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ROOPENDRA SINGH

v.

STATE OF TRIPURA & ANR.

(Criminal Appeal No. 690 of 2017)

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APRIL 11, 2017

[ADARSH KUMAR GOEL AND UDAY UMESH LALIT, JJ.]

Code of Criminal Procedure, 1973:

C ss. 372, 378(4) – Acquittal u/ss. 342, 376(2)(b) and 506 IPC – Appeal thereagainst by the victim u/s. 372 – Objection raised that unless leave was granted u/s. 378(4), appeal could not be admitted – Petition u/s. 482 by victim treating the said criminal appeal u/s. 372/378 – High Court held that no leave was required for the victim to file such appeal – On appeal, held: Though Amicus Curie suggested that in view of anomalies in Satya Pal Singh’s case, it needs reconsideration, such course ought not to be adopted – Special leave petition is pending for last 5 years – Since the victim had already filed an application to treat the appeal initially filed u/s. 372 to be one u/s. 372/378, the leave ought to be granted – Pending appeal to be considered on merits by the High Court.

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E ss. 372, 378(4) – Acquittal of accused for the offences punishable u/ss. 302, 201/34 IPC – Appeal u/s. 372 by the informant-widow of the deceased, rejected – As also leave to appeal against acquittal not granted to the State – On appeal, held: s. 372 confers upon a victim a substantive and independent right to maintain an appeal against acquittal – Widow of the deceased comes within the definition of ‘victim’ – Merely because leave to appeal was not granted to the State, the appeal preferred by victim-informant ought not to have been rejected by the High Court summarily – Said order passed by the High Court set aside – Matter remitted to the High Court for fresh consideration, in the light of Satya Pal Singh’s case.

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G *Satya Pal Singh v. State of Madhya Pradesh 2015 (15) SCC 613 – referred to.*

Case Law Reference

2015 (15) SCC 613

referred to

Para 4

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 690 of 2017. A

From the Judgment and Order dated 06.06.2012 of the High Court of Gauhati at Agartala Bench in Crl. Misc. Appl. No. 253 of 2011 in Crl. Appeal No. 23 of 2011

WITH B

Crl. A. Nos. 691-692 of 2017.

Shekhar Naphade, Sr. Adv. (A.C.)

Bijan Kumar Ghosh, Nishant Singla, Rauf Rahim, Advs. for the Appellant. C

Gopal Singh, Rituraj Biswas, Ms. Varsha Poddar, Ms. Nidhi, Nishant Ramakantrao Katneshwarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

UDAY UMESH LALIT, J. 1. Leave granted in both the matters. D

I Criminal Appeal @ out of SLP (Crl.) No.7014 of 2012)

2. The appellant was tried in Sessions Trial No.22 (WT/K) 2010 in the Court of Additional Sessions Judge, Khowai, West Tripura for having committed offences punishable under Sections 342, 376(2)(b) and 506 IPC and was acquitted of all the charges leveled against him vide judgment of the Trial Court dated 28.04.2011. Respondent No.2, i.e. the victim challenged the acquittal by filing Criminal Appeal No.23 of 2011 in the Gauhati High Court, Agartala Bench. This appeal was filed under Section 372 of Code of Criminal Procedure, 1973 ('Cr.P.C.' for short). When the appeal was listed for admission, an objection was taken that unless "leave" was granted under Section 378(4) of Cr.P.C., the appeal could not be admitted. At this juncture, a petition under Section 482 of Cr.P.C. was filed by Respondent No.2 for treating said criminal appeal under Section 372 read with Section 378 Cr.P.C. E F G

3. The matter was contested. The High Court by its judgment and order dated 06.06.2012 concluded that there was an unfettered right conferred upon the victim by Section 372 Cr. P.C. and that no leave was required for the victim to file such appeal. Consequently, the High Court observed that there was no necessity for converting the appeal to one H

A under Section 372 read with 378 Cr.P.C. The following observations are noteworthy:-

B “The proviso to Section 372 has created a right to appeal unfettered of any leave or sanction and it shall automatically lie to the forum where an appeal ordinarily lies against the order of conviction of such court if the said appeal against the judgment and order of acquittal is filed by the victim as defined in Section 2 (wa) of Cr.P.C.”

C For the reasons as stated above, this court is of the view that even though the right to appeal for the victim has been created by the proviso to Section 372 of Cr.P.C, the said proviso itself is a comprehensive provision, not fettered by any leave or sanction as required for the categories of appeals as depicted in Section 378(1), 378(2) and 378(4) of Cr.P.C. No leave is required for the victim to file an appeal as against the order of acquittal under the proviso to Section 372 of Cr.P.C.”

D 4. The correctness of the decision of the High Court is questioned by the appellant-accused. By order dated 13.08.2014, Mr. Shekhar Naphade, learned Senior Advocate was requested to assist the Court as Amicus Curiae and the matter was directed to be listed for final hearing. In the meantime a decision was rendered by this Court on 06.10.2015 in E *Satya Pal Singh v. State of Madhya Pradesh*¹. Paras 14, 15, 17 and 18 of the decision are as under:-

F “14. Thus, from a reading of the above said legal position laid down by this Court in the cases referred to supra, it is abundantly clear that the proviso to Section 372 Cr.P.C. must be read along with its main enactment i.e. Section 372 itself and together with sub-section (3) of Section 378 Cr.P.C. otherwise the substantive provision of Section 372 Cr.P.C. will be rendered nugatory, as it clearly states that no appeal shall lie from any judgment or order of a criminal court except as provided by Cr.P.C.”

G 15. Thus, to conclude on the legal issue:

“whether the appellant herein, being the father of the deceased, has statutory right to prefer an appeal to the High Court against the order of acquittal under the proviso to Section 372 Cr.P.C.”

H ¹ 2015 (15) SCC 613

without obtaining the leave of the High Court as required under sub-section (3) of Section 378 Cr.P.C.?"

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this Court is of the view that the right of questioning the correctness of the judgment and order of acquittal by preferring an appeal to the High Court is conferred upon the victim including the legal heir and others, as defined under Section 2(wa) Cr.P.C., under the proviso to Section 372, but only after obtaining the leave of the High Court as required under sub-section (3) of Section 378 Cr.P.C. The High Court of M.P. has failed to deal with this important legal aspect of the matter while passing the impugned judgment and order-

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17. Hence, the impugned judgment and order of the High Court is not sustainable in law and the same is liable to be set aside by this Court and the case is required to be remanded to the High Court to consider for grant of leave to file an appeal by the appellant as required under sub-section (3) of Section 378 Cr.P.C. and thereafter proceed in the matter.

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18. For the reasons stated supra, this appeal is allowed by setting aside the impugned judgment and order of the High Court. The case is remanded to the High Court to hear the appellant with regard to grant of leave to file an appeal as the appellant is legal heir of the victim as defined under Section 2(wa) Cr.P.C. and dispose of the appeal in accordance with law in the light of observations made in this order as expeditiously as possible.

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5. The decision in *Satya Pal Singh* shows that reliance was placed on a Full Bench decision of High Court of Delhi in *Ram Phal v. State and others*², according to which the right to prefer an appeal conferred upon a victim by virtue of proviso to Section 372 Cr.P.C. is an independent statutory right and there is no need for the victim to seek leave of the High Court. Said decision of the Full Bench of the High Court of Delhi was not found to be legally correct by this Court in *Satya Pal Singh*.

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6. When this matter came up for final hearing, the learned Amicus Curiae submitted that the decision of this Court in *Satya Pal Singh* required reconsideration. It was submitted that proviso to Section 372 Cr.P.C. is an independent provision conferring a substantive right on the

² 2015 SCC Online Delhi 9802=2015 221 DLT 1

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- A victim to prefer an appeal against the judgment of acquittal, conviction for lesser offence or inadequate compensation. It was further submitted that appeals under Sections 373, 374, 377, 379 and 380 in Chapter XXIX of Cr.P.C. constitute one category of appeals which can be presented without obtaining leave of the appellate court while appeals under Section 378 whether by the State Government, Central Government or by the Complainant against the order of acquittal constitute another category of appeals which are circumscribed by the requirement of obtaining leave of the High Court. In his submission, the appeal under proviso to Section 372 falls in the first category of appeals and as rightly observed by the High Court of Gauhati in the present case, no leave of the High Court was required. The learned Amicus Curiae then traced the legislative history and submitted that in the 1898 Code of Criminal Procedure as originally enacted no right was conferred on the Complainant to file an appeal against acquittal, which for the first time was introduced in Section 417 of the 1898 Code in the year 1955. He further submitted that though the Law Commission in its 41st Report had rejected the suggestion of permitting the victim to file appeals against order of acquittal, in its 154th Report the Law Commission had relied on the 1985 Union Nations Declaration of Basic Principles of Justice for victims of crimes and abuse of power. The Report of the Law Commission noted that the victims were the worst sufferers in the crime and needed to be given certain rights and compensation. The learned Amicus Curiae then stated that these developments led to the constitution of Malimath Committee which recommended that the victims should have the right to file appeal against acquittal and that is how the proviso to Section 372 came to be inserted by Amendment Act of 2008. He laid emphasis on following portion from the Objects and Reasons which weighed with the Parliament while inserting the proviso:-

“At present, the victims are the worst sufferers in a crime and they do not have much role in the court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the criminal justice system.”

- G He submitted that the Statement of Objects and Reasons clearly stressed that the administration of Criminal Law has tendency to distort and therefore the victims are the worst sufferers and as such the Parliament had given an unrestricted right to the victim to prefer appeal against acquittal.

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7. In his written submissions the learned Amicus Curiae sought to bring out the anomalies in the decision of this Court in **Satya Pal Singh** in following terms:-

“(1) This Hon’ble Court in *Satya Pal Singh’s* case has missed out the significance of the word “conviction” used in the proviso to S. 372 Cr. P.C. Under the code, against a conviction, an appeal does not necessarily lie to the High Court. Section 374 lays down different foras for preferring an appeal against conviction.

i If a person is convicted in a trial held by the High Court in its extraordinary original criminal Jurisdiction, an appeal lies to the Supreme Court:

ii Any person convicted by the Sessions Judge or the Assistant Sessions Judge, an appeal lies to the High Court.

iii If a person is convicted by any Court in which the sentence of Imprisonment for more than 7 years is passed he may appeal to the High Court.

iv Any person convicted in a trial held in the Court of a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or second class, his appeal will lie to the Court of Sessions.

v If any person is sentence by the aforesaid Judicial authorities i.e. Metropolitan Magistrate, Assistant Judge, Sessions Judge and sentenced under Section 325, an appeal lies to the Court of Sessions.

vi Any person convicted and sentenced by the Magistrate u/S 360 an appeal lies to the Court of Sessions.

(2) The Proviso to Section 372 not only deals with filing of appeal by the victim but it also provides for Forum. The Forum of such appeals is same as in case of appeals against conviction. Section 374 shows that some appeals against conviction lie before Session Court. Therefore, some appeals of the victim against acquittal would lie before the Sessions Court. In respect of such appeals there is no question of obtaining leave. This creates serious anomaly.

- A (3) The proviso to S. 372 deals with the rights of the victim to file an appeal against the following order:
- i. against acquittal
 - ii. against conviction for a lesser offence and
 - iii. against imposition of inadequate compensation
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As far as imposing inadequate compensation is concerned, the Government has no role to play. Once it is laid down that a right of appeal under the proviso is controlled by Section 378 (3) Cr. P.C. then such a stipulation would apply to appeals against all the three orders.”

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8. Though the learned Amicus Curie has suggested that these matters be referred to larger Bench to reconsider the decision of this Court in **Satya Pal Singh**, we do not think that such course ought to be adopted in the present matter. The special leave petition has been pending in this Court for last 5 years. In any case, in the present matter the victim had preferred an application to treat the appeal initially filed under Section 372 to be one under Section 372 read with Section 378 Cr.P.C. Though the High Court observed that no such leave was necessary, the matter now assumes different complexion in the light of the decision in **Satya Pal Singh**. However, since there was already an application on behalf of the victim to treat the appeal under Section 372 read with Section 378 Cr.P.C., in our considered view the leave ought to be granted, which we presently do. The pending appeal shall now be considered on merits by the High Court. This appeal, thus, stands disposed of.
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II Criminal Appeals arising out of SLP(Crl) Nos.8316-17 of 2012

- F 9. These appeals, at the instance of the original informant question the orders dated 20.06.2012 and 28.06.2012 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur. By order dated 20.06.2012 Criminal Application No.399 of 2012 preferred by State of Maharashtra seeking leave to appeal against the judgment and order dated 04.02.2012 passed by the Extra Joint Ad-hoc Additional Sessions Judge, Kelapur in Sessions Trial No.6 of 2011 acquitting the accused of the offences punishable under Section 302, 201 read with Section 34 IPC was rejected by the High Court. The appeal under Section 372 Cr.P.C. preferred by the Informant, who also happens to be the widow of the deceased was rejected in the light of the earlier rejection dated
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20.06.2012. It appears that State of Maharashtra did not challenge the rejection of their application seeking leave to appeal. This Court issued notice in the aforesaid matter on 12.10.2012 and the matter was thereafter tagged with SLP(Cr) No.7014 of 2012, namely, the earlier matter arising out of the judgment of the Gauhati High Court. A

10. Section 372 Cr.P.C. has conferred upon a victim a substantive and independent right to maintain an appeal against acquittal. The widow of the deceased in the present matter comes within the definition of "victim" as incorporated in Section 2(wa). Merely because leave to appeal was not granted to the State to prefer an appeal against acquittal, the appeal preferred by the victim Informant ought not to have been rejected by the High Court summarily. We, therefore, set aside the order dated 28.06.2012 passed by the High Court rejecting Criminal Appeal preferred by the appellant and remit the matter to the High Court for fresh consideration. It will be open to the High Court to consider the matter for grant of leave to appeal to the appellant in the light of paragraphs 17 and 18 of the decision of this Court in *Satya Pal Singh*. B
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11. These appeals are thus allowed in the aforesaid terms.

12. Before we part, we must express and record our sincere appreciation for the assistance rendered by the learned Amicus Curiae. The Court is deeply grateful to him. E