

Jaisi Ram Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-31-2002

Reported in : 2003(1)ALT(Cri)9; II(2002)DMC719

Judge : J.C. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 235(2)

Appeal No. : Criminal Misc. Application No. 4146 of 2002

Appellant : Jaisi Ram

Respondent : State of U.P.

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : R.K. Dwivedi, Adv.

Disposition : Application allowed

Judgement :

J.C. Gupta, J.

1. Heard Mr. R.K. Dwivedi for the appellant and the learned A.G.A. for the State.

2. This is an application for bail on behalf of appellant Jaisi Ram who has been convicted and sentenced to imprisonment for life under Section 304B, I.P.C. His earlier bail applications were rejected on the ground that the applicant is husband of deceased and his case is distinguishable from other convicts who have already been bailed out during the pendency of appeal.

3. Mr. Dwivedi, learned Counsel for the appellant submitted that the appellant is in jail for the last about ten years and his appeal has not been heard nor there is any chance of appeal being heard in near future. It was further submitted that the Trial Court has not assigned any special reasons for awarding imprisonment for life and that there has been no compliance of the provisions of Section 235(2), Cr.P.C. on the question of hearing on sentence.

4. Under Section 304B the maximum punishment provided is of imprisonment for life. However, this extreme punishment has to be awarded in rarest of rare cases and not in every case. For bringing a case within the category of 'rarest of rare' cases it is incumbent upon the Trial Court to assign satisfactory reasons. In the case of Hem Chand v. State of Haryana, 1 (1995) DMC 86 (SC)=IV (1994) CCR 814 (SC)=JT 1994 (6) SC 473, the Apex Court has held that awarding of extreme punishment of imprisonment of life should be in rare cases and not in every case pertaining to 'dowry death'. Learned Counsel for the applicant urged that the Trial Court in the instant case has not assigned any special or adequate reasons for awarding extreme punishment of imprisonment for life and as the appellant has already undergone a period of ten years' rigorous imprisonment he should now be released on bail.

5. The next submission of the learned Counsel for the appellant is that it is now well settled that provisions of Section 235(2), Cr.P.C. are mandatory which inter alia requires the Trial Court to give an opportunity of hearing to the accused on the question of sentence and this hearing is not confined to merely hearing of oral submission of the accused. In support of his submission, learned Counsel for the appellant has relied upon the decisions of the Apex Court in the case of Santa Singh v. State of Punjab, AIR 1976 SC 2385, and Allah Uddin Miyan v. State, 1989 AWC 911, wherein it was held that the provisions contained in Section

235(2), Cr.P.C. satisfies dual purpose, it satisfies the rule of natural justice by affording to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. The provision is clearly mandatory and should not be treated as a mere formality. Opportunity must be real and effective i.e. opportunity to the accused to place his antecedents, social and economic background mitigating and extenuating circumstances, etc., before the Court. The sentencing Court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggravating circumstances placed before the Court, it should pronounce the sentence.

6. It was argued by the learned A.G.A. that in the present case no request was made from the side of the accused to give him time to place on record evidence/material having a bearing on the question of sentence and, therefore, in this appeal the appellant cannot be allowed to urge that he has been prejudiced on account of non-compliance of Section 235(2), Cr.P.C. I find myself unable to agree with this submission of the learned A.G.A. As has been held by the Apex Court provisions contained in Section 235(2), Cr.P.C. are mandatory and it is the duty of the Court to apprise the accused of this valuable right which the law makers have given to him. Neither the judgment nor the record indicates that such opportunity as envisaged under Section 235(2), Cr.P.C. was afforded to the appellant. On the face of the record it can safely be said that the learned Sessions Judge gave a complete go-bye to this salutary provision as was introduced in the new Code of Criminal Procedure.

7. It could not be disputed that appellant is in jail for the last about ten years and his appeal has not been heard nor there is any likelihood of it being heard in near future. Thus on account of this long delay in hearing and disposal of appeal and also on account of the fact that there has been total disregard of the provisions of Section 235(2), Cr.P.C, this Court finds that it would be most unjust to keep appellant in jail any further.

8. In the circumstances and for the reasons stated above application of appellant is allowed and it is directed that pending appeal appellant Jaisi Ram shall be released on bail on his executing a personal bond in the sum of Rs. 50,000/- and on furnishing two sureties each in the like amount to the satisfaction of the Trial Court in Session Trial No. 33 of 1993, District Barabanki.

9. Realization of half of the fine shall also remain stayed until further orders.

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