

State of Karnataka Vs. Abdul Rasheem and ors.

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SooperKanoon Citation : sooperkanoon.com/388929

Court : Karnataka

Decided On : Mar-31-2006

Reported in : 2006CriLJ3169

Judge : K. Sreedhar Rao, J.

Acts : Code of Civil Procedure (CPC) ; [Code of Criminal Procedure \(CrPC\) , 1973](#);
[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 87 and 379

Appeal No. : CRL. A.N. 758/2000

Appellant : State of Karnataka

Respondent : Abdul Rasheem and ors.

Advocate for Def. : Girish Kodgi, Adv.

Advocate for Pet/Ap. : Bhavani Singh, Addl. SPP

Disposition : Appeal dismissed

Judgement :

K. Sreedhar Rao, J.

1. A. 1 is convicted for an offence punishable Under Section. 87 r/w Section 379 IPC and sentenced to S.I. for a period of six months and to pay fine of Rs. 5,000/- in default to undergo SI. for two months. In the charge sheet there are three

accused persons.... A.2 and A.3 are absconding and the case against them is split up before the trial Court. A. 1 is tried and convicted.

2. The prosecution case discloses that A. 1 was the driver of a private jeep. A.2 and A.3 were the inmates of the jeep. When the forest officials intercepted and checked the jeep, they found 100 Kgs. of sandal wood consisted in 47 rough dressed billets. Under a mahazar, the contraband is seized. The facts of the prosecution case disclose that all the three accused persons shared common intention and were smuggling the sandal wood.

3. The charge sheet material discloses that all the accused persons shared common intention and were jointly transporting sandal wood billets. There is a grave lapse on the part of the Trial Court in not invoking Section 34 IPC for holding joint trial. The failure to do so would become fatal to the prosecution case. The absence of Section 34 IPC in the charge could enable each of the accused to disclaim possession throwing blame on the others and thus ultimately making the case of prosecution vulnerable at trial. This type of lapse has become a routine order in umpteen number of criminal cases. It is necessary that the trial judges should always bear in mind that unless the provisions of law relating to common intention, common knowledge, conspiracy and common object the invoked in the charge, it is not permissible to hold joint trial of two or more accused be it for the offences under IPC or under any special penal enactments.

4. The code of Civil Procedure does not prescribe hearing the parties before issue are framed. The insistence of draft issues by the civil Court is legally deprecated. In contrast the Cr. P.C. obligates that in warrant and sessions Trial hearing before charge is a mandatory requirement. The trial judges hear before charge only in the cases where defence wants to argue for discharge otherwise the Trial judges normally frame charge in a cavalier manner without assistance of the prosecution and the defence counsel and are blindly guided by the provisions of law quoted by the I.O. in the charge sheet. In order to overcome the pedantic practice, it is necessary that the criminal Court in every Trial shall insist the prosecution and the defence to submit a draft charge and if necessary give oral hearing to see that the charge framed is factually and technically sound.

5. The practice of submitting draft charge by the prosecutor and the defence counsel would keep the parties abreast with material facts of the case and also helps in knowing whether the facts alleged would fulfill the material ingredients of the offences which are the subject matter of charge. This practice in particular helps junior members of the Bar in sharpening their legal skills and helps them in preparing a good case for a defence besides helps in prosecutor to put forth a successful prosecution.

6. In the instant case, the accused has already suffered the sentences imposed. In the circumstances, it is not a good ground to interfere with the order to enhance the sentence. The appeal is dismissed.

7. The Registry is directed to circulate the judgment to all the Trial Courts and to send the copy of the judgment to Director of prosecution for issuance of necessary circular instructions for filing draft charge in all the criminal trials by the prosecutors. The compliance report should be submitted by the Director of prosecution within two months from the date of communication.