

Surja Ram Vs. the State

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Court : Rajasthan

Decided On : Mar-20-1963

Reported in : AIR1963Raj202; 1963CriLJ396

Judge : J.S. Ranawat, C.J. and; V.P. Tyagi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 35, 397 and 402;
Indian Penal Code (IPC) - Sections 302, 307 and 309

Appeal No. : Criminal Miscellaneous Case No. 314 of 1962

Appellant : Surja Ram

Respondent : The State

Advocate for Def. : B.C. Chatterji, Deputy Govt. Adv.

Disposition : Application allowed

Judgement :

Ranawat, C.J.

1. This is an application of Surja Ram son of Ratiram from jail under Section 491 of the Code of Criminal Procedure.

2. The petitioner Surja Ram was convicted by the Court of the Sessions Judge of Ganganagar on the 19th of July, 1948 under Sections 302, 307 and 309, Bikanet

Penal Code and he was sentenced to death under Section 302 and to 10 years' and 9 months' rigorous imprisonment under Sections 307 and 309 Bikaner Penal Code respectively. The judgment of the Sessions Judge was confirmed by the High Court of Bikaner and also by Bikaner State Council. There after His Highness the Maharaja of Bikaner commuted the death sentence into a sentence of imprisonment for life by his order dated the 13th of December, 1948 (vide copy of the order at page 5 of the paper book). In the said order it was further mentioned that life imprisonment was deemed, to be imprisonment for 20 years only. After the commutation of the sentence of death, the Superintendent of Jail referred the matter to the Sessions Judge, Ganganagar, for clarification if the sentence of life imprisonment and the other two sentences of imprisonment passed against Surja Ram should be executed concurrently or consecutively. The Sessions Judge, Ganganagar, by his order dated the 4th of January, 1949, informed the Superintendent of Jail that the sentence of life imprisonment and the sentences of imprisonment under Sections 307 and 309 Bikaner Penal Code shall have to be undergone by the petitioner consecutively as the two orders were passed separately. Probably the learned Sessions Judge thought that Section 397, Criminal Procedure Code was applicable to the case and that the two sentences had been passed separately against the accused. Surja Ram has now moved this Court by an application submitted through jail dated the 16th of March, 1962. This application came up for hearing on an earlier occasion but as the record of the Bikaner State High Court and of the Council of that State in which the sentences were confirmed were not before this Court, they were sent for. In spite of long correspondence and search, the said records could not be traced out and the matter has again come up before us in exactly the same condition as it stood when it had come before the Court on the earlier occasion. We take it that the facts that have been verified in the endorsement of the Superintendent of Jail, Bikaner, which have been mentioned above, are authentic and we proceed to determine the case on those facts.

3. The question that arises for decision is whether the sentence of life imprisonment and the other two sentences of imprisonment awarded to the petitioner should be deemed to be executable consecutively or concurrently. Section 35 (1) of the Criminal Procedure Code lays down :

'(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of Section 71 of the Indian Penal Code, sentence him, for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments, when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.'

It has further been provided in Sub-section (2) of Section 35 :

'(2) In the case of consecutive sentences, it shall not be necessary for the Court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court; provided that in no case shall such person be sentenced to imprisonment for a longer period than fourteen years;'

4. In the instant case, the petitioner was sentenced to death under Section 302 and to ten years' and nine months' rigorous imprisonment under Sections 307 and 309 Bikaner Penal Code respectively. There was no occasion for the Sessions Judge, who tried the case, to apply his mind to the point that has arisen on account of a subsequent order of the commutation of the death sentence into sentence of life imprisonment. The High Court of Bikanar, when it confirmed the sentence of death, and the State Council of Btkaner, at the time of hearing the case, also had no occasion to pass any order under Section 35, Criminal Procedure Code. The matter, as has already been mentioned above, arose after the sentence of death was commuted. A reference was, therefore, made to the Sessions Judge of Ganganagar but the learned Judge thought that he had no discretion in the matter except to order that the two sentences shall be undergone by the petitioner conse-cutively.

5. We have given our anxious consideration to this question. Section 35, Criminal Procedure Code would have been applicable to the case if the accused had been sentenced to life imprisonment and to the other sentences of imprisonment at the time he was convicted by the Trial Court or his convictions were confirmed by the higher authorities. The petitioner was convicted under Sections 302, 307 and 309,

Bikaner Penal Code at the same trial and even though he was sentenced to death that sentence was commuted subsequently by the order of His Highness the Maharaja of Bikaner. Section 397, Criminal Procedure Code deals with the cases of sentences passed at different trials, and for purposes of this case Sub-section [2] of the said section may be considered. Sub-section (2) of Section 397, Criminal Procedure Code runs as follows :

'(2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.'

6. Section 397, Criminal Procedure Code does not directly apply to this case for the simple reason that the convictions earned by the accused were in respect of offences for which he had been tried jointly at one trial. However, the principle underlying Section 397 (2), Criminal Procedure Code deserves to be applied to this case. Section 35 Criminal Procedure Code would have applied to it but for the reason that he was sentenced to death under Section 302 and not to life imprisonment, and the occasion for the Court to make an order under Section 35, Criminal Procedure Code lapsed by the time the sentence of death was commuted. This case has, therefore, become an unusual one and cannot fail either under Section 35 or under Section 397 of the Criminal Procedure Code, and we shall have to decide it with reference to the principles underlying the said provisions of the Criminal Procedure Code. It is also significant that when a person is sentenced to imprisonment for life, it cannot be conceived that he shall be made to undergo sentences of various terms of imprisonment that may have been passed at the same trial under other sections after serving the term of life imprisonment. After the life of a convict is finished there cannot remain any opportunity for enforcing other terms of imprisonment against him. This is why the provision under Section 397 (2), Criminal Procedure Code has been so enacted. In this view of the matter, we think that the imprisonments under Sections 307 and 309, Bikaner Penal Code passed against the petitioner could not be conceived to have been enforced after the expiry of the life imprisonment passed against him. The only answer, therefore, which can be given to the question, is that the two terms of imprisonments under Sections 307 and 309 shall have to be enforced

concurrently with the life imprisonment. The order of the Sessions Judge of Ganganagar dated the 4th of January, 1949, does not appear to be consistent with the principles underlying Section 35 and Section 397, Criminal Procedure Code and deserves to be vacated.

7. The application of Surja Ram is allowed. The Superintendent of Jail may be informed that the sentences, passed against the petitioner Surja Ram under Sections 307 and 309, Bikaner Penal Code, of ten years and 9 months respectively should run concurrently with the sentence of his life imprisonment, and if the petitioner appears to have undergone the full terms of his sentences by so computing the said terms of imprisonment, he shall be released from jail if not required otherwise.

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