CRIMINAL MISCELLANEOUS

Before O. Chinnappa Reddy, Acting C.J. and Surinder Singh, J.

RANJIT SINGH,—*Petitioner*

versus

STATE OF PUNJAB,—*Respondent*

Criminal Misc. No. 2718-M of 1976

August 12, 1976.

Code of Criminal Procedure (Act 2 of 1974)—Sections 353 and 354—Judgment of a criminal court not pronounced in the manner prescribed by section 353—Contents of section 354 also not stated—Such judgment—Whether a nullity—Sessions Judge acquitting the accused and recording a note in the order sheet—Sessions Judge dies before writing a detailed judgment—Accused—Whether can be retried by successor of the deceased Sessions Judge.

Held, that there is nothing either in section 353 or section 354 of the Code of Criminal Procedure 1974, which declares a judgment to be a nullity if it is not prosounced in the manner prescribed by section 353 or if it does not contain what it is required to contain by section 354 of the Code. The Sessions Judge, may write the sketchiest of judgments, he may write a judgment containing a single sentence but the judgment so written is not a nullity on that account. The Sessions Judge may pronounce the judgment by merely announcing his conclusions, without delivering, reading or explaining his judgment. The judgment will not be a nullity on that account either. In either case, it will not be open to the successor Sessions Judge to treat his predecessor's judgment as a nullity and proceed to try the accused afresh. If anyone is aggrieved with the judgment of the Sessions Judge, the matter may be taken up in appeal to the appellate Court. It is for the appellate Court to set matters right by passing appropriate orders. Where the entire evidence is already recorded, the appellate Court may not consider it necessary to order retrial. It may itself consider the entire evidence and either confirm or reverse the judgment. In an appropriate case, it may set aside the judgment and order a fresh trial. But these are all things that may be done by the appellate Court. It is not for the successor Judge to sit in judgment, as it were, over the acts of his predecessor. It is not open to the successor Judge to put the accused in jeopardy so long as the predecessor's order or judgment, illegal though it may be, is in force and is not set aside by a superior Court. Hence where a judgment is not written in the manner prescribed by section 354 nor is it pronounced in the manner prescribed by section 353, but the Sessions Judge formally declares the accused acquitted and sets them at liberty, there is a

formal pronouncement and that is sufficient to entitle the accused to contend that there is an order of acquittal in their favour and that it could only be set aside by a superior Court.

(Paras 3 and 4)

Case referred by Hon'ble Mr. Justice S. P. Goyal on 16th July, 1976 to a Division Bench for an authoritative decision on an important question of law involved in the case. The Division Bench consisting of Hon'ble The Acting Chief Justice Mr. O. .Chinnappa Reddy and Hon'ble Justice Surinder Singh finally decided the case on 12th August, 1976.

Application under Section 482 Cr. P.C. praying that the order of Shri Dev Raj Saini, Sessions Judge, Sangrur, proposing to try the accused once again for the offences with which the petitioner and 16 others were originally charged and the case has already been disposed off, be quashed and also praying that till the final disposal of the petition further proceedings before the court below be stayed F.I.R. No. 92, dated 21st May, 1975, under section 302/34 & 201 I.P.C. Sessions Case No. 45 of 1975).

K. R. Mahajan, Advocate, *for the Petitioner.*

D. N. Rampal, A.A.G., Punjab, *for the Respondent.*

O. Chinnappa Reddy, A.C.J.

(1) The petitioner and sixteen others were tried by Shri S. S. Raikhy, learned Sessions Judge of Sangrur Division, for offences under section 302 read with section 34 and section 201, Indian Penal Code. After full trial all the accused were acquitted by the Sessions Judge on 30th January, 1976. The order of acquittal was pronounced in open court and the accused were set at liberty. The learned Sessions Judge made a note to that effect in the order sheet. He did not, however, deliver or read out the whole of the judgment. In fact, he did not write or dictate, before or at the time when he pronounced the order of acquittal, a judgment as contemplated by section 354, Criminal Procedure Code, containing the points for determination, the decision thereon and the reasons for the decision. The only written order made on 30th January, 1976, was the note in the order sheet. Thereafter, Shri Raikhy started writing a judgment in the manner contemplated by section 354, Criminal Procedure Code; and wrote about eight pages. Before he could complete the judgment, he died on 12th February, 1976. Shri Raikhy's successor, Shri Dev Raj Saini was of the view that there was no judgment 'in the eye of law' and passed an order proposing to try the accused once again for the

offences with which they were originally charged. The petitioner has invoked the jurisdiction of this Court under section 482, Criminal Procedure Code, to have the proceedings before the Sessions Judge quashed.

(2) The question for consideration is, whether the learned Sessions Judge is entitled to subject the petitioner and the other accused to a fresh trial. In the case of a trial before the Court of Session, section 232 provides that if, after taking the evidence for the prosecution, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal. Where the accused is not acquitted under section 232, he shall be called upon to enter on his defence and adduce any evidence he may have in support thereof. Section 235 (1) directs the Sessions Judge to give a judgment in the case after the completion of the evidence and the arguments. If the accused is convicted, the Judge is required to pass sentence on him according to law. In the case of a trial of a warrant case by a Magistrate, at the conclusion of the trial, the Magistrate if he finds the accused not guilty is required to record an order of acquittal, if he finds the accused guilty, he is required to pass sentence upon him according to law (vide section 248, Criminal Procedure Code). In the case of trial of a summons case by a Magistrate, section 252, Criminal Procedure Code, makes similar provision for recording an order of acquittal where the Magistrate finds the accused not guilty and for passing sentence on him according to law where he finds the accused guilty. Section 300 enacts a bar against the trial of an accused for the same offence of which he has been acquitted or convicted by a Court of competent jurisdiction. Section 353 prescribes the manner of pronouncement of the judgment. In every trial in any criminal Court of original jurisdiction. the judgment is required to be pronuonced in open Court in either of the following three ways :—

(1) by delivering the whole of the judgment; or

(2) by reading out the whole of the judgment; or

(3) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

Section 354 prescribes the language and contents of a judgment. It provides that every judgment shall contain the points for determination, the decision thereon and the reasons for the decision. Where the accused is convicted, the offence of which he is convicted has to

be specified. Where the judgment is of acquittal, the offence of which the accused is acquitted has to be specified. Where the accused is acquitted, the Judge is required to give a direction that he be set at liberty. Section 362 prohibits any alteration or review of a judgment except to correct a clerical or arithmetical error. Against every order of acquittal, section 378 enables a Public Prosecutor to present an appeal to the High Court. These are the relevant provisions which it may be necessary to keep in mind to decide the question raised before us.

(3) We observe that there is nothing either in section 353 or section 354, Criminal Procedure Code, which declares a judgment to be a nullity if it is not pronounced in the manner prescribed by section 353 or if it does not contain what it is required to contain by section 354, Criminal Procedure Code. The Sessions Judge may write the sketchiest of judgments, he may write a judgment containing a single sentence but the judgment so written is not a nullity on that account. The Sessions Judge may pronounce the judgment by merely announcing his conclusions, without delivering, reading or explaining his judgment. The judgment will not be a nullity on that account either. In either case, it will not be open to the successor Sessions Judge to treat his predecessor's judgment as a nullity and proceed to try the accused afresh. If anyone is aggrieved with the judgment of the Sessions Judge, the matter may be taken up in appeal to the appellate Court. It is for the appellate Court to set matters right by passing appropriate orders. Where the entire evidence is already recorded, the appellate Court may not consider it necessary to order retrial. It may itself consider the entire evidence and either confirm or reverse the judgment. In an appropriate case, it may set aside the judgment and order a fresh trial. But these are all things that may be done by the appellate Court. It is not for the successor Judge to sit in judgment, as it were, over the acts of his predecessor. It is not open to the successor Judge to put the accused in jeopardy so long as the predecessor's order or judgment, illegal though it may be, is in force and is not set aside by a superior Court.

(4) In *Firm Gokal Chand Jagan Nath* v. *Firm Nand Ram Dass*, (1), their Lordships of the Privy Council, referring to Order 41, rule

(1) A.I.R. 1938 P.C. 292.

31, Civil Procedure Code, which prescribes the contents of the judgment and manner of its pronouncement, observed:—

> "The Rule does not say that if its requirements are not complied with the judgment shall be a nullity. So startling a result would need clear and precise words..... The Rule from its very nature is not intended to affect the rights of parties to a judgment.....But accidents may happen. A Judge may die after giving judgment but before he has had a reasonable opportunity to sign it. The Court must have inherent jurisdiction to supply such a defect.....The defect is merely an irregularity."

In Surindra Singh and others v. *State of Uttar Pradesh*, (2), the Supreme Court observed:—

> "In our opinion. a judgment within the meaning of these sections is the final decision of the Court *intimated to the parties and to the world at large by formal "pronouncement" or "delivery" in open Court.* It is a judicial act which must be performed in a judicial way. Small irregularities in the manner of pronouncement or the mode of delivery do not matter but the substance of the thing must be there: that can neither be blurred nor left to inference and conjecture nor can it be vague. All the rest —the manner in which it is to be recorded, the way in which it is to be authenticated, the signing and the sealing all the rules designed to secure certainty about its content and matter—can be cured, but not the hard core, namely the formal intimation of the decision and its contents formally declared in a judicial way in open Court. The exact way in which this is done does not matter. In some Courts the judgment is delivered orally or read out, in some only the operative portion is pronounced, in some the judgment is merely signed after giving notice to the parties and laying the draft on the table for a given number of days for inspection.

An important point therefore arises. It is evident that the decision which is so pronounced or intimated must be a

(2) A.I.R. 1954 S.C. 194.

declaration of the mind of the Court as it is at the time of pronouncement. We lay no stress on the mode or manner of delivery, as that is not of the essence, except to say that it must be done in a judicial way in open Court. But however, it is done it must be an expression of the mind of the Court at the time of the delivery.....The final operative act is that which is formally declared in open Court with the intention of making it the operative decision of the Court. That is what constitutes the "judgment" ..... As soon as the judgment is delivered, that becomes the operative pronouncement of the Court. The law then provides for the manner in which it is to be authenticated and made certain. The rules regarding this differ but they do not form the essence of the matter and if there is irregularity for carrying them out it is curable. *Thus, if a judgment happens not to be signed and is inadvertently acted on and executed, the proceedings consequent on it would be valid because the judgment, if it can be shown to have been validly delivered, would stand good despite defects in the mode of its subsequent authentication.*"

In the present case, the decision of the Court was formally communicated to the parties in open Court. It was acted upon and the accused were set at liberty forthwith. A note was made in the Order Sheet that the accused were acquitted. A judgment was not written in the manner prescribed by section 354 nor was it pronounced in the manner prescribed by section 353, but the essence of the matter was that the Sessions Judge formally declared the accused acquitted and set them at liberty. There was a formal pronouncement. The pronouncement was intimated to the parties and acted upon. That was sufficient to entitle the accused to contend that there was an order of acquittal in their favour and that it could only be set aside by a superior Court. We accept the application under section 482, Criminal Procedure Code, and quash the proceedings before the learned Sessions Judge.

H.S.B.