

Ramkunwar Vs. State of Rajasthan

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Court : Rajasthan Jaipur

Decided On : May-06-2011

Judge : R.S.Chauhan

Acts : Indian Penal Code (IPC) - Section 302,326; [Constitution of India 1949](#) - Articles 19, 21

Appeal No. : S.B. Cr. Misc. 3rd SOS Application No.1152/2010

Appellant : Ramkunwar

Respondent : State of Rajasthan

Judgement :

1.Relying on the cases of Angana & Anr. v. State of Rajasthan [(2009) 3 SCC 767], Takht Singh & Ors. v. State of M.P. [(2001) 10 SCC 463], and Dara Singh v. State of Rajasthan [S.B. Cr. Misc. Second Bail (for Suspension of Sentence) Application No.9/2010, in S.B. Criminal Appeal No.575/2008, decided on 25.01.2011], Mr. Harendra Singh, the learned counsel for the appellant, has vehemently argued that in case the accused-appellant has served a substantial part of his sentence and in case the criminal appeal cannot be decided within the remaining period of the sentence, then the sentence of the accused-appellant should be suspended. According to him, the accused-appellant has already served three years and eleven months out of the seven years of his sentence. Thus, he has undergone a substantial part of his sentence.

2. On the other hand, Mrs. Alka Bhatnagar, the learned Public Prosecutor, has contended that even the cases referred by the learned counsel for the appellant do not lay down a universal principle. Therefore, each case would have to be decided on its own facts and circumstances.

3. Heard the learned counsel for the parties and perused the case law cited at the Bar.

4. In the case of *Kashmira Singh v. State of Punjab* [(1977) 4 SCC 291], the Hon'ble Supreme Court had opined as under :

5. Now, the practice in this Court as also in many of the High Courts has been not to release on bail a person who has been sentenced to life imprisonment for an offence under Section 302 of the Penal Code. The question is whether this practice should be departed from and if so, in what circumstances. It is obvious that no practice howsoever sanctified by usage and hallowed by time can be allowed to prevail if it operates to cause injustice. Every practice of the Court must find its ultimate justification in the interest of justice. The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Courts and in this Court on the basis that once a person has been found guilty and sentenced to life imprisonment, he should not be let loose, so long as his conviction and sentence are not set aside, but the underlying would be disposed of within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. The rationale of this practice can have no application where the Court is not in a position to dispose of the appeal for five or six years. It would indeed be a travesty of justice to keep a person in jail for a period of five or six years for an offence which is ultimately found not to have been committed by him. Can the Court ever compensate him for his incarceration which is found to be unjustified? Would it be just at all for the Court to tell a person: We have admitted your appeal because we think you have a *prima facie* case, but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal, you must remain in jail, even though you may be innocent? What confidence would such administration of justice inspire in the mind of the public? It may quite conceivably

happen, and it has in fact happened in a few cases in this Court, that a person may serve out his full term of imprisonment before his appeal is taken up for hearing. Would a Judge not be overwhelmed with a feeling of contrition while acquitting such a person after hearing the appeal? Would it not be an affront to his sense of justice? Of what avail would the acquittal be to such a person who has already served out his term of imprisonment or at any rate a major part of it? It is, therefore, absolutely essential that the practice which this Court has been following in the past must be reconsidered and so long as this Court is not in a position to hear the appeal of an accused within a reasonable period of time, the Court should ordinarily, unless there are cogent grounds for acting otherwise, release the accused on bail in cases where special leave has been granted to the accused to appeal against his conviction and sentence. Similarly in the case of *Babu Singh v. State of U.P.* [(1978) 1 SCC 579], the Apex Court had observed as under :

6. The significance and sweep of Article 21 make the deprivation of liberty a matter of grave concern and permissible only when the law authorising it is reasonable, even-handed and geared to the goals of community good and State necessity spelt out in Article 19. Indeed, the considerations I have set out as criteria are germane to the constitutional proposition I have deduced. Reasonableness postulates intelligent care and predicates that deprivation of freedom by refusal of bail is not for punitive purpose but for bifocal interests of justice to the individual involved and society affected. Relying on these two cases, in the case of *Angana & Anr.* (Supra), the Hon'ble Supreme Court had suspended the sentence of the accused-appellant for offence under Section 326 IPC.

7. Allegedly, the occurrence had taken place on 02.06.2007. During the course of trial, the appellant was not on bail. He was arrested on 08.06.2007 and till present he is in custody. Therefore, he has completed three years and nine months of incarceration. Thus, he has completed a substantial part of his sentence. Moreover, he has faced the consequences of his alleged criminal action. The alleged offence is not so much a crime against the society at large, as it is an offence against a particular person. Therefore, by keeping him incarcerated, the society does not derive any benefit. Since he has already faced the music for his

alleged criminal conduct, in the interest of justice it would be better to grant him the benefit of bail.

8. Further, there are large number of criminal appeals pending before this Court; the likelihood of this appeal, which is admitted in the year 2008, being decided in the near future is rather slim. Although three years and three months of the sentence are still remaining, but it is unlikely that this appeal can be decided within the remaining period of the sentence. Therefore, keeping in mind the principles annunciated by Their Lordships of Hon'ble Supreme Court, this Court suspends the sentence of the accused-appellant on the condition that he shall appear before the concerned Police Station on every second Monday of the month.

9. It is, therefore, ordered that the sentence of the accused-appellant, namely Ramkunwar S/o Prabhudayal, shall remain suspended till final disposal of the instant appeal and he shall be released on bail, provided he furnishes a personal bond in the sum of Rs.50,000/- with two sureties of the same amount to the satisfaction of the trial court to the effect that he shall appear before this Court on 04.07.2011 and as and when called upon to do so.

10. In case, the above-mentioned condition is violated by the accused-appellant, the complainant/State shall be free to move an application for cancellation of bail granted by this Court.