

(2002) 04 DEL CK 0116

In the Delhi High Court

Case No : Criminal M. 189 and 193 of 2001

State (Govt. of Delhi)

APPELLANT

Vs

Mr. Rajbir Singh and Others

RESPONDENT

Date of Decision : 17-04-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 482

Limitation Act, 1963 — Section 5

Penal Code, 1860 (IPC) — Section 147, 148, 149, 174, 302

Citation : (2002) 4 AD 963 : (2002) CriLJ 3882 : (2002) 97 DLT 950

Hon'ble Judges : Vinod Sagar Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Anil Soni, for the Appellant; R.S. Malik, Neelam Grover and R.D. Mathur, for the Respondent

Final Decision : Allowed

Judgement

V.S. Aggarwal, J.—Respondents had been tried by the learned Additional Session Judge, Delhi with respect to offences punishable under Sections 174/148/149/452/325/326/307/34 Indian Penal Code.

2. The State against the judgment of acquittal, referred to above, and also condensation of delay in filing the same.

3. The relevant facts of the prosecution case are that information was received at Police Post Bawana from Police Station Narela that a quarrel was going on at Chowk Bawana. Entry was made in Daily Diary No. 28 on 6.4.1983. Sub Inspector Mahipal Singh, along with members of his police force, went to Bawana Chowk and was informed that injured had already been removed to Hindu Rao Hospital. SI Mahipal Singh went to Hindu Rao Hospital. He obtained the medico legal reports of Jagan Singh, Khazan Singh besides Zile Singh deceased. Khazan Singh had been declared fit to make statement.

4. In his statement, recorded by SI Mahipal Singh, he had deposed that on

6.4.1983 at 7.00 p.m. he was present in front of his house. His brother Jagan Singh was employed in Delhi Police. He saw him coming down from bus from Bawana Chowk. Respondents Rajbir, Ramesh and Hanumant Singh were sitting on the roof of their house opposite his house. They started abusing his brother. Rajbir Singh respondent exhorted that they be caught hold of and finished so that they are not able to attend the court case fixed on the next day. The brother of the complainant kept quite. Thereafter, the injured complained that he, his son and Jagan Singh went to the roof at first floor of his house. They heard the noise "Pakad Lo Salon Ko Bhagane Na Payen". In the mean time Rajbir Singh, Ramesh, Hanumat, Rajesh, Jaggu, Anand and Satbir Singh, who were armed with Knives, climbed up the stairs of his house and attacked .Zile Singh received injuries. When the complainant and Jagan Singh tried to save Zile Singh, accused Hoshiar Singh gave pharsa blow on the left hand of Jagan Singh while Ram Mehar gave pharsa blow on the head of Jagan Singh. Dhani Ram and Ami Chand gave jellies blow on his left hand and leg and thereafter, Azad Singh, Jahan Singh and Khazan Singh gave lathi blows to him and Jagan Singh, Hoshiar Singh, Hanumat, Rajbir and Ramesh exhorted that they should be finished so that they are not able to see towards the plot in future. Respondents also pelted stones on them. Balram besides Singh and Hari Singh came to save them.

5. On basis of this statement, which was bearing the endorsement of SI Mahipal Singh, formal First Information Report was registered. SI Mahipal Singh prepared the site plan. Certain bricks bats were picked up from the roof of the house and were kept in a gunny bag. From the road side, the blood was lifted and sealed in accordance with law. Blood was also lifted from the roof. They were all converted into different sealed parcels and taken into possession vide different recovery memos.

6. Zile Singh and succumbed to his injuries at Hindu Rao Hospital. Injuries on the person of Khazan Singh and Jagan were opined to be grievous. The death of Zile Sing was opined to be due to shock following injuries on his chest and abodomen. During investigation, one pant, one bushirt of Zile Singh were taken into possession and sealed in a parcel with the seal of HRH. It was taken into possession vide recovery memo. Blood stained uniform of Jagan Singh was sealed with the seal of HRH. Similarly, one blood stained Dhoti of Khazan Singh was taken into possession after converting that into a parcel and sealing with the seal of HRH, vide recovery memo. Blood samples of Jagan Singh and Khazan Singh were also taken by the doctor in the hospital. It was on these broad facts that report u/s 173 of the Code of Criminal Procedure was failed.

7. Charges were framed against the respondents with respect to offences punishable under Sections 147/148/452/149/307 and 302/149. They pleaded not guilty and claimed trial. Separate charge u/s 302/34 IPC was also framed against Rajbir Singh and Hanumant Singh.

8. The learned trial court, on appraisal of evidence, held that prosecution has failed to prove its case beyond reasonable doubt and accordingly acquitted the

respondents.

9. Along with the application, seeking leave to file the appeal, an application has been filed invoking Section 482 of the Criminal Procedure Code and Section 5 of the Limitation Act, seeking condensation of delay. It has been asserted that the judgment of the trial Court was pronounced on 20.11.1999. The learned Additional Public Prosecutor submitted the report on 17.12.99. It was sent to the Director of Prosecution on 21.12.1999. Director of Prosecution forwarded it to Secretary, Law and Justice on 17.1.2000. It was found that it was a fit case for filing an appeal. The file was submitted for approval and it was returned on 6.3.2000. Director of Prosecution forwarded the file to Sub Divisional Magistrate, Narela on 10.3.2000 and then it was forwarded to the Standing Counsel (Criminal) on 1.4.2000. The appeal had been prepared and filed on 3.8.2000 and in this process, it is stated that delay occurred of 73 days, which is claimed to be condoned.

10. In the separate replies filed by respondents 8,9,10,12 and in another reply by respondent No. 11, the said application is being contested. It is denied that delay in filing the appeal is only of 75 days and it has in fact been pointed that delay is of 193 days. There was no application, stated to have been filed along with the petition and in any case, it has been alleged that the delay in filing of the appeal need not be condoned in the peculiar facts of the present case.

11. The first and foremost question that comes up for consideration is as to whether in the facts of the present case, there are sufficient grounds for condensation of delay or not.

12. The expression "sufficient cause" occurring in Section 5 of the Limitation Act indeed had been subject-matter of various pronouncements. We shall be dwelling to some of them, but it is well known that existence of a sufficient cause is a condition precedent for exercise of discretion u/s 5 of the Limitation Act. It will not be possible to enlist different facts that may arise for one to conclude if in that particular matter, it is a sufficient cause for condensation of delay or not. Broadly speaking, sufficient cause means a cause beyond the control of the party invoking the aid of the Section. It could not be a cause for delay which a party could have avoided by exercise of care and attention. While exercising such a jurisdiction, the Court will not excuse inordinate delay but certain it is not to be very strict that it might defeat the ends of justice. Therefore, one has necessarily to see each and every case on its own facts.

13. We know from the decision of the Supreme Court in the case of Ramlal, Motilal and Chhotelal Vs. Rewa Coalfields Ltd., that in construing S.5, it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favor of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to

treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discretion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice.

14. A few years later, in the case of Union of India (UOI) Vs. Ram Charan and Others, the Supreme Court was concerned with the same question. It was held that the Court, in considering whether the appellant has established sufficient cause for continuing the suit in time, has to go by the facts that certain reasons or facts were not known. It was concluded that it could constitute a sufficient cause for condensation of delay. Similarly, in the case of Shakuntala Devi Jain Vs. Kuntal Kumari and Others, the Supreme Court reiterated the same view that Section 5 of the Limitation Act gives the court a discretion, which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion and to be exercised upon principles. There should be no negligence or inaction or lack of bonafides. If the appellant made out sufficient cause for the delay, the Court may in its discretion, keeping in view the facts and circumstances, condone the delay.

15. As regards the controversy as to if the State could be given any special treatment in this regard, the Supreme Court in the case of Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, went on to conclude that no special treatment in this regard should be given and the guidelines provided were:

1. Ordinarily a litigant does not stand to benefit by loading an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day"s delay must be explained" does not mean that a pedantic approach should be made. Why not every hour"s delay, every second"s delay: the doctrine must be applied in a rational common sense pragmatic. manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.
6. It must be grasped that judiciary is respected not on account of its power to

legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

It was reiterated that approach has to be justice oriented.

16. Similarly in the case of Special Tehsildar, Land Acquisition, Kerala Vs. K.V. Ayisumma, the Supreme Court reiterated that limitation act makes no distinction between the State and the citizen. It was held that approach of the court should be pragmatic but not pedantic. More recently, in the case of Calcutta Municipal Corporation v. Pawan K. Saraf and Anr. 1991 (1) AD (SC) 37 the same view found its place, which requires no repetition.

17. With this back drop, one can revert back to the facts of the case once again. It is patent that there has been delay on the part of the applicant at different levels but intention to file the appeal against acquittal and seek leave of the Court was patent. When the approach has to be justice oriented and it is obvious that there is no negligence to the extent that court would be reluctant to interfere keeping in view the totality of facts that file was being routed at different tables and levels and grounds of appeal were to be prepared we deem it necessary to mention that in the facts of the present case, delay is required to be condoned. We accordingly condone the delay.

18. Confronted with that position, it had been urged that in any case, leave to file the appeal should not be granted.

19. We know from the decision of the Supreme Court almost five decades ago in the case of Prandas Vs. The State, that High Court indeed has the power to set aside a judgment of acquittal. The leading case of Sheo Swarup and Others vs. King Emperor was looked with approval, which provided the following guidelines:

Section 417, 418 and 423 of the Code, give to the High Court full power to review at large the evidence upon which the order of acquittal was founded, and to reach the conclusion that upon that evidence the order of acquittal should be reversed. No limitation should be placed upon that power, unless it be found expressly stated in the Code. Put in exercising the power conferred by the Code and before reaching its conclusions upon fact, the High Court should and will always give proper weight and consideration to such matters as (1) the views of the trial Judge as to the credibility of the witnesses, (2) the presumption of innocence in favor of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial, (3) the right of the accused to the benefit of any doubt, and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses. To state this, however, is only to say that the High Court in its conduct of the appeal should and will act in accordance with rules and principles well known and recognised in the administration of justice."

20. In other words, it was held that the High Court would be slow to interfere because it is the trial Court which had the advantage of seeing the demur of

presumption of innocence verified by the judgment of acquittal.

21. Same view prevailed with the Supreme Court in the case of Ramaphupala Reddy and Others Vs. The State of Andhra Pradesh, . The position summarized, keeping in view the earlier law was:

"1. an appellate Court has full powers to review the evidence upon which the order of acquittal is founded;

2. the principles laid down in Sheo Swarup and Others vs. King Emperor afforded a correct guide for the appellate court's approach to a case disposing of such an appeal;

3. the different phraseology used in the judgments of this court such as: (a) "substantial and compelling reasons"; (b) "good and sufficiently cogent reasons"; (c) "strong reasons" are not intended to curtail the undoubted power of an appellate court in an appeal against acquittal to review the entire evidence and to come its own conclusion, but in doing so it should not only consider every matter on record having a bearing on the questions of fact and the reasons given by the court below in support of its order of acquittal but should express the reasons in its judgment which led it to hold that the acquittal was not justified."

22. Identical was the view point of the Supreme Court in the case of Ram Chander and Others Vs. State of Haryana, and also in the case of C.D. George v. Assistant Commissioner of Central Excise, Trichur 1990 (92) CRIMES 34. In other words, ordinarily the High Court would be reluctant but if the reasoning is perverse or no other view point is possible, the High Court may in the facts of that particular case, take note of the totality of circumstances and interfere.

23. Reverting back to the facts, it is patent that the trial court recorded that only interested witnesses were produced and though dozens of other witnesses from public were stated to have witnessed the occurrence, but the prosecution did not care to examine them. Most important fact noted by the trial court was that there were two versions available, which makes the prosecution case doubtful. It had been noted that incident is stated to have taken place in the room on the first floor and some witnesses stated at Bawana chowk and Therefore, the prosecution case could not be deemed to have been proved. He also recorded that if the incident had taken place in the small room, so many persons including the witnesses and the accused persons armed with weapons, could not have used the same so freely, as had been stated. In face of the different versions, that were forth-coming, the trial court did not believe the prosecution evidence.

24. As already pointed and retention at the risk of repetition, there is a presumption of innocence of respondents and it had been verified by the judgment of the acquittal. This court would only interfere if no other view was possible or the reasoning of trial court was totally absurd. When that is not the position, we find it that it is not necessary in the facts of the case to grant leave to file the appeal. The same is refused.

25. Crl.M.No.193/2001 seeking condensation of delay in filing application for leave to appeal, accordingly, is allowed but Crl.M.189/2001 seeking leave to file appeal is rejected.