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Jagdish Singh Vs. State

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Court : Rajasthan

Decided On : Oct-17-2000

Reported in : 2000(4)WLC605; 2000WLC(Raj)UC359

Judge : Arun Madan, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 313, 375, 377, 378, 386, 389, 390, 391, 397, 401, 401(1) and 401(4); Indian Penal Code (IPC), 1860 - Sections 302, 323, 324, 334, 457 and 458; Explosives Substances Act, 1908 - Sections 5; Explosives Act, 1884 - Sections 9-B(2); Terrorist Anti Distractive Act

Appeal No. : S.B. Cr. Revision Petition No. 442 of 1998

Appellant : Jagdish Singh

Respondent : State

Advocate for Def. : M.M. Ranjan, Adv.

Advocate for Pet/Ap. : Prakash Chand Jain, Adv.

Disposition : Petition dismissed

Judgement :

Madan, J.

(1). The petitioner has challenged the impugned sentence on the ground only confined to its inadequacy in this revision petition, Under Section 397 read with Section 401 Cr.P.C. praying therein for awarding deterrent sentence to the respondent (accused) Sangram Singh, who was convicted Under Sections. 457, 458, 323 & 324 IPC but sentenced to undergo four months simple imprisonment under each count and was imposed with fine of Rs. 200/- each Under Section 457 & -158 IPC, by the learned Additional Chief Judicial Magistrate, Bandikui (District Dausa) under Judgment dated 4.7.96 in Criminal Case No. 215/96 arising out of FIR No. 173/95 lodged on 8.5.1995 at Police Station Bandikui by complainant (petitioner) herein. The accused-respondent Sangram Singh who at the time of incident was duly armed with axe is alleged to have intruded into complainant's house at about 1 O'clock in the midnight thereof, whereupon his mother and sister who were sleeping in the chowk got awaken, and respondent Sangram Singh inflicted axe blows upon them.

(2). After usual investigation the police submitted challan and the respondent was charged for offence punishable Under Section 457, 458, 323 & 324 IPC to which he pleaded not guilty and claimed trial. However, when the prosecution examined Babu Singh as PW, who was also not cross examined by the accused, then the respondent submitted an application and pleaded guilty therein, whereupon the prosecution evidence was closed. Accordingly the respondent was examined Under Section 313 Cr.P.C. during which he pleaded his guilt by accepting the prosecution case.

(3). Thus on the basis of guilt pleaded by the respondent and the prosecution evidence on record the trial court held the respondent guilty of the offence charged against him and convicted and sentenced as indicated above. Hence this revision petition against the impugned sentence on the ground of its inadequacy.

(4). I have heard the learned counsel for the parties and perused the impugned judgment of sentence and the material on record.

(5). Shri P.C. Jain learned counsel for the complainant contended at the outset that keeping in view the nature of injuries caused and weapon of offence used so also the manner in which the respondent committed it in the midnight by scaling

over the wall and trespassing into the house, duly armed with axe with which he inflicted several blows upon two women sleeping in their house, the trial court committed grave error of law in awarding a lesser sentence than stipulated in the Indian Penal Code for the offences charged against the respondent.

(6). On the other hand Shri M.M. Ranjan learned counsel for the accused respondent contended that adequacy of the sentence can be challenged Under Section 377 Cr.P.C. only by the Public Prosecutor on the direction of the State Government to present appeal to the High Court on the ground of inadequacy of the impugned sentence inasmuch as by virtue of bar under Sub-section (4) of Section 401 Cr.P.C., this revision petition cannot be entertained by this Court. Lastly Shri Ranjan contended that even otherwise this court by virtue of its jurisdiction Under Section 401, can exercise any of powers conferredon a Court of appeal by Section 386 Cr.P.C. for altering the nature or the extent of the sentence so as to enhance or reduce the same, and in this view of the matter, this Court ran dismiss the revision petition for enhancement of the impugned sentence keeping in view the nature of injuries found on the injured persons and confessional statement of the accused.'

(7). Admittedly the State has not preferred any appeal for enhancement of the impugned sentence, by invoking Section 377, Cr.P.C. Since inadequacy of impugned sentence is challenged Under Section 397 read with Section 401 Cr.P.C., first of all I would tike to have a brief resume as to the scope of revisional powers of this Court. Section 397 Cr.P.C. confers upon the High Court by calling for record to exercise powers of revision for satisfying itself as to the correctness, legality or propriety of any sentence. Section 401 Cr.P.C. does also postulate High Court's powers of revision. According to its sub section (1), ''if otherwise comes to its knowledge' the High Court in its discretion can also exercise any of the powers conferred on a Court of Appeal by Sections 386, 389, 390 & 391 Cr.P.C.. As per sub section (4) of Section 401 Cr.P.C. where an appeal lies under Cr.P.C. and no appeal is brought, no proceeding byway of revision shall be entertained at the instance of the party who could have appealed. Moreover, according to sub sec. (3) of Section 401 Cr.P.C., nothing in Section 401 shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction meaning thereby

that sub sec. (3) restricts the scope of its revisional powers as to conversion of findings acquittal into conviction. This evidently means that the revisional powers are to be exercised very sparingly and that too in exceptional case only.

(8). Section 375 & 377 are the only provisions in the Cr.P.C. which permit appeals against sentence alone. While the former is restricted to cases in which the accused is convicted on a plea of guilty, the latter is restricted to cases in which the State directs the Public Prosecutor to appeal to the High Court against the sentence on the ground of insufficiency. Merely because appeal is provided against sentence in certain cases, court cannot support appealability by implication in other cases where sentence alone is required to be challenged. A right of appeal is not a natural or inherent right and hence it must be referable to express provisions in a statute.

(9). Section 375 Cr.P.C. puts a bar to bring an appeal in cases when accused pleads guilty and is convicted on such plea and however, Section 375(b) Cr.P.C. gives exception to bring an appeal but only as to the extent of legality of the sentence if the conviction on plea of guilty is ordered by Court of Session or Magistrate of the first or second class, Since there is express provision contained in Section 377 under which State Government may appeal to the High Court against sentence upon conviction to the accused. Section 375 Cr.P.C. confines only to the accused meaning thereby that the accused may appeal as to the extent or legality of the sentence if he is convicted on his plea of guilty by Court of Session or the Magistrate. Therefore, Section 375 Cr.P.C. is not attracted to the present case as contended by Shri Ranjan to advance the case that no appeal or revision lies because in this case at hand, the respondent pleaded guilty and he has been convicted on such plea of guilty.

(10). Section 386, Cr.P.C. prescribes powers of the appellate Court and according to it, in case of an appeal Under Section 377 or 378 Cr.P.C., the appellate Court if it considers that there is no sufficient ground for interfering, may dismiss the appeal. Section 386, Cr.P.C. does also confer powers upon- the Court of appeal to reverse under sub Section (a) findings of acquittal and impose sentence on accused according to law, and under Sub-section (b) conviction and sentence by

acquitting the accused. Section 386(b)(iii) Cr.P.C. confers power on the appellate court to alter the nature or the extent of the sentence without altering the finding. In my considered view, the said provision deals with the powers of the appellate Court and does not confer any right the complainant to prefer an appeal.

(11) Section 386(c) Cr.P.C. deals with an appeal for enhancement of sentence as to the power of appellate Court. This section confers power on the appellate Court to (i)reverse the finding and sentence and either acquit or discharge the accused or order him to be retried by a Court competent to try the offence or (ii) alter the finding maintaining the sentence (iii) 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. Second proviso to Section 386 Cr.P.C. restricts the power of appellate Court from inflicting greater punishment for the offence which in its opinion the accused has committed, than might have been inflicted for that offence by the Court passing the sentence under appeal.

(12). Now the decks are clear. The powers of revision Under Section 397 read with Section 401 Cr.P.C. can be exercised by the High Court in consonance with its appellate powers conferred by Section 386 Cr.P.C. for reversal of the conviction and/or the sentence under appeal either for acquittal or enhancement by way of alteration of the finding challenged in appeal, as has been emphatically envisaged in Section 401(1) Cr.P.C. Powers of revision Under Section -101(1) Cr.P.C. is in the realm of discretion either by exercising such powers suo moto calling for record in any criminal proceedings or if it otherwise comes to the knowledge of the High Court.

(13). Section 401(1) Cr.P.C. authorises the Court of Revision viz. High Court to exercise its appellate power as conferred by Sections 386, 389, 390 & 391 Cr.P.C.. Appellate powers of this Court with regard to enhancement of sentence are conferred by sub section (c) of Section 386 Cr.P.C.

(14). It is no doubt true that no proceedings by way of revision can be entertained at the instance of the party who could have appealed. There is no specific or express provision in the Code of Criminal Procedure prescribing the right of preferring an appeal at the instance of the complainant against the sentence for

enhancement thereof. The appeal either against acquittal or for enhancement of the sentence can be brought by the State directly through Public Prosecutor as envisaged expressly in Section 375 & 377 Cr.P.C. as the case may be. So sub Section (4) of Section 401 Cr.P.C. puts bar only on the State if appeal though lies but is not brought by it. It means that remedy of appeal for enhancement of sentence is available to the State and if the State does not exhaust such remedy of appeal though lies but does not bring it, then the State cannot bring revision petition for enhancement of the sentence nor the court of Revision viz. High Court can entertain such revision, by virtue of Section 401(4) Cr.P.C.

(15). However, by virtue of provisions contained in Section 401(1) read with section 386(c)(iii) Cr.P.C. alongwith its second proviso, the scope of revision is limited to examine the record as to the correctness, legality or propriety of any finding and sentence recorded by the trial Court or the appellate Court. In this view of the matter, imposition of sentence is in the realm of discretion of the court and unless the sentence is found to be grossly inadequate, the appellate or revisional court would not be justified in interfering with the discretionary order of the sentence arid thus viewed, an appellate or revisional court should not interfere to the detriment of an accused except for very strong and cogent reasons.

(16). Shri Ranjan placed reliance upon decision in Gurdeep Singh vs. State (Delhi Admn.) (1), In Gurdeep Singh's case (supra), wherein the accused appellant was convicted Under Section 302 & 324 IPC and 5 of the Explosives Substances Act 1908 and Section 9-B(2) of the Explosives Act 1884. The prosecution case was based on circumstantial evidence including a confessional statement of the accused made to the Superintendent of Police. It was a case where the accused challenged his own confessional statement on the ground of it being not voluntary and having been recorded when he was in handcuffs and threat of conviction was constantly hanging over his head. The Apex Court while dismissing his appeal held that the legislature has conferred a different standard of admissibility of a confessional statement made by an accused under the TADA Act, from those made in other criminal proceedings. In the facts and circumstances of that case, the Apex Court held that the appellant's confessional statement was not only admissible but was voluntarily and truthfully made by him soas to be relied upon

on for his conviction and that such confessional statement did not require any further corroboration. However, before parting with the judgment, the Apex Court suggested to Parliament emphasising the need of some respite on solace to the accused who was being tried under TADA Ac! under which he made confessional statement, such as reduction of the period of punishment. In this view of the matter, ratio of decendi in Gurdeep Singh's case (supra) being not directly attracted to the controversy as to the adequacy or inadequacy of the sentence to the accused upon either his confessional statement or having pleaded guilty to the commission of the crime, is not at all attracted and does not help the present accused respondent in advancing his case.

(17). However, this Court cannot loose sight of the observations made by the Apex Court in Gurdeep Singh's case (supra) on the object of punishment to an accused in criminal jurisprudence. It is trite law that object of punishment to an accused is not merely to punish the wrong doer but also to strike a warning to those who are in the same sphere of crime or to those intending to join in such crime. Punishment is also to reform such wrong doers not to commit such offence in future. It is true that a confessional statement comes from the core of the heart through repentence, where such accused is even ready to undertake the consequential punishment under the penology law and that being so, the Apex Court suggested to Parliament that it is this area which needs some encouragement to an accused under TADA Act through some respite, may be, by reducing the period of punishment because such incentive would transform more such incoming accused to confess and speak the truth without fear of conviction, inasmuch as it would curtail and cut short tong procedure and arduous journey of the prosecution to find the whole truth by turning on the accused as approver.

(18). 1 am of the view that many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In treating such type of offenders leniently the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison.

(19). The broad expense of discretion left by legislature to the sentencing courts should not be narrowed only to the seriousness of the offence. No single consideration can definitely determine the proper sentence. In arriving at an appropriate sentence, the court must consider and some times reject, many factors. The Court must recognise, learn to control and exclude many diverse data. It is a balancing act and tortuous process to ensure reasoned sentence.

(20). It is no doubt true that the enormity of the crime committed by the accused is relevant for measuring the sentence. The Court has to consider the totality of the sentences which the accused has to undergo, if the sentences are to be consecutive or otherwise. But the Court cannot take a narrow view of the whole matter with the enormity of the crime on the forefront.

(21). In the case at hand, though the incised wounds were found on the person of injured Smt. Bhagwati on her

(1) left side face at TM joint,

(2) at thoraco cervical vertebra,

(3) upper and medial border of scapula while five incised wounds with one swelling were found on the person of injured Rama on her

(1) back of tower 1/3rd of left forearm,

(2) middle 1/3rd of right forearm,

(3) right knee,

(4) left side of occipital part of scalp,

(5) right side of chin and

(6) tower lip, but curiously enough x ray report of injured Smt. Bhagwati of her left TM joint, thoraco cervical region, right scapula with shoulder, has been produced while despite doctor's advise for x-ray, no report of injured Rama was produced or exhibited and as per x-ray report (ExP6) of Bhagwati, no bone injury was found on

the parts of her body (supra). Thus there is no medical report established on record as to the nature of injuries found on the persons of both the injured whether grievous or simple. Though in his statement Under Section 313 Cr.P.C. the respondent (accused) pleaded guilty by accepting the version given out by Babu Singh (PW1) as to the events of the incident and on his plea of guilt the accused has been convicted of the aforesaid offences but in my considered view, in the light of the natureof injuries, referred to above, so also keeping in view the extent of the prosecution evidence led on record, including medical evidence as discussed above, there are no sufficient ground for interfering by exercising either appellate power under Section 386 Cr.P.C. in consonance with power of revision of this Court Under Section 401 Cr.P.C. so as to enhance the impugned sentence either Under Section 377 Cr.P.C. or reverse the finding of impugned sentence Under Section 386(c)(i) or alter the nature and extent of the impugned sentence so as to enhance or reduce it Under Section 386(c)(iii) Cr.P.C.

(22). As a legal corollary to it, I do not consider to invoke discretionary jurisdiction of this Court by way of exercise of any of the powers conferred by Section 386 Cr.P.C. nor I find any incorrectness, illegality or impropriety in the impugned finding of the sentence the respondent or the order assailed in this complaint's revision petition. Thus after having examined the record of this case, I decline to exercise revisional powers of this Court Under Section 397/401 Cr.P.C. to reverse or alter the impugned sentence.

(23). Consequently this revision petition being devoid of any merit fails and is hereby rejected. The judgment of the impugned sentence dated 4.7.96, referred to above, stands confirmed. The respondent undoubtedly since has undergone the impugned substantive sentence under ail counts and has also deposited the impugned fine and thereupon has since been set free, no further action is necessary or called for.

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