

Premi Vs. State

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Court : Delhi

Decided On : Jul-25-1980

Reported in : ILR1980Delhi1169

Judge : Prithvi Raj and; M.L. Jain, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 302 and 323

Appeal No. : Criminal Miscellaneous Appeal Nos. 150 of 1979 and 877 of 1980

Appellant : Premi

Respondent : State

Advocate for Pet/Ap. : B.G. Singh,; D.C. Mathur and; N.K. Parmar, Advs

Judgement :

M.L. Jain, J.

(1) The appellant was convicted by a judgment passed by the learned Additional Sessions Judge on May 28, 1979, under S. 302 read with S. 34 Indian Penal Code ., and sentenced to imprisonment for life. His applications for suspension of sentence were rejected on merits on August 2, 1979, and on November 12, 1979. He has moved a fresh application for suspension of sentence and bail on the ground that following the decisions of the Supreme Court in Kashmira Singh v. The State of Punjab, : 1977 CriLJ1746 ; Babu Singh and others v. The State of

Uttar Pradesh, : 1978 CriLJ651 ; and Chandgi Ram v. Delhi Administration, Cr. Misc. Petition No, 2961 of 1969, decided on September 19, 1979(3), this court has been releasing the convicts on bail where they have undergone 3 years and more of the sentence even in case where they were convicted for life imprisonment. He referred to a few of such order in cases, namely, Cr. M. 982 of 1978 decided on August 7, 1978, Cr. M. 1061 of 1978, decided on August 24, 1978, Cr. M. 1658 of 1978, decided on August 24, 1980, and Cr. M. 727 of 1978, decided on July 17, 1978. It is urged that the appellant has undergone 3 years and 9 months of his sentence including remissions before he was allowed a parole of 45 days to look after his aged and indigent mother on May 22, 1980, which was extended by another 10 days on July 10, 1980. Two of the co-accused have already been enlarged on bail. It is urged that since the appeal is not likely to be heard in the near future, the appellant should be enlarged on bail.

(2) Bawa Gurcharan Singh appearing for the applicant placed strong reliance, in support of the application, on the following observations of their Lordships in Kashmira Singh's case (supra) :

'THE practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence, are not set aside, but the underlying postulate of this practice was that the appeal of such person would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him.'

(3) This view, the learned counsel submitted, was re-affirmed in Babu Singh's case (supra).

(4) Kashmira Singh's case, the appellant was tried by the Sessions Judge who acquitted him of the charge under S. 302 Indian Penal Code . He was, however,

convicted under S. 323 Indian Penal Code . and sentenced to six month's rigorous imprisonment. The State filed an appeal against his acquittal under S. 302 Indian Penal Code . The High Court set aside the acquittal and convicted him under S. 302 Indian Penal Code . to suffer imprisonment for life. The Supreme Court granted special leave on February 28, 1974, to Kashmira Singh against his conviction. His first bail application was rejected on January 10, 1975. Thereafter, he moved second bail application. Noticing the special features of the case, viz., that the appellant after serving out the sentence of six months rigorous imprisonment for the offence under S. 323 Indian Penal Code . imposed upon him by the Sessions Court, had remained on bail throughout the duration of the appeal before the High Court, on conviction he surrendered before presenting his petition for special leave to appeal to the Supreme Court and since then he had been in jail and the total period he had spent in jail till the time his second bail application came up for consideration was 4 1/2 years and that his appeal was not likely to be heard in another two years, he was allowed bail. But apart from the facts noted above, the overriding factor that prevailed with their Lordships, as observed in the judgment, was that the very fact that they had granted to the appellant special leave to appeal against his conviction showed that in the opinion of the court the appellant had prima facie a good case to consider. It was in the facts and circumstances of the case that Kashmira Singh was granted bail.

(5) In Babu Singh's case (supra), the special features which were taken into consideration were that all the six petitioners were charged with offence under S. 302 Indian Penal Code . but all of them were acquitted by the Sessions Court by judgment dated November 4, 1972. In appeal, by the State, the High Court by its judgment dated May 20, 1977, nearly after 5 years of their acquittal, reversing the findings of the Sessions Court, held all the petitioners guilty and sentenced them all to life imprisonment. Five of the petitioners in that case were the entire male members of a family and all of them were in jail having suffered imprisonment for about twenty months by the time their application for bail came to be considered by the Supreme Court. The sixth petitioner had been on bail in the Sessions Court and had been on bail throughout the pendency of the appeal. When the High Court entertained the appeal against the acquittal of the petitioners, the State did not press for their custody.

(6) In both the above-noted cases, the pertinent factor which was taken into consideration was that a person having been charged with a grave offence had, on trial, been acquitted and his acquittal was held to be a pertinent consideration in considering the plea for bail. It was the finding of innocence recorded by the Sessions Court which weighed as a vital consideration for the grant of bail.

(7) It is also evident from the observations of their Lordships in Babu Singh's case that mere incarceration for a period of 20 months as was sought to be vehemently contended by the learned counsel for the appellant in the instant case, was never held to be a good ground for grant of bail irrespective of the nature of the charge and nature of the offence which were held to be vital and pertinent factors for deciding the application for bail. Not only that, it was further observed that punishment to which a party may be liable if convicted or conviction is confirmed, also has a bearing upon the issue.

(8) Earlier applications of the appellant in the instant case having been rejected on merits and no new feature having been brought to our notice, we do not consider a case is made out for suspending the operation of the impugned judgment. The application is accordingly rejected.

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