

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 345 OF 2019

(Arising out of S.L.P. (CRL.) NO. 5022 OF 2016)

PAPPU @ CHANDRA KUMAR

APPELLANT(S)

VERSUS

THE STATE OF UTTAR PRADESH

RESPONDENT(S)

O R D E R

Leave granted.

Heard learned counsel for the parties.

This appeal is preferred by the appellant, who was arrayed as an accused in Case Crime No. 783 of 2014 under Sections 302 and 506 of the Indian Penal Code ("IPC"), P.S. Kotwali Farrukhabad, District Farrukhabad and S.T. No. 6/15 arising out of Case Crime No. 784 of 2014 under Section 25/27 of the Arms Act, P.S. Kotwali Farrukhabad, District Farrukhabad.

The appellant pleaded not guilty. The matter went on trial. The prosecution examined certain witnesses. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure ("CrPC") wherein he pleaded his innocence and also submitted that he was falsely roped in the said case. The trial court after analyzing the evidence on record came to the conclusion that the appellant was guilty of the aforesaid offences for which he was

charged as the prosecution was able to prove its charges beyond reasonable doubt.

Insofar as conviction under Section 302 IPC is concerned, the trial court awarded the death sentence for the said crime allegedly committed by the appellant. The appellant preferred appeal against his conviction and sentence before the High Court which was registered as Capital Case No. 1251 of 2015. Since the trial court had imposed death penalty upon the appellant, for confirmation of the aforesaid capital punishment, Reference No. 1 of 2015 was also made to the High Court. Both the appeal as well as the reference were taken up together by the High Court and decided *vide* the impugned Judgment dated 02.03.2016. The High Court has affirmed the conviction as well as confirmed the capital punishment imposed by the trial court. The present appeal is preferred by the appellant against the said judgment.

We may point out at this stage that as per the prosecution and the facts disclosed in the FIR, which was lodged by S.S.I. Harish Chander Singh on 29.11.2014 at 6:45 P.M., the appellant had murdered Inspector/Incharge Raj Kumar Singh. The appellant is thus charged for murder of a Police Officer. In fact, that is a prime consideration because of which death penalty is imposed.

The appellant in his appeal against the Order had argued that prosecution evidence is self contradictory and should not have been believed. He had submitted that as per the FIR, S.S.I. Harish Chander Singh after getting vital injury at his chest fell in the *Verandah* of the house which belongs to one Mr. Laxman Singh. The testimony of PW-6, R.P. Yadav, Investigating Officer, was also to the same effect. However, PW-1, S.S.I. Harish Chander, who is stated to be an eyewitness, had stated, in his deposition, that the appellant had fired shot at the deceased at cemented road and after sustaining injuries the deceased had fallen into sewerage. On that basis, he had argued that the presence of PW-1 at the place of the incident was suspicious and it should not have been believed. Likewise, in respect of PW-2, Constable Vijay Shankar Rai, who is an eyewitness, submission of the appellant was that, in his testimony, PW-2 had stated that the appellant had fired shot at Inspector Raj Kumar Singh from a distance of 6-7 paces (about 14 feet) as a result of which he fell on the western side of the road. On the contrary, the deposition of PW-5, Dr. Deepak Kataria, was that the fire was shot from a close range of one foot. This was based on the examination of the body which could be only when fire is shot from a very close range. Moreover, PW-6,

Inspector R.P. Yadav, had even contradicted the doctor and stated that fire was shot from a distance of two meters. On that basis, it was argued that PW-2 also should not be believed.

No doubt, the trial court in its judgment considered these aspects and did not agree with the appellant. However, the appellant had made submissions in detail before the High Court and also argued why the analysis done by the trial court should not be accepted. The High Court, in the impugned judgment, has taken note of all these arguments and other arguments which were also raised by the appellant. Thereafter, the High Court has taken note of the reply on behalf of the respondent-State. Strangely, however, none of these arguments of the appellant or the respondent were discussed and considered. After recording of the arguments, the judgment straightaway proceeds to discuss the question of sentence. It records various judgments on the issue of capital punishment, aggravating and mitigating circumstances which have to be borne in mind and after recording these principles, the judgment, thereafter, concludes that in the present case the offence was committed by the appellant which has shocked the conscience of the society and therefore extreme punishment, i.e., death penalty is warranted. In this entire process, the High Court has

not dealt with the issue as to whether the conviction recorded by the trial court was justified or not.

The High Court was sitting as a Court of first appeal. Therefore, it was required to revisit the entire evidence and was also required to record its opinion as to the findings of the trial court on the conviction were warranted and justified or not.

In the instant case, this requirement was all the more necessary where the appellant is convicted for serious offence of murder, i.e., under Section 302 IPC and above all given the death sentence therefor. Since the entire judgment is silent on the question of conviction and this exercise is not undertaken by the High Court at all, we have no option but to set aside the impugned judgment and remit the case to the High Court for fresh consideration on merits on the lines indicated above.

Since it is a case where death penalty is imposed by the trial court, we expect the High Court to decide the appeal as well as the reference, as expeditiously as possible, and in any case within six months from the date of receipt of the copy of this order.

We make it clear that even if the High Court comes to the conclusion that the conviction of the appellant was rightly recorded by the trial court, the issue as to whether the capital punishment should

be given in such case or not should also be considered afresh.

Since the impugned judgment is set aside, the death sentence, as awarded by the trial court, is stayed till the decision by the High Court.

The appeal is disposed of in the aforesaid terms.

.....J.
(A.K. SIKRI)

.....J.
(S. ABDUL NAZEER)

.....J.
(M.R. SHAH)

NEW DELHI,
FEBRUARY 20, 2019

ITEM NO.106

COURT NO.2

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (CrI.) No(s). 5022/2016
 (Arising out of impugned final judgment and order dated 02-03-2016
 in CC No. 1251/2015 passed by the High Court Of Judicature At
 Allahabad)

PAPPU @ CHANDRA KUMAR

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH
 [TO GO BEFORE THREE HONBLE JUDGES]

Respondent(s)

Date : 20-02-2019 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
 HON'BLE MR. JUSTICE S. ABDUL NAZEER
 HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. S.S. Kulshreshtha, Sr. Adv.
 Mr. Danish Zubair Khan, AOR
 Mr. Ajeet Pandey, Adv.

For Respondent(s) Mr. Harish Pandey, Adv.
 Mr. Rahul Singh Chauhan, Adv.
 Mr. Bhakti Vardhan Singh, AOR

UPON hearing the counsel the Court made the following
 O R D E R

Leave granted.

The appeal stands disposed of in terms of the signed order.
 Since the impugned judgment is set aside, the death sentence, as
 awarded by the trial court, is stayed till the decision by the High
 Court.

Pending applications, if any, shall also stand disposed of.

(SUSHIL KUMAR RAKHEJA)
 AR-CUM-PS

(RAJINDER KAUR)
 BRANCH OFFICER

(Signed order is placed on the file.)