

**State of Karnataka Vs. Benoy Thomas**

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**Court :** Karnataka

**Decided On :** Aug-08-1996

**Reported in :** 1997(1)ALT(Cri)792; 1997CriLJ1225; ILR1997KAR186

**Judge :** Kumar Rajarathnam, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 229, 241, 279, 304A, 337, 368, 399 and 401; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 252

**Appeal No. :** Criminal Appeal No. 390 of 1996

**Appellant :** State of Karnataka

**Respondent :** Benoy Thomas

**Advocate for Pet/Ap. :** Ramakrishna, Govt. Pleader

**Judgement :**

1. The State being aggrieved by the Judgment in CC No. 199/1995 dt. 6-2-1996 on the file of the J.M.F.C. (III) Court, Mangalore, has preferred this Criminal appeal for enhancement of sentence.

2. This is the case where the trial Court has convicted the accused under S. 304-A, IPC and has sentenced the accused till rising of the Court and to pay a fine of Rs. 5,000/-, in default to undergo S.I. for six months. The State has challenged the sentence relying on a judgment of Supreme Court reported in ILR 1987 Kant 1894

: (1987 Cri LJ 776), State of Karnataka v. Krishna @ Raju. The Supreme Court in that judgment has found fault in Court's rendering flea bite sentence. The Supreme Court found that the conduct of the accused in that case was reprehensible where the accused failed to secure the medical assistance to the injured person and also failed to report the accident to the police authorities. In the words of the Supreme Court here was a case where the respondent had not only driven his bus in a reckless manner and caused the death of one person and injuries to another but he had also attempted to escape prosecution by failing to report the accident to the police authorities. The Supreme Court in 1968 Acc CJ 38 in Bhalachandra Waman Pathe v. State of Maharashtra, has held that the question as to what sentence should be imposed was essentially within the discretion of the trial Court and the High Court was not justified in interfering with the discretion unless it was satisfied that the sentence imposed by the trial Court was unduly lenient or in other words grossly inadequate.

3. In 1983 SCC (Cri) 160 : (1983 Cri LJ 1271), in Thippaswamy v. State of Karnataka, the Supreme Court has held as follows :-

'Criminal Procedure Code, 1973 - Sections 229, 241 and 368, 399 and 401 - Plea-bargaining - Enhancement or imposition of sentence in revision or appeal after the accused had plea-bargained for a lighter sentence or mere fine in the trial Court, held, would not be reasonable, just or fair and thereby offend Art. 21. Proper course in such instances is to order retrial giving opportunity to the accused to defend himself. Penal Code, 1860, Sec. 304-A - Constitution of India, Art. 21.

(1) We are of the view that this is a case in which plea-bargaining seems to have taken place, because on the appellant pleading guilty to the charge, the learned Magistrate imposed upon him only a sentence of fine of Rs. 1,000/- even though the offence of which he was convicted was one under S. 304-A of the Indian Penal Code. The High Court, in appeal by the State, acting upon the plea of guilty, maintained the sentence of fine and additionally imposed a substantive sentence of rigorous imprisonment for a period of one year. It is obvious that by reason of plea-bargaining, the appellant pleaded guilty and did not avail of the opportunity to defend himself against the charge, which is a course he would certainly not have

followed if he had known that he would be let off with a mere sentence of fine but would be sentenced to imprisonment. It would be clearly violative of Art. 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. Of course, when we say this, we do not for a moment wish to suggest that the Court of Appeal or Revision should not interfere where a disproportionately low sentence is imposed on the accused as a result of plea-bargaining. But in such a case, it would not be reasonable, fair and just to act on the plea of guilty for the purpose of enhancing the sentence. The Court of Appeal or Revision should in such a case, set aside the conviction and sentence of the accused and remand the case to the trial Court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him.

(2) We would therefore allow the appeal, set aside the order of conviction and sentence passed against the appellant and remand the case to the Court of the Judicial Magistrate 1st Class, Chitradurg, so that the appellant may be tried in accordance with law and if he wishes to defend himself, he should have proper and adequate opportunity to do so. While passing this order, we may make it clear that we should not be taken to have expressed any opinion on the merits of the case against the appellant. If the appellant is found guilty as a result of the trial, the Judicial Magistrate may impose a proper sentence upon him and if on the other hand, he is found not guilty, he may be acquitted.

(3) Before parting with this case, we may point out that Mr. Veerappa, learned Advocate, appearing on behalf of the respondent wanted to file an affidavit in reply to the special leave petition but we thought it unnecessary to grant any further time to the respondent to file such affidavit because we are disposing of the appeal on a pure question of law which does not depend on the facts of the case. Since we are remanding the case to the Court of the Judicial Magistrate, we direct that the ball already granted to the appellant by us will continue for a further period of two weeks, in order to enable the appellant to apply for bail before the Judicial Magistrate and then it will be for the Judicial Magistrate to decide whether to grant bail and on what terms.'

4. In the instant case, the trial Court on the question of sentence by its order dt. 6-2-1996 held as follows :-

'Accused Benoy Thomas is present. His Advocate Sri D.J.K. and also the learned APP are present. Sri D.J.K. Advocate for the accused submits that the accused is final year B.B.M. Student in Badriya First Grade College at Mangalore and he is admitting the offence under S. 304-A of the IPC. By looking into the future life of the accused as well as his prospectus prays for blessing while sentencing the accused. Perused the order sheet and records copies of the charge sheet and relevant documents were furnished to the accused. On their request plea under Ss. 279, 337 and 304-A of the IPC, was made read over to the accused. He pleaded guilty. Plea of the accused being voluntary the same is accepted. Under S. 252 of Cr.P.C. the accused is found guilty for the offence under Ss. 279, 337 and 304-A of IPC. At this stage Sri D.J.K. Advocate has filed memo with affidavit of the accused and the copy of the same is furnished to the learned APP. The learned APP has prayed for passing appropriate sentence to the accused keeping in view of the ratio held in AIR 1987 SC 861. Heard both sides. On perusal of the affidavit the accused has sworn to before the Court that he is a student of final year B.B.M. in Badriya First Grade College at Mangalore and he is resident of Venfermood of Kerala State. According to the accused he has come to Mangalore to study the B.B.M. Course and on the date of accident along with CW. 1 were coming from Kanakareddy towards Hampanakatte and it was in the night hour this accident had occurred. According to the accused he is student and he has spent nearly about Rs. 10,000/- for treatment of the deceased and inspite of the same and all due necessary care taken by him he could not save the life of the deceased. The accused has also filed the photostat copies of his identity card issued by the Badria First Grade College, Mangalore, and also the certificate issued by the said college which shows that the accused is the student of B.B.M. class studying in final year.

In a criminal case while imposing sentence against the accused the prospects and future life of the accused has to be considered and given prime importance. Admittedly the accused is a student in final year B.B.M. course and after completion of his career he has to start his future life. I have gone through the

decision laid down by the Hon'ble Supreme Court in AIR 1987 SC 861 between the State of Karnataka v. Krishna @ Raju. In the said decision the accused was the professional driver of the bus and caused the fatal accident and also attempted to escape the prosecution by failing to report the accident to the police authorities. In the case on hand the accused is a student and this accident occurred in the night hours at about 10.00 p.m. In this case FIR discloses that immediately after this accident the Pillion rider of the Motor bicycle of the accused, C.W. 1 and the deceased shifted to the hospital for treatment. The same also corroborates the contents of the affidavit sworn by the accused, that he has spent huge amount for the treatment of the accused. In the above referred decision of the Hon'ble Supreme Court has condemned the flea bite sentence in such a heinous offences. The sum and substance of the said decision of the Supreme Court is that no undue sympathy should be shown to the accused persons who are involved in such a fatal accident cases. I respectfully agree with the ratio held in the above referred decision.

In this case the accused is a student by profession and he has voluntarily appeared before the Court and admitted the offence against him. Keeping in mind the ratio held in the above referred decision of the Supreme Court and also the fact that the accused is a student and also about his future career, in my considered view if the following sentence is given to the accused, the same will serve the purpose of both the sides.

The nature and ingredients of the offence under Ss. 279, 337 and 304-A of the IPC are one and the same. The ingredients of the Ss. 279 and 337 of IPC are squarely covered under S. 304-A of IPC. Under the circumstances, in my view if the accused is sentenced only for the severe offence under Sec. 304-A of the IPC the same is proper. Accordingly, in my view there need not be a separate sentence for the offence under Ss. 279 and 337 of the IPC. In result I proceed to pass the following :- For the offence under S. 304-A of the IPC the accused is sentenced to be in the hall till rising of the Court and to pay fine of Rs. 5,000/- in default to undergo S.I. for six months.'

5. In an unreported Division Bench judgment of this Court in Cr. A. 99/92 in State of Karnataka v. S. Anwar dt. 2-7-93, this Court has held that if the adequate reasons are given by the trial Court for imposing a lenient sentence the Court may not interfere with the jurisdictional discretion exercised by the trial Court.

6. It is stated in this case that the accused was a student and has spent nearly Rs. 10,000/- for the treatment of the deceased and he has also filed the photostat copies of his identity card issued by the Badriya First Grade College, Mangalore. The FIR discloses that immediately after accident the accused rushed the deceased to the hospital and spent Rs. 10,000/- on his medical expenses. The deceased was the pillion rider of the motor-cycle driven by the accused.

7. In these circumstances, relying on the unreported Division Bench judgment of this Court, no interference is called for and the appeal stands dismissed at the stage of admission.

8. Appeal dismissed.