
(2006) 09 RAJ CK 0042
In the Rajasthan High Court

State of Rajasthan and Others

APPELLANT

Vs

Mubeen and Others

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Arms Act, 1959 — Section 25, 3
Criminal Procedure Code, 1973 (CrPC) — Section 378, 390, 427, 482
Penal Code, 1860 (IPC) — Section 302, 396

Citation : (2007) 2 RLW 1585

Hon'ble Judges : Shiv Kumar Sharma, J;R.S. Chauhan, J

Bench : Division Bench

Judgement

Shiv Kumar Sharma, J.—The respondents six in number, were the accused on the file of learned Sessions Judge Alwar bearing Sessions Case No. 55/2005 u/s 396 IPC and 3/25 Arms Act. Learned Sessions Judge vide judgment dated May 5, 2006 acquitted respondents of all the charges. Being aggrieved by the finding of learned Sessions Judge, the State of Rajasthan submitted petition seeking leave to appeal u/s 378(3) of the Code of Criminal Procedure, 1973 (for short "CrPC"). This court on May 26, 2006 granted leave and summoned the respondents through bailable warrants. Thereafter on August 14, 2006, the State of Rajasthan made an application u/s 390 read with 482 Cr.P.C. for recalling the order dated May 26, 2006 and to commit the respondents to prison after summoning them through non-bailable warrants. Similar prayer has been sought in the revision petition filed by the widow of deceased.

2. It is the prosecution case that Ramavatar Goyal (now owner of Petrol Pump situated at Alwar-Delhi road in village Divakari, while standing out of cabin around 8 PM on March 12, 2005 seven culprits came rushing from the road side and took Ramavtar Goyal on gun point and opened fire as a result of which Ramavtar Goyal sustained injury on his face and fell down. Thereafter three culprits armed with Kattas (country made guns) entered inside the cabin, one culprit caught hold of Banwari Lai while another caught hold of Chhote Lal, Accountant and gave them beating and decamped with sale amount of Rs.

1,61,800/- along with other amount kept in blue colour bag. Ramavtar Goyal expired on the spot and culprits ran away. A case u/s 396 IPC and 3/25 Arms Act was registered and investigation commenced. The respondents were arrested and remained in custody throughout the trial. However, on completion of trial all of them stood acquitted.

3. A look at the material on record demonstrates that in the test identification parades held on March 20 and 22 of 2005 Banwari Lal (PW. 18) correctly identified the accused respondents. Banwari Lal identified the respondents in the trial Court also. Foot prints of the respondents were taken on March 23, 2005 before the Additional District Magistrate Alwar and as per the FSL report the foot moulds were found to be of the accused respondents. The investigating agency also seized the hair from the hands of the deceased and as per the DNA report the seized hair tallied with the hair of accused respondents Mubin and Amin. As per the testimony of Investigation Officer various criminal cases were pending against the accused respondents.

4. It is canvassed on behalf of the State and the petitioner in revision that the acquittal of the respondents simply on presumption without properly considering the evidence available on record is ex facie illegal and perverse and liable to be set aside.

5. As against this, learned Counsel for the respondents contended that the presumption as to innocence of the accused respondents stands fortified on their acquittal by the trial court. It is next urged that refusal of bail is never for the purpose of punishment. In view of the long period usually taken for disposal of appeals, it would cause hardship if the accused who stood acquitted in trial, is refused bail. It is further contended that the evidence of identification was rightly disbelieved since the respondents, before test identification parade, were shown to the witnesses. Evidence in regard to hair and foot prints was also rightly disbelieved. According to learned Counsel the case of the prosecution rests on circumstantial evidence, that falls short of the required standard of proof. It is also urged that once the accused were summoned through the bailable warrants, there is no reason to commit the respondents to prison. Maintainability of revision petition and the review application of the State, has also been questioned.

6. In order to resolve the controversy poised for our consideration it will be useful to have a look at Section 390 Cr.P.C. which provides thus:

When an appeal is presented u/s 378, the High Court may issue a warrant directing that the accused be arrested and brought before it or any subordinate court, and the court before which he is brought may commit him to prison pending the disposal of the appeal or admit him to bail.

7. Section 390 corresponds to Section 427 of the repealed Code. In the present section the word and figure "Section 378" are substituted for the words and figures "Section 411-A Sub-section (2) of Section 417" in the old section. Except

for this change, no other changes are made. Under this section the High Court has the power to re-arrest the accused pending the disposal of an appeal against his acquittal.

8. The Constitution Bench of Hon''ble Supreme Court in *State of U.P. v. Poosu* AIR 1976 SC 1750 while considering Section 427 of the repealed Code, propounded as under:

This is the rationale of Section 427. As soon as the High Court on perusing a petition of appeal against an order of acquittal, considers that there is sufficient ground for interfering and issuing process to the respondents, his status as an accused person and the proceedings against him, revive. The question of judging his guilt or innocence in respect of the charge against him, once more becomes subjudice.

9. Since on granting leave to appeal against the impugned judgment of acquittal, the proceedings against accused- respondents revived and charges against them once more becomes subjudice, it is to be seen as to whether sufficient grounds exist for issuance warrants of arrest against them and to commit them to prison.

10. These days when crime is looming large and humanity is suffering and the society is so much affected thereby, duties and responsibilities of the courts have become much more. Vide *Krishna Mochi and Others Vs. State of Bihar*, In *Vinay Kumar Vs. Narendra and Others*, , the Apex Court indicated the principles for considering the prayer for bail in a sessions offence thus:

The principle is well settled that in considering the prayer for bail in a case involving a serious offence like murder punishable u/s 302 IPC, the court should consider the relevant factors like the nature of the accusation made against the accused the manner in which the crime is alleged to have been committed, the gravity of the offence and the desirability of releasing the accused on bail....

11. Revisional jurisdiction of the High Court at the behest of private party had been explained by the Hon''ble Supreme Court in *Akalu Ahir and Others Vs. Ramdeo Ram*, thus:

The High Court when approached by a private party for exercising its power of revision from an order of acquittal, should appropriately refrain from interfering except when there is a glaring legal defect of a serious nature which has resulted in grave failure of justice. The power being discretionary, it has to be exercised judiciously and not arbitrarily. It is only in glaring cases of injustice resulting from same violation of fundamental principles of law by the trial court in the course of trial the High Court is empowered to set aside the order of acquittal and direct the retrial of the acquitted accused persons.

12. Having carefully scanned the material on record and the case law placed for our perusal, we find that after the acquitted accused respondents appear before this Court pursuant to the bailable warrants issued vide order dated May 26,2006, fresh order u/s 390 CrPC is required to be passed since proceedings

against the accused respondents stand revived and charges against them once more become subjudice. On considering the DNA report of hair allegedly seized from the hands of the deceased, we are prima facie satisfied that the hair so seized, tallied with the hair of accused respondents Mubin and Amin, who remained throughout the trial in custody.

13. On giving our thoughtful consideration to the nature of the accusation made against the accused respondents, the manner in which the crime is alleged to have been committed and the gravity of the offence we direct that warrant of arrest be issued against the accused respondents Mubin and Amin and they be produced before the learned Sessions Judge Alwar, who shall commit them to prison pending the disposal of appeal. We however grant bail to accused respondents Taiyab, Ilias, Islam and Khursheed and direct that on furnishing personal bond in the sum of Rs. 50,000/- with one surety of the like amount they be released on bail on the following conditions:

(i) They will not commit any offence during the pendency of appeal.

(ii) On the last day of each month they will appear before the SHO Police Station MIA Alwar who shall refer their presence in the daily Rojnamcha.

14. We grant three days time to furnish the bail bonds. The aforequoted conditions shall be incorporated in the bail bonds. We further direct that in the event of breach of the condition the bail granted by us shall stand automatically cancelled. If the bail bonds are not filed within three days the respondents Taiyab, Ilias, Islam and Khursheed shall be taken in custody and commit to prison.

15. With these observations the applications stand disposed of. A copy of this order be remitted to the learned Sessions Judge Alwar.