

State of Karnataka Vs. Nagaraja

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Court : Karnataka

Decided On : Mar-22-1996

Reported in : 1997CriLJ696; ILR1996KAR1947; 1996(7)KarLJ813

Judge : C.N. Aswathanarayana Rao, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 229, 304A and 377

Appeal No. : Cr.R.P. 231/91

Appellant : State of Karnataka

Respondent : Nagaraja

Advocate for Def. : B.N. Chandrashekaraiiah, Adv.

Advocate for Pet/Ap. : B.A. Satish, HCGP

Disposition : Appeal allowed

Judgement :

C.N. Aswathanarayana Rao, J

1. This is a State appeal against the alleged inadequacy of sentence passed by the Sessions Court, while sentencing the appellant accused for an offence under Section 304-A I.P.C.

2. The PSI, F1 Traffic Police Station, Mysore filed a charge- sheet against the respondent accused, alleging that on 08.06.89 at about 7.30 p.m., in Mysore City, accused being a bullock-cart-hawker, drove the same on Chikkaveeranna Public Road, in a rash or negligent manner, so as to endanger human life or the personal safety of others and dashed against one Syed Hussain. As a result of the injuries suffered by him in the said accident, the said Syed Hussain died.

3. When the accused was brought to Trial he made an application appearing through counsel and voluntarily pleaded guilty to the charge. The learned First Additional Chief Judicial Magistrate, Mysore in C.C.No. 2976/89 dated 03.08.89 accepted his plea of guilt and sentenced the appellant to undergo R.I. for one month and to pay a fine of Rs. 1,000/- for the offence under Section 304A I.P.C.

4. Aggrieved by the said order, the respondent preferred an appeal in Cr.A.No. 83/89 on the file of First Additional Sessions Judge, Mysore. The learned Sessions Judge, by a judgment dated 11.01.91 maintained the conviction but altered the sentence. He deleted the sentence of imprisonment and enhanced the fine of Rs. 1,000/- to 2,500/- in default to undergo imprisonment for six months. Being aggrieved by the said order, the state has come up with this appeal.

5. I have heard the learned High Court Government Pleader for the appellant and Sri B.M. Chandrashekar, learned Counsel for the respondent and perused the records.

6. The learned High Court Government Pleader, in support of his arguments contended that the sentence imposed upon the accused, considering the serious nature of the offence which is alleged is too inadequate and it requires to be enhanced. The HCGP relied upon the following two decisions. STATE OF KARNATAKA v. KRISHNA ALIAS RAJU, IILR 1987(2) Kar 1894. It was also a case under Section 304-A I.P.C. In that case also the accused pleaded guilty. The learned Magistrate accepted the plea and imposed a total fine of Rs. 345/- for the offences under Sections 279, 337 and 304-A IPC. The High Court declined exercise of powers under Section 377 Cr.P.C. In appeal to Supreme Court against refusal of High Court to enhance the sentence, it was held as follows:

'Section 304-A: Considerations of undue sympathy in such cases will not only lead to miscarriage of justice but still 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 IPC and that too without any extenuating or mitigating circumstances is bound to shock the conscience of any one and will unmistakably leave the impression that the trial was a mockery of justice.

Sentence for conviction under Section 304A IPC enhanced to six months R.I. and fine of Rs. 1,000/- in default to undergo R.I. for two months.'

In STATE v. EMBICHI AHMED, ILR 1990 KAR 598 under similar circumstances in a case for the offence under Section 304A IPC and where the accused pleaded guilty voluntarily. The learned Magistrate imposed a fine of Rs. 250/-. In the appeal by the State, this Court held that such a lenient view leads to miscarriage of justice and enhanced the punishment to a sentence of three months R.I. and fine of Rs. 1,000/-. Relying upon these two decisions, the learned High Court Government Pleader for the appellant prayed for suitable enhancement of the sentence, in the case on hand.

7. The learned Counsel for the respondent submitted that the accused has voluntarily pleaded guilty in the case and if he had known that a sentence of imprisonment would be imposed on him, he would not have pleaded guilty. He submitted under the circumstances the proper course would be to set aside the order of conviction and remand the matter to the Trial Court for deciding the case afresh in accordance with law. In support of this submission, the learned Counsel relied upon the decision reported in THIPPESWAMY v. STATE OF KARNATAKA, : 1983 CriLJ1271 . It was a case for the offences under Sections 375, 229, 386-401 and 304A I.P.C. The accused pleaded guilty and when the State sought for the enhancement of sentence, the Supreme Court held as follows:-

'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 Section 304-A of the Penal

Code. The High Court, in appeal by the State, acting upon the plea of guilt, 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 not be let off with a mere sentence of fine but would be sentenced to imprisonment. It would be clearly violative of Article 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, or fair 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.'

This decision fully supports the arguments of the learned Counsel for the respondent.

8. The learned High Court Government Pleader contended that this decision has no application to the facts of the case on hand because in the case on hand, the accused has appeared through counsel, has filed an application and has voluntarily pleaded guilty. I do not think this will make any difference. Because even in such a situation, there is an element of plea-bargaining. The observations made by the Supreme Court as quoted above fully apply to such a case also.

9. In the later decision relied upon by the learned Government Pleader referred to above in I.L.R. KAR 1987 Par-II S.C. 1894, the earlier decision in : 1983 CriLJ1271 has not been referred to. Therefore in the later decision, the Supreme Court has not considered the question of plea-bargaining. Under the circumstances, I find that the submission made by the learned Counsel for the

respondent that it is proper to apply the principle laid down in : 1983 CriLJ1271 has much force. Under the circumstances, it would be in the interest of justice and proper to allow this appeal, set aside the conviction and sentence and remand the matter back to the Trial Court, with a direction to dispose of the case in accordance with law, as it has been done by the Supreme Court in the case referred to above in : 1983 CriLJ1271 .

For the reasons aforesaid the appeal is allowed. The conviction and sentence of the accused respondent for the offence under the Section 304-A I.P.C. passed by the Trial Court and altered by the Sessions Court with regard to the sentence are hereby set aside. The matter is remanded to the Trial Court with a direction to the learned Magistrate to record the plea of the accused afresh and then proceed in accordance with law keeping in view the observations made by the Supreme Court in : 1983 CriLJ1271 .

Both the parties are directed to appear before the Trial Court on 25.04.1996 for further proceedings. The office is directed to send the records to the Trial Court well within that time.

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