

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.13 of 2019

Arising Out of PS. Case No.-143 Year-2004 Thana- BAKHTIYARPUR District- Patna

Ramesh Kumar Late Narsingh Roy Resident of village- Naya Tola,
Bariyarpur,(Sri Sohan Ray ka Tola) P.S- Bakhtiyarpur, Dist- Patna

... .. Appellant/s

Versus

1. The State of Bihar
2. Sanjay Kumar S/o-Rajendra Prasad Yadav, Resident of village- Naya Tola,
Madhopur Old Bye Pass Road, Bakhtiyarpur, P.S- Bakhtiyarpur, Dist- Patna
3. Rinku Kumar S/o-Rajeshwar Roy, r/o-Vill.-Kachra Dehri, P.s-Chandi, Distt.-
Nalanda

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Arun Kumar Arun, Adv. Mrs. Subuhi, Adv.
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP
For the Respondents No. 2 & 3:		Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Anuj Kumar, Adv. Mr. Priyanka Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

18 24-09-2019 Heard learned counsel for the appellant, learned
counsel for the respondents No. 2 & 3 as well as learned APP.

2. After all, the informant claiming himself to be a victim, woke up but, after a deep slumber covering a period of six precious years whereunder the right of the accused got affirmed after expiry of the statutory period of 90 days as prescribed under Article 114 of the Limitation Act for filing an appeal against the judgment of acquittal.

3. Needless to say that on an earlier occasion, there was some sort of confusion as, the right of appeal in accordance



with Section 372 CrPC at the instance of victim has not properly been identified under the Limitation Act but, in ***Raghunath Yadav v. State of Bihar*** reported in ***2010(4) PLJR 351***, the Division Bench had considered the issue and then, directed that the period so enumerated under Article 114 of the Limitation Act for filing an appeal against the judgment of acquittal would be available and the same view has also been acceded to in the case of ***Parmeshwar Mandal v. State of Bihar*** as reported in ***2014 CrLJ 1046***.

4. That being so, irrespective of the fact that a prayer has been made under Section 5 of the Limitation Act to condone the delay and further, claiming that as no summon/warrant was ever executed so, appellant was not in a position to know about the actual affair and that being so, from the date of knowledge of the judgment, there should be countenance of the period of limitation and, within 90 days thereof, the appeal has been preferred and so, there happens to be no question of limitation, does not find favour.

5. However, the last leg of argument having at the end of learned counsel for the appellant is based upon the principle decided by the Hon'ble Apex Court in the case of ***Dinubhai Boghabhai Solanki v. State of Gujarat*** as reported in



(2018) 11 SCC 129 and submitted that the instant memo of appeal be permitted to be converted as criminal writ because of the fact that (a) the appeal against acquittal is duly influenced with the period of limitation which in the facts and circumstances of the case, would cause prejudice to the appellant as, due to negligence having at the part of executing machinery, the witnesses have been deprived off an opportunity to depose before the Court leading to acquittal and further, under the garb of aforesaid eventuality, has been deprived off to know about the judgment impugned, (b) the outcome of the trial happens to be on account of miscarriage of justice, (c) as observed by the Apex Court during exercise of power under Article 226 of the Constitution of India, the Court is within its domain to exercise its appellate power under Section 386 of the CrPC and so, it is a fit case whereunder, the period of limitation should not be allowed to clutch the illegality having been committed at the end of the lower court leading to acquittal of the Respondents No. 2 and 3 and one another (since dead).

6. Learned counsel for the Respondents No. 2 and 3 has submitted that though it happens to be privilege of the appellant to have transformation of the memo of appeal as petition under Article 226 of the Constitution of India but, in the



facts and circumstances of the case, it should not be because of the fact that memo of appeal is found barred by law of limitation. Furthermore, by having a judgment of acquittal, the presumption under criminal jurisprudence that the accused is innocent till he is found guilty, is found further strengthened which, after expiry of the period of limitation got affirmed.

7. Be that as it may, in the facts and circumstances of the case, the prayer of the appellant is allowed. Let this memo of appeal be transposed as a petition purported to be under Article 226 of the Constitution of India.

8. Respective parties as well as office to act accordingly.

(Aditya Kumar Trivedi, J)

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