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DEEPAK RAJAK  
v.  
STATE OF WEST BENGAL

JUNE 14, 2007

B

[DR. ARIJIT PASAYAT AND B.P. SINGH, JJ.]

C

*Penal Code, 1860—s. 302 r/w s. 34 and s. 201 r/w s. 34—Conviction under—By courts below—Co-accused acquitted by Supreme Court—Appellant-accused seeking benefit of acquittal of co-accused—State contending that he was not entitled to the benefit as he had initially not surrendered—Held: Accused was entitled to the benefit of acquittal of co-accused, in view of the fact that he later surrendered.*

D

In the present appeal, appellant-accused who was convicted u/ss. 302 r/w s. 34 and 201 r/w s. 34 IPC by courts below contended that he should be granted benefit of acquittal of the co-accused. Respondent-State distinguished the case of the appellant on the ground that he had initially not surrendered. However, appellant subsequently surrendered and suffered custody of more than two years.

E

Allowing the appeal, the Court

F

**HELD:** The law of giving benefit of acquittal of similarly placed co-accused on the same set of facts and on similar accusations, may be departed in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended. Hence conviction and sentence recorded by courts below is set aside. [Paras 5, 6 and 7] [1024-C-E]

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*Raja Ram and Ors. v. State of M.P.* [1994] 2 SCC 568; *Kashmira Singh v. State of Punjab*, [1995] Supp 4 SCC 558; *Dandu Lakshmi Reddy v. State of A.P.*, [1999] 7 SCC 69; *Jayantibhai Bhenkar v. State of Gujarat*, [2002] 8 SCC 165; *Bijoy Singh and Anr. v. State of Bihar*, [2002] 9 SCC 147; *Gurucharan Kumar and Anr. v. State of Rajasthan*, [2003] 2 SCC 698; *Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra*, [2003] (2) SCC 708; *Suresh Chaudhary, v. State of Bihar* 2003 (4) SCC 128; *Pawan Kumar v. State of Haryana*, [2003]

H

11SCC 241; *Hem Raj and Anr. v. State of Punjab*, [2003] 12 SCC 241; *Vijrapu Sambayya Naidu v. State of A.P.* 2004 (10) SCC 152; *Mohinder Singh and Anr. v. State of Punjab and Ors.* [2004] 1 SCC 311; *Uma Shankar Gopalika v. State of Bihar* 2005 10 SCC 336 and *Munna Kumar v. State of Bihar*, [2005] 12 SCC 209, referred to. A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1308 of 2001. B

From the Final Judgment and Order dated 24.5.2001 of the High Court of Calcutta in C.A. No. 17 of 2000.

Sanjay R. Hedge, Anand, Ail Mishra, Abhijit Sengupta for the Appellants. C

T.C. Sharma, Neelam Sharma, Rajeev Sharma, for the Respondent.

The Judgment of the Court was delivered by D

**DR. ARIJIT PASAYAT, J. 1.** Appellant faced trial alongwith several others for alleged commission of offences punishable under Section 302 read with Section 34, Section 201 read with Section 34 and Section 120(B) of the Indian Penal Code, 1860 (in short the 'IPC').

2. The factual details need not detain us as undisputedly the co-accused have been acquitted by this Court in *Mousam Singha Roy and Ors. v. State of W.B.* [2003] 12 SCC 377]. The effect of such acquittal *vis-a-vis* similarly situated co-accused has been considered by this Court in several cases. E

3. Learned counsel for the appellant placed reliance on various decisions of this Court contending that the benefit of acquittal should be extended to the appellant. F

4. Learned counsel for the State on the other hand submitted that the appellant did not surrender initially and therefore decisions relied upon may not have any relevance. He relied on the decisions in *Raja Ram & Ors. v. State of M.P.* [1994] 2 SCC 568; *Kashmira Singh v. State of Punjab* [1995] Supp 4 SCC 558); *Dandu Lakshmi Reddy v. State of A.P.* [1999] 7 SCC 620; *Jayantibhai Bhenkar v. State of Gujarat*, [2002] SCC 165; *Bijoy Singh & Anr. v. State of Bihar*, [2002] 9 SCC 147; *Gurucharan Kumar & Anr. v. State of* G H

- A *Rajasthan*, [2003] 2 SCC 698; *Akhil Ali Jehangir Ali Sayyed v. State of Maharashtra*, [2003] 2 SCC 708); *Suresh Chaudhary v. State of Bihar*, [2003] 4 SCC 128); *Pawan Kumar v. State of Haryana*, [2003] 11 SCC 241; *Hem Raj & Anr. v. State of Punjab*, [2003] 12 SCC 241; *Vijrapu Sambayya Naidu v. State of A.P.* [2004] 10 SCC 152; *Mohinder Singh & Anr. v. State of Punjab and Ors.*, [2004] 12 SCC 311; *Uma Shankar Gopalika v. State of Bihar*, [2005] 10 SCC 336 and *Munna Kumar v. State of Bihar*, [2005] 12 SCC 209. The appellant subsequently surrendered and has suffered custody for more than two years.

C 5. The position in law as to what happens in case of acquittal of similarly placed co-accused on the same set of facts and on similar accusations has been considered by this Court in several cases.

D 6. A departure may be made in cases where the accused had not surrendered after the conviction in addition to not filing an appeal against the conviction. But as in the present case, after surrender, the benefit of acquittal in the case of co-accused on similar accusations can be extended.

7. The appeal is allowed and conviction and sentence as recorded by the trial court and upheld by the High Court is set aside.

K.K.T.

Appeal allowed.