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CRA 151 of 1987

In the matter of: Sk. Anwar Ali

... appellant

Mr. Dipankar Dandapath

.... *Amicus Curiae*

Ms. Baisali Basu

.... for the State

Learned *Amicus Curiae* contends that there was patent discrepancy in the depositions, inasmuch as both the alleged independent witnesses, who were supposed to have signed on the seizure list, turned hostile at the time of adducing evidence and categorically stated that the witnesses were at Bargachhia at the time of signing the seizure list, which place is far off from the site of seizure.

That apart, one of the police officers, who deposed in the matter, categorically admitted in his cross-examination that they were at Bargachhia to visit the kerosene oil shop of a third person the same morning.

However, such evidence was again contradicted by the Investigating Officer himself, who denied such visit to Bargachhia.

That apart, it is pointed out that, although the time of occurrence is mentioned in the First Information Report (FIR) was 18.30 hours on April 29, 1986, it was stated both by the

P.W.3 and P.W.4, that is, the constable and the Investigating Officer who raided the shop of the accused, that the raid took place at around 5.30 hours in the afternoon.

Learned counsel appearing for the State points out that Exhibit-1/1 specifically proved that the accused did not maintain the register correctly. The relevant documents were seized and exhibited in the case. As such, minor discrepancies in the evidence, if any, ought to be overlooked.

Upon hearing the learned *Amicus Curiae* as well as learned counsel for the State and going through the materials on record, the very genesis of the case against the accused, that is, the FIR, is vitiated, having been contradicted by both the Investigating Officer and the accompanying constable who allegedly raided the shop of the accused. As per the admission of the said witnesses, the raid took place at 5.30 p.m., whereas the reported hour in the FIR is 6.30 p.m. The discrepancy of as long as an hour between the two remains unexplained.

That apart, the seizure list, on the basis of which the prosecution case stood, was also patently vitiated, since both the alleged independent witnesses signing thereon turned hostile and clearly denied having been at the place of occurrence at the time of raid. Both such alleged independent witnesses, in unison, stated that they were made to sign the papers at Bargachhia, which is far off from the place of seizure.

Moreover, P.W.3's evidence as regards being present in Bargachhia to visit a different shop on the same morning is

also corroborative of the statements of the two independent witnesses. In an apparent bid to advance an excuse, the Investigating Officer contradicted the evidence of his own constable, who allegedly accompanied him on the raid, regarding the visit at Bargachhia the same morning.

As such, the prosecution miserably failed to prove the case against the accused on any count.

Since the basis of initiation of the prosecution, being the FIR and the seizure list, stands vitiated in view of the above findings, the prosecution had no legs to stand upon, since there could not have been proof beyond the prosecution case. Independent production of an alleged account book/register was not sufficient to indict the appellant of the offence.

However, unfortunately, due to the fault of our judicial system, the matter was filed as long back as on 1987 and one of the grounds was the then advanced age of the appellant, who was a septuagenarian at that juncture, after which a long period of 34 years have elapsed, before the appeal is being heard.

It can well be assumed as to the present status of the appellant, if alive. However, since an unnecessary stigma came to be attached to the accused due to the conviction and the sentence, although the appellant might have served the entire sentence long back, and in view of a fine component being there in the impugned judgment and order, the appeal could not even be declared to have become infructuous or abated.

In view of the above findings, CRA 151 of 1987 is allowed on contest, thereby setting aside the impugned judgment and order dated March 19, 1987 passed by the Special Court, Howrah in S.C.T. No.57 of 1986.

The appellant is acquitted, whether alive or posthumously, honourably from the offences on which he was tried and is discharged from all charges. In the event bail was granted to the appellant, the appellant stands discharged from all conditions thereof and the bail bond, if any, furnished by the appellant.

This court expresses its appreciation for the invaluable assistance provided by the learned *Amicus Curiae* and learned counsel for the State.

(Sabyasachi Bhattacharyya, J.)