

State Vs. Embichi Ahmed

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Court : Karnataka

Decided On : Dec-12-1989

Reported in : II(1990)ACC582

Judge : Hirewath and ;Ramachandrian, JJ.

Appellant : State

Respondent : Embichi Ahmed

Judgement :

Hiremath, J.

1. The Charge against the accused-respondent before the Court of the J.M.F.C. at Maddur was that on 18-6-1981, at about 7.45 p.m., he being the driver of lorry No. KLZ 8134, drove in a rash and negligent manner and hit against a passenger bus as a result of which injuries were sustained, both simple and grievous, to as many as 12 passengers and a lady by name Shanthamma, who was also travelling in the same bus bearing No. MDS 9313, died on account of injuries sustained by her. The charges against him were under Sections 279, 337, 338 and 304-A of the Indian Penal Code. Charge-sheet was filed before the trial Court on 23-2-1982 after the accused appeared in the court. Trial could not commence immediately and the plea was actually recorded on 1-3-1985. The accused pleaded guilty and accepting the plea of guilt he was convicted for the offences and sentenced to pay fine of Rs. 250/- on each count with default sentence. The total amount of fine thus

imposed came to Rs. 1,000/-. The State has sought enhancement of the sentence approaching this Court under Section 377 of the Code of Criminal Procedure.

2. It is urged by the appellant-State that the sentence awarded is very lenient and it does not meet the ends of justice. The trial Court has taken a very lenient view in sentencing the accused who has driven the lorry in a rash and negligent manner resulting in the death of one person and causing injuries to many inmates of the bus. The Trial Court ought to have taken a serious note of the offence committed by the respondent and ought to have imposed what it calls 'stringent' punishment.

3. During arguments, the learned Additional State Public prosecutor urged that imposition of fine of Rs. 250/- even for the offence under Section 304-A IPC is too lenient to be considered as adequate. Even though discretion is given to the trial magistrate in the matter of sentence and even though substantive sentence of imprisonment is not mandatory, the trial Court has not considered the gravity of the offence. The decision of the Supreme Court in the case of *The State of Karnataka v. Krishna* in which the facts were analogous to the facts of this case has been cited before us. The Supreme Court has observed that it is necessary to comprehend that the respondent in that case has been let off with a total fine of Rs. 345/- as conviction fine on charges relating to the death of one person and sustaining of injuries by another due to his rash and negligent driving besides his failure to secure medical assistance to the victims as well as his failure to make a report to the authorities after the accident. The Supreme Court so observing found that sentencing the accused therein to rigorous imprisonment for six months and to pay a fine of Rs. 1,000/- for the offence under Section 304-A IPC could be adequate and allowed the State appeal sentencing accordingly, maintaining the fine imposed on other counts.

4. The respondent's Counsel invited our attention to the fact that the charge-sheet was filed in the year 1982 and the offence in fact was committed in the year 1981 i.e., on 18-6-1981. The trial ended in the Court below on 1-3-1985 and thereafter this appeal came to be filed which again came up for hearing after a lapse of nearly 3 1/2 years after it was filed. In view of this time length, it may not be necessary to impose substantive sentence of imprisonment but fine may be

enhanced.

5. We have kept in our view the observation's of the Supreme Court in the case referred to above which was against the judgment of this Court. At para-5 of the report, the Supreme Court referring to the reasons assigned by this Court for taking a lenient view quoted the same as follows:

The Judgment of conviction and sentence has been delivered on January 30, 1981. We are today at the fag-end of January, 1983. The award has been hanging over the head of the accused for a very long time which should have made him undergo a lot of mental agony and torture. It is no doubt true that one death has taken place and injuries have been caused to one person. The sentence imposed appears to be a lenient one. Therefore, considering the fact that appeal is pending for a long time and it must have caused the accused a lot of mental anxiety, we think that the appeal should be dismissed with an observation that in such serious cases the Court is expected to take a serious view of the matter and not to be lenient in such matters. With this observation, the appeal is dismissed.

Referring to these reasons, the Supreme Court at Para-6 of the report observed as below:

The utter disregard shown by the Magistrate to the nature of the offences, particularly the one under Section 304-A I.P.C., and the sentences provided for them under the Penal Code and the Motor Vehicles Act, by imposing what may be termed as 'flea-bite' sentences on the respondent, should have spurred the High Court to not pass appropriate strictures against the Magistrate but also to set right matters by enhancing the sentence at least for the conviction under Section 304-A I.P.C. to a conscionable level in exercise of its powers under Section 377 I.P.C.

At para-7 it further observed that:

Consideration of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal judicial system. It need be hardly pointed out that the imposition of a sentence of fine of Rs. 250/- on the driver of a motor vehicle for an offence under

Section 304-A I.P.C. and that too without any extenuating or mitigating circumstances is bound to shock the conscience of anyone and will unmistakably leave the impression that the trial was a mockery of justice.

6. It is high time the Courts should take serious note of the concern expressed by the Supreme Court and express our serious concern that the learned Magistrate did what the Supreme Court wanted him to avoid. This decision of the Supreme Court of course was rendered after the present case came to be disposed of by the learned Magistrate in the year 1985 and the decision was not available for being cited for the guidance of the Magistrate. But, as on today, it has now become the concern of the judicial system that in such cases lenient view would only lead to miscarriage of justice and public are likely to lost confidence in the administration of justice if without there being any mitigating of justice if without there being any mitigation or extenuating circumstances pleaded by the accused such 'flea bite' sentence of small fines are imposed. The learned Magistrate accepting the plea of guilt, without assigning any reasons for taking lenient view and for not awarding substantive sentence of imprisonment proceeded to impost sentence of Rs. 250/- only even for the offence under Section 304-A IPC. In our view, this is a fit case in which we should allow this appeal preferred by the State for enhancing the sentence for the offence under Section 304-A IPC and imposing sentence of rigorous imprisonment for three months and a fine of Rs. 1000/- would meet the ends of justice and while imposing the sentence of three months, we have taken into consideration the plea of the learned Counsel for the respondent that the offence is of the year 1081 and nearly eight years have elapsed. We, however, place on record our concern over the trend of trial Magistrates to impose grossly inadequate sentences in cases of this nature perhaps keeping in view the only factor of plea of guilt by drivers of motor vehicles. Consequently roads either on highways or in crowded streets have become hazardous for pedestrians or law abiding drivers or two wheeler riders and potential rash drivers are emboldened to drive their way and get let off by payment of fines which their purses or those of their employers may readily meet.

7. It is again a matter of concern that the provision of Motor Vehicles Act which have a deterrent effect on potential rash drivers are totally brushed aside and are

almost non existent for the Courts. To have deterrent effect on potential delinquents it is high time the Courts should take note of the provisions in the Motor Vehicles Act, 1988, like Section 20 to 22. We direct that the attention of the trial Courts shall be drawn to the decision of the Supreme Court (supra) by way of a circular for their guidance.

With these observations, for the reasons aforesaid, we allow this appeal, enhance the sentence against the accused-respondent to rigorous imprisonment for three months and to pay a fine of Rs. 1,000/- and in default to suffer further Rule 1 for one month for the offence under Section 304-A IPC maintaining the sentence on other counts awarded by the trial Court. A copy of the Judgment shall be sent to the Registrar of the High Court for issuing necessary Circular as directed.

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