

PETITIONER:
NARPAL SINGH & OTHERS

Vs.

RESPONDENT:
STATE OF HARYANA

DATE OF JUDGMENT 01/02/1977

BENCH:
FAZALALI, SYED MURTAZA
BENCH:
FAZALALI, SYED MURTAZA
BHAGWATI, P.N.

CITATION:
1977 AIR 1066 1977 SCR (2) 901
1977 SCC (2) 131

ACT:

Sentence--Right to be heard by the accused on the question of sentence and the duty of the court to pass a sentence after conviction--Code of Criminal Procedure (Act 2 of 1974), 1973--Section 235(2)--De novo trial not necessary in such cases on the question of convictions.

HEADNOTE:

Appellants Nirpal Singh, Gurdev Singh and Jagmohan Singh were convicted under s. 302 J.P.C. and sentenced to death while the appellants Devinder Singh, and Maha Singh were convicted under s. 302 but sentenced to imprisonment for life by the Sessions Judge. The High Court upheld the convictions as also the sentences while accepting the reference under s. 366 made by the Sessions Judge and dismissing the appeals by the accused.

On appeal by special leave, the appellants contended inter alia, that the sentence passed against them was bad as the Sessions Judge, after delivering the judgment of conviction has not given any opportunity to them of being heard on the question of sentence separately.

Dismissing the appeals of Devinder Singh and Maha Singh and partly allowing the appeals of the other three appellants, the Court maintained their convictions set aside the sentence of death passed on them and remitted their cases to the trial Court for passing sentences on them afresh under s. 235(2) of the Criminal Procedure Code. The Court

HELD: (1) Though the commitment inquiry was held under the Code of Criminal Procedure, 1973, since the procedure under s. 235(2) has not been adopted by the Sessions Judge, the sentence of death passed on the appellants, Narpal Singh, Gurdev Singh and Jagmohan Singh in the instant case cannot be sustained. Since Devinder Singh and Maha Singh have already been given sentences of life imprisonment which is the minimum sentence that could be passed under s. 302, remitting their cases to the Sessions Judge was not necessary. [902 F-G, 903 E]
Santa Singh v. State of Punjab [1977] 1 S.C.R. 229, reiterated.

(2) When a case is remitted by this Court to the Sessions Court for giving a hearing on the question of sentence under s. 235(2) of the Code of Criminal Procedure 1973.

there would be fresh evidence and the principle that the Sessions Judge may not act on evidence already recorded before his predecessor and must conduct de novo trial would not be violated. The ratio of Pyare Lal's case [1962] 3 S.C.R. 328 cannot be applied or projected into the facts and circumstances of the present case or to cases where the trial has ended in a conviction but the matter has been remitted to the trial Court for hearing the case only on the question of sentence. [903 A-D]

Pyare Lal v. State of Punjab [1962] 3 S.C.R. 328, distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 149 of 1976.

Appeal by Special Leave from the Judgment and Order dated 19-7-1975 of the Punjab & Haryana High Court in Criminal Appeal No. 1205 of 1974 and Murder Reference No. 60 of 1974.

902

Frank Anthony, Hatbans Singh and Harjender Singh for Appellants Nos. 1, 2 and 4.

A.N. Mulla, and Harbans Singh for Appellants Nos. 3 and 5.

R.L. Kohli for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.--After having gone through the entire evidence on the record and the judgment of the courts below and after hearing counsel for the parties and for the reasons that we have already given, we are fully satisfied and convinced that the prosecution case against the appellants has been proved beyond reasonable doubt and that the appellants were rightly convicted by the Sessions Judge and the High Court.

This, however, does not dispose of the matter completely, because it appears that the commitment inquiry was held under the Code of Criminal Procedure, 1973 and the Sessions Judge after delivering the judgment of conviction has not given any opportunity to the accused of being heard on the question of sentence separately. In Santa Singh v. State of Punjab(1) this Court has taken the that under the provisions of the Code of Criminal Procedure, 1973, it is incumbent on the Sessions Judge delivering a judgment of conviction to stay his hands and hear the accused on the question of sentence and give him an opportunity to lead evidence which may also be allowed to be rebutted by the prosecution. This procedure has not been adopted by the learned Sessions Judge and, therefore, the sentences of death passed on the appellants Narpal Singh, Gurdev Singh and Jagmohan Singh cannot be sustained although the convictions recorded against them are confirmed by us and will not be reopened under any circumstance whatsoever.

Counsel for the State has drawn our attention to the fact that in some cases the accused have raised the question that once the case is remitted to the Sessions Judge, then the accused is entitled to claim a de novo trial on the question of conviction also. In this connection, reliance was placed on Pyare Lal v. State of Punjab(2). In the first place, this case was based on an interpretation of ss. 251 to 259 of the Code of Criminal Procedure, 1898, and the reason why this Court held that the proceedings by a successor Judge cannot be started from the stage left out by his predecessor was that a Judge who had heard the whole of the evidence before had the advantage of watching the demean-

nour of the witnesses which would be lost if the successor Judge was to proceed from the stage left by his predecessor. It is true that under s. 326 of the Code of Criminal Procedure

*Only pages 33 to 36 of the Judgment are reported as per directions of the Court.

(1) [1976] s.c.c. 190.

(1) [1962] 3 S.C.R. 328.

903

Under, 1973, there is a discretion given to the successor Magistrate to act on the evidence already recorded and not to hold a de novo trial and no such provision is made in case of a trial by the Sessions Judge or a Special Judge. The ratio of Pyare Lal's case (supra), however, is not applicable to the present case. Once the judge who hears the evidence delivers a judgment of conviction, one part of the trial comes to an end. The second part of the trial is restricted only to the question of sentence and so far as that is concerned, when a case is remitted by us to the Sessions Court for giving a hearing on the question of sentence under s. 235(2) of the Code of Criminal Procedure, 1973, there would be fresh evidence and the principle that the Sessions Judge may not act on evidence already recorded before his predecessor and must conduct a de novo trial would not be violated. In these circumstances, therefore, the ratio of Pyare Lal's case mentioned above cannot be applied or projected into the facts and circumstances of the present case or to cases where the trial has ended in a conviction but the matter has been remitted to the Trial Court for hearing the case only on the question of sentence.

So far as the case of Devinder Singh and Maha Singh are concerned as they have already been given sentences of life imprisonment and this is the minimum sentence that could be passed under s. 302 I.P.C. it is not necessary to remit their cases to the Sessions Judge. The convictions and sentences of these two accused are, therefore, confirmed and their appeals are dismissed. As regards the appeals by the three other appellants, namely, Narpal Singh, Jagmohan Singh and Gurdev Singh, we confirm their convictions which would not be reopened under any circumstances, but set aside the sentence of death passed on them and remit their cases to the Trial Court for passing sentences on them afresh after hearing the accused in the light of the observations made by us and to this extent only the appeals of the three appellants are allowed so far as their sentences are concerned.

S.R.

allowed.

904

Appeals partly