Vivian Rodrick

Vs

The State of West Bengal

Criminal Appeal No. 137 of 1970

(CJI S. M. Sikri, V. Bhargava, I. D. Dua JJ)

27.01.1971

JUDGMENT

SIKRI, C. J. -

In this case special leave was limited to the question of sentence only. The relevant facts for determining this point are as follows : The appellant Vivian Rodrick, was tried by the High Court of Calcutta, in exercise of its original jurisdiction having been committed to stand his trial by the Presidency Magistrate as early as July 31, 1963. The substance of the charges against the appellant were as follows -

> (i) that on January 13, 1963, the appellant was a member of an unlawful assembly guilty of rioting, being armed with deadly weapons and as such punishable under Section 148, I.P.C.;
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> (ii) that on January 13, 1963, the appellant committed the murder of one Vincent D'Rozaric and thereby committed an offence punishable under Section 302, I.P.C.; and
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> (iii) that on January 13, 1963, the appellant was in possession of explosive substances for unlawful object and thereby committed an offence under Section 5 of the Explosive Substances Act."

1. Four others persons, Stanley Rodrick, Ranjit Mandal, Simon Das and Ranjit Biswas were also tried jointly with the appellant and convicted under Section 302, read with Section 149, and also under Section 148, I.P.C. The jury returned a unanimous verdict of guilty against the appellant and on September 4, 1964, the Presiding Judge convicted the appellant under Section 302, I.P.C., and sentenced him to death. At the trial the appellant was also convicted for offences under Section 148, I.P. C., and Section 5 of the Explosive Substances Act, and sentenced to rigorous imprisonment for two years and three years respectively. The terms of imprisonment were directed to run concurrently.

2. The appellant filed a petition of appeal under Section 411-A, Cr.P.C., on September 7, 1964, challenging his conviction and the sentences imposed on him. The High Court, by its judgment, dated September 19, 1967, in Criminal Appeal No. 5 of 1964, confirmed the conviction and sentences imposed on the appellant. In considering the question of sentence the High Court observed that "the murder was a premeditated and cold-blooded one. There was not the slightest provocation from the side of the deceased. This is undoubtedly a fit case for capital punishment. No

question of showing any leniency on the ground of tenderness of age arises as the appellant is now aged about 35 years". It was urged before the High Court that the sentence of death should be reduced to rigorous imprisonment for life on account of the long delay that had taken place in hearing the appeal. Although the High Court regretted the delay and the consequent mental suffering undergone by the condemned prisoner, it felt that the "delay in executing the death sentence was not by itself a sufficient ground for which the Court should exercise its jurisdiction to commute the death sentence to one of imprisonment for life".

3. The appellant sought leave to appeal to this Court against the judgment of the High Court on October 21, 1967, and the same was refused on January 8, 1968. Having obtained special leave, the appellant filed an appeal to this Court (Criminal Appeal No. 190 of 1968). By its judgment, dated April 30, 1969, this Court set aside the judgment and order of the High Court, dated September 19, 1967, and remanded the appeal to the High Court for fresh disposal and hearing in accordance with law and in the light of the observations contained in this Court's judgment. This Court in its judgment in Criminal Appeal No. 190 of 1968 observed, regarding the four other co-accused, as follows :

> "Though the conviction was for an offence under Section 302, read with Section 149, I.P.C., curiously they were sentenced to varying terms of imprisonment, and none of them challenged their conviction in appeals."

4. On remand the appeal was again dismissed by the High Court on the February 6, 1970. Chakrabarti, J., with whom Amaresh Chandra Roy. J., agreed, again considered the question of sentence and held that although there had been a delay of more than five years in executing the death sentence that was not by itself sufficient ground for commuting the death sentence. The High Court referred to Nawab Singh v. The State of Uttar Pradesh (AIR 1954 SC 278 : 1954 Cri LJ 738.) and Piare Dusadh v. King Emperor. ((1944) FCR 61 : AIR 1944 FC 1.) As the High Court did not find any extenuating circumstances whatsoever that would justify its taking a lenient view in the matter, it left to the State Government to take a decision as to whether it should, on account of inordinate delay in executing the sentence, exercise its powers under Section 402, Cr.P.C.

5. The learned Counsel for the appellant contends that the matter should not have been left to the State Government. In Nawab Singh v. The State of Uttar Pradesh (supra), which has been referred to by the High Court in its judgment, dated February 6, 1970, it is observed :

> "It is true that in proper cases an inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it, but we desire to point out that this is no rule of law and is a matter primarily for consideration of the local Government. If the Court has to exercise a discretion in such matter, the other facts of such case would have to be taken into consideration. In the case before us, we find that the murder was a cruel and deliberate one and there was no extenuating circumstance whatsoever which would justify us in ordering a commutation of the death sentence."

6. It seems to us that the extremely excessive delay in the disposal of the case of the appellant would by itself be sufficient for imposing a lesser sentence of imprisonment for life under Section 302. Section 302, I.P.C. prescribes two alternate sentences, namely, death sentence or imprisonment for life, and when there has been inordinate delay in the disposal of the appeal by the High Court it seems to us that it is a relevant factor for the High Court to take into consideration for imposing the

lesser sentence. In this particular case, as pointed out above, the appellant was committed to trial by the Presidency Magistrate as early as July 31, 1963, and he was convicted by the Trial Judge on September 4, 1964. It is now January, 1971, and the appellant has been for more than six years under the fear of sentence of death. This must have caused him unimaginable mental agony. In our opinion it would be inhuman to make him suffer till the Government decides the matter on a mercy petition. We consider that this is now a fit case for awarding the sentence of imprisonment for life. Accordingly we accept the appeal, set aside the order of the High Court awarding death sentence and award a sentence of imprisonment for life. The sentences under Section 148, I.P.C., and Section 5 of the Explosive Substances Act and under Section 302, I.P.C., shall run concurrently.

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