Supreme Court of India
Ajit Singh Thakur Singh And Anr. vs State Of Gujarat on 9 January, 1981
Equivalent citations: AIR 1981 SC 733, 1981 CriLJ 293, (1981) GLR 268 SC, 1981 (1) SCALE 54, (1981) 1 SCC 495, 1981 2 SCR 509, 1980 (12) UJ 830 SC
Author: Pathak
Bench: R Pathak, R Sarkaria
JUDGMENT Pathak, J.

1. This appeal, preferred under the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970, is directed against the judgment and order of the High Court of Gujarat setting aside the judgment and order of acquittal passed by the trial court and convicting and sentencing the appellants for offences under Section 302 read with Section 34, Indian Penal Code, and under Section 326 read with Section 34 of the Code.

2. The appellants, Ajit Singh and Balwant Singh, are father and son. Another son is Mohan Singh. All three were charged with the murder of Manilal and with causing injuries to Parmabhai, Bhulabhai and Natwarlal. The prosecution case is that Manilal, Bhulabhai and Bhikabhai were three brothers residing in a chawl belonging to the appellant Ajit Singh, that on 9th April, 1975 Manilal drew his salary from the factory where he worked and at about 6.45 p.m. on returning to his room in the chawl he was met by the appellants and Mohan Singh. They demanded payment of rent but Manilal said he would pay it only on the next day. His refusal to make immediate payment is alleged to have infuriated Balwant Singh who, it is said, inflicted two kirpan blows on him. Upon this Manilal started running away, pursued by the three accused, and headed towards the room of Parmabhai. Further kirpan blows were inflicted on him there by the appellants. Parmabhai, who had emerged from his room, was also attacked and given a kirpan blow. Manilal, meanwhile, turned and entered the house of Shanabhai. Ajit Singh is alleged to have struck him further blows there in consequence of which he fell down. Bhulabhai, who arrived on the scene, was also struck a kirpan blow. Mohan Singh is alleged to have wielded a bamboo stick and hit Natwarlal on the head with it. All three accused are said to have run away from the place then, leaving their bicycles behind. Manilal was removed to the hospital and declared dead. Parmabhai was admitted as an indoor patient.

3. Shanabhai telephoned the police control room and informed them of the incident, and the Gomtipur Police Station recorded a complaint made by Bhulabhai.

4. The three accused were tried by the learned Additional Sessions Judge, Ahmedabad (Rural), who after considering the evidence on the record acquitted the accused by his judgment and order dated 15th October, 1975.

5. On 26th April, 1976 the State filed an appeal in the High Court and prayed for condonation of the delay in filing it. The High Court condoned the delay, considered the appeal on its merits and allowed it against Ajit Singh and Balwant Singh. They were convicted under Section 302 read with Section 34 of the Code and sentenced to imprisonment for life. They were also convicted under Section 326 read with Section 34 of the Code but no separate sentence was passed thereunder. The

appeal against the acquittal of Mohan Singh was dismissed.

6. At the outset, it is urged by learned counsel for the appellants that the High Court erred in condoning the delay in filing the appeal, and the appeal should have been dismissed as barred by limitation. We have examined the facts carefully. It appears that initially the State Government took a decision not to file an appeal and it allowed the period of limitation to lapse. Subsequently, on certain observations made by the High Court while considering a revision petition by Bhulabhai that it was a fit case where the State Government should file an appeal and on notice being issued by the High Court to the State Government in the matter, the appeal was filed. It was filed three months after limitation had expired. A faint attempt was made to show that when the initial decision was taken not to file an appeal all the papers had not been considered by the department concerned, but we are not impressed by that allegation. The truth appears to be that the appeal was not filed at first because the State Government saw no case on the merits for an appeal, and it was filed only because the High Court had observed - and that was long after limitation had expired - that the case was fit for appeal by the State Government. Now, it is true that a party is entitled to wait until the last day of limitation for filing an appeal. But when it allows limitation to expire and pleads sufficient cause for not filing the appeal earlier, the sufficient cause must establish that because of some event or circumstance arising before limitation expired it was not possible to file the appeal within tune. No event or circumstance arising after the expiry of limitation can constitute such sufficient cause. There may be events or circumstances subsequent to the expiry of limitation which may further delay the filing of the appeal. But that the limitation has been allowed to expire without the appeal being filed must be traced to a cause arising within the period of limitation. In the present case, there was no such cause, and the High Court erred in condoning the delay.

7. It is pointed out that the High Court could have sent for the record in the exercise of its revisional jurisdiction and examined the case. That is quite another matter and raises other questions. We are concerned here with the question whether the delay in filing the appeal could have been condoned.

8. But quite besides this, there was also no merit in the appeal filed before the High Court. The trial court wrote a careful judgment, exhaustively considering all the evidence and on painstaking analysis reached conclusions which, in our opinion, are pre-eminently reasonable and support the order of acquittal. It found that the evidence did not establish that the injury suffered by Bhulabhai could have resulted from a kirpan, that the panch witnesses to the recovery of the two kirpans did not support the prosecution, that of the six eye-witnesses one of them, Ramiben, widow of Manilal, was not present on the scene at all, that all the eye witnesses had indulged in palpable falsehood in attempting to implicate Mohan Singh when plainly he was not there (the State appeal against his acquittal was dismissed by the High Court), that there were material contradictions between the different eye-witnesses concerning the sequence of events, the exact places where the blows were struck, and the role played by each accused, that the information given by one eye witness, Shanabhai, to the police control room mentioned merely that four or five "sardarjis" had come to the chawl and had injured two persons with a knife, and although admittedly Shanabhai had known the accused by name for the last four or five years he did not mention their names in that report. It is also in evidence that it was already dark when the incident took place and there were no municipal lights within the limits of the chawl. The trial court has further adverted to the circumstance that

four bicycles were seized by the police at the scene, which is inconsistent with the prosecution case that three persons, the accused, were involved. As regards the complaint filed by Bhulabhai, the trial court has found that it could not be admitted in evidence under Section 154, CrPC, and there was ample material to show that the eye-witnesses had plenty of time to confer with one another before the complaint was drawn up. The trial court also adverted to the fact that the police did not record the statement of the remaining eye-witnesses that very night. The Prosecuting Inspector also admitted in cross-examination that during the investigation all the eye-witnesses came forward with "stereotype" statements. One other significant fact remains. According to the evidence the incident was witnessed by several other people, but not a single independent witness has come forward to support the prosecution. The eye-witnesses produced are either related or members of the same community; members of other communities also lived in the chawl and admittedly were on cordial terms with the complainant Bhulabhai and the other witnesses. The trial court pointed out that the eye-witnesses were, already prior to the incident, extremely hostile to the accused. There was a running war between them in the matter of payment of rent, and disputes had arisen concerning ownership of the property and criminal proceedings had been taken. At this point, it is relevant to note that Ajit Singh used to employ one Shivram for collecting rents. In all the circumstances, the trial court observed that when the witnesses could not identify the four or five Sardarjis who had come to the chawl, they put their heads together and decided to involve Ajit Singh and his two sons. Holding that the evidence was untrustworthy and it would be highly unsafe and hazardous to convict the accused on such testimony the trial court gave them the benefit of doubt and acquitted them.

9. We may observe that the High Court had before it an appeal against an order of acquittal. The approach to be adopted by the High Court when exercising its appellate powers in such a case has been defined in a long line of cases. As long ago as Warren Ducane Smith v. The King the Privy Council declared that the High Court must give proper weight and consideration to "such matters as (1) the view of the trial judge as to the credibility of the witnesses; (2) the presumption of innocence in favour of the accused, a presumption certainly not weakened by the fact that he has been acquitted at his trial; (3) the right of the accused to the benefit of any doubt; and (4) the slowness of an appellate Court in disturbing a finding of fact arrived at by a Judge who had the advantage of seeing the witnesses." The approach has been endorsed by this Court repeatedly, and in a very recent decision, Ganesh Bhavan Patel and Anr. v. State of Moharashtra to which one of us (Sarkaria, J.) was party, it was also observed :

Where two reasonable conclusions can be drawn on the evidence on record, the High Court should as a matter of judicial caution, refrain from interfering with the order of acquittal recorded by the Court below. In other words, if the main grounds on which the Court below has based its order acquitting the accused, are reasonable and plausible, and cannot be entirely and effectively dislodged or demolished, the High Court should not disturb the acquittal.

10. The legal position is well settled and, indeed, has been adverted to by the High Court. But after specifically referring to it the High Court appears to have overlooked the limitations imposed on it and has embarked on a course not warranted by law. It has taken into particular regard a few considerations which seemed to it to assume importance. It has referred to the recovery of a

bloodstained slipper and a diary from the scene of the offence, and has inferred that they belong to Ajit Singh. We are not satisfied that the connection has been truly established. The papers found in the diary do not necessarily show that the diary belongs to him. Nor is there sufficient proof that the slipper is his. The High Court has concentrated on some of the material only, omitting to consider in the process that the integrality of the evidence alone can ensure whether the accused are guilty.

11. We are satisfied that the High Court erred in interfering with the judgment of the trial court. The appeal must, therefore, be allowed, the judgment and order of the High Court set aside and the judgment and order of the trial court restored.

12. These are the reasons which persuaded us to make the order disposing of the appeal.