

Tyron Nazarath Vs. the State

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Court : Mumbai

Decided On : Feb-01-1988

Reported in : 1989(1)BomCR293; (1988)90BOMLR161

Judge : G.D. Kamat and ;Dr. G.F. Couto, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173, 225, 229, 235(2), 304 and 375

Appeal No. : Criminal Appeal No. 22 of 1987

Appellant : Tyron Nazarath

Respondent : The State

Judgement :

Dr. Couto, J.

1. The appellant was convicted on his own plea for the offence punishable under S. 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and sentenced to undergo 10 years of Rigorous Imprisonment and to pay a fine of Rupees one lakh, or in default, to undergo a further period of imprisonment of one year. It is against this conviction and sentence that the present appeal is moved.

2. The prosecution case is that on 3rd July, 1986, at 12 noon and at Feira Alta, Mapuca, the appellant was found in possession of 8 packets containing heroin or

brown sugar weighing in all 2 grams.

3. The matter came for trial before the learned Sessions Judge, Panaji, and after the charge was framed, the learned Judge questioned the appellant as to whether or not he was pleading guilty to the offence. The appellant pleaded guilty and, on being satisfied about the voluntary nature of such plea, the learned Sessions Judge convicted the accused for the aforesaid offence and, after hearing him under S. 235(2) of the Criminal Procedure Code, passed the minimum sentence under the law against the appellant.

4. Mr. Kantak, learned counsel appearing for the appellant, contends that the learned Sessions Judge ought not to have accepted the plea of guilt of the appellant considering, on one hand, that he had appeared in person and no counsel was appearing for him, and on the other, considering the seriousness of the punishment prescribed in the Act. As regards the first part of the argument, Mr. Kantak placing reliance in the provisions of S. 304 of the Criminal Procedure Code, submitted that the trial commences with the presentation of the case by the Prosecutor and with the arguments advanced as regards the charge by the prosecution as well as on behalf of the accused. Therefore, according to him, it was the duty of the learned Sessions Judge to appoint under the Legal Aid Scheme a counsel to the accused to defend himself. In this connection, he placed strong reliance in the decision of the Supreme court in *Suk Das v. Union Territory of Arunachal Pradesh*, : 1986 CriLJ1084 . He further urged, addressing himself to the second limb of his argument, that the appellant is not an educated person, for he has only the Second Standard of the Primary Education. In the circumstances, he could not understand what were the consequences, attached to his plea by the law, namely, that by pleading guilty and admitting the possession of the drug in question, he had made himself liable for a minimum punishment of 10 years Rigorous Imprisonment plus a fine of one lakh of rupees. This being so, according to the learned counsel, the learned Sessions Judge ought not to have accepted the plea of guilt and ought to have ordered evidence to be recorded. This is a rule of prudence which he ought to have followed as ordinarily is done in cases of murder as it was observed in *Abdul Kader Allerakhia v. Emperor* AIR 1947 Bom 345 : 1947 Cri LJ 329.

5. Mr. Bhole, the learned Public Prosecutor however joined issue and he submitted that the question of legal aid and the appointment of a counsel to the accused is motivated and is meant only for the purpose of giving an opportunity to the accused person to defend himself properly. This does not at all arise when the accused himself admits all the facts which constitute the offence and, therefore, the possibility of an unfair trial does not exist. The learned Public Prosecutor also submitted that there is no rule of law under the which the trial Court cannot convict a person on a plea of guilt. He urged that the authority in Abdul Kader Allarakhia's case relied upon by Mr. Kantak in support of his submissions instead of advancing the case of the appellant, runs, counter, for what is laid down there is that even in a murder case where the law provides for a capital punishment or for life imprisonment, there is no bar for the trial Court, if satisfied about the genuineness of the plea, to convict the accused on such plea. However, in Abdul Kader Allarakhia's case, the Court not only observed that in cases of murder where many intricacies of law arise, it is not prudent and ordinarily a Judge will not convict solely on the basis of a plea of guilt. The learned counsel further submitted that no appeal lies against a conviction based on a plea of guilt as provided in S. 375 of the Criminal Procedure Code, except to the extent of legality of the sentence. In the present case, even the question of entertaining this appeal as regards the extent of the sentence passed against the appellant does not arise since the learned Sessions Judge has no discretion and he passed the minimum sentence provided in the Act.

6. In the light of the above rival contentions, it will be pertinent and necessary to make a detailed reference to the plea of the appellant recorded by the learned Sessions Judge. As can be seen from statement of the accused which is at page 14 of the Paperbook, the learned Sessions Judge started to question the appellant as to whether he had received the copies referred to in S. 173 of the Criminal Procedure Code. The appellant answered this question in the affirmative and then, the learned Judge asked him whether he had understood the charge that had been read over and explained to him and the copy of which had been given to him. Once again, the appellant answered this question in the affirmative. Finally, the learned Sessions Judge asked him whether he pleaded guilty or claimed to be tried. To this question, the appellant answered as under :-

'I plead guilty. I say that I was having with me on said occasion the drug referred to in the charge. At that time I was a drug addict and had said drug in my possession for my own consumption. Subsequently I am no more an addict. I pray the leniency be shown towards me.'

7. We quoted in extenso the plea of the appellant. It is crystal clear from what was mentioned above that the appellant not only understood quite well the substance of the charge made against him, but he was fully aware that the facts attributed to him were constituting an offence and were making him liable to a criminal penalty. He had indeed stated that he was having the drug mentioned in the charge in his possession on the date, time and place mentioned in the charge and that he was having it in his possession as, at the relevant time, he was a drug addict and he had it for his own consumption. He added that he had regenerated himself and he was no more a drug addict. In these circumstances, he prayed for leniency while passing the sentence. This plea shows that the appellant did not confine himself to plead guilty. He gave details which leave no margin for doubts and abundantly show that he fully understood the meaning and the substance of the charge made against him. This being so, it is very difficult to think that there was by vice in the plea recorded by the learned Sessions Judge and that there was any reason for the learned Sessions Judge to be not satisfied about the genuineness and truthfulness of the said plea. S. 21 of the Narcotic Drugs and Psychotropic Substances Act, 1985, provides for punishment for contravention in relation to manufacture drugs and preparations and provides that whoever, in contravention of any provision of the Act, or any rule or order made or condition of licence granted thereunder, manufactures, possesses, sells, purchases, transports, imports inter-State, exports inter-State or uses any manufactured drug or any preparation containing any manufactured drug shall be punishable with rigorous imprisonment for a term which shall not be less than ten years but which may extend to twenty years and shall also be liable to fine which shall not be less than one lakh rupees but which may extend to two lakh rupees, provided that the court may, for reasons to be recorded in the judgment, impose a fine exceeding two lakh rupees. The section provides, therefore, that the mere possession of one of the prohibited drugs constitutes an offence. The appellant has clearly confessed that he was in possession of 2 grams of brown sugar or heroin and the only

explanation of this possession given by him was that the said drug was for his consumption as he was at the relevant time, a drug addict. This being the position, it is manifest and clear that no legal aid or no legal ingenuity of a counsel could have benefited the appellant and avoided his conviction.

8. Mr. Kantak is quite right in his submission that trial starts with the presentation of the case by the Prosecution. This becomes clear from the provisions S. 225 onwards of the Criminal Procedure Code. He is also right that legal aid to the accused at State's expense is to be granted in certain cases to an accused before the Sessions Court. This is laid down in S. 304 of the Criminal Procedure Code and had been made now compulsory by the Supreme Court in its judgment in Suk Das case : 1986 CriLJ1084 . But the question to which we have to address ourselves is whether a conviction is vitiated only because the accused having pleaded guilty, conviction was recorded against him without the appointment of counsel to him under the Legal Aid Scheme. In our view, such conviction is not at all vitiated since the appointment of a counsel under the Legal Aid Scheme is meant to avoid or prevent miscarriage of justice and a conviction on the basis of a plea by an accused person who did not understand the law. Therefore, in case like the present, where the facts which constitute the offence were unmistakably admitted, the omission in appointing a counsel to defend the accused was of no consequence and the appellant was in no manner prejudiced by this omission.

9. Coming now to the second limb of the argument of Mr. Kantak, we may point out that S. 229 of the Criminal Procedure Code provides that if the accused pleads guilty, the Judge shall record the plea and may in his discretion convict him thereon. Then, S. 375 provides that no appeal except to the extent of the sentence or validity thereof lies against a conviction based on plea of guilt. We have already mentioned that the plea of the appellant leaves no doubt whatsoever that he understood fully well the substance of the charge, particularly, he was fully aware of the facts which constituted the offence attributed to him. Therefore, his plea was not confined merely to the admission of the charge made against him. When he pleaded guilty he accepted the truth of the facts which constituted the charge made against him. No doubt, there is a difference between the admission of the facts that constitute the offence and the admission of the charge. In the second

case, that is, in case the accused pleads guilty to the charge, then, it is possible that he may have not understood properly the legal implications of such charge and may have pleaded guilty under an error. This, however, is not the case at hand as his plea above quoted makes abundantly clear.

10. There is nothing in the law that bars a conviction on basis of a plea of guilt, however serious is the offence committed and however grave is the sentence provided in law. What the Courts had held is that in serious cases like offences of murder, it is not prudent to convict a man for such an offence without recording evidence. This is merely a rule of the prudence which the seriousness of the punishment justifies and the intricacies of the offence involve. This is what the Special Bench of this Court laid down in other words in Abdul Kader Allarakhia's case 1947 Cri LJ 329.

11. We are fully alive to the serious consequences which had visited the appellant in view of his confessed addiction to drugs. But we are also at the same time aware of the needs to safeguard and to defend the society against the poison and the danger of the drugs. Considering the seriousness of the problem, the Legislature, in its wisdom, felt it necessary to impose severe penalties not only to the manufacturing and trafficking of the drugs but also for the possession, be it for personal consumption or for peddling. The Legislature considering also the social aspect that it is necessary and good for the society to bring out from the addiction those who had fallen under the vice, had provided for a lesser punishment in S. 27 for those addicts who are found in possession of a minimal amount of drugs which is of only 250 milligrams. The Legislature provided for the minimum of 10 years of Rigorous Imprisonment, inter alia, for the possession of the prohibited drugs and although the appellant had pleaded that he has come out of the vice and from the addiction, and we hope that this is so, we are unfortunately helpless and we cannot reduce the penalty passed against him by the learned Sessions Judge.

12. Section 21 provides for a penalty of minimum one lakh of rupees in addition to the substantive penalty of 10 years of Rigorous Imprisonment. The learned Sessions Judge while passing a sentence of fine of Rupees one lakh, further ordered that, in default, this sentence of fine be substituted for one year of

imprisonment. We feel and we are of the strong view that one year of imprisonment ordered in default of payment of the fine should be reduced to six months of imprisonment.

13. The result is that, with the above modification the impugned judgment is affirmed. The appeal is consequently dismissed.

14. Appeal dismissed.

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