

Raj Kumar and Others Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-11-1997

Reported in : 1998(2)AWC854

Judge : P.K. Jain, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 147, 148, 149 and 302; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 311 and 313

Appeal No. : Criminal Revision No. 1165 of 1997

Appellant : Raj Kumar and Others

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : K.K. Srivastava, Adv.

Judgement :

P.K. Jain, J.

1. Heard Sri K. K. Srivastava. learned counsel for the revisionists and the learned A.G.A.

This revision is being finally disposed of at the admission stage.

2. Revisionists Raj Kuinar, Pramod, Chhotu alias Pratap and AJay alias Rohit are facing trial in S. T. No. 674 of 1994 for offences under Sections 147/148/149 and 302, I.P.C. The session trial is pending before the Addl. Sessions Judge, Ghazlabad. On 25.7.97 an application was moved before the learned Addl. Sessions Judge for giving an opportunity to adduce evidence in defence. By a detailed order dated 25.7.97 the learned Addl. Sessions Judge, rejected the said application.

It is this order which is being challenged in this revision.

3. Before consideration of the arguments advanced by the learned counsel for the revisionists, a brief narration of the facts is necessary. Three of the revisionists, namely, Raj Kumar, Chhotu alias Pratap and Ajay alias Rohit are in jail while Pramod was granted bail by an order dated 3.4.97 although his earlier two bail applications were rejected by this Court. While hearing the second bail application on 1.3.96, this Court had directed the Addl. Sessions Judge before whom the session trial was pending to dispose of the session trial within a month without waiting for the arrest of the co-accused Satyabir. The Court had also directed the learned trial court to submit a report giving his reasons for his inability to do so. This order of the Court still remains to be complied with. It appears from the record that after the prosecution evidence was closed and the case was fixed for statements of the accused persons under Section 313, Cr. P.C. accused Chhotu alias Pratap on 4.4.96 engaged another counsel Sri Chhidda Singh Tyagi who moved an application under Section 311, Cr. P.C. for summoning prosecution witness Vinod and also P.W. 1 Ramesh for further cross-examination. This application was rejected on the same day finding that there was no sufficient ground. On 9.4.96 again another application was moved for summoning the witnesses which application was again rejected. Thereafter the accused applied for time to file revision before the High Court. The Court below granted time but no revision was filed. Thereafter it appears that the statements of the accused persons under Section 313, Cr. P.C. were recorded on 14.5.96 and the case was fixed for defence evidence. Several dates were fixed for defence evidence as disclosed in the impugned order dated 25.7.97. It appears that the case was fixed for defence evidence on as many as 21 dates and out of these 21 dates on 3

dates, that is, 25.1.0.96, 3.12.96 and 7.1.97 the Court was vacant. However, on none of these dates fixed for defence evidence, any defence evidence was given by the accused persons. On 19.6.97 the counsel for the accused absented and no application for adjournment was moved. The trial court heard arguments of the prosecution and fixed 3.7.97 for judgment. On 3.7.97 an application was moved again making prayer for summoning the prosecution witnesses for further cross-examination. That application was rejected by a detailed order dated 8.7.97 as observed by the trial Court in the impugned order. On 15.7.97 again the accused moved an application for affording an opportunity to adduce defence evidence which application was rejected, although the counsel was given opportunity to place arguments in the session trial. Similar application was again moved on 22.7.97 which had been rejected by the impugned order.

4. The above history of the case clearly shows that the accused persons are not cooperating in final disposal of the case and creating obstruction in compliance of the directions of this Court given in the order dated 1.3.96. The copy of the order-sheet filed on behalf of the revisionists further discloses that the learned Addl. Sessions Judge despite fixing several dates for pronouncement of the judgment has not disposed of the case as yet. This is not proper. General Rule provides that normally Judgment in session trial should be delivered within 14 days after hearing the arguments.

5. Now coming to the contention of the learned counsel for the revisionists, it may be pointed out that the learned counsel has submitted that fair opportunity of cross-examining the witness and adducing defence evidence have not been given to the revisionists. It may be seen that at various stages, the revisionists have been changing their counsel even on 25.7.97 another counsel Sri Narendra Kumar Singh was engaged as counsel by the accused persons. The history of the case, described above, clearly goes to show that there is no substance in the argument of the learned counsel for the revisionists that proper opportunity of cross-examining the witness and adducing defence evidence is not being given. The revisionists are themselves responsible for the situation as they are not cooperating in speedy disposal of the trial and creating hindrance by moving one or other application. The learned counsel for the revisionists has referred to a

decision of this Court in Rama Shankar v. State of U. P.. 1996 JIC 902. The facts of that case were different and the observations made in the said case are not applicable to the facts of the present case. That was a case in which the accused had no counsel and Amicus Curiae defended him. At later stage of the trial, accused engaged defence counsel who after going through the record moved an application for recalling some witnesses which was rejected by the trial court. It was in these circumstances, this Court has set aside the order of the trial court and has directed the trial court to afford opportunity to the defence to further cross-examine the witnesses.

6. I may point out that despite a question being put to the learned counsel for the revisionists, he has not been able to justify the request for summoning the prosecution witnesses already examined by the Court. In these circumstances, I do not find any merit in this revision and the same deserves to be dismissed.

7. The revision is hereby dismissed. The session trial was fixed for judgment on 9.9.97. In case the judgment has not already been delivered, the trial court shall finally dispose of the session trial within a week from the date of receipt of a copy of this order, in case stenographer is not available to the presiding officer as is disclosed in some of the order-sheets, the presiding officer shall make a request to the District Judge, Ghaziabad for providing him an efficient stenographer so that the session trial may be finally disposed of.

8. Let a copy of this order be sent forthwith to the Sessions Judge, Ghaziabad as well as to the learned trial court.