

Moti Lal Vs. State

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Court : Rajasthan Jodhpur

Decided On : Apr-24-2014

Appellant : Moti Lal

Respondent : State

Advocate for Pet/Ap. : Shri. Shah

Judgement :

{1} IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
<><><> :

ORDER

: Moti Lal versus The State of Raj.

S.B.Criminal Revision Petition No.349 of 1995 under Section 397 read with Section 401 Cr.P.C.against the judgment dated 08.11.1995 passed by the learned Sessions Judge, Rajsamand whereby the appeal preferred against the judgment and order dated 17.02.1993 passed by the learned Chief Judicial Magistrate, Rajsamand in Criminal Regular Case No.22/91 was dismissed.

<><><> Date of Order ::: April, 24, 2014 Present Hon'ble Mr.Justice Banwari Lal Sharma Mr.Pradeep Shah, for the petitioner.

Mr.Rajesh Bhati, Public Prosecutor.

By the Court: The petitioner has preferred this revision petition against the judgment dated 08.11.1995 passed by the learned Sessions Judge, Rajsamand whereby the appeal preferred against the judgment and order dated 17.02.1993 passed by the learned Chief Judicial Magistrate, Rajsamand was dismissed and affirmed the conviction and sentence awarded by the learned trial court, which was as under:- U/s.279 IPC Fine amounting to Rs.500/- in event of default in payment of fine to undergo for 15 days simple imprisonment.

U/s.337 IPC Three months' simple imprisonment.

U/s.338 IPC Six months' simple imprisonment.

{2} U/s.304A IPC One years simple imprisonment with fine of Rs.1,000/- in default whereof to further undergo one years simple imprisonment.

All the sentences were ordered to run concurrently.

The brief facts of the case are that on 19.08.1979 complainant Amba Lal Booking Clerk (PW-1) lodged a report Ex.P1 that- Moti Lal and Jawahar Singh were drivers on Bus No.R.S.B.257 which runs between Nathdwara to Abu Parbat and today at 22.30 the said bus moved for Mount Abu and about 30 Minutes later one man came on bicycle out side the office and told that near Banas river one man died and 10-12 persons sustained injuries due to collision between roadways Bus and Truck No.RRG3625 therefore action may be taken.

On the basis of the said report, Case No.65/1979 was registered at Police Station Nathdwara and investigation commenced.

After investigation, the police filed challan against the petitioner-accused and co-accused Sucha Singh for offences punishable under sections 279, 337, 338 and 304 Indian Penal Code on 28.09.1979 in the court of the learned Judicial Magistrate, Nathdwara.

Since offence under Section 304 IPC was exclusively triable by the court of Sessions, therefore, learned Magistrate, after complying provisions envisaged in

Section 207 Cr.P.C., committed the case to learned Additional Sessions Judge, Rajsamand under Section 209 Cr PC.

Learned Additional Sessions Judge, Rajsamand, after hearing on charge, discharged the accused persons from the offence under Section 304 IPC and for trial of offences punishable under Sections {3} 279, 337, 338, 304A IPC and 53/112 M.V.Act, remitted the case for trial to learned Chief Judicial Magistrate, Udaipur.

Learned Chief Judicial Magistrate read over the charges for offences under Sections 279, 337, 338, 304A IPC and 53/112 M.V.Act for which accused persons denied and claimed trial.

Thereafter the case was transferred to the court of learned Additional Chief Judicial Magistrate, Rajsamand.

Thereafter co-accused Suchcha Singh remained absent and he was declared absconder vide order dated 04.03.86.

After creation of new Court i.e.Chief Judicial Magistrate, Rajsamand, the case was transferred to the court of learned Chief Judicial Magistrate, Rajsamand vide order dated 10.04.1991.

To substantiate the Charges against present petitioner accused Moti Lal, prosecution examined as many as 25 witnesses and proved documents Ex.P/1 to Ex.P/54.

Thereafter, the petitioner-accused was examined under Section 313 Cr.P.C.in which he stated that on 18.08.1979 his duty was from Abu Road to Falna depot and he left bus at Falna and didnt drive the Bus for Udaipur.

He was not driving Bus No.RSB257on 19.08.1979 from Udaipur to Mount Abu.

Accident didnt occur during his duty.

Petitioner-accused failed to adduce evidence in defence even after availing opportunity.

The learned trial court, after hearing the learned Assistant Public Prosecutor and the learned counsel for the petitioner- accused, convicted and sentenced the petitioner-accused as aforesaid vide judgment and order dated 17.02.1993.

Being aggrieved and dissatisfied with the same, the petitioner-accused preferred appeal before the learned appellate court, which too was dismissed vide impugned judgment dated 08.11.1995.

Hence, this revision petition.

{4} This revision petition was admitted for hearing vide order dated 21.11.1995 and while suspending the sentence awarded by the learned trial court and affirmed by the learned appellate court, the petitioner-accused was enlarged on bail.

Heard Mr.Pradeep Shah, learned counsel appearing for the petitioner and Mr.Rajesh Bhati, learned Public Prosecutor.

At the very outset, without assailing the judgment of conviction, learned counsel for the petitioner has submitted that the petitioner has undergone about 15 days of the substantive sentence and the occurrence pertains to the year 1979.

The petitioner has already suffered a lot, as such, a lenient view may be taken on the point of quantum of sentence.

Per contra, the learned Public Prosecutor supported the impugned judgment and has submitted that all the eye-witnesses, who were none else but the passengers of the offending bus, have clearly stated that the Bus was being driven rashly and negligently by the petitioner-accused after having liquor.

He lost the control and collided with the truck.

In this case, four persons have died and 11 persons got injured.

Hence, it was prayed that the revision petition be dismissed.

I have considered the arguments advanced at the Bar and perused the impugned judgments and record of the case.

Having examined the impugned judgment, the evidence appears to have been appreciated in the right perspective.

No illegality much less irregularity has been detected in the concurrent findings of conviction recorded by both the courts below warranting interference at the end of this court.

{5} From the bare perusal of the record, it reveals that all the eye-witnesses have clearly stated that the petitioner was driving the bus rashly and negligently and at high speed.

From the site plan Ex.P/2 and Ex.P/3, it is also clear that the road where the bus was being driven, was wide enough where two vehicles can pass at a time easily.

Further, the bus was driven on the wrong side in high speed.

Thus, it is clear that the bus was being driven rashly and negligently.

Learned counsel Shri Shah, appearing for petitioner-accused, fairly did not assail the conviction of the petitioner as both the learned courts below, after considering all the facts and circumstances of the case, have concurrently reached at the conclusion that the petitioner drove the Bus rashly and negligently and thus have rightly convicted him for the said offences and this court has a very limited jurisdiction while interfering with the concurrent finding of the learned courts below.

In *Dulli Chand versus Delhi Administration* (AIR 1975 SC1960, the scope of invoking jurisdiction of the High Court in criminal revision was examined and it was held that the High Court should not re-appreciate the evidence in absence of perversity of finding.

In *State of Orissa versus Nakula Sahu & ORS.* [AIR 1979 SC663, it was held that the High Court should not have interfered with the concurrent findings recorded by the trial court and affirmed by the appellate court in exercise of revisional jurisdiction when there was no error of fact or law arrived at by the trial court or the appellate court.

In State of Kerala versus Puttamana Illath Jathavedan Namboodiri [(1999) 2 SCC452, it was held that the revisional jurisdiction is one of supervisory jurisdiction exercised by the High {6} Court for correcting miscarriage of justice.

But the said, revisional power cannot be equated with the power of an appellate court nor it be treated even as a second appellate jurisdiction.

Ordinarily, therefore, it would not be appropriate for the High court to re-appreciate the evidence come to its own conclusion on the same, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice.

In the light of above pronouncements and discussions there seems no manifested error in the conclusions or in analyzing the evidence by the learned trial court as well as learned appellate court.

Thus, I find no reason to interfere with the conviction recorded against the petitioner-accused.

So far as the sentence is concerned, the learned counsel for the petitioner has submitted that the incident is of 1979 and the petitioner has remained in custody for more than 15 days, and he is suffering from the agony of protracted trial for last 35 years. therefore, benefit of Probation of Offenders Act may be given to him or his sentence may be reduced to already undergone after enhancing the fine amount.

The law on the point as to whether the benefit of Probation under the Act of 1958 should be granted to the accused-convict for the offence under Section 304-A IPC, has been settled by Hon'ble Apex Court in Dalbir Singh versus State of Harayana, 2000 (2) RCR (Crl.) 816 by observing that the Court should not as a normal rule invoke the provisions of the Probation of the Offenders Act, 1958 when the accused is convicted of the offence under Section 304-A IPC in causing death of human beings by rash or negligent driving.

Relevant paragraphs Nos.12 and 13 of the judgment read as under:- {7} 12.

In State of Karnataka v. Krishna alias Raju (1987) 1 SCC 538: (AIR 1987 SC 861: 1987 CrL.J. 776) this Court did not allow a sentence of fine, imposed on a driver who was convicted under S.304-A IPC to remain in force although the High Court too had confirmed the said sentence when an accused was convicted of the offence of driving a bus callously and causing death of a human being.

In that case this Court enhanced the sentence to rigorous imprisonment for six months besides imposing a fine.

13.

Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, Criminal Courts cannot treat the nature of the offence under S.304-A I.P.C. as attracting the benevolent provisions of S.4 of the P.O. Act.

While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence.

A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single movement of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion.

He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident, or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted for the offence, and lastly that even if he is convicted he would be dealt with leniently by the Court.

He must always keep in his mind the fear psyche that if he is convicted of the offence of causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence.

This is the role which the Courts can play, particularly, at the level of trial courts for lessening the high rate of motor accidents due to callous driving of automobiles.

This judgment was subsequently followed by the Hon'ble Apex Court in B.

Nagabhushanam v.

State of Karnataka 2008(3) RCR (Crl.) 50 and the benefit under the Probation of Offenders Act, 1958 was denied to the accused for commission of offence punishable under Section 304-A IPC.

{8} In *Sevaka Perumal & Anr.*

versus *State of Tamil Nadu* [(1991) 3 SCC471, it has been emphasized that undue sympathy resulting in imposition of inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law.

In *Jashubha Bharatsingh Gohil & ORS.versus State of Gujarat* [(1994) 4 SCC353, the Hon'ble Apex Court advertent to the new challenges of sentencing, opined that the courts are constantly faced with the situation where they are required to answer to new challenges and mould the required sentencing system to meet those challenges.

Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing appropriate sentence.

In *State of M.P.versus Saleem @ Chamaru & Anr.*

[(2005) 5 SCC554, it has been ruled that the object should be to protect society and the avowed object of law is achieved by imposing appropriate sentence to deter the criminal.

It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

In *Alister Anthony Pareira versus State of Maharashtra* [(2012) 2 SCC648], it has been laid down that sentencing is an important task in relation to criminal justice dispensation system.

One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence, commensurate with the nature and gravity of crime and the manner in which the crime is done.

There is no straitjacket formula for sentencing an accused on proof of crime.

The courts have evolved certain principles; twin objective of the sentencing policy is deterrence and correction.

What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

It has been further opined that the principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence.

As a matter of law, the proportion between crime and punishment bears the most relevant influence in the determination of sentencing the crime-doer.

The court has to take into consideration all aspects including the social interest and conscience of the society for award of appropriate sentence.

In *State TR.P.S.Lodhi Colony, New Delhi versus Sanjeev Nanda* [(2012) 7 sCC120], Hon'ble Mr. Justice K.S. Radhakrishnan, in his separate opinion, pertaining to the conception of adequate sentencing, has expressed thus: Law demands that the offender should be adequately punished for the crime, so that it can deter the offender and other persons from committing similar offences.

Nature and circumstances of the offence; the need for the sentence imposed to reflect the seriousness of the offence; to afford adequate deterrence to the conduct and to protect the public from such crimes are certain factors to be considered while imposing the sentence.

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From the aforesaid authorities, it is luminous that the Hon'ble Supreme Court has expressed its concern on imposition of adequate sentence in respect of commission of offences regard being had to the nature of the offence and demand of the conscience of the society.

That apart, the concern has been to impose adequate sentence for the offence punishable under Section 340-A IPC.

It is worthy to notice that in certain circumstances, the mitigating factors have been taken into consideration but the said aspect is dependent on the facts of each case.

As the trend of authorities would show, the proficiency in {10} profession driving is emphasized upon and deviation therefrom that results in rash and negligent driving and causes accident has been condemned.

In a motor accident, when a number of people sustain injuries and a death occurs, it creates a stir in the society; sense of fear prevails all around.

The negligence of one shatters the tranquility of the collective.

When such an accident occurs, it has the effect potentiality of making victims in many a layer and creating a concavity in the social fabric.

The agony and anguish of the affected persons, both direct and vicarious, can have nightmarish effect.

It has its impact on the society and the impact is felt more when accidents take place quite often because of rash driving by drunken, negligent or, for that matter, adventurous drivers who have, in a way, no concern for others. Be it noted, grant of compensation under the provisions of the Motor Vehicles Act, 1988 is in a different sphere altogether.

Grant of compensation under Section 357(3) with a direction that the same should be paid to the person who has suffered any loss or injury by reason of the act for

which the accused has been sentenced as a substitute in all circumstances for adequate sentence.

Recently, Hon'ble Supreme Court in *Rattiram & ORS.versus State of M.P.Through Inspector of Police* [AIR 2012 SCW1722, though in a different context, has stated that criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the view point of the criminal as well as the victim.

Both are viewed in the social context.

The view of the victim is given due regard and respect in certain countries.

It is the duty of the court to see that the victim's right is protected.

We may note with profit that an appropriate punishment works as an eye-opener for the wrong doers.^{11} In *Guru Basavaraj @ Benne Settappa*, the Hon'ble Supreme Court observed that there can hardly be any cavil that there has to be a proportion between the crime and the punishment.

It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order.

The cry of the collective for justice which includes adequate punishment cannot be lightly ignored.

In *Siriya @ Shri Lal versus State of M.P.*[AIR 2008 SC231, it has been held:- Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence.

Therefore, law as a corner-stone of the edifice of 'order' should meet the challenges confronting the society.

Friedman in his 'Law in Changing Society' stated that, 'State of criminal law continues to be - as it should be - a decisive reflection of social consciousness of society'.

Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix.

By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be.

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In view of the aforesaid, I have to weigh whether the submission advanced by the learned counsel for the petitioner as regards the mitigating factors deserves acceptance.

Compassion is being sought be on the ground of protracted trial and mercy is being invoked on the foundation of family responsibilities.

The date of occurrence is in the year of 1979.

The scars on the collective cannot be said to have been forgotten.

In the present case, the petitioner-accused's act has taken life of four persons, 4 other persons have sustained grievous injuries and 7 persons sustained simple injuries.

Weighing the individual difficulty as against the social order, collective conscience and the duty of the {12} court, this Court is disposed to think that the adequate sentence affirmed by the learned appellate court does not warrant any interference and according I concur with the same.

Consequently, the revision petition, being devoid of any merit, fails and is hereby dismissed.

The petitioner is on bail.

He is directed to surrender himself before the learned trial court forthwith and to receive and undergo remaining sentence imposed upon him.

On the failure of the petitioner to surrender as above directed, the learned trial court shall commit the petitioner for undergoing the sentence by issuing warrant of

arrest against him.

Record of the courts below be returned with a copy of this order forthwith for compliance.

[Banwari Lal Sharma], J.

/skm/

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