IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Jai Singh Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.642/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 14-5-2002 in Sessions Case No.34/2001 (49/2001) passed by Shri Anil Kumar Suroliya, RHJS, Additional Sessions Judge (Fast Track) Jhunjhunu.

Date of Judgment: March 30, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Sajjan Raj Surana, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.
Mr. R.S.Agrawal, for the complainant.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Jai Singh, appellant herein, was put to trial before learned Additional Sessions Judge (Fast Track) Jhunjhunu in a case under section 302 IPC. Learned Judge vide judgment dated May 14, 2002 convicted the appellant under section 302 IPC and sentenced him to suffer imprisonment for life and fine of Rs.5000/-, in default to further suffer imprisonment for six months. A sum of Rs.50,000/- has been awarded to legal representatives of deceased by way of compensation.

2. It is the prosecution case that informant Raj Kumar (Pw.10) lodged a written report (Ex.P-34) at Police Station Surajgarh on December 27, 2000 to the effect that his cousin brother Satya Narayan was killed by the

appellant. On that report a case under section 302 IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu. Charge under section 302 IPC was framed. The appellant denied the charge and claimed trial. The prosecution in support of its case examined as many as 11 witnesses. In the explanation under section 313 Cr.P.C., the appellant claimed innocence. Two witnesses in defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard the rival submissions and scanned the material on record.

4. Informant Raj Kumar (Pw.10) cousin brother of the deceased, is the star witness of the prosecution case. Testimony of Raj Kumar is the pivot upon which whole prosecution case rounds up. It appears from the record that in the course of trial before the learned Additional Sessions Judge (Fast Track) Jhunjhunu, Raj Kumar was working as Criminal Clerk in the said court. In the cross examination, that was recorded on January 12, 2002 by the Additional Sessions Judge (Fast Track) Jhunjhunu Raj Kumar deposed as under:-

> "मैं एम.काम. तक पढा हुआ हूं। मैं जुलाई 92 से नौकरी कर रहा हूं। जुलाई 92 से घटना के दिन तक मेरी पोस्टींग खेतडी में थी। मैं 3-4 महिने तक मुंसिफ कोर्ट में रहा और उसके बाद एडीजे कोर्ट में था। एडीजे कोर्ट में 95 तक मेरे पास सिविल सीगा था और उसके बाद फौजदारी सीगा था।"

5. We are of the view that justice should not only be speedy but it should be visible. Right to fair trial enjoys a pride of place in our scheme of

right's jurisprudence under the Constitution.

6. In Zahira Habibullah Sheikh Vs. State of Gujarat (2006)3 SCC 374, their Lordships of the Supreme Court had occasion to interpret the principles of fair trial and it was indicated as under:-

(Paras 33, 34 & 35)

> "The principle of fair trial now informs and energizes many areas of the law. It is reflected in numerous rules and practices. It is a constant, ongoing development process continually adapted to new and changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved - directly or operating behind, social impart and societal needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.
> As will presently appear, the principle of a fair trial manifests itself in virtually every aspect of our practice and procedure, including the law of evidence. There is, however, an overriding and, perhaps, unifying principle. As Deane, J. put it:
>
> > "It is desirable that the requirement of fairness be separately identified since it transcends the context of more particularized legal rules and principles and provides the ultimate rationale and touchstone of the rules and practices which the common law requires to be observed in the administration of the substantive criminal law."
>
> This Court has often emphasised that in a criminal case the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community as a community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and it is the community that acts through the State and prosecuting agencies. Interests of society is not to be treated completely with disdain and as persona non grata. Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a Court of law in the future as in the case before it. <u>If a criminal Court is to be an effective instrument in dispensing justice, the Presiding Judge must cease to be a spectator and a mere recording machine by becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth, and administer justice with fairness and impartiality both to the parties and to the community it serves. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators."</u>

(Emphasis supplied)

7. In the leading case R. V. Sussex Justices, Ex p McCarthy (1924)1 KB 256, Lord Hewart observed thus:-

> "... it is not merely of some importance but is of fundamental importance, that justice should both be done and be manifestly seen to be done... Nothing is to be done which creates even a suspicion that there has been an improper interference with the course of justice"

8. In R. v. Barnsley Licensing Justices, ex p Barnsley and District Licensed Victuallers' Assn. (19602 QB 167, Justice Devlin, L.J. Said:

> "We have not to inquire what impression might be left on the minds of the present applicants or on the minds of the public generally. We have to satisfy ourselves that there was a real likelihood of bias, and not merely satisfy ourselves that was the sort of impression that might reasonably get abroad. The term `real likelihood of bias' is not used, in my opinion, to import the principle in R. v. Sussex Justices (supra) to which Salmon, J. referred. It is used to show that it is not necessary that actual bias should be proved. It is unnecessary and, indeed, might be most undesirable to investigate the state of mind of each individual justice. `Real likelihood' depends on the impression which the court gets from the circumstances in which the justices were sitting. Do they give rise to a real likelihood that the justices might be biased? The court might come to the conclusion that there was such a likelihood without impugning the affidavit of a justice that he was not in fact biased. Bias is or may be an unconscious thing and a man may honestly say that he was not actually biased and did not allow his interest to affect his mind, although , nevertheless, he may allowed it unconsciously to do so. The matter must be determined on the probabilities to be inferred from the circumstances in which the justices sit."

9. In Hannam V. Bradford City Council (1970)2 All ER 690,

Cross, LJ expressed the view that there is really little, if any, difference between the real likelihood of bias and reasonable suspicion of bias test:

> "If a reasonable person who has no knowledge of the matter beyond knowledge of the relationship which subsists between some members of the tribunal and one of the parties would think that there might well be bias, then there is in his opinion a real likelihood of bias. Of course, someone else with inside knowledge of the characters of the members in question might say: "Although things don't look very well, in fact there is no real likelihood of bias." But that would be beside the point, because the question is not whether the tribunal will in fact be biased, but whether a reasonable man with no inside knowledge might well think that it might be biased."

This view was accepted in R. v. Liverpool City Justices, ex p Topping (1983)1 All ER 490. The Divisional Court considered that the correct test to apply is whether there is the appearance of bias, rather than whether there is actual bias; and that as to the way in which the test is to be applied the question is: Would a reasonable and fair-mined person sitting in court and knowing all the relevant facts have a reasonable suspicion that a fair trial for the applicant was not possible? `Reasonable suspicion' seems to have prevailed over `reasonable likelihood' as the test to be applied in determining bias."

10. Looking to the fact that informant Raj Kumar was Criminal clerk in the court of learned trial Judge, we are of the view that the matter requires fresh consideration by the Judge, other than the trial Judge under whom the informant Raj Kumar was working. We therefore deem it appropriate to invoke our inherent powers to do complete justice between the parties.

11. As a result of above discussion we allow the appeal and set aside the impugned judgment dated May 14, 2002 of learned Additional Sessions Judge (Fast Track) Jhunjhunu and we remit the case to the court of Sessions Judge Churu to hear the arguments afresh and decide the matter, as expeditiously as possible, preferably within two months from the date of receipt of the copy of this order. The appellant has been remained in custody for a period more than six years and he has to engage a counsel to argue the case in the court of Sessions Judge Churu, we therefore deem it appropriate to suspend the sentence awarded to appellant vide impugned judgment. It is, therefore, ordered that the appellant Jai Singh shall be released on bail, provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties each in the sum of Rs.25,000/- to the satisfaction of learned Sessions Judge Churu with the stipulation to appear before that Court on April 16, 2007 and as and when called upon to do so during the pendency of the case.

Deputy Registrar (Judicial) is directed to forthwith send the copy of this order as well as the record to the court of Sessions Judge Churu.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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