REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1153-55 OF 2021

RAMYASH @ LAL BAHADUR ...APPELLANT

VERSUS

THE STATE OF UTTAR PRADESH AND ANOTHER ETC. ETC. ...RESPONDENTS

WITH

CRIMINAL APPEAL NO. 1175 OF 2021

J U D G M E N T

B.R. GAVAI, J.

1. These criminal appeals challenge the judgement and final order dated 8th February 2019 passed by the Division Bench of the Allahabad High Court in Criminal Misc. Correction Application No. 2 of 2019 which had been preferred by the accused persons namely, Bhupendra Singh, Moti Lal and Prahlad.

2. The Correction Application purportedly sought a clarification of a previous judgment and final order passed by the Division Bench of the High Court on 21st May 2018[1], by

[1] Hereinafter referred to as "First Judgment".

which the High Court had dismissed the criminal appeals preferred by the accused persons and had affirmed the judgment passed by the Court of Additional Sessions Judge, Court No.4, Jaunpur in Sessions Trial No. 277 of 2012[2] wherein the trial court had convicted the accused persons for the offences punishable under Sections 302 and 323 read with 34, and Sections 452, 504 and 506 of the Indian Penal Code, 1860[3] and sentenced them to suffer imprisonment for life.

3. Subsequently however, the High Court by way of the impugned judgment and order allowed the Correction Application preferred by the accused persons and modified its First Judgment. While so modifying its First Judgment, the High Court partly allowed the criminal appeals thereby converting the conviction awarded to the accused persons to one under Section 304 Part II of the IPC and consequently sentenced accused Bhupendra Singh to undergo rigorous imprisonment for 10 years and sentenced accused Moti Lal and Prahlad to undergo rigorous imprisonment for 5 years.

[2] Hereinafter referred to as 'trial court'.
[3] 'IPC' for short.

4. We have two sets of criminal appeals before us. The first set of criminal appeals being Criminal Appeal Nos. 1153-1155 of 2021 has been preferred by one Ramyash @ Lal Bahadur, the original complainant, taking exception to the modification undertaken by the High Court in the impugned judgment and order. The second appeal being Criminal Appeal No. 1175 of 2021 has been filed by accused Bhupendra Singh with a plea for acquittal. For the sake of convenience and to avoid confusion, the parties will be referred to as per their positions in the first set of appeals.

5. The brief facts leading to the present appeals are as follows:-

5.1 On 13th May 2012 at about 7:30 a.m., the appellant lodged a complaint at P.S. Sikrara, District Jaunpur against the accused persons, alleging therein that owing to a previous enmity between the families of the appellant and the accused persons, on that very morning at around 06:30 a.m., the accused persons had verbally and physically assaulted the appellant and his family members with various weapons which led to severe injuries being suffered by the appellant and his family members. On the basis of the complaint, a

First Information Report[4] being Case Crime No. 290 of 2012 was registered against the accused persons for the offences punishable under Sections 323, 324, 452, 504 and 506 of the IPC.

5.2 According to the prosecution story, the families of the appellant and the accused persons were related by blood and there was a long-standing land dispute between the two families. The dispute had led to a lot of litigation between the parties, pursuant to which the land belonging to the appellant's grandmother was set to be measured and demarcated on the date of the incident. Owing to the existing animosity, in the early morning of 13th May 2012, the accused persons arrived at the appellant's house armed with various weapons such as *gandasi*, *danda* and *lathi* and started verbally abusing the appellant and his family. On objections being raised to the verbal abuse, accused Bhupendra Singh instigated the co-accused to beat up the appellant and his family and thereafter all the accused persons attacked the appellant and his family with the various weapons that they were carrying. On hearing their

[4] 'FIR' for short.

cries, the appellant's father Jeet Lal, his sister-in-law Amrawati, his cousin Kalawati and his niece Priyanka ran out to rescue them, however, they were also beaten up. The appellant ran into the house in order to save himself, however, the accused persons rushed into the house and severely assaulted him with *lathi*, *danda* and *gandasi*. Upon cries of alarm being raised, several persons reached the spot and intervened, thereby putting an end to the matter.

5.3 As a result of the assault, the appellant and his family members and particularly his father Jeet Lal sustained serious injuries. The injured persons were initially taken to the primary health centre at Sikrara wherefrom the appellant's father Jeet Lal was referred to the Sadar Hospital considering his severe condition. However, the appellant's father Jeet Lal died on the way to the hospital. As per the post-mortem report, the cause of death was haemorrhage, shock and coma caused by ante-mortem injuries.

5.4 Upon the death of the appellant's father, the offence punishable under Section 304 of the IPC was added to the FIR.

5.5 Upon completion of the investigation, the chargesheet was filed before the Chief Judicial Magistrate, Jaunpur.

5.6 As the case was exclusively triable by the Sessions Court, it was committed to the Court of the Learned Sessions Judge, Jaunpur where it was registered as Sessions Trial No. 277 of 2012 and was subsequently made over to the Court of the learned Additional Sessions Judge, Court No.4, Jaunpur for trial.

5.7 The trial court framed charges against the accused persons for the offences punishable under Sections 302, 323 and 324 read with Section 34 and Sections 452, 504 and 506 of the IPC.

5.8 The accused persons denied the charges and asked to be tried. To bring the charges home, the prosecution examined 8 witnesses and produced several documents. In their defence, the accused persons submitted that the incident was false and fabricated and they had been falsely implicated in the matter owing to the ongoing land disputes between the parties.

5.9 On the conclusion of the trial, the trial court vide judgment and order dated 10th March 2015 convicted the accused persons and sentenced them as aforementioned.

5.10 Aggrieved thereby, the accused persons preferred three criminal appeals before the High Court being Criminal Appeal Nos. 1078 and 1691 of 2015 and 1094 of 2016.

5.11 A Division Bench of the High Court by the First Judgment dismissed the criminal appeals and upheld the judgment of the trial court dated 10th March 2015.

5.12 Thereafter, the accused persons preferred an application under Section 362 of the Code of Criminal Procedure, 1873[5] being Criminal Misc. Correction Application No. 2 of 2019 seeking that the criminal appeals be partly allowed. It was pleaded in the Correction Application that when the aforesaid judgment had been pronounced in open court, to the extent of the sentence awarded, the criminal appeals had been partly allowed and the convictions for the offence punishable under Section 302 of the IPC had been converted to one under Section 304 Part II of the IPC. Accordingly, the sentence awarded to each of the accused

[5] Hereinafter referred to as "Cr.P.C."

persons had been reduced as aforementioned. However, it was further pleaded when the First Judgment was delivered by the High Court, the criminal appeals had been dismissed. It was subsequently found that despite the dismissal, the case status showed that the criminal appeals had been partly allowed. Therefore, the accused persons prayed that the last five paragraphs of the First Judgment be corrected to reflect the order which had been pronounced in open court.

5.13 The High Court by the impugned judgment and order allowed the Correction Application and modified its First Judgment as aforementioned.

5.14 Being aggrieved thereby, these appeals.

6. We have heard Mr. Narender Singh Yadav, learned counsel appearing for the appellant, Mr. Shaurya Krishna, learned counsel appearing for Respondent No.1, Mr. Sushil Balwada, learned counsel appearing for Respondent No.2, and Ms. Nanita Sharma, learned counsel appearing for Respondent No.3.

7. Learned counsel appearing on behalf of the appellant submitted that the procedure adopted by the learned Judges of the Division Bench of the High Court is totally contrary to

the provisions of Section 362 of the Cr.P.C. It is submitted that by the impugned judgment, the High Court has totally changed its earlier judgment. It is submitted that, under Section 362 of Cr.P.C., it is not permissible for any Court to alter or review its earlier judgment except to correct a clerical or arithmetical error.

8. Learned counsel appearing on behalf of the respondent, on the contrary, tried to support the impugned judgment.

9. For appreciating the issue, it will be relevant to refer to Section 362 of Cr.P.C., which reads thus:

> "**362. Court not to alter judgment.**- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error."

10. It can thus be seen that, under Section 362 of Cr.P.C., once the judgment and final order is signed disposing of a case, no Court is allowed to alter or review the same except to correct a clerical or arithmetical error. No doubt that the High Court while delivering the impugned judgment has said that it was only correcting a clerical error. However, for testing the correctness of the said finding, it will be pertinent

to refer to certain paragraphs of both the judgments of the High Court.

11. In its first judgment, the High Court referred to various injuries sustained by the deceased Jeet Lal and the injured victims. It is to be noted that insofar as the injuries of deceased Jeet Lal is concerned, as many as 11 injuries are recorded. Thereafter, the High Court also referred to the autopsy report conducted by the Medical Expert, wherein 10 injuries were recorded. Thereafter, the High Court referred to the evidence of 8 witnesses. It is to be noted that in the arguments advanced on behalf of the appellants therein before the High Court, it was submitted that the evidence of eye witnesses was not reliable and truthful. Rejecting the said argument, the High Court has observed thus:

> "We are not impressed with the said argument of learned counsel for the appellants in view of the fact that P.W. 1 informant Lal Bahadur @ Ramyash Maurya is an injured witness of the incident. His presence on the date, time and place of incident has been cogently and unerringly established by the prosecution. Even his injuries have not been seriously challenged by the prosecution and he in a natural and truthful manner has narrated the entire incident and has assigned specific role to each of the accused persons of wielding blows by lathi and danda and assaulting the deceased by gadansi. Merely because in the later part of his testimony instead of assigning the role of assault by

gadansi, the weapon 'ballam' has been used, will not discredit his entire testimony. Moreover from a meticulous scrutiny of his entire evidence as a whole, in our opinion, he is a truthful and reliable witness and except minor contradictions which do not go to the root of the case, his testimony inspires confidence and cannot be discredited. Furthermore, his testimony finds complete corroboration from the statement of P.W.2 Amrawati, who in her statement has clearly stated that she has not witnessed any accused-appellant holding a ballam and stated that her father in law Jeet Lal and Lal Bahadur received injuries by gadansi.

Now coming to the testimony of P.W.2 Amrawati, who in her statement has clearly stated that on account of dispute over the measurement of land on the date of incident at 6:30 a.m, appellants Bhupendra, Moti Lal and Prahlad along with non-appellant Sunil had on instigation of Bhupendra, assaulted them and at the time of incident, Bhupendra was holding a gadansi whereas Moti Lal, Sunil and Prahlad were armed with lathi. She has further stated that on account of alarm raised by her father *in* law and brother in-law, she, her daughter Priyanka and sister-in law Kalawati (nanad) rushed to rescue them and intervened *in* the matter and they were also assaulted by the assailants and when ·his brother in-law P.W. 1 Lal Bahadur@ Ramyash Maurya with an intention to rescue them, entered in the house followed by the assailants who also assaulted his dewar with gadansi and lathi because of which they received serious injuries and when the assailants had left the scene of incident, she along with her father-in-law, brother-in-law, daughter and sister-in law (nanad) were brought at the police station and after registration of the case, they were sent for medical examination and on account of serious injuries received by her and her father-in-law, they were referred to Sadar Hospital where his father-in-law succumbed to his injuries. The said witness has also been subjected to rigorous cross-examination.

However, the defence has not been able to elicit any material contradictions in her statement and she has corroborated the prosecution story on material particulars and nothing could be elicited by the defence to doubt his credibility. The defence has not challenged her presence at the time of incident and the injuries on her person completely establishes the complicity of the appellants in the present case.

As such we are of the opinion that she is a reliable witness and has completely corroborated the prosecution story and the trial court has rightly relied upon her evidence. The defence has not been able to point out any inconsistency or material contradictions in her statement and finds corroboration from the medical evidence as well as the testimony of P.W. 1 informant Lal Bahadur @ Ramyash Maurya. In the backdrop of said circumstances, the argument of learned counsel for the appellants that the testimony of P.W.2 Amrawati does not inspire confidence, is not tenable and is liable to be discarded."

12. Thereafter, the High Court referred to the arguments advanced on behalf of the appellants therein with regard to discrepancies in the medical examination report prepared by Dr. Manoj Kumar Chaurasiya (PW-3). Rejecting the said contention, the High Court observed that the opinion of a medical expert should be accepted to support the direct evidence in the case. Thereafter, finally the High Court concluded thus:

"From the ocular testimony, it is clinchingly established that the victim was assaulted by lathi, danda and gadansi and even from careful perusal of

the postmortem report, the injuries of the said weapons find corroboration. Therefore, in view of inconsistency in the nature of injuries found in the medical examination and postmortem report, the otherwise consistent testimony of the injured witnesses cannot be thrown over board. As such, we are of the opinion that the said argument of the learned counsel for the appellants also does not shake the credibility of the witnesses.

The next argument of learned counsel for the appellants is that since the weapon of assault could not be recovered by the police and even the blood-stained clothes have not been handed over to the police, therefore, the prosecution story becomes doubtful. The said argument of learned counsel for the appellants also does not appeal to us in view of the fact that ocular testimony of the witnesses clearly establishes the prosecution story beyond any reasonable doubt and, therefore, in view of the lapses on the part of the Investigating Officer in making the recovery of the weapon and producing the clothes, whole of the prosecution story supported by the witnesses cannot be thrown over board. The two injured witnesses whose injuries and presence has been clearly established by the prosecution and when the defence has not been able to elicit any material contradictions in their statements pointing towards the guilt of the accused, the prosecution story cannot be discarded.

In view of the foregoing discussion, we are of the opinion that the prosecution has successfully proved its case beyond all reasonable doubt against the appellants and their conviction is liable to be affirmed.

This appeal lacks merit and is accordingly dismissed.

Bhupendra Singh, appellant in Criminal Appeal No. 1078 of 2015 is in jail. He shall serve out the remaining part of his sentence.

Moti Lal, appellant in Criminal Appeal No. 1691 of 2015 and Prahlad, appellant in Criminal Appeal No. 1094 of 2016 are on bail. Their bail

bonds are cancelled and their sureties discharged. Chief Judicial Magistrate, Jaunpur is forthwith directed to take them into custody and send them to jail for serving out the remaining part of their sentences."

13. Whereas, in the impugned judgment, the High Court observed thus:

> "We have perused the record and the court register maintained by the Bench Secretary which briefly records the order passed by the Court in different cases and upon perusing the relevant page of the court register dated 21.05.2018, we find that the Bench Secretary had also recorded in the register that all the three appeals had been partly allowed. The notes made by us on the paper books also support the case of the applicants/ appellants. To us, it appears that the last five paragraphs of the judgement and order sought to be corrected were wrongly typed out inadvertently.
>
> Thus, since the facts that the mistakes which have crept into the final judgement and order and the last five paragraphs of the judgement and order sought to be corrected are not in consonance with the operative order pronounced in the court, are admitted to the learned counsel for the informant and learned A.G.A. for the State who had made similar notes on their file after hearing had been concluded, the correction application is allowed.
>
> The last five paragraphs of the judgement and order sought to be corrected are deleted and substituted by the following paragraphs :-
>
> Thus, in view of the foregoing discussion, it follows that although in the F.I.R. it was alleged that the accused-appellants were present at the place of occurrence armed with lathis and gandasi and had attacked the deceased and the injured namely Jeet Lal, Amrawati, Lal Bahadur, Priyanka and Kalawati. However, their injury reports (Ext.Ka.2 to Ka. 6) do not contain any injuries which could be caused by

spears. Moreover, the doctor has opined that the injuries received by the deceased as well as the injured were caused by blunt objects except injury no. 4 sustained by the deceased which could have been caused by a ballam as deposed by the prosecution witnesses which was not assigned to any of the accused in the F.I.R.

Upon a wholesome consideration of the facts of the case, the attending circumstances and the evidence on record, both oral as well as documentary, we find that a dispute had taken place between the parties over the measurement of the land of the informant's grand mother which the accused-appellants claimed to be their property and although it has been alleged by the prosecution that on the date of the incident, the measurement of the land in dispute was to be carried out by an Officer of the Revenue Department but the prosecution failed to lead any evidence to show that the date on which the occurrence had taken place was fixed for measurement of land of informant's grand mother by an officer of the Revenue Department which thus, indicates that the prosecution has suppressed the true genesis of the occurrence. The incident, in our opinion, appears to be a result of sudden provocation and at the heat of the moment and thus, the recorded conviction of the accused-appellants deserves to be converted to one u/ s 304 Part II I.P. C. and the imprisonment of life awarded to them palliated to a lesser period of imprisonment.

Accordingly, the appeal is allowed in part.

The conviction of Bhupendra Singh, Moti Lal and Prahlad, appellants in Criminal Appeal Nos. 1078 of 2015, 1691 of 2015 and 1094 of 2016 respectively is converted to one u/s 304 Part II I.P.C. The sentence of life imprisonment awarded to Bhupendra Singh, appellant in Criminal Appeal No. 1078 of 2015 is reduced to ten years rigorous imprisonment. However, he shall pay a sum of Rs. 1,00,000/- as cost to the heirs and legal representatives of the deceased Jeet Lal within six months of his release from jail without prejudice to

the right of the relatives of the deceased to seek compensation under the provisions of The Uttar Pradesh Victim Compensation Scheme, 2014.

Considering the fact that the appellants, Moti Lal and Prahlad, appellants in Criminal Appeal Nos. 1691 of 2015 and 1094 of 2016 respectively were aged around 50 years at the time of the occurrence, we are of the opinion that the ends of justice shall be met if the the sentences of life imprisonment awarded to them is palliated to five years rigorous imprisonment and a fine of Rs. 5, 000/- each and in case of default in payment of fine, three months additional rigorous imprisonment each.

Bhupendra Singh, appellant in Criminal Appeal No. 1078 of 2015 is in jail. He shall be released after serving out the remaining part of his sentence.

Moti Lal and Prahlad, appellants in Criminal Appeal Nos. 1691 of 2015 and 1094 of 2016 respectively who were taken into custody and sent to jail on account of the mistakes in the operative portion of the judgement and order, shall be released forthwith if they have served the sentence of five years imprisonment."

14. It could thus clearly be seen that whereas in the First Judgment, the High Court clearly rejected the contention as raised on behalf of the appellants therein and confirmed the conviction under Section 302 of IPC, the entire reasoning is changed in the impugned judgment. The High Court, in the impugned judgment, came to a finding that the incident appeared to be a result of a sudden provocation and occurred in the heat of a moment and therefore converted the

conviction from Section 302 of IPC to Part-II of Section 304 of IPC.

15. We have already referred to the provisions of Section 362 of Cr.P.C. Even upon a plain reading of the provisions of Section 362 of Cr.P.C., the procedure adopted by the High Court was totally untenable.

16. In the case of ***Smt. Sooraj Devi v. Pyare Lal and Another***[6], this Court has considered what would fall within the meaning of a clerical and arithmetical error and observed thus:

> "**4.** .....A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. It represents that which the court never intended to say. It is an error apparent on the face of the record and does not depend for its discovery on argument or disputation. An arithmetical error is a mistake of calculation, and a clerical error is a mistake in writing or typing. *Master Construction Co. (P) Ltd.* v. *State of Orissa* [AIR 1966 SC 1047 : (1966) 3 SCR 99 : (1966) 17 STC 360]."

17. Thereafter, this Court observed thus:

> "**5.** The appellant points out that he invoked the inherent power of the High Court saved by Section 482 of the Code and that notwithstanding the prohibition imposed by Section 362 the High Court had power to grant relief. Now it is well settled that the inherent power of the court cannot be exercised for doing that which is specifically prohibited by the

[6] **(1981) 1 SCC 500**

> Code (*Sankatha Singh* v. *State of U.P.* [AIR 1962 SC 1208 : 1962 Supp 2 SCR 817 : (1962) 2 Cri LJ 288]). It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is "otherwise provided by this Court or by any other law for the time being in force". Those words, however, refer to those provisions only where the court has been expressly authorised by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in Section 362 and, therefore, the attempt to invoke that power can be of no avail."

18. An exercise similar to the one done by the Allahabad High Court in the instant matter had come up for consideration before this Court in the case of ***Naresh and Others v. State of Uttar Pradesh***[7]. In the said case also, the High Court had pronounced the judgment on 25th February 1980 confirming the conviction as recorded by the trial court under Section 302 of IPC. Subsequently however, the High Court by its judgment dated 14th April 1980 converted the conviction to one under Section 304 Part I of IPC and reduced the sentence to rigorous imprisonment for 7 years. It will be relevant to refer to the following observations of this Court:

[7] **(1981) 3 SCCC 74**

"**2.** .....Thereafter on an application filed by the appellant Naresh, the High Court made the following order on April 14, 1980:

> "The application is allowed as there is a clerical mistake in the operative part of the judgment in Criminal Appeal No. 674 of 1975 regarding the conviction and sentence of appellant Naresh. The sentence, "but his conviction under Section 302 of the IPC and sentence of imprisonment for life awarded thereunder are affirmed" be substituted by the sentence: "He is convicted under Section 304 (Part I) of the IPC instead of Section 302 of the IPC and sentenced to undergo rigorous imprisonment for seven years".

We are entirely at a loss to understand the order dated April 14, 1980. In their judgment dated February 25, 1980 while discussing the case against Naresh the learned Judges had given a specific and express finding that he intended to kill the deceased Bahadur and, therefore, had committed an offence punishable under Section 302 of the Penal Code, 1860. The operative part of the judgment also said the same thing. We do not understand what the learned Judges mean when they state in their order dated April 14,1980, "there is a clerical mistake in the operative part of the judgment". The High Court was wholly wrong in altering the judgment pronounced by them disposing of the criminal appeals. That was clearly in contravention of the provisions of Section 362 of the Code of Criminal Procedure. What was worse, the High Court acted in purported exercise of the power to correct clerical mistakes when in fact there was none. The conviction under Section 302 of the Penal Code, 1860 was perfectly correct and the conviction had been rightly affirmed by the High Court in the first instance. There was no occasion at all for the purported exercise of power to correct a clerical mistake and alter the conviction under Section 302 to one under Section 304 of the Penal

> Code, 1860. We are greatly concerned that the High Court should have committed this grievous error. There is, however, nothing that we can do about it at this juncture as the State has not chosen to file any appeal against the order dated April 14, 1980."

19. It could thus clearly be seen that this Court had observed that the similar exercise undertaken by the High Court in that case was in contravention of the provisions of Section 362 of Cr.P.C. This Court had expressed its great concern that the High Court should have committed this grievous error. We fail to understand as to how the High Court, in the present case also, in spite of the plain and unambigious words used in the provisions of Section 362 of Cr.P.C., has committed such an error.

20. We have no other option but to allow the appeals filed by the complainant.

21. In the result, we pass the following order:

(i) Criminal Appeal Nos.1153-1155 of 2021 are allowed;

(ii) Criminal Appeal No.1175 of 2021 is dismissed;

(iii) The impugned judgment and order dated 8th February 2019 is quashed and set aside inasmuch as it was not competent for the High Court to have

reviewed its judgment and order dated 21st May 2018;

(iv) The accused, if they have not undergone their sentence as recorded by the High Court in its first judgment dated 21st May 2018, are directed to surrender before the Chief Judicial Magistrate, Jaunpur within a period of 4 weeks from the date of this judgment, after which they shall undergo the remaining period of sentence;

(v) We, however, reserve the right of the accused persons to challenge the judgment and order dated 21st May 2018. If such an appeal is filed, the same shall be considered on its own merits.

22. Pending application(s), if any, shall stand disposed of.

.....J.
(B.R. GAVAI)

.....J.
(AUGUSTINE GEORGE MASIH)

NEW DELHI;
APRIL 23, 2025.