
(2014) 05 AHC CK 0023
In the Allahabad High Court
Case No : Crl. Appeal No. 3808 of 2006

Madhav Tiwari and Others

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 31
Penal Code, 1860 (IPC) — Section 328, 34, 379, 381, 411

Citation : (2015) 1 ACR 624

Hon'ble Judges : Anil Kumar Sharma, J

Bench : Single Bench

Advocate : Manish Tiwari, A.K. Verma, A.K. Srivastava, D.S. Singh Jadaun, S.R. Verma, Sushila Jadaun and A.K. Awasthi, Advocates for the Appellant

Judgement

Anil Kumar Sharma, J.—Challenge in this appeal is to the judgment and order dated 26.6.2006 passed by Sri R.C. Chaudhary the then Addl. Sessions Judge, Court No. 3, Kanpur Nagar in S.T. No. 839/2004, State v. Madan Tiwari and another, under Sections 328, 381 and 411/34, I.P.C. (arising out of Case Crime No. 365/2002) P.S., Kalyanpur District Kanpur Nagar whereby both the appellants have been convicted and sentenced as under:

It was specifically directed that the sentences on different count would not run concurrently, but one after the other, i.e., consecutive. It was stated in the memo of appeal that although their Criminal Misc. Bail application No. 1062/2004 was allowed by the Court vide order dated 23.1.2004, but they could not be released on bail due to non-availability of local sureties. I have heard the learned counsel for the parties" at length and perused the original record of the case carefully.

2. At the outset learned counsel for the appellants has not challenged the conviction of the appellants on different counts, but they are primarily concerned with the latter direction regarding consecutive operation of the sentence. The contention is that the sum of substantive sentence awarded to each appellant comes to 19-years apart from total amount of fine Rs. 13,000 and default

imprisonment of 1-year and two months, which is wholly illegal in view of the clear and specific provisions of Section 31, Code of Criminal Procedure. The provisions of Section 31 are quoted below:

"31. Sentences in cases of conviction of several offences at one trial.--(1) When a person is convicted at one trial of two or more offences, the court may, subject to the provisions of Section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefore which such court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher court:

Provided that--

(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;

(b) the aggregate punishment shall not exceed twice the amount of punishment which the court is competent to inflict for a single offence.

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this Section shall be deemed to be a single sentence."

Proviso (a) aforesaid clearly mandates that the accused could not have been sentenced to imprisonment for a period more than fourteen years.

3. Learned counsel for the appellants has placed reliance on the case of Chatar Singh Vs. State of M.P., , wherein it was observed:

"11. In view of the proviso appended to Section 31 of the Criminal Procedure Code, we are of the opinion that the High Court committed a manifest error in sentencing the appellant for 20 years" Rigorous Imprisonment. The maximum sentence imposable being 14 years and having regard to the fact that the appellant is in custody for more than 12 years. Now, we are of the opinion that interest of justice would be sub-served if the appellant is directed to be sentenced to the period already undergone."

In this case the Apex Court has approved the observations given in the case of Zulfiquaf Ali alias Ram Chander and Another Vs. State of U.P., , wherein it was held:

"The opening words "In the case of consecutive sentences" in sub-section (2) of Section 31 make it clear that this sub-section refers to a case in which

"consecutive sentences" are ordered. After providing that in such a case if an aggregate of punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of single offence, it shall not be necessary for the court to send the offender for trial before a higher court. After making such a provision, proviso (a) is added to this sub-section to limit the aggregate of sentences which such a court pass while making the sentences consecutive. That is this proviso has provided that in no case the aggregate of consecutive sentences passed against an accused shall exceed 14 years. In the instant case the aggregate of the two sentences passed against the appellant being 28 years clearly infringes the above proviso. It is accordingly not liable to be sustained."

4. In Mohd. Akhtar Hussain alias Ibrahim Ahmed Bhatti Vs. Assistant Collector of Customs (Prevention), Ahmedabad and another, , on the issue of concurrent or consecutive sentences, the Supreme Court has observed as under:

"10. The basic rule of thumb over the years has been the so called single transaction rule for concurrent sentences. If a given transaction constitutes two offences under two enactments generally, it is wrong to have consecutive sentences."

5. The same position of law was adopted by the Apex Court in the case of State of Punjab Vs. Madan Lal, , by observing in para 5 that:

"5. The majority view in State of Maharashtra and Another Vs. Najakat Alia Mubarak Ali, , was to the similar effect. It was held in para 17 as follows:

"17. In the above context, it is apposite to point out that very often it happens, when an accused is convicted in one case under different counts of offences and sentenced to different terms of imprisonment under each such count, all such sentences are directed to run concurrently. The idea behind it is that the imprisonment to be suffered by him for one count of offence will, in fact and in effect be imprisonment for other counts as well."

6. In the case of Manoj @ Panu Vs. State of Haryana, , the Apex Court following its earlier decisions referred above, has held in para-11 as under:

11. We have heard the learned counsel for both the parties. The ground on which the appellant was awarded the sentence which was to run consecutively was due to the previous criminal record of the appellant for a similar type of offence of shooting in the court premises, which charge was proved as per Ex. P-1. This is the basis on which the trial court considered the extenuating circumstances into consideration to impose punishment for offences committed by the appellant, sentencing him to different periods for each one of the offences committed by him. The sentences were ordered to run consecutively, and the same was upheld by the High Court in exercise of its appellate jurisdiction. In view of the aforesaid legal position laid down by this Court regarding concurrent and consecutive sentences, the sentences imposed upon the appellant for different offences to

run consecutively under the I.P.C. and the Arms Act, are erroneous in law, as the same are contrary to law laid down by this Court as per the cases referred to supra upon which reliance has been rightly placed by the learned senior counsel on behalf of the appellant."

7. The facts of the instant case before us are almost similar with that of the above case because here also, both the accused are previous convict of similar offences. Jail Appeal No. 5320 of 2005, Madhav Tewari alias Vinod v. State of U.P., was partly allowed and his conviction under Section 411, I.P.C. was maintained but he was acquitted for the offence punishable under Sections 379/34 and 328/34 was set aside. However, Jail Appeal No. 5233 of 2005 of appellant No. 2, Ashok alias Vijay alias Arjun v. State of U.P., was dismissed. Both these Jail appeals were also preferred by the present appellants and were decided by common judgment dated 23.8.2007.

8. Since in the instant case, the sum of the sentences awarded to each appellant on different count comes to 19-years, therefore, in view of the above settled legal position with regard to the application and interpretation of Section 31 of the Code of Criminal Procedure, in my opinion, the learned trial court has grossly erred in directing the sentences awarded against the accused-appellants to run consecutively. The appeal, thus, partly succeeds.

9. The appeal is partly allowed. The conviction of each appellant for the offence punishable under Sections 328, 381 and 411/34 and the sentence awarded on each count are confirmed. However, the direction with regard to concurrent sentences is set aside and it is directed that the sentences awarded to each appellant would run concurrently. Let certified copy of the judgment be sent to the court concerned immediately for ensuring compliance and to issue suitable order/direction to the Superintendent of the Jail, where the appellants are presently serving out the sentences.