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IN THE SUPREME COURT OF INDIA

Appellants: **State of U.P.**
vs.
Respondent: **Shambhu Nath Singh & Ors.**

Hon'ble Judges: K.T. Thomas and Mr. R.P. Sethi, JJ.

ORDER

Thomas, J.

1. Leave granted.

2. Witnesses tremble on getting summons from courts, it India, not because they fear examination or cross-examination in courts but because of the fear that they might not be examined at all for several days and on all such days they would be nailed to the precincts of the courts awaiting their chance of being examined. The witnesses, perforce, keep aside their avocation and go to the courts and wait and wait for hours to be told at the end of the day to come again and wait and wait like that. This is the infelicitous scenario in many of the courts in India so far as witnesses are concerned. It is high time that trial courts should regard witnesses as guests invited (through summons) for helping such courts with their testimony for reaching judicial findings. But the malady is that the predicament of the witnesses is worse than the litigants themselves. This case demonstrates the agony and ordeal suffered by witnesses who attended a Sessions court on several days and yet they were not examined in full. The party who succeeded in dodging examination of such witnesses finally enjoyed the benefit when the Sessions Court acquitted them for want of evidence. The only casualty in the aforesaid process is criminal justice.

3. This appeal by special leave is by the State of U.P. against the order of acquittal of the respondents and also against the order of a Division Bench of the High Court of Allahabad refusing to grant leave to appeal against acquittal. How the situation reached can be narrowed now after referring to the facts of the case summarily.

4. Nine persons were arraigned before a Sessions Court to face the charges of murder, attempt to murder and rioting etc. Those nine persons are the respondents in this appeal. The trial judge included Sections 302 and 307 read with Section 149 of the IPC among other offences in the charge framed against the respondents. The allegations, inter alia, are that the respondents formed themselves into an unlawful assembly at about 8 P.M. on 22.6.1982 and armed with the deadly weapons including firearms, they caused the murder of one Ram Bachan and serious injuries to some other persons.

5. Prosecution cited Jiyawoo, Paras and Indresh Singh as eye witnesses and offered to examine them and other witnesses to prove the charge against the respondents. We are told that Jiyawoo was examined as PW-1, but his cross-examination was not completed on the same day. Hence, the trial court adjourned the case to some other day and then to some other day and like that to so many days. According to the learned counsel for the appellant State, PW-1 Jiyawoo had appeared in court on 9th and 15th of November 1994, 8th December 1994, and then on 12th January, 7th February, 24th June, 25th August and 25th September of 1995. In spite of the fact that the witness turned upon on those days he was not cross-examined due to one reason or the other for which the witness is not at fault. Copy of the proceeding papers submitted before us showed that one or the other accused was absent on most of those days and the cross-

examination of PW-1 could not be undertaken for that reason. The Public Prosecutor in the trial court filed an application on 11.7.1995 for adopting punitive action against the accused for the dilatory tactics and the Sessions Court posted the case to 25th August, 1995 with a warning to the accused that no further adjournment would be given for cross-examination of PW-1. But the presiding officer happened to be on leave on 25th August, 1995 and hence the case was posted to 25th September, 1995. Though PW-1 was present on that day also he was not examined. Ultimately the case stood posted on 4.1.1996. But on that day PW-1 happened to be absent and an application for adjournment was presented on his behalf. The trial judge dismissed the said application and closed the prosecution evidence and pronounced the judgment on 9.1.1996 acquitting the accused for want of evidence.

6. It is pertinent to point out that the trial judge expressed misgivings about the police that they and the accused in the case would have colluded together for not producing evidence against the accused. This is what the Sessions Judge has said on that score:

"A perusal of the file in the present case shows that the said matter is pending before the sessions court since 1991 and five years have passed while the prosecution side have been given 45 dates for producing evidence but the prosecution has still failed to lead any evidence, whereas the prosecution side had filed the list of 34 witnesses in the court. It is regretted and it appears to be a handiwork of the police administration and it can be safely derived thereof that the police and the prosecution side have colluded with the defence side, and therefore they have not produced any witness in the court. The conduct of the police (at police station Autraulia) has put a question mark on the performance of the police."

7. After the order of acquittal was passed the State moved the High Court seeking leave to appeal. A Division Bench of the High Court of Allahabad refused to grant leave to appeal, for which learned judges wrote only two sentences as under:

"Heard learned A.G.A. Perused the impugned judgment. We do not find any good ground for interference by this court in appeal. Leave to appeal is refused."

8. If the Sessions Judge had succumbed to the collusive tactics of the parties in serious offences like murder by acquitting the accused on the ground of want of evidence in spite of witnesses being present on a large number of dates the public confidence in the efficacy of the administration of criminal justice would be further drained considerably. In the present case, when PW-1 was examined in chief the court should have posted the case to the next working day for completion of cross-examination of that witness. What a pity when a Sessions Court was engaged in adjourning and again adjourning the case at long intervals in spite of the presence of eye witnesses willing to be examined fully. If the trial court thought it fit to close the evidence on a day when the witness could not be present, the accused would have had the last laugh.

9. We make it abundantly clear that if a witness is present in court he must be examined on that day. The court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meagre amount of Bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by presiding officers of the trial courts and it can be reformed by every one provided the presiding officer concerned has a commitment to duty. No sadistic pleasure in seeing how other persons summoned by him as witnesses are stranded on account of the dimension of his judicial powers can be a persuading factor for granting such adjournments lavishly, that too in a casual manner.

10. Section 309 of the Code of Criminal Procedure (for short 'the Code') is the only provision which confers power on the trial court for granting adjournments in criminal proceedings. The

conditions laid down by the legislature for granting such adjournments have been clearly incorporated in the section. It reads thus:

"309. Power to postpone or adjourn proceedings- (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing.

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him."

11. The first sub-section mandates on the trial courts that the proceedings shall be held expeditiously but the words "as expeditiously as possible" have provided some play at the joints and it is through such play that delay often creeps in the trials. Even so, the next limb of the sub-section sounded for a more vigorous stance to be adopted by the court at a further advanced stage of the trial. That stage is when examination of witnesses begin. The legislature which diluted the vigour of the mandate contained in the initial limb of the sub-section by using the words "as expeditiously as possible", has close to make the requirement for the next stage (when examination of witnesses has started) to be quite stern. Once the case reaches that stage the statutory command is that such examination "shall be continued from day to day until all the witnesses in attendance have been examined." The solitary exception to the said stringent rule is, if the court finds that adjournment "beyond the following day to be necessary" the same can be granted for which a condition is imposed on the court that reasons for the same should be recorded. Even this dilution has been taken away when witnesses are in attendance before the Court. In such situation the court is no given any power to adjourn the case except in the extreme contingency for which the second proviso to sub-section (2) has imposed another condition, "provided further that when witnesses are in attendance, no adjournment or postponement shall be granted without examining them, <u>except for special reasons to be recorded in writing."</u> (emphasis supplied)

12. Thus, the legal position is that once examination of witnesses started the court has to continue the trial from day to day until all witnesses in attendance have been examined (except those whom the party has given up). The court has to record reasons for deviating from the said course. Even that is forbidden when witnesses are present in court, as the requirement then is that the court has to examine them. Only if there are "special reasons", which reasons should find a place in the order for adjournment, that alone can confer jurisdiction on the court to adjourn the case without examination of witnesses who are present in court.

13. Now, we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with immunity. Even when witnesses are present cases are adjourned on far less serious reasons or even on flippant grounds. Adjournments are granted even in such situations on the mere asking for it. Quite often such adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has

frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a "special reason" for bypassing the mandate of Section 309 of the Code.

14. If any court finds that the day to day examination of witnesses mandated by the legislature cannot be complied with due to the non co-operation of accused or his counsel the court can adopt any of the measures indicated in the sub-section i.e. remanding the accused to custody or imposing cost on the party who wants such adjournments (the cost must be commensurate with the loss suffered by the witnesses, including the expenses to attend the court). Another option is, when the accused is absent and the witness is present to be examined, the court can cancel his bail, if he is on bail (unless an application is made on his behalf seeking permission for his counsel to proceed to examine the witnesses present even in his absence provided the accused gives an undertaking in writing that he would not dispute his identity as the particular accused in the case.)

15. The time frame suggested by ta three-Judge Bench of this court in **Rajdeo Sharma vs. State of Bihar** MANU/SC/0640/1998 is partly in consideration of the legislative mandate contained in Section 309(1) of the Code. This is what the Bench said on that score:

"The Code of Criminal Procedure is comprehensive enough to enable the Magistrate to close the prosecution if the prosecution is unable to produce its witnesses in spite of repeated opportunities. Section 309(1) Cr.P.C. supports the above view as it enjoins expeditious holding of the proceedings and continuous examination of witnesses from day to day. The section also provides for recording reasons for adjourning the case beyond the following day."

16. In **Rajdeo Sharma (II) vs. State of Bihar** {1999 (7) SCC 504} this Court pointed out that the trial court cannot be permitted to flout the mandate of Parliament unless the court has very cogent and strong reasons and no court has permission to adjourn examination of witnesses who are in attendance beyond the next working day. A request has been made by this Court to all the High Courts to remind all the trial judges of the need to comply with Section 309 of the Code. The request is in the following terms:

"We request every High Court to remind the trial judges through a circular, of the need to comply with Section 309 of the Code in letter and spirit. We also request the High Court concerned to take note of the conduct of any particular trial judge who violates the above legislative mandate and to adopt such administrative action against the delinquent judicial officer as the law permits."

17. We believe, hopefully, that the High Courts would have issued the circular desired by the apex court as per the said judgement. If the insistence made by the Parliament through Section 309 of the Code can be adhered to by the trial courts there is every chance of the parties co-operating with the courts for achieving the desired objects and it would relieve the agony which witnesses summoned are now suffering on account of their non-examination for days.

18. It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools, is the only answer to those indolent judicial officers who find fault with the defects in the system and the imperfections of the existing infrastructure for his tardiness in coping up with such directions.

19. In some states a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each sessions trial to be followed. Such schedule is fixed by the Court well in advance after ascertaining the convenience of the counsel on both sides. Summons or process would then be handed over to the Public Prosecutor incharge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day today. This is one method of complying with the mandates of the law. It is for the presiding officer of each court to chalk out any other methods, if any found

better, for complying with the legal provisions contained in Section 309 of the Code. Of course, the High Court can monitor, supervise and give directions, on the administration side, regarding measures to conform to the legislative insistence contained in the above section.

20. We have no doubt that in this case a miscarriage of justice has occasioned due to the failure of the trial court to comply with the mandatory directions contained in the Code. Criminal justice cannot be allowed to be defeated solely on account of inaction or lapses of the court in adhering to the mandates of law. When the State of UP moved the High Court of Allahabad, in this case, seeking leave to appeal, the above aspect should have been considered by the learned Judges and set right the grave miscarriage of justice occasioned on account of flouting the directions of law.

21. We, therefore, allow this appeal and set aside the order of the acquittal passed by the trial court. We direct the trial court to proceed with the further examination of PW-1 and examination of other witnesses to whom the court should issue process if so requested by the prosecution. (It is open to the prosecution to produce such witnesses without bothering the Court to issue summons to them). The case shall be disposed of after taking all the remaining steps, in accordance with law.

22. This appeal is disposed of in the above terms.