

Govind Ramji Jadhav

Vs

State of Maharashtra

Criminal Appeal No. 197 of 1990

(S. R. Pandian, K. Jayachandra Reddy JJ)

07.03.1990

JUDGMENT

S. RATNAVEL PANDIAN, J. -

1. Special leave granted.

2. The notice was issued on the special leave petition limited to the question whether the High Court had jurisdiction to enhance the sentence without issuing notice and affording to the appellant an opportunity of showing cause against such enhancement of the sentence, or in the absence of an appeal by the State for enhancement of sentence on the ground of inadequacy.

3. This appellant along with two others were convicted for murdering Kumari Mangala in furtherance of their common intention and causing disappearance of evidence of the said offence with the intention of screening themselves from legal punishment under Section 302 read with Section 34 IPC and under Section 201 read with Section 34 IPC respectively and sentenced to suffer imprisonment for life under the first count and to suffer rigorous imprisonment for a period of 3 years and to pay a fine of Rs. 2500 each with a default clause and directed both the substantive sentences to run concurrently.

4. They all prepared Criminal Appeal No. 284 of 1987 before the High Court of Bombay Bench at Aurangabad which set aside the conviction of all the convicted accused inclusive of this appellant under Section 302 read with Section 34 IPC and the conviction of other two under Section 201 read with Section 34 IPC but confirmed the conviction of this appellant under Section 201 IPC and enhanced the sentence to 7 years rigorous imprisonment.

5. The High Court neither issued notice to the appellant nor afforded him any opportunity of showing cause against the said enhancement while enhancing the sentence. Admittedly, there was no appeal by the State for enhancement of sentence under Section 377 CrPC or, the ground of its inadequacy.

6. 'Let punishment fit the crime' is one of the main objects of the sentencing policy. To achieve this object, the Code of Criminal Procedure empowers the High Court to enhance the sentence in appropriate cases where the sentence awarded by the subordinate courts is grossly inadequate or unconscionably lenient or 'flea-bite' or is not commensurate with the gravity of the offence. The High Court enjoys the power of enhancing the sentence either in exercise of its revisional jurisdiction under Section 397 read with Section 401 or in its appellate jurisdiction under Section 377 read with Section 386(c) of the Criminal Procedure Code (hereinafter referred to as the 'Code'

subject to the provisos (1) and (2) to Section 386 of the Code. It may be stated in this connection that it is permissible for the High Court while exercising its revisional jurisdiction under Section 397 read with Section 401 IPC to exercise the power of a court of appeal under Section 386(c) for enhancement of sentence.

7. This Court in *Bachan Singh v. State of Punjab* ((1979) 4 SCC 754 : 1980 SCC (Cri) 174 : (1980) 1 SCR 645) while dealing with the revisional powers of the High Court has ruled thus : (SCC pp. 756-57, paras 10 and 11)

".. In respect of the petition which was filed under Section 401 CrPC for the exercise of the High Court's power of revision, it was permissible for it to exercise the power of a court of appeal under Section 386 for enhancement of the sentence The High Court's power of revision in the case of any proceeding the record of which has been called for by it or which otherwise comes to its knowledge, has been stated in Section 401 CrPC to which reference has been made above. That includes the power conferred on a court of appeal under Section 386 to enhance or reduce the sentence."

8. Under Section 377(1) of the Code, the State Government in any case of conviction of a trial held by any court other than the High Court is empowered to direct the public prosecutor to present an appeal to the High Court against the sentence on the ground of its inadequacy. Under sub-section (2) of Section 377, the Central Government under the circumstances stated therein is empowered to direct the public prosecutor to present an appeal to the High Court for enhancement of sentence. Before the introduction of this Section 377 on the recommendation of the Law Commission in its 41st Report, any error in sentencing could be remedied only by the exercise of the revisional power of the High Court. However, the High Court notwithstanding the exercise of its powers under the appellate jurisdiction in an appeal preferred under Section 377 of the Code have powers to act suo motu to enhance the sentence in appropriate cases while exercising its revisional jurisdiction even in the absence of an appeal against the inadequacy of the sentence as provided under Section 377.

9. In *Nadir Khan v. State (Delhi Administration)* ((1975) 2 SCC 406 : 1975 SCC (Cri) 622) wherein a question was raised that the High Court, in revision under Section 401 CrPC has no jurisdiction or power to enhance the sentence in the absence of an appeal against the inadequacy of sentence under Section 377 Goswami J. characterised that question as an unmerited doubt on the undoubted jurisdiction of the High Court in acting suo motu in criminal revision in appropriate causes and said. "The attempt has to be nipped in the bud". Dealing with that question, he observed as follows : (SCC pp. 407-08, paras 4 and 5)

"It is well known and has been ever recognised that the High Court is not required to act in revision merely through a conduit application at the instance of an aggrieved party. The High Court as an effective instrument for administration of criminal justice keeps a constant vigil and wherever it finds that justice has suffered it takes upon itself as its bounden duty to suo motu act where there is flagrant abuse of the law. The character of the offence and the nature of disposal of a particular case by the subordinate court prompt remedial action on the part of the High Court for the ultimate social good of the community even though the State may be slow or silent in preferring an appeal provided for under the new code . The High Court in a given case of public importance e.g. in now too familiar cases of food adulteration, react to public concern over the problem and may act suo motu on perusal of newspaper reports disclosing imposition of grossly inadequate sentence upon such offenders.

This position was true and extant in the old Code of 1898 and this salutary power has not been denied by Parliament under the new Code has expressly given a right to the state under Section 377 CrPC to appeal against inadequacy of sentence which was not there under the old Code. That however does not exclude revisional jurisdiction of the High Court to act suo motu for enhancement of sentence in appropriate cases. What is an appropriate case has to be left to the discretion of the High Court.

Section 401 expressly preserves the power of the High Court by itself to call for the records without the intervention of another agency and has kept alive the ancient exercise of power when something extraordinary comes to the knowledge of the High Court. The provisions under Section 401 read with Section 386(c) (iii) CrPC are clearly supplemental to those under Section 377 whereby appeals are provided for against inadequacy of sentence at the instance of the State Government or Central Government, as the case may be."

10. See also *Lingala Vijay Kumar v. Public Prosecutor* ((1978) 4 SCC 196 : 1978 SCC (Cri) 579).

11. In *Surjit Singh v. State of Punjab* (1984 Supp SCC 518 : 1985 SCC (Cri) 90) the facts disclosed that the High Court while disposing an appeal preferred under Section 374 sub-section (2) enhanced the sentence by imposing additional sentence of a fine of Rs. 5000 with a default clause in addition to the sentence of life imprisonment inflicted by the trial court without issuing show cause notice and without affording an opportunity to be heard. This Court while allowing the appeal held thus (SCC p. 519 para 3)

"Rules of natural justice as also the prescribed procedure require that the sentence imposed on the accused cannot be enhanced without giving notice to the appellants and the opportunity to be heard on the proposed action."

12. In a recent judgment in *Sahab Singh v. State of Haryana* ((1990) 2 SCC 385 : 1990 SCC (Cri) 323 : JT (1990) 1 SC 303) it has been observed : (SCC p. 388, para 5)

If the High Court was minded to enhance the sentence the proper course was to exercise suo motu powers under Section 397 read with Section 401 of the Code by issuing notice of enhancement and hearing the convicts on the question of inadequacy of sentence. Without following such procedure, it was not open to the High Court in the appeal filed by the convicts to enhance the sentence by enhancing the fine. The High Court clearly acted without jurisdiction.

13. Section 386 of the Code deals with the power of the appellate court in disposing of an appeal preferred under Section 374 and also in case of an appeal under Section 377 or Section 378 of the Code.

14. Under Clause (b)(iii) of Section 386 the appellate court may in an appeal from a conviction with or without altering the finding alter the nature or the extent or the nature and extent, of the sentence, but not so as to enhance the same. Under clause (c)(iii) of Section 386, the appellate court may in an appeal for enhancement of sentence with or without altering the finding, alter the nature or the extent or the nature and extent, of the sentence so as to enhance or reduce the same.

15. From the above discussion, it is clear that the High Court both in exercise of its revisional jurisdiction under Section 397 read with Section 401 CrPC and its appellate jurisdiction under Section 377 read with Section 386(c) of CrPC in matters of enhancement of sentence should give

the accused a reasonable opportunity of showing cause against such enhancement as contemplated under the first proviso to Section 386 as well under sub section (3) of Section 377 of the Code. As pointed out in Surjit Singh case (1984 Supp SCC 518 : 1985 SCC (Cri) 90) the rules of natural justice as also the prescribed procedure require issuing of the notice to the appellant and affording an opportunity to be heard on the proposed action for enhancement of sentence.

16. In the backdrop of this legal position, we may revert to the case on hand. The High Court has enhanced the sentence unmindful of the relevant provisions of the Code of Criminal Procedure and also the rules of natural justice and by overstepping its jurisdiction adopted a leeway in enhancing the sentence from 3 years to 7 years for the conviction under Section 201 IPC which exercise of powers in violation of the prescribed procedure, is impermissible for the reasons stated albeit.

17. We, therefore, set aside the order of the High Court enhancing the sentence to 7 years and restore the order of the trial court inflicting the sentence of 3 years rigorous imprisonment and the fine of Rs. 2500 with the default clause.

18. The appeal is allowed to the extent herein indicated.

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