

THE STATE OF MADHYA PRADESH

A

v.

NANDU @ NANDUA

(Criminal Appeal No. 1356 of 2022)

SEPTEMBER 02, 2022

B

**[M. R. SHAH, JJ. AND KRISHNA MURARI]**

*Sentence/Sentencing – ss.147,148,323 and 302/34 of IPC – Reduction of sentence by the High Court – Proper or not – The respondent-accused along with other accused was convicted for the offence punishable u/ss.147,148,323 and 302/34 of IPC and was sentenced to life imprisonment by the trial Court – High Court maintained the conviction under aforesaid sections but reduced the sentence to approximately seven years and ten months, the period of sentence undergone by the respondent – State approached the Supreme Court and submitted that the reduction in sentence is contrary to s.302 IPC – On appeal, held: Though the High Court has maintained the conviction of the respondent for the offence u/ s.302 IPC, but the High Court has reduced the sentence to sentence already undergone which is less than imprisonment for life, which shall be contrary to s.302 IPC and is unsustainable – Judgment and order of High Court set aside – Judgment and order passed by the trial Court restored.*

C

D

E

CRIMINALAPPELLATE JURISDICTION: Criminal Appeal No. 1356 of 2022.

From the Judgment and Order dated 17.05.2019 of the High Court of Madhya Pradesh Bench at Jabalpur in CRA No. 219 of 1995.

F

Ms. Ankita Chaudhary, Dy. AG, Gopal Jha, Amit Sharma, Advs. for the Appellant.

The Judgment of the Court was delivered by

**M. R. SHAH, J.**

G

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 219 of 1995 by which the High Court has partly allowed the said appeal preferred by the respondent - accused – Nandu

H

A @ Nandua and has reduced the sentence from life imprisonment to the sentence already undertone while maintaining his conviction for the offences under Sections 147, 148, 323 and 302/34 of the Indian Penal Code (IPC), the State has preferred the present appeal.

2. We have heard Ms. Ankita Chaudhary, learned Deputy Advocate General appearing on behalf of the appellant - State.

3. At the outset, it is required to be noted that the learned Trial Court convicted the respondent - accused alongwith other accused for the offence punishable under Sections 147, 148, 323 and 302/34 of the IPC and sentenced him to undergo life imprisonment. However, by the impugned judgment and order, though the High Court has maintained the conviction of the accused for the offence under Sections 147, 148, 323 and 302/34 of the IPC by giving benefit of right to private defence, the High Court has thereafter interfered with the sentence and reduced the same to the already undergone by him. At this stage, it is required to be noted that by the time, the High Court passed the impugned judgment and order reducing the sentence, the period of sentence undergone by the respondent - accused was approximately seven years and ten months.

4. Ms. Ankita Chaudhary, learned Deputy Advocate General appearing on behalf of the State has vehemently submitted that when the High Court has maintained the conviction of the accused for the offence punishable under Section 302 IPC, the punishment which can be imposed would be punishment with death or imprisonment for life and also fine, but in any case, it shall not be less than the imprisonment for life.

4.1 It is vehemently submitted that once an accused is held to be guilty for the offence punishable under Section 302 IPC, the minimum sentence, which is imposable would be the imprisonment for life and, therefore, any punishment/sentence less than the imprisonment for life shall be contrary to Section 302 of the IPC. It is submitted that therefore the High Court has committed a very serious error in reducing the sentence to already undergone (seven years and ten months).

5. Having heard the learned counsel appearing on behalf of the State and considering the impugned judgment and order passed by the High Court by which though the High Court has maintained the conviction of the respondent - accused for the offence under Section 302 IPC, but the High Court has reduced the sentence to already undergone, i.e.,

seven years and ten months, we are of the firm view that the same is impermissible and unsustainable. The punishment for murder under Section 302 IPC shall be death or imprisonment for life and fine. Therefore, the minimum sentence provided for the offence punishable under Section 302 IPC would be imprisonment for life and fine. There cannot be any sentence/punishment less than imprisonment for life, if an accused is convicted for the offence punishable under Section 302 IPC. Any punishment less than the imprisonment for life for the offence punishable under Section 302 would be contrary to Section 302 IPC. By the impugned judgment and order though the High Court has specifically maintained the conviction of the accused for the offence under Sections 147, 148, 323 and 302/34 of the IPC, but the High Court has reduced the sentence to sentence already undergone which is less than imprisonment for life, which shall be contrary to Section 302 IPC and is unsustainable.

6. In view of the above and for the reasons stated above, present appeal succeeds. The impugned judgment and order passed by the High Court reducing the sentence of the respondent – accused to the sentence already undergone while maintaining the conviction of the respondent – accused for the offence under Sections 147, 148, 323 and 302/34 of the IPC is hereby quashed and set aside. The judgment and order passed by the learned Trial Court imposing the life imprisonment is hereby restored. Now, the respondent – accused to be arrested and to undergo life imprisonment for which we give eight weeks’ time to the accused to surrender before the concerned Court/Jail Authority.