

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRR No. 1087 of 2015

1. Banwari Lal Sharma S/o Late Ramnath Sharma, aged about 77 years, R/o Bhatgaon, P.S. Bilaigarh, Civil District, Revenue District Baloda Bazar, Chhattisgarh.

---- Applicant

Versus

1. State of Chhattisgarh, Through: District Magistrate Baloda Bazar, District Baloda Bazar, Chhattisgarh.
2. Umesh Sharma S/o Kishori Lal Sharma, aged about 49 years, R/o Rajgangapur, Police Station Rajgangapur, Shriram Colony, District Sundargarh, Orissa.

---- Non-applicants

For Applicant – Mr. Sunil Otwani, Advocate.

For Non-applicant No.1 – Ms. M.Asha, Panel Lawyer.

For Non-applicant No.2 – Mr. T.K.Jha, Advocate.

Hon'ble Shri Justice Chandra Bhushan Bajpai

Order on Board

05/04/2016

1. The matter heard finally at the motion stage itself in the light of judgment passed by the Full Bench of this High Court in Acquittal Appeal No.96/2012 and Acquittal Appeal No.121/2012 dated 1st October, 2013.
2. As per aforementioned Acquittal Appeal No.121/2012 (Smt. Ahilya Bai Satnami Versus State of Chhattisgarh and another) the question referred and the answer given by Hon'ble the Full Bench are as under:-

Question :-

“Whether the period of limitation prescribed for filing an appeal under Section 377 or 378 of the Code of Criminal Procedure would also apply to an appeal preferred by the victim under proviso to Section 372 of the Code of Criminal Procedure?”

Answer :-

- (A) The period of limitation prescribed for filing an appeal against order of acquittal as provided under Article 114 and Article 115 of the

Schedule to the Limitation Act, 1963, is not applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Cr.P.C. against an order of acquittal. Nevertheless, appeal is required to be filed by the victim within a reasonable period to be reckoned from the date the victim acquires knowledge of the order of acquittal. What would be the reasonable period, should depend upon the facts and circumstances of every case.”

3. Vide judgment dated 18-06-2012 passed by the Judicial Magistrate First Class, Bhatgaon, District Balodabazar, C.G.in Criminal Case No.477/2009 the accused/respondent No.2 was held acquitted from the charges under Section 506 Part II of the IPC by affording benefit of doubt. Against the said judgment of acquittal, the complainant/appellant preferred a criminal appeal (unregistered) before the First Additional Sessions Judge, Balodabazar, C.G. The learned appellate Court dismissed the application filed on behalf of the appellant/applicant to condone the delay under Section 5 of the Limitation Act, 1963 and also dismissed the said criminal appeal as the same is barred by time.

4. From perusal of the aforementioned judgment passed by the Full Bench of this Court, it goes to show that the provisions of Articles 114 and 115 of Schedule to the Limitation Act, 1963, is not applicable in the matter of appeal that may be preferred by a victim under proviso to Section 372 of the Code of Criminal Procedure, 1973 against an order of acquittal. Hon'ble the Full Bench further held that nevertheless, appeal is required to be filed by the victim within a reasonable period to be reckoned from the date the victim acquires knowledge of the order of acquittal. What would be the reasonable period, should depend upon the facts and circumstances of every case. As the aforementioned cited case law is applicable in the present matter and the appellate Court while deciding the factum of delay not appreciated the above

cited case law, it would be appropriate that the prayer of the appellant regarding condonation of delay and the said criminal appeal may be appreciated in the light of the aforementioned cited case law.

5. Consequently, the instant criminal revision is disposed of without appreciating anything on its merit. The order passed by the appellate Court dated 03-11-2015 is hereby quashed. The appellate Court is directed to rehear the matter afresh in the light of aforesaid case law and the facts attracted in the matter and to dispose of the said factum of delay without being influenced by the order dated 03-11-2015.

6. The parties present before this Court are directed to remain present either through their counsel or in person, as the case may be, before the appellate Court on **12th of May, 2016**.

7. The said unregistered criminal appeal is restored to its original number and the Court below shall dispose of the same as directed.

8. The instant criminal revision disposed of.

9. Certified copy as per rules.

Sd/-

(Chandra Bhushan Bajpai)
JUDGE