

State Vs. Rajinder and anr.

State Vs. Rajinder and anr.

SooperKanoon Citation : sooperkanoon.com/699287

Court : Delhi

Decided On : May-25-2005

Reported in : 2005(82)DRJ561

Judge : Manmohan Sarin and; R.S. Sodhi, JJ.

Acts : Arms Act - Sections 25; Code of Criminal Procedure (CrPC) - Sections 378(1); Indian Penal Code (IPC) - Sections 34, 297 and 302

Appeal No. : Cri LP 88/2003

Appellant : State

Respondent : Rajinder and anr.

Advocate for Def. : Nemo

Advocate for Pet/Ap. : Mukta Gupta, Adv

Disposition : Appeal dismissed

Judgement :

Manmohan Sarin, J.

1. This petition for leave to appeal under Section 378(1) Cr.P.C. against the judgment dated 9.11.1998, acquitting the respondents, passed by Addl. Sessions Judge, New Delhi, was filed only on 29.4.2003. Certain objections were raised and

it was refiled only on 22.7.2003.

2. The State has filed Crl. M. No. 62/2003 for condensation of delay and another Crl. M. No. 84/2003 has been filed for condensation of delay in refiling the appeal after removal of objections. Averments made in the application dated 8.8.2003, which is the subsequent application filed is that there was a delay of 436 days in initial filing and 3 years and 22 days in refiling the appeal. Para 11 of the Crl. M. No. 84/2003 is in the following terms:-

'11. That there is a delay of 436 days in initial filing and 3 years and 22 days in refiling the appeal, however, it is respectfully reiterated that the same is neither intentional nor deliberate.'

The initial delay in filing is attributed to the file processing for filing an appeal between the Addl. P.P. And the Director of Prosecution. Thereafter it was on account of processing of the case by the Secretary (Law and Judl.) and the approval of the Competent Authority. Further delay is due to movement of the file from the office of Director (Prosecution) to the SDM, Najafgarh and then in the office of the Standing Counsel. Lastly it is contended that after filing of the appeal and objections being raised, the file got mixed up with other files of the Standing Counsel due to paucity of space, which resulted in these enormous delays. Reliance is sought to be placed on several decisions to the effect that technicalities of law should not prevent the Court from substantial justice being done and that a liberal approach ought to be adopted.

3. We are not persuaded to accept that the appellants have been able to offer a tenable Explanation or show sufficient cause for condensation of this enormous and inordinate delay. In fact if for the stated reasons in every case a delay of this magnitude is to be condoned, it would amount to negation of the period of limitation prescribed.

Leaving that apart, we also heard the learned counsel on merits of the appeal to satisfy ourselves that there should not be any substantial miscarriage of justice in case leave to appeal is declined.

4. Ms. Mukta Gupta, learned standing counsel for the State submitted that the Trial Judge had ignored the statement of eye witnesses and thereby material evidence was not considered. She submitted that eye witness Satish Kumar had duly identified accused Rajinder in the Test Identification Parade (TIP). The second respondent/ accused Hari Prakash refused to participate in the TIP, hence adverse inference was bound to be drawn against him. She submitted that this was a case where the medical and scientific evidence corroborates the ocular testimony of the witnesses. She submits that the Trial Judge erred in holding that Satish Kumar was unreliable and had not witnessed the crime. She submits that there was no contradiction in his statement, in as much as, after first shot had been fired, Satish Kumar, who was on the roof of his house came down and chased the assailants. Simply because Satish Kumar had not met the Investigating Officer (IO) at the Ram Manohar Lohia Hospital, where his father had been taken, it could not be concluded that he was not an eye witness. She submits that the possibility of Satish Kumar being busy in informing other relatives and thereby not meeting the Investigating Officer could not be ruled out. She submits that the minor discrepancies ought to be ignored.

5. Upon hearing learned counsel for the State and perusing the judgment of Addl. Sessions Judge, we find that the judgment of the Trial Court is a well reasoned one and there is no infirmity in the view taken by the Trial Judge.

6. Balwan Singh Solanki a Municipal Councillor and Durga Parsad are stated to have been shot in the morning of 26.9.1988 at about 9.02 a.m. Information of the crime was given by one Anil Kumar from a public call booth to PCR. A Daily Diary report was duly recorded and the case was entrusted to the Sub Inspector Dalbir Singh, who along with ASI Chand Ram, Constable Ran Singh and Constable Ashok Kumar went to the site of crime. On the site of crime, they learnt that the injured namely Balwan Singh Solani and Durga Parsad had been taken to RML Hospital. They did not find any eye witness at the site of crime. Leaving the accompanying staff at the site, he rushed to RML Hospital and procured the MLC of Balwan Singh Solanki, who was reported to be brought dead at the hospital. Durga Parsad was also unfit to make statement. There were injuries of bullet on their person. Case under Section 302/297/34 IPC read with Section 25 of the Arms

Act was registered. Inquest proceedings were completed as also the Post-mortem and medical report with regard to the injuries on the deceased and Durga Parsad were obtained.

7. The accused in this case had been arrested in another case FIR No. 238-239/1989 related to a shooting incident in a jewelry shop at Rajouri Garden. The accused are stated to have made a disclosure statement regarding this case. Based on this a TIP was held where Satish Kumar son of the Municipal Councillor who claimed to be the eye witness identified the accused Rajinder.

8. The learned Sessions Judge proceeded on the basis that as far as the statement of Satish Kumar and Durga Parsad are concerned, letters alleged to have been received at Police Station can only be used for corroborating the testimony of witnesses. therefore, the witness had to be believed first. The learned Addl. Sessions Judge notes that as per the examination-in-chief of Satish Kumar, who claimed to have witnessed the murder of his father, stated that his father had gone to telephone from the shop of Durga Parsad which was 20-30 paces away from the house. He heard many fire shots. He went to his father and found him in wounded condition. In his presence then accused Rajinder fired at him, when Hari Parkash other accused was with him holding a pistol. Alarm was raised by him and the public and both the accused ran towards Ram Chowk. Hari Parkash stated to have taken out a revolver and threatened the public to run away otherwise he would fire. In the cross-examination, he states that he was on the roof when he heard the bullet shot and he saw Rajinder and Hari Parkash running as soon as he heard the bullet shot. They were running towards Ram Chowk and public was chasing them. He heard 4 to 5 bullet shots and ran after the accused. It would be seen that the version as sought to be given in the examination-in-chief and cross examination is altogether different. In the examination-in-chief, he claims that one shot was fired in his presence when he held his wounded father. In cross-examination, he claims that he heard couple of shots being fired and then he ran after the accused. He does not mention any shot being fired in his presence. The learned trial Judge rightly concludes that if Satish Kumar was present at point 'C' in the site plan, he could not have witnessed the face of the accused when allegedly one bullet was fired by accused Rajinder. We find the reasoning and

analysis of the learned Addl. Sessions Judge in appreciation of the evidence fully justifiable. He has correctly analyses the contradictions and improbability in the version of the eye witness. Further he has rightly pointed out that it is highly improbable that said witness would not have been available to the police at the site of crime or RML Hospital to tell how the crime had taken place. Had he been an eye witness, he would have certainly told as to how crime had taken place? The Addl. Sessions Judge has rightly concluded that crime was not known to this witness until the time the FIR was sent. He has rightly concluded that he was not a trustworthy or reliable witness.

9. Similar is the position with regard to the second witness Jagdish Prasad. Based on the deposition as made in examination-in-chief and the cross examination it would appear that the witness was available to the police within 20-25 minutes of the crime and he had accompanied the police in the Jeep to search for the accused. There is no case of the State to this effect. Case of the State as per the FIR and the endorsement of Investigating Officer is that no witness was located or available at the site or hospital. Moreover, the graphic account of the happenings as contained in the Statement of PW-12, Ram Singh shows that no eye witness was available. It is, therefore, unlikely that both these witnesses had witnessed the crime. In these circumstance the learned Addl. Sessions Judge had rightly returned the finding that accused deserve to be acquitted.

In view of the foregoing discussion, we find that apart from the appeal being hopelessly barred by limitation, it is also devoid of merit. Leave to appeal is accordingly declined.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com