

Dilip Kumar Sharma and Others

Vs

State of Madhya Pradesh

Criminal Appeal No. 188 of 1974

(Y. V. Chandrachud, P. N. Bhagwati R. S. Sarkaria JJ)

10.10.1975

JUDGMENT

CHANDRACHUD, J. -

1. Since this appeal by special leave is limited to the question of sentence, it would be enough to set out the facts bearing on the sentence.

2. The appellants, Dilip Kumar, Bharatsingh and Rohitsingh were tried by the Sessions Judge, Ujjain, for committing the murder of one Arun Bhargave. The learned Judge convicted Dilip Kumar under Section 302 Bharatsingh under Section 302 read with Section 34, Rohitsingh under Section 303 of the Penal Code and sentenced them to death. The High Court of Madhya Pradesh, Indore Bench, confirmed the conviction and sentence of Dilip Kumar and Rohitsingh. The conviction of Bharatsingh was also confirmed but the High Court reduced his sentence to imprisonment for life.

3. On May 3, 1974 this Court granted special leave to the appellants "limited to the question of application of Section 303 in the case of Rohitsingh and sentences in case of all". Counsel for the appellants urged that under this order Bharatsingh is entitled to challenge the sentence of life imprisonment imposed upon him by the High Court and since that cannot be done without challenging Bharatsingh's conviction under Section 302 read with Section 34, the order of conviction is also open to challenge in this appeal. There is no merit in this argument. Rohitsingh's case apart, the special leave petition filed by the appellants was not admitted on the question of conviction and leave was expressly restricted to the question of sentence only. Bharatsingh having been convicted under Section 302 read with Section 34, there is no scope for any argument as regards the sentence imposed on him. The minimum sentence for murder under Section 302 is imprisonment for life and that is the sentence which the High Court has imposed on Bharatsingh.

4. As regards Dilip Kumar, we see no reason to reduce the sentence of death imposed on him by the Sessions Court and confirmed by the High Court. On June 20, 1973 at 9 p.m. the deceased Arun Bhargava was sitting in front of a hotel in Ujjain. Bharatsingh and Rohitsingh caught hold of his arms from behind and Dilip Kumar stabbed him on the chest with a big knife. As a result of the injury, the pleura, the pericardium and the right ventricle of the heart were all cut. Dilip Kumar's conduct cannot be viewed with leniency and the High Court was right in confirming the death sentence passed by the Sessions Court. Motiveless murders are not necessarily acts of mad and unhinged people. Prosecution is often unable to collect satisfactory evidence on the motive behind the crime. That does not call for any leniency and indeed were this so, criminals would prefer, in order to reduce the gravity of their acts, to suppress the motive leading to the crime.

5. As regards Rohitsingh, the main question for consideration is whether his conviction under Section 303, Penal Code, is legal. If it is, the sentence of death has to be upheld because under Section 303,

Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.

The section leaves no discretion to award a lesser sentence than death.

6. One Prabhu was murdered on October 24, 1971 for which Rohitsingh was sentenced to lie imprisonment on May 18, 1972 in Sessions Case No. 5 do 1972. In appeal, Rohitsingh was acquitted by the Madhya Pradesh High Court, on February 27, 1974, being the very date on which the High Court pronounced its judgment in the instant case. The Sessions Court had no opinion in the matter of sentence because on January 24, 1974 when it found Rohitsingh guilty of the murder of Arun Bhargava in the instant case, he was "under sentence of imprisonment for life" imposed upon him on May 18, 1972 in Sessions Case No. 5 of 1972. But that position had undergone a material change when the High Court delivered its judgments in the instant case on February 27, 1974. Precisely that very day Rohitsingh's conviction and sentence for Prabhu's murder were set aside by the same Bench of the High Court. In fact, Rohitsingh's appeal arising out of Prabhu's murder was allowed by the High Court and immediately thereafter it took up for consideration the appeal arising out of Arun Bhargava's murder. Thus, when the High Court pronounced its judgment in the instant case holding Rohitsingh guilty of the murder of Arun Bhargava, Rohitsingh was not under the sentence of imprisonment for life. For the matter of that, he was not under any sentence save the sentence of death imposed on him for the murder of Arun Bhargava which was the subject-matter of appeal before the High Court.

7. Despite Rohitsingh's acquittal in the earlier case, the High Court convicted him under Section 303 of the Penal Code, on the view that the material date for deciding the application of Section 303 is the date on which the subsequent offence of murder is committed and not the date on which the trial or the appellate Court pronounces its judgment in respect of the subsequent offence. The subsequent offence, namely, the murder of Arun Bhargava was committed by Rohitsingh on June 20, 1973 and since on that date he was under a sentence of life imprisonment imposed on him on October 24, 1971 for Prabhu's murder, the High Court thought that it was inconsequential that at the time when it pronounced its judgment in the instant case the sentence of life imprisonment imposed in the earlier case had been set aside. According to the High Court :

On a plain construction of the provision, we are of the opinion that Section 303 of the Indian Penal Code is attracted to a case where a person having subsisting sentence of imprisonment for life commits a murder, that murder being committed when the sentence was in force, notwithstanding the fact that in a pending appeal the sentence is set aside subsequent to the commission of the crime.

We have to examine the correctness of this view.

8. Section 303 does not afford a clear enough clue to be solution of the problem raised by the High Court judgment. Its brief and pithy words do not throw sufficient light on whether the relevant date of deciding upon its applicability could be the date on which the proceeding in respect of the subsequent offence was decided finally. But considering the matter in all its ramifications, the view of the High Court appears to us difficult to sustain.

9. When a person who is sentenced to imprisonment for life commits a murder, the previous conviction assumes a graver proportion and becomes an aggravating circumstance. But the aggravation is on the assumption that the previous conviction is lawful and valid. An order of acquittal in regard to the previous offence wipes out the guilt and turpitude attaching to the previous conviction, for, the true implication of an acquittal is as if the offender did not commit the offence for which he was tried, no matter whether the acquittal is founded on benefit of doubt or rests upon an overall rejection of the prosecution case. The sequiter that the order of acquittal implies the innocence of the accused is not dependent upon the stage of the court proceeding at which the order was passed but it depends, plainly, upon the fact of acquittal itself. Therefore, if a court, whether of the first instance or otherwise, finds on the date on which it records its decision that the accused before it is no longer under a sentence of life imprisonment, it cannot under Section 303 sentence him to death. On the date when the subsequent offence of murder was committed, the accused might have been under a sentence of life imprisonment but such a sentence would cease to have existence in the eye of law if at any subsequent stage the conviction on which the sentence of life imprisonment is founded is set aside or the conviction is maintained but the sentence of life imprisonment is reduced to a lesser sentence. More than one offence in the Penal Code is punishable with life imprisonment and not all sections of the Code which provides for the sentence of life imprisonment make it obligatory to impose that sentence. For example, an offence under Section 304, Part I, or Section 326 is punishable with life imprisonment and the court of first instance may sentence the offender under those sections to life imprisonment. The higher court may set aside the conviction in its entirety and acquit the accused in which case there is no question of imposing any sentence; or it may maintain the conviction and reduce the sentence to a lesser term which under those sections is permissible. In either event, the offender would no longer be under a sentence of life imprisonment and no matter when that sentence is set aside or reduced, the court dealing with the proceeding relating to the subsequent offence of murder will have to take that circumstance into account. The date of murder, undoubtedly, has relevance but that is in the limited sense that the murder has to succeed, not precede, the offence for which the accused was sentenced to life imprisonment. This sequence is fixed by the pre-condition of Section 303 that a person under sentence of imprisonment for life must be found guilty of murder. But in between the date on which the subsequent offence of murder is committed and the proceeding in respect thereof is terminated, the sentence of life imprisonment founded upon the previous conviction may have been set aside, in which event, Section 303 would cease to have application.

10. It is a well-established proposition that a court seized of a proceeding must take into account event subsequent to the inception of that proceeding. That position is widely accepted in civil law and there is no reason why the principle should be extended to criminal proceedings with appropriate modifications. When on the conclusion of a sessions trial, the Sessions Judge finds the accused guilty of murder, he will have no option save to act under Section 303, if he finds that at the date of the offence the accused was under a sentence of life imprisonment for some other offence. The High Court, dealing with an appeal from the judgment of the Sessions Court, may find that the sentence of life imprisonment which was in operation on the date when the Sessions Court delivered its judgment has been, in the meanwhile, set aside by a higher court seized of the previous case. The High Court shall have to take the subsequent event of acquittal into consideration and by reason of that event Section 303 would cease to have application. It may so happen that this Court seized of an appeal against the High Court judgment may find when it records its own judgment that the sentence of the life imprisonment imposed by the trial Court but set aside by a higher court has been reimposed in a further proceeding. In that event, this Court shall have to proceed on the basis that at the time when the accused is alleged to have committed murder, he was under a sentence of

imprisonment for life. If the conviction for murder is upheld by this Court, Section 303 would come into play and the accused shall have to be sentenced to death.

11. The High Court thought that the words "Whoever . . . commits murder" in Section 303 indicate that the relevant point of time is the date of commission of the murder and not the date of conviction for murder. According to the High Court there was no warrant for substituting the words "Whoever . . . is convicted for murder", for the words "Whoever . . . commits murder". In taking this view the High Court overlooked the fundamental principle of criminal jurisprudence that an accused is to be presumed to be innocent until his guilt is established. "Whoever . . . commits murder" must mean "Whoever is proved to have committed murder" and not "Whoever is alleged to have committed murder". The proof of murder consists in the final judgment of conviction and therefore, until such a judgment is recorded it is impossible to predicate that the accused has committed murder.

12. The anomaly arising out of the view taken by the High Court may be demonstrated in reference to Section 75 of the Penal Code. Stated briefly, under that section if a person who is convicted of an offence therein mentioned is again found guilty of a similar offence, he is liable to enhanced punishment. It is true that Section 75 uses the words "Whoever having been convicted" but what is important is that for justifying the enhanced punishment, the court convicting the accused for the subsequent offence has to find that the previous conviction is in operation on the date of the subsequent conviction. If the previous conviction is in the meanwhile set aside, the accused would not be liable to enhanced punishment because on the date of the subsequent judgment it cannot be said that the accused has a previous conviction.

13. Thus, when Section 303 speaks of a person "under sentence of imprisonment for life" it means a person under an operative, executable sentence of imprisonment for life. A sentence once imposed but later set aside is not executable and therefore the court convicting an accused of murder cannot take such a sentence into account for imposing the sentence of death by the application of Section 303.

14. On merits, there is no justification for distinguishing the case of Rohitsingh from that of Bharatsingh. They played an identical role in the murder of Arun Bhargava and if Bharatsingh deserved a sentence of life imprisonment, so must Rohitsingh.

15. In the result we dismiss the appeals of Dilip Kumar and Bharatsingh and confirm the sentence of death imposed on Dilip Kumar and the sentence of life imprisonment imposed on Bharatsingh. We allow the appeal of Rohitsingh and reduce his sentence from death to imprisonment for life.

SARKARIA, J.

(concurring) - I have seen the judgment prepared by my learned brother Chandrachud, J. I agree that the appeals of Dilip Kumar and Bharatsingh be dismissed and their convictions and sentences be confirmed. I further agree that Section 303, Penal Code being not applicable to Rohitsingh's case, his sentence of death be commuted to imprisonment for life.

17. The case of Rohitsingh involves a question regarding the interpretation and scope of Section 303, Penal Code. In view of the importance of the question, I would like to state my own reasons.

18. The facts are given in full in the judgment of my learned brother and I need not repeat them.

19. Section 303, Penal Code runs as under :

Whoever being under sentence of imprisonment for life, commits murder shall be punished with death.

20. A bare reading of the section indubitably shows that the crucial point of time when the state of the accused person "being under sentence of life imprisonment", is to be considered, is when the murder in question is committed. On this point, the language of the section is crystal clear, and it means what it says. The real problem that has come to the surface in this case, is about, the scope and construction of the phrase, "being under sentence of life imprisonment". The key-word in this phrase is "sentence" which is capable of a strict as well as a broad interpretation. In the strict sense, the meaning and ambit of this word would be limited to a sentence which has become final, absolute and indivisible so far as judicial process is concerned. In a broad sense, it may also include a sentence which has not become final, but is being impeached or is still liable to be impeached by way of appeal or revision or other mode known to law. The case has thus resolved itself into the issue, as to which of these two constructions of the expression "sentence" comports best with reason and fair applicability of the section ?

21. The learned Judges of the High Court did not address themselves to this pivotal question. They simply assumed that the expression "sentence" is wide enough to include a sentence which is not even final and absolute, but is still being impugned in a pending appeal. Proceeding on this wrong assumption, the learned Judges posed the question as to what was the crucial point of time when such a sentence should be subsisting ? Thereafter, they answered it in these terms :

Thus on a plain construction of the provision we are of the opinion that Section 303 of the Indian Penal Code is attracted to a case where a person having subsisting sentence of imprisonment for life commits a murder, but murder being committed when the sentence was in force, notwithstanding the fact that in a pending appeal the sentence is set aside subsequent to the commission of the crime.

22. Section 303 makes murder by a life-convict punishable with death, with no alternative sentence. Once it is established that at the time of committing the murder, the prisoner was under a sentence of life imprisonment, the Court has no discretion but to award the sentence of death, notwithstanding the existence of mitigating circumstances which by normal judicial standards and modern notions of penology do not justify the imposition of the capital penalty. Viewed from this aspect, the section is Draconian in severity, relentless and inexorable in operation.

23. It is well settled that such a penal provision must be strictly construed; that is to say, in the absence of clear compelling language, the provision should not be given a wider interpretation, and

no case should be held to fall within which does not come within the reasonable interpretation of the statute. (M. V. Joshi v. M. U. Shimpi ((1961) 3 SCR 986, AIR 1961 SC 1494 : (1961) 2 Cri LJ 696))

If two constructions are possible upon the language of the statute, the Court must choose the one which is consistent with good sense and fairness, and eschew the other which makes its operation unduly oppressive, unjust or unreasonable, or which would lead to strange, inconsistent results or otherwise introduce an element of bewildering uncertainty and practical inconvenience in the working of the statute.

24. Considered in the light of these principles, the connotation of the expression "sentence" in the phrase "being under sentence of imprisonment for life" must be restricted to a sentence which is

final, conclusive and ultimate so far as the judicial remedies are concerned. A sentence of life imprisonment which at the time of the commission of the murder in question, is defeasible or capable of being, or liable to be voided, annulled or undone by way of appeal, revision or other judicial process known to law, is outside the purview of the phrase, "being under sentence of imprisonment for life" in Section 303.

25. The adoption of the wider interpretation of the expression, so as to include a sentence which is not final and ultimate in the judicial process but is still being impeached or is capable of being impeached and annulled by having recourse to judicial remedies available at law, would, in my opinion led to strange, unreasonable and unjust results. It would further introduce an element of disconcerting uncertainty in the application of the section and disturbing instability, unpredictability and contradiction in the administration of justice. In that view, the application of the section, it is feared, may become very much of a gamble. Courts must endeavour to avoid this reproach.

26. The point can be highlighted by taking an extreme illustration. Accordingly, I would modify the facts of the instant case, to make it such an illustration.

27. R is convicted and sentenced to imprisonment for life for the murder of X by the trial Court on January 1, 1970. He appeals against his conviction to the High Court. During the pendency of the appeal, R on January 10, 1970, commits the murder of Y. He is convicted by the trial Court for this murder but it is found that there are mitigating circumstances in the case which do not justify the imposition of the death penalty. Nevertheless, the court imposes the death penalty on the ground that Section 303 is attracted and makes a reference to the High Court for confirmation of the death sentence. R also appeals. R's appeal is dismissed but the reference is accepted and the sentence is confirmed by the High Court on April 10, 1970. R's special leave petition under Article 136 of the Constitution is also dismissed by the Supreme Court on July 10, 1970. For some reason or the other, - and it is not difficult to conceive such cases - R's appeal in X's murder case could not be disposed of by the High Court before January 9, 1971, on which date, the High Court accepts that appeal and acquits R with a clear finding that he had been falsely implicated in the murder of X.

28. Would not the invocation of Section 303 in such a situation lead to confusion, inconsistency and contradiction ? Would it not present a strange, unenviable spectacle where reasoned justice and law stand poles asunder mocking at each other ?

29. It is possible to suggest that the court awarding or confirming the death sentence in Y's murder case could avoid this anomalous situation in either of these ways : Firstly, it may postpone the trial/hearing or pronouncement of the sentence till the whole gamut of judicial process has been run and legal remedies are exhausted by R and the ultimate result is known in X's murder case. Secondly, it may pass a conditional sentence of death under Section 303 which in the event of the life sentence in X's murder case being set aside by a court in due course of law, would be deemed to have been converted into a sentence of imprisonment for life.

30. Postponement of the trial or pronouncement of the sentence till the happening of an event the ultimate shape of which is uncertain, is not desirable. Such a course is bound to cause inordinate delay and practical inconvenience in the disposal of the case. It will offend against the scheme of the Criminal Procedure Code and the Court Rules which require that murder cases and murder references should be disposed of with utmost expedition. There is no statutory provision in the Code of Criminal Procedure, authorising the court to postpone the proceedings or the trial till the accused has exhausted all his remedies upto the highest court and the ultimate result of the judicial process is

known. The second possible course would be manifestly illegal. It is clearly not permissible under the law.

31. The instant case also illustrate how illogical, queer and contradictory results may flow from a wider construction of the expression "sentence" for the purpose of Section 303. On one hand, the High Court accepted Rohits appeal, quashed his conviction and sentence and acquitted him of Prabhu's murder. On the other, inconsistently enough, it worked out the proposition, that despite his acquittal and the annulment of his sentence of life imprisonment, Rohit was at the time of committing Arun's murder, under a subsisting sentence of life imprisonment for the purpose of Section 303, and consequently, for that reason, and that reason alone, on this conviction for Arun's murder, they had no option but to sentence him to death. If I may say so with respect, this anomalous, incongruous and contradictory position into which the learned Judges of the High Court found themselves landed, could be avoided if they had not, at the threshold of their approach, taken it for granted that the expression "sentence" in the aforesaid phrase in Section 303, is wide enough to embrace not only a sentence which is final and conclusive but also one which is not so.

32. One wrong assumption led to another infirm deduction, viz., that an order of acquittal passed in appeal does not operate to obliterate a sentence with effect from the date on which it was originally awarded.

33. There is authority for the proposition that an order of acquittal, particularly one passed on merits, wipes off the conviction and sentence for all purposes, and as effectively as if it has never been passed. An order of acquittal annulling or avoiding a conviction operates from nativity. As Kelson puts it, "it is a true annulment, an annulment with retroactive force". So when the conviction of Rohit for Prabhu's murder was quashed, the High Court - to borrow the felicitous words of Krishna Iyer, J. - 'killed the conviction not then, but performed the formal obsequies of the order which had died at birth'.

34. I need not labour the point further. It has been lucidly brought out by my learned brother, Chandrachud, J. in his judgment. Moreover, in the view I take, - that the phrase "being under a sentence of imprisonment for life" takes in only that sentence of life imprisonment which, under the law, being the ultimate end product of the entire gamut of litigation fought in the hierarchy of courts, has become final, conclusive and indefeasible, and as such is not liable to be impugned, annulled or voided by further judicial action - further pursuit of this line of argument will be unnecessary, if not academic.

35. For the foregoing reasons, the death sentence awarded to Rohitsingh with the aid of Section 303, Penal Code, must be set aside. His conviction under Section 302/34, Penal Code for the murder of Arun shall stand and on that count he shall undergo imprisonment for life. Excepting this modification, his appeal is dismissed.

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