
(2013) 09 BOM CK 0237

In the Bombay High Court

Case No : Confirmation Case No. 2 of 2013 and Criminal Appeal No. 421 of 2013

The State of Maharashtra

APPELLANT

Vs

Santosh Maruti Mane

RESPONDENT

Date of Decision : 21-09-2013

Acts Referred:

Citation : (2013) ALLMR(Cri) 4387

Hon'ble Judges : P.V. Hardas, J;P.N. Deshmukh, J

Bench : Division Bench

Advocate : M.H. Mhatre, app, Ms. P.P. Shinde, APP for State, Mr. J.D. Mane and Mr. D. Mane in Cri. Appeal No. 421/13, for the Appellant; J.D. Mane and Mr. D. Mane in Conf. No. 2/13, for the Respondent

Judgement

P.V. Hardas, J.—The accused, who stands convicted for an offence punishable under Sections 381, 302, 307, 324, 427 and 3(2) of the Prevention of Damage to Public Property Act, 1984 and sentenced to R.I. for 5 years and to pay fine of Rs. 500/- in default R.I. for one month, sentence of death and fine of Rs. 5000/- in default, R.I. for one year, R.I. for 10 years and fine of Rs. 5000/- in default R.I. for two months, R.I. for three years and fine of Rs. 5000/- in default, R.I. for one month, R.I. for 2 years and fine of Rs. 500/- in default R.I. for 15 days and R.I. for 5 years and fine of Rs. 5000/- in default, R.I. for two months, respectively, with a direction that the substantive sentences shall run concurrently, by the Additional Sessions Judge, Pune by Judgment dated 8.4.2013, has filed Criminal Appeal No. 421 of 2013, questioning the correctness of his conviction and sentence. In accordance with the provisions of Section 366 of the Code of Criminal Procedure, the Trial Court has made a reference to this Court for confirmation of the death sentence passed against the accused. Since both these proceedings arise from the same Judgment of the Trial Court, the Confirmation Case as well as the Criminal Appeal is being decided by this common Judgment.

2. In the light of the fact which has been brought to our notice by the learned Counsel for the Appellant, we need not advert to the evidence as well as decide

the question of sustainability of the conviction of the accused at this stage. After we had heard the learned APP, the learned Counsel for the accused brought to our notice that the accused had not been heard on the point of sentence. Perusal of paragraph 146 of the Judgment discloses that the Trial Court in the light of the Judgment of the Supreme Court in Allauddin Mian and Others Vs. State of Bihar, was conscious of the requirement of hearing of the accused before pronouncement of the sentence. On that count the Judgment was deferred for hearing the prosecution and the accused on the point of sentence. The case was accordingly adjourned for 8.4.2013. The order sheet of 8.4.2013 indicates that the Counsel for the accused was present and the D.G.P. was also present. The accused had also been produced from Jail. The order sheet further records that arguments were heard on the point of sentence. Paragraph 147 of the Judgment discloses that the submissions of the learned Counsel for the accused and the learned Counsel for the D.G.P. were heard on the point of sentence. However, in the entire body of the remaining part of the Judgment, no reference is made as to what was submitted by the learned Counsel for the accused. The learned Counsel for the accused has urged before us that the accused in fact has not been heard and a right of adducing evidence if felt necessary by the accused has been denied to him. A reference at this juncture may be made to the Judgment of the Supreme Court in Santa Singh Vs. The State of Punjab, . The Supreme Court, while construing Section 235(2) of the Code of Criminal Procedure clearly indicated that the said provision was mandatory and the Court was required to hear the accused on the question of sentence and then pass sentence according to law. The Supreme Court further held that noncompliance of Section 235(2) of the Code of Criminal Procedure was not a mere irregularity curable u/s 465 but was an illegality which vitiated the sentence.

3. The Judgment of the Supreme Court in Ajay Pandit @ Jagdish Dayabhai Patel and Another Vs. State of Maharashtra, has been brought to our notice. The Supreme Court referring to the earlier Judgment of the Supreme Court in Dagdu and Others Vs. State of Maharashtra, , Muniappan Vs. State of Tamil Nadu, , Allauddin Mian and Others Vs. State of Bihar, and Malkiat Singh and Others Vs. State of Punjab, concluded at paragraph 46 of the Judgment by holding that the High Court had only mechanically recorded what the accused had stated and no attempt has been made to elicit any information or particulars from the accused or the prosecution which were relevant for awarding a proper sentence. The Supreme Court further held that no genuine effort had been made by the High Court to elicit any information either from the accused or the prosecution as to whether any circumstance exists which might influence the High Court to avoid and not to award death sentence.

4. The Judgment of the Supreme Court, in Surendra Pal Shivbalak pal Vs. State of Gujarat, has also been brought to our notice. The Supreme Court, in the said Judgment has concluded that hearing the Counsel for the accused on the point of sentence was sufficient compliance of Section 235(2) of Code of Criminal Procedure as the accused who was present in the Court did not make any further

statement regarding sentence to be imposed on him. The Supreme Court further held that the accused had liberty to adduced evidence regarding the sentence but he did not avail that liberty and the contention that the Appellant was not questioned before the sentence was imposed was not correct.

5. In the present case, we find that though paragraph 147 of the Judgment states that the Counsel for the accused as well as the D.G.P. was heard on the point of sentence, yet, the remaining paragraphs of the Judgment deal with the imposition of the death sentence. No reference is made by the Trial Judge in respect of what was contended by the Counsel for the accused. This fact is not disputed before us by the learned APP, who represents the Respondent - State.

6. According to us, there has been a failure of justice as there has been no effective hearing on the point of sentence. We accordingly set aside the sentence passed against the Appellant/accused while maintaining his conviction and remit the matter back to the Trial Court for passing appropriate sentence in accordance with law, after due compliance of Section 235(2) of the Code of Criminal Procedure. The Appellant was in custody throughout the trial and shall continue to remain so. The Appellant shall be produced before the Trial Judge on 15th October 2013 and the Trial Judge shall complete the hearing of the accused on the point of sentence and pronounce sentence in accordance with law within two months from 15th October 2013. It is needless to state that the accused would have the liberty of filing an Appeal afresh in the event he is aggrieved by the sentence which may be passed against him. Similarly, it is needless to state that the Trial Judge would be at liberty to make a reference afresh to this Court in the event the death sentence is imposed. We accordingly, answer the reference in the above terms. Criminal Appeal filed by the accused/Appellant is, thus, partly allowed to the extent indicated above. R. & P. be forthwith remitted to the Trial Court.