State of Maharashtra

Vs

Champalal Punjaji Shah

Criminal Appeal No. 126 of 1975

(O. Chinnappa Reddy, A.P. Sen, Baharul Islam JJ)

12.08.1981

JUDGMENT

CHINNAPPA REDDY, J. –

1. 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, as 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 overdelayed 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 years on end awaiting trial because of the insensibility of the prosecuting agencies. The first Hussainara case (Hussainara Khatoon (I) v. Home Secretary, State of Bihar, Government of Bihar, Patna ((1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360 : (179) 3 SCR 169, 179-80)) 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 Article 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 prejudice to a man to be denied a fair trial. A fair trial implies a speedy trial. In Hussainara Khatoon (I) v. State of Bihar ((1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360 : (179) 3 SCR 169, 179-80),

this Court said (at SCR page 179) : (SCC page 88, para 5)

> 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 :
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> '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 interpreted by this Court in Maneka Gandhi v. Union of India ((1978) 1 SCC 248 : (1978) 2 SCR 621). 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 or 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 reasonably 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.

2. 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 inditement or the vocation (sic 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 (37 L Ed 2d 56) is an instructive case on this point. As pointed out in the first Hussainara case ((1980) 1 SCC 81 : 1980 SCC (Cri) 23 : AIR 1979 SC 1360 : (179) 3 SCR 169, 179-80), 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 Article 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.

3. 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, Eighth Court, Esplanade, Bombay, with offences under Section 120-B of the Indian Penal Code read with Section 135 of the Customs Act and Rule 126-P(2)(ii) and (iv) of the Defence of India Rules, 1962, Section 135(a) and (b) and (i) of the Customs Act and Rule 126-P(2)(ii) and Rule 126-P(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 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 3 but convicted accused 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 accounts. The substantive sentences 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 Article 136 of the Constitution.

4. The brief facts of the case may now be stated. On May 30, 1965, on information received, PW 4, the Superintendent of Central Excise and PW 1, the Deputy Superintendent of Central Excise, accompanied by other Central Excise Officers and two panchas, Savlaram Ganpat Bhagat (PW 7) and another went to flat 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. PW 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 1. On seeing the Central Excise Officers accused 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 1 to open the almirah. Accused 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 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 3. After the investigation was

completed a complaint was filed for the various offences mentioned by us at the outset.

5. 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 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 ass alleged by the prosecution. The bunch of three keys was on his person but two out of the three keys were of the scooter purchased by him from accused 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 offences 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 fit through the minds of any of us about almost anything at some time or other" (Salmon, J. in his charge to the Jury in R v. fantle, 1949 Cri L Rev 584) 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 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 Article 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.

6. 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 Article 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 county 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 of 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 Magistrate, Eighth Court, Esplanade, Bombay. The respondent will surrender forthwith. The gold slabs will stand confiscated to the Central Government. The appeal is allowed.

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