

Vicky @ Vikas vs State (Govt. Of Nct Of Delhi) on 31 January, 2020

Equivalent citations: AIR 2020 SUPREME COURT 916, AIR ONLINE 2020 SC 92, (2020) 1 RECCRIR 929, (2020) 3 SCALE 40

Author: R. Banumathi

Bench: A.S. Bopanna, R. Banumathi

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 208 OF 2020
(Arising out of SLP(Crl.) No.4201 of 2019)
VICKY @ VIKAS ...Appellant

VERSUS

STATE (GOVT. OF NCT OF DELHI) ...Respondent

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. This appeal has been filed by the appellant against the impugned judgment dated 20.05.2016 passed by the High Court of Judicature at Delhi in Criminal Appeal No.1496 of 2013, whereby while dismissing the appeal filed by the appellant, the High Court also dismissed his application to direct sentences awarded to him to run concurrently.

3. Case of the prosecution in brief is that on 28.04.2011, at about 10:25 PM, the appellant along with co-accused Yamin @ Sohail Reason: Rs.2700/- and the complainant's mobile phone by inflicting injuries on him with a knife. FIR No.67/2011 was registered against the accused for the occurrence on 28.04.2011 at 10.25 PM. After completion of investigation, charge-sheet was filed against the accused. In the trial, charges were framed against the appellant and the co-accused under Sections 392, 394, 397 IPC read with Section 34 IPC. The appellant pleaded not guilty and claimed trial.

4. Based on the evidence adduced by the prosecution, the trial court convicted the appellant under Sections 392 and 394 IPC while acquitting him of the charge under Section 397 IPC. The trial court

sentenced the appellant to rigorous imprisonment for a period of seven years and a fine of Rs.10,000/- with default sentence of one month in case of non-payment of fine and clarified that this sentence will run consecutively to the sentence imposed on the appellant in FIR No.64/2011 under Sections 392, 397, 411 IPC read with Section 34 IPC.

5. In appeal, vide the impugned judgment, the High Court opined that the conviction recorded by the trial court is based upon fair appraisal of evidence and warrants no interference. As to the prayer of the appellant directing sentences to run concurrently, the High Court observed that the appellant is involved in sixteen criminal cases, he is a habitual hard core criminal and in the instant case, not only was the victim robbed of valuable articles but also inflicted with grievous injuries on his body. The High Court thus rejected the prayer that both the sentences in FIR No.64/2011 and FIR No.67/2011 to run concurrently.

6. By order dated 26.04.2019, we had already held that we are not inclined to interfere with the verdict of conviction of the appellant and also the quantum of sentence imposed upon him. The instant appeal is confined to the appellant's prayer seeking concurrent running of sentences imposed upon him.

7. The appellant faced trial in various cases and has been convicted in number of cases. Mr. Anish Kumar Gupta, learned counsel appearing for the appellant-accused has collected the details from the Assistant Superintendent, Central Jail-13, Mandoli. By order dated 13.12.2019, we have called for details of the cases pertaining to the appellant from the Director General (Prison). Accordingly, the Superintendent, Central Jail No.13 has sent the status report containing the details of the cases in which the appellant is convicted and the sentence of imprisonment imposed upon him and the period of sentence undergone by him.

Case No.	Details of Court Date of Conviction	Conviction and Sentence	Sentence undergone as well as pending and in which cases	
FIR No.64/2011 ASJ, PS – Bhalswa Courts, Delhi Dairy	Rohini Section 394/397 IPC Sented to R.I. for 10 Date of conviction years + Rs.10,000/- fine - 02.06.2012		Sentence completed (Sentence default of fine is remaining)	in
FIR No.67/2011 SC No.58/2011	ASJ, Rohini Courts, Delhi	Section 392/394 IPC Sentence to R.I. for 7	Currently serving sentence.	

Date of conviction years + Rs.10,000/- fine As of 11.12.2019, – 28.07.2012 in default for one month he has undergone 01 year 04 months and 28 days.

<p>FIR No.263/2009 CMM, Tis Hazari Section 394 IPC PS – Janakpuri Courts, Delhi Sentenced to R.I. for 4 Date of conviction years – 09.09.2013</p>	<p>During trial, he was inside for 01 year 02 months and 17 days from 10.05.2011 to 27.07.2012. Sentence will commence after completion of sentence in case</p>
<p>FIR No.601/2007 MM, Rohini Section 353/365/506 PS – Model Courts, Delhi IPC Town Sentence to the period already undergone</p>	<p>Convict was inside from 04.12.2013 to 16.09.2014.</p>

FIR No.234/2012 MM, Tis Hazari Section 20/61/85 of Convict was inside PS – Subzi Courts, Delhi NDPS Act from 04.12.2013 to Mandi Sentence to the period 15.09.2015.

already undergone

8. As per the Status Report filed by the DGP on 16.01.2020, the appellant is presently undergoing rigorous imprisonment for seven years awarded to him in the case in FIR No.67/2011. As seen from the above, as on 11.12.2019, the appellant has undergone actual sentence of 01 year 04 months and 28 days and has earned remission of 6 days. During trial of the case in FIR No.67/2011, the appellant was in custody for 01 year 02 months and 17 days from 10.05.2011 to 27.07.2012. It has been stated that the sentence in the case in FIR No.67/2011 started w.e.f. 02.10.2019 after expiry of previous sentence of 10 years' rigorous imprisonment in the case in FIR No.64/2011. This sentence of imprisonment of ten years in the case in FIR No.64/2011 was completed on 01.10.2019. In the case in FIR No.263/2009, the appellant is also convicted and sentenced to 4 years' rigorous imprisonment under Section 394 IPC vide order dated 09.09.2013 in the case in FIR No. 263/2019. This sentence would commence after completion of sentence running in the case in FIR No. 67/2011. Further on 16.09.2014, the appellant was convicted in the case in FIR No.601/2007 under Sections 353, 365 and 506 IPC. On 15.09.2015, he was convicted under Sections 20, 61 and 85 of NDPS Act in the case in FIR No. 234/2012. However as noted above, in both these cases – FIR No.601/2007 and FIR No.234/2012, he was sentenced to the period already undergone, i.e. judicial custody from 04.12.2013 till the date of decision in these cases.

9. The point falling for consideration is whether the sentence of imprisonment in the cases in FIR No.64/2011, FIR No.67/2011 and FIR No.263/2009 are to be ordered to run concurrently. We are conscious that the case in FIR No.263/2009 is not before us. However, considering the facts and circumstances of the case and the family background of the appellant and with a view to give quietus to the matter, we have considered the case in FIR No.263/2009 also.

10. Section 427 CrI.P.C. deals with the situations where an offender who is already undergoing a sentence of imprisonment is sentenced to imprisonment on a subsequent conviction or

imprisonment for life. Section 427 Cr.P.C. provides that such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence. Section 427 Cr.P.C. reads as under:-

“427. Sentence on offender already sentenced for another offence.-

(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 122 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately.

(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.”

11. We may refer to the decision of the Supreme Court in Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti v. Assistant Collector of Customs (Prevention), Ahmedabad and Another (1988) 4 SCC 183, wherein the Supreme Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences. In Mohd. Akhtar Hussain, it was held as under:-

“10. The basic rule of thumb over the years has been the so-called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences. It is proper and legitimate to have concurrent sentences. But this rule has no application if the transaction relating to offences is not the same or the facts constituting the two offences are quite different.

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12. The submission, in our opinion, appears to be misconceived. The material produced by the State unmistakably indicates that the two offences for which the appellant was prosecuted are quite distinct and different. The case under the Customs Act may, to some extent, overlap the case under the Gold (Control) Act, but it is evidently on different transactions. The complaint under the Gold (Control) Act relates to possession of 7000 tolas of primary gold prohibited under Section 8 of the said Act. The complaint under the Customs Act is with regard to smuggling of gold worth Rs 12.5 crores and export of silver worth Rs 11.5 crores. On these facts, the courts are not unjustified in

directing that the sentences should be consecutive and not concurrent.”

12. After referring to Mohd. Akhtar Hussain and other cases, in V.K. Bansal v. State of Haryana and Another (2013) 7 SCC 211, the Supreme Court held that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints may have been filed. In V.K. Bansal, it was held as under:-

“14. We may at this stage refer to the decision of this Court in Mohd. Akhtar Hussain v. Collector of Customs (1988) 4 SCC 183 in which this Court recognised the basic rule of convictions arising out of a single transaction justifying concurrent running of the sentences.”

15. In Madan Lal case (2009) 5 SCC 238 this Court relied upon the decision in Akhtar Hussain case (1988) 4 SCC 183 and affirmed the direction of the High Court for the sentences to run concurrently. That too was a case under Section 138 of the Negotiable Instruments Act. The State was aggrieved of the direction that the sentences shall run concurrently and had appealed to this Court against the same. This Court, however, declined interference with the order passed by the High Court and upheld the direction issued by the High Court.

16. In conclusion, we may say that the legal position favours exercise of discretion to the benefit of the prisoner in cases where the prosecution is based on a single transaction no matter different complaints in relation thereto may have been filed as is the position in cases involving dishonour of cheques issued by the borrower towards repayment of a loan to the creditor.”

13. In V.K. Bansal, the appellant-accused was facing fifteen cases and the Supreme Court has grouped fifteen cases into three different groups:- (i) the first having twelve cases relating to advancement of loan/banking facility to M/s Arawali Tubes Ltd. acting through the appellant thereon as Director; (ii) the second having two cases relating to advancement of loan to the appellant M/s Arawali Alloys Ltd. acting through the appellant as its Director; and (iii) the third having a single case qua the criminal complaint by the State Bank of Patiala. The Court directed that the substantive sentences within first two groups would run inter-se concurrently. The Supreme Court directed that the substantive sentences in first two groups and that in respect of the case in the third group would run consecutively.

14. Following the decision in V.K. Bansal, in Benson v. State of Kerala (2016) 10 SCC 307, the Supreme Court directed that the sentences imposed in each of the cases shall run concurrently with the sentence imposed in Crime No.8 which was then currently operative. However, the Court held that the benefit of “concurrent running of sentences” is granted only with respect of substantive sentences; but the sentences of fine and default sentences shall not be affected by the direction. The Supreme Court observed that the provisions of Section 427 CrI.P.C. do not permit a direction for the concurrent running of the default sentence for non-payment of fine.

15. Further, in the case of Anil Kumar v. State of Punjab (2017) 5 SCC 53, it was held by this court that “in terms of sub-section (1) of Section 427, if a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment, such subsequent term of imprisonment would normally commence at the expiration of the imprisonment to which he was previously sentenced. Only in appropriate cases, considering the facts of the case, the court can make the sentence run concurrently with an earlier sentence imposed. The investiture of such discretion, presupposes that such discretion be exercised by the court on sound judicial principles and not in a mechanical manner. Whether or not the discretion is to be exercised in directing sentences to run concurrently would depend upon the nature of the offence/offences and the facts and circumstances of each case.”

16. The point falling for consideration is whether the case of the appellant is a fit case for exercising the discretion in directing the sentence of imprisonment to run concurrently with the sentence of imprisonment imposed in the earlier case in FIR No.64/2011. Of course, FIR No.64/2011, FIR No.67/2011 and FIR No.263/2009 relate to different transactions. Since the appellant was already undergoing imprisonment in FIR No.64/2011, in terms of Section 427 CrI.P.C., subsequent sentences shall run consecutively until and unless the court specifically directs that they shall run concurrently.

17. Coming to the facts of the instant case, we find that the appellant is a young man with roots in his family. The appellant has already undergone 10 years of imprisonment for conviction in FIR No.64/2011. The appellant is currently undergoing imprisonment for conviction in FIR No.67/2011 out of which he has already undergone 01 year 06 months and 16 days as of 29.01.2020. As per status report of the DGP (Prison), during the trial in FIR No.67/2011, the appellant was in custody for 01 year 02 months and 17 days i.e. with effect from 10.05.2011 to 27.07.2012. If the appellant is to undergo the sentences consecutively, the appellant has to undergo another about five years plus four years of imprisonment for the conviction in FIR No.263/2009.

18. Pursuant to the order dated 13.12.2019, the Probation Officer, Department of Social Welfare, Govt. of NCT of Delhi had sent the report dated 10.01.2020 stating the family background and also that there is ample scope of improvement in the behaviour of the appellant and that he may be given a chance for reformation and reintegration with the family and the society. As per the report filed by the Probation officer dated 10.01.2020, on visiting the residential address of the appellant, it was found that his family is very poor and residing in a 50 yard house for the last 20 years. The father of the appellant is 58 years old, having ill health and the only bread winner in the family, was working as carpenter. The mother of the appellant was suffering from cancer and was not able to take treatment due to the poor economic condition. The father of the appellant submitted that the appellant was helping in his work before conviction. The elder sister of the appellant is married, but since the last one and a half year, she has been living in her maternal house due to domestic violence in her in-laws' house. On enquiring from neighbours, they reported in favour of the appellant and his family. The family of the appellant expressed positive attitude to be reunited with the appellant and desired to live a normal social life. The appellant has full acceptance of his family and the appellant has also shown keen interest and willingness to re-unite with them.

19. Considering the report of the Probation Officer, illness of the mother of the appellant, his family background, facts and circumstances of the case and in the interest of justice, in our view, this is a fit case for exercising discretion in directing the sentence of imprisonment to run concurrently. Since the appellant has a poor economic background, fine amount of Rs.10,000/- imposed on him each in FIR No.67/2011 and FIR No.263/2009 are set aside and therefore, the appellant need not to undergo default sentence of imprisonment. This order to run the sentence of imprisonment concurrently has been made in the peculiar facts and circumstances of the case and the illness of the appellant's mother and hence, the same may not be quoted as precedent in other cases.

20. In the result, the sentence of imprisonment imposed upon the appellant in FIR No.64/2011, FIR No.67/2011 and FIR No.263/2009 are ordered to run concurrently. The fine amount of Rs.10,000/- imposed on the appellant each in FIR No.67/2011 and FIR No.263/2009 are set aside and therefore, the appellant need not to undergo default sentence of imprisonment. The appellant has already undergone rigorous imprisonment for ten years in FIR No.64/2011 which is ordered to run concurrently with sentence of imprisonment in FIR No.67/2011 and also the sentence of imprisonment in FIR No.263/2009. The appellant is ordered to be released forthwith. The appeal is, accordingly, disposed of.

.....J. [R. BANUMATHI]J. [A.S. BOPANNA] New Delhi;

January 31, 2020.