

Sunil Kumar Vs. State of Jharkhand and ors.

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Court : Jharkhand

Decided On : Feb-21-2002

Reported in : 2002CriLJ2507; II(2002)DMC424

Judge : Vikramaditya Prasad, J.

Acts : [Constitution of India](#) - Article 226; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 167(2); [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 304 and 304B

Appeal No. : W.P. (Cr.) No. 237 of 2001

Appellant : Sunil Kumar

Respondent : State of Jharkhand and ors.

Advocate for Def. : Shamim Akhtar SC II and; A.K. Mishra, JC to SC II

Advocate for Pet/Ap. : Mihir Jha and; Manoj Tandon, Adv.

Disposition : Application allowed

Judgement :

Vikramaditya Prasad, J.

1. This writ application under Article 226 of the Constitution has been filed for quashing the order dated 29.3.2001 passed by the learned Addl. Chief Judicial

Magistrate, Jamtara, in G.R. Case No. 471 /2000 arising out of Jamtara (Mihijam) P.S. Case No. 193/2000 (S.T. No 348/2001), now pending in the Court of Sessions Judge, Jamtara, whereby and whereunder the application filed by the petitioner under Section 167(2), Cr. P.C. has been rejected.

2. Briefly stated, the petitioner is an accused in a case under Sections 304-B, 201/34, I.P.C. He surrendered in the Court below in the aforesaid case on 24.1.2001 and since then he is in jail. The charge-sheet in this case was filed on 21.4.2001 though his 60 days detention in jail had been completed on 26.3.2001. The petitioner had filed an application under Section 167(2), Cr. P.C. for his release on bail on 27.3.2001. The matter was heard on 27.3.2001 and 28.3.2001 and on 29.3.2001 the application of the petitioner dated 27.3.2001 was rejected.

3. The main ground for rejection was that the petitioner was an accused under Section 304-B, I.P.C. in which the prescribed punishment is imprisonment of not less than 7 years, but which may extend to imprisonment for life and consequently the learned Court below felt that the case of the petitioner fell under the purview of Section 167(2)(a)(i), Cr. P.C. and not under Section 167(2)(a)(ii), Cr. P.C. and in arriving at the said decision, learned Court below has relied on the decision reported in 1999 Cr. L.J. 2645.

4. The main question that has arisen for consideration in this writ application is 'whether, in cases of offences under Section 304B, I.P.C., where minimum punishment prescribed is not less than 7 years, the charge-sheet has to be submitted within a period of 60 days by the Investigating Agency from the date of surrender/ arrest and whether the accused becomes entitled to statutory bail in the event of failure in submission of the charge-sheet within that period'.

5. It is, in this connection, worthwhile to quote Section 167(2)(a)(i), Cr. P.C.:

'167(2)(a)(i) : Provided that-

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the

detention of the accused person in custody under this paragraph for a total period exceeding,

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii)

and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purpose of that Chapter.'

From a simple analysis of this provision, it appears that it includes the following categories of offences :

(a) offences punishable with death;

(b) offences punishable with life imprisonment or offences punishable with imprisonment for a term not less than 10 years.

6. The word 'punishable' has been used in the aforesaid section for the offence punishable with life imprisonment which comes within the mischief of this section. 'Punishable' in my opinion, does not mean that in all cases the convict must be punished with life sentence. Plainly and simply, it means that in suitable cases the offence is punishable with life imprisonment.

7. Section 304B(2), I.P.C., being apposite in this connection, is quoted below :

'304B(2). Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.'

The sentence prescribed for an offence under Section 304B, I.P.C., as stated above, is not less than 7 years, but it may extend to imprisonment for life. This means that the offence under Section 304B, I.P.C. is also punishable with life

imprisonment. It is not that in no case under Section 304B, I.P.C, punishment of life imprisonment cannot be awarded. Thus, the offence under Section 304B, I.P.C, notwithstanding the minimum sentence prescribed becomes an offence punishable with life imprisonment. It may be one view.

8. Yet, it can be examined from the other angle. The words, 'imprisonment of life or imprisonment for a term not less than 10 years' are separated by the word 'or' in the aforesaid Section 167(2)(a)(i), Cr. P.C. It means that either of these two conditions is required to be fulfilled for bringing an offence under its ambit. It may be another view.

9. Yet there may be a third view. As stated in paragraph 5, the offences under Section 167(2)(a)(i), Cr. P.C. do cover the offences punishable with death like offence of murder or offence under Section 31A of N.D. & PS. Act, 1985. In such offences, in the event of conviction the Court has no option, but to award the sentence of death, particularly in an offence under Section 31A of the N.D. & P.S. Act, where the only sentence prescribed is of death.

10. The other offence punishable with life imprisonment are the offences like one punishable under Section 311, I.P.C, where the sentence prescribed is pure and simple life imprisonment. This means, in such offences, as a legal compulsion, the Court has to award a sentence of life imprisonment pure and simple, not less, not more. No discretion has been left on the Court.

11. Third types of offences where the punishment is not less than a term of 10 years which automatically means that in such offences, the sentence may vary from minimum of 10 years to the maximum of life imprisonment and/or the period which may be prescribed, for example an offence under Section 27A of the N.D. & P.S. Act, which is punishable with an imprisonment for a term which shall not be less than 10 years, but which may extend to 20 years. In such cases, while awarding the sentence the Court, under an obligation, has to grant the minimum sentence of 10 years, but for passing a sentence above the 10 years, the Court may exercise its judicial discretion. It is further to be found that offences punishable with life imprisonment and the offences punishable with imprisonment for a term not less than 10 years are separated by a word 'or' in this section, This

means that both types of offences, i.e. punishable with life imprisonment or punishable with a minimum sentence of 10 years, have been put on equal footing. But this section does not clarify as to what will happen if the minimum sentence is not of 10 years, rather less than 10 years, in which cases, the imprisonment may extend to life.

12. Section 304B(2), I.P.C. reads as quoted above in para 7. This section does not exclusively provide that the offence punishable is with life imprisonment, as has been ordained in Section 311, I.P.C and, therefore, the law leaves a discretion on the Court whereas no such discretion is left to the Court when dealing with the offences under Section 311, I.P.C. as stated above. Thus, in a case under Section 304B, I.P.C, though the sentence may be not less than 7 years, it may not always go to the maximum limit, which may be even less than 10 years. Had the Legislature intended to include the offence in which sentence may extend to life imprisonment, then in that circumstances, in the aforesaid section, i.e. 167(2)(a)(i), Cr. P.C. would have been such, punishable with death, imprisonment for life or imprisonment which may extend to life or an imprisonment for a term of not less than 10 years. The sentence underlined has not been used by the Legislature.

13. In the aforesaid circumstances, the punishment which is to be awarded under Section 304B, I.P.C. and the sentences which are to be awarded under Section 27A of N.D. & P.S. Act are the nearest, which can be compared. Thus, in the cases under Section 27A of N.D. & P.S. Act, where the sentence is not less than 10 years and the sentences for an offence under Section 304B, I.P.C. in which sentence shall not be less than 7 years are not exactly equal to each other. If the offence punishable with a term not less than 10 years is placed on the one pan of the scale and the other offence which is punishable with sentence not less than 7 years is placed on the other pan of the scale, the pan of the scale will, due to the gravity of the weight over it, i.e. the offence punishable with a term not less than 10 years, tilt down and the other pan of the scale, due to lesser gravity of the minimum sentence punishable, will go up and this will distinguish the two types of offences of this category.

14. No doubt, though the offences under Section 304B, I.P.C. are very serious ones. Had the Legislature intended to put this offence within the mischief of Section 167(2)(a)(i), Cr. P.C., then it had two alternatives, either in place of 10 years as used in this section, it would have used 7 years or in Section 304B, I.P.C., in place of 7 years it had used the words 10 years but this was not the case. Had the intention of the Legislature been to bring this offence under Section 304B, I.P.C. and the offence like this out of the mischief of Section 167(2)(a)(i), Cr. P.C., then in addition to the phrase imprisonment for life, imprisonment which may extend to life would also have been used. But all these circumstances are wanting.

15. Thus, the result of this analysis is that though the offence under Section 304B, I.P.C. may extend to life, but it cannot be an imprisonment for life as ordained for the offence under Section 311, I.P.C. Though the minimum sentence may not be less than 7 years, but it cannot be equated with those offences for which minimum sentence prescribed is 10 years.

16. Now considering three views, it appears to mean that the preceding view i.e. the third view, in the circumstances of the situation, brings the offences under Section 304B, I.P.C. out of mischief of Section 167(2)(a)(i), Cr. P.C. and lands it under Section 167(2)(a)(ii), Cr. P.C. Thus, the result in this case is that in the cases under Section 304B, I.P.C, investigation has to be completed within 60 days from the date of arrest/surrender of the accused and if the charge-sheet is not submitted then the accused becomes entitled to statutory bail under Section 167(2)(a)(ii), Cr. P.C. if he is ready and furnishes bail bonds. This statutory right that had accrued to him cannot be defeated. The majority view of the Apex Court in the judgment reported in 2001 (1) JLJR 890 (SC) is relied upon for this purpose.

17. The writ application is allowed with a direction to the Court concerned to release the accused-petitioner, if he was ready and furnishes the bail bonds and if he fulfilled the condition as laid down in 2001 (1) JLJR 890 (SC).