

Gangoji Rao Salanke Vs. State

Gangoji Rao Salanke Vs. State

SooperKanoon Citation : sooperkanoon.com/381620

Court : Karnataka

Decided On : Sep-24-1992

Reported in : ILR1993KAR782

Judge : Mirdhe, J.

Acts : [Probation of Offenders Act, 1958](#) - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 304A and 337

Appeal No. : Crl. R.P. No. 134 of 1990

Appellant : Gangoji Rao Salanke

Respondent : State

Advocate for Def. : Y.R. Jagadeesha, HCGP

Advocate for Pet/Ap. : Hasmath Pasha, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Mirdhe, J.

1. This Criminal Revision Petition is filed by the petitioner who was the accused in the trial Court under Sections 397 and 401 Cr.P.C. against the order dated

7.2.1990 passed by the Sessions Judge, Mandya, in Criminal Appeal No. 18 of 1989 partly allowing it and modifying the order dated 17.3.1989 passed by the Munsiff and J.M.F.C. Mandya, in C.C.No.2007 of 1983.

2. I have heard the learned Counsel for the petitioner and the learned Government Pleader for the respondent fully and perused the records of the case.

3. The petitioner was convicted in this case under Section 255(2) Cr.P.C. for the offences punishable under Sections, 279, 337 and 304-A I.P.C. and he was sentenced to undergo S.I. for a period of 3 months for the offence punishable under Section 337 I.P.C, and R.I. for a period of one year for the offence punishable under Section 304-A I.P.C. and the sentences were ordered to run concurrently by the order of the Principal Munsiff and J.M.F.C. Mandya, dated 28.7.1987. The petitioner preferred Criminal Appeal No. 38 of 1987 in the Court of the Sessions Judge, Mandya, and the learned Sessions Judge, Mandya, dismissed it on 26.6.1988. The petitioner was aggrieved by the orders of the Courts below and, therefore, he preferred a Criminal Revision Petition at Criminal Revision Petition No. 319 of 1988 in this Court and this Court by its order confirmed the order of conviction, But, so far as the order of sentencing the petitioner was concerned, it was set aside and the matter was remanded to the trial Magistrate with a direction to consider the application of the provision of the Probation of Offenders Act to the case of the petitioner, if necessary, after calling a report from the Probation Officer concerned and dispose of the case in accordance with law. After the matter was remanded to the trial Court, the J.M.F.C. Mandya, called for a report of the Probation Officer who submitted his report. After perusing the report and also hearing the Counsel for the petitioner, the learned J.M.F.C. held that looking to the gravity and the nature of the offence and the act of the accused petitioner, the petitioner was not entitled to the benefit of the Probation of Offenders Act. The learned J.M.F.C. sentenced him to undergo S.I. for a period of 3 months for the offence punishable under Section 337 I.P.C. and R.I. for a period of one year for the offence punishable under Section 304-A I.P.C. and ordered the sentences to run concurrently. The petitioner was aggrieved by this Order. So, he preferred Criminal Appeal No. 18 of 1989 in the Court of the Sessions Judge, Mandya, and the learned Sessions Judge, Mandya,

after hearing both sides, allowed the Appeal in part and sentenced the petitioner to undergo S.I. for two months for the offence punishable under Section 337 I.P.C. and he has further sentenced the petitioner to undergo S.I. for two months and to pay a fine of Rs. 3,000/- and in default to undergo S.I. for 6 months for the offence punishable under Section 304-A I.P.C. He has ordered the sentences to run concurrently. The petitioner being aggrieved by the orders of both the Courts below for not extending the benefit of the Probation of Offenders Act to him, has preferred this Petition.

4. So far as the conviction of the petitioner for the offences punishable under Sections 337 and 304-A I.P.C. are concerned, they have been confirmed by the order of this Court in Criminal Revision Petition No. 319 of 1988. Therefore, the conviction of the petitioner for the said offences is not liable to be disturbed.

5. The matter came to be remanded to the trial Court with a direction to consider whether the application of the provisions of the Probation of Offenders Act 1958 (which will hereinafter be referred to as the 'the Act') can be extended to the case of the petitioner. Both the Courts below have held that the facts and circumstances of the case do not warrant the extension of the benefit of the Act to the petitioner.

6. In *SOMABHAI MANGALBHAI DABHI v. STATE OF GUJARAT*, 1989 (2) CrL.L.J. 1945 the Gujarat High Court held that where the negligence and rashness were of grave nature resulting in the death of a girl aged 10 years, the benefit of the Act could not be extended to the accused.

7. In *AMAR LAL v. STATE OF RAJASTHAN*, 1988(1) CrL.LJ.1 the death of a young Engineer was caused due to the rash and negligent driving and the Rajasthan High Court refused to reduce the sentence of one year R.I. with a fine of Rs.500/- imposed on the truck driver by the Magistrate and confirmed by the District Judge as it would amount to abatement of offence by Judiciary. His Lordship has also further observed in that Ruling that there is necessity for making provision for the minimum mandatory punishment of one year rigorous imprisonment in fatal accident with fine of Rs.15,000/- to be paid as compensation in addition to the provision for increase of sentence under Section 304-A I.P.C. from two years to five years.

8. In *AITHA CHANDER RAO v. STATE OF ANDHRA PRADESH*, 1981 SCC(CrI) 637 the Supreme Court extended the benefit of the Act to the accused in that case.

9. There is no law which lays down that the provisions of the Act cannot be made applicable to the case of an accused convicted for an offence punishable under Section 304-A I.P.C. Section 4 of the Act applies to all the offences except the offences punishable with imprisonment for life or death. The offence under Section 304-A I.P.C. is punishable in maximum with 2 years imprisonment or fine. Therefore, the provisions of the Act can be made applicable even to a person who is convicted of an offence punishable under Section 304-A I.P.C. Whether the benefit of the Act should be given to an accused convicted of the offence punishable under Section 304-A I.P.C. will depend on the facts and circumstances of each case. In the case reported in *Aitha Chander Rao v. State of Andhra Pradesh*, 1981 SCC(CrI) 637 the benefit of the Act was given to the accused in that case as there was finding that there was some amount of contributory negligence on the part of the victim and the peculiar circumstances of the case.

10. The learned Counsel for the petitioner also relied on *DILBAG SINGH v. STATE OF PUNJAB*, 1979 SCC (CrI) 376 wherein the accused was given the benefit of the Act. In that case, the conviction of the accused by the Sessions Court was under Section 302 I.P.C. which came to be reduced to an offence under Section 304 Part I I.P.C. in the High Court, The benefit of the Act was extended to the accused in that case on the ground that the role of the accused was lesser, taking into consideration the family background, history and also the fact that alcohol had played some role in the commission of the offence.

11. In *RAJBIR v. STATE OF HARYANA*, 1985 Vol II Crimes 462 the Supreme Court gave the benefit of the Act to an accused convicted for an offence punishable under Section 323 I.P.C. on the ground that if convicted he might lose his job.

12. In *BISHAMBER DASS v. THE STATE (UNION TERRITORY OF CHANDIGARH)*, 1987 (2) Crimes 806 the Punjab and Haryana High Court gave the benefit of the Act to an accused who has been convicted for an offence

punishable under Sections 279, 337 and 304-A I.P.C.

13. The learned Counsel for the petitioner also relied on the Ruling reported in STATE OF KARNATAKA v. HARIJAN DHARMA AND ANR. wherein this Court gave the benefit of the Act to an accused who was convicted for an offence punishable under Section 304 Part II I.P.C.

14. In NIRMAL SINGH v. STATE OF HARYANA, 1989 Volume I Crimes 398 the Punjab and Haryana High Court extended the benefit of the Act to an accused who has been convicted for the offence punishable under Section 304-A I.P.C.

15. It cannot be disputed that there is no bar under the Act itself for extending the benefit of the Act to an accused who has been convicted for an offence punishable under Section 304-A I.P.C.

16. In State of Karnataka v. Harijan Dharma and Anr., 1992(2) KLJ 85 the benefit of the Act was extended to the accused as he was found guilty of the offence falling under Section 304 Part II I.P.C. and the facts of the case were that the blow intended by the accused to stab another, fell on the deceased. In view of the peculiar facts and circumstances of the case, the Court extended the benefit of the Act to the accused. Even in the Supreme Court Ruling in Aitha Chander Rap v. State of Andhra Pradesh, 1981 SCC(CrI) 637 the Supreme Court extended the benefit of the Act in view of the peculiar facts and circumstances of the case, one of which was that there was some contributory negligence on the part of the victim. As a principle, it can be held that the Act can be made applicable to the case of an accused who is convicted for an offence punishable under Section 304-A I.P.C. But, the question is whether it should be extended to the petitioner in this case.

17. In STATE OF KARNATAKA v. KRISHNA ALIAS RAJU, : 1987 CriLJ776 the accused was convicted for killing one person and injuring another for the offence punishable under Section 304-A I.P.C. The Magistrate had sentenced the accused to pay fine. The State preferred an appeal under Section 377 Cr.P.C. to this High Court for enhancement of sentence. The High Court declined to interfere with the sentence on the ground that there was no basis or relevance. The Supreme Court while enhancing the sentence in that case has held as follows:-

'7. The High Court has failed to comprehend that the respondent has been let off with a total fine of Rs.345/- for his conviction under all the five charges relating to the death of one person and the sustainment 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 about the accident. The reasons given by the High Court are really non-existent as well as irrelevant ones. It is not as if the respondent had been charged or convicted for a grave offence punishable with death or imprisonment for life and his fate had remained in suspense for a long time and as a consequence thereof, he had undergone mental agony and torment for a long period of time. 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. Considerations 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. If 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 circumstance is bound to shock the conscience of any one and will unmistakably leave the impression that the trial was a mockery of justice.'

The Supreme Court in RATTAN SINGH v. STATE OF PUNJAB, : 1980 CriLJ11 where the accused was sentenced to R.I. for two years for the offence punishable under Section 304-A I.P.C. refused to reduce the sentence and observed 'when a life has been lost and the circumstances of driving are harsh, no compassion can be shown'.

18. Therefore, whether the benefit of the Act should be given to an accused or not depends upon the facts and circumstances of each case. In this case, the bus driven by the petitioner dashed against the bullock cart going on the proper side of the road and as a result of the accident two bullocks have died, the cart has been damaged and two persons sitting in the cart were seriously injured and one of them died subsequently. Taking into consideration the facts and circumstances of the case, I think both the Courts below were right in holding that the benefit of the

Act cannot be extended to the petitioner.

19. The learned Counsel for the petitioner submitted that the petitioner is a driver in K.S.R.T.C. and he is likely to lose his job if he is convicted and not given the benefit of the Act. The learned Counsel relied on the ruling of the Supreme Court in *Rajbir v. State of Haryana*, 1985 Vol II Crimes 462. But, it was a case where a Government servant was convicted for the offence punishable under Section 323 I.P.C. As compared with Section 304A, the offence under Section 323 I.P.C. can be termed as not so serious. There was no loss of life in that case. In view of the facts and circumstances of that case, the Supreme Court extended that benefit of the Act to the accused on the ground that if the benefit is not extended, the accused is likely to lose his job, Therefore, the Ruling relied upon by the learned Counsel for the petitioner is distinguishable from the facts of this case. The learned Counsel for the petitioner submitted that the petitioner is a driver in K.S.R.T.C. and he will lose the job if he is not given the benefit of the Act. If the petitioner is given the benefit of the Act on the ground that he is a driver in K.S.R.T.C. and he is likely to lose the job if the benefit of the Act is not extended to him, all the drivers in the K.S.R.T.C. who are convicted for the offences punishable under Section 304-A I.P.C. will be entitled to the benefit of the Act on this ground, The Court will not be serving the cause of justice by laying down such a law which will be a precedent not in the interest of justice but it can lead to the frustration of the ends of justice.

20. The learned Counsel for the petitioner further argued that the object of punishment is reformatory and during the pendency of this case for the last 10 years, the petitioner has not committed even a single accident. No doubt, one of the objects of punishment is reformatory. The reformatory theory of punishment will be applicable to the case of habitual offenders. There is no question of a person who has committed a single offence to be considered to be reformed. Merely because the petitioner has not committed any accident during the last 10 years of the pendency of this case cannot be a ground to extend the benefit of the Act to the petitioner. The learned Sessions Judge, Mandya, has noticed that he was receiving 60 to 70 claim cases per month asking for compensation due to accidents by the drivers of motor vehicles. This is a statistics only in respect of one

Court in the State. If the said statistics is multiplied by the number of Claims Tribunals in the State, it will come to an alarming figure of the accidents that are being caused by the drivers of the Motor Vehicles. One of the purpose of punishment is deterrent. That not only the accused but also the persons who are in a position to commit similar offences must be deterred from committing such offences. In my opinion, the deterrent object of punishment is more important in cases of road accidents so that the persons who ply their vehicles on the road can bear in mind that if they commit the fatal accidents, they will have to face serious consequences including conviction and also imprisonment. Even the drivers who are employed in the K.S.R.T.C. and other Corporations must also be deterred by such examples that if they are found guilty of having committed that fatal accidents, they will be liable to be dealt with sternly in accordance with law and no undue sympathy will be shown to them on the ground that they are likely to lose their jobs. If the Courts show sympathy on such matters and start extending the benefit of the Act to the accused convicted for the offence punishable under Section 304 I.P.C. when there are no justifiable grounds and circumstances to do so, it will be doing injustice to the persons who have suffered in the accident and it will be an encouragement to the like minded persons to commit the accidents and go scot free on the basis of the benefit of the Act.

21. For the reasons discussed above, I proceed to pass the following order-The Criminal Revision Petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com