

HIGH COURT OF CHHATTISGARH, BILASPURACQA No. 22 of 2019

1. Anand Mati Yadav W/o Late Shri Shiv Bagas Yadav Aged About 57 Years R/o Village Chhuiha Police Station Baloda Bazar, Tahsil And District Baloda Bazar Bhatapara.

Presently R/o Ward No. 20 Village Rawan Balodabazar Chhattisgarh.

----- Appellant

Versus

1. State Of Chhattisgarh Through Station House Officer Balodabazar Bhatapara Chhattisgarh.
2. Lakhan Yadav S/o Shiv Singh Yadav Aged About 45 Years
3. Gopal Yadav S/o Ramdayal Yadav Aged About 25 Years
4. Punit Ram S/o Itwari Yadav M Aged About 25 Years
5. Bhaiya Ram S/o Chaitram Yadav Aged About 35 Years
6. Krishna S/o Ram Dayal Verma Aged About 33 Years
7. Vishnu Yadav S/o Ramcharan Yadav Aged About 29 Years
8. Chintaram S/o Kanshram Yadav Aged About 30 Years
9. Suraj S/o Mahasingh Yadav Aged About 30 Years
10. Dashrath Yasdav S/o Ramdayal Aged About 26 Years
11. Tulsi S/o Nathuram Yadav Aged About 18 Years
12. Santosh S/o Bhaiyaram Yadav Aged About 19 Years
13. Johan S/o Santram Yadav Aged about 21 Years
14. Dhannu S/o Santuram Yadav Aged About 19 Years

All R/o Village Chhuiha, thana Baloda Bazar District Baloda Bazar-Bhatapara, Chhattisgarh

----- Respondents

For Appellants	Shri Ashok Varma, Adv. with Shri Gajendra Sahu, Advocate
For Respondent/ State	Shri Avinash Choubey, Panel Lawyer
For Respondents No.2 to 14	Shri Anjinesh Shukla, Advocate

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

Judgment on Board

By

Prashant Kumar Mishra, J.

3-9-2019

I.A.No.1 of 2019

1. This is an application for condonation of delay in filing the acquittal appeal.
2. This appeal against acquittal of the respondents No.2 to 14 herein from the charge under Sections 302, 147, 148/149, 452, 325, 323 & 427 of the Indian Penal Code rendered by the Second Additional Sessions Judge, Baloda Bazar vide its judgment dated 15-4-2005 in ST No.170/2004 is barred by delay of 5010 days i.e. more than 13½ years.
3. The appellant is the wife of Shiv Bagas Yadav (since deceased), who was done to death by 16 accused persons including the present acquitted accused (respondents No.2 to 14 herein) on 7-3-2004. The trial Court acquitted the present 13 respondents and convicted only 3 of them namely; Nathuram (A-1), Tuka @ Durga (A-2) & Puran (A-5).

4. Arguing for condonation of delay of 5010 days, Shri Ashok Varma, learned counsel appearing for the appellant, would submit that no period of limitation is prescribed for filing appeal under Section 372 of the Cr.P.C., therefore, the family members of the victim/deceased are entitled to file appeal at any point of time. In the alternative, Shri Varma would submit that the appellant had valid and sufficient reasons for not preferring the appeal within reasonable time because at all relevant point of time, after the date of incident, the accused persons were threatening the appellant and other members of family to leave the village otherwise they will meet the same fate like the deceased. It is further putforth that because of threat given by the accused persons, the appellant sold her entire land at village Chhuiha, Police Station Baloda Bazar to shift to village Rawan, a nearby village. Other relatives of the appellant also sold their land, however, date of sale of land by other relatives of the appellant is not mentioned in the application.
5. Shri Ashok Varma, learned counsel would refer to the Full Bench judgment rendered by this Court in *Mithilesh Yadav v State of Chhattisgarh & Others*¹ and other connected matter and the Full Bench decision of the Gujarat High Court rendered in *Bhavuben Dineshbhai Makwana v State of Gujarat & Others*².

¹ ACQA No.96 of 2012 (decided on 1-10-2013)

² 2013 Cri.L.J. 4225

6. Shri Avinash Choubey, learned Panel Lawyer appearing for the State and Shri Anjinesh Shukla, learned counsel appearing for the respondents No.2 to 14, *per contra*, would vehemently oppose the prayer for condonation of delay. They would read the entire application for condonation of delay to highlight that there is absolutely no explanation for such enormous delay of 5010 days. According to them, the appellant has suddenly decided to file an appeal for no reason, therefore, the present is a case where the appeal deserves to be dismissed either as barred by limitation or on the ground of delay and laches.
7. In the application for condonation of delay, which we have treated as an application explaining the delay and laches, the appellant's main submission is that because of the threat extended by the accused persons the family members of the appellant had to leave village Chhuiha to settle at a nearby village Rawan, therefore, they had no courage to prefer an appeal against the acquittal of the respondents No.2 to 14.
8. We are not impressed with the submission for the simple reason that it is not a case where all the accused persons were acquitted under the impugned judgment. Three accused who have been found to be the real perpetrators have been convicted by the trial Court, therefore, there does not appear to be any real or tangible threat to the appellant or her family members. Moreover, no complaint or report has been annexed with the application in

support of the submission that there was threat extended to the appellant or her family members.

9. In *Mithilesh Yadav* (supra), relied by the learned counsel for the appellant, it is observed in paras 59 to 65 that the victim cannot be allowed to prefer an appeal after months or years together and likewise victim's right cannot be negated if the delay has occasioned for sufficient reasons, therefore, even if no period of limitation is prescribed under Section 372 of the Cr.P.C. an appeal against acquittal has to be preferred within reasonable time from the date of knowledge.
10. Following the aforesaid view, we have tried to gather by putting questions to learned counsel for the appellant as to what is the date of knowledge on which the appellant became aware of the impugned judgment of acquittal in respect of the respondents No.2 to 14 herein.
11. To our specific query, learned counsel for the appellant would fairly submit that the appellant was examined as a witness in course of trial and was otherwise aware of the judgment soon after its delivery as the respondents No.2 to 14 started threatening the appellant soon after the judgment.
12. In view of this submission, we are of the considered view that the appeal should have been filed within 90 days after the impugned judgment. Even if the appellant is permitted to prefer an appeal

within a reasonable time thereafter, assuming that some threat was extended to her by the acquitted accused persons, the present is a case where the delay is not of few months, but the delay is of almost more than 13½ years. There is absolutely no satisfactory explanation for causing such enormous delay in filing the acquittal appeal, therefore, we are not inclined to entertain this appeal on merits.

13. In the result, the instant acquittal appeal is dismissed as it suffers from unexplained delay and laches.

Sd/-
(Prashant Kumar Mishra)
Judge

Sd/-
(Gautam Chourdiya)
Judge

Gowri