

PETITIONER:
MOHINDER SINGH AND ORS. ETC.

Vs.

RESPONDENT:
STATE OF PUNJAB AND ANR.

DATE OF JUDGMENT 20/12/1984

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
VARADARAJAN, A. (J)

CITATION:
1985 AIR 383 1985 SCR (2) 488
1985 SCC (1) 342

ACT:
Criminal Procedure Code 1973 Sections 377, 378 and 386.

HEADNOTE:

Appeal against acquittal by state Government to High Court-Powers of appellate court-What are-High court final court of facts-Correctness and acceptability of evidence-Duty-To be satisfied-Open to re-appraise evidence and decide appeal or order re-trial-Not proper to remand case to trial court for writing a fresh judgment-Proper direction by Government to file appeal- Existence of-High Court whether competent to go through the sanction file.

The four appellants in the appeal were tried by the Sessions Judge for offenses under Sections 302/34 I.P.C. and also under Section 27 of the Arms Act 1959. The court convicted the first appellant under Section 304 Part-I I.P.C. and sentenced him to 7 years rigorous imprisonment and acquitted the others.

The first appellant filed an appeal before the High Court and the State Government filed appeals against the acquittal of the other appellants and also of the first appellant's under Section 302 I. P. C. The High Court came to a general conclusion that the judgment of the Sessions Judge was not in accordance with law and had not dealt with some of the Points raised in the appeals, and remanded the case back to the trial court for writing a fresh and proper judgment. As far as the acquitted accused were concerned although the appeals were filed by the Public Prosecutor as directed by the State Government, the High Court held that there was no proper direction by the Government for filing the appeals except in the case of the first appellant.

Allowing the Appeals to this Court,

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HELD: Assuming that the High Court was right in thinking the judgment suffered from some infirmity and there were certain facts which were not taken into consideration they would not be grounds for remanding the case to the Sessions Court to write a proper judgment. The High Court itself was a final court of facts and it was its duty to satisfy itself regarding the correctness and acceptability of the evidence. It was entirely open to the High Court to re-appraise the evidence once again to consider the facts

overlooked by the Sessions Judge and to have decided the appeal

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itself instead of remanding the case to the Sessions Court. The proper order in such a case should be either to decide the case itself or to send it for re-trial. The question of re-trial does not arise in the instant case. The order of the High Court is set aside and the High Court is directed to re-hear two appeals on merits according to law. [491D-F]

2. Whenever the Government seeks opinion it consults various agencies namely the Advocate-General, Public Prosecutor, Legal Remembrancer and others and thereafter the order is passed by the Government through the Secretary incharge. [490E]

In the instance cases it is not in dispute that the Public Prosecutor was directed by the Under Secretary to the Government in charge to file appeals against all the appellants. A clear direction had been given to the Public Prosecutor to file appeals against all the four accused and as regards the first appellant against his acquittal under Section 302 IPC. The High Court at the instance of the acquitted accused tried to re-open the matter in order to find out the manner and various stages through which the sanction to file an appeal was channelised. This was not at all proper for the High Court to do. [490E; G; F]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 335-36 and 523 of 1982.

From the Judgment and order dated the 31st of March, 1982 of the High Court of Punjab and Haryana in Criminal Revision No. 977 of 1980.

R.L. Kohli, M. K. Dua, S.K. Mehta, P.N. Puri and R.C. Kohli for the appellants.

S.K. Bagga for the respondents.

The Judgment of the Court was delivered by

FAZAL ALI, J. In these appeals by special leave four persons, namely, Mohinder Singh, Gurcharan Singh, Bharpur Singh and Jagvinder Singh were tried by the Sessions Judge for offences under Sections 302/34 and 307/34 IPC and also under Section 27 of the Arms Act. After recording the entire evidence the trial court convicted Mohinder Singh under section 304 Part I IPC sentenced him to 7 years rigorous imprisonment. The other three accused were acquitted by the Sessions Judge. Mohinder Singh filed an appeal before the High Court of Punjab and Haryana against his conviction and sentence. The State Government also filed an appeal against Gurcharan Singh, Bharpur Singh and Jagvinder Singh so far
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as their acquittal was concerned and against Mohinder Singh so far as his acquittal under Section 302 IPC was concerned. The High Court without making any real attempt to analyse and appreciate the evidence led in support of the prosecution came to a general conclusion that the judgment of the learned Sessions Judge was not in accordance with law and that he had not dealt with some points or omitted to consider some points, and remanded the case back to the trial court for writing a fresh and proper judgment. So far as the acquitted accused were concerned although the appeal was filed by the Public Prosecutor as directed by the State Government yet the High court on its own or perhaps at the instance of the acquitted accused on a petition filed by them held that there was no proper direction by the

Government for filing the appeal except in case of Mohinder Singh.

There was undoubtedly a direction to the Public Prosecutor to file appeal against acquitted accused as indicated above. The High Court, however, at the instance of the acquitted accused tried to re-open the matter in order to find out the manner and various stages through which the sanctioned to file an appeal was channelised. With due respects to the learned judges we feel that this was not at all proper for the High Court to do. Whenever, a Government seeks opinion it consults various agencies, namely, the Advocate General, Public Prosecutor, Legal Remembrancer and others and thereafter the order is passed by the Government through the Secretary incharge. In the instant case it was not disputed that the Public Prosecutor was directed by the Under Secretary to the Government in charge to file appeal against all the appellants. The High Court, however, seems to have gone deeper into the matter by making a roving inquiry into what had happened when the matter was under consideration of the Government and how things shaped and held after making this roving inquiry, that the authority given to the Public Prosecutor was only in respect of Mohinder Singh and not others. Therefore, the High Court was of the opinion that direction to file appeal against acquitted accused Gurcharan Singh, Bharpur Singh and Jagvinder Singh was non-est and hence appeal filed by the State was not properly presented so far as they are concerned. It appears that a clear direction has been given to the Public Prosecutor to file appeal against all the four accused, three of them against acquittal and as regards Mohinder Singh against his acquittal under Section 302 IPC.

Having gone through the entire record we are unable to agree with the High Court that there was any interpolation with

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respect to acquitted accused. It may be that various agencies may have expressed different views but by and large the final decision taken by the Under Secretary prevailed as a result of which the Public Prosecutor was authorised to file an appeal before the High Court against all the acquitted accused. In such a situation, therefore, the High Court erred in holding that the appeal presented by the State was not properly presented as against the said three accused, and it should have heard the appeal on merits alongwith the case of Mohinder Singh. As we intend to send the case back to the High Court for fresh decision in accordance with law after taking into consideration the fact that the appeal by the State was properly constituted it is not necessary for us to give further details. We might, however, mention that the High Court instead of analysing and appreciating evidence, remanded the case back to the Sessions Judge for writing a proper judgment. In the first place, assuming that the High Court was right in thinking that the judgment suffered from some infirmities and there were certain facts which were not taken into consideration they would not be grounds remanding the case to the Sessions Court to write a proper judgment. The High Court itself was a final court of facts and it was its duty to satisfy itself regarding the correctness and acceptability of the evidence. Thus, it was entirely open to the High Court to reappraise the evidence once again to consider the facts which may have been overlooked by the Sessions Judge and it should have decided the appeal itself instead of remanding the case to the Sessions Court. It being a moot point, we refrain from expressing any opinion on the question whether the first

appellate court of fact can in a criminal case send the case back to the Sessions Court for writing a fresh judgment. The proper order in such a case should be either to decide the case itself or to send it for re-trial. The question of re-trial does not arise in the view we have taken in this case.

We, therefore, allow one Appeal 523 of 1982 and the other appeals in part set aside the order of the High Court and direct to re-hear the appeals on merits according to law. We think it proper and expedient in the interest of justice that this appeal should be heard by a different bench of the High Court.

N.V.K

Appeals allowed.

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JUDIS