

State Vs. Amit Tripathi

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Court : Delhi

Decided On : Dec-20-2010

Judge : Anil Kumar; S.L.Bhayana, Jj.

Acts : Limitation Act - Section 5; Indian Penal Code,(IPC) - Sections 302/398/411/471, 307; Arms Act - Section 25; Code of Criminal Procedure (CrPC) (Cr.P.C) - Sections 313, 161

Appeal No. : Crl. L.P. No. 443/2010

Appellant : State

Respondent : Amit Tripathi

Advocate for Pet/Ap. : Mr.Jaideep Malik, Adv.

Judgement :

This is an application by the appellant/applicant seeking condonation of delay in filing the petition for leave to appeal on the ground that the impugned judgment was pronounced on 30th April, 2010 and considerable time was taken in procuring the certified copy of the judgment. Thereafter, the concerned learned additional public prosecutor received the file along with the letter of approval dated 21st July 2010 from the Assistant Legal Advisor, Govt. of NCT. The applicant has given the details as to who had considered the file to decide whether a petition for leave to appeal is to be filed or not. The applicant has relied on Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., (1987) 2 SCC 107 and State of

Nagaland v. Lipok Ao, 2005 (3) SCC 752 holding that sufficient cause should be considered with pragmatism in justice oriented approach rather than a technical deflection of sufficient causes for explaining every days delay having regard to considerable delay of procedural red tape in the decision making process of the government, certain amount of latitude is permissible and should be given. The applicant has contended that the State Government is the impersonal machinery working through its officers or servants hence it cannot be put on the same footing as an individual.

The petitioner/applicant, in the circumstances, has contended that there is sufficient cause for condoning the delay of 123 days in filing the petition for leave to appeal.

Considering the averments made in the application, it is apparent that the petitioner has been able to make out sufficient cause for condonation of delay in filing the petition for leave to appeal. Consequently, the application under Section 5 of the Limitation Act, seeking condonation of delay of 123 days in filing the petition for leave to appeal is allowed and delay is condoned.

The petitioner/state has sought leave to appeal against the order of acquittal of respondent, dated 30th April, 2010 in Sessions Case No. 23/2008 titled as State vs. Amit Tripathi, arising out of FIR No. 20/2008 under Sections 302/398/411/471 of IPC and Section 25 of Arms Act.

The case of the prosecution in brief was that the respondent allegedly murdered Sh. Hari Om Giri, a TSR driver by firing at him with a country made pistol on 18th January, 2008 at 9:30 pm at the slope, in between the electric pole No. 23 and 24 on the left side of Nizamuddin bridge at Road No. 52, near Akshardham Mandir and robbed him of his TSR.

Two days after the incident, Pradeep Kumar came to the Police Station on 20th January, 2008 and claimed that he had eye-witnessed the incident. Thereafter, on 24th January, 2008, the respondent was allegedly arrested with the robbed TSR at NH-24 bus stand in front of Samaspur Village and a loaded country made pistol with one fired and two live cartridges were allegedly recovered from him. The

charges were framed against the respondent under Section 398/302/411/471 of IPC and Section-25 of Arms Act on 24th November, 2008 and the accused pleaded not guilty and claimed trial. During the trial, prosecution examined 21 witnesses. The statement of the respondent was recorded under Section 313 of Crl. Procedure Code. He denied his involvement in murdering the scooter driver Hari Om Giri and pleaded innocence and stated that he was standing near the Bapu Dham Hospital when some police personnel made some inquiries about him as to why he was standing there. He objected to any inquiry being made from him without any justifiable reason, which angered the policemen and they took him to police station and involved him in this case falsely. He also stated that recovery of auto and country made pistol with cartridges had been planted upon him. The respondent also examined his father Sh. Ved Prakash Tripathi, DW-1, who proved an application filed by him before the Human Right Commission, which was exhibited as Ex. DW1/A and he also proved letter and receipt and envelope dispatched to one Baba Glass Company as Ex. DW1/B to DW1/D where according to the deposition of PW-3, alleged eye witness, he was working at the time of the incident.

The Trial Court disbelieved the testimony of alleged eye-witness PW-3 and held that he is a stock witness and is therefore not reliable. The Trial Court also noted that the alleged eye-witness was also a witness in Case FIR No. 416/2006 of PS Pandav Nagar under Section 302 of IPC and FIR No. 170/2003, PS Pandav Nagar, under Section 379/411 of IPC. It was also considered by the Trial Court while acquitting the respondent that the alleged eye-witness had not seen any revolver or country made pistol in the hands of the respondent but his deposition was that he had only seen something.

Relying on the post mortem report, Ex. PW-11/A, it was noticed that there were other injuries which could be caused only by dragging, which could not be established by the prosecution. The reason for not disclosing the incident for two days to the police as the alleged incident has taken place on 18th January, 2008 and the alleged eye-witness, PW- 3 had only went to the police on 20th January, 2008, were also found to be quite unnatural as he had allegedly seen a man lying on the road and bleeding and yet did not disclosed this to any of his friends and

family members and did not even try to intimate about it anonymously in order to save that person.

The Trial Court, while acquitting the respondent, also considered that a piece of blood stained glass and stone pieces were found near the dead body, however, it was not investigated as to how the blood came on these objects, nor the earth and earth control was lifted from the spot nor any effort was made to lift the chance prints and to ascertain whose blood was on those pieces. The site plan Ex. PW-15/A and the rough site plan Ex. PW12/A also did not show the position of PW-3 at the time of incident. Reliance was placed on *Sagar Chand v. State*, 1990(1) CC Cases 489 Delhi, holding that where the map is too sketchy and does not indicate about the place of occurrence and from which place the eye-witnesses saw the occurrence, the investigation was held to be slipshod reflecting efforts to conceal the true facts from the Court. The Trial Court also noticed that the respondent was produced in the Court on 25th January, 2008 with unmuffled face and he was shown even before he was offered for the TIP. In the circumstances, refusal of the accused to participate in the TIP was held to be justified and reliance was placed on *Sheikh Umar Ahmad Sheikh v. State*, AIR 1998 SC 1922 and *Sarwan Singh v. State of Punjab*, 2003 CrL. Law Journal 21 (SC), holding that ordinarily identification of an accused for the first time in a Court by a witness should not be relied upon for the purpose of passing the order of conviction without a definite corroboration since identification for the first time in the court ordinarily is not to be relied upon. The Trial Court also noticed that the testimony of PW-3, the alleged eye-witness that he had visited on 25th January, 2008 Karkardooma Courts for disposal of a challan of his friend where he had met SHO, who was having the custody of the respondent, who had killed the TSR driver Hari Om Giri and had fled from there and that he had stayed in the parking of the Court and his friend went inside and he never entered the Court premises was found to be inconsistent with his statement made under section 161 of the CrL. P. Code. PW-3 stated that he had seen the respondent/accused at the gate of the Court where his statement was recorded and where he had identified the accused. However, in his statement under Section- 161 of the CrL. Procedure Code, which was exhibited as Ex. PW-3/DA, he had stated that he met the Investigation Officer outside the Court no.6 on the 2nd Floor of Karkardooma Courts, where he had identified the accused.

The Trial Court also noted that PW-3, the alleged eye-witness had given the incorrect address of his employer as Baba Glass Company, Block-85, Gol Market, New Delhi though the registered letter sent to him at the said address had come back with the report that "No such company was functioning at the said address". This created, according to the Trial Court, doubt about the veracity and credibility of the alleged eye-witness which cannot be held to be unsustainable or not based on evidence on record.

Brother of the deceased who had allegedly seen the respondent driving the TSR of the deceased bearing No. DL-1R K-3438 with a tampered number plate has also been disbelieved on account of various contradictions and inconsistencies in his statement. The brother of the deceased had deposed that he had found the respondent with the TSR of his brother at Ashram and he stopped him and asked for the paper of the TSR and when the respondent failed to show the paper of the TSR to him, he went to call the police and in the mean time, the respondent fled from there. However, in the cross-examination, he deposed that he joined the investigation team on 24th January, 2008 and at about 5:00 p.m. near the bus stand Samaspur Village a TSR No. DL-1RK-3488 driven by the accused was stopped and the accused, on interrogation, disclosed that he had changed the number plate of TSR from 3438 to 3488. In his cross-examination, he reverted to another version that he had seen the accused for the first time at Ashram and then at the Police Station but he did not remember the date when the accused was arrested and whether his statement was recorded by investigating officer or not. According to him, when he saw the TSR, it was having number 3438 whereas the prosecution case is that the accused had changed the number from 3438 to 3488. On account of these contradictions, it has been held by the Trial Court that the testimony of the brother of the deceased regarding the arrest of the accused and recovery of TSR and other article is not reliable. The learned counsel for the petitioner is unable to show any un-sustainability in any of the inferences drawn by the Trial Court and in the circumstances, there are no grounds to grant leave to appeal to the petitioner. The testimony of PW-4 Pappu, another TSR driver could also be not relied as he failed to identify the accused during the cross-examination as the person whom he had seen driving. The Trial Court has also noted various contradictions and inconsistencies in the statements of PW-8, PW-

12 and PW-16, which goes to the root of the matter. In the circumstances it has been held that there is not sufficient evidence of inculcate the respondent/accused for the murder and robbing deceased.

The Trial Court has also noted that the father of the deceased and other family members were having enmity in their native village with Deshraj, Rajesh and Ram Dass and he also admitted in his cross- examination that a case under Section-307 of IPC is pending against them at District Shahjahanpur, UP and he had lodged a complaint against the said three persons for the murder of his son at PS Pandav Nagar and in his opinion, they were the suspects. These facts were also admitted by the brother of the deceased. Though, these persons were interrogated but they were not brought to Delhi nor arrested contrary to the testimony of PW-1. PW-14, father of the deceased had filed a complaint against them before the Human Right Commission. The bullet, which was extracted from the body of the deceased, could not be related to the live cartridges allegedly recovered from the respondent nor could it be established that the same was fired from the alleged pistol, which was allegedly recovered from the respondent. The testimony of PW-10, registered owner of the TSR, also negated the prosecution version as according to the prosecution, the tampered number plates were seized, however said witness deposed that when he received the TSR on superdari, it had number plate with tampered number, thus it was held that the only eye-witness PW-3 is unreliable; manner of arrest of the accused is also doubtful in view of the contradictions in the testimonies of the material witnesses and therefore, it has not been proved beyond reasonable doubt that the accused is liable for offences punishable under Section 398/302/411/471 of IPC and Section-25 of the Arms Act. This is settled law that in reversing the finding of acquittal the High Court has to keep in view the fact that the presumption of innocence is still available in favor of the accused which is rather fortified and strengthened by the order of acquittal passed in his favor. Even if on fresh scrutiny and reappraisal of the evidence and perusal of the material on record, if the High Court is of the opinion that another view is possible or which can be reasonably taken, then the view which favors the accused should be adopted and the view taken by the trial Court which had an advantage of looking at the demeanour of witnesses and observing their conduct in the Court is not to be substituted by another view which may be reasonably

possible in the opinion of the High Court. Reliance for this can be placed on 2009(1) JCC 482=AIR 2009 SC 1242, Prem Kanwar v. State of Rajasthan; 2008 (3) JCC 1806, Syed Peda Aowlia v. the Public Prosecutor, High Court of A.P, Hyderabad; Bhagwan Singh and Ors v. State of Madhya Pradesh, 2002 (2) Supreme 567; AIR 1973 SC 2622 Shivaji Sababrao Babade & Anr v. State of Maharashtra; Ramesh Babu Lal Doshi v. State of Gujarat, (1996) 4 Supreme 167; Jaswant Singh v. State of Haryana, 2000 (1) JCC (SC) 140. The Courts have held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. The High Court has the power to reconsider the whole issue, reappraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the findings are against the evidence or record or unsustainable or perverse. However, before reversing the finding of acquittal the High Court must consider each ground on which the order of acquittal is based and should record its own reasons for not accepting those grounds and not subscribing to the view of the trial Court that the accused is entitled to acquittal. This Court has perused the Trial Court Record specially the testimonies of the relevant witnesses PW-3, PW-12 and other witnesses and the documents. The learned counsel for the State, Mr. Malik has also been heard. The emphasis of the learned counsel for the petitioner is that the testimony of PW-3 is reliable. This Court, however, concurs with the reasoning of the Trial Court regarding the unreliability of the testimony of PW-3. Perusal of the testimony of PW-3, Pradeep reveals that in his examination, he disclosed that after the TSR was taken away by the accused, he went to the place of incident and found that a middle aged person was lying dead in the pool of blood. Despite finding the middle aged person in a pool of blood lying dead, the said witness went away to his house and slept and did not disclose anything to any of his friends and any family member nor tried to intimate anonymously and rather went to the police station only two days thereafter. The Trial Court has found this behaviour of the said

witness to be not reliable coupled with the fact that this witness is also witness in two more cases under FIR No. 416/2006 of PS Pandav Nagar under Section-302 of IPC and FIR No. 170/2003 of PS Pandav Nagar under Section 379/411 of IPC as the suggestion given to the said witness had not been refuted by the prosecution by producing the relevant record. In the circumstances, if the Trial Court has found the said witness, unreliable, the learned counsel for the petitioner has not been able to show any grounds on the basis of which it can be inferred that the said witness is reliable. The testimony of said witness is full of contradictions. He had also stated that he had gone to Karkardooma Courts with his friend, who wanted to pay the challan and he stayed outside the Court complex whereas in his statement, under Section-161 of CrI.P.C he had taken entirely different stand where he had stated that IO had met him outside Court No. 6 on the second floor at Karkardooma Courts. The testimonies of other police witnesses regarding the arrest of the accused also have many contradictions and inconsistencies, which create a substantial doubt about the version of the prosecution.

Taking the entire judgment of the Trial Court, the learned Additional Public Prosecutor has not been able to point out any inference which can be termed to be unsustainable or not based on any evidence or arrived at without considering any material evidence. In any of the findings of the Trial Court, the learned counsel for the petitioner has not been able to show any perversity. The testimony of the sole witness PW-3 Sh. Pradeep is unreliable and so is the testimony of PW-1, brother of the deceased about the arrest of the respondent. In the circumstances, the alleged recovery of the scooter and pistol and blank cartridge and live cartridge also cannot be relied on. There is substantial doubt in the version of the prosecution and in the circumstances, no infirmity has been demonstrated by the learned counsel for the State so as to grant leave to appeal to the petitioner. In the facts and circumstances, there are no grounds to grant leave to appeal against the judgment dated 30th April, 2010 acquitting the respondent. The petition for leave to appeal is without any merit and it is, therefore, dismissed.