

(2008) 12 GUJ CK 0055

In the Gujarat High Court

Case No : Criminal Revision Application No. 656 of 2005

State of Gujarat

APPELLANT

Vs

Babubhai Shankarbhai Solanki and Others

RESPONDENT

Date of Decision : 29-12-2008

Acts Referred:

Bombay Police Act, 1951 — Section 135
Criminal Procedure Code, 1973 (CrPC) — Section 319, 320(8), 397
Penal Code, 1860 (IPC) — Section 395, 427, 435

Citation : (2009) 1 GLH 622

Hon'ble Judges : D.H. Waghela, J

Bench : Single Bench

Advocate : I.M. Pandya Addl. Public Prosecutor, for the Appellant; Mumtaz Saiyed for Respondent(s) 1 - 6, for the Respondent

Judgement

D.H. Waghela, J.—The State has preferred this revision application u/s 397 of Cr.P.C, to challenge the order dated 07.04.2005 below Ex.42 in Sessions Case No. 18 of 2004 whereby the application for joining as accused one person u/s 319 of Cr.P.C, was rejected. Even after clear evidence of the victim himself implicating the known accused person in serious offence, that person was not joined as accused person and the application of the State u/s 319 of Cr.P.C. was rejected by the impugned order only on the ground that the name of the person was not included in the charge-sheet after the investigating agency verifying his alibi. Although that person, namely Haribhai Mohanlal, was joined in the application for exercise of powers u/s 319 of Cr.P.C, that person is not even joined as a party in the present revision application. The present revision application was filed in August, 2005, after four months of the impugned order, but no application for condonation of delay was filed. Therefore, the present petition appears to have remained under office objection till December, 2005 when application for condoning delay of 21 days was made. In that application for condonation of delay, Rule was issued on 20.01.2006 and made returnable on 10.2.2006. Respondents, the other accused persons who were joined as

respondents, appeared to have been served in March, 2006 and even vakalatnama on their behalf appeared to have been filed in March, 2006. But the application was somehow not heard and decided till 08.07.2008 when it was allowed. Thereafter, the present revision application came to be listed for admission hearing for the first time in November 2008 and it was immediately sought to have disposed as infructuous on the statement that the main criminal case in which the impugned order was made was already disposed by the trial Court. Thus, the revision application lost its meaning and purpose even before it could be heard for admission, although the impugned order was apparently illegal and palpably perverse. Learned Additional Public Prosecutor Mr. I.M. Pandya, appearing for the petitioner-State, had no explanation for such perverse pursuit of the matter at the hands of the office of learned Public Prosecutor.

2. In view of the above shocking state of affairs, the record of Criminal Appeal No. 2495 of 2005 in which the judgment and order of conviction dated 30.11.2005 in the original Sessions Case No. 18 of 2004 was challenged were called for and learned Law Secretary was requested to remain personally present. It was seen from the record of that appeal that, by the judgment dated 30.11.2005, accused No. 1 and 2 were convicted and let off with minor punishment; and even the convicted accused persons were acquitted u/s 320 (8) of Cr.P.C, by compounding the offence on the basis of an amicable settlement. The fact remained that in the criminal case which was disposed on 30.11.2005, the present revision application before this Court was filed in August 2005 but even the application for condonation of delay was not filed till the main criminal case was concluded and the whole proceeding before this Court had become infructuous even before application for condonation of delay was filed and entertained. It may be noted here that the original criminal case, in which chargesheet was filed after investigation, charge was framed for offences punishable under sections 395, 435 and 427 of IPC and section 135 of the Bombay Police Act and in the actual incident involving disfiguring the victim by cutting his nose with a knife, the person who was sought to be implicated had satisfied the investigating agency about his alibi on the basis of his being under treatment for fracture at the relevant time.

3. As seen earlier, ultimately the trial and the whole legal process has turned out to be infructuous; and the State as prosecuting agency has played in it a pivotal role by thorough incompetence and lethargy bordering on complicity with the accused persons. Learned Law Secretary, upon being apprised of these facts, stated that the Legal Department will take appropriate remedial and reformatory actions as may be suggested by the Court, since no rules or guidelines were available for dealing with such failure on the part of the State as prosecuting agency.

4. It needs to be recounted that, in the facts of the original case, the accused persons were alleged to have systematically, with deadly weapons, attacked the family of the victims and committed loot and arson and the victims themselves

had clearly stated on oath that the accused person proposed to be joined u/s 319 of Cr.P.C, had wielded a knife. He successfully evaded arrest and even implication in the charge-sheet. Thereafter, the Sessions Court rejected the application for its exercise of powers u/s 319 of Cr.P.C, by a perverse order and the challenge to that order was made infructuous by sheer delay and lethargy on the part of the State. The plight, state of mind and the faith of the victims in the judicial system could only be imagined. Since the part of investigation and prosecution is in the exclusive domain of the State agencies, what is left with the judicial system is carrying the burden of infructuous, mala fide, lethargic or wasteful litigation at public expense and add to the problem of arrears in the process. Therefore, viewing the malady in the larger perspective, it would appear that the judicial process and judicial time of Courts is often consumed not for doing justice to the aggrieved party but for exonerating the culprits and allow some accused persons to even escape the trial. This state of affairs does not augur well for the rule of law and nobody should be surprised if faith of the people in such justice delivery system is fast eroded to lead the society into anarchy. It was fairly conceded and it is widely perceived that this is by no means a unique case of its kind but such maladministration of justice happens in many cases requiring immediate attention and energetic action. The minimum that could be and needs to be done is issuing proper guidelines for pursuing the prosecution with proper despatch and application of mind and for fixing personal responsibilities for apparent failures and lapses on the part of district, additional or assistant public prosecutors. All the prosecutions and matters of criminal proceedings at the district and High Court level are required to be monitored at the district and State level by an independent and vigilant monitoring agency to prevent pointless waste of public time of the Court at the hands of prosecutors or State agencies. That may go a long way in making the proceedings in criminal courts more meaningful, less wasteful and help in ensuring that ultimately justice is done within a reasonable time and no mockery of justice is brought about, as has happened in the facts of the present case. With the above observations, the present petition is dismissed as admittedly infructuous with the request that the Legal Department of the Government of Gujarat may take appropriate actions and issue appropriate guidelines for proper prosecution of criminal cases and monitoring thereof and to ascertain responsibility of the prosecutor concerned in the cases like the present one for taking departmental actions including removal in appropriate cases. It can be hoped that the State would take appropriate reformatory and remedial measures to discharge its constitutional obligation of ensuring rule of law and effective administration of justice.