Doongar Singh vs The State Of Rajasthan on 28 November, 2017

Equivalent citations: AIR 2018 SC(CRI) 461, 2018 (13) SCC 741, AIR 2017 SC (SUPP) 328, 2017 CRILR(SC MAH GUJ) 1256, (2018) 1 PAT LJR 98, (2017) 13 SCALE 752, (2018) 1 ALLCRILR 269, 2017 CRILR(SC&MP) 1256, (2018) 1 MADLW(CRI) 514, (2018) 69 OCR 385, 2018 ALLMR(CRI) 2299, (2018) 1 JLJR 23, (2018) 1 UC 82, (2018) 1 BOMCR(CRI) 590, (2018) 102 ALLCRIC 923, (2018) 1 KER LT 629, (2017) 4 CRILR(RAJ) 1256, (2018) 1 RECCRIR 256, 2019 (1) SCC (CRI) 410

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Bench: Uday Umesh Lalit, Adarsh Kumar Goel

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 2045-2046 OF 2017
(Arising out of Special Leave Petition (Crl.)Nos.8994-8995 of 2015)

DOONGAR SINGH & ORS. …Appellants

Versus

THE STATE OF RAJASTHAN …Respondents

WITH

CRIMINAL APPEAL NO. 2047 OF 2017
(Arising out of Special Leave Petition (Crl.)No.1761 of 2016)

NARAIN CHANDELIA & ORS. …Appellants

Versus

THE STATE OF RAJASTHAN …Respondent

O R D E R

1. Delay condoned. Leave granted.

2. For the murder of one Bhagwan Singh at Sikar, Rajasthan, on 27 th May, 2005, 20 persons were tried. Nine have been convicted concurrently by the trial court and the High Court. They are the appellants. Others have either been acquitted or have died.

3. We have heard learned counsel for the parties at great length and 15:05:25 IST Reason:

> also perused the record. We do not find any infirmity in the orders of the court below calling for our interference under Article 136 of the Constitution of India. The appeals are, accordingly, dismissed.

4. Before parting with this matter, we must record a disturbing feature in the conduct of the trial of the present case. After recording examination-in-chief of the star witness, PW-14 Prabhu Singh, on 13 th April, 2010, the matter was adjourned on the request of defence counsel to 25th August, 2010 i.e. for about more than four months.

After that, part evidence of the witnesses was recorded on 24 th September, 2010 and the matter was again adjourned to 11 th October, 2010. Before that, four witnesses of the same family in their statements recorded on 10th April, 2010 had become hostile.

5. In a criminal case of this nature, the trial court has to be mindful that for the protection of witness and also in the interest of justice the mandate of Section 309 of the Cr.P.C. has to be complied with and evidence should be recorded on continuous basis. If this is not done, there is every chance of witnesses succumbing to the pressure or threat of the accused.

6. This aspect of the matter has received the attention of this Court on number of occasions earlier. In State of U.P. versus Shambhu Nath Singh and Others1 this Court observed it was a pity that the 1 (2001) 4 SCC 667 sessions court adjourned the matter for a long interval after commencement of evidence, contrary to the mandate of Section 309 of the Cr.P.C. Once examination of witnesses begins, the same has to be continued from day-to-day unless evidence of the available witnesses is recorded, except when adjournment beyond the following day has to be granted for reasons recorded. This Court observed:

> "12. Thus, the legal position is that once examination of witnesses started, the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.
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> 13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with impunity. Even when witnesses are present, cases are adjourned on far less serious reasons or even on flippant grounds.

Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that

the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day-to-day examination of witnesses mandated by the legislature cannot be complied with due to the non-cooperation of the accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case).

15. The time-frame suggested by a three-Judge Bench of this Court in Raj Deo Sharma v. State of Bihar2 is partly in consideration of the legislative mandate contained in Section 309(1) of the Code. This is what the Bench said on that score: (SCC p. 516, para 16) "16.The Code of Criminal Procedure is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses in spite of repeated opportunities. Section 309(1) CrPC supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day to day. The section also provides for recording reasons for adjourning the case beyond the following day." xxx xxx xxx

17. We believe, hopefully, that the High Courts would have issued the circular desired by the Apex Court as per the said judgment. If the insistence 2 (1998) 7 scc 507 made by Parliament through Section 309 of the Code can be adhered to by the trial courts there is every chance of the parties cooperating with the courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their non-examination for days.

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19. In some States a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each sessions trial to be followed. Such schedule is fixed by the court well in advance after ascertaining the convenience of the counsel on both sides. Summons or process would then be handed over to the Public Prosecutor in charge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day to day. This is one method of complying with the mandates of the law. It is for the presiding officer of each court to chalk out any other methods, if any, found better for complying with the legal provisions contained in Section 309 of the Code. Of course, the High Court can monitor, supervise and give directions, on the administration side, regarding measures to conform to the legislative insistence contained in the above section."

7. The above decision has been repeatedly followed. In Mohd.

Khalid versus State of W.B. 3, this Court noted how adjournment can result in witnesses being won over. It was observed:

> "54. Before parting with the case, we may point out that the Designated Court deferred the cross-examination of the witnesses for a long time. That is a feature which is being noticed in many cases. Unnecessary adjournments give a scope for a 3 (2002)7 SCC 334 grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in this allegation, the fact remains that such adjournments lack the spirit of Section 309 of the Code. When a witness is available and his examination-in-chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking. These aspects were highlighted by this Court in State of U.P. versus Shambhu Nath Singh 4 and N.G. Dastane versus Shrikant S. Shivde 5 ... ..."

8. Again in Vinod Kumar versus State of Punjab 6 this Court noted how unwarranted adjournments during the trial jeopardise the administration of Justice. It was observed:

> "3. The narration of the sad chronology shocks the judicial conscience and gravitates the mind to pose a question: Is it justified for any conscientious trial Judge to ignore the statutory command, not recognise "the felt necessities of time" and remain impervious to the cry of the collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracising the concept that a civilised and orderly society thrives on the rule of law which includes "fair trial" for the accused as well as the prosecution?
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> 4. In the aforesaid context, we may recapitulate a passage from Gurnaib Singh v. State of Punjab7:
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> (SCC p. 121, para 26) "26. ... we are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial 4 (2001) 4 SCC 667 5 (2001) 6 SCC 135 6 (2015)3 SCC 220 7 (2013)7 SCC 108 was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner.

Adjournments were granted on a mere asking. The cross-examination of the witnesses were deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracised from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in Talab Haji Hussain v. Madhukar Purshottam Mondkar8 wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction."

9. In spite of repeated directions of this Court, the situation appears to have remained unremedied.

10. We hope that the Presiding Officers of the trial courts conducting criminal trials will be mindful of not giving such adjournments after commencement of the evidence in serious criminal cases.

11. We are also of the view that it is necessary in the interest of justice that the eye-witnesses are examined by the prosecution at the earliest.

8 AIR 1958 SC 376

12. It is also necessary that the statements of eye-witnesses are got recorded during investigation itself under Section 164 of the Cr.P.C. In view of amendment to Section 164 Cr.P.C. by the Act No. 5 of 2009, such statement of witnesses should be got recorded by audio-video electronic means.

13. To conclude:

> (i) The trial courts must carry out the mandate of Section 309 of the Cr.P.C. as reiterated in judgments of this Court, inter alia, in State of U.P. versus Shambhu Nath Singh and Others9, Mohd. Khalid versus State of W.B. 10 and Vinod Kumar versus State of Punjab11 .
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> (ii) The eye-witnesses must be examined by the prosecution as soon as possible.
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> (iii) Statements of eye-witnesses should invariably be recorded under Section 164 of the Cr.P.C. as per procedure prescribed thereunder.

14. The High Courts may issue appropriate directions to the trial courts for compliance of the above.

9 (2001) 4 SCC 667 10 (2002)7 SCC 334 11 (2015)3 SCC 220

15. A copy of this order be sent by the Secretary General to the Registrars of all the High Courts for being forwarded to all the presiding officers in their respective jurisdiction.

……J. (ADARSH KUMAR GOEL) ……J. (UDAY UMESH LALIT) NEW DELHI;

NOVEMBER 28, 2017.