

Sayed Ahmed Laskar Vs. Anam Uddin

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Court : Guwahati

Decided On : Nov-21-2007

Judge : Aftab H. Saikia and P.K. Musahary, JJ.

Appellant : Sayed Ahmed Laskar

Respondent : Anam Uddin

Disposition : Petition allowed

Judgement :

P.K. Musahary, J.

1. Heard Mr. H.R.A. Choudhury, learned Senior Counsel, assisted by Mr. I.A. Hazarika, for the petitioner Mr. K.C. Mahanta, learned Additional Public Prosecutor, Assam and Mr. A.B. Choudhury, learned Senior Counsel, assisted by Mr. M. Hussain for the accused opposite party.

2. This revision petition is directed against the Judgment and Order dated 04.01.2006 passed by learned Sessions Judge, Hailakandi in Sessions Case No. 25/2002 under Section 147/148,149/448,149/323,149/302, 149/325 of the IPC whereby the accused/opposite parties No. 2 to 17 were acquitted of offences charged against them.

3. The prosecution case in brief is that one Sri Ansar Ali was a resident of Dali Dahar Grant where he had a dwelling house and cultivable land. On 30.10.1997 at about 6 A.M. at the instigation of Babul Ali, the accused/opposite parties No. 2 to 17 trespassed the house campus of Ansar Ali and killed Kamrul Huda and also caused injuries upon the persons of Ansar Ali, Nurul Huda, Ali Ahmed, Fhakar Uddin and Rafiq Uddin by voluntarily assaulting them by means of dangerous weapons. The FIR was lodged by Sayed Ahmed Laskar, PW-1, and a crime was registered being Algapur Police Station Case No. 172/97 and the Police investigated the same. In the course of investigation Police held inquest on the dead body of the deceased and caused the injured persons medically treated. The post mortem was conducted on the dead body of the deceased Kamrul Huda. On completion of the investigation, Police submitted charge sheet against Anam Uddin and the accused/opposite parties No. 2 to 17 under Section 147/148/149/325/323/ 302 IPC. The case was committed to the Court of Sessions Judge, Hailakandi, as the offences are exclusively triable by the Sessions Court. The Charges having been read over and explained the accused persons pleaded not guilty. The prosecution examined as many as nine witnesses including the Investigating Officer and medical officer and the statements of the accused/opposite parties were recorded. The learned trial Court passed the impugned Judgment and Order convicting accused Anam Uddin and sentencing him imprisonment for the period he has already undergone and also sentencing him to pay a fine of Rs. 15,000/- (Rupees fifteen thousand) only, in default rigorous imprisonment for six months while the other co-accused persons were acquitted.

4. The learned trial Court while convicting and sentencing the accused opposite party, Anam Uddin as stated above, acquitted all the co-accused. Separate revision petition being Criminal Revision (P) 136/2006 was preferred by the petitioner challenging their acquittal and prayed for conviction and sentence of the said co-accused persons. The said petition was also heard along with the present revision petition as they arose from the same Judgment and Order and a separate Judgment and Order has been pronounced by this Court in the said revision petition. All the acquitted co-accused have been arrayed as opposite parties No. 2 to 18 in the present petition but their names were deleted vide order dated 08.05.2006 and as such we are to confine ourselves only to a question as to

whether the impugned sentence of accused/opposite party Anam Uddin to imprisonment for a period which he has already undergone and also to pay a fine of Rs. 15,000/- (Rupees Fifteen Thousand) only, in default rigorous imprisonment for six months, is legally authorized and proportionate to the offence committed and if not, whether the sentence should be enhanced.

5. It is noteworthy that in the impugned Judgment no indication is given about the period of imprisonment the accused had undergone at the time of acquittal and ordering the sentence. On perusal of the case record it is found that accused/opposite party surrendered himself along with five other accused before the police on 13.11.1997 and they were produced before the Chief Judicial Magistrate, Hailakandi on the same date. The accused/opposite party along with five other accused were granted bail on 06.01.1998 and their bail bonds were accepted on 07.01.1998. The accused/opposite party was, thus behind the bar only for fifty-six days at the time of passing the impugned conviction and sentence order.

6. On appreciation of evidence on record the learned trial Court in its Judgment dated 04.01.2006 recorded as many as 7 findings which are quoted as follows:

1. All the accused persons formed an unlawful assembly and being armed with deadly weapons came to the place of occurrence with the common object of driving out Ansar Ali from the house which was in possession of Ansar Ali on that particular day i.e. on 30.10.1997 but the real fact as reveals from the statement recorded under Section 161, Cr.P.C. by the Police and also the evidence adduced by the witness in Sessions Case No. 50/02 make it clear that only on 29.10.2002 Ansar Ali came into possession of the house and disputed land.

2. With the common object of driving away Ansar Ali and his relations, all the accused persons of this case formed an unlawful assembly and being armed with lathis came to the place of occurrence without taking legal recourse.

3. Over the occupation of the land, there was quarrel between the parties and there was dual between the parties and in the dual; both the parties sustained injuries. In the dual; Makaddas Ali of the group of the accused persons sustained

simple injuries caused over his parietal region by blunt object. Kurshed Ali sustained simple injuries caused by blunt object over his scalp and right thumb. Abdul Noor sustained two simple injuries over his head caused by blunt object. Abdul Hasim Mira sustained two injuries over his thumb which is suggestive of the fact that he was not an aggressor but he defended his person by bare hand. Asman Ali sustained two incised wound over the distal aspect of the dorsum and over the right parietal region which is suggestive of the fact that he had no weapon at his hand. In the opinion of the Medical Officer, the injuries sustained by him was caused by sharp object. This fact reveals that the informant of this case and his witnesses were armed with sharp weapons.

4. The injuries sustained by both the parties reflect that both the parties were fighting for occupying the house and the land.

5. The evidence on record reflects that Anam Uddin dealt a lathi blow over the parietal region of Kamrul Huda who instantly died.

6. The accused persons Sayed Ali and Badar Uddin assaulted Nurul Huda and inflicted grievous injuries upon his person &

7. The accused persons Namar Ali, Burhan Uddin, Barish Ali and Abdus Samad assaulted other injured person who sustained injuries.

7. According to the learned Trial Court the witnesses were very much specific about accused Anam Uddin's dealing a lathi blow over the parietal region over the deceased Kamrul Huda and the post mortem report also support that Kamrul Huda died due to the injuries sustained by him. To quote from the judgment 'This being the position, it can be held that Kamrul was done to death by Anam Uddin' and held him guilty and convicted him under Section 304 Pt II of the IPC.

8. No appeal or revision petition has been preferred by accused/opposite party Anam Uddin against the said Judgment convicting him as aforesaid and as such it has attained its finality.

9. As regards the sentence to be imposed under Section 304 Pt II IPC the statute provides for punishment of imprisonment for a term, which may extend to 10 years

or fine or both.

10. Mr. H.R.A. Choudhury, learned Senior Counsel, for the petitioner submitted that the sentence as passed by the learned trial Court is not in conformity with the punishment prescribed under Section 304 Pt II IPC inasmuch as it has not imposed even the minimum punishment considering the gravity for the offence committed and hence it is required to be enhanced for the ends of justice.

11. Placing the cases reported in AIR 2002 SC 260 & AIR 1976 SC 2205 he has submitted that the High Court in revision can suo motu enhance the sentence awarded by the trial Court. The High Court as an effective instalment for administration of criminal justice is to keep constant vigil and whenever it finds that justice has been suffered and it should take upon itself as its bounden duty to suo motu act where there is flagrant abuse of the law.

This is a settled position of law and needs no reiteration.

12. In the present case we are rather required to discuss and find out what should be the adequate period of sentence that should be imposed under Section 304 Pt. II. The learned trial Court, apparently did not ascertain from record the custodial period of the accused/opposite party before the sentence was passed and without doing so it has mechanically sentenced him to imprisonment, which he has already undergone. The learned trial Court should have first of all ascertained or disclosed the period of custody or imprisonment already undergone by the accused concerned and then consider whether the said period would be adequate or commensurate with the crime committed and last of all could the accused be sentenced to imprisonment already undergone by him.

13. In this regard Mr. H.R.A. Choudhury learned Senior Counsel has placed the following reported cases:

i) : 2003 CriLJ4339 State of Madhya Pradesh v. Ghanshyam Singh

ii) : 2005 CriLJ333 State of Madhya Pradesh v. Shri Kishan.

iii) : 2006 CriLJ1132 Sailesh Jasvantbhai v. State of Gujarat

iv) (2006) 10 SCC 673 Siddharama v. State of Karnataka.

The first case of Ghanshyam Singh (supra) dealt with the needs to impose appropriate sentence and the object of law as well as the duty and role of the Courts in this regard. In that case the accused was convicted under Section 304 Pt. 1 IPC and imposed sentence restricted to the period already undergone, which was about two years and fine of Rs. 15,000/- (Rupees Fifteen Thousand) only and in default of payment of amount of fine, further, rigorous imprisonment of two years. Such lesser sentence was ordered merely on the ground of long pendency of the matter. Deprecating the order of sentence, the Hon'ble Supreme Court observed that two years custodial sentence was too meagre and held that even on a liberal approach sentence of six years would be proper sentence. In that case it was further held that there is no stipulation in IPC for two years rigorous imprisonment in case of default in payment of fine. In other words it was held that the Court cannot order rigorous imprisonment as it is not provided under the law. For better appreciation it would be appropriate to quote paras 13 & 14 hereunder:

13. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of

proportionality has disappeared from the law-only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

The same principles have been followed in the other three cases mentioned above.

14. In the case of Shri Kishan (*supra*) the accused was convicted under Section 304 Pt. II IPC and awarded sentence of seven years rigorous imprisonment by the trial Court but the High Court by an un-reasoned and non-speaking order reduced the custodial sentence to the period already undergone and imposed fine of Rs. 15,000/- (Rupees Fifteen Thousand) only without indicating what period of custody the accused has already suffered. The Hon'ble Supreme Court held that the High Court erred in doing so and directed the High Court to re-hear the appeal on the question of sentence keeping in view the ratio in Ghanshyam's case (*supra*). The present case is almost similar to the case of Shri Kishan (*supra*). The fact that the Hon'ble Supreme Court remanded the above cited case to the High Court for re-hearing on question of sentence confirms the position that this Court is also authorized to pass an appropriate sentence.

15. There is yet another recent similar case in Salim Sahab v. State of Madhya Pradesh as reported in (2007) 1 SCC 699. In that case the factual scenario was that during a quarrel between the deceased and the accused they were grappling and during quarrel, the accused attacked the deceased with a pair of scissor which was not a very big-sized but had a sharp edged point. The conviction order under Section 302 IPC was altered to Section 304 Pt II IPC by the Apex Court and ordered sentence of seven years rigorous imprisonment.

16. The provision under Section 304 Pt II IPC prescribes the maximum sentence of seven years but it does not prescribe the minimum sentence. Does it mean that the Court is authorized only to impose the prescribed maximum sentence for

seven years? For answering this questions the Court has to bear in mind that object of sentence-is to protect the society and to deter the criminals. Sometimes leniency is required to be shown in ordering the severest or the maximum punishment for correctional needs of the perpetrator. Balance should be maintained between the society's loud cry for justice against the increasing acts of serious crimes requiring exemplary deterrent punishment and the society's strong appeals for liberal approach towards the criminals for effecting reformation in sentencing system. Between this cry of the society and appeal of the changing time, justice demands that the Court should impose punishment that fits the gravity of the crime and show the society that the Court is judicious in moulding the sentence proportionate to the offence to meet the challenge and above all, to demonstrate that the Court is not at all weak to enforce its power. The Court is duty bound to consider the facts and circumstances of each case dispassionately without any bias and sympathy and imposing appropriate/adequate sentence to restore the public confidence in the efficacy of law in delivering the justice.

17. The Hon'ble Supreme Court in the case of Siddharama (supra) observed that the Courts are expected to 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. Imposition of sentence without considering its effect on the social order in many cases may be in reality futile exercise. In that case some accused/persons were convicted by the trial Court under Section 307 read with Section 149 IPC and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs. 500/- (Rupees Five Hundred) only with default stipulation. On appeal the High Court altered the conviction to Section 326 read with Section 149 IPC and ordered sentence of eight years rigorous imprisonment with a fine of Rs. 500/-. Further appeal having been preferred against the said enhancement of sentence of eight years rigorous imprisonment, the Hon'ble Supreme Court reduced the same to five years but enhanced the fine of Rs. 20,000/- (Rupees Twenty Thousand) only.

18. In the present case we find that the learned trial Court lost sight of the principle laid down by the Apex Court in the cases cited earlier in regard to imposition of appropriate sentence befitting the gravity of the crime. We also find from record

that the accused/opposite party was in custody for fifty-six days only as noted earlier and the learned trial Court passed the impugned sentence of imprisonment for the period which he has already undergone without ascertaining the actual period of custody. In our considered opinion, the sentence of imprisonment for a period of fifty six days, which accused has actually undergone, is too meager to serve the purpose of sentence and the ends of justice as enunciated by the Apex Court in the above noted cases. In view of the aforesaid factual and legal position, it would be appropriate to enhance the custodial sentence of the accused/opposite party to five years without disturbing the order as to fine and it is accordingly ordered. The revision petition stands allowed to the extent indicated

19. Needless to say that the petitioner would be entitled to get the benefit of counting the period of custody he actually underwent towards the aforesaid enhanced sentence of five years. The accused opposite party, Sri Anam Uddin, is directed to surrender before the appropriate authority immediately for serving the sentence. Send down the record.

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