

Abdul Azeez Vs. the State of Mysore

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Court : Karnataka

Decided On : Jul-01-1974

Reported in : 1975CriLJ335

Judge : C. Honniah and; M.S. Nesargi, JJ.

Appellant : Abdul Azeez

Respondent : The State of Mysore

Judgement :

Nesargi, J.

1. The appellant In Cr. A. No. 456 of 1973 has been sentenced to death after having been found guilty of offences punishable under Sections 302 and 303 of the Indian Penal

Code, by the Sessions Judge, Kolar, in Sessions Case No. 10 of 1973.

2. The prosecution case was that by 27-1-1973 the accused was undergoing sentence of imprisonment for life passed on him by this Court in Cr. A. No. 269 of 1960, and by 10.00 A. M. on that day viz.. 27-1-1973, he speared Kurubara Narayanappa and cut on his neck with a chopper, in front of Vasudev Rolling Mills, Kalaipeth, Kolar, and committed his murder.

The accused pleaded not guilty.

3. He refused legal assistance when the same was offered to him by the learned Sessions Judge. He insisted that he would defend his own case. The learned Sessions Judge permitted him to do so. In this Court also he insisted that he would himself argue his case. We permitted him to do so. But, however, we appointed Sri M. V. Deva Raju, Advocate, as amicus curiae to assist the Court and he assisted us in a commendable manner.

4. In the view that we are going to take, we do not consider it necessary to narrate the whole case here.

5. The record shows that there are nine eye-witnesses viz., P. Ws. 14 to 22 and two witnesses P. Ws, 23 and 24 who went to the spot immediately after the incident, took major part in disarming the accused and getting him arrested at the spot. Either any of these witnesses or other witnesses have not been cross-examined by the accused. The order-sheet discloses that even though the Sessions Judge asked the accused to cross-examine the witnesses as and when they were examined in chief, the accused did not cross-examine them, and the trial proceeded in that manner. The learned Sessions Judge was aware that one of the charges was under Section 303 of the Indian Penal Code and if the charge was to be held proved, sentence of death had to be compulsorily passed as per the provisions of law.

6. The learned Sessions Judge has, in the circumstances narrated above, observed as follows in paragraph 13 of his judgment:

It is unfortunate that when legal aid was offered to him by the Court on behalf of the State, he refused to avail of the same. On the other hand, he gave in writing stating that there is no necessity to engage counsel to defend him as he is the Advocate of his case in the Court (vide Ex. C-I). In such a situation it is the duty of the Presiding Judge to safeguard the interests of the accused. However, I could not play the role of a defence counsel. The accused kept mum while he was asked several times by the Court to cross-examine the prosecution witnesses

The Sessions Judge has accepted the evidence of the nine eye-witnesses and P. Ws. 23 and 24 and the other witnesses. While relying on their evidence, he has

taken into consideration non-cross-examination of these witnesses in favour of the prosecution.

7. Cr. A. No. 269 of 1960 arose out of Sessions Case No. 1 of 1960. The Sessions Judge had acquitted this very accused of the charge of murder. The State preferred Cr. A. No. 269 of 1960. The accused had refused legal assistance both in the Sessions Court and in this Court. In this context this Court observed in its judgment as follows:

It is unfortunate that the respondent refused to avail of the legal assistance offered by the Court on behalf of the State, during the trial of the case. In this Court also, he refused our offer of legal assistance. He had chosen to conduct his own case both in the trial Court as well as in this Court. He is no doubt an intelligent person and has presented his case reasonably well. But an accused conducting his own case is always confronted with certain difficulties which are inherent in the very nature of things and those difficulties are necessarily aggravated when he is not well versed in law and procedure. In such a situation, it is the duty of the Presiding Judge or Judges to safeguard the legitimate interests of the accused. Sometimes, it may even become necessary for him to question the witnesses somewhat elaborately to elicit the relevant facts. But a Judge placed in such a situation must guard against the danger of his identifying with the defence by unconsciously playing the role of the defence counsel. He must constantly bear in mind his true role.

We respectfully agree with the learned Judges. Our opinion is that the above principles aptly apply to the present facts and circumstances.

8. The Sessions Judge has not adopted the procedure indicated in the observation excerpted above. Even though the accused persisted in refusing legal assistance, the Sessions Judge ought to have, in the interests of justice, either, himself tested the evidence of the witnesses by putting questions in order to get the relevant facts elaborately elicited or appointed a competent counsel to defend the accused and thereby assist the Court in doing justice in the matter.

9. For the reasons narrated in the preceding paragraphs, the case has to be remitted to the Sessions Court for retrial. Now that the case has to be retried by the Sessions Judge, we consider it necessary to point out another error that has crept in and has to be set right

10. In the first instance only a charge under Section 302, of the Indian, Penal Code was framed and the trial proceeded. After all the witnesses were examined to prove the charge, the Public Prosecutor filed an application under Section 540 of the Code of Criminal Procedure (old) praying for permission to examine three witnesses not named in the charge-sheet. Permission was granted by the Sessions Judge and a next date for continuing the trial was fixed. On that date, the Public Prosecutor filed a memo for framing of a charge under Section 303 of the Indian Penal Code in proof of which the said three witnesses were to be examined. The learned Sessions Judge framed charge under Section 303 of the Indian Penal Code after observing the requirements of law and then the said three witnesses were examined.

11. The above said procedure adopted by the learned Sessions Judge is not, in our opinion, correct. The appropriate procedure to be adopted was to frame charges both under Sections 302 and 303 of the Indian Penal Code at the beginning of the trial itself.

12. In view of the foregoing reasons, we allow the appeal and reject the reference. We set aside the conviction and sentence passed on the appellant by the Sessions Judge, Kolar, in Sessions Case No. 10 of 1973, and remit the case for fresh disposal according to law. He is directed to bear in mind the observations made in the body of this judgment.