

Parveen Kumar Vs. State of Punjab

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Court : Punjab and Haryana

Decided On : Mar-23-1979

Reported in : 1979CriLJ1395

Judge : S.S. Sandhawalia, C.J.,; Harbans Lal and; C.S. Tiwana, JJ.

Appellant : Parveen Kumar

Respondent : State of Punjab

Judgement :

Harbans Lal, J.

1. The controversy underlying the question under reference centres around the scope and ambit of Section 303, Indian Penal Code. The said provision is reproduced below:

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

For proper appreciation of the respective contentions raised on both sides, the relevant facts may be briefly stated.

2. Parveen Kumar, committed a murder and was convicted under Section 302, Indian Penal Code and awarded life imprisonment by the Sessions Judge. His appeal was dismissed by the High Court on Nov. 2, 1977. Against that decision,

special leave petition, vide Special Leave Petition (Criminal) No. 440 of 1978 was admitted by the Supreme Court on March 28, 1978, though the special leave was granted only to the limited extent inasmuch as it was confined to the nature of offence and sentence. The second murder was committed by said Parveen Kumar on Nov. 20, 1977, for which he was tried in the Court of the Sessions Judge, Jullundur, who, by his judgment, dated July 26, 1978, held him guilty of the murder and convicted and awarded him death penalty under Section 303, Indian Penal Code, on the ground that at the time of the award of the sentence and the decision of the case, Parveen Kumar was already undergoing life sentence in connection with the first murder. The Sessions Judge made a reference to the High Court for confirmation of the death sentence (Murder Reference No. 9 of 1978). The decision was also challenged on merits by Parveen Kumar in Criminal Appeal No. 878 of 1978. Both the reference and the appeal were heard by the Division Bench on Nov. 29, 1978. According to the decision, it was held that it was proved beyond doubt that Parveen Kumar was guilty of the murder of Vijay Kumar (the second murder) and referred the following question for decision by the Full Bench:

Whether such a sentence of imprisonment for life against which an appeal is still pending in any Court can be taken into consideration for the conviction of an offender under Section 303, Indian Penal Code?

According to the learned Counsel for the convict-appellant, Section 303, Indian Penal Code, was not attracted to the facts of the present case. It is contended that the expression in the provision 'under sentence of imprisonment for life' meant only such a sentence which is 'final, conclusive and ultimate so far as the judicial remedies are concerned.' If a sentence of life imprisonment was defeasible and was liable to be annulled in appeal, revision or any other judicial proceeding under the law, the same cannot be within the ambit of Section 303, Indian Penal Code. As the life sentence awarded to the convict-appellant was under challenge before the Supreme Court and is liable to be set aside or reduced, he cannot be awarded capital punishment as envisaged under Section 303, Indian Penal Code. As against this, the contention of the learned Counsel for the State is that if the life sentence awarded in the first murder case was operative and, executable at the time when the decision in the second murder case is to be announced whether by

the trial Court or the Appellate Court or, as a matter of fact, by any Court, Section 303, Indian Penal Code, was positively attracted and there was no discretion left with the Court concerned but to award the capital punishment. It was also stressed that the fact that the life sentence in the first murder case was still under challenge, was immaterial for the purpose. The counsel on both sides, in support of their respective contentions, have relied upon the decision of their Lordships of the Supreme Court in *Dilip Kumar Sharma v. State of Madhya Pradesh* : 1976 CriLJ184 . In the said case, the main judgment was rendered by Chandrachud, J., (now the Chief Justice). A separate judgment was also given by Sarkaria, J. The learned Counsel for the convict-appellant has mainly relied upon the judgment by Sarkaria, J., whereas the contentions by the learned Counsel for the State are sought to be supported by the main judgment. Both these judgments thus need close and exhaustive consideration for arriving at the correct conclusion in order to interpret the scope and ambit of Section 303, Indian Penal Code.

3. In Dilip Kumar's case (supra), one Rohitsingh was sentenced to life imprisonment by the Sessions Court on May 18, 1972, for the first murder committed on Oct. 24, 1971. At the time when he committed the second murder and when he was convicted and sentenced to death under Section 303, Indian Penal Code, by the Sessions Judge, the life sentence awarded to him in the first murder was still in operation. However, he was acquitted by the High Court of Madhya Pradesh in appeal in the first murder case on Feb. 7, 1974. On the same day, the High Court heard the appeal in the second murder case and dismissed the same irrespective of his acquittal in the first murder. According to Chandrachud, J., the decision by which the Sessions Judge in the second murder case convicted and sentenced Rohitsingh under Section 303, Indian Penal Code, was unexceptionable as the convict was already undergoing sentence of imprisonment in the first murder case. However, when the High Court heard the appeal against the decision of the Sessions Judge, the position had undergone a drastic change inasmuch as the convict had already been acquitted in appeal in the first murder case. In para 6 of the judgment, the following categorical observations are significant:

The Sessions Court had no option in the matter of sentence because on Jan. 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 judgment in the instant case on Feb. 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.

4. The High Court of Madhya Pradesh dismissed the appeal of Rohitsingh pertaining to the second murder on the basis of the following conclusion:

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 the 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.

It was the correctness of this view which fell for examination in both the judgments in the above said case. Ultimately, this view was held to be incorrect and the sentence under Section 303, Indian Penal Code, was quashed. Chandrachud, J., after elaborate and illuminative examination of all the possible constructions of the provision, laid down the following propositions of law:

1. A Court seized of a proceeding must take into account events subsequent to the inception of that proceeding;

2. 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, Indian Penal Code, if he finds that at the date of the offence, the accused was under a sentence of life imprisonment for some other offence;

3. If the High Court dealing with an appeal from the judgment of the Sessions Court in the second murder case finds that the sentence of life imprisonment in the first murder case which was in operation at the time of the decision by the Sessions Court, has been set aside by a higher Court, it shall have to take the subsequent events of acquittal into consideration and on account of the same, Section 303, Indian Penal Code, would cease to have application; and

4. It may so happen that the Court (Supreme Court) seized of an appeal against the High Court judgment may find when it records its own judgment that the sentence of life imprisonment, imposed by the trial Court, but set aside by a higher Court, has been re-imposed in a further proceeding. In that event, the Supreme 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 the Supreme Court, Section 303, Indian Penal Code, would come into play and the accused shall have to be sentenced to death.

Lastly, the scope of Section 303, Indian Penal Code, was interpreted in para 13 as under:

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.

5. From the above discussion, it is clear that Chandrachud, J., clearly held that the expression 'under sentence of imprisonment for life' under Section 303, Indian Penal Code, meant that the Court, whether at the Sessions trial, the Appellate Court or the Supreme Court in special leave while deciding the matter relating to

the second murder was required to take into consideration the latest decision in the first murder. If the sentence of life awarded in the first murder is not set aside at the time of the decision relating to the second murder, the same was to be taken into consideration as operative and executable and as such, the convict was to be treated as 'under sentence of imprisonment for life'. Even if conviction in the first murder case results in acquittal at the appellate stage, but again if the sentence of life imprisonment is restored in appeal by the Supreme Court, the provision of Section 303, Indian Penal Code, will be attracted when the second murder case falls for determination before any Court subsequent thereto. As the High Court of Madhya Pradesh had acquitted Rohitsingh in the first murder before deciding his appeal relating to the second murder, the life sentence under the first murder had been obliterated for all purposes and it was held that Section 303, Indian Penal Code, was not applicable and the decision of the High Court was set aside.

6. Sarkaria, J., in his separate, profound and comprehensive judgment did not express any disagreement with any of the conclusions arrived at by Chandrachud, J. However, while scrutinising the scope of the words, 'being under sentence of imprisonment for life' in Section 303, Indian Penal Code, it was held as follows:

In the strict sense, the meaning and ambit of this word would be limited to a sentence which has become final, absolute and indefeasible so far as judicial process is concerned.

According to the learned Judge, if the expression in the provision is interpreted so as to include a sentence which is not final inasmuch as it was still being impeached or is capable of being impeached and nullified by having recourse to judicial remedies available at law, it would lead to strange, unreasonable and unjust results and would also introduce an element of uncertainty. It was also held that neither the trial, hearing or pronouncing of the sentence in the subsequent murder case should be postponed till the whole gamut of judicial process had been gone through, nor could a conditional sentence of death under Section 303, Indian Penal Code, be passed as neither of the procedure was warranted by any provision of law. The learned Counsel for the appellant, has laid down

considerable emphasis on the following operative part of the judgment in para 32;

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.

7. The principle of law as laid down by Sarkaria, J., is unexceptional that the trial, hearing and decision of the subsequent murder case cannot be postponed under any provision of the Code of Criminal Procedure till all the judicial process with regard to the first offence resulting in the award of life sentence has been completed and the final decision is not liable to be impeached, set aside or modified in any manner, nor can it be disputed that there is no warrant for the passing of a conditional order of death penalty under Section 303, Indian Penal Code, subject to the maintenance of the life sentence in the first offence. In such a situation, one of the two courses can be adopted. The Court deciding the subsequent murder case, whether at the stage of the trial or the subsequent stage of appeal, will take into consideration the final decision with regard to the life sentence in the first offence which may be existing at that time and decide the question of applicability of Section 303, Indian Penal Code. If subsequently, the decision in the first case is modified and life sentence is either set aside absolutely or modified to a lesser sentence, this will be taken into account at the time of the decision of the second case in further appeal. This view is propounded by Chandrachud, J., in his main judgment. The learned Judge did not proceed with the matter any further, nor felt the necessity of delving into the conjectural proposition as to the consequences if any judicial remedy to impeach the decision regarding the life sentence in the first case was still available. The other course was propounded by Sarkaria, J., that till any judicial remedy was available and the life sentence in the first case though not set aside, was liable to be impeached and thus defeasible, theoretically Section 303, Indian Penal Code, will not be applied

and capital punishment will not be awarded to the offender in the second murder.

8. To this extent, the divergence of opinion in the two judgments is quite apparent. In this situation, the important question which has posed itself before me is as to which opinion is binding on this Court as a declaration of proposition of law. For this purpose, it is essential to arrive at the conclusion as to what is the ratio decidendi in the Supreme Court case. It was held in the State of Orissa v. Sudhansu Sekhar Misra : (1970)ILLJ662SC :

A decision is only an authority for what it actually decides. What is of the essence of a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic, this is what Earl of Halsbury LC said in Quinn v. Leathern, 1901 AC 495-

Now before discussing the case of Allen v. Flood 1898 AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical Code, whereas every lawyer must acknowledge that the law is not always logical at all.

It is not profitable task to extract a sentence here and there from a judgment and to build upon it.

9. It is thus crystal clear that the ratio decidendi in any case has to be linked with the relevant facts of the particular case. So far as the facts in the said Supreme Court case, mentioned above, are concerned, it is clear that at the time the High Court of Madhya Pradesh dismissed the appeal of Rohitsingh in the second murder case and upheld the award of capital sentence under Section 303, Indian Penal Code, he had been acquitted by the same Bench in the first murder. The

High Court held the view that the material date for the applicability of Section 303, Indian Penal Code, was the date of the commission of the second murder. If on that date, the offender was already undergoing sentence of imprisonment for life, he was liable under Section 303, Indian Penal Code, though the life sentence may be set aside, subsequent to the commission of the second murder at the time when the appeal relating thereto was pending. Chandrachud, J., expressly observed in paragraph 7 of the judgment as under:

We have to examine the correctness of this view.

The view of the High Court was not agreed to in both the judgments in the aforesaid Supreme Court case, Chandrachud, J., held:

The High Court shall have to take the subsequent event of acquittal into consideration and by reason of that event, Section 303, Indian Penal Code, would cease to have application.

Sarkaria, J., also held in paragraph 31,-

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 had never been passed. An order of acquittal annulling or voiding a conviction operates from nativity.

Thus operative parts of the two judgments in Dilip Kumar's case (supra), which are in the nature of declaration of law, are only to the effect that in order to determine the applicability of Section 303, Indian Penal Code any Court deciding the matter pertaining to the second murder has to take into consideration the latest decision with regard to the first offence which may have come into existence.

10. It was contended by the learned Counsel for the convict-appellant, that if the capital sentence awarded to the appellant under Section 303, Indian Penal Code, is now affirmed by the High Court, but subsequently the special leave petition relating to the first murder is allowed and the sentence of life imprisonment is set aside, the damage done to the appellant would be beyond recovery inasmuch as the death sentence may have been executed by that time and the resuscitation of

a valuable life taken earlier will be impossible. The contention suffers from an apparent fallacy and the apprehension of the learned Counsel is ill-founded. If the appeal is dismissed by the High Court and the capital punishment is upheld, the appellant is entitled to seek his remedy in the Supreme Court. In that case, either the special leave petition already admitted pertaining to the first murder will be decided prior to the second appeal or both the appeals will be decided simultaneously. During the pendency of the appeal relating to the second murder, the question of execution of death sentence does not arise in view of the provisions of Section 415 Code of Criminal Procedure, (hereinafter called the Code), which are reproduced below:

415 (1) When a person is sentenced to death by the High Court and an appeal from its 'judgment lies to the Supreme Court under Sub-clause (a) or Sub-clause (b) of Clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until the period allowed for preferring such appeal has expired or, if an appeal is preferred within that period, until such appeal is disposed of.

(2) Where a sentence of death is passed or confirmed by the High Court, and the person sentenced makes an application to the High Court for the grant of a certificate under article 132 or under Sub-clause (c) of Clause (1) of article 134 of the Constitution, the High Court shall order the execution of the sentence to be postponed until such application is disposed of by the High Court, or if a certificate is granted on such application until the period allowed for preferring an appeal to the Supreme Court on such certificate has expired.

(3) Where a sentence of death is passed or confirmed by the High Court, and the High Court is satisfied that the person sentenced intends to present a petition to the Supreme Court for the grant of special leave to appeal under Article 136 of the Constitution, the High Court shall order the execution of the sentence to be postponed for such period as it considers sufficient to enable him to present such petition.

11. The learned Counsel for the convict-appellant went to the extent of urging that the appellant is a poor man and may not be in a position financially to bear the

expense of filing an appeal against the death sentence affirmed by the High Court. This contention does not merit any serious consideration as the appeal can be filed directly from the jail where any appellant is not in a position to engage a counsel and such appeals are to be conducted by amicus curiae.

12. The learned Counsel also stressed that Section 303, Indian Penal Code, being a penal provision must be interpreted strictly. In view of this, it was argued that the expression 'being under sentence of imprisonment for life' in Section 303, Indian Penal Code, ought to be construed to mean such a sentence which is beyond the pale of judicial review and is not liable to be set aside or impeached. If this extreme view is taken, Section 303, Indian Penal Code, will be virtually reduced to a non-entity. The stark reality in the matter of administration of justice cannot be lost sight of that after the commission of murders and other offences, a long period involving seven to eight years is consumed before all the judicial remedies by way of appeal to the High Court and special leave petitions to the Supreme Court are exhausted. If Section 303, Indian Penal Code, cannot be made applicable so long as all judicial remedies are exhausted and the final decisions rendered in those proceedings, commission of second murders though fully proved beyond doubt, will not visit the offenders with death penalty virtually in any case. Section 303, Indian Penal Code, has been on the statute book from the very inception of the Penal Code. The intention of the legislature appears to be absolutely clear that if an offender who is held guilty of the offence of murder or any other heinous offence and awarded life sentence commits a second murder during the operation of the life sentence, he must be visited with the extreme penalty of death as the previous life sentence did not deter him from committing the subsequent murder.

13. Reliance by the learned Counsel for the convict-appellant on Shaik Abdul Azees v. State of Karnataka : 1977 CriLJ1121 and Sunil Batra v. The Delhi Administration. : 1978 CriLJ1741 , also renders no assistance to the case of the appellant.

14. In Shaik Abdul Azees's case (supra), the appellant though sentenced to imprisonment for life for murder, had been released by the State Government by conditional remission of the sentence under Section 401, Code of Criminal

Procedure, 1898, at the time he was sought to be convicted and sentenced under Section 303, Indian Penal Code, for the second murder. In such a situation, it was held as under:

To revert, at the end, to the only question with which we started. Was the appellant under sentence of imprisonment for life during the unexpired period of his imprisonment conditionally remitted under Section 401, Code of Criminal Procedure We are clearly of opinion that an accused cannot be under a sentence of imprisonment for life at the time of commission of the second murder unless he is actually undergoing such a sentence or there is legally extant a judicially final sentence which he is bound to serve without the requirement of a separate order to breathe life into the sentence which was otherwise dead on account of remission under Section 401, Code of Criminal Procedure. Section 303, Indian Penal Code, is applicable only to an accused who, on the date of commission of the second offence of murder, had earlier committed a murder for which his conviction and sentence of imprisonment for life were beyond judicial controversy and were operative.

The learned Counsel laid stress on the following observations in paragraph 21 of the judgment.

A person must be actually and irrevocably a lifer beyond the pale of judicial controversy at the time of the commission of the second offence of murder to be visited with the penalty of death under Section 303, Indian Penal Code.' However, this conclusion can be appreciated properly only if it is read in the context of the subsequent observations wherein it was held.

If the sentence of a convict had already been remitted at the time of commission of the second murder, he would cease to be an actual lifer to come within the lethal clamp of Section 303, Indian Penal Code.

15. Sunil Batra's case (supra), does not have much relevance to the proposition of law as canvassed in the present case. Therein, two petitions had been filed under Article 32 of the Constitution by two prisoners confined in the Central Jail, in which the vires of Sections 30 and 56 of the Prisons Act, 1894, had been challenged.

Under Section 30 of the said Act, 'every prisoner under sentence of death', was made subject to certain restrictions inside the jail. The expression 'under sentence of death' was the subject-matter of interpretation in the case. It was held that the sentence of death was not executable until confirmed by the High Court and during the pendency of the appeal or other proceedings before the High Court or the Supreme Court, the execution of death sentence was kept in abeyance under the provisions of Section 415 of the Code, which has been reproduced in the earlier part of this judgment. It was in these circumstances, held by Desai, J., who spoke for the Court as follows:

The expression 'prisoner under sentence of death' in the context of Sub-section (2) of Section 30 can only mean the prisoner whose sentence of death has become final, conclusive and indefeasible which cannot be annulled or voided by any judicial or constitutional procedure. In other words, it must be a sentence which the authority charged with the duty to execute and carry out must proceed to carry out without intervention from any outside authority.

16. Obviously, there is a world of difference between the sentence of life and sentence of death. Sentence of life becomes executable and is put into operation as soon as the offender is convicted and sentenced. Even the period of incarceration undergone by the offender during trial is taken into consideration under the Code for the purpose of determining the span of sentence for life. The sentence for life even if set aside may actually amount to reduction in the period of imprisonment and the period already served will have no irrevocable consequences. So far as the sentence of death is concerned, once it is executed, the prisoner goes out of existence and nothing more remains to be done. Thus, the expressions 'under sentence for life' and 'under sentence of death', cannot be treated at par while scrutinising its scope and ambit.

17. In view of the above discussion, the reply to the question under reference is in the affirmative and it is held that the expression 'whoever being under sentence of imprisonment for life' in Section 303, Indian Penal Code, means that whosoever is undergoing the sentence of imprisonment for life which is operative at the time when any Court whether at the stage of trial or appeal or otherwise, is called upon

to announce its decision in the second murder held to have been committed by the accused. The main appeal be now fixed before Division Bench for disposal.

S.S. Sandhawalia, C.J.

18. I agree

C.S. Tiwana, J.

19. I also agree.

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