

The State Vs. Kaidia

The State Vs. Kaidia

SooperKanoon Citation : sooperkanoon.com/888429

Court : Himachal Pradesh

Decided On : Aug-20-1951

Reported in : AIR1952HP6

Judge : Chowdhry, J.C.

Acts : Limitation Act, 1908 - Section 12 and 12(2); ;Code of Criminal Procedure (CrPC) - Section 417

Appeal No. : Criminal Appeal No. 2 of 1951

Appellant : The State

Respondent : Kaidia

Advocate for Def. : Man Mohan Nath and; Labh Singh, Advs.

Advocate for Pet/Ap. : Bakshi Sita Ram, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.C.

1. This is an appeal on behalf of the Government under Section 417, Cr. P. C., against the acquittal of Kaidia respondent of an offence punishable under Section 302, I.P.C.

2. The respondent was charged with having murdered his wife's brother's son, a young lad of about fifteen named Occhbu, by pushing him down a precipice for the sake of Rs. 730/- in cash and a gold nose-ring. At the respondent's request the boy's father Mohtu is said to have sent him to the respondent with that amount and ornament in order to settle his marriage. The Sessions Judge's judgment of acquittal has been strongly supported by the learned counsel for the respondent on the ground that there was no proof of 'corpus delicti' in this case. The body of the deceased has not been found, but a prosecution witness, Phagnia, has stated that the respondent took him to the scene of occurrence, confessed there his guilt to him, asked for his help to bury the dead body and, on his refusing to comply, threw it into the river Tons at a short distance from the base of the precipice. The prosecution also led evidence of the place of occurrence having been pointed out by the respondent, of a 'tabiz', trouser-string and cap of the deceased having been recovered at that spot, of marks of dragging from the base of the cliff to the bank of the river and of the recovery of Rs. 530/-, a nose-ring and a coat from the respondent's house. The story of the boy having been sent with the cash and ornament to the respondent for the settlement of his marriage, and of the respondent being the suspected culprit, was set forth only in the report lodged with the police a week afterwards on 18-4-1950. It found no mention in a report (Ex. P.M.) which purports to have been scribed by one Rup Singh, Zaildar, on 15-4-1950, to the dictation of Kedar Singh, Lambardar and another, although the fact of Occhbu having been murdered by the respondent is said to have been communicated by the said Phagnia to one Jujuwa and by the latter to the deceased's father on the very next day after the murder, and by the deceased's father to Kedar Singh on 15-4-1950. The report Ex. P.M., which purports to have been scribed in the presence of the deceased's father and the respondent himself, was suppressed by the investigating head-constable Sunder Lal and produced by him only on being ordered by the learned Sessions Judge to do so after its existence had been disclosed by other prosecution witnesses. The main plank of the argument of the learned Government Advocate was that Ex. P.M., should not be taken into consideration notwithstanding its production by the investigating head-constable himself because it was inadmissible in evidence, and that, on its being so rejected, the pointing out of the place of occurrence by the respondent

and the recovery of the said article from there and of the cash and ornament from his house were, in the absence of any explanation from the respondent, sufficient for his conviction, even though the learned Sessions Judge be right in discarding Phagnia's evidence with regard to the respondent having confessed his guilt to him and thrown the dead body of the deceased into the river in his presence. On the other hand, it was argued by the learned counsel for the respondent that on the showing of the prosecution witnesses themselves it was the police which took the accused to the place of occurrence, and not 'vice versa', and that the mere recovery of a portion of the alleged cash and the ornament is not sufficient for bringing the guilt home to the respondent unless and until possession of those articles by the respondent could not be attributed to any other cause but the alleged murder. And in this connection it was pointed out that the remaining Rs. 200/-, which the deceased is said to have taken to the respondent's house on a second visit, were in any case not recovered from his house, so that it is possible that the boy was murdered by somebody else, if it be a fact that he has been murdered, for the sake of those Rs. 200/-.

3. It is, however, not necessary for me to enter into the merits of the case since, in my opinion, the contention of the learned counsel for the respondent that this appeal is time-barred is well-founded. And I am glad to be able to say that I have no compunction in throwing out this appeal on the ground of limitation inasmuch as I am satisfied that the decision of the learned Sessions Judge was on merits quite correct. In fact, the present appeal has been filed against the very intention underlying the enactment of Section 417, Cr. P.C., namely, a miscarriage of justice so grave as would induce the Local Government to move in the matter, as laid down in 'Deputy Legal Remembrancer v. Karuna Baistobi', 22 Cal 164. The reason for the filing of such a misconceived appeal seems to be that there is no Legal Remembrancer to help our Government in such matters and the learned Government Advocate, who argued the case before the Sessions Judge, was naturally inclined in favour of the strength of his case.

4. To come back to the question of limitation, the period prescribed under Article 157, Limitation Act, for an appeal from acquittal is six months from the date of the order appealed from. The judgment and order of the learned Sessions Judge was

passed on 20-9-1950, and the present appeal was filed six months and two days later on 22-3-1951. It appears that the deceased's father Mohtu applied for a copy of the Sessions Judge's judgment on 6-11-1950 and got it on 7-11-1950. The learned Government Advocate argued that the Government is entitled to the benefit of the two days taken in obtaining the copy of the judgment of the Sessions Judge under Section 12 (2), Limitation Act, and that therefore the appeal was just filed within limitation. I shall presently show that the Government is not entitled to the benefit of Section 12 (2), Limitation Act, in the present case; but even if it were, the extremely belated filing of the appeal would still have merited the following observation made in 'Empress of India v. Yakub Khan, 5 All 253, although the delay in that case was of only about three months :

'We observe, with some surprise, that the petition of appeal was not presented until the 4th of October, or more than three months from the date of the order complained of; and we are constrained to express our regret that, with whomsoever the fault may be, there should have been so much delay in steps being taken to impeach the judgment. The circumstance is not of so much importance in the present instance, as there is evidence sufficient on the record to enable us, supposing we admit the legal objections to the accuracy of the Judge's decision, to deal with the matter upon the merits. But there are cases in which the contingency arises that we have to order a new trial, or further evidence to be taken, and the longer the interval that has elapsed since the first investigation and trial, the greater is the inconvenience and difficulty, not only to get witnesses together again, but to obtain from them accurate or reliable testimony. It is true that a period of six months is the limitation allowed by law for appeal from acquittals, but we would earnestly commend to the attention of Government the policy of, and necessity for, such appeals, when made, being preferred with all reasonable expedition possible, not only in the public interest, but in justice to the persons whose acquittal it is sought to reverse.'

5. Now, the relevant portion of Section 12 (2), Limitation Act, runs, thus :

'In computing the period of limitation prescribed for an appeal, the time requisite for obtaining a copy of the decree, sentence or order appealed from, shall be

excluded.'

It is one of the exceptions to the otherwise inflexible rule contained in Section 3 of the Act that any suit instituted, appeal preferred, and application made after the period of limitation prescribed therefore by the first schedule shall be dismissed, although limitation has not been set up as a defence, as mentioned in the section itself. The other exceptions are also mentioned in the section, and an examination of those exceptions will show that they arise either out of the disability of the person entitled himself due to causes over which he has no control, or of the character or conduct of the opposite party. Instances of the former category are the disability of the person entitled due to Court being closed when period expires (Section 4), or to his being a minor or insane or an idiot at the time from which the period of limitation is to be reckoned (Sections 6 and 7, subject to Sections 8 and 9), or to time taken in obtaining copy of the decree, etc., appealed from (Section 12), or to his prosecuting another proceeding 'bona fide' in Court without jurisdiction (Section 14), or to suspension of his proceedings by injunction or order (Section 15), or to the very non-existence of the legal representative of the person entitled to sue or be sued due to the latter's death before the accrual of right (Section 17), or due to some cause considered sufficient by Court (in cases to which Section 5 has been made applicable). Instances of the latter category are where the opposite party is an express trustee or his representative (Section 10), or he has been absent from India (Section 13), or he has acknowledged his liability (Section 19), or if, in case of debt or interest on legacy, he has made payment (Section 20). Section 18 is an instance of a composite character where the person entitled has been kept from the knowledge of his right by the fraud of the opposite party. All these are the cases specifically enumerated in Section 3 itself in which, and in which alone, the maxim '*Lex non cogit ad impossibilia*', (the law does not compel the doing of impossibilities) is applicable to the law of limitation.

6. So far as the present case is concerned, it falls in the first category of cases where the person entitled is disabled to conform to the prescribed period of limitation due to causes over which he has no control. And what is important to notice in this connection is that it is his own, and not any body else's disability which will entitle him to the benefit of any of the said exceptions. If there is a

stumbling block in the way of 'A', but the path lies clear before 'B', the latter has no excuse for not arriving at his destination. The matter is so plain on the face of it that it need hardly be pursued any further I find support for this view from the following observations in the Privy Council ruling reported as '*Pramatha Nath Roy v. Lee*', 49 Cal 999, which was also a case where the provisions of Section 12 (2) of the Limitation Act had to be interpreted : 'Now the learned Judges in the Appeal Court have held that in determining what is the requisite time referred to in Section 12, Sub-section (2) of the Limitation Act the conduct of the appellant must be considered, and their Lordships think that in so determining they have rightly regarded the statutory provision. In their Lordships' opinion, no period can be regarded as requisite under the Act, which need not have elapsed if the appellant had taken reasonable and proper steps to obtain a copy, of the decree or order. In the present case he took none.' In determining what is the requisite time under Section 12 (2) of the said Act therefore the conduct of the appellant, the Government, must be considered, so that no time not taken by the Government itself in obtaining the copy can be regarded as requisite under the Act. No steps whatsoever for obtaining the copy were taken in this case by the Government, for, as adverted to above, the copy was applied for and taken delivery of by the deceased's father Mohtu, and not by the Government. It was not even suggested before me by the learned Government Advocate that Mohtu did it for or on behalf of the Government. It was) not explained how the Government came into possession of this copy, but it is possible that the machinery of the Government for the filing of the present appeal under Section 417, Cr. P.C., was set in motion on an application by Mohtu, and that Mohtu's application was accompanied by this copy of the judgment. The Government cannot, therefore, take advantage of the time taken by Mohtu in obtaining this copy as the time requisite mentioned in Section 12 (2) of the Limitation Act, and the appeal is clearly time-barred.

7. The learned Government Advocate cited in this connection the ruling of the Allahabad High Court reported at '*Ramkishan Shastari v. Kashibai*'. 29 All 235, and a Madras ruling which followed it and which is reported as '*Aminuddin Sahib v. Pyari Bi*', 43 Mad 633. There is, however, nothing in the basic Allahabad ruling which runs counter to the view expressed by me above. The appellant in the lower appellate Court had left it to her Vakil to obtain a copy of the decree and judgment

of the trial Court, and the Vakil had left it to his clerk, and it was in the circumstance held by the lower appellate Court that the appellant was not entitled to the benefit of Section 12 (2) of the Limitation Act. The decision of the lower appellate Court was set aside on appeal by the High Court, and, on a Letters Patent appeal, it was held by Stanley, C. J., and Burkitt, J., that it would be unduly restricting the language of Section 12 of the Limitation Act if they were to hold, as did the lower appellate Court, that the application for a copy of the judgment must necessarily be by the appellant or some body 'proved' to have been acting in the matter as her agent since the language of that section was very general and did not say by whom the copy was to be obtained. It is manifest that the appellant was given the benefit of the said provision because the act of obtaining the copy was her act even though it was performed vicariously through her Vakil's clerk. The 'ratio decidendi' of the case was that there was nothing in the section which required, as erroneously held by the lower appellate Court, that the application for copy should have been made by the appellant herself or by a person proved' to have been acting as her agent. In the present case also it was not necessary that the application for a copy of the judgment of the Sessions Judge should have been made by the Government or by somebody proved to have been acting in the matter as its agent, but the act should ultimately have been attributable to the Government, as it was in the Allahabad ruling. This ruling is therefore not helpful to the appellant.

8. In the Madras ruling the appellants, who were some of the defendants in the trial Court, filed with their memorandum of appeal a copy of the decree obtained by some other defendants against whom the suit had been dismissed, and it was held, following the Allahabad ruling, that they were entitled to the benefit of Section 12 (2) of the Limitation Act. I must, however, say with all respect that the conclusion arrived at in the Madras ruling is a 'non sequitur': it does not follow from the ruling it is based upon. The Allahabad ruling did not lay down that a party would be entitled to the benefit of the said provision even if the act of obtaining the copy could not in any way be attributable to him but to quite a different party who had nothing to do with the filing of the appeal. It is manifest therefore that the Allahabad ruling did not apply to the facts of the Madras case, and that the latter is in conflict with the Privy Council ruling mentioned above.

9. There are two other cases in which, if I may again say so with respect, the Allahabad ruling was followed correctly : 'Rudra Pratab Singh v. Raghuraj Gir', A I R (1) 1914 Oudh 244 and 'Chandu v. Mast Ram', A I R (21) 1934 Lah 135. In the former case the application for copy was not made by the appellant himself but by a pleader's clerk, and it was held that the appellant was entitled to the benefit of the aforesaid provision of the Limitation Act because it did not require that the application for copy should have been made by the appellant himself. It is noteworthy that it was not said that the pleader whose clerk had made the application was not the appellant's counsel. In the Lahore case also it was held that the appellant need not have applied for copies in person. There is nothing to show that the act of applying for copies was eventually not attributable to the appellant, irrespective of whether the person who actually applied for the copies had or had not been proved to have been acting in the matter as the appellant's agent.

10. The appeal is dismissed as time-barred and the judgment and order of the learned Sessions Judge acquitting the respondent are maintained.

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