SUPREME COURT OF INDIA

Sudevanand

Vs.

State Through CBI

Crl.A.No.174 of 2012

(Aftab Alam and Ranjana Prakash Desai JJ.)

19.01.2012

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. On March 20, 1975, at about 4.15 p.m. when the car in which Mr. Justice A.N. Ray, holding the office of the Chief Justice of India at that time, was travelling, along with his son Shri Ajoy Nath Ray and a Jamadar Jai Nand and the driver Inder Singh, stopped at the intersection of Tilak Marg and Bhagwan Dass road, at a stone throw distance from the Supreme Court of India, two live hand grenades were lobbed inside the car. Fortunately, the grenades did not explode and the occupants of the car, including the Chief Justice of India, escaped unharmed.

3. A case was registered and investigation was started by the Crime Branch of the Delhi Police. But, as the police investigation did not make much headway, on June 30, 1975 the case was handed over to the CBI. On the same day, one Santoshanand Avadhoot (appellant in Criminal appeal arising out of SLP (Criminal) 6625 of 2006) was arrested followed by the arrest of an advocate, namely, Ranjan Dwivedi (appellant in criminal appeal arising out of SLP (Crl.) No.6800/2006) on July 6, 1975.

4. Here, it may be noted that about two and a half months before the attempt on the life of the Chief Justice of India, Shri L.N. Mishra, the Minister of Railways in the Union Cabinet was killed in a bomb blast taking place during a function on the platform of Samastipur Railway Station. In connection with that case, Sudevanand

Avadhoot (appellant in criminal appeal arising out of SLP (Crl.) No.6489/2006) and one Vikram alias Jaladhar Das were arrested at Bhagalpur. On July 27, 1975 they were also arrested in the present case relating to the attempt on the life of the Chief Justice and were brought to Delhi where they were sent on police remand from July 31, 1975 to August 14, 1975. While on remand, Vikram made a confessional statement and requested to be allowed to become an Approver. He was produced before a Magistrate on August 14, 1975, before whom he made a statement under Section 164 of the Code of Criminal Procedure (in short Cr.P.C.) giving the details of the conspiracy to kill the Chief Justice of India. He was again produced before the Chief Judicial Magistrate on August 22, 1975 before whom he made a similar statement for grant of pardon under Section 306 Cr.P.C.

5. The CBI completed investigation of the case and submitted charge- sheet against the three accused, namely, Sudevanand, Santoshanand and Ranjan Dwivedi and they were put on trial in Sessions Case No.9/1976. Sudevanand and Santoshanand were charged under Section 307 read with Section 120-B of the Indian Penal Code and Section 4(b) of the Explosive Substances Act, 1908. So far as Ranjan Dwivedi is concerned, he was charged jointly with the other two accused under Section 120 B of the Penal Code only. At the conclusion of the trial, the Additional Sessions Judge, Delhi vide his judgment and order dated October 28, 1976 convicted Sudevanand and Santoshanand under Sections 115, 307/120B of the Penal Code and sentenced them to undergo rigorous imprisonment for 7 years under Section 115 read with 120-B(1), 10 years for attempting to kill Chief Justice A. N. Ray and three other occupants of the car and 7 years under Section 4(b) of the Explosive Substances Act, 1908. Ranjan Dwivedi was convicted under Section 115/120 B(1) of the Penal Code and was sentenced to 4 years rigorous imprisonment.

6. It may be noted here that Vikram, the Approver was examined by the prosecution as PW.1 and according to the appellants their conviction is mainly based on his evidence.

7. Against the judgment and order passed by the trial court, Ranjan Dwivedi filed appeal before the High Court on December 6, 1976 which is registered as Criminal Appeal No.436/1976. Sudevanand and Santoshanand jointly filed a separate appeal which is registered as 443/1976.

8. After the appellants' trial was over, and they were convicted and sentenced by the trial court, as noted above, and after they had filed their appeals before the High Court against the judgment and order passed by the trial court, certain developments took place in the L. N. Mishra murder case. That case was also

investigated by the CBI and in that case too Sudevanand and Santoshanand (along with others) were accused and in that case also Vikram was granted pardon on becoming an Approver. According to his statements made before the Magistrates both the killing of L. N. Mishra and the attempt on the life of Chief Justice of India were parts of a larger conspiracy, at the instance of the same organisation and a common group of persons.

9. On August 30, 1978, the Chief Minister of Bihar wrote a highly confidential letter to the Prime Minister of India, a copy of which was endorsed to the DIG (CID) Bihar. In pursuance of the Chief Minister's letter, the DIG (CID) is said to have made an inquiry into the circumstances in which Vikram @ Jaladhar Das had made the confessional statement and was tendered pardon to become Approver. Following the enquiry, on September 30, 1978 the statement of Vikram was recorded at Danapur jail where he was lodged at that time. The statement was taken in the question and answer form and it was recorded in the presence of Dr. D. Ram, Superintendent; Danapur Hospital, (Ex-officio Jail Superintendent) and Haider Ali, the Jailor. The statement was also recorded on a tape recorder. In this statement Vikram retracted from his earlier statements incriminating himself and the other accused in the case. He said that his earlier statements were obtained by the CBI by subjecting him to great mental and physical torture. He was beaten up and tortured to such an extent that he agreed to make whatever statement CBI wanted him to make. The retraction made by Vikram was placed before the Chief Minister who requested Mr. Tarkunde, a former judge of the Bombay High Court to give a report in light of the statement made by Vikram in jail on September 30, 1978. Mr. Tarkunde is said to have given his opinion that the conviction of all the accused in the Chief Justice's case was based on fabricated evidence of the Approver and, therefore, the High Court should be requested to consider the appeals of the three accused keeping aside the Approver's evidence. We need not go any further in this matter, as all this was plainly outside the legal frame-work.

10. It needs, however, to be noted that upset by these developments, the CBI moved this Court in Transfer Petition (Crl.) No. 69/1979 praying for the transfer of the trial of the L.N. Mishra murder case outside Bihar. In the transfer petition though the State of Bihar was not formally made a party, a number of allegations were made against some of its officers. In those circumstances, the concerned officers after obtaining permission from the State Government, filed affidavits/applications denying the allegations made against them in the transfer petition filed by the CBI and supporting the veracity of the retraction made by Vikram in Danapur jail on September 30, 1978 disowning the earlier statements made by him. In the overall facts and circumstances of the case, however, this

Court deemed just and proper to transfer the trial of the L.N. Mishra murder case from Bihar to Delhi where it now remains pending as Sessions Case No. 1/2006 (after being renumbered) before the Additional Sessions Judge, Delhi.

11. It is curious to note that in the L.N. Mishra murder case Vikram was examined by the prosecution as PW.2 and in course of his deposition before the court he said that the statement made by him at Danapur jail was not voluntary but he was forced to make the statement under coercion and threats by the Chief Secretary, Law Secretary and Home Secretary, Government of Bihar and the SP and the DSP in the State Police. He said in his deposition before the court that his statement in jail was made on the basis of a statement prepared and given to him in writing by the State Government officers.

12. Coming back to the appellant's appeal pending before the Delhi High Court, both Sudevanand and Santoshanand were released on bail in 1986 after remaining in jail for almost 11 years. In 1997-1998, that is to say 11 years after coming out of jail, the appellants filed three criminal miscellaneous applications in the pending appeals. Criminal miscellaneous application No. 5786/97 was filed on September 24, 1997 praying to call for and taking on the appeal record the statement made by Vikram, the Approver, in Danapur jail on September 30, 1978, the affidavits of the officials of the Bihar Government filed in the transfer petition before this Court and the enquiry report of Justice Tarkunde. The second application (criminal miscellaneous) No.5700/98 was filed on September 16, 1998 to summon Vikram, the Approver (PW.1 in the case), for further cross- examination in terms of Section 145 of the Evidence Act. The third application (criminal miscellaneous) No.6300/98 was filed on October 15, 1998 praying to call the evidence of Vikram, the Approver (PW.2), recorded in the trial of L.N. Mishra murder case.

13. The Delhi High Court took up all the three criminal miscellaneous applications and disposed them of by order dated November 22, 2006. The High Court noted that it was within the knowledge of the appellants that the Approver had made the retraction in the year 1978 disowning his earlier statements but the three applications in question were filed after a lag of more than 20 years and primarily for that reason did not allow all the prayers made in the three applications but granted the appellants only a limited and partial relief. In the operative portion of the order the High Court observed and directed as follows:

> The last application moved by the appellant for considering the record, certified copies etc. u/s 80 and other provisions under the Evidence Act, report of justice V.M. Tarkunde and other documents which may be

admissible under the Evidence Act has to be permitted. This prayer is being kept open and would be considered as per law.

Succinctly stated, the applications for leading further evidence which would have entailed further time are hereby dismissed, but the third application for considering those documents which have already been placed on the record as per law, is hereby permitted. This case is fixed for final arguments on 6th December, 2006 at 12.15 P.M. The case would be taken up on day to day basis. Against the order passed by the High Court, the appellants have come to this Court in these appeals.

14. Mr. Lahoty and Mr. Arvind Kumar, counsel appearing for the appellants in the three appeals placed before the Court passages from the statement of Vikram recorded in Danapur jail on September 30, 1978 describing the manner in which his earlier statements, incriminating himself and the other accused, were obtained by the CBI. Referring to the latter statement of Vikram, counsel submitted that denial to further cross-examine him in light of his statement of September 30, 1978 would cause grave prejudice to the appellants and would lead to a miscarriage of justice. Mr. Lahoty stated that the accused in the L.N. Mishra murder case had earlier come to this court for quashing the trial proceedings and their appeal (Criminal Appeal No. 126 of 1987) was heard along with the case of Abdul Rehman Antulay and was disposed of by a common judgment reported in (1992) 1 SCC 225. In paragraph 98 of the judgment, the Court noted the submission made on behalf of the appellants that a very unusual feature of the case was the exchange of charges and counter charges between the CBI and the Bihar (CID) of false implication and frame up against each other. According to the Bihar (CID), the CBI was guilty of frame up against the members of Anand Marg, while according to CBI, the Bihar (CID) had been deliberately proceeding against innocent persons while letting of the real culprits. Mr. Lahoty submitted that as a result of the Central Investigating Agency and the State Investigating Agency acting at cross purpose, the case had become highly murky to the great detriment of the appellants. He further submitted that in that situation if the appellants are not allowed the opportunity to further cross-examine Vikram, the Approver (PW.1), it would be highly unfair and unjust to them. He also submitted that the Delhi High Court was wrong in rejecting the applications made by the appellants on the ground of delay.

15. Mr. Arvind Kumar in support of the plea raised by the appellants placed reliance on the decision of this Court in Zahira Habibulla H. Sheikh v. State of Gujarat, (2004) 4 SCC 158, commonly known as the Best Bakery Case. He also

pressed into service a decision of this Court in Pandit Ukha Kolhe v. State of Maharashtra, 1964 (1) SCR 926 (939-940).

16. So far as the Best Bakery Case is concerned, we see absolutely no application of that decision to the facts of the present case. Suffice to note here that in Satyajit Banerjee v. State of W.B., (2005) 1 SCC 115, the Court explained the very exceptional nature of the Best Bakery Case and observed that the decision cannot be applied to all cases against the established principles of criminal jurisprudence (See paragraph 25 26 in Satyajit Banerjee).

17. We also fail to see how the decision in Pandit Ukha Kolhe might help the appellants in the present appeals.

18. We agree with Mr. Lahoty's submission that the delay in filing the applications should not have been the sole ground for rejecting the appellants' applications before the High Court. The High Court does not say that the appellants were in anyway responsible for the inordinate delay in their appeals, that remains pending since 1976, being taken up for hearing. That being the position, as long as the appeals were pending, the High Court should have considered the appellants' request for summoning PW.1 for further cross-examination on merits, and in light of the relevant legal provisions. Mr. Lahoty is also right in submitting that any further cross- examination of PW.1 would not have taken more than two or three days and would not have contributed to any further delay in the disposal of the appeal in any material way.

19. But the question remains to be examined whether the law permits the summoning of PW.1 for the reason as stated on behalf of the appellants.

20. Mr. P.K. Dey, the counsel appearing for the CBI, strongly opposed the appellants' prayer for summoning Vikram, the Approver (PW.1), for further cross-examination in light of his statement recorded in Danapur jail on September 30, 1978. Learned counsel submitted that Vikram had made his confessional statements completely voluntarily and on three different occasions. He was produced before the Magistrate on August 14, 1975 for recording his statement under Section 164 Cr.P.C. He was then produced before the Chief Judicial Magistrate on August 22, 1975 for recording his statement for grant of pardon under Section 306 Cr.P.C. Finally, he was produced before the trial court as PW.1 where he was examined first by the prosecution and was then subjected to a lengthy cross-examination on behalf of the accused. On none of the three occasions he made the slightest complaint that his statements were obtained under coercion

or threats. He was also produced before the Magistrate many times for the purpose of remand and for other purposes, such as taking cognizance, commitment of the case to the court of Sessions and also before the trial court where the trial proceeded and got concluded and at no point of time he gave any indication that his statements/evidence were given under any coercion, threats or inducement.

21. Mr. Dey also submitted that the statement of Vikram that was recorded in Danapur jail on September 30, 1978 had no legal sanctity, as it was recorded in a manner and by means completely unknown to law. It also did not qualify as the previous statement within the meaning of Section 145 of the Evidence Act as in fact, it was later in time than the deposition of PW.1 in this case before the trial court. He also referred to passages from the deposition of Vikram, the Approver, made in the trial of the L.N. Mishra murder case in which he was examined as PW.2 where he stated that his statement of September 30, 1978 recorded in Danapur jail was not voluntary but it was made under threats from the top officials of the State Government.

22. Mr. Dey submitted that the statement made by Vikram in jail on September 30, 1978 could never be the basis for summoning him for further cross-examination at the stage of the appeal and in support of this submission relied upon a decision of this Court in Mishrilal v. State of M.P., (2005) 10 SCC 701. In that case, one of the prosecution witnesses (PW.2) had supported the prosecution case before the trial court but before the Juvenile Court that was trying some of the juvenile accused in the same case he did not support the prosecution case and as a result, the juvenile accused were acquitted of the charge under Section 307 IPC for having made an attempt on the life of this witness. After his evidence before the Juvenile Court, he was again summoned before the trial court where the other accused were facing trial and was confronted with the evidence he had given before the Juvenile Court. This Court found and held that the procedure adopted by the Sessions Judge was not in accordance with law and in paragraphs 5 and 6 of the judgment observed and held as follows:

> 5. The learned Counsel for the appellants seriously attacked the evidence of PW.2 Mokam Singh. This witness was examined by the Sessions Judge on 6-2-1991 and cross-examined on the same day by the defence counsel. Thereafter, it seems, that on behalf of the accused persons an application was filed and PW.2 Mokam Singh was recalled. PW.2 was again examined and cross- examined on 31-7-1991. It may be noted that some of the persons who were allegedly involved in this incident were minors and their case was tried by the Juvenile Court. PW.2 Mokam Singh was also examined as a

witness in the case before the Juvenile Court. In the Juvenile Court, he gave evidence to the effect that he was not aware of the persons who had attacked him and on hearing the voice of the assailants, he assumed that they were some Banjaras. Upon recalling, PW.2 Mokam Singh was confronted with the evidence he had given later before the Juvenile Court on the basis of which the accused persons were acquitted of the charge under Section 307 IPC for having made an attempt on the life of this witness.

6. In our opinion, the procedure adopted by the Sessions Judge was not strictly in accordance with law. Once the witness was examined-in-chief and cross-examined fully, such witness should not have been recalled and re-examined to deny the evidence he had already given before the court, even though that witness had given an inconsistent statement before any other court or forum subsequently. A witness could be confronted only with a previous statement made by him. At the time of examination of PW.2 Mokam Singh on 6.2.1991, there was no such previous statement and the defence counsel did not confront him with any statement alleged to have been made previously. This witness must have given some other version before the Juvenile Court for extraneous reasons and he should not have been given a further opportunity at a later stage to completely efface the evidence already given by him under oath. The courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the court on mere explanation that he had given it under the pressure of the police or for some other reason. Whenever the witness speaks falsehood in the court, and it is proved satisfactorily, the court should take a serious action against such witnesses.

23. The decision in Mishrilal was followed in Hanuman Ram v. State of Rajasthan and others, (2008) 15 SCC 652. The case of Mishrilal had come to this Court after the appeal court had maintained the conviction and sentence passed against the accused. But Hanuman Ram came at the intermediate stage when the trial court was directed by the High Court to recall two prosecution witnesses under Section 311 of the Cr.P.C. under similar circumstances. In Hanuman Ram too, two of the witnesses (PWs 3 and 5) who had supported the prosecution case before the trial court did not support the case of the prosecution before the Children's Court where one of the accused in the case who was a minor was being tried. Before the trial court an application was made under Section 311 Cr.P.C. for summoning those two witnesses for cross-examination with reference to their statements before the Children's Court. The trial court did not accept the prayer and rejected the petition. On an application in revision, the High Court intervened in favour of the accused

and directed the trial court to recall and re-examine the two witnesses. In appeal against the High Court order, this Court following the earlier decision in Mishrilal, held that there was no legal foundation for recalling the witnesses under Section 311 Cr.P.C. and set aside the High Court judgment.

24. At first sight, the decisions in Mishrilal and Hanuman Ram seem to clinch the issue arising in the case. But, on a deeper examination, it would appear that the decision in Mishrilal did not interpret Section 311 Cr.P.C. defining the import, scope and ambit of the provision contained therein. It rather said that on the facts of the case, the provision had no application and the procedure adopted by the trial court was not strictly in accordance with law. Now, the interpretation of a legal provision and its application to a set of facts are two different exercises requiring different approaches. Interpretation means the action of explaining the meaning of something. For interpreting a statutory provision, the court is required to have an insight into the provision and unfold its meaning by means of the well-established canons of interpretation, having regard to the object, purpose, historicism of the law and several other well-known factors. But, what is important to bear in mind is that the interpretation of a legal provision is always independent of the facts of any given case. Application means the practical use or relevance (of something to something); the application of a statutory provision, therefore, is by definition case related and as opposed to interpretation, the application or non-application of a statutory provision would always depend on the exact facts of a given case. Anyone associated with the process of adjudication fully knows that even the slightest difference in the facts of two cases can make a world of difference on the question whether or not a statutory provision can be fairly and reasonably applied to it. Keeping in mind what is said here if we read Mishrilal, it would be evident that in the over all facts of that case, the Court was satisfied that the statement of the witness (PW.2, Mokam Singh) before the Juvenile Court was for some extraneous reasons and, therefore, he should not have been allowed an opportunity to completely efface the evidence already given by him under oath. The Court with its vast experience of the way criminal justice system works in our country was in a manner commenting upon the serious and widespread malady of prosecution witness being won over by the accused. Once the Court came to realise that the witness was gained over before he was examined in the Juvenile Court, it naturally felt that at least he should not have been allowed to spoil the other case too and it would, therefore, logically follow that his recall and re- examination in the trial of the other accused before the Sessions Court was an abuse of Section 311 of the Cr.P.C. To us, it appears that it was mainly due to that reason that the Court frowned upon the latter evidence of PW.2 taken by the Sessions Court on his recall after his examination before the Juvenile Court.

25. Moreover, in Mishrilal the question that came up for consideration before the Court was whether the deposition of Mokam Singh (PW.2) before the Juvenile Court would come within the meaning of previous statement under Section 145 of the Evidence Act so as to justify his recall for further cross-examination confronting him with his deposition before the Juvenile Court. The Court answered the question in the negative pointing out that at the time of his examination earlier before the Sessions Court there was no such statement with which he could be confronted by the defence.

26. In Hanuman Ram, on identical facts and for the same reasons the Court simply followed the decision in Mishrilal.

27. The facts of the case before us are quite different. It is not only Vikram who is making diametrically opposite statements but the CBI and the State (CID) seem to be at loggerheads with the one accusing the other of manipulating and using Vikram for its own designs. It is an unusual case by any reckoning.

28. It is obvious that one of the two statements of Vikram is false. But unlike Mishrilal or Hanuman Ram where the Court was able to sense without difficulty that the witnesses' depositions before the Juvenile Court and the Children's Court respectively were false, it is very difficult to say at this stage which of the statements is true and which of the statement was made under the influence, threat or coercion by the State officials or the CBI. The position may be clear in case he is subjected to further examination with reference to his statement made in Danapur jail on September 30, 1978.

29. The matter may be looked at from another angle. Section 391 of the Cr.P.C. provides as follows:

> 391. Appellate Court may take further evidence or direct it to be taken.- (1) In dealing with any appeal under this Chapter, the Appellate Court, if it thinks additional evidence to be necessary, shall record its reasons and may either take such evidence itself, or direct it to be taken by a Magistrate, or, when the Appellate Court is a High Court, by a Court of Session or a Magistrate.
>
> (2) When the additional evidence is taken by the Court of Session or the Magistrate, it or he shall certify such evidence to the Appellate Court, and such Court shall thereupon proceed to dispose of the appeal.

> (3) The accused or his pleader shall have the right to be present when the additional evidence is taken.
>
> (4) The taking of evidence under this section shall be subject to the provisions of Chapter XXIII, as if it were an inquiry.

30. It is, thus, to be seen that the provision is not limited to recall of a witness for further cross-examination with reference to his previous statement. The Appellate Court may feel the necessity to take additional evidence for any number of reasons to arrive at the just decision in the case. The law casts a duty upon the court to arrive at the truth by all lawful means. This is another reason why we feel any reliance on Mishrilal that considered the recall of a witness in the context of Section 145 of the Evidence Act is quite misplaced in the facts of this case.

31. Mr. Dey contended that Vikram's statement that he is alleged to have made in jail has no legal sanctity and it came to be made and recorded in a manner completely unknown to law. Mr Dey may be right but on that ground alone it would not be correct and proper to deny the application of Section 391 of the Cr.P.C. Take the case where, on the testimony of the Approver, a person is convicted by the trial court under Section 302 and 120-B etc. of the Penal Code and is sentenced to a life term. After the judgment and order passed by the trial court and while the convict's appeal is pending before the High Court, the `Approver' is found blabbering and boasting among his friends that he was able to take the Court for a ride and settled his personal score with the convict by sending him to jail to rot at least for 14 years. Such a statement would also be completely beyond the legal framework but can it be said that in light of such a development the convicted accused may not ask the High Court for recalling the Approver for further examination.

32. As a matter of fact, if some later statement, has come to be made in some legal ways, it may be admissible on its own without any help from Section 311 or Section 391 of the Cr.P.C. It is only such statement or development which is otherwise not within the legal framework that would need the exercise of the Court's jurisdiction to bring it before it as part of the legal record.

33. In light of the discussions made above, we have no hesitation in holding that the High Court was in error in refusing to summon Vikram, the Approver (PW.1) for his further examination as prayed for on behalf of the appellants. We, accordingly, set aside that part of the High Court order and direct the High Court to

summon Vikram (PW.1) for his further examination by the appellants and if so desired by the CBI. For the sake of convenience, the High Court may direct a member of the Registry of the rank of a Sessions Judge/Additional Sessions Judge to record the additional evidence of Vikram (PW.1). The examination of the witness by the appellants and the CBI must not go beyond two working days each so that the recording of his evidence should be complete in not more than four days. The Registrar recording the evidence would certify it and place before the Court and the Court shall then proceed to dispose of the appeals.

34. The appeals are thus allowed.

35. Before parting with the record of the case we are constrained to say that we are distressed beyond words to find that the case relating to the attempt on the life of the CJI remains stuck up at the stage of the appeal even after about 37 years of the occurrence. We are informed that the other case of the killing of Shri L.N. Mishra is still mired before the trial court. We do not wish to make any comment on that case as that is the subject matter of Writ Petition (Criminal) Nos. 200 and 203 of 2011 that remains pending before this Court. But so far as the present case is concerned, we would request the Chief Justice of the Delhi High Court with all the strength at our command to take notice of the inordinately long time for which these appeals (Criminal Appeal Nos.436 443 of 1996) are pending before the High Court and to put a tab on them so as to ensure that the appeals are disposed of without any further delay and in any case not later than six months from the date of the receipt/production of a copy of this order.