

TARLOK SINGH
v.
STATE OF PUNJAB
April 28, 1977

[V. R. KRISHNA IYER AND P. S. KAILASAM, JJ.]

Criminal Procedure Code (Act 2 of 1974), 1973—Section 235, object and scope of.

The appellant was convicted along with two other accused under s. 302 I.P.C. and sentenced to death while the other two were sentenced to life imprisonment. In appeal to this Court against the orders of the High Court confirming the death sentence imposed, the special leave was granted limited to sentence.

Allowing the Criminal Appeal No. 337 of 1976 in part and modifying the death sentence to one of life imprisonment, the Court,

HELD : (1) The object of s. 235 Cr.P.C. 1974 is to give a fresh opportunity to the convicted person to bring to the notice of the court such circumstances as may help the court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case. [712 D]

(2) Failure to give an opportunity under s. 235(2) Cr.P.C. will not affect the conviction under any circumstance. In a murder case where the charge is made out the limited question is as between the two sentences prescribed under the Penal Code. If the minimum sentence is imposed, question of providing an opportunity under s. 235 would not arise. [712 F]

(3) The hearing contemplated by s. 235(2) is not confined merely to hearing oral submissions but extend giving an opportunity to the prosecution and the accused to place before the court facts and materials of sentence and, if they are contested by either side, then to produce evidence for the purpose of establishing the same. [712 G]

Santa Singh v. State of Punjab A.I.R. 1976 S C 2386, reiterated.

(4) To save time and expense and help produce prompt justice, it may be more appropriate for the appellate court to give an opportunity to the parties in terms of s. 235(2) to produce the materials they wish to adduce instead of going through the exercise of sending the case back to the trial court. [713 A]

In the instant case, the Court modified the death sentence to one of life imprisonment in view of the facts : (i) The death sentence has been inflicted nearly two years ago and the agony of such a sentence has been an excruciating experience suffered by the convict for a long period; (ii) The appellant had two other assailants with him who have been awarded life imprisonment; (iii) There was no motive for the appellant to kill the innocent child; and (iv) The other circumstances present indicate that the ends of justice would be met by awarding life imprisonment. [713 G-E]

E. Annamma v. State of Andhra Pradesh A.I.R. 1974 S.C. 799, referred to.

CRIMINAL APPELLATE JURISDICTION : CrI. A. 337 & 367/1976

(Appeals by Special Leave from the Judgment and Order dated 24.3.1976 of the Punjab and Haryana High Court in Srl. A No. 757

A 75 and Murder Reference No. 27/75 and in CrI. Appeal No. 759 of 1975)

A. K. Sen and Hariinder Singh, for the appellant.

N. S. Das Behl, for the respondent.

B

The Judgment of the court was delivered by

C KRISHNA IYER, J. In CrI. Appeal No. 337/1976 by special leave Shri A. K. Sen has confined his challenge—indeed, leave itself was limited—to the question of sentence. The case of murder was proved and the conviction by the Sessions Court was confirmed by the High Court. The Sessions Judge awarded life imprisonment to two accused and death sentence to the appellant. The High Court confirmed the death sentence and hence this appeal.

D Section 235 Cr. P.C. 1974 makes a departure from the previous Code on account of humanist considerations to personalise the sentence to be awarded. The object of the provision is to give a fresh such circumstances as may help the court in awarding an appropriate sentence having regard to the personal, social and other circumstances of the case. Of course, when it is a case of conviction under s. 302, I.P.C. if the minimum sentence is imposed the question of providing an opportunity under Sec. 235 would not arise.

E

In this case it is admitted that no opportunity was given under s. 235(2) Cr. P. C. to the appellant to show cause as to why the lesser sentence of life imprisonment should not be inflicted. We may make it absolutely clear that such a failure will not affect the conviction under any circumstances. The only point is relevant to sentence. Even there in a murder case where the charge of murder is made out, the limited question is as between the two sentences prescribed under the Penal Code.

F

G In *Santa Singh v. State of Punjab*⁽¹⁾ this Court considering s. 235 (2) Cr. P. C. held that the hearing contemplated by that sub-section is not confined merely to hearing oral submissions but extends to giving an opportunity to the prosecution and the accused to place before the court facts and materials relating to the various factors bearing on the question of sentence and, if they are contested by either side, then to produce evidence for the purpose of establishing the same. Of course, in that particular case this Court sent the case back to the sessions court for complying with s. 235(2) Cr. P. C. It may well be that in many cases sending the case back to the Sessions Court may lead to more expense, delay and prejudice to the cause of justice. In such cases it may be more appropriate for the appellate court to give an opportunity to the parties in terms of s. 235(2) to produce the

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(1) A.I.R. 1976 S.C. 2386

materials they wish to adduce instead of going through the exercise of sending the case back to the trial court. This may, in many cases, save time and help produce prompt justice. A

In the present case we propose to adopt that course and counsel for the parties agree that they will rely upon the materials available on record and they have nothing more to offer to the court bearing on the question of sentence. It will be an idle formality in a situation like that to remit the case to reconsider the question of sentence to the Sessions Court. B

Coming to the facts of the present case, having heard both sides we are impressed by Shri Sen's submission that the death sentence has been inflicted nearly two years ago and the agony of such a sentence has been an excruciating experience suffered by the convict for a long period. This, by itself, may not be a circumstance to bring down the death sentence, if otherwise the act is too brutal, depraved or meriting the highest penalty. It has been now established in many decisions of this Court that death sentence must be awarded where there are aggravating factors (vide *E. Annamma v. State of Andhra Pradesh*⁽¹⁾). The appellant had two other assailants with him who have been awarded life imprisonment. Moreover, it is evident from the records that there was an exchange of abuse between the parties, viz., Shiv Singh and the accused party. It is also apparent that there was no motive for the appellant to kill the innocent child who died, a circumstance which has influenced the courts below in awarding the capital sentence. The other circumstances present also indicate that there is no particular reason why the appellant should have been given the severer sentence and we are satisfied that the ends of justice would be met by awarding life imprisonment. We accordingly direct that the sentence of life imprisonment should be substituted in place of death sentence awarded by the trial court and confirmed by the High Court. We allow the appeal to this extent. C D E

CrI. Appeal No. 367 of 1976 is dismissed as not pressed.

Cr. A. 337 allowed in part and sentence modified. Cr. A. 367/76 dismissed.

S.R.

(1) A.I.R. 1974 S.C. 799