

Bhaskar Vs. State of U.P.

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Court : Allahabad

Decided On : Aug-02-2001

Reported in : 2002CriLJ146

Judge : J.C. Gupta, J.

Acts : Indian Penal Code (IPC) - Sections 39 and 392

Appeal No. : Cri. Appeal No. 2311 of 2000

Appellant : Bhaskar

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : R.S. Tiwari, Adv.

Judgement :

ORDER

J.C. Gupta, J.

1. Heard appellant's counsel and the learned A. G. A.

2. A prayer has been made for releasing the appellant on bail during the pendency of appeal. Appellant was duly tried for committing murder of one Prabhakar by firearm in Court compound in broad day light on 19-6-1995 at 10.30 a.m. With the

help of police the witnesses succeeded in apprehending the accused on the spot with a country made pistol used in the commission of murder. The prosecution produced three eye witnesses, who fully supported the prosecution case and stated of appellant's arrest on the spot with the pistol used in the commission of murder. Motive alleged was that in the year 1991, appellant along with three others had committed murder of Vimal Kumar, father of first informant of the present case. The trial Court has found the evidence of the prosecution evidence wholly reliable and trustworthy and accordingly concluded that case against the appellant has been established beyond doubt and accordingly has convicted and sentenced the appellant to imprisonment for life.

3. Learned Counsel for the appellant submitted before the Court that the appellant is in jail for the last six years and the appeal filed in the year 2000 has not yet been heard nor is likely to be heard in near future therefore he be released on bail. In support of his contention learned Counsel relied upon the decision of Apex Court in the case of Smt. Akhtari Bi v. State of M.P. 2001 (4) JT (SC) 40 : 2001 AIR SCW 1236 wherein it was observed : 'In the absence of prompt action under the Constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular Benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. We feel that if an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after a lapse of 5 years the convicts may under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. We request the Chief Justices of the High Courts, where the criminal cases are pending for more than 5 years to take immediate effective steps for their disposals by constituting regular and special Benches for that purpose.

4. In that case bail was allowed to the appellant keeping in view the nature of allegations made against her coupled with the facts that she was an old and infirm woman.

5. The other case relied upon by the learned Counsel for the appellant is *Buddhu v. State of U. P.*, reported in 2000 (40) ACC 941 : 200 All LJ 1043 (HC). In this case bail was granted considering the role attributed to the appellant and the fact that death of deceased occurred several days after the incident. Even as per the prosecution case appellant had given only single blow with lathi on the head of the deceased and the cause of death was not due to that injury.

6. The decision in *Bhagwan Rama Shinde Gasai v. State of Gujarat* 1999 SCC (Cri) 553 : AIR 1999 SC 1859 was also relied upon by the learned Counsel for the appellant. It was held in that case that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under statutory right, suspension of sentence can be considered by the appellate Court liberally unless there are exceptional circumstances.

7. In this decision it was observed that where the sentence is of life imprisonment the consideration for suspension of sentence could be of a different approach. In that case appellants were convicted and sentenced to ten years rigorous imprisonment under Section 392 read with 39, I.P.C.

8. They filed an appeal before the High Court and moved for suspension of sentence, but that prayer was not allowed. At a later stage they again moved for suspension of sentence but that prayer was also turned down. Unfortunately their motion for having their appeal expedited was also declined by the High Court on the premise that the High Court was having older appeals on the Board. In these circumstances the Apex Court directed release of appellants on bail.

9. In all the aforesaid decisions it was nowhere laid down that in every appeal against conviction whenever an appellant has been in jail for a period of 5 years or more, the appellant has to be released on bail irrespective of the allegations made against him by the prosecution and the findings of the trial Court. Each case therefore has to be examined on its own merits to find out whether appellant

should be released on bail during the pendency of his appeal and in this regard no hard and fast formula can be laid down.

10. In the present case besides the fact that on merits appellant does not deserve bail, this Court further finds that when appeal was filed on 15-7-1999, Hon. S. K. Agrawal, J. directed that record of lower Court be summoned at an early date and appeal be listed for consideration of bail immediately on receipt of record. After the receipt of lower Court's record, case was listed on 30-9-99, 8-10-99, 25-10-99, 2-11-99, 31-8-2000, 4-9-2000 and 13-9-2000, but was got passed over on the own request of the learned Counsel for the appellant.

11. Having regard to the facts of the present case and the allegations made against the appellant, the Court is not inclined to enlarge him on bail at this stage. Application for bail is accordingly rejected. But as the appellant is in jail for the last 6 years, office is directed to place the record before the Hon' The Chief Justice for passing necessary orders for early hearing of the appeal.

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