

M. Subramanyam Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-06-1987

Reported in : ILR1988KAR210

Judge : Kulkarni, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 258

Appeal No. : Crl. Petn. No. 1146 of 1987

Appellant : M. Subramanyam

Respondent : State of Karnataka

Advocate for Def. : C.H. Jadav, HCGP

Advocate for Pet/Ap. : C.H. Hanumantharaya, Adv.

Disposition : Petition allowed

Judgement :

ORDER

Kulkarni, J.

1. The learned counsel Sri Hanumantharaya for the petitioner and the Government Advocate Sri Jadhav for the respondent submitted that the matter may be heard finally on merits. Accordingly I heard them on merits for final disposal of the case.

2. The material facts are: on 2-12-1983 at about 9.30 P.M. the victim Sudhakar examined as P.W.2 was coming cycling near Mico Factory. At that time a scooter MYO 2930 came from behind and dashed against him. As a result thereof he fell down sustaining the injuries. Scooterist went away without giving him first aid. He himself got the treatment and lodged the complaint. The police registered a case in Crime No. 967/83 and recorded the scene of offence panchanama and prepared the sketch and recorded the statement of the victim and thereafter filed chargesheet against the accused for the offence punishable under Sections 279 and 337 IPC. The police papers as required by the Court are produced by Sri Hanumantharaya, the learned counsel and they are taken on record.

3. Though the charge sheet has been filed in 1984, the only progress made by the prosecution is that it has so far examined the victim Sudhakar as P.W.2 and the Investigation Officer-P.W. 1. As can be seen from the charge sheet, only six witnesses have been cited. Out of six witnesses one is the victim P.W.2 and C.W.6 Anwar Pasha is the I.O. It is rather disheartening to note that such a small case which has to be dealt with summarily, has taken long four years, but still is in the stage of recording evidence itself.

4. The charge sheet witnesses Nos.2 and 3 are the panch witnesses who have attested the spot panchanama. Even if they are examined to prove the scene of offence, their evidence only proves that blood might have fallen on the scene of offence or that some articles were seized from the spot. It would not be sufficient to connect the accused with the commission of offence. C.W.4. is the most the doctor might say that the victim had sustained the injuries mentioned in the medical certificate. I do not think that the evidence of the doctor would in any way involve the accused in the commission of offence. Therefore the examination of C.Ws.2 to 4 is wholly superfluous and it is not at all material. C.W.b is another investigating officer. Therefore C.Ws.2 to 5 are the most formal witnesses and their evidence, even if they are examined, will not be helpful to connect the accused with the crime. Therefore the evidence of C.Ws.2 to 5, even if recorded, would be extremely formal in nature.

5. The victim Sudhakar P.W.2 himself has given a goodbye to the prosecution case as he has turned hostile and as he does not implicate the accused in the course of the evidence before the Court. If it is s?i, no further evidence need be recorded in this case at all. Section 258 Cr.P.C. reads :

'In any summons case instituted otherwise than upon complaint, a Magistrate of the First Class or, with the previous sanction of the Chief. Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceeding is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.'

6. Admittedly the offences under Sections 279 and 337 are summons case. The most important witnesses are the victim Sudhakar-P.W.2 and the I.O. Anwar Pasha P.W. 1. The rest of the C.Ws. are absolutely formal and even if they are examined they would not connect the accused with the crime. Therefore taking into consideration that the offence has taken place in December 1983 and that we are at the fag end of 1987 and that a very little or tardy progress is made by the prosecution in this case, and taking into consideration that the remaining witnesses in the case are formal, I think this would be a fit case in which the Magistrate ought to have exercised the power vested in him under Section 258 Cr.P.C. Refusal to exercise the discretion in such circumstances would be a negation of the principle laid down by Section 258 Cr.P.C. The Magistrate as well as the Sessions Judge, in my opinion, slipped into an error in refusing to exercise the jurisdiction under Section 258 Cr.P.C. The view of the Sessions Judge that as it was a revision and when the prosecution intended to examine the remaining witnesses, it was not necessary and proper for him to pass an order contemplated by Section 258 Cr.P.C., is opposed to the principle laid down by Section 258 Cr.P.C. So this is a fit case where the discretion vested in the Magistrate by Section 258 Cr.P.C. ought to have been exercised. Failure to exercise the same would amount to negation of justice.

7. Therefore as laid down by Section 258 Cr.P.C. the accused has to be acquitted and is acquitted. Petition is allowed.

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