

[2010] 12 S.C.R. 247

SAMJUBEN GORDHANBHAI KOLI

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v.

STATE OF GUJARAT

(Criminal Appeal No. 689 of 2005)

OCTOBER 7, 2010

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[MARKANDEY KATJU AND T.S. THAKUR, JJ.]

Code of Criminal Procedure, 1973:

ss.432, 433 and 433 – Remission or commutation of sentence – Restrictions – Conviction of accused by courts below – Upheld by Supreme Court – Prayer for remission of rest of the sentence – HELD: Remission can only be granted by the executive authorities – Accused will be free to seek appropriate redress from the appropriate Government by making a representation praying for pardon or remission of sentence in terms of s. 432 CrPC or under Article 72 or Article 161 of the Constitution of India – Section 433-A Cr.P.C. can restrict the power u/s 432 or s. 433 CrPC, but it cannot restrict the constitutional powers of the President of India under Article 72 or the Governor under Article 161 of the Constitution, just as no limitation statute can restrict the constitutional power of the High Court under Article 226 of the Constitution – This is because the Constitution is a higher law and the statute is subordinate to it – Constitution of India, 1950 – Articles 72 and 161.

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 689 of 2005.

From the Judgment & Order dated 17.12.2003 of the High Court of Gujarat at Ahmedabad in Criminal Appeal No. 812 of 1995.

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C.D. Parmar, Dr. Kailash Chand and S. Talukdar for the Appellant.

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A Hemantika Wahi, Jesal and Ranuka Sahu for the Respondent.

The following order of the Court was delivered

ORDER

B Heard learned counsel for the parties.

C This Appeal, by special leave, has been filed against the impugned judgment and order of the High Court of Gujarat dated 17.12.2003 passed in Criminal Appeal No. 812 of 1995.

The facts have been set out in the impugned judgment and order and hence we are not repeating the same here.

D Having carefully perused the impugned judgment and order of the High Court, we are of the opinion that there is no infirmity in the same. The High Court has dealt with the matter in great detail and upheld the conviction of the appellant. We see no reason to disagree with the impugned judgment and order.

E The Appeal is dismissed accordingly.

By order dated 09.05.2005 this Court has granted bail to the appellant. The bail bonds are cancelled. The appellant shall be taken into custody forthwith to serve out the remaining portion of sentence.

F Learned counsel for the appellant submitted that the appellant should be granted remission of the rest of her sentence. In our opinion, remission can only be granted by the executive authorities.

G However, the appellant will be free to seek appropriate redress from the appropriate Government by making a representation praying for pardon or remission of sentence in terms of Section 432 of the Code of Criminal Procedure or under Articles 72 or 161 of the Constitution of India. We make

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it clear that the power of the President of India under Article 72 or of the Governor under Article 161, being a constitutional power cannot be under the restriction imposed by Section 433-A Cr.P.C. Section 433-A Cr.P.C. can restrict the power under Section 432 Cr.P.C. or Section 433 Cr.P.C. but it cannot restrict the constitutional powers under Article 72 or 161 of the Constitution, just as no limitation statute can restrict the constitutional power of the High Court under Article 226 of the Constitution. This is because the Constitution is a higher law and the statute is subordinate to it.

The appellant may also file a petition before the High Court if the appellant is entitled to the benefit of any Rule or G.O. of the State Government for remission of the sentence.

R.R.

Appeal dismissed.