

MANGOO @ MANGAL SINGH

v.

STATE OF M.P.

(Criminal Appeal No.1145 of 2008)

JULY 24, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860: s.302 r.w. s.149 – Five Accused convicted and sentence to life imprisonment – Affirmed by High Court – Three accused filed SLP – Supreme Court passed judgment altering conviction to s.304(Part I) and reducing sentence to 10 years – Held: Benefit of the judgment would extend to the non-appealing accused also – Sentence/Sentencing – Constitution of India, 1950 – Article 136.

Constitution of India, 1950: Article 136 – Equity – Reduction of sentence in case of appealing accused – Benefit of – Held: To be extended to non-appealing accused also – Sentence/Sentencing.

Five persons faced trial for alleged commission of offence punishable under s.302 read with s.149 IPC. The trial Court convicted all the five accused persons including the appellant and sentenced him to undergo Ri for life. All the accused persons filed appeal before High Court, which was dismissed. Three of the accused persons filed appeal before this Court but appellant did not approach this Court. In respect of the three accused, this Court held that Exception 4 to s.300 IPC was applicable to the facts of the case and altered the conviction to s.304 Part I IPC and held that custodial sentence of 10 years and fine as was imposed by the High Court would meet the ends of justice.

The appellant filed a writ petition, and this Court treated it as SLP against the judgment of the High Court.

A Respondent-State contended that since the appellant had not filed special leave petition in time, he is not entitled to the benefit of the judgment in respect of the three accused.

Allowing the appeal, the Court

B HELD: By exercising *suo motu* power, this Court in several cases has granted the benefit of acquittal, conviction for a lesser offence or reduction of sentence to non-appealing accused. Similar course needs to be adopted. In the circumstances, by applying the decision in *Vajrapu's case, the conviction of the appellant is altered to s.304 Part I IPC and 10 years' custodial sentence with fine as was imposed by the High Court would meet the ends of justice, since the appellant stands on similar footing with the other accused persons who were the appellants in Criminal Appeal No.229 of 2003. [Paras 7,8] [335-H, 336-A,B,C]

E *Vajrapu Sambayya Naidu and Ors. v. State of A.P. and Ors. JT (2003) 7 SC 558; Hardyal v. State of Rajasthan (1991) Supp 1 SCC 148; Pyare Singh v. State of M.P. (1992) Supp 3 SCC 45; Jashubha v. State of Gujarat (1994) 4 SCC 353; Dandu v. State of A.P. (1999) 7 SCC 69; Bijoy Singh v. State of Bihar (2002) 9 SCC 147; Rajaram v. State of M.P. (1994) Supp 2 SCC 153; Gurucharan v. State of Rajasthan (2003) 2 SCC 698; Akhil Ali v. State of M.P. (1982) 3 SCC 370; Rattan Singh v. State of Punjab (1988) 1 SCC 14; Jayantibhai v. State of Gujarat (2002) 8 SCC 165; Suresh v. State of Bihar (2003) 4 SCC 128; Apren Joseph v. State of Kerala (1973) 2 S C R 16; Hira Lal v. Delhi Administration (1973) 3 SCC 398; Uma Shankar v. State of Bihar (2005) 10 SCC 336 – relied on.

G Ghappoo Yadav and Ors. v. State of Madhya Pradesh JT (2003) 3 SC 474; Harbans singh v. State of U.P. and Ors. (1982) 2 SCC 101 –referred to.

Case Law Reference

H (2003) 7 SC 558 relied on Para 4

(1991) Supp 1 SCC 148	relied on	Para 7	A
(1992) Supp 3 SCC 45	relied on	Para 7	
(1994) 4 SCC 353	relied on	Para 7	
(1999) 7 SCC 69	relied on	Para 7	B
(2002) 9 SCC 147	relied on	Para 7	
(1994) Supp 2 SCC 153	relied on	Para 7	
(2003) 2 SCC 698	relied on	Para 7	C
(1982) 3 SCC 370	relied on	Para 7	
(1988) 1 SCC 14	relied on	Para 7	
(2003) 4 SCC 128	relied on	Para 7	D
(1973) 2 SCR 16	relied on	Para 7	
(1973) 3 SCC 398	relied on	Para 7	
(2005) 10 SCC 336	relied on	Para 7	E
JT (2003) 3 SC 474	referred to	Para 1	
(1982) 2 SCC 101	referred to	Para 5	

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 1145 of 2008 F

(@ SLP Crl. No. 5417 of 2008 @ W.P. Criminal No. 192
of 2005)

Arna Das and L.N. Gupta for the Appellant.

C.D. Singh and Munendra Kumar Singh for the Respon-
dent. G

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Though the petition was filed H

- A as a writ petition and was numbered as WP (Crl.) No.192 of 2005, by order dated 1.4.2005 it was noted that in the notice it shall be indicated that the writ petition shall be treated as a Special Leave Petition against the judgment of the High Court and shall be disposed of in the light of this Court's judgment in
- B *Ghapoo Yadav and Ors. v. State of Madhya Pradesh* (JT 2003 (3) SC 474).

2. Background facts in a nutshell are as follows:

- C Five persons faced trial for alleged commission of offence punishable under Section 302 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court convicted all the five accused persons including the appellant in this Writ Petition and sentenced him to undergo RI for life. All the accused persons preferred appeal which was numbered as Criminal Appeal No.718 of 1989 before the Madhya Pradesh High Court at Jabalpur. The High Court by its judgment dated 18.4.2001 dismissed the appeal. Three of the accused persons filed Special Leave Petition No.4782 of 2002 which was admitted and registered as Criminal Appeal No.229 of 2003.
- D The appellant admittedly did not file any Special Leave Petition. By judgment dated 17.2.2003 in the aforesaid Criminal Appeal, a Bench of this Court held that Exception 4 to Section 300 IPC was applicable to the facts of the case and altered the conviction to Section 304 Part I IPC and held that custodial sentence of 10 years and fine as was imposed by the High Court
- E would meet the ends of justice. The petition be numbered as Special Leave Petition and consequently as a criminal appeal on grant of leave.
- F

- G 3. Learned counsel for the respondent-State submitted that since the appellant had not filed any special leave petition in time, he is not entitled to the benefit of the judgment.

- H 4. In *Vajrapu Sambayya Naidu and Ors. v. State of A.P. and Ors.* (JT 2003 (7) SC 558) the benefit of the judgment was extended even to other accused persons who had not approached this Court.

5. In *Harbans Singh v. State of UP. & Ors.* (1982 (2) SCC 101), four accused were convicted and sentenced to death. The order was confirmed by the High Court. One of the accused died in police encounter. Separate Special Leave Petitions of remaining three accused came up for consideration before different Benches in this Court. SLP of one of them was dismissed and he was hanged, SLP of another accused was partly allowed by the Court and death sentence was commuted to imprisonment for life. SLP of the remaining accused thereafter was dismissed, review petition was also dismissed and his prayer for clemency came to be rejected by the President. When the date for execution of death penalty was fixed, he again approached this Court. A B C

6. The Court noted that the course which the case had taken made a 'sad reading'. It was observed that it would be a sheer travesty of justice, if for the very same offence; one had to pay the extreme penalty of death whereas the other accused was to get life-imprisonment. In view of the fact, however, that the 'mercy petition' of the appellant was rejected by the President, the Court thought in the interest of comity to refer the matter to the President with a recommendation to be so good as to exercise his power to commute death sentence into imprisonment for life. D E

7. In a concurring judgment, A.N. Sen, J. stated:

"Very wide powers have been conferred on this Court for due and proper administration of justice. Apart from the jurisdiction and powers conferred on this Court under Articles 32 and 136 of the Constitution, I am of the opinion that this Court retains and must retain, an inherent power and jurisdiction for dealing with any extraordinary situation in the larger interests of administration of justice and for preventing manifest injustice being done. This power must necessarily be sparingly used only in exceptional circumstances for furthering the ends of justice". F G

7. By exercising *suo motu* power, this Court has granted H

- A the benefit of acquittal, conviction for a lesser offence or reduction of sentence to non-appealing accused in several cases. (See *Hardyal v. State of Rajasthan* (1991 Supp (1) SCC 148), *Pyare Singh v. State of M.P.*, (1992 Supp (3) SCC 45); *Jashubha v. State of Gujarat* (1994) 4 SCC 353); *Dandu v. State of A.P.*, (1999) 7 SCC 69), *Bijoy Singh v. State of Bihar*, (2002) 9 SCC 147), *Rajaram v. State of M.P.*, (1994 Supp (2) SCC 153), *Gurucharan v. State of Rajasthan*, (2003) 2 SCC 698), *Akhil Ali v. State of Maharashtra*, (2003) 2 SCC 708), *Bansi Lal v. State of M.P.* ((1982 (3) SCC 370), *Rattan Singh v. State of Punjab* (1988 Supp SCC 456), *Hari Nath v. State of U.P.*, (1988) 1 SCC 14), *Jayantibhai v. State of Gujarat*, (2002) 8 SCC 165), *Suresh v. State of Bihar*, (2003) 4 SCC 128), *Apren Joseph v. State of Kerala*, (1973) 2 SCR 16); *Hira Lal v. Delhi Administration*, (1973) 3 SCC 398), *Uma Shankar v. State of Bihar*, (2005) 10 SCC 336).
- B
- C
- D

8. In our view, similar course needs to be adopted. In the circumstances, by applying the decision in *Vajrapu's* case (supra), the conviction of the appellant is altered to Section 304 Part I, IPC and 10 years' custodial sentence with fine as was imposed by the High Court would meet the ends of justice, since the accused appellant stands on similar footing with the other accused persons who were the appellants in Criminal Appeal No.229 of 2003.
- E

9. The appeal is allowed.

D.G.

Appeal allowed.