

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 184 OF 2020
SPECIAL LEAVE PETITION (CRL) NO. 8087 OF 2019

ASIM @ MUNMUN @ ASIF ABDULKARIM SOLANKI .. Appellant (s)

Versus

THE STATE OF GUJARAT .. Respondent(s)

O R D E R

Leave granted.

The Appellant was convicted for an offence under Section 302 read with Section 34 and Section 114 of the Indian Penal Code ('IPC') apart from Section 35 of the Gujarat Police Act, 1951. He was sentenced to life imprisonment under Section 302. Aggrieved by the conviction and sentence, the Appellant filed a criminal appeal before the High Court of Gujarat at Ahmedabad. The Appellant filed an application under Section 391 of the Code of Criminal Procedure (Cr.P.C.) seeking permission to produce additional evidence to substantiate his plea of *alibi*. The said application was opposed by the State. By an Order dated 10.4.2019, the High Court disposed of the application by observing

that the Appellant is at liberty to submit an appropriate application at the time when the appeal is finally heard. The High Court relied upon the judgment of this Court reported in *Union of India versus Ibrahim Uddin* [2012 (8) SCC 148] to hold that the application for taking additional evidence on record should be heard at the time of final hearing of the appeal. The judgment of this Court pertains to an application filed under Order XLI Rule 27 of the Code of Civil Procedure ('CPC') for adducing additional evidence. The application filed by the Appellant in this case is under Section 391 of the Cr.P.C., which empowers the Appellate Court to either take evidence by itself or direct the evidence to be taken by a Magistrate or a Court of Session, if it is satisfied that the additional evidence is necessary, after recording reasons. Ms. Aastha Mehta, learned counsel appearing for the State of Gujarat submitted that the High Court was right in holding that the application under Section 391 Cr.P.C. requires to be decided when the appeal is finally heard.

Section 391 of the Cr.P.C. does not impose any restriction as to when the application filed for adducing additional evidence should be heard by the High Court. In fact, we are of the opinion that it is desirable that an application filed under Section 391 should be heard immediately after it is filed without waiting for the appeal to be finally heard.

Without making any observation on the merits of the case or the application filed under Section 391, we request the High Court to hear the application under Section 391 at the earliest.

The order passed by the High Court is set aside. The appeal is allowed.

Pending application(s) shall stand disposed of.

.....J.
(L. NAGESWARA RAO)

.....J.
(DEEPAK GUPTA)

New Delhi,
Dated: January 28, 2020

ITEM NO.18

COURT NO.9

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) No(s).8087/2019

(Arising out of impugned final judgment and order dated 10-04-2019 in CRLMA No. 7/2019 passed by the High Court Of Gujarat At Ahmedabad)

ASIM @ MUNMUN @ ASIF ABDULKARIM SOLANKI

Petitioner(s)

VERSUS

THE STATE OF GUJARAT

Respondent(s)

(IA No. 129276/2019 - EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT

IA No. 129277/2019 - EXEMPTION FROM FILING O.T.

IA No. 133049/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 28-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE L. NAGESWARA RAO

HON'BLE MR. JUSTICE DEEPAK GUPTA

For Petitioner(s) Ms. Vibha Datta Makhija, Sr. Adv.
Mr. Manoj K. Mishra, AOR
Mr. Umesh Dubey, Adv.
Mr. Jyoti Mishra, Adv.
Mr. Pravin Gaur, Adv.

For Respondent(s) Ms. Aastha Mehta, Adv.
Ms. Vishakha, Adv.
Mr. Aniruddha P. Mayee, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the Signed Order.

Pending application(s) shall stand disposed of.

(GEETA AHUJA)
COURT MASTER (SH)

(ANAND PRAKASH)
BRANCH OFFICER

(The Signed Order is placed on the file)