

State vs.atul Garg

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Court : Delhi

Decided On : Oct-30-2017

Appellant : State

Respondent : Atul Garg

Judgement :

§~1 * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.L.P. 563/2017
STATE

... Petitioner

Through: Mr. Rajat Katyal, Additional Public Prosecutor for the State with Sub-Inspector Arvind Kumar, Police Station Jaitpur, Delhi. versus ATUL GARG

Through: None. Respondent CORAM: HON'BLE MR. JUSTICE VIPIN SANGHI HON'BLE MR. JUSTICE P.S.TEJI

ORDER

3010.2017 % P.S. TEJI, J.

Crl. M.A. No.16046/2017 (Condonation of delay of 423 days in filing the leave petition) & Crl.L.P. 381/2017 read with Section 482 of Cr.P.C. The State has filed the application under Section 5 of the for seeking Limitation Act condonation of delay of 423 days in preferring the accompanying leave petition to challenge the impugned judgment dated 26.04.2016 passed by learned Additional Session Judge-01, South-East District, Saket Courts, Delhi in S.C. No.123/2011 in case

FIR No.161/2011, registered under Section 363/377/3

of IPC at Police Station Jaitpur, Delhi. In the application for condonation of delay, it has been submitted that due to administrative reasons and long process of obtaining final approval, the appellant could not prefer the appeal in the time frame. Argument submitted by the learned Additional Public Prosecutor for the State is that there is a cumbersome procedure to process the matter for filing the leave to appeal and it is formulated after the opinion of the legal experts and the opinion formed by various officers, as a result the present appeal could not be filed within the prescribed time and the same caused a delay of 423 days. In *Balwant Singh (Dead) vs Jagdish Singh & Ors* AIR 2010 SC3043 Honble Supreme Court has observed that : granting some latitude to of for to explain what In the case of *Union of India v. Tata Yodogawa Ltd.*, [1988 (38) Excise Law Times 739 (SC)]., this Court while the Government in relation to condonation of delay, still held that there must be some way or attempt to explain the cause for such delay and as there was no whisper legal problems occurred in filing the Special Leave Petition, the application delay was dismissed. Similarly, in the case of *Collector of Central Excise, Madras v. A.MD. Bilal & Co.*, [1999 (108) Excise Law Times 331 (SC)]., the Supreme Court declined to condone the delay of 502 days in filing the appeal because there was no satisfactory or reasonable explanation rendered for condonation of delay. The provisions of Order 22 Rule 9, CPC has been the subject matter of judicial scrutiny for considerable time now. Sometimes the Courts have taken a view that condonation delay should be condoned with a liberal attitude, while on certain occasions the Courts have taken a stricter view and wherever the explanation was not satisfactory, have dismissed the application for condonation of delay. In the entire application for condonation of delay, the State has failed to give reasonable explanation which caused delay in filing the appeal. There is no whisper in the application to explain what legal problems occurred in filing the application seeking leave to file the appeal. We are of the view that the petitioner has not satisfactorily explained the delay. On this short ground, the present application and the leave petition are liable to be dismissed. In any event, we have also examined the impugned judgment and we are of the view that, even on merits, the State is not able to make out a case for grant of leave in the present leave petition seeking leave to appeal against the judgment dated 26.04.2016

passed by the Court below. Leave to appeal has been sought by the State feeling dissatisfied by the judgment of acquittal delivered by the Court below dated 26.04.2016. It has been submitted that the findings of acquittal are based on imagined doubts and not on the factual matrix. The circumstantial evidence which surfaced during trial has not been properly appreciated. Testimony of PW2-Dr.Sudipta Ranja Singh who conducted the post mortem has been wrongly discarded. It is submitted wrongly held that no motive of murder was proved. that the material witnesses have supported the case of the prosecution but the trial court has failed to appreciate the evidence in correct perspective. In support of the contentions made, learned Additional Public Prosecutor for the State referred to judgment in case of Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC681 Dilip Kumar Sharma v. State of Madhra Pradesh AIR 1976 SC133 Nigan Sultana Borah & ors. V. State of Assam (Crl. Appeal No.156(1) of 2005 decided on 25.04.2012 by High Court of Gauhati), S.K. Yusuf v. State of West Bengal 2011 (11) SCC754 Leela Ram v. State of Haryana and Anr. AIR 1999 SC3717 and Gangadhay Behera v. State of Orissa AIR 2002 SC3633 The facts of the present case are that on 15.06.2011 a missing report was lodged by the complainant Ravindra Kumar about missing of his 8 year old son since 14.06.2011 which was converted into FIR under Section 363 IPC. During investigation, dead body of the missing boy was recovered. One Deepak came to the police station and stated that on 14.06.2011, he had seen Atul, Chottu and Mayankar @ Kalia with the son of the complainant at the juice shop. All the three accused were arrested and as per their disclosure statements, penal Sections 377/3

IPC were added. After completion of investigation, charge sheet was filed in the Court. Charge under Section 363/377/3

IPC was framed against the accused to which accused pleaded not guilty. To prove its case, the prosecution examined 22 witnesses, namely, Ravinder Kumar (PW1), Dr.Sudipta Ranjan (PW2), Dr.Hari Prasad (PW3), SI Heera Singh (PW4), Ct.Balram (PW5), HC Kalyan Singh (PW6), Dr.Munish Sharma (PW7), Deepak (PW8), Johny (PW9), Ajay Bhati (PW10), HC Surender Kumar (PW11), Lady Ct.Mamta (PW12), SI Mahesh Kumar (PW13), SI Kailash Chand (PW14), SI Vijay Pal Singh Kasana (PW15), ASI Dhashrath (PW16), SI pappu Lal (PW17), Ct.Ajay

Kumar (PW18), Ct.Sudhir Kumar (PW19), ASI Baljor Singh (PW20), AIS Raghuvar Dayal (PW21) and Insp. Shahid Khan (PW22). The main witnesses examined by the prosecution case to prove its case was PW9-Johny. PW9 had stated that on 15.06.2011 at about 05.00 a.m., the complainant came to his house and informed him about his son going missing. They both searched for the missing boy in the nearby area and then they went to police station to lodge the complaint. In the meantime, on receipt of a call by police, they reached the spot and found the dead body of son of the complainant at the first floor of an under construction house. Another material witness examined by the prosecution was PW8-Deepak. PW8 had stated that on 14.06.2011 at about 10.30 p.m., he had seen Atul, Mayanka Kalia, Chottu and the child at the juice shop. He further stated that he knew accused Atul, as he used to get the punctures of bike repaired from him. There are material contradictions and discrepancies in the testimony of prosecution witnesses. The complainant has stated that he reached the spot of recovery of dead body on receiving a call from his neighbour, but as per testimony of his friend they reached the spot of dead body upon receiving a call from one boy Prince. Witness PW16 has deposed that on receiving the information of a dead body, he reached the spot and at that time father of the child was already present there. His testimony has been contradicted by PW18 who stated that father of the deceased was called by the Investigating Officer to the spot. Another contradiction in the testimony of witnesses is with regard to inspection of spot by the crime team. PW15, Incharge of the crime team has stated that the spot was got photographed from a private photographer by the Investigating Officer, but the photographs were not clicked in his presence. Other police officials who remained associated with the investigation have stated that the photographs of the spot were taken by the photographer of the crime team. PW15 has stated that he did not find any blood or urine at the spot, but his testimony has been contradicted by PW11 who stated that on 15.06.2011 he received wireless information that a dead body of a boy was lying on the terrace of unoccupied house and the dead body was bleeding from his private parts. As per the prosecution case, accused purchased one packet of Kurkure which was found lying at the spot of recovery of dead body, PW10-Kurkure vendor was examined by the prosecution who stated that the packet of Kurkure was in the name of Dhoom Dhamaka mark, but the fact remains that the

packet recovered from the spot was having the mark Chature Tedhi Medhi Stix. In the disclosure statement of the accused they are alleged to have stated that they had sodomised the deceased. However, the medical evidence produced on record does not conclusively establish the same. Moreover, the medical examination of the accused did not establish that they had indulged in any sexual activity. Since the case is entirely based on circumstantial evidence, it was essential for the prosecution to establish the complete chain of circumstances, to secure conviction, which was not done. Therefore, conviction of the respondent, in our view, cannot be secured. The Honble Apex Court in case of Gurpreet Singh v. State of Haryana AIR 2002 SC3217 observed that : Coming back on to the merits of the matter now, it thus appears that there is no direct evidence available so as to connect the appellant with the incident-but only circumstantial evidence. It is however now well settled that while circumstantial evidence alone and by itself forms the basis of conviction, provided, however, there is no snap in the chain of events; the chain of events must thus be complete in such a way so as to point to the guilt of the accused persons and to none others - It is not a mere matter of surmise or conjecture but the events ought to be so tell-tale that one cannot but come to the conclusion that accused is the guilty person. Standard of proof has thus to be at a much higher degree lest an innocent person gets the blame therefore. The approach of the Court thus ought to be extremely cautious and upon proper circumspection as regards the appraisal of the available evidence on record. Various citations were referred to be the parties during the course of hearing, but the law seems to be so well-settled, that we may not detain ourselves on that score. Further in case of Ram Sunder Sen and Ors. v. Narender (2016) 15 SCC440 the Court has observed that : based present thus, is, The circumstantial evidence. when evidence, established : prosecution the purely on It is a settled law that circumstantial to be clearly relies on following tests circumstances an (i)The inference of guilt is sought to be drawn, must be cogent and firm; from which (ii)Those circumstances should be of a definite pointing towards guilt of the accused; unerringly tendency (iii)The circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and none else; and (iv)The circumstantial evidence in order to sustain conviction must be complete

and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused should but his innocence. inconsistent with be Keeping in view the law laid down by Honble Apex Court and the evidence discussed above, the prosecution has failed to bring on record all the chain of events and the circumstances to point out to the guilt of the accused. In view of the aforesaid, finding no ground to grant leave to appeal against the impugned judgment, coupled with the fact that there has been delay of 423 days in preferring the leave petition for which there is no satisfactory explanation, the present leave petition filed by the State as well as application for seeking condonation of delay is dismissed. P.S. TEJI, J VIPIN SANGHI, J OCTOBER30 2017 pkb

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