

Santosh De vs Archana Guha And Others on 26 August, 1993

Equivalent citations: AIR1994SC1229, 1994(1)ALT(CRI)595, 1994(42)BLJR1271, 1994CRILJ1975, 1994SUPP(3)SCC735, AIR 1994 SUPREME COURT 1229

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, S.P. Bharucha

JUDGMENT

B.P. Jeevan Reddy, J.

1. Civil Appeal No. 3811 of 1990 Adjourned to September 1, 1993.

Criminal Appeal No. 127 of 1987

2. It is stated by Sri Sumant Bhardwaj, learned Counsel for the respondent that the respondent, Dilip Kumar Dey has since been acquitted by the trial court. The statement is recorded. In view of this statement, this appeal must be deemed to have become infructuous and is dismissed as such.

Criminal Appeal 146 of 1987.

3. No one appears for the State of Bihar, the appellant. This appeal is preferred against the judgment of the Division Bench of the Patna High Court in CrI. WJC 164/86. The respondent had approached the High Court by way of a writ petition complaining that his right to speedy trial was infringed by the inordinate delay in proceeding with the criminal prosecution launched against him. The writ petition was allowed by the Patna High Court and the proceedings quashed.

4. A few relevant facts may be stated. The respondent was the Director of Mines, Government of Bihar. A raid was conducted on his premises and certain amount of cash and Jewellery recovered. On March 27, 1978, a preliminary charge-sheet was filed under Section 5 of the Prevention of Corruption Act. The substance of the charge was that the respondent was in possession of assets beyond the known sources of his income. On December 15, 1982, the government of Bihar refused to grant sanction for prosecuting the respondent which was required under the provisions of the Prevention of Corruption Act. For that reason - or any other, as the case may be no final charge-sheet was filed. Yet the proceedings were kept pending. It is in these circumstances that the respondent approached the High Court by way of a writ petition which was allowed. We are also told

that in the criminal appeal filed against the judgment of the High Court, this Court made an order on November 23, 1987 permitting the parties to lead evidence with the restriction that no further proceedings shall be taken in the matter. Taking advantage of the said interim order, it appears, sanction for prosecution was accorded by the State Government on March 29, 1990 but it is stated by the learned Counsel for the respondent, no statements of witnesses were recorded in the case. Meanwhile, the respondent retired from service on November 30, 1991.

5. It would be evident from the above narrative that the prosecution launched in 1978 is pending even today and yet the examination of the witnesses has not begun, though the final charge-sheet is said to have been filed in April 1990. Learned Counsel for the respondent states that the disproportionate assets alleged to have been possessed by the respondent is in the region of Rs. 2,00,000/-.

6. In the facts and circumstances of this case, it cannot be said that the delay in conduct of the case has been caused by the accused-respondent. From 1978 to 1986 and again from November 1987 till this day, there has been no progress in the case. Not a single witness has been examined so far. In these circumstances, following the principles enunciated in *A.R. Antulay v. R. S. Nayak*, the judgment of the High Court is affirmed and the criminal appeal is dismissed.

SLP (C) No. 15131 of 1990.

S.L.P. is taken on board.

7. This S.L. P. is directed against an order of the Patna High Court dismissing the writ petition filed by the respondent (accused in CrI. A. 146/87) against the order of sanction dated March 29, 1990. In view of our orders in Cr. A. 146/87, this S.L. P. has become infructuous and is dismissed accordingly.

Criminal Appeal No. 257 of 1987.

8. This appeal is preferred by the complainant against the order of the Patna High Court quashing the criminal proceedings on the ground that the inordinate delay in proceeding with and concluding the prosecution case against the accused has defeated his fundamental right to speedy trial. A few facts may be noticed.

9. In the occurrence that took place in the village concerned herein, on April 9, 1993, one Nand Kumar Singh received gun-shot injuries. First Information Report was lodged on the same day. Nand Kumar Singh succumbed to his injuries later whereupon the FIR was converted to one under Section 302 in the place of Section 307. On May 25, 1974, charge-sheet was filed and the case was committed to sessions on July 15, 1974. No trial took place for a period of six years when on June 3, 1980 the case was transferred to the file of IIIrd Additional Sessions Judge, Siwan. Even here, it took about two years for charges to be framed by the Court. The cross-examination of witnesses began in 1982 and only four witnesses were examined over a period of two years. Thereafter, the prosecution obtained as many as ninety adjournments for producing other witnesses including the

Inquiry Officer.

10. The writ petition was filed by the accused persons in the High Court of Patna on August 29, 1986 and it was allowed on March 2, 1987.

11. The State has not chosen to question the judgment of the High Court. It is only the complainant who has come to this Court. Learned Counsel for the appellant, Sri A. K. Srivastava says that because the offence is of a serious nature involving murder and dacoity and further because the accused was in jail only for a period of two years, this was not a fit case for quashing the charges. He prays that the judgment of the High Court be set aside and the sessions trial be directed to be proceeded with expeditiously.

12. We are not satisfied that there are any valid grounds for interference with the order of the High Court. The most glaring circumstance in the case is the delay in commencing the trial. The case was committed to sessions court on July 15, 1974 and the charges came to be framed by the sessions court only on April 13, 1983 i.e. , after a lapse of about eight years. The appellant is not in a position to explain the reasons for this delay. In the order under appeal, the High Court has stated that this delay is entirely on account of the default of the prosecution. This is not a case of what is called 'systemic delays' - as explained in A. R. Antulay AIR 1992 SC 1701. In our opinion, this unexplained delay of eight years in commencing the trial by itself infringes the right of the accused to speedy trial. In the absence of any material to the contrary, we accept the finding of the High Court that this delay of eight years is entirely and exclusively on account of the default of the prosecution. Once that is so there is no occasion for interference in this appeal. It is accordingly dismissed.

Criminal Appeal No. 601 of 1987

13. This is an appeal by special leave granted against the judgment and order of the High Court at Patna dated December 19, 1986 whereby it quashed the criminal proceedings in twenty six matters including the matter out of which this appeal arises, on the ground that there had been such delay as violated the right of the accused to a speedy trial.

14. The incident in question took place on July 10, 1976 in a village in the State of Bihar when the respondents 1 to 9 are alleged to have entered into the house of one Rajinder Singh along with one Ram Lakhan Singh, the son of the deceased. They were armed with pistols and fired at Rajinder Singh who was badly injured. The FIR was recorded on the same day after some hours and the police came to the scene. On December 20, 1976 respondents 1 to 9 were charged Under Sections 147, 148, 149, 448, 307, 324 of the Indian Penal Code and under Section 27 of the Arms Act. It was only in 1980 that the case was committed to the Court of Session and the trial commenced. By 1986, only two witnesses had been examined when respondents 1 to 9 filed a criminal writ petition in the Patna High Court for quashing of the trial on account of delay and the pendency of the trial for a period of more than seven years. The writ petition came to be allowed on December 19, 1986 and the criminal case against the respondents 1 to 9 was quashed.

15. Special Leave Petition against the judgment and order of the Patna High Court in so far as it concerned respondents 1 to 9 was filed by the appellant who is the son of the injured Rajinder Singh who, subsequently, died. When leave to appeal was granted on November 23, 1987 this Court granted stay of the operation of the High Court judgment.

16. The appeal has been filed not by the State of Bihar but by the complainant. Not surprisingly, the complainant is unable to explain why, when respondents 1 to 9 were charge-sheeted in December, 1976, the committal order was made only in 1980; why only two witnesses had been examined between 1980, when the trial commenced and 1986 when the criminal writ petition in the Patna High Court was filed; and why despite the stay of the judgment granted by this Court in November, 1987 the criminal case has not been proceeded with up to date. Learned Counsel for the State of Bihar which is impleaded as a respondent has also no explanation.

17. While we appreciate that a serious criminal offence might have taken place at the hands of respondents 1 to 9, we cannot be oblivious to the fact that almost 17 years have elapsed since the date of that occurrence and there are these several delays pointed out earlier which remain unexplained. We think that in the circumstances the rights of respondents 1 to 9 to a speedy trial have been breached and no interference with the judgment under appeal is called for. The appeal is dismissed.

Criminal Appeal No. 665 of 1989

18. No one appears for the appellant. List on September 1, 1993.

19. Adjourned to September 1, 1993.

Writ Petition (C) No. 1128 of 1986

20. Party-in-person not present. None else appears for the petitioner. The writ petition is dismissed in default. No costs.