

# SUPREME COURT OF INDIA

Khader

Vs.

State of Mysore

Crl.A.No. 24 of 1952

(M. Patanjali Sastri, C.J.I., B. K. Mukherjea, Vivian Bose, Ghulam Hasan And B. Jagannadhadas,  
JJ.)

30.04.1953

## JUDGEMENT

### **BOSE, J.:-**

1. This is an appeal arising out of convictions in four criminal cases which were tried under the Special Criminal Courts Act, 1942 (Act 24 of 1942). Special leave to appeal was granted by this Court but the leave was confined to the question of the validity of the Act and leave was only granted to the first, second, third, eleventh and fourteenth petitioners.

2. Now that we have heard counsel on both sides at length we consider it unnecessary to decide the constitutional points raised. We are of opinion that the convictions in which sentences for transportation and under have been awarded must in any event stand. That narrows the matter down to the second appellant's case, for he is the only one now under sentence of death.

3. The second appellant Nalband Abdul Rahiman was prosecuted in two cases. In one (criminal case No. 1 of 1948-49) he was convicted under S. 302, 304, Penal Code, and was sentenced to death He was also convicted in the same case under Ss. 333/34 and 326, Penal Code, and sentenced to ten years' rigorous imprisonment. On a reference to the Chief Justice of Mysore under s. 7 of the Act these convictions and sentences were upheld. In another case (criminal case No. 2 of 1948-49) he was convicted under S. 302 on one count and sentenced to transportation for life and was convicted under S. 148 on another count and sentenced to three years. These convictions and sentences were also upheld on review.

4. The first appellant Phylwan Abdul Khader was also sentenced to death by the Special Judge in criminal case No. 1 of 1948-49 but he was acquitted of the murder charge by the learned reviewing Judge. He was, however, sentenced to transportation for life in criminal case No. 2 of 1948-49 and that was upheld. He was also sentenced to ten years in case No. 1 on charges under Ss. 333/34 and 326 and in case No. 2 to seven years under S. 304 (1), to seven years under S. 326 and to three years under S. 148. These were all upheld on review.

5. We need not set out the convictions and sentences of the remaining appellants. It is enough to say that none of them has been sentenced to death.

6. We will first consider the cases of all the appellants (including the second) except where the

second appellant has been sentenced to death in criminal case No. 1 of 1948-49, that is to say, we will take up all those cases in which no sentence of death is outstanding.

7. The only question we have to decide is whether these convictions offend Art. 14 of the Constitution.

8. The Act under which these trials were held empowered the constitution of special Courts. It is not necessary for us to decide whether those trials would have been illegal after the Constitution. We will assume for the purposes of those cases, without deciding the point, that they would. But there is no doubt that the trials were valid before the Constitution and that the convictions in all those cases, which were decided on 5-10-49, were good in law.

9. Section 25 of the Act expressly takes away all rights of appeal and revision and states that-

"..... save as aforesaid, no Court shall have authority to revise such order or sentence . . . . . or have any jurisdiction of any kind in respect of any proceedings of any such Court."

The provisions "aforesaid" referred to are, so far as these cases are concerned, contained in S. 7 (a).

"If in any proceedings before a Special Judge

(a) a person convicted is sentenced to death or to transportation for life, or to imprisonment for a term of seven years or more.. ..

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the proceedings shall be submitted for review by a person nominated in this behalf by the Government, which person shall be chosen from the Judges of the High Court, and the decision of that person shall be final."

The cases were submitted at once, namely on 5-10-1949, the date of the convictions. The reviewing Judge was the Chief Justice of the Mysore High Court.

10. While the matters were still pending before the learned Chief Justice, the Constitution came into force. On that date, 26-1-1950, the sixty days allowed for appeal in ordinary criminal cases had elapsed. Therefore, but for this section the matter would have been finally concluded and no question about the applicability of Art. 14 could have arisen because the Article has no retrospective effect.

11. The argument, however, is that the trial must be regarded as a whole and that as the sentences of the Special Judge could not be given effect to until confirmed by the reviewing Judge, the proceedings must be taken to have continued. Reliance was placed upon *Piare Dusadh v. Emperor*, A. I. R. 1944 F. C. 1 at p. 12.

12. If this contention is correct, then the only conclusion which follows from it is that the proceedings before the reviewing Judge are ultra vires and may be ignored, but that would not confer any advantage upon the appellants at their right of appeal, if any, against the convictions and sentences of transportation for life and less had already become barred before the Constitution came into force and this fight could not be revived after the Constitution.

13. We turn next to the case in which the second appellant has been sentenced to death. This is sought to be placed on a different footing because it is said that even if it be granted that there was no right of appeal at the date of the Constitution others under sentence of death could claim confirmation of their sentence by two High Court Judges because of S. 374, Criminal P. C. Under S. 5 (2) of the Act the Special Judge is deemed to be a Court of Session, therefore looking to the substance of the position we have here a man who has been sentenced to death by a Court which was equivalent to a Court of Session. Under the general law no such sentence can be carried out till it is confirmed in the manner laid down by S. 374. Under S. 7 (a) of the Act the sentence of death passed by the trial Judge is no more final than it is under the Criminal Procedure Code. It requires confirmation on review. Therefore, in so far as the second appellant has been sentenced to death by a Court which is, for all practical purposes, equivalent to a Court of Session, and his sentence has been confirmed after the Constitution by only one Judge instead of two, there has been substantial discrimination.

14. We do not intend to decide this point because on the view we take it becomes academic whichever way the matter is viewed. If the appellant is right, his sentence and conviction would be set aside, but that would not entitle him to release because he has sentences of transportation and three years in one case and a sentence of ten years in another outstanding against him. On the other hand, if he were to fail in his contention, we would in any event reduce the sentence to transportation for life because of the three and a half years which have elapsed since his conviction. He was sentenced to death on 5-10-1949 and the sentence was not confirmed till 31-3-1951 and it is now April 1953. The appellant was in no way responsible for the long delay while the matter was awaiting review nor has he been responsible for the delay which has since occurred. In the circumstances, even if we were to uphold the conviction, we would have reduced the sentence. But that would not have given him his liberty. In the circumstances we do not intend to interfere with the conviction but will reduce the sentence of death without going into the constitutional points which were raised.

15. The appeal is dismissed as regards all the appellants but in the case of the second appellant Nalband Abdul Rahiman the sentence of death is reduced to one of transportation for life.

Order accordingly.

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