A STATE OF MAHARASHTRA

v.

SH. MARUTI SHRIPATI DUBAL

AUGUST 29, 1996

B [G.N. RAY AND G.B. PATTANAIK, JJ.]

Penal Code, 1860 :

S. 309—Attempt to commit suicide—Police constable met with a road
C *accident—Suffered heart injury—Became mentally ill—Diagnosed to be suffering from scizoph-renea—Attempted self immolation—Before the case of attempted suicide could be decided by the Court, he challenged the vires of S. 309—High Court held that S.309 was ultra vires Articles 14 and 21 of the Constitution—Subsequently a Constitution Bench of Supreme Court overruled that decision—Held, considering the serious ailments which he was suffering*
D *from, it would not be desirable to proceed further with the trial of the criminal case initiated against him for the offence of attempt to commit suicide after a long lapse of time of about 11 years—In order to do complete justice, direction issued for quashing the criminal case against him—Constitution of India, Art 14, 19, 21 and 142.*

E *Lokendra Singh* **v.** *State of M.P.,* **[1996] 2 SCC 648, followed and sentencing-as-pect explained.**

Maruti Shripati Dubal **v.** *State of Maharashtra,* **(1987) Crl. C.J. 743, held already overruled and set aside.**

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 130 of 1987.

From the Judgment and Order dated 24/25.9.86 of the Bombay High Court in W.P. No. 641 of 1986.

G Shivaji M. Jadhav for the Appellant.

The following Order of the Court was delivered :

This appeal is directed against the judgment dated 25.9.96 passed in
H writ petition No. 641 of 1986 by the High Court of Bombay upholding the

challenge made by the respondent Shri Maruti Shripati Dubal about the *vires* of Section 309 of the Indian Penal Code. The respondent Shri Dubal was a Police Constable attached to the Bombay City Police Force and on the date of the incident, he had already put in 19 years service as a Constable. In 1981, he met with an accident and suffered head injuries and although he recovered from such injury he became mentally ill and continued to be so until that day. He attempted to commit suicide by pouring kerosene on his body and lighting match stick as alleged by the prosecution. Before the said case of attempted suicide could be decided by the Court, the respondent challenged the *vires* of Section 309 of the IPC before the High Court of Bombay by filing the writ petition and by the impugned judgment, the High Court found that Section 309 was *ultra vires*, Articles 14 and 21 of the Constitution.

In Criminal Appeal No. 461/96 *(Lokendra Singh* v. *State of Madhya Pradesh)* the Constitution Bench of this Court by judgment dated 21st March, 1996 since reported in [1996] 2 SCC page 648 has upheld the vires of Section 309 Indian Penal Code by indicating that the said section does not violate Articles 14, 19 and 21 of the Constitution of India. The impugned decision of the Bombay High Court was also referred for consideration in *Lokendra Singh's* case but the decision of the Bombay High Court in *Maruti Sripati's* case has been expressly over-ruled. The appeal, therefore, is to be allowed. The impugned judgment of the Bombay High Court is set aside.

It, however, appears to us that the alleged attempt to commit suicide had been made by the respondent on 27th April, 1985 and the said case had not been tried as yet because of the challenge at the threshhold made by the respondent questioning the constitutional validity of Section 309 IPC. As Section 309 IPC is constitutionally valid as held by the Constitution Bench of this Court, the criminal case initiated on the charge of attempt to commit suicide therefore requires to be decided on merits.

The alleged incident for attempt to commit suicide had taken place more than 11 years ago. In the impugned judgment, the High Court has noted that after meeting with road accident causing head injury, the respondent became mentally dis-balanced and he had undergone psychiatric treatment since January, 1982. His ailments were diagnosed in in July 1992 as "Giddiness fright, reduced sleep, nervousness, confusion

A etc." In August, 1982, the doctor diagnosed that the respondent was suffering from schizophrenea. He was also suffering from auditory and visual hallucinations. Electric Shocks treatment was administered to him and heavy tranquilizers were given to the respondent and even when the writ petition was presented before the Bombay High Court, the respondent was
B under heavy tranquilizers.

It has been indicated in the Constitution Bench decision in *Lokendra Singh's* case that Section 309 IPC does not offend Article 14 because of the inbuilt flexibility in Section 309 IPC. It has been indicated that the discretion given to the court to award suitable punishment commensurate
C with the gravity of the offence against compulsion of giving disproportionately harsh punishment in all cases of offence of attempt to commit suicide protects Section 309 IPC from the vice of being unconscionably harsh, thereby making it wholly arbitrary and unreasonable. It has been indicated by the Constitution Bench that in an appropriate case, even fine can be imposed for offence under Section 309 IPC and incidents have been
D cited where Law Courts in India have awarded nominal punishment and have been given the benefit of Probation of Offenders' Act to the accused convicted for offence in attempting to commit suicide.

Considering the serious ailments which the respondent was suffering
E from, it appears to us that it will not be desirable to proceed further with the trial of the said criminal case initiated against the accused for the alleged offence to commit suicide after such a long lapse of time. In the facts of the case, even if he is found guilty after the completion of trial, the respondent deserves to be treated very sympathetically in the matter of awarding punishment for the said offence alleged against him. In the
F special facts of the case, we do not think that the respondent deserves to be subjected to trial for the aforesaid offence after such a distant time when even if the prosecution case is proved beyond reasonable doubt, the accused deserves a very lenient sentence of nominal fine. In order to do complete justice, in the facts of the case, we direct for quashing the said
G criminal case against the respondent.

G.N. Appeal dismissed.