

2022 LiveLaw (SC) 687

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

B.R. GAVAI; J., PAMIDIGHANTAM SRI NARASIMHA; J.

12th AUGUST, 2022

CRIMINAL APPEAL NO. 1248 OF 2022 (Arising out of SLP (CRL.) NO. 7283 OF 2019)

RADHEYSHYAM & ANR. versus STATE OF RAJASTHAN

Code of Criminal Procedure 1973 -Section 374 - Appeals from convictions- High Court cannot enhance the sentence of the accused without putting the accused to prior notice.

(Arising out of impugned final judgment and order dated 01-07-2019 in DBCRA No. 64/2018 passed by the High Court of Judicature for Rajasthan at Jodhpur)

For Petitioner(s) Mr. C.S.N. Mohan Rao, Sr. Adv. Ms. Aruna Gupta, AOR Mr. Ramesh Allanki, Adv. Mr. Syed Ahmad Naqvi, Adv. Mr. Lokesh Kumar Sharma, Adv;

For Respondent(s) Mr. Rahul Kumar, Adv. Ms. Kavita Bhardwaj, Adv. Mr. D. K. Devesh, AOR

ORDER

Leave granted.

The appeal challenges the judgment and order dated 01.07.2019 passed by the High Court of Rajasthan at Jodhpur vide which, though the High Court has confirmed the conviction for the offence punishable under Section 302 of the Indian Penal Code ('IPC'), it has also observed that the case against the present appellant fell within the category of 'rarest of the rare cases'. It was further held that the trial Court has failed in not considering the present case to be falling in the category of 'rarest of the rare cases' for the purpose of awarding death sentence. The High Court therefore, directed that the appellants shall undergo imprisonment for the rest of their life for the offence punishable under Section 302 of the IPC.

It is to be noted that it was the appellants who had challenged their conviction by way of an appeal before the High Court. It is further pertinent to note that the State had not appealed against the order of the learned Sessions Judge thereby not awarding death penalty to the appellants.

No doubt that the High Court could have itself exercised *suo moto* powers and enhanced the sentence. However, prior to doing so, the High Court was required to give a notice to the appellants. Admittedly, the same has not been done.

As a result of the judgment and order of the High Court, the sentence awarded to the appellants has been enhanced without the appellants having an opportunity to defend their case as to why the enhanced sentence should not be granted.

In that view of the matter, we partly allow the appeal. The following part of the judgment and order of the High Court is quashed and aside:

"The accused-appellants shall undergo imprisonment in prison for the rest of their life for the offence under Section 302 of I.P.C. The record of the trial court be returned forthwith."

It is further clarified that the observations made in the impugned order with regard to the appellants being not entitled to any remissions or pre-mature release are also expunged.

Pending application(s), if any, shall stand disposed of.