

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A.No.59/2008**

% **Date of Decision: 04.11.2008**

State (Govt. of NCT) of Delhi Appellant
Through Mr.Sunil Sharma, Advocate

Versus

Shashi Shekhar @ Neeraj @ Raju Respondent
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE V.K. SHALI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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Crl.M.A. No.751/2008

Allowed, subject to just exceptions. The application is disposed of.

Crl.M.A. No.750/2008 and Crl.A. No.59/2008

1. This is an application by the appellant/applicant, in the above noted appeal, seeking condonation of delay of 1122 days in filing the appeal in the interest of justice.

2. By judgment dated 28th April, 2004, the Additional Sessions Judge, New Delhi, had sentenced the respondent/accused to undergo life imprisonment and a fine of Rs.1,000/- under Section 302 of Indian Penal Code and in default to further undergo rigorous imprisonment for two months and to further undergo rigorous imprisonment of 10 years and a fine of Rs.1,000/- under Section 397 of Indian Penal Code and in default to further undergo rigorous imprisonment for two months in FIR No.76/1996 under Section 302/392/397/216A of Indian Penal Code registered at Police Station C.R. Park. The sentence of the appellant was held not to run concurrent with the sentence awarded in another case FIR No.509/1995, P.S Vasant Kunj.

3. While sentencing the respondent to undergo life imprisonment and rigorous imprisonment of 10 years, the Additional Sessions Judge had considered the plea of the State for award of extreme penalty on the ground that the accused/respondent had committed murder of an innocent, helpless girl only for monetary gains. Though the Sessions Judge had noticed that the accused had been previously been convicted for the murder of two innocent and hapless girls, the reasons which weighed with the Additional Sessions Judge in not awarding the extreme penalty were that the accused/respondent had gone unarmed, without any weapon much less any deadly weapon and that the exact manner of committing the murder had not been established. It was

held that the possibility of the accused having gone simply to meet/allure the maid, Hema, and thereafter formed an opinion to rob the articles could not be ruled out. The extreme penalty of death was also not awarded on the ground that the respondent/accused was not of much age at the time of commission of crime. The Additional Sessions Judge was of the opinion that it would be more appropriate if the convict is kept in judicial custody for a longer period than to take his life as in that eventuality the convict would be left with no power of alluring the innocent girls which he was having in the young age and also living with the worry of long incarceration with the stigma of a murderer will be more painful than dying an early and instant death.

4. The appeal against the order dated 28th April, 2004, under Section 377 of Code of Criminal Procedure, was filed on 21st November, 2007 after a delay of about 1122 days (One thousand one hundred and twenty two days). Along with the appeal above-noted application for condonation of delay has also been filed.

5. The application for condonation of delay of 1122 days, more than three years, in filing the appeal does not disclose any cogent or sufficient reason for condonation of delay as is apparent from the averments made in the application. The relevant averments made in the application are as under:-

“2. That the filing appeal has been delayed for 1122 days.

3. That after the order of Ld. Trial Court considerable time was consumed for seeking opinion for challenging the impugned order. The file has to move through different channels before decision is taken for challenging the aforesaid order. Thus leading to delay in filing the appeal.

4. That the delay in filing the appeal is not deliberately but on account of aforesaid reason which are most bonafide and genuine.

5. That the instance case, deliberate were held at different levels for taking appropriate decision in the matter for enhancement of sentenced. The factum of conviction of accused in other cases was to be considered and sufficient time was consumed for procuring documents and judgment relating to those cases thus leading to delay in filing this appeal.”

Apparently, the application lack in details and no relevant particulars have been given. It appears that the application has been filed on the premise that the delay will be condoned without sufficient cause being made out in any manner. The application is reflective of lackadaisical and casual attitude of the appellant/applicant in seeking condonation of delay.

6. The appeal, after having been filed on 21st November, 2007, was listed on 21st January, 2008 when it was adjourned to 4th February, 2008. On 4th February, 2008 it was adjourned to 20th March, 2008 at the request of the counsel for the appellant. Thereafter again the appeal has been adjourned from time to time on various dates including 19th May, 2008 and 23rd July, 2008. The appellant had also sought

adjournment to file a detailed affidavit explaining the inordinate delay in filing the appeal. It has also not been filed despite sufficient time given to the appellant and the only reason disclosed by the learned counsel for the appellant is that he was not well for some time.

7. On a perusal of the application for condonation of delay it is apparent that there are no averments detailing the reasons for the inordinate delay of 1122 days which is more than three years. The pleas for condonation of delay are generic as no dates have been furnished nor any names have been given as to who had dealt with the file and why the decision could not be taken for more than three years. Consequently, no such facts and pleas have been disclosed on the basis of which it may be inferred that there is sufficient cause for condonation of this inordinate delay. The appellant was given time to file a detailed affidavit as the appeal is pending since more than one year still the affidavit giving the necessary details had not been filed and consequently no further time has been given to the appellant to file any further affidavit.

8. Learned counsel for the appellant has very vehemently relied on AIR 2005 SC 2191, State of Nagaland v. Lipok AO and others and (2004) 2 SCC 694, Simon and others v. State of Karnataka to contend that even if there are no sufficient grounds made out for condonation of delay, it will not take away the power of this Court to make an order

enhancing the sentence in the appeal, if the facts call for such an order being made. It is also contended that considering the peculiar characteristics of functioning of Government, pragmatic approach is to be adopted and certain latitude should be given to the Government.

9. In State of Nagaland (supra), the delay was of only 57 days and condonation of the same was sought which was also declined by the High Court on the ground that each and every day delay was not explained. The Apex Court in the appeal, however, had held that it is not the length of the delay but the sufficiency of the cause and shortness of the delay in the circumstances which should be taken into account for consideration of 'sufficient cause' for condonation of delay. It was further held that though no special indulgence should be shown to the Government in comparison to an individual litigant, still a pragmatic view has to be taken in case of the government being an appellant and seeking condonation of delay, considering the functioning of the government machinery. In the circumstances, it was further held that certain latitude should be given and in that case the delay of 57 days was condoned. The application for condonation of delay in the said case relied on by the appellant had also disclosed categorical details as to when the copy of the order was received by the concerned Department and as to when the papers were put up for necessary sanction before the Deputy Inspector General of Police (Headquarters), Nagaland, and thereafter when the whole file along with note sheet

went missing and could not be traced despite best efforts and as to when the case file was finally traced which was on 15th March, 2003 and thereafter put up for necessary action.

10. In contradistinction to the case relied on by the appellant/applicant, the delay in the present appeal is 1122 days which is more than three years. Moreover no details as to who are the officers to whom the files had been sent or other details as to what happened and who did not take decision etc and various other necessary facts have not been given despite repeated adjournments and opportunities given to the appellant. The application is blatantly silent on all relevant aspects and despite repeated adjournments for almost a year and despite sufficient time given to file the additional affidavit, no necessary pleas and facts have been disclosed by the appellant so as to infer 'sufficient cause' for condoning the delay.

11. The case of the Simon and Others (supra) is also clearly distinguishable. It was held by the Apex Court that the dismissal of special leave petition filed by the State seeking enhancement of sentence does not take away the power of the Supreme Court to make an order enhancing the sentence if the facts call for such an order being made. However, it has not been held that the High Court will have the power to entertain the appeal, even after dismissing the application for condonation of delay in filing the appeal.

12. The judgments relied on by the appellant are clearly distinguishable and cannot be relied on in the present facts and circumstances. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases and disposing of a case by blindly placing reliance on a decision is not proper. In *Ambica Quarry Works v. State of Gujarat and Ors.* MANU/SC/0049/1986 the Supreme Court had observed:-

“The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an authority for what it actually decides, and not what logically follows from it.”

Similarly in *Bhavnagar University v. Palitana Sugar Mills Pvt Ltd* (2003) 2 SC 111 (vide para 59), the Supreme Court had observed:-

“It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision.”

In *P.S.Rao Vs State*, JT 2002 (3) SC 1, the Supreme Court had held as under:

“There is always a peril in treating the words of judgment as though they are words in a legislative enactment and it is to be remembered that judicial utterances are made in setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusion in two cases.

In *Rafiq Vs State*, 1980 SCC (Crl) 946 it was observed as under:

“The ratio of one case cannot be mechanically applied to another case without having regard to the fact situation and circumstances obtaining in two cases.”

13. In the totality of facts and circumstances, we are, therefore, of the considered opinion that the appellant/applicant has failed to make out a 'sufficient cause', rather the appellant has been utterly negligent and has not been able to show any ground for condoning the delay. In any case considering the pleas and contentions, it is also not a case where we must interfere with the sentence awarded by the Sessions Court, as it is not one of those 'rarest of rare cases' as is apparent from the various factors which have been urged before us, which were also considered by the Session Court while declining to award the extreme penalty of death. Therefore, in the totality of facts and circumstances, the appeal does not warrant condonation of delay in its filing.

14. In the circumstances, the application seeking condonation of delay is dismissed and consequently the present appeal of the appellant is also dismissed.

ANIL KUMAR, J.

November 04, 2008
'Dev'

V.K. SHALI, J.