

CASE DETAILS

HARENDRA RAI

v.

THE STATE OF BIHAR AND ORS.

(Criminal Appeal No. 1726 of 2015)

SEPTEMBER 01, 2023

**[SANJAY KISHAN KAUL, ABHAY S. OKA AND
VIKRAM NATH, JJ.]**

HEADNOTES

Issue for consideration: In a murder case, the acquittal of respondent no.2 recorded by Trial Court and the High Court having been reversed and respondent no.2 having being convicted u/ss.302 and 307 IPC by the Supreme Court by an earlier judgment, now the issue for consideration was the sentence to be imposed upon respondent no.2.

Sentence / Sentencing – Murder – Conviction vide earlier judgment ([2023] 11 S.C.R. 403) – Death sentence not appropriate on facts, and as such imprisonment for life awarded alongwith fine – However, fine awarded to be paid as damages – Also, compensation awarded u/s.357-A CrPC – Code of Criminal Procedure, 1973 – ss. 357(c) and 357A – Penal Code, 1860 – ss.302 and 307.

HELD: Considering the facts and circumstances of the case and also taking into consideration the fact that the incident is of the year 1995, almost 28 years old, awarding death sentence would not be appropriate and as such imprisonment for life is awarded to respondent no.2 under Section 302 IPC along with fine of Rs.20 lacs. Further, respondent no.2 is awarded 7 years rigorous imprisonment under Section 307 IPC along with fine of Rs.5 lacs. Both the sentences to run concurrently. Section 357 of the Code of Criminal Procedure, 1973 provides that whenever fine is imposed as a sentence, the Court may while passing the judgment, order the whole or in part of the fine recovered to be applied as per clauses (a) to (d) of sub-section (1) thereof. Clause (a) provides for defraying the expenses incurred in the prosecution. This Court is not inclined to grant any such expenses to the State

considering the fact that the State in fact did not prosecute the case fairly, rather throughout assisted the accused. Clause (b) and (d) also will have no CrPC application, however, under clause (c) considering the conduct of respondent no.2, further the mental, physical, and financial damages suffered by the victim's family, the two deceased and the injured, the fine awarded be paid as damages. Considering the conduct of the State and also the amount of trauma and harassment faced by the victim's family, in addition to the damages awarded under section 357 CrPC further compensation be awarded under section 357-A CrPC. [Paras 5, 6 and 7]

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1726 of 2015.

From the Judgment and Order dated 02.12.2011 of the High Court of Judicature at Patna in CRRP No.1345 of 2009.

Appearances:

Abhay Kumar, Shagun Ruhil, Rajat Khattry, Ms. Kusum Pandey, Saurabh Mishra, Ms. Neetu Jain Gautam, Ms. Neetu Jain, Ms. Anamika, Advs. for the Appellant.

R. Basant, Dr. Abhishek Manu Singhvi, Sr. Advs., Devashish Bharuka, Ms. Sarvshree, Shobhit Dvivedi, Ms. Swati Mishra, Neeraj Shekhar, Sunny Choudhary, Manoj Kumar, Ms. Nishi Kashyap, Shashi Bhushan Singh, Advs. for the Respondents.

JUDGMENT / ORDER OF THE SUPREME COURT
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JUDGMENT

VIKRAM NATH, J.

1. The acquittal of respondent no.2 recorded by the Trial Court and the High Court was reversed vide judgment dated August 18, 2023 and respondent no.2 was convicted under Section 302 and 307 of the Indian Penal Code, 1860¹. By the same order it was directed to take respondent

1 IPC

no.2 into custody and produce him today in Court for being heard on sentence.

2. Crl.M.P.No.169246 of 2023 was filed by respondent no.2 with a prayer to permit him to appear virtually considering his health conditions and that he was already undergoing life sentence in another murder case. Crl.M.P. is allowed. Respondent no.2 is present virtually from jail and is duly represented by his counsel.

3. We have heard learned counsel for the parties.

4. Considering the facts and circumstances of the case and the findings recorded by us and also taking into consideration the fact that the incident is of the year 1995, almost 28 years old, awarding death sentence would not be appropriate and as such we award imprisonment for life to respondent no.2 under Section 302 IPC along with fine of Rs.20 lacs. Further, respondent no.2 is awarded 7 years rigorous imprisonment under Section 307 IPC along with fine of Rs.5 lacs. Distribution of fine will be indicated a little later. Both the sentences to run concurrently.

5. The fine has been awarded of the magnitude referred to above considering the shocking facts and circumstances of the case which have been considered in detail and findings recorded in the judgment dated August 18, 2023.

6. Section 357 of the Code of Criminal Procedure, 1973² provides that whenever fine is imposed as a sentence, the Court may while passing the judgment, order the whole or in part of the fine recovered to be applied as per clauses (a) to (d) of sub-section (1) thereof. Clause (a) provides for defraying the expenses incurred in the prosecution. We are not inclined to grant any such expenses to the State considering the fact that the State in fact did not prosecute the case fairly, rather throughout assisted the accused. Clause (b) and (d) also will have no application, however, under clause (c) considering the conduct of accused no.2, further the mental, physical, and financial damages suffered by the victim's family, the two deceased and the injured, we direct that the fine awarded to be paid as damages in the following manner:

2 CrPC

- a) We award damages of Rs.10 lacs each to the legal heirs of two deceased Rajendra Rai and Daroga Rai. The Trial Court will get a preliminary enquiry conducted with regard to the legal heirs of the two deceased and the amount will be disbursed to the legal heirs as per the law of Succession.
- b) Similarly, the amount of fine awarded under section 307 IPC of Rs.5 lacs would be disbursed in the same manner by the Trial Court to the victim if she is alive and if not, to her legal heirs.

7. Considering the conduct of the State as noticed in the judgment dated August 18, 2023 and also the amount of trauma and harassment faced by the victim's family, we are of the view that in addition to the damages awarded under section 357 CrPC further compensation be awarded under section 357-A CrPC. The State of Bihar will compensate the legal heirs of the two deceased and the injured if alive otherwise her legal heirs in the like amount of the fine awarded above i.e. Rs.10 lacs each to the legal heirs of the deceased Rajendra Rai and Daroga Rai and Rs.5 lacs to the injured Smt. Devi or her legal heirs, as the case may be. The amount so deposited will be disbursed in the same manner as provided above for disbursement of the damages under section 357 CrPC.

8. Amount of fine and compensation as awarded above to be deposited with the Trial Court within two months from today failing which the same shall be got recovered as arrears of land revenue by the Trial Court. Appeal stands disposed off as above.

9. Compliance report to be submitted by the Trial Court to this Court within four months. Registry to circulate the compliance report if filed, and if not filed within the time allowed, the matter may be listed with office report for directions.