CHATAR SINGH

v.

STATE OF M.P.

NOVEMBER 24, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

Sentence/Sentencing:

Consecutive sentence—Maximum imprisonment—Accused convicted u/s. 364 IPC—High Court held that total period of Rigorous Imprisonment would he 20 years—Correctness of—Held, incorrect—In view of s. 31 Cr. P.C, accused cannot be sentenced for period longer than 14 years—Penal Code, 1860—Section 364—Code of Criminal Procedure, 1973—Section 31 and its proviso.

Prosecution's case was that the accused kidnapped two boys and when his demand for ransom was not fulfilled, he killed them. He was prosecuted u/ss. 302, 201, 364, 365 and 120-B IPC. Trial Court held that there was no material to show that appellant had killed the victims and therefore convicted appellant for offences punishable u/ss. 364 and 365 r/w. ss. 120-B and 201 and passed various sentences. On appeal, High Court accepted that prosecution could not establish that the boys were murdered by appellant, but upheld the finding of Sessions Judge as regards involvement of appellant for alleged commission of offence u/s. 364. The High Court held that the total period of rigorous imprisonment would be 20 years.

In appeal to this Court, the appellant contended that the Trial Judge as also the High Court committed an error in sentencing the appellant to undergo 20 years' Rigorous imprisonment in view of Section 31 Cr. P.C.

Partly allowing the appeal, the Court

HELD: The Provisos appended to Section 31 Cr.P.C clearly mandate that the accused could not be sentenced to imprisonment for a period longer than fourteen years. In view of this, the High Court committed a manifest error in sentencing the appellant for 20 years' Rigorous Imprisonment. The maximum sentence imposable being 14 years and having regard to the fact that the

A **appellant is in custody for more than 12 years, interest of justice would be sub-served if the appellant is directed to be sentenced to the period already undergone. [374-B]**

Kamalanantha & Ors. v. *State of T.N.*, **[2005] 5 SCC 194;** *K. Prabhakaran* v. *P. Jayarajan,* **[2005] 1 SCC 754 and** *Zulfiwar Ali & Anr.* v. B *State of U.P.*, **[1986] ALL. L.J. 1177, referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.623 of 2005.

From the Final Judgment and Order dated 3-2-2004 of the High Court C of Madhya Pradesh at Jabalpur in Criminal Appeal No.2665/1998.

T.N. Singh for the Appellant.

N.M. Ghatate, C.D. Singh, Merusagar Samantharay and Kamakshi S. Mehlwal for the Respondent.

D

The Judgment of the Court was delivered by

S.B. SINHA, J. Interpretation and application of Section 31 of the Criminal Procedure Code, 1973 is involved in this appeal, which arises out of a judgment and order dated 3rd February, 2004 passed by a learned Single E Judge of the Madhya Pradesh High Court at Jabalpur in Criminal Appeal No.2665 of 1998.

In view of the question involved herein, we need not dilate on the factual matrix of the matter in great details. Suffice it say that the appellant F herein was proceeded against in a case involving kidnapping of two boys Sudhir Kumar and Sushil Kumar, aged about 10 to 12 years. They were sons of Ramakant Katiyar (P.W.6). They had gone to attend school at about 7.30 in the morning of 29th December, 1994. They were to return at about 1.30 p.m., but, when they did not return till 5.30 p.m., a search for them was made. After the informant came back home, he was informed by his wife that one of the G classmate of the boys, namely, Gulabchandra Gour (P.W.7), had delivered his school bag informing that Satyendra (P.W.10) had asked him to do the same. P.W.6 went to the house of Satyendra to make inquiries about his son and came to learn that victim Sudhir Kumar had come to his house and handed over the bag stating that he was proceeding towards the farm. A First Information Report was lodged. Allegedly, the Chowkidar of the school, H namely, Ramesh Kumar (P.W.8) discovered certain wearing apparels as also

a letter demanding ransom of Rs.2,000/-. He handed over the trouser and the letter to the police. On the next day, one Prakash Chandra Sharma came to the house of Ramakant and stated that he had found a letter in which it was stated that P.W.6 had committed a grave error in intimating the police. Therein it was, allegedly, mentioned that dead body of Sunil Kumar was thrown in the 'nallah' behind the 'durgha'. A search was made, but the dead body was not found. Allegedly, a demand of Rs.10,000/- towards ransom was made by a letter, which was marked as Exhibit P/10. On 6.1.1995, a dead body was recovered, which was ultimately found to be that of Sushil Kumar. P.W.6 received another letter on 17.1.1995, whereby he was asked to pay a sum of Rs.20,000/-. In that letter it was said to have written that if the said amount was not paid, Sudhir Kumar would be similarly dealt with. The dead body of Sudhir Kumar was thereafter found. During investigation, appellant was apprehended and ultimately, he was prosecuted for alleged commission of offences under Section 302, 201, 364, 365 and 120-B of the Indian Penal Code, 1860 ('IPC', for short). The learned Trial Judge opined that there was no material on record to show that the victims were killed by the appellant. It was further not found that they were kidnapped for obtaining ransom or for murdering them. However, two letters were found to have been written by the appellant. He, therefore, convicted the appellant for commission of offences punishable under Sections 364 and 365 read with Sections 120-B and 201 of the Indian Penal Code and passed the following sentences :

"U/S. 364 IPC	R.I. for 10 years,
U/S. 364 IPC	R.I. for 10 years,
U/S. 365 IPC	R.I. for 4 years,
U/S. 365 IPC	R.I. for 4 years,
U/S. 120-B IPC	R.I. for 5 years,
U/S. 120-B IPC	R.I. for 5 years,
U/S. 201 IPC	R.I. for 2 years."

On appeal, the High Court accepted that the prosecution could not establish that the boys were murdered by the appellant, but the finding of the learned Sessions Judge as regards involvement of the appellant for alleged commission of an offence under Section 364 was upheld, stating :

> "...In the present case the accused was responsible for abducting to young children. The learned trial Judge might have acquitted him of the offence punishable under Section 302 of the IPC but the fact

A remains because of such abduction the young boys lost their lives. If they would not have been abduction (sic) their life-sparks would not have been extinguished and they would have in ordinary course of nature blossomed into young men and their parents would not have suffered agony and anguished for the loss of their lives. When there is such act by the accused, it not only projects ruthlessness and
B totally insensitive proclivity but also creates a fear in the mind of the society. A person who creates phobia in the mind of collective, cannot be leniently dealt with. Keeping in view the totality of circumstances and regard being had to basic conception of victimology, I am inclined to hold that the sentences which have been directed to run
C consecutively in respect of the offence under Section 364 of the IPC, should be maintained and accordingly it is so directed. As far as sentence in respect of other offences is concerned, the same would be concurrent. Thus, the total period of the rigorous imprisonment would be 20 years."

D Mr. T.N. Singh, learned counsel appearing on behalf of the appellant would submit that the learned Trial Judge as also the High Court committed an error in sentencing the appellant to undergo 20 years' Rigorous Imprisonment in view of Section 31 of the Criminal Procedure Code. It was pointed out that the appellant had already been in jail for a period of more
E than 12 years. The appellant, as noticed hereinbefore, was charged both under Section 364A IPC as also 102B IPC. He was not found guilty of any of the said charges. He was charged only under Sections 364 and 365 of the Indian Penal Code. The maximum sentence which could be imposed under Section 364 was 10 years and under Section 365 was 7 years. Fine could also be imposed, but the same has not been done.

F We, although, appreciate the anxiety on the part of the learned Sessions Judge as also the learned Judge of the High Court not to deal with such a matter leniently, but, unfortunately, it appears that the attention of the learned Judges was not drawn to the provision contained in Section 31 of the Criminal Procedure Code. The said provision reads thus :

G "31. *Sentence in cases of conviction of several offences at one trial.* (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent
H to inflict; such punishments, when consisting of imprisonment to

commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently. A

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court." B

Provisos appended the said Section clearly mandate that the accused could not have been sentenced to imprisonment for a period longer than fourteen years. C

Learned Sessions Judge as also the High Court, in our opinion, thus, committed a serious illegality in passing the impugned judgment.

In *Kamalanantha & Ors.* v. *State of T.N.,* [2005] 5 SCC 194, this Court, although, held that even the life imprisonment can be subject to consecutive sentence, but it was observed : D

"Regarding the sentence, the trial court resorted to Section 31 CrPC and ordered the sentence to run consecutively, subject to proviso (a) of the said section." E

Although, the power of the Court to impose consecutive sentence under Section 31 of the Criminal Procedure Code was also noticed by a Constitution Bench of this Court in *K. Prabhakaran* v. *P. Jayarajan,* [2005] 1 SCC 754, but, therein the question of construing proviso appended thereto did not and could not have fallen for consideration. F

The question, however, came up for consideration in *Zulfiwar Ali & Anr.* v. *State of U.P.,* [1986] All.L.J. 1177, wherein it was held :

"The opening words "In the case of consecutive sentences" in sub-s. 31(2) make it clear that this sub-section refers to a case in which "consecutive sentences" are ordered. After providing that in such a case if an aggregate of punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of single offence, it shall not be necessary for the court to send the offender for trial before a higher court. After making such a provision, proviso (a) is added to this sub-section to G H

A limit the aggregate of sentences which such a court pass while making the sentences consecutive. That is this proviso has provided that in no case the aggregate of consecutive sentences passed against an accused shall exceed 14 years. In the instant case the aggregate of the two sentences passed against the appellant being 28 years clearly infringes the above proviso. It is accordingly not liable to be sustained."

B

In view of the proviso appended to Section 31 of the Criminal Procedure Code, we are of the opinion that the High Court committed a manifest error in sentencing the appellant for 20 years' Rigorous Imprisonment. The maximum sentence imposable being 14 years and having regard to the fact that the appellant is in custody for more than 12 years. Now, we are of the opinion that interest of justice would be sub-served if the appellant is directed to be sentenced to the period already undergone.

C

The appeal is allowed to the aforementioned extent. The appellant shall be released forthwith if not wanted in connection with any other case.

D

D.G. Appeal partly allowed.