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No arguments were addressed to this court on the correctness of the finding of the High Court in regard to the conviction for receiving illegal gratification from Pal Singh. We agree with the opinion of the High Court that the offence under s. 5(1)(d) of receiving illegal bribe of Rs. 50 has been made out and would therefore dismiss this appeal.

Appeal dismissed.

SARJUG RAI AND OTHERS

v.

THE STATE OF BIHAR

1957

October 28.

(B. P. SINHA and J. L. KAPUR, JJ.)

Criminal Revision—Enhancement of sentence—Power of High Court—Enhancement beyond the maximum sentence imposable by trial Court—Code of Criminal Procedure (V of 1898), ss. 31 and 439.

The appellants were tried before an Assistant Sessions Judge for the offence of dacoity under s. 395 Indian Penal Code. Under s. 31(3) Code of Criminal Procedure, (as it then stood) the Assistant Sessions Judge could award a maximum sentence of seven years rigorous imprisonment. He convicted the appellants and sentenced them to five years rigorous inprisonment each. The appellants appealed to the High Court, and the High Court, in its revisional jurisdiction, issued a notice to the appellants for enhancement of sentence. The High Court dismissed the appeal and enhanced the sentence to ten years rigorous imprisonment.

Held, that the High Court had, in its revisional jurisdiction under s. 439 Code of Criminal Procedure, the power to enhance the sentence beyond the limit of the maximum sentence that could have been imposed by the trial Court.

Bed Raj v. *The State of Uttar Pradesh,* (1955) 2 S.C.R. 583, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 165 of 1957.

Appeal by special leave from the judgment and order dated the 4th August, 1955, of the Patna High Court in Criminal Appeal No. 699 of 1953 with Criminal Revision No. 205 of 1954, arising out of the judgment and order dated the 12th December, 1953, of

the Court of the Assistant Sessions Judge, Second Court Chapra in Trial No. 70 of 1953.

G. C. Mathur, for the appellants.

S. P. Varma, for the respondent.

1957. October 28. The following judgment of the Court was delivered by

SINHA J.—The only question for determination in this appeal is whether the High Court in its revisional jurisdiction, has the power to enhance the sentence, as it has done in the instant case, beyond the limit of the maximum sentence that could have been imposed by the trial court, on the accused persons. The appellants, along with others, were placed on their trial before the Assistant Sessions Judge of Chapra in the district of Saran, for the offence of dacoity under s. 395, Indian Penal Code. They, along with two others, were convicted under s. 395, Indian Penal Code, and sentenced to rigorous imprisonment for 5 years, by the Assistant Sessions Judge, by his Judgment and order dated December 12, 1953. The other accused were acquitted. The convicted persons preferred an appeal to the High Court at Patna. The High Court, in its revisional jurisdiction, while admitting the appeal, called upon the appellants to show cause why, in the event of their convictions being maintained, their sentence should not be enhanced. The appeal and the rule for enhancement of sentence were heard together by a Division Bench of that Court. The High Court, by its judgment and order dated August 4, 1955, allowed the appeal of two of the appellants and acquitted them but maintained the conviction as against the remaining six appellants. On the question of sentence, the High Court observed that the "offence of dacoity has increased tremendously. It is a very heinous offence as innocent persons, while sleeping in their houses, are attacked and their belongings are taken by force." The High Court, therefore, was of the opinion that a sentence of five years' rigorous imprisonment was "extremely inadequate". It, therefore, enhanced the sentence to 10 years' rigorous imprisonment in each case. The appellants, six in number, moved this Court and obtained special leave

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to appeal limited to the question of sentence only, the question being whether the High Court had the jurisdiction to enhance the sentence beyond the limits of the power of the trial court itself.

The occurrence of dacoity which is the subject-matter of the charge against the appellants, along with others, took place on the night between July 1 and 2, 1952, in the house of Ranjit Bahadur, a minor. After midnight, 16 or 17 dacoits, fully armed with various deadly weapons, broke open the main entrance door of the house with an axe. After going into the house, they broke open boxes and tampered with the iron safe, and removed articles worth twenty thousand rupees. The inmates of the house were overpowered. Some of them, slipping out of the house, raised a big fire which is the customary form of alarm raised against the invading crowd of dacoits. On that alarm, a number of people of the village turned up but had not the courage to face the dacoits for fear of being shot. They contented themselves with using brickbats against the dacoits who made good their escape with their booty. It would, thus, appear that it was a serious occurrence involving the lives and fortunes of the inmates of the house, and naturally, the High Court took a very serious view of the offence.

In this Court, the learned counsel for the appellants, who appeared *amicus curiae*, contended, in the first place, that the High Court had exceeded its powers in enhancing the sentence from 5 to 10 years inasmuch as the trial court itself could not have inflicted a sentence of imprisonment for more than 7 years. Alternatively, he contended that the High Court had not kept in view the dictum of this Court in the case of *Bed Raj* v. *The State of Uttar Pradesh*(1), while enhancing the sentence against the appellants before it. And lastly, it was contended that in any view of the matter, in the circumstances of this case, the sentence of 10 years rigorous imprisonment is too severe. In our opinion, there is no substance in any one of these contentions.

(1) [1955] 2 S.C.R. 583.

The main point on which the special leave was granted is the question of the competence of the High Court to impose a higher sentence than that which could have been imposed by the learned Assistant Sessions Judge under s. 31(3) of the Code of Criminal Procedure. The learned trial judge could not have imposed a term of imprisonment exceeding 7 years. The argument is that the High Court could enhance the sentence from 5 to 7 years and no more. This argument is sought to be enforced by the consideration that it must be presumed that the learned Assistant Sessions Judge had been entrusted with the trial of the accused persons with the full knowledge that, on conviction, the accused persons could be punished with a term of imprisonment not exceeding 7 years. In its revisional jurisdiction, the High Court could exercise its powers only to correct any mistakes made by the learned trial judge. The High Court could, therefore, at the most, say that the trial judge should have inflicted the highest punishment, it had been empowered by the Code, to impose. The High Court could not, at the revisional stage, it was further argued, insist upon a higher punishment being awarded by the trial court than 7 years' rigorous imprisonment.

The power of the High Court to enhance a sentence, is contained in sub-s. (1) of s. 439 of the Code, which clothes the High Court with the powers of a Court of Appeal under the Code, as also the power to enhance the sentence. Sub-s. (1) itself, does not contain any words of limitation on the power to enhance the sentence. Hence, the High Court could impose any sentence up to the maximum limit prescribed by the Indian Penal Code, for a particular offence. In this case, therefore, the High Court could impose the maximum sentence of imprisonment for life under s. 395, Indian Penal Code. Is there anything in the Code of Criminal Procedure, which limits that power? The fact that the trial of the case was entrusted to a court with a limited jurisdiction in the matter of sentence, could not be used to impose a limit on the power of a High Court to impose a proper and

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adequate sentence. That the Legislature did not intend to impose a limit on the power of the High Court to inflict an adequate sentence in a trial held by a Court of Session, is made clear by the provisions of sub-s. (3) of s. 439, Criminal Procedure Code, which is in these terms :

"(3) Where the sentence dealt with under this section has been passed by a Magistrate acting otherwise than under section 34, the Court shall not inflict a greater punishment for the offence, which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class."

Section 32 of the Code lays down the sentence which magistrates may, ordinarily, impose, which is a term of imprisonment not exceeding two years, in the case of Presidency Magistrates and Magistrates of the first class (omitting all reference to fine). But in certain specified areas, s. 30 empowers the Government to invest a District Magistrate or a Magistrate, first class, with the power to try, as a magistrate, all offences not punishable with death. A magistrate so empowered under s. 30, may pass a sentence of imprisonment for a term of 7 years or less. Thus, the powers of an Assistant Sessions Judge, under s. 31(3) and of a magistrate specially empowered under s. 30 to impose a sentence of imprisonment, are the same, the terms of s. 31(3) and s. 34 being almost identical. From the terms of s. 439(3), it is clear that the only limitation on the power of a High Court to impose punishment is in respect of cases tried by magistrates other than those specially empowered under s. 30, and thus, vested with higher powers of punishment under s. 34. Sub-section (3) aforesaid, does not impose any limits on the powers of the High Court in cases dealt with by a magistrate specially empowered under s. 30. Hence, in such a case, the High Court has the power to impose a sentence higher than that which could have been imposed by such a magistrate. That sub-section has no reference to a trial held by a Court of Session. If the High Court can enhance the sentence beyond the maximum sentence which could be

awarded by a magistrate specially empowered under s. 30, and acting under s. 34, there is no reason to hold that the High Court's power in respect of enhancing the sentence in a trial held by an Assistant Sessions Judge, should be limited in the way suggested on behalf of the appellants. Sub-section (3) of s. 439, thus, makes it clear that there is no limitation on the power of the High Court to enhance a sentence to the maximum prescribed by the Indian Penal Code, except in cases tried by magistrates other than those especially empowered under s. 30, Criminal Procedure Code. The learned counsel for the appellants very properly informed us that there are some reported decisions of some of the High Courts which have gone against his contention, and that there is no decision which has taken a view in support of his contention. In our opinion, there is no provision in the Code of Criminal Procedure, which limits the power of the High Court in the way suggested on behalf of the appellants, and there are no reasons which militate against the decision of the High Courts taking that view. The case relied upon on behalf of the appellants in support of their second contention [*Bed Raj* v. *The State of Uttar Pradesh*(1)], also seems to point to the same conclusion as will appear from the following observations at p. 584:

"Now, though no limitation has been placed on the High Court's power to enhance it is nevertheless a judicial act and, like all judicial acts involving an exercise of discretion, must be exercised along well-known judicial lines."

On the second contention, there is no doubt that the question of sentence is a matter of discretion which has to be exercised in a judicial way, that is to say, the sentence imposed by the trial court should not be lightly interfered with and should not be enhanced unless the appellate court comes to the conclusion, on a consideration of the entire circumstances disclosed in the evidence, that the sentence imposed is inadequate. In the instant case, the High Court has pointed

(1) [1955] 2 S.C.R. 583.

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out that the incidence of the offence of dacoity has gone up to such an extent that in proved cases of serious dacoity, like the one in hand, deterrent punishment is called for. The High Court was, therefore, justified in imposing the sentence of 10 years' rigorous imprisonment. In view of the circumstances disclosed in the case, as indicated above, it cannot be asserted that the sentence as enhanced by the High Court is excessive. The appeal is, accordingly, dismissed.

Appeal dismissed.

NANI GOPAL BISWAS

v.

THE MUNICIPALITY OF HOWRAH

1957

October 29.

(B. P. SINHA *and* VIVIAN BOSE, JJ.)

Municipal Law—Encroachment caused by compound wall—Structure not part of main building—Notice to remove encroachment headed by wrong provision of the Municipal Act—Conviction under different section—Legality—Calcutta Municipal Act, 1923 *(Bengal III of* 1923), *ss.* 299, 300, 488(1)(c).

The appellant was convicted by the Municipal Magistrate under s. 488, read with s. 299, of the Calcutta Municipal Act, 1923, and sentenced to pay a fine of Rs. 75, for failure to carry out within the specified time the terms of a notice served on him under s. 299 of the Act to remove the encroachment caused by a compound wall upon the roadside land of the Municipality. Since the offending structure was a compound wall and not something which was part and parcel of the main building, the offence comes under s. 300 and not s. 299, read with s. 488 of the Act. The High Court, in revision, found that the accused was fully aware of the nature of the accusation against him and that there was no prejudice caused to him by the wrong mention of s. 299 in the notice in place of s. 300. It accordingly altered the conviction into one under s. 488, read with s. 300, and reduced the amount of fine to Rs. 50 as required by the section. On appeal to the Supreme Court it was contended for the appellant that the conviction was bad because (1) the notice having been headed as under s. 299 of the Act, the conviction under s. 300 was illegal, (2) the requisition had not been lawfully made within the meaning of s. 488(1)(c), and (3) there was substantial prejudice to the appellant inasmuch as if the conviction were under s. 299 and not s.