

DABARE
vs
REPUBLIC OF SRI LANKA

COURT OF APPEAL
SISIRA DE ABREW. J
ABEYRATNE. J
CA 111/2006
HC COLOMBO 231/99
MAY 04, 2009

Criminal Procedure Code - Section 203 - Failure to comply - Does it affect the conviction? - Provisions are they mandatory? - Duty of trial Judge to deliver judgment?

The appellant was convicted for being in possession of heroin. The case was concluded on 7.6.2006, judgment was put off for 1.8.2006, but after two postponements judgment was delivered on 30.11.2006. The appellant contended that the trial Judge failed to comply with Section 203.

Held:

The provisions of Section 203 are directory and not mandatory. This is a procedural obligation that has been imposed upon the Court and its non compliance would not affect the individuals rights unless such non compliance occasions a failure of justice.

Per Sisira de Abrew. J.

“Courts below cannot use this judgment as an authority to refrain from delivering the judgments within the time period in Section 203, one should not forget that after the close of the defence case, the accused is generally remanded till the delivery of judgment. Thus when the judgment reserved is put off without reasons the accused would continue to be in the custody of remand without reasons. It is the duty of the trial judge to deliver his judgment within the time period stipulated in Section 203 - failure to comply with Section 203 or postponing judgments with out reasonable grounds would lead to erosion of public confidence in the judicial system and would lead to laws delay”.

APPEAL from the judgment of the High Court, Colombo.

Case referred to:-

Anura Shantha Silva vs. A. G. 1999 1 Sri LR 299

Dr. Ranjith Fernando for accused-appellant

Rohantha Abeysuriya DSG for Attorney General

cur.adv.vult

June 5, 2009

SISIRA DE ABREW J.

The accused appellant in this case was convicted for being in possession of 25.7 grams of heroin. The learned trial Judge sentenced the appellant to life imprisonment. This appeal is against the said conviction and the sentence.

The only ground urged by the learned counsel for the appellant is that the learned trial Judge failed to comply with section 203 of the Criminal Procedure Code (CPC). The case was concluded on 7.6.2006 and the judgment was put off for 1.8.2006. The case was not called on 1.8.2006. On 29.9.2006 and 10.10.2006 the case was called but the judgment was not delivered. The learned trial Judge delivered the judgment on 30.11.2006. It is therefore clear that the judgment was not delivered within the period stipulated in Section 203 of the CPC.

The important question that must be decided is whether the failure to comply with Section 203 of the CPC would affect the conviction. In *Anura Shantha Silva vs A.G*⁽¹⁾ His Lordship Justice De Silva held: "The provisions of Section 203 of the Code are directory and not mandatory. This is a procedural obligation that has been imposed upon the Court and its non compliance would not affect the individual's rights unless such non compliance occasions a failure of justice."

According to the facts of this case when IP Liyanage attached to the Police Narcotic Bureau arrested the appellant, who was having a parcel containing heroin, when he came out of his house. His evidence was corroborated by PS Senarathne. Learned Counsel did not challenge the evidence of the prosecution. I have gone through the evidence of the case and am of the opinion that the case has been proved beyond reasonable doubt. When the case has been proved beyond reasonable doubt, failure to comply with Section 203 of the CPC would not affect the conviction. I therefore hold that non compliance of Section 203 has not occasioned a failure of justice. I would like to state here that the courts below cannot use this judgment as an authority to refrain from delivering their judgments within the time period specified in Section 203 of the CPC. One should not forget that after the close of the defence case the accused is generally remanded till the delivery of the judgment. Thus when the judgment reserved is put off without stating reasons, the accused would continue to be in the custody of remand without reasons. It is the duty of the trial judge to deliver his judgment within the time period stipulated in Section 203 of the CPC. If he can't do so, he must state his reasons for his inability and should deliver it within a reasonable time. The superior Court can then examine the reasons and decide whether his inability is justified or not. Failure to comply with Section 203 of the CPC or postponing judgments without reasonable grounds would lead to erosion of public confidence in the judicial system and also would lead to laws delay.

As I pointed out earlier, non compliance of Section 203 of the CPC in the instant case has not occasioned a failure of justice. For the aforementioned reasons, I upholding the conviction and the sentence of the accused appellant, dismiss this appeal.

ABEYRATHNE, J. - I agree.

Appeal dismissed.