

(2008) 12 AHC CK 0424

Allahabad High Court

Case No: Criminal M.B.A. No. 17890 of 2006

Gulshad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 5, 2008**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 439
- Penal Code, 1860 (IPC) - Section 302, 307, 452, 504, 506

Citation: (2009) 1 ACR 655**Hon'ble Judges:** Ravindra Singh, J**Bench:** Single Bench**Advocate:** Satish Trivedi, Imran Ullah, Kamla Singh and S.P. Tiwari, for the Appellant;
Jagdish Singh Sengar and A.G.A., for the Respondent**Final Decision:** Disposed Of

Judgement

Ravindra Singh, J.

This application has been filed by the applicant-Gulshad with a prayer that he may be released on bail in Case Crime No. 174 of 2005 under Sections 452, 307, 504, 506 and 302, I.P.C., P. S. Kokhraj, district Kaushambi.

2. The facts in brief of this case are that the F.I.R. of this case has been lodged by Anwar Ahmad on 19.6.2005 at 9.30 a.m. in respect of the incident which had occurred on 19.6.2005 at about 9 a.m. It is alleged that co-accused Irshad had taken the loan from the Bank in the name of Ilias, the younger brother of the deceased Mohd. Ayub, on account of this dispute there was tension in both the parties consequently the applicant and co-accused discharged the shots by their country made pistol and licensed gun at the deceased Mohd. Ayub consequently he sustained gun shot injuries. The deceased Baby alias Tavassum the daughter of the deceased Mohd. Ayub came in rescue, she also sustained gun shot injuries. The F.I.R. was lodged under Sections 452, 307, 504, 506 and 302, I.P.C. but on the same

day of the alleged incident both the injured Ayub and Baby alias Tavassum succumbed to their injuries. According to the post-mortem examination reports the deceased Mohd. Ayub had sustained two gun shot wound of entries having two gun shot wound of exit and the deceased Baby alias Tavassum had also sustained two gun shot wound of entry having two gun shot wounds of exit. The statement of both the deceased were recorded u/s 161, Cr. P.C., they also made the allegation of firing against the applicant and co-accused Irshad. It is alleged that the applicant was armed with country made pistol and the co-accused Irshad was armed with licensed gun.

3. Heard, Sri Satish Trivedi, senior advocate assisted by Sri Imran Ullah, learned Counsel for the applicant and learned A.G.A. for the State of U. P. and Sri J. S. Sengar, learned Counsel for the complainant.

4. It is contended by learned Counsel for the applicant that the prosecution story is fully concocted and highly improbable. The presence of the first informant and other witnesses at the alleged place of occurrence was highly doubtful. The statement of the deceased persons were recorded u/s 161, Cr. P.C. whereas according to the injuries sustained by them it was not possible to them to narrate the story as recorded by the Investigating Officer in their statements recorded u/s 161, Cr. P.C. which shows that the investigation was not fair and there was no eye-witness to support the prosecution story. The applicant is in jail since 26.6.2005. He was having no criminal antecedent.

5. It is further contended that there are material contradictions in the statements of the witnesses recorded by the trial court even the statements of the witnesses P.W. 1, P.W. 2, P.W. 3 and P.W. 6 have been tampered so that the applicant may be convicted because according to their original statements there was a least chance of conviction of the applicant, therefore, deliberately the tampering with the original statements of the witnesses has been done in the court of learned Sessions Judge, Kaushambi where the trial was pending.

6. In reply of the above contention it is submitted by learned A.G.A. and learned Counsel for the complainant that in the present case the F.I.R. has been promptly lodged, it is broad day light incident. The specific role of firing is assigned to the applicant and co-accused. In this case two persons have lost their lives and both the deceased had sustained gun shot injuries but the tampering has been done with the original record of this case in the court of learned Sessions Judge, Kaushambi which is shocking, even then the learned Sessions Judge did not take any action for such tampering and deliberately transferred the case to Court of F.T.C.-1 so that on the basis of tampered record the case may be decided and it's benefit may be given to the accused persons. In this case all the witnesses have been examined and under the direction of this Court the genuine record has been re-constructed with the approval of both the parties, therefore, the applicant may not be released on bail.

7. Considering the facts and circumstances of the case and submission made by learned Counsel for the applicant, learned A.G.A. and learned Counsel for the complainant it appears that the allegation is that the applicant and co-accused Irshad discharged the shots by country made pistol and licensed gun consequently two persons sustained gun shot injuries whose statements u/s 161, Cr. P.C. have been recorded who supported the prosecution story but they succumbed to their injuries. The alleged incident is of broad day light, the F.I.R. of this case has been promptly lodged. The record has been reconstructed and all the witnesses have been examined, the trial is at its conclusion. There is no good ground for releasing the applicant on bail, therefore, the prayer for releasing the applicant on bail is refused.

8. The statement of the witnesses which were tampered have been reconstructed, thereafter, the trial court has proceeded further therefore, the interim order dated 19.10.2006 by which it was directed that the judgment of this Court shall not be delivered is hereby vacated. The learned Sessions Judge, shall proceed further in S.T. No. 190 of 2005 and shall deliver the judgment of this case in accordance with the provisions of law.

9. After refusing bail to the applicant, it is necessary to deal with the issue of tampering and forgery which has taken place in the present case. During arguments it was revealed that the statement of P.W. 3 has changed in the trial court subsequently it was found that the original statements of the witnesses P.W. 1, P.W. 2, P.W. 3 and P.W. 6 were changed by way of adding some words and sentences, overwriting and evasion in S.T. No. 190 of 2005 pending in the Court of Shri Ashok Kumar Srivastava, Sessions Judge, Kaushambi. At the stage of the hearing of the bail application the certified copy of statement of P.W. 3 has been filed by the counsel for the applicant and photo stat copy of the statement of P.W. 3 has been filed by the counsel for the complainant but both were not same then it came to the notice of the Court that some tampering has been done with the statement of the witness or forged copies have been filed, to verify the same this Court has passed the order dated 7.9.2006 directing the learned Session Judge, Kaushambi to examine the statement of P.W. 3 and to submit the report on or before 18.9.2006. Sri Ashok Srivastava, learned Sessions Judge, Kaushambi has sent his report dated 12.9.2006 in which it was mentioned that S.T. No. 190 of 2005 was transferred to the court of learned Additional Sessions Judge/F.T.C. No. 1, Kaushambi where it was pending and it has been reported that the tampering has been done with the original statement of P.W. 3 for which the inquiry has been initiated. Considering the report of learned Session Judge, Kaushambi and seriousness of the matter this Court has passed the order dated 19.10.2006, directing the learned Sessions Judge inquiring into the matter thoroughly and to submit the report within one month and after inquiry the criminal proceeding shall be initiated against the persons involved in tampering with the original record and it was also directed that the Session Trial No. 190 of 2005 shall be withdrawn from the court of learned Additional Sessions Judge/F.T.C.

No. 1, Kaushambi to the court of Sessions Judge and the trial shall be done by learned District and Session Judge, Kaushambi. The learned Session Judge, Kaushambi was directed to explain the circumstances in which the part heard matter which was serious in nature was transferred to court of learned Additional Sessions Judge/F.T.C. No. 1, Kaushambi knowing it well that tampering has been done with the original record and directed not to deliver the judgment of this case till further order of this Court, in pursuance of the order dated 19.10.2006, Sri Ashok Srivastava then learned District and Sessions Judge, Kaushambi has sent his explanation and enquiry report dated 16.11.2006 mentioning therein that the Session Trial No. 190 of 2005 has been recalled from the court of F.T.C. No. 1 to the court of learned Sessions Judge, it was at the stage of 313, Cr. P.C., the tampering has been done with the statement of P.W. 1, P.W.2, P.W. 3 and P.W. 6 in the original record. On administrative side the sessions trial of this case was transferred to the court of F.T.C. No. I on 18.8.2006 by that time he was not having any information about the tampering with the record, first time he came to know on 8.9.2006 when he received a copy of the order dated 7.9.2006, passed by this Court through fax message. It has also been mentioned that he was not able to provide sufficient time for session trials on account of administrative work and some other reasons. This case was to be decided within a period of six months as directed by the High Court vide order dated 22.11.2005, at that time he was having 3 sessions trial including the sessions trial of the present case, in which there was direction of the High Court to conclude the proceedings within stipulated period.

10. It is also reported that he took over the charge of Sessions Judge in the first week of March, 2006 he came to know that three session trial including the trial of the present case were to be decided within a stipulated period as directed by this Court but half of the period was passed, therefore, for making compliance of the order of this Court, the sessions trial of this case was transferred to the court of F.T.C. No. I, whereas he had recorded the statements of 7 prosecution witnesses, the sessions trial of this case was transferred to the court of F.T.C. No. I on 18.8.2006. The learned Sessions Judge, Kaushambi has stated in inquiry report that the record of this case has remained in the hands of five officials and during enquiry no such evidence came forward to hold the guilt of any official and it was not possible to take action against any official on the basis of suspicion because mere suspicion cannot be evidence against any employee."

11. After considering the explanation given by Sri Ashok Kumar Srivastava, Sessions Judge, Kaushambi, and the inquiry report submitted by him, this Court was not satisfied with the explanation and the inquiry report submitted by the learned Sessions Judge, Kaushambi because the issue of tampering with the record of a murder case was very serious in nature, it was a shocking incident which had occurred in the court of Sessions Judge, Kaushambi, being the District and Sessions Judge, he was the head of Kaushambi Judgeship, he was under obligation to take strict action as soon as he came to know that such forgery has been committed in

the Court itself and the statement of P.W. 1, P.W. 2, P.W. 3 and P.W. 6 have been changed by way of adding some words and sentences, overwriting and erasion, but the learned Sessions Judge did not take any positive action against the persons who committed this offence even the learned Sessions Judge did not consider the gravity of the order dated 19.10.2006, passed by this Court by which it was directed that the learned Sessions Judge shall hold an inquiry and Sessions Trial No. 190 of 2005 transferred to the court of learned Additional Sessions Judge/F.T.C. No. I, Kaushambi was recalled and he was directed to explain as to why a part heard matter was transferred to the court of F.T.C. No. I, Kaushambi. The learned Sessions Judge, Kaushambi did the formality of conducting the inquiry and without fixing the liability of any person and reported that on the basis of suspicion no liability can be fixed such inquiry report was not expected to be submitted by a responsible officer. The learned Sessions Judge was directed to initiate the criminal proceedings also after inquiry but at a belated stage formality of lodging the F.I.R. against five unknown persons of the Court was done on 27.11.2006 but after lodging that F.I.R. the Investigating Officer of that Case Crime No. 222 of 2006 under Sections 218, 219 and 466, I.P.C., P. S. Manjhanpur district Kaushambi also did not take any interest in the investigation, after lodging the F.I.R. on 27.11.2006 next parcha of the case diary was written by the Investigating Officer on 19.12.2006. Surprisingly the Investigating Officer recorded the statement of the first informant on 10.1.2007 when he was directed vide order dated 8.1.2007 to appear before this Court on 10.1.2007, the Investigating Officer of this case was not taking any interest in doing investigation of this case, therefore, S. P., Kaushambi and S.H.O., Manjhanpur were also summoned to ensure the proper investigation, thereafter the Investigating Officer of this case concluded the investigation and submitted the charge-sheet against six persons namely Dinesh Chandra Srivastava, the Munsarim of District and Sessions Judge, Ramendra Kumar Dwivedi, the Sessions Clerk of the Sessions Judge, Munnu alias Javed and Ashok Kumar Verma, D.G.C. (Criminal) Ram Harsh Verma, advocate, Meraj Ahmad, which shows that Sri Ashok Kumar Srivastava the then District and Sessions Judge, Kaushambi, was trying to close the chapter submitting the report that no action may be taken against any officer on the basis of suspicion whereas Munsarim and Sessions Clerk, D.G.C. (Criminal) working in his Court have been charge-sheeted subsequently, when this Court took a very serious note of this issue. The learned District and Sessions Judge, Kaushambi deliberately did not take any action against the officials of his Court and person involved in the commission of this crime, even he did not discharge his legal obligation by way of lodging the F.I.R. etc. suo motu immediately when he came to know that forgery has been committed in his Court, the conduct of the learned Sessions Judge was also unusual when he transferred the session trial of this Court after recording the statement of 7 witnesses to the Court of F.T.C. No. I, the explanation given by the learned Sessions Judge for transferring this case to the court of F.T.C. at the pretext that there was an order of the High Court to conclude the proceedings of this case within six months, appears to be skin saving because the date on which this case was transferred to

the court of F.T.C. No. I the period of six month was expired, it has not been reported by the learned Sessions Judge that in two other cases it was also directed to conclude the proceedings within a stipulated period have been transferred to another Court. It appears that Sessions Judge was having knowledge that the record had been tampered with and by way of transferring the case to the court of F.T.C. No. I, it was intended to decide the case on the basis of tampered record, co-incidentally, it has been noticed by this Court that forgery has been committed in the record of the Sessions trial, if this Court would not have taken cognizance of this forgery, great injustice would have been done, in deciding the case on the basis of tampered evidence. The learned Sessions Judge, Kaushambi has tried to save the skin of the delinquent persons (wrongdoers) whereas it was expected from the District and Sessions Judge, Kaushambi to take prompt action against the persons who were involved in the commission of the offence. The F.I.R. was lodged on 27.11.2006 at P. S. Manjhanpur but after lodging the F.I.R. the investigation was not initiated, when this Court took strong view and summoned the S.H.O., Manjhanpur on 8.1.2007 then the statement of the first informant was recorded on 10.1.2007 even thereafter, Investigating Officer was not interested in doing proper investigation when this Court has taken a serious view the Investigating Officer proceeded further took the action against the accused person which shows that under the pressure of the District and Sessions Judge, Kaushambi the investigation of this case was held up because the F.I.R. was lodged against five employee of the judgeship. It is an incident by which the root of criminal justice has been shaken, the conduct of the then District and Sessions Judge, Kaushambi is highly deplorable, he had failed to perform his legal obligation, it is a matter in which stern action is required to be taken against Sri Ashok Kumar Srivastava, the then District and Sessions Judge, Kaushambi, therefore, this matter may be placed before the Hon"ble the Chief Justice forthwith for passing necessary order to take action against him by way of initiating the departmental proceedings in view of the above mentioned circumstances.

12. In view of the above discussion and recommendations this application is finally disposed of.

13. The office is directed to communicate a copy of this order to the learned Sessions Judge, Kaushambi for delivering the judgment of S.T. No. 190 of 2005, in accordance with law.