

A SURENDRA SINGH RAUTELA @ SURENDRA SINGH BENGALI
v.
STATE OF BIHAR (NOW STATE OF JHARKAHAND)

NOVEMBER 27, 2001

B [M.B. SHAH AND B.N. AGRAWAL, JJ.]

C *Penal Code, 1860/Arms Act, 1959—Sections 302 & 307/Section 27/(1) and (3)—Conviction and senetence of accused—Corroboration of the testimony of the sole eye witnesses—Incident taking place in broad day light—No improbability in identification of accused—On basis of such evidence conviction and sentence of accused under sections 302 and 307 upheld.*

Criminal trial:

D *Testimony of sole eye witness—Reliability of—Corroborated by his relative and also medical evidence—Held, testimony of such eye witness cannot be rejected mainly because another eye witness had not supported prosecution case and was declared hostile.*

E *Identification of the other accused—Reliability of—From the statement of the informant in the FIR that he could not identify accused even by face—Such identification of the accused in the test identification parade becomes farce and his identification in the court cannot be relied on.*

Code of Criminal Procedure, 1973 :

F *Section 377—Appeal by the State Government—Enhancement of sentence—From life imprisonment to death penalty—Is justified only when opportunity of hearing given.*

G *Section 220(3)—Simultaneous prosecution for two offences—When act of an accused in same transactions—Constitutes offences under the Penal Code as well as the Arms Act—Trial for each of such offences is permissible in law.*

H *According to the prosecution, informant alongwith his uncle and their bodyguards were travelling in a car. Appellant 'S' sitting on the rear seat of the motor cycle came from behind at the right side of the car and*

fired from the stengun and appellant 'MA' sitting on the rear seat of the scooter also fired at the right side of the car. As a result informant got injured while his uncle died. First Information Report was registered. Motive alleged for the occurrence was that prior to the incident appellant 'S' had demanded ransom on two or three occasions from the informant which was refused. Magistrate took cognizance and committed the accused persons to Sessions Court for trial. Trial Court convicted and sentenced the appellants to life imprisonment. It also convicted and sentenced appellant 'S' to death penalty and appellant 'MA' to imprisonment under the Arms Act. Appellant challenged their conviction and the Respondent-State filed an appeal for enhancement of sentence awarded to appellant 'MA'. High Court dismissed the appeal filed by appellant 'MA' and the Respondent-State and also set aside the conviction and sentence of Appellant 'S' under Section 27(3) of the Arms Act. It upheld the conviction and sentence of appellant 'S' under Section 307 of the Code and also upheld his conviction under S. 302 of the Code but awarded death penalty. Hence the present appeals.

Disposing of the appeals, the Court

HELD : 1.1. It cannot be said that reliance could not be placed upon the testimony of the informant as prosecution case has not been supported by another eye witness who turned hostile since the informant is an injured person whose evidence is corroborated by his father and his brother and the medical evidence. [346-A; B]

1.2. Father of the informant stated that two or three times informant received telephone calls in his presence from appellant 'S' demanding ransom. He further stated that he also received a telephone call from appellant 'S' demanding ransom. Even the brother of the informant stated that the cause of incidence was demand of ransom from the informant by appellant 'S' which was not met. Therefore, the submission that the prosecution failed to prove the motive disclosed in the first information report as no evidence has been lead to prove the same is to be rejected.[346-C-E]

1.3. Informant stated in his evidence that five to six days before the incident he was introduced to appellant 'S' by one of their bodyguards in a hotel where they had gone for taking snacks. Therefore, since the incident had taken place in broad day light and as the appellant 'S' was introduced

A to the informant in the hotel prior to the occurrence even though once, there is no improbability in identification of appellant 'S' by the informant. [346-F; G]

B 1.4. The High Court was not justified in upholding convictions and sentences awarded against appellant 'MA'. From the statement of the informant in the first information report, it would appear that he could not identify appellant 'MA' even by face and for the first time in the Sessions Court, he identified appellant 'MA'. Therefore, the identification of the appellant 'MA' by the informant in the test identification parade becomes farce and no reliance can be placed upon his identification in Court. [347-G; H; 348-A; B]

C 2. It is well settled that the High Court, *suo motu* in exercise of revisional jurisdiction can enhance the sentence of an accused awarded by the trial court and the same is not affected merely because an appeal has been provided under Section 377 of the Code for enhancement of sentence D and no such appeal has been preferred. In the instant case, no opportunity of hearing was given to the appellant 'S' against the enhancement of sentence. Thus the High Court was justified in upholding conviction of appellant 'S' under Sections 302 and 307 of the Penal Code but was not justified in enhancing the sentence of life imprisonment awarded under Section 302 E of the Penal Code into death penalty. [347-A; B; D; E]

Nadir Khan v. The State (Delhi Administration), AIR (1976) SC 2205 and Eknath Shankarrao Mukkawar v. State of Maharashtra, AIR (1977) SC 1177, referred to.

F 3. *Jayaram Vithabo and Anr. v. The State of Bombay, AIR (1956) SC 146 and Bachan Singh and Ors. v. State of Punjab, AIR (1980) SC 267, relied on.*

G 3. The act of firing by appellant 'S' at the victims constitutes offences under Section 307 of the Penal Code for firing at the informant and under Section 302 of the Penal Code for firing at the deceased alongwith offences punishable under Section 27(3) of the Arms Act. In view of the specific provisions engrafted under Section 220(3) Cr. P.C. that if act or acts of an accused in the same transaction constitute more than one offence under different laws, the person accused of them may be charged with and tried at one trial for each of such offence, it was not justified in holding that it H was not permissible to try appellant 'S' simultaneously for offences under

Section 302 of the Penal Code as well as Section 27(3) of the Arms Act and the charge under Section 27(3) of the Arms Act was totally superfluous.

[348-G-H; 349-A; B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 628-629 of 2001.

From the Judgment and Order dated 18.12.2000 of the Rajasthan High Court in D.R.C. No. 1/2000 (R) with Crl. A. No. 115 with Govt. A. No. 17 of 2000 (R).

WITH

Crl. A. Nos. 630 and 1210-1211 of 2001.

P.S. Mishra, Ranjit Kumar and S.B. Sanyal, Himanshu Munshi, L.R. Singh (NP), Amboj Kumar Sinha, Varun Goswami, Neeraj Shekhar, Ashok Mathur, Rajesh Pathak, for the appearing parties.

The Judgment of the Court was delivered by

B.N. AGRAWAL, J. Leave granted in SLP (Crl.) Nos. 1964-65 of 2001.

These appeals by Special Leave have been preferred against the judgment rendered by Jharkhand High Court. Surendra Singh Rautela @ Surendra Singh Bengali who is sole appellant in Criminal Appeal No. 628-29 of 2001 and Mohd. Anis who is appellant in Criminal Appeal No. 630 of 2001 were tried and convicted by the trial court. Surendra Singh Rautela was convicted under Sections 302 and 307 of the Penal Code and sentenced to undergo rigorous imprisonment for life on both count. He was further convicted under Section 27(3) of the Arms Act and awarded death sentence and the matter was referred to the High Court for confirmation of death sentence. Mohd. Anis was convicted under Sections 302 and 307 read with Section 34 of the Penal Code and sentenced to rigorous imprisonment for life and ten years respectively. He was further convicted under Section 27(1) of the Arms Act and sentenced to undergo rigorous imprisonment for seven years. The sentences awarded against the appellants were, however, ordered to run concurrently. Both the accused persons preferred separate appeals before the High Court challenging their convictions whereas on behalf of the State, an appeal was filed for enhancement of punishment of life imprisonment awarded against Mohd. Anis into death penalty. The High Court by a common judgment disposed of the reference and

A the appeals. Appeal preferred by Mohd. Anis and State Government have been dismissed whereby convictions and sentences awarded against this appellant have been affirmed. So far appeal preferred by appellant Surendra Singh Rautela is concerned, his conviction and sentence under Section 27(3) of the Arms Act have been set aside. Conviction and sentence of this appellant under Section 307 of the Penal Code have been upheld. So far as his conviction under Section 302 of the Penal Code is concerned, the same has been confirmed but he has been awarded death penalty.

Prosecution case, in short, is that on 4th April, 1966 at 10.00 a.m. the informant Ranjan Singh (PW 7) along with his material uncle Dhananjay Singh

C and their bodyguards Shyam Bihari Singh (PW 4) and Karu Singh were going in a Maruti Car to their site where contract work was going on. Ranjan Singh (PW 7) was driving the Car and Dhananjay Singh was sitting by his side whereas Shyam Bihari Singh (PW 4) and Karu Singh were sitting on the rear seat of the Car. Shyam Bihari Singh was holding licenced revolver belonging to Ranjan Singh (PW 7). At about 10.20 a.m., when the Car reached near Military Chowk at Booty Road, one black coloured Yamaha motor cycle, on the rear seat of which, appellant Surendra Singh Rautela was sitting, came from behind at the right side of the Car and he started firing at Ranjan Singh (PW 7) by a stengun, who pushed himself behind. In the meantime, there was also firing from the left side of the Car by a person who was on a scooter. Thereupon, the informant stopped the Car in front of the traffic post. As a result of firing Ranjan Singh (PW 7) and his maternal uncle Dhananjay Singh got injured. Thereafter, the accused person fled away. At that time, some police personnel arrived there and brought Ranjan Singh (PW 7) and Dhananjay Singh in injured condition to Rajendra Medical College Hospital where doctor declared Dhananjay Singh as brought dead. It was stated in the first information report that Ranjan Singh (PW 7) could identify the person, who was driving the motor cycle, on seeing him and other occupants of the Car could identify, the person who was on the scooter and fired from the left side, on seeing him. Motive for the occurrence as disclosed in the first information report was that G prior to the incident appellant Surendra Singh Rautela had demanded Rs. 2 lakhs from Ranjan Singh (PW 7) as ransom on two or three occasions which was refused by him which led to the present occurrence. Stating the aforesaid facts, *fardbayan* of Ranjan Singh (PW 7) was recorded by the police in the hospital on the same day at 11.30 a.m. on the basis of which the first information report was drawn up.

The police after registering the case took up investigation and on completion thereof submitted charge sheet on receipt whereof, the magistrate took cognizance and committed the accused persons to the court of sessions to face trial. During trial, the prosecution examined fourteen witnesses in all and upon the conclusion of trial, the trial court convicted and sentenced the appellants whereupon appeals were preferred and the same having been disposed of as stated above, the present appeals by Special Leave filed on behalf of the accused persons as well as the State are before us.

First, we proceed to consider ocular version of the occurrence supported by the informant Ranjan Singh (PW 7). According to the first information report and the evidence of this witness, besides him and the deceased Dhananjay Singh, there were two other occupants of the car, who were eye witnesses, namely, Shyam Bihari Singh (PW 4) and Karu Singh, out of whom, Karu Singh died during trial, therefore, could not be examined and Shyam Bihari Singh was examined as PW 4, but as he did not support the prosecution case, he was declared hostile. Thus, Ranjan Singh (PW 7) remains the solitary eye witness. This witness has received injuries by firearms on vital parts of the body as would appear from the evidence of Dr. V.K. Jain (PW 8), who examined this witness on the date of occurrence itself in the hospital where he was admitted. This witness has supported the prosecution case in all material particulars and his evidence has been corroborated by Ram Pal Singh (PW 1), Om Prakash (PW-3) and Kundan Prakash (PW 5), out of whom, PW 1 is his father and PW 3 and PW 5 are his brothers, who were at their house at 11.00 a.m. in the morning of the date of occurrence and rushed to the hospital immediately upon receipt of information before whom the informant disclosed about the occurrence and name of appellant Surendra Singh Rautela. These witnesses were examined by the police on the same day in the hospital. The medical evidence supports the statement of Ranjan Singh (PW 7) as Dr. A.K. Choudhary (PW 6), who held postmortem examination on the dead body of Dhananjay Singh on the date of occurrence itself at 4.00 p.m. found injuries by firearm and opined that death was caused between three to eighteen hours at the time of postmortem examination which fits in with the prosecution case. That apart, the doctor recovered a bullet from the dead body which was sent to the Forensic Science Laboratory where it was examined by Ezaj Ahmad Khan (PW 12), Deputy Director, Ranchi Regional Forensic Science Laboratory, who opined that bullet was fired from 9 mm caliber and on the statement of accused Surendra Singh Rautela made before the police, firearms including 9 mm. Caliber were recovered by the Police Office, PW. 14, from steel almirah in the premises of ceramic

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A factory on key being produced by the accused himself. Shri P.S. Mishra, learned Senior Counsel appearing on behalf of the appellant Surendra Singh Rautela submitted that no reliance should be placed upon the testimony of Ranjan Singh (PW 7) as the prosecution case has not been supported by another eye witness Shyam Bihari Singh (PW 4), who has been declared hostile. In our opinion, in view of the fact that Ranjan Singh (PW 7) is an injured person and his evidence is corroborated by PWs 1, 3 and 5 and the medical evidence, we cannot discard his evidence merely because another eye witness Shyam Bihari Singh (PW 4) has not supported the prosecution case.

B Shri Mishra submitted that the prosecution has failed to prove the motive C which has been disclosed in the first information report at no evidence has been led to prove the same. In our view, the submission has been made only to be rejected as the motive has been proved by the three witnesses, namely, Ram Pal Singh (PW 1), Om Prakash (PW 3) and Kundan Prakash (PW 5). Ram Pal Singh (PW 1), who is father of the informant, stated that two or three times, D telephone calls were received in his presence from appellant Surendra Singh Rautela demanding Rs. 2 lakhs as ransom from the informant. He has further stated that on one occasion, he also received a telephonic call from appellant Surendra Singh Rautela demanding ransom. Om Prakash (PW 3), who is brother of the informant has stated that the cause of incident was that Surendra E Singh Rautela had demanded a sum of Rs. 2 lakhs from the informant Kundan Prakash (PW 5), who is another brother of the informant, stated that PW 7 told him that cause of incident was refusal to meet the demand of ransom of appellant Surendra Singh Rautela by the informant.

F Learned counsel for the appellant Surendra Singh Rautela next submitted that identification of this appellant by Ranjan Singh (PW 7) was highly improbable as this witness had seen him prior to the occurrence only once. This witness has stated in his evidence that five to six days before the incident, he was introduced to appellant Surendra Singh Rautela by Shyam Bihari Singh (PW 4) in Ganga Ashram Hotel at Kachheri Road where they had gone for taking snacks. Since the incident had taken place in broad day light and as this G appellant was introduced to this witness in the hotel, we do not find any improbability in identification of appellant Surendra Singh Rautela by him.

H Shri Mishra further submitted that the High Court was not justified in enhancing the punishment awarded against this appellant from imprisonment for life to death sentence as no appeal under Section 377 of the Code of

Criminal Procedure, 1973 (hereinafter referred to as 'the Code') was filed by the State for enhancement of sentence. It has been further submitted that no opportunity of hearing was afforded to appellant Surendra Singh Rautela against the enhancement of sentence. It is well settled that the High Court, *suo motu* in exercise of revisional jurisdiction, can enhance the sentence of an accused awarded by the trial court and the same is not affected merely because an appeal has been provided under Section 377 of the Code for enhancement of sentence and no such appeal has been preferred. Reference in this connection may be made to decisions of this Court in the cases of *Nadir Khan v. The State (Delhi Administration)*, AIR (1976) SC 2205 and *Eknath Shankarao Mukkawar v. State of Maharashtra*, AIR (1977) SC 1177. It has been also settled by this Court in the cases of *Jayaram Vithoba and Anr. v. The State of Bombay*, AIR (1956) SC 146 and *Bachan Singh and Ors. v. State of Punjab*, AIR (1980) SC 267 that the *suo motu* powers of enhancement under revisional jurisdiction can be exercised only after giving opportunity of hearing to the accused. In the case on hand, undisputedly, no opportunity of hearing was given to the appellant Surendra Singh Rautela on the question of enhancement of sentence.

Thus, in view of the foregoing discussions, we are of the view that the High Court was quite justified in upholding conviction of appellant Surendra Singh Rautela under Sections 302 and 307 of the Penal Code but was not justified in enhancing the sentence of life imprisonment awarded under Section 302 of the Penal Code into death penalty.

Turning now to the case of appellant Mohd. Anis, it may be stated that his conviction is based upon the solitary evidence of his identification by Ranjan Singh (PW 7) in Court as well as in the test identification parade. Even according to prosecution case as disclosed in the first information report as well as the evidence of Ranjan Singh (PW 7), this appellant was sitting on rear seat of the scooter which came from left side of the car and fired at the victims. In the first information report, it has been specifically stated that the associates of the informant who were in the Car could identify this appellant, who fired from the scooter, on seeing him and the informant could identify the person who was driving the motor cycle on seeing him and on which motor cycle accused Surendra Singh Rautela was sitting on the rear seat and fired at the victims. From the aforesaid statement of the informant in the first information report, it would appear that he could not identify appellant Mohd. Anis even by face and for the first time in the Sessions Court, the witness identified him. In view of the aforesaid statement in the first information report, the identifi-

A cation of the appellant Mohd. Anis by Ranjan Singh (PW 7) in the test identification parade becomes farce and no reliance can be placed upon his identification in Court: This being the position, we have no option but to hold that the High Court was not justified in upholding convictions and sentences awarded against this appellant.

B As far as appeal preferred on behalf of the State of Jharkhand is concerned, the same was filed challenging the acquittal of appellant Surendra Singh Rautela by the High Court from the charge under Section 27(3) of the Arms Act, but Shri S.B. Sanyal, learned Senior Counsel appearing on behalf of the State submitted that he is not in a position to challenge the order of acquittal on merit. It appears that in the leading judgment, the learned Judge recorded acquittal of appellant Surendra Singh Rautela from the charge under Section 27(3) of the Arms Act on merit but in the concurring judgment which is by the learned Chief Justice, acquittal under the aforesaid Section has been recorded on the ground that it was not permissible in law to try appellant Surendra Singh Rautela simultaneously for the offences under Sections 302 of the Penal Code as well as 27(3) of the Arms Act. Learned counsel for the State has objected to recording of acquittal in the concurring judgment on this ground. It has been submitted that the learned Chief Justice was not justified in holding that it was not permissible in law to try appellant Surendra Singh Rautela simultaneously for the offences under Sections 302 of the Penal Code as well as 27(3) of the Arms Act as the same is contrary to the provisions of Section 220 of the Code. Sub section (1) of Section 220 of the Code lays down that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. Such section (3) of Section 220 of the Code lays down that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. In the case on hand, the act of firing by appellant Surendra Singh Rautela at the victims constitutes offences both under the Penal Code as well as Arms Act. Under the Penal Code, two offences have been disclosed, one under Section 307 of the Penal Code for firing at Ranjan Singh (PW 7) and another under Section 302 of the Penal Code for firing at Dhananjay Singh, deceased. The act of firing at Dhananjay Singh, deceased, by appellant Surendra Singh Rautela apart from constituting an offence punishable under Section 302 of the Penal Code does constitute an offence punishable under Section 27(3) of the Arms

Act. According to the provisions of Sub section (3) of Section 220 of the Code, if act or acts of an accused in the same transaction constitute more than one offence under different laws, the person accused of them may be charged with and tried at one trial for each of such offences. Thus, in view of the specific provisions engrafted under sub-section (3) of Section 220 of the Code, we have no option but to hold that the learned Chief Justice in the concurring judgment was not justified in holding that it was not permissible to try appellant Surendra Singh Rautela simultaneously for offences under Section 302 of the Penal Code as well as Section 27(3) of the Arms Act and the charge under Section 27(3) of the Arms Act was totally superfluous.

In the result, Criminal Appeal Nos. 628-29 of 2001 are allowed in part and sentence of death awarded against appellant Surendra Singh Rautela @ Surendra Singh Bengali by the High Court under Section 302 of the Penal Code is set aside and the sentence of imprisonment for life awarded under that Section by the trial Court is restored while upholding conviction of the appellant under Section 302 of the Penal Code and his conviction and sentence under Section 307 of the Penal Code. Criminal Appeal No. 630 of 2001 is allowed, convictions and sentences awarded against appellant Mohd. Anis are set aside and he is acquitted of all the charges. Appellant Mohd. Anis is directed to be released forthwith, if not required to be in custody in connection with any other case. Criminal Appeals arising out of SLP (Crl.) Nos. 1964-65 of 2001 preferred by the State are disposed of with the observations aforementioned.

N.J.

Appeals disposed of.