

VIVIAN RODRICK

v.

STATE OF WEST BENGAL

January 27, 1971

[S. M. SIKRI, C.J., P. JAGANMOHAN REDDY AND I. D. DUA, JJ.]

Criminal Law—Sentence of death—Inordinate delay in disposing of appeal by High Court—If ground for awarding lesser sentence.

The accused was committed to trial in July 1963 and was convicted and sentenced to death on September 4, 1964. The appeal to the High Court under s. 411A, Cr. P.C., was finally dismissed on February 6, 1970. The High Court left it to the State Government whether it should reduce the sentence on account of inordinate delay.

In appeal to this Court on the question of sentence,

HELD : Section 302, I.P.C., prescribes two alternate sentences, namely, death sentence or imprisonment for life. When there has been inordinate delay in the disposal of the appeal by the High Court, it is a relevant factor for the High Court to take into consideration for imposing the lesser sentence. [549 A-B]

In the present case, the appellant has been for 6 years under the fear of sentence of death, which must have caused him unimaginable mental agony. In view of the excessive delay it is a fit case for awarding the lesser sentence instead of leaving it to the Government to decide the matter on a mercy petition. [549 B-D]

Nawab Singh v. State of U.P., A.I.R. 1954 S.C. 278, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 137 of 1970.

Appeal by special leave from the judgment and order dated February 6, 1970 of the Calcutta High Court in Criminal Appeal No. 5 of 1964.

O. P. Rana, for the appellant.

S. P. Mitra and Sukumar Basu, for the respondent.

The Judgment of the Court was delivered by

Sikri, C.J. In this case special leave was limited to the question of sentence only. The relevant facts for determining this point are as follows : The appellant, Vivian Rodrick, was tried by the High Court of Calcutta, in exercise of its original jurisdiction, having been committed to stand his trial by the Presidency Magistrate as early as July 31, 1963. The substance of the charges against the appellant were as follows :

- A** (i) that on January 13, 1963 the appellant was a member of an unlawful assembly guilty of rioting, being armed with deadly weapons and as such punishable under section 148, I.P.C.;
- B** (ii) that on January 13, 1963 the appellant committed the murder of one Vincent D'Rozaric and thereby committed an offence punishable under section 302, I.P.C.; and
- C** (iii) that on January 13, 1963 the appellant was in possession of explosive substances for unlawful object and thereby committed an offence under section 5 of the Explosive Substances Act.

D Four other persons, Stanley Rodrick, Ranjit Mandal, Simon Das and Ranjit Biswas were also tried jointly with the appellant and convicted under s. 302 read with s. 149, and also under s. 148, I.P.C. The jury returned a unanimous verdict of guilty against the appellant and on September 4, 1964 the Presiding Judge convicted the appellant under s. 302, I.P.C., and sentenced him to death. At the trial the appellant was also convicted for offences under s. 148, I.P.C., and s. 5 of the Explosive Substances Act, and sentenced to rigorous imprisonment for two years and three years respectively. The terms of imprisonment were directed to run concurrently.

E The appellant filed a petition of appeal under s. 411A, Cr. P.C., on September 7, 1964, challenging his conviction and the sentences imposed on him. The High Court, by its judgment dated September 19, 1967 in Criminal Appeal No. 5 of 1964, confirmed the conviction and sentences imposed on the appellant. In considering the question of sentence the High Court observed that

F "the murder was a premeditated and cold-blooded one. There was not the slightest provocation from the side of the deceased. This is undoubtedly a fit case for capital punishment. No question of showing any leniency on the ground of tenderness of age arises as the appellant is now aged about 35 years." It was urged before the High Court that the sentence of death should be reduced

G to rigorous imprisonment for life on account of the long delay that had taken place in hearing the appeal. Although the High Court regretted the delay and the consequent mental suffering undergone by the condemned prisoner, it felt that the "delay in executing the death sentence was not by itself a sufficient ground for which the court should exercise its jurisdiction to commute the

H death sentence to one of imprisonment for life."

The appellant sought leave to appeal to this Court against the judgment of the High Court on October 21, 1967, and the same

was refused on January 8, 1968. Having obtained special leave, the appellant filed an appeal to this Court (Criminal Appeal No. 190 of 1968). By its judgment dated April 30, 1969, this Court set aside the judgment and order of the High Court, dated September 19, 1967, and remanded the appeal to the High Court for fresh disposal and hearing in accordance with law and in the light of the observations contained in this Court's judgment. This Court in its judgment in Cr. Ap. No. 190 of 1968 observed, regarding the four other co-accused, as follows :

“Though the conviction was for an offence under section 302 read with section 149, I.P.C., curiously they were sentenced to varying terms of imprisonment, and none of them challenged their conviction in appeals.”

On remand the appeal was again dismissed by the High Court on February 6, 1970. Chakrabarti, J., with whom Amaresh Chandra Roy, J., agreed, again considered the question of sentence and held that although there had been a delay of more than five years in executing the death sentence that was not by itself sufficient ground for commuting the death sentence. The High Court referred to *Nawab Singh v. The State of Uttar Pradesh*⁽¹⁾ and *Piara Dusadh v. King Emperor*⁽²⁾. As the High Court did not find any extenuating circumstances whatsoever that would justify its taking a lenient view in the matter, it left to the State Government to take a decision as to whether it should, on account of inordinate delay in executing the sentence, exercise its powers under s. 402, Cr. P.C.

The learned counsel for the appellant contends that the matter should not have been left to the State Government. In *Nawab Singh v. The State of Uttar Pradesh*⁽¹⁾, which has been referred to by the High Court in its judgment dated February 6, 1970, it is observed :

“It is true that in proper cases an inordinate delay in the execution of the death sentence may be regarded as a ground for commuting it, but we desire to point out that this is no rule of law and is a matter primarily for consideration of the local Government. If the Court has to exercise a discretion in such matter, the other facts of such case would have to be taken into consideration. In the case before us, we find that the murder was a cruel and deliberate one and there was no extenuating circumstance whatsoever which would justify us in ordering a commutation of the death sentence.”

(1) A.I.R. 1954 S.C. 278.

(2) [1944] F.C.R. 61

- A** It seems to us that the extremely excessive delay in the disposal of the case of the appellant would by itself be sufficient for imposing a lesser sentence of imprisonment for life under s. 302. Section 302, I.P.C., prescribes two alternate sentences, namely, death sentence or imprisonment for life, and when there has been inordinate delay in the disposal of the appeal by the High Court
- B** it seems to us that it is a relevant factor for the High Court to take into consideration for imposing the lesser sentence. In this particular case, as pointed out above, the appellant was committed to trial by the Presidency Magistrate as early as July, 31, 1963, and he was convicted by the Trial Judge on September 4, 1964. It is now January 1971, and the appellant has been for more than six
- C** years under the fear of sentence of death. This must have caused him unimaginable mental agony. In our opinion it would be inhuman to make him suffer till the Government decides the matter on a mercy petition. We consider that this is now a fit case for awarding the sentence of imprisonment for life. Accordingly we accept the appeal, set aside the order of the High Court awarding death sentence and award a sentence of imprisonment for life.
- D** The sentences under s. 148, I.P.C., and s. 5 of the Explosive Substances Act and under s. 302, I.P.C., shall run concurrently.

V.P.S.

Sentence modified.