

CASE NO.:

Appeal (crl.) 628-29 of 2001

Appeal (crl.) 630 of 2001

Appeal (crl.) 1210-11 of 2001

PETITIONER:

SURENDRA SINGH RAUTELA @ SURENDRA SINGH BENGALI

Vs.

RESPONDENT:

STATE OF BIHAR (NOW STATE OF JHARKHAND)

DATE OF JUDGMENT: 27/11/2001

BENCH:

M.B. Shah & B.N. Agrawal

JUDGMENT:

B.N.AGRawal, J.

Leave granted in SLP (Crl.) Nos. 1964-65 of 2001.

These appeals by Special Leave have been preferred against the judgment rendered by Jharkhand High Court. Surendra Singh Rautela @ Surendra Singh Bengali who is sole appellant in Criminal Appeal No. 628-29 of 2001 and Mohd. Anis who is appellant in Criminal Appeal No. 630 of 2001 were tried and convicted by the trial court. Surendra Singh Rautela was convicted under Sections 302 and 307 of the Penal Code and sentenced to undergo rigorous imprisonment for life on both counts. He was further convicted under Section 27(3) of the Arms Act and awarded death sentence and the matter was referred to the High Court for confirmation of death sentence. Mohd. Anis was convicted under Sections 302 and 307 read with Section 34 of the Penal Code and sentenced to rigorous imprisonment for life and ten years respectively. He was further convicted under Section 27(1) of the Arms Act and sentenced to undergo rigorous imprisonment for seven years. The sentences awarded against the appellants were, however, ordered to run concurrently. Both the accused persons preferred separate appeals before the High Court challenging their convictions whereas on behalf of the State, an appeal was filed for enhancement of punishment of life imprisonment awarded against Mohd. Anis into death penalty. The High Court by a common judgment disposed of the reference and the appeals. Appeals preferred by Mohd. Anis and State Government have been dismissed whereby convictions and sentences awarded against this appellant have been affirmed. So far appeal preferred by appellant Surendra Singh Rautela is concerned, his conviction and sentence under Section 27(3) of the Arms Act have been set aside. Conviction and sentence of this appellant under Section 307 of the Penal Code have been upheld. So far as his conviction under Section 302 of the Penal Code is concerned, the same has been confirmed but he has been awarded death penalty.

Prosecution case, in short, is that on 4th April, 1996 at 10.00 a.m., the informant Ranjan Singh (PW 7) along with his maternal uncle Dhananjay Singh and their bodyguards Shyam Bihari Singh (PW 4) and Karu Singh were going in a Maruti Car to their site where contract work was going on. Ranjan Singh (PW 7) was driving the Car and Dhananjay Singh was sitting by his side whereas Shyam Bihari Singh (PW 4) and

Karu Singh were sitting on the rear seat of the Car. Shyam Bihari Singh was holding licensed revolver belonging to Ranjan Singh (PW 7). At about 10.20 a.m., when the Car reached near Military Chowk at Booty Road, one black coloured Yamaha motor cycle, on the rear seat of which, appellant Surendra Singh Rautela was sitting, came from behind at the right side of the Car and he started firing at Ranjan Singh (PW 7) by a stengun, who pushed himself behind. In the meantime, there was also firing from the left side of the Car by a person who was on a scooter. Thereupon, the informant stopped the Car in front of the traffic post. As a result of firing, Ranjan Singh (PW 7) and his maternal uncle Dhananjay Singh got injured. Thereafter, the accused persons fled away. At that time, some police personnel arrived there and brought Ranjan Singh (PW 7) and Dhananjay Singh in injured condition to Rajendra Medical College Hospital where doctor declared Dhananjay Singh as brought dead. It was stated in the first information report that Ranjan Singh (PW 7) could identify the person, who was driving the motor cycle, on seeing him and other occupants of the Car could identify, the person who was on the scooter and fired from the left side, on seeing him. Motive for the occurrence as disclosed in the first information report was that prior to the incident appellant Surendra Singh Rautela had demanded Rs. 2 lakhs from Ranjan Singh (PW 7) as ransom on two or three occasions which was refused by him which led to the present occurrence. Stating the aforesaid facts, fardbayan of Ranjan Singh (PW 7) was recorded by the police in the hospital on the same day at 11.30 a.m. on the basis of which the first information report was drawn up.

The police after registering the case took up investigation and on completion thereof submitted charge sheet on receipt whereof, the magistrate took cognizance and committed the accused persons to the court of sessions to face trial. During trial, the prosecution examined fourteen witnesses in all and upon the conclusion of trial, the trial court convicted and sentenced the appellants whereupon appeals were preferred and the same having been disposed of as stated above, the present appeals by Special Leave filed on behalf of the accused persons as well as the State are before us.

First, we proceed to consider ocular version of the occurrence supported by the informant Ranjan Singh (PW 7). According to the first information report and the evidence of this witness, besides him and the deceased Dhananjay Singh, there were two other occupants of the car, who were eye witnesses, namely, Shyam Bihari Singh (PW 4) and Karu Singh, out of whom, Karu Singh died during trial, therefore, could not be examined and Shyam Bihari Singh was examined as PW 4, but as he did not support the prosecution case, he was declared hostile. Thus, Ranjan Singh (PW 7) remains the solitary eye witness. This witness has received injuries by firearms on vital parts of the body, as would appear from the evidence of Dr. V.K.Jain (PW 8), who examined this witness on the date of occurrence itself in the hospital where he was admitted. This witness has supported the prosecution case in all material particulars and his evidence has been corroborated by Ram Pal Singh (PW 1), Om Prakash (PW 3) and Kundan Prakash (PW 5), out of whom, PW1 is his father and PW3 and PW5 are his brothers, who were at their house at 11.00 a.m. in the morning of the date of occurrence and rushed to the hospital immediately upon receipt of information before whom the informant disclosed about the occurrence and name of appellant Surendra Singh Rautela. These witnesses were examined by the police on the same day in the hospital. The medical evidence supports the statement of Ranjan Singh (PW 7) as Dr. A.K.Choudhary (PW 6), who held postmortem examination on the dead body of Dhananjay Singh on the date of occurrence itself at 4.00 p.m., found injuries by firearm and opined that death was caused between three to eighteen hours at the time of postmortem examination which fits in with the prosecution case. That apart, the doctor recovered a bullet from the dead body which was sent to the Forensic Science Laboratory where it was examined by Ezaj Ahmad Khan (PW 12), Deputy Director, Ranchi Regional Forensic Science Laboratory, who opined that bullet was fired

from 9 mm caliber and on the statement of accused Surendra Singh Rautela made before the police, firearms including 9 mm. Caliber were recovered by the Police Officer, PW.14, from steel almirah in the premises of ceramic factory on key being produced by the accused himself. Shri P.S. Mishra, learned Senior Counsel appearing on behalf of the appellant Surendra Singh Rautela submitted that no reliance should be placed upon the testimony of Ranjan Singh (PW 7) as the prosecution case has not been supported by another eye witness Shyam Bihari Singh (PW 4), who has been declared hostile. In our opinion, in view of the fact that Ranjan Singh (PW 7) is an injured person and his evidence is corroborated by PWs 1, 3 and 5 and the medical evidence, we cannot discard his evidence merely because another eye witness Shyam Bihari Singh (PW 4) has not supported the prosecution case.

Shri Mishra submitted that the prosecution has failed to prove the motive which has been disclosed in the first information report as no evidence has been led to prove the same. In our view, the submission has been made only to be rejected as the motive has been proved by the three witnesses, namely, Ram Pal Singh (PW 1), Om Prakash (PW 3) and Kundan Prakash (PW 5). Ram Pal Singh (PW 1), who is father of the informant, stated that two or three times, telephone calls were received in his presence from appellant Surendra Singh Rautela demanding Rs. 2 lakhs as ransom from the informant. He has further stated that on one occasion, he also received a telephonic call from appellant Surendra Singh Rautela demanding ransom. Om Prakash (PW 3), who is brother of the informant has stated that the cause of incident was that Surendra Singh Rautela had demanded a sum of Rs. 2 lakhs from the informant. Kundan Prakash (PW 5), who is another brother of the informant, stated that PW.7 told him that cause of incident was refusal to meet the demand of ransom of appellant Surendra Singh Rautela by the informant.

Learned counsel for the appellant Surendra Singh Rautela next submitted that identification of this appellant by Ranjan Singh (PW 7) was highly improbable as this witness had seen him prior to the occurrence only once. This witness has stated in his evidence that five to six days before the incident, he was introduced to appellant Surendra Singh Rautela by Shyam Bihari Singh (PW 4) in Ganga Ashram Hotel at Kachcheri Road where they had gone for taking snacks. Since the incident had taken place in broad day light and as this appellant was introduced to this witness in the hotel, we do not find any improbability in identification of appellant Surendra Singh Rautela by him.

Shri Mishra further submitted that the High Court was not justified in enhancing the punishment awarded against this appellant from imprisonment for life to death sentence as no appeal under Section 377 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) was filed by the State for enhancement of sentence. It has been further submitted that no opportunity of hearing was afforded to appellant Surendra Singh Rautela against the enhancement of sentence. It is well settled that the High Court, suo motu in exercise of revisional jurisdiction, can enhance the sentence of an accused awarded by the trial court and the same is not affected merely because an appeal has been provided under Section 377 of the Code for enhancement of sentence and no such appeal has been preferred. Reference in this connection may be made to decisions of this Court in the cases of Nadir Khan v. The State (Delhi Administration) AIR 1976 SC 2205 and Eknath Shankarrao Mukkawar v. State of Maharashtra AIR 1977 SC 1177. It has been also settled by this Court in the cases of Jayaram Vithoba and another v. The State of Bombay AIR 1956 S.C.146 and Bachan Singh and others v. State of Punjab AIR 1980 SC 267 that the suo motu powers of enhancement under revisional jurisdiction can be exercised only after giving opportunity of hearing to the accused. In the case on hand, undisputedly, no opportunity of hearing was given to the appellant Surendra Singh Rautela on the question of enhancement of sentence.

Thus, in view of the foregoing discussions, we are of the view that the High Court was quite justified in upholding conviction of appellant Surendra Singh Rautela under Sections 302 and 307 of the Penal Code but was not justified in enhancing the sentence of life imprisonment awarded under Section 302 of the Penal Code into death penalty.

Turning now to the case of appellant Mohd. Anis, it may be stated that his conviction is based upon the solitary evidence of his identification by Ranjan Singh (PW 7) in Court as well as in the test identification parade. Even according to prosecution case as disclosed in the first information report as well as the evidence of Ranjan Singh (PW 7), this appellant was sitting on rear seat of the scooter which came from left side of the car and fired at the victims. In the first information report, it has been specifically stated that the associates of the informant who were in the Car could identify this appellant, who fired from the scooter, on seeing him and the informant could identify the person who was driving the motor cycle on seeing him and on which motor cycle accused Surendra Singh Rautela was sitting on the rear seat and fired at the victims. From the aforesaid statement of the informant in the first information report, it would appear that he could not identify appellant Mohd. Anis even by face and for the first time in the Sessions Court, the witness identified him. In view of the aforesaid statement in the first information report, the identification of the appellant Mohd. Anis by Ranjan Singh (PW 7) in the test identification parade becomes farce and no reliance can be placed upon his identification in Court. This being the position, we have no option but to hold that the High Court was not justified in upholding convictions and sentences awarded against this appellant.

As far as appeal preferred on behalf of the State of Jharkhand is concerned, the same was filed challenging the acquittal of appellant Surendra Singh Rautela by the High Court from the charge under Section 27(3) of the Arms Act, but Shri S.B.Sanyal, learned Senior Counsel appearing on behalf of the State submitted that he is not in a position to challenge the order of acquittal on merit. It appears that in the leading judgment, the learned Judge recorded acquittal of appellant Surendra Singh Rautela from the charge under Section 27(3) of the Arms Act on merit but in the concurring judgment which is by the learned Chief Justice, acquittal under the aforesaid Section has been recorded on the ground that it was not permissible in law to try appellant Surendra Singh Rautela simultaneously for the offences under Sections 302 of the Penal Code as well as 27(3) of the Arms Act. Learned counsel for the State has objected to recording of acquittal in the concurring judgment on this ground. It has been submitted that the learned Chief Justice was not justified in holding that it was not permissible in law to try appellant Surendra Singh Rautela simultaneously for the offences under Sections 302 of the Penal Code as well as 27(3) of the Arms Act as the same is contrary to the provisions of Section 220 of the Code. Sub section (1) of Section 220 of the Code lays down that if, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence. Sub section (3) of Section 220 of the Code lays down that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. In the case on hand, the act of firing by appellant Surendra Singh Rautela at the victims constitutes offences both under the Penal Code as well as Arms Act. Under the Penal Code, two offences have been disclosed, one under Section 307 of the Penal Code for firing at Ranjan Singh (PW 7) and another under Section 302 of the Penal Code for firing at Dhananjay Singh, deceased. The act of firing at Dhananjay Singh, deceased, by appellant Surendra Singh Rautela apart from constituting an offence punishable under Section 302 of the Penal Code does constitute an offence punishable under Section 27(3) of the Arms Act. According to the provisions of Sub section (3) of Section 220 of the Code, if act or acts of an

accused in the same transaction constitute more than one offence under different laws, the person accused of them may be charged with and tried at one trial for each of such offences. Thus, in view of the specific provisions engrafted under sub section (3) of Section 220 of the Code, we have no option but to hold that the learned Chief Justice in the concurring judgment was not justified in holding that it was not permissible to try appellant Surendra Singh Rautela simultaneously for offences under Section 302 of the Penal Code as well as Section 27(3) of the Arms Act and the charge under Section 27(3) of the Arms Act was totally superfluous.

In the result, Criminal Appeal Nos. 628-29 of 2001 are allowed in part and sentence of death awarded against appellant Surendra Singh Rautela @ Surendra Singh Bengali by the High Court under Section 302 of the Penal Code is set aside and the sentence of imprisonment for life awarded under that Section by the trial Court is restored while upholding conviction of the appellant under Section 302 of the Penal Code and his conviction and sentence under Section 307 of the Penal Code. Criminal Appeal No. 630 of 2001 is allowed, convictions and sentences awarded against appellant Mohd. Anis are set aside and he is acquitted of all the charges. Appellant Mohd. Anis is directed to be released forthwith, if not required to be in custody in connection with any other case. Criminal Appeals arising out of SLP(Crl.) Nos.1964-65 of 2001 preferred by the State are disposed of with the observations aforementioned.

.J.
[M.B.SHAH]

.J.
[B.N.AGRawal]

November 27, 2001.