

BACHAN SINGH ETC.

v.

STATE OF PUNJAB

September 14, 1979

[V. R. KRISHNA IYER AND P. N. SHINGHAL, JJ.]

Criminal Procedure Code, 1973 (Act 1 of 1974), Sections 377, 401, Scope of—Hearing of an appeal against their conviction and sentence filed by the accused along with the State appeal against their conviction under section 302 I.P.C. and a Revision Petition for enhancement of sentence—Their appeal itself, furnishes further opportunity to the accused to plead for their acquittal or reduction of sentence or to show cause against the enhancement of sentence.

Against their conviction and sentence passed by the Sessions Judge, Gurdaspur, the appellants preferred an appeal to the High Court. The State filed an appeal for their conviction and sentence under section 302 I.P.C. A revision petition was also filed under Section 401 CrI. P.C. for enhancement of the sentence of imprisonment and fine "to meet the ends of justice". Though the High Court made an express order on December 9, 1974 that the revision petition would be heard along with the criminal appeal, the High Court by its impugned judgment dated January 3, 1978, dismissed the appeal filed by the accused, but enhanced the sentence of Bachan Singh, Gurnam Singh and Chanan Singh accused under Section 304 Part I read with Section 149 I.P.C. to rigorous imprisonment for life and of accused Ravail Singh and Vir Singh under the same section to rigorous imprisonment for 10 years. While making that order, the High Court observed that the State appeal "for enhancement of punishment" was partly accepted, without reference to the revision petition. Hence the petition for special leave under Article 136 of the Constitution on the ground that the High Court committed an error of law in enhancing the sentence of the accused without giving them a reasonable opportunity of showing cause against such enhancement and without allowing them to plead for their acquittal or for reduction of the sentence as contemplated by sub-section (3) of section 377 of the Code of Criminal Procedure.

Dismissing the petition the Court,

HELD :

1. The revision petition under section 401 CrI. P.C. for enhancement of the sentence was maintainable as it was not permissible for the revision petitioner to file an appeal under section 377. The High Court effectively disposed of both the appeals and the revision petition even though there was an inadvertent mistake in not making a reference to the revision petition in the judgment. [647 F-G, 648 B]

2. The opportunity for pleading for acquittal was amply furnished to the accused at the hearing of their own appeal against their conviction, and the same appeal furnished them the necessary opportunity for pleading for their acquittal or the reduction of the sentence. That, in fact, was the subject matter of their appeal. The fact that the appeal filed by the State

A against the acquittal of the accused under section 302 I.P.C. was heard along with their appeal against conviction and sentence, itself furnished an opportunity to show cause against the enhancement of the sentence. [648 C-D]

3. (a) In the petition filed under section 401 Crl. P.C. for the exercise of the High Court's power of revision, it was permissible for it to exercise the power of a Court of appeal under section 386 for enhancement of the sentence. [648 E-F]

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(b) It was also permissible for the High Court under Section 397 Crl. P.C., to call for and examine the record of the proceedings before the trial court for purpose of satisfying itself as to the correctness, legality or "propriety" of any finding, "sentence" or order recorded or passed by that inferior Court. The High Court's power of revision under section 401 Crl. P.C. in the case of any proceeding the record of which has been called for by it or which otherwise comes to its knowledge includes the power conferred on a court of appeal under section 386 to enhance or reduce the sentence. So when the record of the case was before the High Court in connection with the two appeals and the revision petition there was nothing to prevent the High Court from invoking its power under section 397 read with 401 Crl. P.C. and to make an order for the enhancement of the sentence. [648 F-H]

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CRIMINAL APPELLATE JURISDICTION : Special Leave Petition (Crl.) No. 1383 of 1978.

From the Judgment and Order dated 3-1-1978 of the Punjab and Haryana High Court in Crl. A. No. 1039/74.

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K. L. Jogga and *L. N. Gupta* for the Petitioner.

Hardev Singh for the Respondent.

The Order of the Court was delivered by

SHINGHAL, J.— We have heard learned counsel for the parties at length.

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Accused Bachan Singh, Gurnam Singh and Chanan Singh were convicted by the Sessions Judge of Gurdaspur of an offence under section 304 Part I read with section 149 I.P.C. and were sentenced to rigorous imprisonment for 10 years and a fine of Rs. 1000/-. They were also convicted of an offence under section 148 I.P.C. and sentenced to rigorous imprisonment for 2 years. The remaining two accused Ravail Singh and Vir Singh were convicted of an offence under section 304 Part I read with section 149 I.P.C., but they were sentenced to rigorous imprisonment for 5 years and a fine of Rs. 500/-. Further, they were convicted of an offence under section 147 I.P.C. and were sentenced to rigorous imprisonment for 1 year.

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An appeal was filed by the accused against their conviction and sentence; and the State filed an appeal for their conviction and sentence under section 302 I.P.C. A revision petition was filed under

section 401 Cr. P.C. for enhancement of the sentence of imprisonment and fine "to meet the ends of justice". The High Court of Punjab and Haryana made an express order on December 9, 1974 that the revision petition would be heard alongwith the criminal appeal (No. 1039 of 1974) filed by the accused.

By its impugned judgment dated January 3, 1978, the High Court dismissed the appeal which was filed by the accused, but enhanced the sentence of Bachan Singh, Gurnam Singh and Chanan Singh accused under section 304 Part I read with section 149 I.P.C. to rigorous imprisonment for life and of accused Ravail Singh and Vir Singh under the same section to rigorous imprisonment for 10 years. While making that order, the High Court observed that the State appeal "for enhancement of punishment" was "partly accepted". That is why all the five accused have applied to this Court for special leave under article 136 of the Constitution.

It has been argued by learned counsel for the accused that the High Court committed an error of law in enhancing the sentence of the accused without giving them a reasonable opportunity of showing cause against such enhancement and without allowing them to plead for their acquittal or for reduction of the sentence as contemplated by sub-section (3) of section 377 of the Code of Criminal Procedure.

It appears to us, however, that as the State Government did not file an appeal against the sentence under sub-section (1) of section 377 Cr.P.C, and as it is not disputed before us that its appeal was directed against the acquittal of the accused for the offence under section 302 I.P.C., there is no justification for the argument that the High Court committed an illegality in not complying with the requirement of sub-section (3) of that section for giving the opportunity to the accused of showing cause against the enhancement of the sentence or of pleading for their acquittal or for reduction of the sentence.

As has been stated, a petition was filed under section 401 Cr.P.C. for enhancement of the sentence, and it was clearly maintainable as it was not permissible for the revision petitioner to file an appeal under section 377. It will be recalled that the High Court made an express order on December 9, 1974, for the hearing of the revision petition alongwith the appeal which had been filed by the accused.

The fact therefore remains that the High Court had before it the abovementioned appeals which had been filed by the accused and the State, and the revision petition under section 401 Cr.P.C. for enhancement of the sentence. While that court dismissed the appeal of the

A accused, and allowed the appeal of the State in part, it forgot to make a reference to the revision petition while drawing up the operative part of its order. That was an inadvertent mistake for, after reading the impugned judgment of the High Court, we have no doubt that it effectively disposed of both the appeals and the revision petition even though the wordings of the judgment in that respect were not quite appropriate.

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C But, even otherwise, there is no merit in the grievance of the accused that they were not given the opportunity of showing cause against the enhancement of the sentence or to plead for their acquittal or for reduction of the sentence. The opportunity for pleading for acquittal was amply furnished at the hearing of their own appeal against their conviction, and the same appeal furnished them the necessary opportunity for pleading for the reduction of the sentence. That in fact was the subject matter of their appeal.

D It is not disputed before us that the High Court heard the State appeal against the acquittal of the accused, alongwith the appeal which was filed by the accused, and that furnished further opportunity to the accused to plead for their acquittal, or reduction of sentence, or to show cause against the enhancement of the sentence. There is thus no force in the argument to the contrary. It has to be appreciated that in respect of the petition which was filed under section 401 Cr.P.C. for the exercise of the High Court's powers of revision,

E it was permissible for it to exercise the power of a Court of Appeal under section 386 for enhancement of the sentence, and if that had been done, there is no justification for the argument that the enhancement was illegal.

F There is another reason for this view. It was permissible for the High Court under section 397 Cr.P.C. to call for and examine the record of the proceeding before the trial court for the purpose of satisfying itself as to the correctness, legality or "propriety" of any finding, "sentence" or order, recorded or passed by that inferior court. The High Court's power of revision in the case of any proceeding the record of which has been called for by it or which otherwise comes to its knowledge, has been stated in section 401 Cr.P.C. to which reference has been made above. That includes the power conferred on a Court of Appeal under section 386 to enhance or reduce the sentence. So when the record of the case was before the High Court in connection with the two appeals and the revision petition referred to above, there was nothing to prevent the High

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H Court from invoking its powers under section 397 read with section 401 Cr.P.C. and to make an order for the enhancement of the sentence.

There is thus no force in the argument to the contrary.

All the same, we gave an opportunity to the learned counsel for the accused to advance his arguments on question of sentence and all that he was able to argue was that as the accused had undergone a portion of the sentence and, as the offence was committed in 1972, the High Court was not justified in enhancing the sentence. As is obvious, both these arguments are untenable and inconsequential because of the concurrent findings of the trial court and the High Court that the accused emerged from the house of accused Bachan Singh as soon as Sarup Singh (deceased) reached the place of occurrence, shouted that he should be taught a lesson for getting liquor recovered from them and beat him with their respective weapons. It has been found further that while accused Vir Singh caught hold of the hair of the deceased and Ravail Singh caught hold of his legs and felled him on the ground, Gurnam Singh, who was armed with a *datar*, dealt blows on his right knee while Chanan Singh gave a *kirpan* blow on his left hand, and then accused Gurnam Singh gave a blow on his right knee while Chanan Singh gave a *kirpan* blow on his left hand and he, Gurnam Singh and Bachan Singh dealt further blows on his left leg near the knee, as a result of which the left leg was completely severed from the body. It has also been concurrently found that the accused took away the chopped off leg of the deceased after wrapping it in his turban, and that he succumbed to the injuries soon after. The facts and the circumstances which have thus been established by the evidence of Pal Singh P.W.4, and Nishan Singh P.W.5, on which reliance has been placed by both the courts, justify the view taken by the High Court that the accused deserved the sentence awarded to them by it.

Learned counsel for the accused tried to argue that the conviction of the accused was not justified on the merits, and took us through the finding in regard to the motive for the offence, the nature of the medical evidence, the plea of self defence taken by accused Bachan Singh and the relationship of eye-witnesses Pal Singh P.W.4 and Nishan Singh P.W.5 with the deceased. Apart from the fact that there was no occasion for us to consider those arguments, we have no hesitation in saying that they are without merit.

In the view we have taken, the petition for special leave is dismissed.