

APPELLATE CRIMINAL

Before S. B. Capoor and H. R. Khanna, JJ.

SOHAN SINGH,—Appellant

versus

THE STATE,—Respondent

Criminal Appeal No. 690 of 1964

Murder Reference No. 58 of 1964

1964

September, 15th.

Penal Code (XLV of 1860)—S. 303—Accused convicted under section 302, Indian Penal Code, and sentenced to transportation for life—Part of his sentence remitted on condition that he should furnish security in the sum of Rs 10,000 with two sureties in the like amount for keeping peace and being of good behaviour during the term of the unexpired portion of his sentence and if any act of violence was reported on his part, the remission granted to him would be cancelled and he would have to serve the unexpired portion of his sentence in the jail—Accused committing a murder after release and before the expiry of the unexpired period of his sentence—Whether liable to be convicted under Section 303, I. P. C.

Held, that the perusal of section 303 of the Indian Penal Code goes to show that it would cover the case of a person who, being under sentence of imprisonment for life, commits murder. On the facts of this case the accused was clearly guilty of an offence punishable under section 303, I.P.C., and was correctly convicted. The remission granted to him was not in absolute terms but was conditional and in case any act of violence was reported on his part he had still to undergo the unexpired portion of his sentence in the previous case in the jail. The effect of a conditional order of remission is not to altogether wipe out or efface the remitted portion of the sentence, but to keep it in abeyance. As soon as there is a breach of the conditions of the remission, the remission can be cancelled and the prisoner committed to custody to undergo the unexpired portion of the sentence. In the

circumstances the accused should be deemed to be under sentence of imprisonment for life when the present occurrence took place.

Appeal from the order of Shri Murari Lal Puri, Sessions Judge of Ludhiana, dated 31st July, 1964, convicting the appellant.

MANI SABRAT JAIN, ADVOCATE, for the Appellant.

K. L. JAGGA, ASSISTANT, ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Khanna, J.

KHANNA, J.—This is a jail appeal by Sohan Singh, aged about 45 or 46 years, who has been convicted by the learned Sessions Judge, Ludhiana, under section 303, Indian Penal Code, and sentenced to death. The matter is also before us for confirmation of the death sentence under section 374 of the Code of Criminal Procedure.

The prosecution case is that Sohan Singh accused was convicted in a case under section 302, Indian Penal Code, by Sessions Judge, Ludhiana, on 20th March, 1952, and was sentenced to transportation for life. After the accused had undergone a sentence of a little over ten years, the Government made a conditional order, copy of which is Exhibit P.M., on 31st October, 1961, remitting the unexpired portion of the sentence of the accused. The unexpired portion of the sentence was five years and twenty-six days. One of the conditions contained in the order was that the prisoner would furnish security in the sum of Rs. 10,000 with two sureties in the like amount for keeping the peace and being of good behaviour during the term of the unexpired portion of his sentence. It was further provided that in case any fact of violence was reported on the part of the accused, the remission granted to him would be cancelled and he would have to serve the unexpired portion of his sentence in the Jail. The accused was, accordingly, released from Jail on 29th June, 1962.

The accused was married to Shrimati Basant Kaur, daughter of Shrimati Ram Rakhi, and had three sons from her. Shrimati Ram Rakhi had purchased in lieu of her claim an evacuee house in Jagraon in the name of her daughter Shrimati Basant Kaur. The accused along with his wife and sons used to live with Shrimati Ram Rakhi in

that house and also ran a shop in a front portion of that house. The accused was of spendthrift habits and consequently his relations with his mother-in-law Shrimati Ram Rakhi, from whom he used to demand money, were not quite cordial. Likewise, the relations of the accused with his sons were not happy.

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On the evening of 17th February, 1964, a day before the present occurrence, the accused had a quarrel with his mother-in-law Shrimati Ram Rakhi deceased in the lane in front of the house. Shrimati Ram Rakhi then told Surjit Singh, Satnam Singh and Wazir Singh (P.Ws.) who passed that way that the accused was troubling her by asking for money again and she had no money to give to him. Surjit Singh, Satnam Singh and Wazir Singh then intervened and pacified the parties. Surjit Singh, and Satnam Singh are both brothers and Shrimati Ram Rakhi deceased was their father's sister. The accused is also related to those two witnesses being their cousin. Wazir Singh (P.W.) is a maternal uncle of Surjit Singh, Satnam Singh and the accused.

On 18th February, 1964, at about 8.45 a.m. it is alleged, Surjit Singh (P.W.) while on the way to his own shop passed in front of the shop of the accused. The house of Surjit Singh is at a distance of about 25 karams from the shop of the accused. Surjit Singh then found the accused giving blows to Shrimati Ram Rakhi with a wooden *bala* (Exhibit P. 1) in front of his shop (the shop of the accused). Just then Shrimati Kulwant Kaur, wife of Surjit Singh, came there on the way back from the house of Wazir Singh to which she had gone earlier. Shrimati Kulwant Kaur asked the accused not to give blows to Shrimati Ram Rakhi. The accused then turned towards Shrimati Kulwant Kaur, and gave a number of blows to her on her head with that very *bala* as a result of which the *bala* was broken and its two pieces (Exhibits P. 2 and P. 3) fell at the spot. The occurrence was witnessed by Surjit Singh, Satnam Singh, Sahib Singh and Jaswant Singh. Surjit Singh raised alarm. Both Shrimatis Ram Rakhi and Kulwant Kaur died at the spot as a result of the injuries caused by the accused. Jaswant Singh, Sahib Singh and Satnam Singh then secured the accused and during the scuffle he received some minor injuries. Jaswant Singh

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also picked up the *bala* (Exhibit P. 1) as well as the broken pieces (Exhibits P. 2 and P. 3). Surjit Singh then started towards the police-station, but on the way he met S.I. Sher Singh in Mohalla Telian. Surjit Singh then made statement (Exhibit P. A.) to the Sub-Inspector at 10 a.m. In that statement the facts of the case were given substantially as those reproduced above. The statement was sent to the police-station where a case was registered and a formal first information report (Exhibit PA/1) was prepared at 10.15 a.m. S.I. Sher Singh then came to the place of occurrence and found the dead bodies of Shrimatis Ram Rakhi and Kulwant Kaur lying in the lane in front of the shop of the accused. The Sub-Inspector prepared the injury statements and the inquest reports. He also put the accused, who was present there in custody of Satnam Singh, Sahib Singh and Jaswant Singh (P.ws) under arrest. Jaswant Singh produced *bala* (Exhibit P. 1). The *bala* and the two broken pieces (Exhibits P. 2 and P. 3) were taken into possession and were found to be bloodstained. They were, accordingly, made into sealed parcels. The blood-stained earth was also taken into possession and was made into a sealed parcel. The accused had injuries on his person and the Sub-Inspector prepared his injury statement.

Post-mortem examination on the bodies of Shrimatis Kulwant Kaur and Ram Rakhi was performed by Dr. D. S. Kochhar (P.W. 1) on the evening of the day of occurrence. Shrimati Kulwant Kaur, who was aged about 25 or 30 years, was found to have nine lacerated wounds on her head resulting in complete fracture of the bones of her head. Shrimati Ram Rakhi, who was aged about 60 or 65 years, had, besides abrasions, three lacerated wounds on her head resulting in fracture of the bones underneath. Besides that, she had a lacerated wound on her left cheek which too had resulted in complete fracture of the underlying bone. The deaths of both Shrimatis Kulwant Kaur and Ram Rakhi were due to haemorrhage, shock and laceration of the brain.

The accused too was examined by Dr. Kochhar at 7.45 p.m. on the day of occurrence and five simple injuries caused with blunt weapon were found on his person.

The accused in his statement under section 342 of the Code of Criminal Procedure admitted having caused the

deaths of Shrimatis Ram Rakhi and Kulwant Kaur. He, however, gave the following version of the occurrence:—

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“What happened was that my sons asked my wife that morning not to serve any breakfast to me. I enquired from my wife, but she also refused and said that she was of the view of her sons. I then returned to the shop. My wife came there. I picked up a *soti* and went in the house, as I was feeling annoyed why my sons were refusing to give me food. However my sons Darshan Singh and Bhupinder Singh caught hold of me. The boys caused some injuries to me. On hearing the alarm Satnam Singh, P.W., Kishan Singh and his mother reached there and enquired why were we fighting. These persons rescued me and then my eldest son Darshan Singh threatened me. Then my mother-in-law Ram Rakhi asked my sons to go to police and make a report against me. I asked her not to interfere in the matter which was between me and my sons. She again tauntingly said that they were not my sons. Then my sons came out of the house. My mother-in-law told my wife not to cook food that day either for me or for my sons. I felt insulted and took up a *soti* and gave some blows with it to Ram Rakhi who fell on the ground. I then came out of my shop and sat there. After some time Satnam Singh, Surjit Singh, P.Ws., and Kishan Singh named above reached there and Satnam Singh said that I had done a bad thing. I replied that I had been insulted very much. Then Surjit Singh took me in his grip while Satnam Singh caught from my *banyan* and Kishan Singh snatched the *lathi* from me. In order to rescue myself I gave some pushes to Surjit Singh with my arms. I then got myself disengaged from his grips and we exchanged first blows. Out of fear I ran to my house and brought one *bala* from there. I then challenged Surjit Singh who ran from there and reached about 25 or 30 yards distance and he escaped. When I returned I found Kulwant Kaur and 15 or 20 persons collected

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there in front of my shop. I was feeling annoyed and gave blows to Kulwant Kaur. She died there and then, so did Ram Rakhi. I will like to tell the truth, Kulwant Kaur did not do anything to me nor she said anything to me."

The learned Sessions Judge accepted the prosecution case and held that the version put forward by the accused had not been substantiated. The accused was, accordingly, found guilty of the murders of Shrimatis Ram Rakhi and Kulwant Kaur. It was further held that though the unexpired portion of the sentence of the accused had been remitted, the remission was conditional that the accused would not indulge in any act of violence and if he did so the remission granted to him would be cancelled and he would have to serve the unexpired portion of his sentence. The accused was, accordingly, held to be undergoing the sentence of imprisonment for life at the time of the present occurrence. He was consequently convicted and sentenced as above.

We have heard Mr. Jain on behalf of the accused-appellant, and Mr. Jagga on behalf of the State. We have also been taken through the evidence on record and are of view that the conviction and sentence imposed upon the accused are well-founded and call for no interference. The prosecution case about the actual occurrence is supported by the evidence of Surjit Singh (P.W. 2), Satnam Singh, (P.W. 3), Sahib Singh (P.W. 4) and Jaswant Singh (P.W. 5). The above-mentioned four witnesses have deposed about their having seen the accused giving ^{away} bala blows to Shrimati Ram Rakhi, Kulwant Kaur, ~~when the latter intervened to save Shrimati Kulwant Kaur,~~ when the latter intervened to save Shrimati Ram Rakhi. We see no reason whatsoever to disbelieve the evidence of the afore-said four witnesses. Surjit Singh, Satnam Singh and Sahib Singh are no doubt related to the two deceased women but they have also a relationship with the accused. Jaswant Singh is, however, not shown to be in any way related to any party and is an altogether disinterested witness. The report (Exhibit P.A.) with regard to the actual occurrence was lodged soon thereafter and in it the facts given were substantially the same as those brought out in evidence. The accused himself also admits having caused the death

of the two deceased women, though, according to him, the circumstances, in which he gave blows, were somewhat different. There is, however, no evidence or other material giving credence to the version of the accused and as such the aforesaid version should be deemed to have remained unsubstantiated. Apart from that, even if the version given by the accused were to be accepted, the attack made by him on Shrimati Kulwant Kaur was wholly unprovoked and looking to the nature of injuries was most merciless and wanton in character. I would, accordingly, hold that the accused was guilty of the offence of committing the murder of Shrimatis Ram Rakhi and Kulwant Kaur.

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Mr. Jain has argued that as the unexpired portion of the sentence awarded to the accused in the previous case under section 302, Indian Penal Code, had been remitted by the Government under section 401 of the Code of Criminal Procedure, the case of the accused would not fall under section 303 of the Indian Penal Code, which reads as under:—

“Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.”

Perusal of the above section goes to show that it would cover the case of a person who, being under sentence of imprisonment for life, commits murder. It is not essential for the application of the section that a person should be actually undergoing the sentence of imprisonment for life when he commits murder. In the present case the statements of P.W. 8 Jagdish Singh, Assistant of the Home Department, and P.W. 9 Raminder Singh, Assistant of the office of Inspector-General of Prisons, go to show that the accused was convicted in a case under section 302, Indian Penal Code, on 20th March, 1952, by the Sessions Judge, Ludhiana, and a sentence of transportation for life was awarded to him. After the accused had undergone the actual imprisonment for ten years, three months and nine days, the Government remitted the unexpired portion of his sentence of five years and twenty-six days under section 401 of the Code of Criminal Procedure as per order dated

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31st October, 1961, copy of which is Exhibit P.M. Conditions I, II and III, which had to be accepted by the accused before his release; were as under:—

"I. Before his release the prisoner shall furnish to the satisfaction of the District Magistrate, Ludhiana, for the condition of keeping the peace and good behaviour and surrendering when so desired by the Governor of Punjab during the unexpired portion of his sentence, two bonds one for Rs. 10,000 (Rupees ten thousand only) to be executed by the prisoner and the other by two sureties in the like amount.

II. In case any act of violence is reported on his part, the remission granted to the prisoner shall be cancelled and he will have to serve the unexpired portion of his sentence in the Jail.

III. In addition to the action proposed under Section 401(3) of the Code of Criminal Procedure, 1898, the sum of each of the bonds shall stand forfeited to the Punjab Government in case of breach of any condition of the bond."

The accused was thereafter released on 29th June, 1962. It would thus appear that the remission granted to the accused was not in absolute terms but was conditional and in case any act of violence was reported on his part he had still to undergo the unexpired portion of his sentence in the previous case in the Jail. According to sub-section (3) of section 401 "if any condition on which a sentence has been suspended or remitted, is, in the opinion of the appropriate Government, not fulfilled, the appropriate Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted, may, if at large, be arrested by any police officer without warrant and remanded to undergo the unexpired portion of the sentence." It would thus follow that the effect of a conditional order of remission is not to altogether wipe out or efface the remitted portion of the sentence, but to keep it in abeyance. As soon as there is a breach of the conditions of the remission, the remission can be cancelled

and the prisoner committed to custody to undergo the unexpired portion of the sentence. In the circumstances the accused should be deemed to be under sentence of imprisonment for life when the present occurrence took place. In case *Po Kun v. The King* (1), the head note, which is based upon the observations in the body of the Judgment, reads as under:—

“If the sentence of transportation for life passed on a person is conditionally remitted by the Government under section 403, Criminal Procedure Code, and the person is released, such person must still be deemed to be under sentence of transportation for life in spite of the fact that he is not actually under sentence or in a penal settlement. Where, therefore, such a person after his release or remission, breaks the conditions on which remission was granted and commits an offence of murder, his case falls under section 303 and such person must be sentenced to death.”

Ghulam Muhammad Wali Muhammad v. Emperor (2) has been referred to by Mr. Jain, but the accused-appellant, in our opinion, can derive no benefit from that authority because the remission in that case was unconditional. It was in those circumstances that section 303 of the Penal Code was held not to apply. We, therefore, are of the view that the learned Sessions Judge rightly convicted the accused under section 303 of the Indian Penal Code.

Assuming for the sake of argument that the present case is not covered by section 303 but is covered by section 302, Indian Penal Code, even then we are of the view that the only proper and suitable sentence that should be awarded to the accused is the sentence of death. As would appear from the facts given above, the accused caused deaths of two helpless women by making a merciless attack on them. Shrimati Ram Rakhi was killed because she refused to accede to the monetary demands of the accused. So far as the attack on Shrimati Kulwant Kaur, who merely intervened to save Shrimati Ram Rakhi is concerned, it was, in any case, most callous and wanton and shows an

(1) A.I.R. 1939 Rangoon 124.

(2) A.I.R. 1943 Sind 114.

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utter disregard for human life and in the circumstances the extreme penalty seems to be the most appropriate and apt.

We would, accordingly, confirm the sentence of death awarded to the accused, and dismiss his appeal.

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S. B. CAPOOR, J.— I agree.

B.R.T.