

Jagdev Singh And Anr. vs State Of Punjab on 24 April, 1973

Equivalent citations: AIR1973SC2427, 1973CRILJ1614, (1974)3SCC412, 1973(5)UJ664(SC), AIR 1973 SUPREME COURT 2427

Author: K.K. Mathew

Bench: K.K. Mathew

JUDGMENT

Dua, J.

1. In this appeal, special leave was granted by this Court limited to the question whether the probation of Offenders Act (No. XX of 1958), hereinafter called the Act, applies to this case. The appeal was directed on April 3, 1973 to be heard on special leave paper book with such additional document as the parties may wish to file from therecord.

2. The two appellants, Jagdev Singh and Jagrup Singh, who are real brothers, along with Mohinder Singh and Karnail Singh were tried in the court of the Additional Sessions Judge, Sangrur for an offence under Section 307 read with Section 34, I.P.C. for a murderous assault on Kand Singh P.W. 6, furtherance of the common intention of all of them, in village Lehla Khurd. Jagdev Singh and Mohinder Singh accused were convicted under Section 307 I.P.C. and sentenced to rigorous imprisonment for 7 years each, whereas jagrup and Karnail Singh were convicted under Section 327 read with Section 34, i.p.c. and sentenced to rigorous imprisonment for 4 years each.

3. The High Court of Punjab and Haryana on appeal converted Mohinder Singh's conviction into one under Section 326, I.P.C. and reduced his sentence of imprisonment to a period of two years rigorous imprisonment and also imposed a fine of Rs. 300/- in default of payment of fine, he was directed to undergo further rigorous imprisonment for three months. Jagrupsingh's conviction was also converted into one under Section 326/34, I.P.C. and his sentence of imprisonment was also reduced to rigorous imprisonment for one year along with a fine of Rs. 300/-. In default of payment of fine, he was also ordered to serve further rigorous imprisonment for three months. The sentence imposed on Karnail Singh was reduced to that already undergone. Jagdev Singh, who had his age as 18 years, but when the learned Additional Sessions Judge considered from 'appearance to be 21/22 years old, had in the opinion of the High Court, been, perhaps, persuaded by his elder brother Jagrup Singh to participate in the crime. His conviction was also in the circumstances, converted into one under Section 326, I.P.C. and the sentence reduced to rigorous imprisonment for six months.

4. How, both Sections 4 and 6 of the Act clearly provide that the benefit of these sections is not available to persons found guilty of an offence punishable with imprisonment for life. This Act is intended to carry out the object of keeping away from the unhealthy atmosphere of jail life there normally one has to mix with hardened criminals, those found guilty of the commission of comparatively less serious offences by providing for dealing with them more leniently with a view to their reformation. Under Section 3, 4 or 6 of the Act as the case may be. An offence punishable under Section 326, I.P.C. OR under Sections 326/34, I.P.C. is indisputably punishable with imprisonment for life. The benefit of the Act on the plain language of Sections 4 & 6 is thus not available to the present appellant.

5. Mr. Mahajan Has, however, contended that the nature of the injuries proved to have been inflicted by the two appellants does not attract Section 326, I.P.C. This, in our opinion, is not open to the learned Counsel to contend because special leave was granted by this Court limited only to the question whether the Act could be applied to this case. The merits of the appellant's conviction are not, therefore, open to argument. The counsel has, however, contended that the whole case should be considered to be open for consideration by this Court, the restricted special leave notwithstanding, because the discretionary power of this Court under Article 136 of the Constitution is intended to be exercised to set right grave injustice and if a case for such interference is made out even at this stage, the limitation imposed while granting special leave should not be held as a bar to the power of this Court to set right such grave injustice. This submission, however attractive prima facie as an appeal to this Court to set right grave injustice, is misconceived and difficult to accept. While granting special leave this Court considered the whole case and came to the conclusion that in the interest of justice only the applicability of the Act required examination. On no sound principle can this Court now ignore the limited scope of the special leave as granted. The scope of the appeal must be confined with the limitation specified in the order granting special leave.

6. Mr. Mahajan in order to get over this bundle, prayed that he may be permitted to apply for review of the order dated April 3, 1972 so as to have the limitation to be placed on the scope of this appeal removed. According to him the evidence on the record does not make out a case punishable under Section 326 or Sections 326/34, I.P.C. The evidence in this case, according to the learned Counsel, has been misread. Assuming this submission is correct, in our view the order dated April 3, 1973 must be considered to be final and not open to re-consideration on point which was open at the time of the argument on the special leave application. There is no new discovery of any fact which would justify re-examination of the order passed on April 3, 1973. The appellant's conviction as held by the High Court on an appraisal of the evidence must be considered to be conclusive and binding on this Court in the present appeal. Once that conclusion is held final and not open to challenge, no other question arises and the appeal must fail.

7. On the view that we have taken, it is unnecessary to decided whether, on the facts and circumstances of this case, the appellant should be permitted to raise the question of the benefit of the Act for the first time in this Court. No doubt, in special circumstances in which an offence is committed is on the record, this Court may justifiably grant such benefit to an appellant while finding him guilty but in the absence of such material, this Court may well disallow such a prayer to be made for the first time on appeal by special leave. More so when the question of the appellant's

guilt is not open for consideration.

8. The Act being not applicable to this case, this appeal fails and is dismissed.