

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 1256/2009

GULAM MOHAMMAD MALIK

APPELLANT (S)

VERSUS

STATE OF GUJARAT & ANR.

RESPONDENT (S)

WITH

CRIMINAL APPEAL NO. 1322/2014

O R D E R

In these two appeals, one coming from the judgment of the High Court of Gujarat and other from the High Court of Bombay, the appellant is the same. In both cases he was charged for the offences under Sections 8(c), 20(b) and 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the 'NDPS Act'). Insofar as the case filed in Gujarat is concerned, it was registered as NDPS Case No. 1/2002 and was tried by the Additional Sessions Judge, Himmatnagar, Gujarat. Vide judgment and order dated 09.03.2004 passed by the Trial Court, the appellant was convicted for the aforesaid offences and was directed to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 1 lakh with default clause to undergo further rigorous imprisonment for one year in case the fine is not paid. The appellant had challenged the aforesaid conviction and sentence by filing an appeal in the High Court of Gujarat i.e. Criminal Appeal No. 683 of 2004, which

has been dismissed by the High Court vide judgment dated 24.10.2008. We may record here that against the sentence awarded by the learned Additional Sessions Judge even the State had preferred an appeal in the High Court for enhancement of the sentence which had also been dismissed by the High Court. We may also record at the outset that the main reason which has prevailed with the courts below is the confessional statement of the appellant recorded under Section 67 of the NDPS Act apart from relying upon certain other material.

Mr. Anand Grover, learned senior counsel appearing for the appellant, has made earnest endeavour to challenge the verdict of the courts below on various grounds. He submitted that for various reasons the statement of the appellant under Section 67 of the NDPS Act could not be used. According to him, the said statement was not given voluntarily but was extracted when the appellant was in custody and the prosecution has not been able to demonstrate that it was a voluntary statement given by the appellant. It is also argued that no such statement could be used unless the accused is arrested and in the present case no such arrest was shown at the time when the appellant had made the statement, though he was in custody. It was also argued that the statement was taken in Hindi whereas the appellant only knows Urdu.

We have considered all the aforesaid submissions in the light of the findings recorded by the Trial Court and upheld by the High Court. We are not able to find any substance in the aforesaid contentions as we find that the statement recorded was voluntary, which was never retracted by the appellant. Both the courts below

have arrived at the same finding. The second contention of the learned senior counsel is also not having any merit. We further find that the appellant had accepted that he knew Hindi although he could not write in Hindi and while recording the statement it is specifically stated that the statement was read out to the appellant, which he understood and only thereafter he put his signatures. In the absence of any retraction of any such statement, we do not find any fault in the approach of the Trial Court in treating the said statement as voluntary and acting thereupon.

We may also record at this stage that the appellant has already undergone the said sentence of ten years. Notwithstanding the same the main reason for arguing this appeal by Mr. Grover was that it has a bearing on the second case which has originated from Bombay High Court and we shall advert thereto at this juncture.

As far as the other appeal is concerned, the appellant was tried by the Special Judge for NDPS, Court of Sessions for Greater Bombay in Special Case No. 60 of 2002. This trial culminated into conviction vide judgment dated 06.02.2008 by said court whereby the appellant was convicted for the offence under Sections 8(c), 20(b) (ii) read with Section 31A of the NDPS Act and was sentenced to death. The death reference has been sent for confirmation before the High Court. The appellant also filed an appeal against the aforesaid conviction and sentence in the High Court of Bombay. The High Court has, vide its judgment dated 07.05.2012 rejected the Confirmation Case no. 2 of 2008 filed by respondent/State by not affirming the death sentence. The High Court has also dismissed the appeal of the appellant. The death sentence is converted into

thirty years rigorous imprisonment and a fine of Rs.3 lakhs. It is this judgment awarding the aforesaid death sentence which is the subject matter of other Criminal Appeal No. 1322 of 2014.

After going through the impugned judgment, we find that insofar as conviction of the appellant under the aforesaid offence is concerned, it does not call for any interference. Even Mr. Grover, learned senior counsel appearing for the appellant, led more emphasis on the sentence that is awarded to the appellant in this case. It is not in dispute that for the aforesaid offences, minimum sentence that is to be awarded is ten years rigorous imprisonment and it can go upto twenty years. However, in case of previous conviction there is a provision for enhancement of punishment stipulated in Section 31 of the NDPS Act and it reads as under:

"[31. Enhanced punishment for offences after previous conviction.

(1) If any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under this Act is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence punishable under this Act with the same amount of punishment shall be punished for the second and every subsequent offence with rigorous imprisonment for a term which may extend to one and one-half times of the maximum term of imprisonment and also be liable to fine which shall extend to one and one-half times of the maximum amount of fine

(2) Where the person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one and one-half times of the minimum term of imprisonment and one and one-half times of the minimum amount of fine:

Provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding the fine for which a person is liable

(3) Where any person is convicted by a competent court of criminal jurisdiction outside India under any corresponding law, such person, in respect of such conviction, shall be dealt with for the purposes of sub-sections (1) and (2) as if he had been convicted by a court in India.]”

As per sub-section (1) of Section 31, in case of previous conviction, for second and every subsequent offence the convicted person would be punished with rigorous imprisonment for a term which may extend to one and one-half times of the maximum term of imprisonment as well as one and one-half times of the maximum amount of fine. Sub-section (2) of Section 31, on the other hand, prescribes that when a person referred to in sub-section (1) is liable to be punished with a minimum term of imprisonment and to a minimum amount of fine, the minimum punishment for such person shall be one and one-half times of the minimum term of imprisonment and one and one-half times of the minimum amount of fine.

In the instant case, the High Court has given thirty years rigorous imprisonment to the appellant on the assessment that the appellant should be given maximum punishment as prescribed i.e. twenty years and thereafter extending it to one and one-half times of the said term.

On the facts of this case and after giving our due consideration thereupon we are of the opinion that it was not a case where the appellant should have been given maximum punishment and thereafter multiplier of one and one-half times applied. Since the minimum term of imprisonment as prescribed in sub-section (2)

of Section 31 is ten years, on that reckoning, when it is enhanced by one and one-half times, the minimum sentence comes to 15 years. However, in the facts of this case, we are of the opinion that the sentence should be more than minimum and ends of justice would be sub-served if the appellant is given the sentence of rigorous imprisonment of 16 years. While doing so we also had in mind that the appellant is of 65 years of age and suffering from various ailments. We also make it clear that sentence given in Gujarat case as well as Bombay case would run concurrently. Insofar as fine of Rs.1 lakh which is imposed by the Trial Court in Gujarat case is concerned, the same would remain. However, as far as fine of Rs.3 lakhs in Bombay case is concerned, the same is reduced to Rs.2 Lakhs. Since the amount of fine is to be remitted to Narcotic Control Bureau, we permit the appellant to pay the total fine of Rs.3 lakhs (Rs.1 lakh + Rs.2 lakhs) with the Narcotic Control Bureau, Special Judge, Bombay.

The appeals are accordingly disposed of.

.....J.
[A.K. SIKRI]

.....J.
[R.K. AGRAWAL]

NEW DELHI;
FEBRUARY 01, 2017.

ITEM NO.103

COURT NO.8

SECTION IIB

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1256/2009

GULAM MOHAMMAD MALIK

Appellant(s)

VERSUS

STATE OF GUJARAT & ANR.
(with appln. (s) for bail)

Respondent(s)

WITH

Crl.A. No. 1322/2014
(With Office Report)

Date : 01/02/2017 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE R.K. AGRAWAL

For Appellant(s) Mr. Anand Grover, Sr. Adv.
Mr. Shree Prakash Sinha, Adv.
Ms. Tripti Tandon, Adv.
Mr. Rakesh Mishra, Adv.
Mr. Shekhar Kumar, Adv.

For Respondent(s) Ms. Hemantika Wahi, Adv.
Ms. Puja Singh, Adv.
Ms. Mamta Singh, Adv.

Mr. K.L. Janjani, Adv.
Mr. Vijay Prakash, Adv.
Mr. R.S. Jena, Adv.
Mr. A. Deb Kumar, Adv.
Mr. Raj Bahadur, Adv.
Mr. Mukesh Kumar Maroria, Adv.
Mr. B. Krishna Prasad, Adv.

Mr. Nishant Katneshwarkar, Adv.
Ms. Deepa Kulkarni, Adv.

UPON hearing the counsel the Court made the following

O R D E R

The appeals are disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur)
COURT MASTER

(Mala Kumari Sharma)
COURT MASTER

(Signed order is placed on the file)