboured the impression that even if the prosecution witnesses had not been served the notice to depose in court, and the prosecution had not taken any affirmative steps to make them available for adducing evidence in court, yet he must conclude the trial by

A the target date as if it is a mechanical and routine act. The learned trial Judge, as it appears to us, has totally forgotten that he could have asked for extension of time from the High Court, for the High Court, and we are totally convinced, could never have meant to conclude the trial either at the pleasure of
B the prosecution or desire of the accused.

2. The sad scenario has to have a narration. The informant lodged an FIR on 29.11.2004 at Tikari Police Station about 8.00 p.m. that the accused persons came armed with various
C weapons, took away her husband Brahamdeo Yadav, the deceased, and threatened the family members not to come out from their house. The deceased was taken towards the house of Krishna Yadav and next morning he was found dead having several wounds. It was mentioned in the FIR that the
D occurrence had taken place as the family of the informant and the accused persons were in litigating terms. On the basis of the FIR, criminal law was set in motion and eventually, the investigating agency submitted the charge-sheet for the offences which we have already mentioned hereinbefore. After
E the accused persons were sent up for trial, charges were framed on 10.8.2007. Be it noted, the appellants in this case were tried as accused in Session Trial No. 350/2006 and trial of different accused-persons had been split up. It is apt to mention here that applications for grant of bail were preferred
F by certain accused persons before the High Court and the High Court by order dated 17.07.2007, while declining to admit the accused persons to bail, directed that the trial should be concluded as early as possible and in any case within nine
G months from the date of receipt/production of the copy of the order passed by the High Court. After the charges were framed, the learned trial Judge, that is, Additional Session Judge, FTC-II Gaya, passed orders to issue summons to the witnesses and they were issued on 17.8.2007. Thereafter the
H learned trial Judge issued bailable as well as non-bailable

warrants against the informant on 5.12.2007. The learned trial Judge on various occasions recorded that witnesses were not present and ultimately vide order dated 17.5.2008 directed the matter to be posted on 23.5.2008 for orders under Section 232 CrPC and on the dated fixed recorded the judgment of acquittal. A B

3. Being aggrieved by the aforesaid judgment, the informant preferred criminal revision no. 919 of 2008. The learned Single Judge upon perusal of the record found that there was no service report/execution of warrant of arrest against the informant and there was also no service report on record to show that either summons were served on other witnesses or bailable or non-bailable warrants issued against the witnesses were executed. The High Court also took note of the fact that after the accused persons were examined under Section 313 CrPC, case was adjourned to 17.5.2008 for evidence of the defence and hearing and finally the matter was taken up for consideration under Section 232 CrPC and judgment was passed acquitting the accused persons. It has been clearly stated by the High Court that the Superintendent of Police, Gaya had not taken steps to produce the evidence and the learned trial Judge had not taken effective steps for production of witnesses and tried to conclude the trial without being alive to the duties of the trial court. The learned Single Judge has placed reliance on the decision rendered in ***Zahira Habibulla H. Sheikh and Another v. State of Gujarat and others***[1] and opined there has been no fair trial and accordingly remanded the matter for retrial by the trial court. C D E F

4. Calling in question the propriety and justification of the order passed by the High Court, it is submitted by Mr. Tanmaya Mehta, learned counsel appearing for the appellants that adequate opportunities were afforded to the prosecution G

[1] (2004) 4 SCC 158 H

witnesses and when summons were issued, a presumption has to be drawn that they had been served and, therefore, there was no error on the part of the learned trial Judge in passing the order under Section 232 CrPC and the High Court in exercise of revisional jurisdiction could not have directed for retrial of the case because such a direction can only be issued in very rare and exceptional circumstances. It is urged by him that the accused persons in the split up trial have been acquitted and, therefore, no fruitful purpose would be served for holding a retrial. In support of his submissions, he has commended us to the authority in ***Abinash Chandra Bose v. Bimal Krishna Sen***[2].

5. Mr. Shishir Pinaki, learned counsel for the State and Mr. Devendra Kumar Singh, learned counsel for the informant-respondent no.2 have supported the order passed by the High Court on the ground that the order in the obtaining facts and circumstances does not warrant any interference. They have emphasised on the concept of fair trial and how the trial in the instant case defeats the very essence of the said concept.

6. On a scrutiny of the orders passed by the learned trial Judge from time to time, we find that the learned trial Judge has really not taken pains to verify whether the summons had really been served on the witnesses or not. The High Court has rightly observed that the trial court has also not tried to verify from the record whether the warrants had been executed or not. As is manifest, he had directed the prosecution to produce the witnesses and mechanically recorded that the witnesses were not present and proceeded to direct the prosecution to keep them present. Eventually, as we have stated earlier, the trial Judge posted the matter to 23.5.2008 and passed an order under Section 232 CrPC. The question that arises for consideration is whether under these

[2] (1963) 3 SCR 564 = AIR 1963 SC 316

circumstances the High Court while dealing with the revision under Section 401 CrPC should have interfered and directed for retrial of the case. In this regard, we may refer with profit to the decision in **K.Chinnaswamy Reddy v. State of Andhra Pradesh**[3] and Anr., wherein a three-Judge Bench while dealing with the power of the High Court for directing retrial has ruled thus:

> "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 may not have thought fit to appeal; but this jurisdiction should in our opinion be exercised by the High Court only in exceptional cases, when there is some glaring defect in 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 convert 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 a finding of acquittal in revision and it is only in exceptional cases that this power should be exercised. It is not possible to lay down the criteria for determining such exceptional cases which would cover all contingencies. We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be: where the trial court has no jurisdiction to try the case but has still acquitted the accused, or where the trial court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal *court*

[3] AIR 1962 SC 1788

A has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and
B other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal; and in such a case it is obvious that it cannot be said that the High Court was doing indirectly what it could not do directly in view of
C the provisions of Section 439(4)."

From the aforesaid decision, it is apparent that the High Court would be justified to interfere with an order of acquittal if the trial court has wrongly shut out the evidence which the
D prosecution wishes to produce. It is one of the instances given by the court in the aforesaid verdict.

7. In ***Abinash Chandra Bose*** (supra), the Court though dealing with a different fact situation observed that when the
E prosecution had the full opportunity to produce the evidence and the trial court had unreasonably not refused any opportunity to the prosecution to adduce all the evidence that it was ready and willing to produce, the High Court should not have directed for retrial as that would put the accused to botheration and
F expense of a second trial. While saying so, the three-Judge Bench also observed that same could not be done simply because the prosecution did not adduce all the evidence that should and could have been brought before the court of first instance.

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8. In this context, it is seemly to refer to the authority in ***Ayodhya Dube v. Ram Sumer Singh***[4] wherein a three-Judge Bench explaining the decision in ***Chinnaswamy***

H [4] 1981 Supp. SCC 83

(supra) observed that:-

> "....we only wish to say that the criminal justice system does not admit of 'piegon-holing'. Life and the Law do not fall neatly into slots. When a court starts laying down rules enumerated (1), (2), (3), (4) or (a), (b), (c), (d), it is arranging for itself traps and pitfalls. Categories, classifications and compartments, which statute does not mention, all tend to make law 'less flexible, less sensible and less just.'"

Be it noted, in the said case this Court had affirmed the order of retrial directed by the High Court in a revision petition preferred under Section 401 CrPC on the ground that judgment of acquittal consisted of faulty reasoning and lack of judicial approach, and accepted canons for appreciating evidence had been thrown to the wind as a consequence of which grave miscarriage of justice had occurred.

9. In ***Sunil Kumar Pal v. Phota Sheikh***[5], the Court while commenting on the unusual procedure adopted by trial court, opined that:-

> ".....We have no doubt that under these circumstances the trial could not be regarded as fair and just so far as the prosecution was concerned. The entire course of events shows that the conduct of the trial was heavily loaded in favour of Respondents 1 to 9. The trial must in the circumstances be held to be vitiated and the acquittal of Respondents 1 to 9 as a result of such trial must be set aside. It is imperative that in order that people may not lose faith in the administration of criminal justice, no one should be allowed to subvert the legal process. No citizen should go away with the feeling that he could not get justice

[5] (1984) 4 SCC 533

A from the court because the other side was socially, economically or politically powerful and could manipulate the legal process. That would be subversive of the rule of law."

B 10. In ***Bansi Lal v. Laxman Singh***[6], on the question of limited revisional jurisdiction under Section 401 CrPC and the duty of the court, a two-Judge Bench opined that such a power has to be exercised only in exceptional cases when there is a glaring defect in the procedure or there is a manifest error on C point of law and there has consequently been flagrant miscarriage of justice. A mere circumstance that finding of fact recorded by the trial court which may be in the opinion of the High Court is erroneous or incorrect, would not justify setting aside the order of acquittal and directing a retrial of the D accused.

11. In ***Satyajit Banerjee & Ors. v. State of W.B. & Ors.***[7], it has been opined that direction for retrial should not be made in all or every case where acquittal of accused is for want of E adequate or reliable evidence. It is only when an extraordinary situation with regard to first trial is found so as to treat it as a farce or a 'mock trial', direction for retrial would be justified. The same principle has been reiterated in ***Mary Pappa Jebamani v. Ganesan & Ors.***[8]

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12. In ***Bindeshwari Prasad Singh alias B.P. Singh and others v. State of Bihar (now Jharkhand) and another***[9], while dealing with the power under Section 401 CrPC, the Court while not agreeing with the High Court interfering with G the order of acquittal in exercise of its revisional jurisdiction at

[6] (1986) 3 SCC 444

[7] (2005) 1 SCC 115

[8] 2013 (15) SCALE 154

H [9] (2002) 6 SCC 650

the instance of the informant observed thus:- A

> "It may be that the High Court on appreciation of the evidence on record may reach a conclusion different from that of the trial court. But that by itself is no justification for exercise of revisional jurisdiction under Section 401 B of the Code of Criminal Procedure against a judgment of acquittal. We cannot say that the judgment of the trial court in the instant case was perverse. No defect of procedure has been pointed out. There was also no improper acceptance or rejection of evidence nor was C there any defect of procedure or illegality in the conduct of the trial vitiating the trial itself."

13. In the present context, it is also necessary to appreciate the basic concept behind a fair trial. In ***Manu Sharma v. State (NCT of Delhi)***[10], it has been stated that:- D

> "*197.* In the Indian criminal jurisprudence, the accused is placed in a somewhat advantageous position than under different jurisprudence of some of the countries in E the world. *The criminal justice administration system in India places human rights and dignity for human life at a much higher pedestal. In our jurisprudence an accused is presumed to be innocent till proved guilty, the alleged accused is entitled to fairness and true* F *investigation and fair trial and the prosecution is expected to play balanced role in the trial of a crime.* The investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. These are the fundamental canons of our criminal G jurisprudence and they are quite in conformity with the constitutional mandate contained in Articles 20 and 21

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[10] (2010) 6 SCC 1 H

A of the Constitution of India."

14. In ***Rattiram v. State of M.P.***[11], a three-Judge Bench has ruled thus:-

B "Fundamentally, a fair and impartial trial has a sacrosanct purpose. It has a demonstrable object that the accused should not be prejudiced. A fair trial is required to be conducted in such a manner which would totally ostracise injustice, prejudice, dishonesty and favouritism."

C And again:-

"Decidedly, there has to be a fair trial and no miscarriage of justice and under no circumstances, prejudice should be caused to the accused but, a pregnant one, every D procedural lapse or every interdict that has been acceded to and not objected at the appropriate stage would not get the trial dented or make it unfair. Treating it to be unfair would amount to an undesirable state of pink of perfection in procedure. An absolute apple-pie order in carrying out E the adjective law, would only be sound and fury signifying nothing."

15. In this regard, it is apt to reproduce a passage from ***Natasha Singh v. CBI***[12], wherein it has been laid down:-

F "Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, G and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human

[11] (2012) 4 SCC 516

H [12] (2013) 5 SCC 741

right. Thus, under no circumstances can a person's right to fair trial be jeopardised. A

16. In ***J. Jayalalithaa v. State of Karnataka***[13], the Court dealing with the concept of fair trial has opined that:-

> "Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial Judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution." B C D

17. The same principle has also been stated in ***NHRC v. State of Gujarat***[14], ***State of Karnataka v. K. Yarappa Reddy***[15], ***Ram Bali v. State of U.P.***[16], ***Karnel Singh v. State of M.P.***[17] and ***Dayal Singh v. State of Uttaranchal***[18]. E

18. Keeping in view the concept of fair trial, the obligation of the prosecution, the interest of the community and the duty of the Court, it can irrefragably be stated that the Court cannot be a silent spectator or a mute observer when it presides over a trial. It is the duty of the court to see that neither the F

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[13] (2014) 2 SCC 401

[14] (2009) 6 SCC 767 G

[15] (1999) 8 SCC 715

[16] (2004) 10 SCC 598

[17] (1995) 5 SCC 518

[18] (2012) 8 SCC 263 H

A prosecution nor the accused play truancy with the criminal trial or corrode the sanctity of the proceeding. They cannot expropriate or hijack the community interest by conducting themselves in such a manner as a consequence of which the trial becomes a farcical one. Law does not countenance a
B 'mock trial'. It is a serious concern of the society. Every member of the collective has an inherent interest in such a trial. No one can be allowed to create a dent in the same. The court is duty bound to see that neither the prosecution nor the defence takes unnecessary adjournments and take the trial
C under their control. The court is under the legal obligation to see that the witnesses who have been cited by the prosecution are produced by it or if summons are issued, they are actually served on the witnesses. If the court is of the opinion that the material witnesses have not been examined, it should not allow
D the prosecution to close the evidence. There can be no doubt that the prosecution may not examine all the material witnesses but that does not necessarily mean that the prosecution can choose not to examine any witness and convey to the court
E that it does not intend to cite the witnesses. The Public Prosecutor who conducts the trial, has a statutory duty to perform. He cannot afford to take things in a light manner. The Court also is not expected to accept the version of the prosecution as if it is sacred. It has to apply its mind on every
F occasion. Non-application of mind by the trial court has the potentiality to lead to the paralysis of the conception of fair trial.

19. In the case at hand, it is luculent that the High Court
G upon perusal of the record has come to hold that notices were not served on the witnesses. The agonised widow of deceased was compelled to invoke the revisional jurisdiction of the High Court against the judgment of acquittal as the trial was closed after examining a formal witness. The order passed by the

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High Court by no stretch of imagination can be regarded as faulty. That being the position, we have no spec of doubt in our mind that the whole trial is nothing, but comparable to an experimentation conducted by a child in a laboratory. It is neither permissible nor allowable. Therefore, we unhesitatingly affirm the order passed by the High Court as we treat the view expressed by it as unexceptionable, for by its order it has annulled an order which was replete with glaring defects that had led to miscarriage of justice.

20. Consequently, the appeal, being sans merit, stands dismissed. The order be communicated to the Registrar General of the High Court to communicate to the concerned learned trial Judge to proceed with the trial in accordance with law.

Devika Gujral Appeal dismissed.