Supreme Court of India
State Of Maharashtra vs Champalal Punjaji Shah on 12 August, 1981
Equivalent citations: 1981 AIR 1675, 1982 SCR (1) 299
Author: O C Reddy
Bench: Reddy, O. Chinnappa (J)

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
CHAMPALAL PUNJAJI SHAH

DATE OF JUDGMENT12/08/1981

BENCH:
REDDY, O. CHINNAPPA (J)
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REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)
ISLAM, BAHARUL (J)

CITATION:
1981 AIR 1675 1982 SCR (1) 299
1981 SCC (3) 610 1981 SCALE (3)1161
CITATOR INFO :
R 1983 SC 361 (2,19)
RF 1983 SC 465 (17)
RF 1985 SC 231 (2)
F 1987 SC 149 (9)
RF 1992 SC1701 (32,36,53)

ACT:
Customs Act, section 135-Gold bars with foreign markings discovered in the house of accused-Trial delayed for many years by action of accused-Delay-Whether a mitigating circumstance in according sentence.
Delayed trial Whether violative of fundamental right under Article 21 of Constitution-Principles to be taken into consideration in considering delayed trials.

HEADNOTE:
Under the present system of criminal justice an accused person resolutely minded to delay the day of reckoning, may quite conveniently and comfortably do so, if he can but afford the cost involved, by journeying back and forth between the court of first instance and the superior Courts at frequent interlocutory stages, by filing applications to quash investigations, complaints and charges on all

imaginable grounds. Delay is a known defence tactic.

All this is not to say that the responsibility for delaying criminal trials should always be laid at the door of the rich and the reluctant accused. Delays caused by tardiness, indifference and somnolence or the deliberate inactivity of prosecuting agencies are not uncommon or unknown. As a result of the delaying tactics of prosecuting agencies an accused person may be seriously jeopardised in the conduct of his defence. In such a situation it may be possible to infer infringement of the right to life and liberty guaranteed by Article 21 of the Constitution. Denial of a speedy trial may lead to an inference of prejudice and denial of justice.

Hussainara Khatoon v. State of Bihar , [1979] 3 SCR 169, referred to.

In deciding whether there has been denial of the right to speedy trial, the court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay. whether he was prejudiced in the preparation of his defence by reason of the delay and whether the delay was unintentionally caused by reason of overcrowding of the Court's docket or under staffing of prosecutors and so forth. Though in India the right of speedy trial is not an expressly guaranteed constitutional right it is implicit in the right to fair trial which is a part of the right to life and liberty guaranteed by Article of the Constitution. While a speedy trial is an implied ingredient of a fair trial the converse is not necessarily true. A delayed trial is not necessarily an unfair trial.

The question whether conviction should be quashed on grounds of delayed trial depends upon the facts and circumstances of a case. If it is shown to the
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satisfaction of the Court that the accused had been prejudiced in the conduct of his defence and thus had been denied adequate opportunity to defend himself the conviction would have to be set aside. There would, on the contrary, be no justification to quash a conviction on the ground of delayed trial unless it is shown that there are circumstances entitling the court to raise a presumption that the accused had been prejudiced. [304 B-C]

In the instant case in a surprise raid on the house of the respondent, Central Excise officers discovered a large quantity of gold bars with foreign markings concealed in the false bottom of a steel almirah, the keys of which were found with him.

On a charge for offences under section 120B I.P.C. read with section 135 Customs Act and rule 126P(2)(ii) and (iv) of the Defence of India Rules 1962, the Additional Chief Presidency Magistrate convicted the respondent and variously sentenced him under different counts with imprisonment and fine. On appeal the High Court acquitted him.

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HELD: Although it is settled law that circumstantial evidence must be of a conclusive nature and circumstances must not be capable of a duality of explanations, the Court is not bound to accept any exaggerated, capricious or ridiculous explanation which may suggest itself to a highly imaginative mind. The three circumstances established in the instant case were: (1) presence of the respondent in the flat at the time of the raid by Central Excise officers and recovery of gold slabs with foreign markings from the steel almirah: (2) recovery from his person of a bunch of eight keys which fitted the almirah and (3) recovery of a bunch of three keys from his person, one of which fitted the lock hanging from the inside handle of the door of the flat. The explanation fancied by the High Court that the steel almirah in the flat was not shown to have been specially made and that the keys of a similar almirah could well fit it and that perhaps was how the keys recovered from the respondent did fit the almirah in the flat, was a wholly unreasonable explanation in the circumstances of the case. This was not the plea of the respondent, nor did he make any such suggestion to the prosecution witnesses. [306 FG & CD]

Notwithstanding the fact that the case is based on circumstantial evidence and this is an appeal against acquittal and that this Court is exercising extraordinary but exceptional jurisdiction under Article 136 of the Constitution, interference with the judgment of the High Court in the instant case is imperative hesitation to do which would lead to miscarriage of justice. [307 C]

The respondent being himself responsible for a fair part of the delay, could not complain that there was violation of his fundamental right to life and liberty guaranteed under Article 21; nor has he shown how he was prejudiced in the conduct of his defence by reason of the delay. [307 E]

Nor again would the fact that there was a long lapse of time since the commission of the offence or that the respondent was preventively detained for over two years be of any avail to him because the offence was one which jeopardised the country s economy. It is impossible to take a casual or light view of
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such an offence. It is only where the offence is of a trivial nature as for example, a simple assault or theft of a trilling amount that the Court might hesitate to send the accused back to jail after a long lapse of time; but the nature of the offence and the stakes involved in this case do not merit any sympathy being shown to the respondent. [307 G-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 126 of 1975.

Appeal by special leave from the judgment and order dated the 19th/20th February, 1974 of the Bombay High Court in Criminal Appeal No. 1549 of 1971.

O. P. Rana and R. N. Poddar for the Appellant. Ram Jethmalani and Miss Rani Jethmalani for the Respondent.

The Judgment of the Court was delivered by CHINNAPPA REDDY, J. It is one of the sad and distressing features of our criminal justice system that an accused person, resolutely minded to delay the day of reckoning, may quite conveniently and comfortably do so, if he can but afford the cost involved, by journeying back and forth, between the Court of first instance and the superior Courts, at frequent interlocutory stages. Applications abound to quash investigations, complaints and charges on all imaginable grounds, depending on the ingenuity of client and counsel. Not infrequently, as soon as a court takes cognizance of a case requiring sanction or consent to prosecute, the sanction or consent is questioned as improperly accorded, so soon as a witness is examined or a document produced, the evidence is challenged as illegally received and many of them are taken up to the High Court and some of them reach this Court too on the theory that 'it goes to the root of the matter'. There are always petitions alleging 'assuming the entire prosecution case to be true, no offence is made out'. And, inevitably proceedings are stayed and trials delayed. Delay is a known defence tactic. With the passage of time, witnesses cease to be available and memories cease to be fresh. Vanishing witnesses and fading memories render the onus on the prosecution even more burdensome and make a welter weight task a heavy weight one. Sure, we do not mean to suggest that the responsibility for delaying criminal trials is always to be laid at the door of the rich and the reluctant accused. We are not unmindful of the delays caused by the tardiness and tactics of the prosecuting agencies. We know of trials which are over delayed because of the indifference and somnolence or the deliberate inactivity of the prosecuting agencies. Poverty-struck, dumb accused persons, too feeble to protest, languish in prisons for months and year on end awaiting trial because of the insensibility of the prosecuting agencies. The first Hussainara case (Hussainara Khatoon & Ors. v. Home Secretary, State of Bihar, Govt. Of Bihar, Patna)(1) was one like that. Sometimes when the evidence is of a weak character and a conviction is not a probable result, the prosecuting agencies adopt delaying tactics to keep the accused persons in incarceration as long as possible and to harass them. This is a well known tactic in most conspiracy cases. Again, an accused person may be seriously jeopardised in the conduct of his defence with the passage of time. Witnesses for the defence may become unavailable and their memories too may fade like those of the witnesses for the prosecution. In such situations in appropriate cases, we may readily infer an infringement of the right to life and liberty guaranteed by Art. 21 of the Constitution. Denial of a speedy trial may with or without proof of something more lead to an inevitable inference of prejudice and denial of justice. It is prejudice to a man to be detained without trial. It is prejudiced to a man to be denied a fair trial. A fair trial implies a speedy trial. In Hussainara Khatoon v. State of' Bihar(1), this Court said (at p. 179).

> "Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. It is interesting to note that in the United

States, speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that"

'In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial'. So also Article 3 of the European Convention on Human Rights provides that:

'every one arrested or detained-shall be entitled to trial within a reasonable time or to release pending trial'.

We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as R interpreted by this Court in Maneka Gandhi v. Union of India(1). We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, fair and just'. If a person is deprived of his liberty under a procedure which is not 'reasonable, fair and just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be 'reasonable, fair or just' unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable, quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21".

What is the remedy if a trial is unduly delayed ? In the United States, where the right to a speedy trial is a constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence. But in deciding the question whether there has been a denial of the right to a speedy trial, the Court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The Court is also entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the Court's docket or under-staffing of the Prosecutors. Strunk v. United States(2) is an instructive case on this point. As pointed out in the first Hussainara case, (supra) the right to a speedy trial is not an expressly guaranteed constitutional right in India but is implicit in the right to a fair trial which has been held to be part of the right to life and liberty guaranteed by Art. 21 of the Constitution. While a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactic or conduct of the accused himself. The delay may have caused no prejudice whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to have been

prejudiced in the conduct of his defence and it could be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only.

In the present case, in the beginning, three persons, Champalal Punjaji Shah, Poonam Chand and Mohan Lal were charged by the learned Additional Chief Presidency Magistrate 8th Court, Esplanade, Bombay, with offences under S. 120B of the Indian Penal Code read with 135 of the Customs Act and rule 126P (2) (ii) and (iv) of the Defence of India Rules, 1962, 135(a) and (b) and (i) of the Customs Act and rule 126P (2) (ii) and rule 126P (2) (iv) of the Defence of India Rules. After some evidence had been led by the prosecution, the Public Prosecutor filed an application before the learned Magistrate requesting permission to withdraw from the prosecution against accused no. 2, Poonam Chand. Permission was granted and thereafter Poonam Chand was examined by the prosecution as their witness. After some vicissitudes, necessitated by the respondent Champalal Punjaji Shah taking the matter to the higher courts, the trial finally concluded and by a judgment dated December 13, 1971 the learned Magistrate acquitted Mohan Lal, accused no. 3 but convicted accused no. 1, Champalal Punjaji Shah under various heads of the charge and sentenced him to suffer imprisonment for various terms ranging from two years to four years and to the payment of fine of Rs. 10,000 on each of different counts. The substantive sentence of imprisonment were directed to run concurrently. On appeal, the respondent was acquitted by the High Court. The State of Maharashtra has filed the present appeal against the judgment of the High Court of Bombay after obtaining special leave from this Court under Art. 136 of the Constitution.

The brief facts of the case may now be stated. On May 30, 1965, on information received, P.W. 4, the Superintendent of Central Excise, and P.W. 1, the Deputy Superintendent of Central Excise, accompanied by other Central Excise officers and two panchas, Savalram Ganpat Bhagat (P.W. 7) and another went to fiat no. 14 on the first floor of a building known as Vidya Vihar on Tulsi Pipe Road, Dadar, Bombay. The flat had two doors, one away from the staircase, locked from the outside and another near the staircase and closed from inside. P.W. 1 pressed the calling bell and the door was opened by Poonam Chand. Another person was sitting on a sofa inside the room. He was accused no. 1. On seeing the Central Excise officers accused no. 1 got up and went towards them. PW 1 told the accused that he was authorised to search the room and showed them the authorisation given to him by PW 4. The room was then searched. The rear side of the entrance door had a handle from which was hanging a 'Tiger' brass lock. Besides the sofa there was a steel almirah. PW 1 asked accused no. 1 to open the almirah. Accused no. 2 Poonam Chand then took out a bunch of keys from the pocket of his trousers and opened the almirah. There were eight drawers in the steel almirah. These drawers contained some documents. It was noticed that the two bottom drawers had false bottoms. When the false bottoms were pulled out and searched, they were found to contain 11 jackets in each of which there were 100 slabs of gold weighing 10 tolas each. The total quantity of gold found secreted in the almirah was 11,000 tolas. The gold slabs had foreign markings on them. A key was also found in that almirah and this key was found to fit the 'Tiger' lock which was hanging from the inner handle of the front door of the flat. Thereafter accused no. 1's person was searched and some documents and two bunches of keys, one containing eight keys and the other containing

three keys were found. The bunch of eight keys was found to fit the steel almirah from which the slabs of gold were recovered. Two of the three keys of the other bunch were obviously keys of a scooter while the third key was found to fit the 'Tiger' lock which was on the handle of the back of the front door of the flat. Thereafter a panchnama was prepared. During the course of the investigation it was found that . the flat was taken on a 'leave and licence' basis by accused no. 3. After the investigation was completed a complaint was filed for the various offences mentioned by us at the outset.

The case of the respondent was that he had purchased a scooter from Mohan Lal and had gone to the flat of Mohan Lal that night for completing some negotiations. When he was coming from the building he was dragged into flat no. 14 by the Customs officers. He had nothing to do with the flat nor did he have anything to do with the gold found in the flat. The bunch of eight keys was not found on his person as alleged by the prosecution. The bunch of three keys was on his person but two out of the three keys were of the scooter purchase by him from accused no. 3. Shri Jethmalani, learned counsel for the respondent initially challenged the reception of the evidence of Poonam Chand into the record but desisted from doing so when we told him that he might confine himself to the rest of the evidence which appeared to us to be sufficient to hold the respondent guilty of the offence with which he was charged. The three outstanding circumstances established against the respondent and not disputed before us by the learned counsel for the respondent were (1) the presence of the respondent in the flat at the time of the raid by the Central Excise officers and the recovery of the gold slabs of foreign origin from the steel almirah and (2) the recovery of the bunch of eight keys from his person which keys fitted the almirah from which the gold slabs were recovered and (3) the recovery of a bunch of three keys from his person one of which fitted the lock which was hanging from the inside handle of the door of the flat. To any mind, unassailed by "some light, airy, unsubstantial doubt that may flit through the minds of any of us about almost anything at sometime or other(')" these circumstances should be sufficient to draw an inference of guilt. The High Court however thought that the steel almirah in the flat was not shown to have been specially made and that the keys of a similar almirah could well fit it and that was perhaps how the keys recovered from the accused did fit the almirah in the flat. That of course was not the plea of the accused nor was it a suggestion made to the prosecution witnesses. We agree with the submission that circumstantial evidence must be of a conclusive nature and circumstances must not be capable of a duality of explanations. It does not however mean that the Court is bound to accept any exaggerated, capricious or ridiculous explanation which may suggest itself to a highly imaginative mind. It is well to remember that the Evidence Act considers a fact as "proved" when, after considering the matters before it, the Court either believes it to exist, or considers its existence so probable that a prudent mind ought under the circumstances of the particular case, to act upon the supposition that it exists. It is also worthy of remembrance that a Court may presume the existence of A any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. We are unhesitatingly of the view that the explanation fancied by the High Court was a wholly unreasonable explanation in the circumstances of the case. Shri Jethmalani reminded us first that we were considering circumstantial evidence, second we were dealing with an appeal against acquittal and third we were exercising our extraordinary but exceptional jurisdiction under Art. 136. Indebted as we are to him, for his forceful presentation of the reasons against interference with the judgment of

the High Court, we think that, interference in this case is imperative and hesitation to interfere will lead to a miscarriage of justice.

Shri Jethmalani also urged that the trial of the respondent was considerably delayed, that there was thus a violation of the fundamental right to life and liberty guaranteed under Art. 21 of the Constitution and that was a sufficient ground to entitle the accused to a dismissal of the complaint against him. We have earlier discussed the relevant principles which should guide us in such situations. In this case the accused himself was responsible for a fair part of the delay. He has also not been able to show cause how he was prejudiced in the conduct of his defence by reason of the delay, Shri Jethmalani then suggested that the long lapse of time since the commission of the offence should be taken into account by us and we should refuse to interfere with the order of acquittal or at any rate we should not send the accused back to prison particularly in view of the fact that the accused was preventively detained for over two and nearly three years on the basis of the very acts complained of in this particular case. We are afraid we are unable to agree with Shri Jethmalani. The offence is one which jeopardises the economy of the country and it is impossible to take a casual or a light view of the offence. It is true that where the offence is of a trivial nature such as a simple assault or the theft of a trifling amount, we may hesitate to send an accused person back to jail as it would not be in the public interest or in the interest of anyone to do so. But the offences with which we are concerned and the stakes involved clearly show that sympathy in this case would be misplaced. We therefore, set aside the judgment of the High Court and restore that of the learned Additional Chief Presidency Magis-

trate, 8th Court, Esplanade, Bombay. The respondent will surrender forthwith. The gold slabs will stand confiscated to the Central Government. The appeal is allowed.

P.B.R. Appeal allowed.