A LAKHAN SINGH

v.

AMARJEET SINGH & ANR.

(Criminal Appeal No. 2191 of 2022)

B DECEMBER 06, 2022

[DINESH MAHESHWARI AND SUDHANSHU DHULIA, JJ.]

Code of Criminal Procedure, 1973 – s.391 – Additional evidence in criminal appeal – When impermissible – Respondent no.1-accused was convicted u/s 302, IPC and sentenced to life – Conviction and sentence challenged by respondent before High Court, also filed application for recording of evidence in respect of his plea of unsoundness of mind – Application allowed, Trial Court was directed to take on record the additional evidence and documents and to send the file back along with additional evidence – On appeal by complainant, held: Evidence regarding mental condition of the respondent was already on record – He also got himself examined as DW-2 to put forward the aspect of his mental incapacity – Facts and conclusions in the orders passed by the Trial Court and by Supreme Court were available before the High Court – While dealing with the appeal, it ought to have examined the material on record before taking a decision as to whether any further evidence was required in the matter or not – Deciding the application for permission to lead additional evidence in the appeal without hearing the parties on merits and without examining the record and the reasoning that prevailed in the Trial Court, cannot be countenanced – Further, if at all any further evidence was considered requisite, it could have been taken by the High Court itself or by directing the registry to do the same, after recording specific reasons therefor – Impugned order set aside – Criminal appeal restored for reconsideration of the High Court on merits – Application filed by respondent also restored – Penal Code, 1860 – ss.302, 84.

Code of Criminal Procedure, 1973 – s.391 – Scope of – Held: Proposition of taking additional evidence in a criminal appeal cannot be adopted as a matter of course by the Appellate Court – Appellate Court could take a considered decision on the prayer for adducing additional evidence in appeal only after the appeal itself has been heard on merits and not before.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2191 of 2022.

From the Judgment and Order dated 29.03.2022 of the High Court of Delhi at New Delhi in Crl. M.A. No.1828 of 2020 in Crl. A. No. 453 of 2019.

Tanmay Mehta, Lakshya Gupta, V. K. Sidharthan, Advs. for the Appellant.

Vikramjeet Banerjee, ASG, Roshan Santhalia, Ms. Suruchi Jaiswal, P.V. Yogeswaran, Ms. Vishakha,. Raghav Sharma, Akshit Pradhan, Ms. Shruti Agarwal, Ms. Janhvi Prakash,. Kartik Dey, Gurmeet Singh Makker, Advs. for the Respondents.

The Order of the Court was passed by

DINESH MAHESHWARI, J.

Leave granted.

2. By way of this appeal, complainant of the criminal case arising from FIR No. 211 of 2011 has questioned the order dated 29.03.2022 passed by the High Court of Delhi at New Delhi in Crl. M.A. No. 1828 of 2020 in Criminal Appeal No. 453 of 2019, whereby the High Court allowed an application moved by the accused-applicant (appellant before the High Court-respondent No.1 herein) with reference to Sections 311 and 391 of the Code of Criminal Procedure, 1973[1] and directed the Trial Court to take on record the additional evidence and documents, as mentioned in the subject application; and to send the file back along with additional evidence.

3. The relevant background aspects of the matter are that the said appeal bearing No.453 of 2019 has been filed by the applicant-respondent No.1 against the judgment of conviction dated 15.12.2018 and order on sentence dated 19.12.2018, as passed by the Additional Sessions Judge, Tis Hazari Courts, West Delhi in relation to FIR No. 211 of 2011, whereby he was convicted of the offence punishable under Section 302 of the Indian Penal Code, 1860[2] and was sentenced to imprisonment for life with fine of Rs.1 lakh.

---

[1] 'CrPC', for short.
[2] 'IPC', for short.

A 4. Looking to the nature of order passed by the High Court and the order proposed to be passed by us herein, narration of all the factual aspects is not necessary. Suffice it to notice for the present purpose that while challenging the judgment and order leading to his conviction and sentence, the applicant-respondent No. 1 submitted before the High Court
B that on the date of incident, he was of unsound mind and hence, could not have been tried and convicted in this matter; and such a relevant fact had not been considered by the Trial Court. In support of this plea, the applicant sought to rely upon, amongst others, the OPD Reports dated 12.07.2011 and 19.07.2011 along with the Medical Store Bill dated 12.07.2011; and to examine the doctor who had attended on him and
C prescribed the medicines as also the chemist who had supplied such medicines. The applicant also made the submission that he wanted to examine the Director, IHBAS, Dilshad Garden, Delhi or any doctor from IHBAS to ascertain his medical condition on the day of incident, as also his father, who was having the original record of the said OPD Reports
D and Bill of medicines.

5. After taking note of the contents of application and the provisions of Section 391 CrPC[3], the High Court noticed that on behalf of the State, there was no objection to the recording of evidence in respect of the plea of unsoundness of mind, which the applicant intended to raise
E and which was not considered in the trial; and also observed that the contentions sought to be urged were going to the root of the matter. On these considerations and with reference to the General Exception

---

[3] Section 391 CrPC reads as under: -

F "391. Appellate Court may take further evidence or direct it to be taken.- (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or when the Appellate Court is a High Court, by a Court of Session or a Magistrate.

(2) When the additional evidence is taken by the Court of Session or the Magistrate,
G it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

(3) The accused or his pleader shall have the right to be present when the additional evidence is taken.

(4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry."

H

provided in Section 84 IPC[4], the High Court deemed it appropriate to allow the applicant to lead additional evidence before the Trial Court. Though the High Court expressed that the appeal was *remanded back* but, issued directions that the Trial Court shall get the evidence recorded after giving shortest possible dates and thereafter, the file shall be returned along with additional evidence.

6. The relevant observations and directions of the High Court read as under: -

> "9.Keeping in view the facts and circumstances of the case before us and also the fact that the state has accorded no objection to the recording of the evidence in respect of the plea of insanity, which the appellant now intends to raise, as the same were not considered during the course of the trial, and also the circumstance that the contention raised at this stage by the appellant does go to the root of the matter; the appellant wants to place on record documents pertaining to his mental condition as well as wanting to examine the witnesses in support of his contention; and the same in our considered opinion does not amount to filling up the lacuna in the present case. The plea of insanity is covered under general exceptions under Section 84 of the Indian Penal Code and the same would definitely have a bearing on this case. Even otherwise it is pertinent to observe that the Applicant/Appellant had in fact raised the issue of his being of unsound mind at the stage of trial before the learned Additional Sessions Judge which was dismissed and declined vide order dated 20.02.2014. Thus, in this view of the matter, and in the interest of justice, we consider it appropriate to allow applicant/appellant to lead additional evidence before the learned Trial Court.
>
> 10. Appeal is remanded back with the directions to learned Trial Court to take on record the additional evidence and documents as mentioned in the subject application, under Section 311 of Code of Criminal Procedure, 1973 dated 23.01.2020. Let the file be

[4] Section 84 IPC reads as under: -

> "84.Act of a person of unsound mind.- Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law."

A placed before the learned District Judge – Tis Hazari Courts to mark the case to the concerned Trial Court and the concerned Trial Court shall fix a shortest possible date for recording of the evidence. The Trial Court shall not give more than one opportunity to the applicant/appellant to lead the additional evidence as prayed for and shall not give any unnecessary adjournments. Thereafter, the file shall be sent back to this Court along with additional evidence recorded."

B

7. Seeking to challenge the order aforesaid, learned counsel for the complainant-appellant has argued that the order dated 20.02.2014, as referred to by the High Court in the order impugned, was indeed considered and affirmed by this Court in the order dated 12.10.2015 in Criminal Appeal Nos. 1345-1346/2015; and the impugned order, as passed by the High Court, does not stand in conformity with the order so passed by this Court.

C

7.1. Learned counsel has further submitted that during the course of trial, two-fold submissions were made in the application dated 17.11.2011 moved on behalf of the accused-applicant: one about his mental illness at the time of incident and another about his unsoundness of mind during the trial; and sought relief in terms of Section 330 CrPC. Learned counsel would submit that in the order dated 20.02.2014, the application so made was duly considered by the Trial Court and then, the same was dismissed with reference to the deposition of witnesses examined for the purpose. Learned counsel has pointed out that in the order dated 20.02.2014, the Trial Court, *inter alia*, found and held as under:-

D

E

F "18. I am of the view that in view of medical board report dated 06.02.2013, the deposition of CW-1 & CW-2 and in view of further report dated 01.01.2014 of IHBAS, the accused is fit to face trial. The accused is not incapable of making his defence. The application under Section 330 CrPC filed by Sunehera Singh father of the accused is without any merits and same is hereby dismissed. With this application is disposed off."

G

7.2. Learned counsel has further submitted that the said order came to be specifically affirmed by this Court in the order dated 12.10.2015, that reads as under: -

H "Leave granted.

The instant appeal has been filed by the father-in-law of the deceased, assailing the orders passed by the High Court, suspending the trial of the respondent-Amarjeet Singh. The question which came to be considered by the High Court, related to the mental fitness of the respondents to face trial. Insofar as the instant aspect of the matter is concerned, the High Court relied on the first medical evaluation conducted by a Medical Board on 06.02.2013. It also relied on the statement of two Court witnesses examined by the Trial Court, namely, CW-1 on 20.07.2013 and CW-2 on 11.10.2013.

In addition to the above, the High Court also took into consideration a second report of the Medical Board dated 01.01.2014. In both the aforementioned Medical Reports, and also, the statement made before the trial court by the two court witnesses, respondents had been considered to be fit to face the trial.

In the above view of the matter and keeping in mind the opinion/ statements of experts on the subject, we are satisfied that the direction issued by the High Court on 04.09.2014, to suspend the trial, was not justified. The impugned order passed by the High Court is accordingly set aside. The order passed by the trial court dated 20.02.2014, affirming the fitness of the respondents to face trial, is confirmed.

In the above circumstances, the appeals stand allowed."

7.3. Learned counsel would submit that both the issues as regards mental capacity of the applicant-respondent No.1 at the time of incident as also during the course of trial stand concluded by the aforesaid orders; and the High Court has not been justified in granting opportunity for further evidence on the very same aspects.

8. *Per contra*, learned counsel for respondent No.1 has submitted that in the order dated 20.02.2014 passed by the Trial Court as also the order dated 12.10.2015 passed by this Court, only the aspect as regards the mental capacity of the applicant–respondent No.1 to face the trial came to be considered and pronounced upon but, his mental capacity at the time of incident and his capacity to know the nature of his acts definitely remains a question for consideration and hence, the High Court has not committed any error in allowing evidence to be adduced in that regard before the Trial Court.

A 8.1. Learned counsel would further submit that the High Court having taken a particular view which remains just and proper and serves the cause of justice, no interference is called for.

9. Learned ASG appearing for the State has duly assisted us with reference to the provisions of Sections 311, 391 and 330 CrPC.

B

10. Having given thoughtful consideration to the submissions made and having examined the record, we are clearly of the view that the order impugned cannot be sustained for more than one reason.

11. Insofar as the question of unsoundness of mind of the C respondent No. 1 is concerned, it is noticed that in the application moved before the Trial Court in reference to Section 330 CrPC, it was precisely the contention on his behalf that he was suffering from mental illness during the period of incident. It was also submitted that being of unsound mind, he was incapable of making his defence. It is also noticed that in the earlier round of proceedings, the High Court set aside the order D dated 23.02.2012 passed by the Trial Court and issued directions for examination of respondent No.1 from the specialist/medical board. Thereupon, the file was sent to the concerned Magistrate to get the applicant examined by the medical board. After receiving report from the medical board that respondent No. 1 was fit to stand trial, the Trial E Court posted the matter for examination of witnesses and in fact, examined two Doctors as CW-1 and CW-2 respectively. After taking note of the entire evidence on record, the Court found that the respondent No. 1 was fit to face the trial and was not incapable of making his defence. Thus, the application was rejected. This Court approved the order so passed by the Trial Court, particularly in view of the opinion/ F statement of the experts and found no justification in the High Court interfering with the matter.

12. In the given set of facts and circumstances, when the evidence was indeed taken for the purpose of dealing with the plea put forward on behalf of the applicant-respondent No.1; and a specific view was G taken by the Trial Court, which was affirmed by this Court with reference to the evidence available on record, we find it difficult to approve the approach of the High Court in permitting further evidence of the same nature to be adduced and for that purpose, sending the matter to the Trial Court.

H

13. The procedure as adopted in the present matter is difficult to be approved, more particularly when specific evidence as regards mental condition of the applicant–respondent No.1 is already on record and then, it is also seen that the aspect of his mental incapacity was sought to be put forward by respondent No.1 himself by entering into witness-box and getting himself examined as DW-2. The facts and conclusions in the orders passed by the Trial Court and by this Court are available before the High Court. The High Court dealing with the appeal ought to have examined the material on record before taking a decision as to whether any further evidence was required in the matter or not. Secondly, if at all any further evidence was considered requisite, in the totality of circumstances of the present case and nature of plea sought to be raised, such evidence could have been taken by the High Court itself or by directing the registry to do the same, of course, after recording specific reasons therefor.

13.1. Put in a nutshell, it is apparent that while passing the order dated 29.03.2022, neither the order passed by this Court on 12.10.2015 has been taken note of by the High Court nor even the evidence already available on record has been examined by the High Court.

14. The proposition of taking additional evidence in a criminal appeal cannot be adopted as a matter of course by the Appellate Court and in fact, the occasion for the Appellate Court to take a considered decision on the prayer for adducing additional evidence in appeal could arrive only after the appeal itself has been heard on merits and not before. Taking up an application moved in the appeal for permission to lead additional evidence and deciding the same without hearing the parties on merits of the appeal and without examining record of the case and the reasoning that has prevailed in the Trial Court, in our view, cannot be countenanced.

15. In the aforesaid view of the matter, the impugned order dated 29.03.2022 deserves to be and is hereby set aside and the appeal i.e., Criminal Appeal No.453 of 2019, stands restored for reconsideration of the High Court in accordance with law.

16. Having regard to the circumstances of the case, though we are not approving the order dated 29.03.2022 but, while restoring the appeal for consideration on merits, we would also restore the said application, Cr.M.A. 1828 of 2020, as moved by the applicant-respondent

A No.1, which may be considered at an appropriate stage by the High Court in accordance with law; and appropriate orders may be passed, as deemed fit and necessary in the facts and circumstances of the case.

17. The parties through their respective counsel shall stand at notice to appear before the High Court in Criminal Appeal No.453 of
B 2019 on 10.01.2023.

18. In the totality of the circumstances of the case, the interim arrangement made by the High Court in its order dated 15.09.2022 during the pendency of the appeal shall continue until the first date of appearance of the parties before the High Court i.e., 10.01.2023.

C 19. It goes without saying that we have not made any comments on merits of the case either way; and all the aspects relating to the merits remain open to be argued by the parties before the High Court.

20. With the observations, relaxations and requirements foregoing, the appeal stands allowed.

Divya Pandey Appeal allowed.
(Assisted by : Deepak Panwar, LCRA)