M.A. Waheed Vs. the State

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Court : Andhra Pradesh

Decided On : Oct-27-1995

Reported in : 1996(1)ALD(Cri)387; 1996(1)ALT(Cri)359; 1995CriLJ1059

Judge : V. Rajagopala Reddy, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 304A and 337; Code of Criminal Procedure (CrPC) , 1973 - Sections 235, 235(2), 248, 248(2), 360 and 401

Appeal No. : Criminal Revn. Case No. 651 of 1992 and Cri Revn. Petn. No. 625 of 1992

Appellant : M.A. Waheed

Respondent : The State

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mirza Nisar Ahmed Baig, Adv.

Judgement :
ORDER

1. Since none appeared for the petitioner on 17-10-1995 an order has been passed disposing the case on merits. After the order has been dictated but before it was transcribed and signed, Sri. T. L. N. Chari, Advocate representing the Counsel for the petitioner requested to make submission as to the merits of the

case. However, he requested for time on personal grounds.

2. Heard Sri T. L. N. Chari, for Petitioner and the Public Prosecutor.

3. The petitioner has been convicted by the trial Court i.e., the Court of the Judicial Magistrate of 1st Class, Jagthiyal, in C.C. No. 45 of 1987 under Section 337 IPC and sentenced to undergo simple imprisonment for a period of three months and under Sec.338 IPC for simple imprisonment for a period of nine months and to pay a fine of Rs. 1,000/-, in default to suffer simple imprisonment for two months and further convicted under Section 304-A IPC to undergo simple imprisonment for a period of two years and to pay a fine of Rs. 3,000/-, in default to suffer simple imprisonment for six months and all the sentences were directed to run consecutively. On appeal, in the Court of the Sessions Judge at Karimnagar, in Crl. A. No. 47 of 1992, the convictions and sentences have been confirmed.

4. The case of the prosecution is that P.Ws. 1 to 3, 5 to 7 and P.W. 10 are close relatives. P.W. 6 wanted to perform the tensure ceremony at Kondagattu temple, so he engaged a tractor to transport his family members. When they were travelling sitting in the tralior, on their return journey, after tensure ceremony, a bus of the A.P. State Road Transport Corporation driven by the petitioner came in the opposite direction. The petitioner was driving rashly and negligently in a zig zag manner and dashed against the tracter breaking the tracter into pieces. The passengers in the trailor fell down, resulting in the death of eight persons and injuries to thirty persons. Seven persons died on the spot and a woman died in the headquarters hospital at Karinjnagar. P.Ws. 2, 3 and 5 to 10 deposed to the accident, that due to the petitioner's rash and negligent driving of the bus, the occurrence took place, resulting in the death of eight persons. The petitioner examined D.W. 1, a practising advocate of Jagtiyal to the effect that the tractor was coming without head lights at the time of the accident and that the petitioner was driving the bus in a slow speed and that the tractor dashed against the bus.

5. The trial court after considering the entire evidence on record and appreciating the evidence of the eye witnesses, convicted and sentenced the petitioner as stated above. The Appellate Court after reappraising the entire evidence on record agreed with the findings of the trial court and confirmed the convictions and

sentences and dismissed the appeal. Questioning the order of the appellate court, the petitioner filed this crl. revision case.

6. It is contended by the counsel for the petitioner that the evidence on record was not sufficient to hold that the petitioner's act of driving the vehicle was solely responsible for the cause of death of the deceased and if at all petitioner might have been responsible, it is only for contributory negligence and unless it is shown that the petitioner was solely responsible, he cannot be convicted under S. 304A IPC. It is also contended that inadmissible evidence has been taken into consideration, inasmuch as the sketch of the scene of the scene of the accident was not properly proved, and it would vitiate prosecution's case and that the evidence of D.W. 1 was disbelieved without giving any reason. Lastly it was contended that the trial court violated the mandatory and fundamental requirement as contemplated under S. 248(2) Code of Criminal Procedure. It is also contended that the petitioner is entitled for the benefit under Section 360 of the Code of Criminal Procedure (for short, 'the Code'), and the lower court was not right in denying such benefit without proper reasons.

7. It is seen from the judgment of the trial court that 15 witnesses have been examined by the prosecution and Exs. P-1 to P-15 have been marked in support of the case. Ex. P-5 is the report of the M.V.I., which shows that the accident occurred not due to any mechanical defect of both the vehicles involved in the accident. So it can be held that the accident was the result of negligence and rashness of one of the drivers of the vehicles. Relying upon the evidence of P.Ws. 2 to 10 coupled with documentary evidence of Exs. P-3 to P-5 and P-11 to P-13, the trial court held and that the petitioner was responsible for the accident and that he was liable for the offences with which he was charged. Therefore, the contention that there is no sufficient evidence on record to base the conviction is wholely unsustainable. The sketch of the scene of occurrence, Ex. P-4 and Exs. P-11 to P-13, photographs, show that the offending RTC bus went below the tar road towards the western side after the incident. Ex. P-5 was prepared soon after the accident. It should be noticed that this document is not the sole basis for conviction. The basis for the conviction is the evidence of witnesses of the prosecution. So, the argument on this aspects has no force.

8. The trial court has also considered the question whether the tractor driver was responsible for the accident and held that the petitioner alone was driving rashly and negligently and caused the accident. This finding was based upon the evidence of passengers and other witnesses, who deposed to the incident. Sitting in Revision, I cannot reappreciate the evidence on record. This finding was also confirmed by the appellate court. It is also not correct to contend that no reasons have been given to disbelieve D.W. 1. Cogent reasons were given by the trial court and were considered by the appellate court and on proper appreciation D.W. 1 has been disbelieved. The revisional power under Section 401 of the Code cannot be exercised unless there is manifest error of the law or flagrant miscarriage of justice. These grounds do not exist in this case and the conclusions reached by the courts below are proper and based upon the evidence. It is also not a case where the beneficial provisions of Probation of Offenders Act should be extended to the petitioner. The petitioner is responsible for the death of eight persons due to his sheer negligence and rashness and utter disregard for the lives of others. Hence Section 360 of the Code is not applicable to the petitioner. The convictions are, therefore, confirmed.

9. Coming to the sentences, it is pointed out that the trial court has not followed the mandatory requirements under Section 248(2) of the Code, inasmuch as the petitioner was not heard before passing the sentences. The provision of sub-section (2) of Section 248 of the Code was held to contain a salutary principle and is mandatory. I have seen the record of the trial court. On 21-7-92, the petitioner was convicted and on the same day, he was sentenced to the above punishments. The judgment also does not show that the accused has been heard before he was sentenced. In Muniappan v. State of Tamil Nadu, : 1981 CriLJ726 :

'The obligation to hear the accused on the question of sentence which is imposed by Section 235(2) of the Criminal Procedure Code is not discharged by putting a formal question to the accused as to what he has to say on the question of sentence. The Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. All admissible evidence is before the Judge but that evidence itself often furnishes a clue to the genesis of the crime and the motivation of the criminal. It is the bounden duty of

the Judge to cast aside the formalities of the Court-scene and approach the question of sentence from a broad sociological point of view. The occasion to apply the provisions of Section 235(2) arises only after the conviction is recorded. What then remains is the question of sentence in which not merely the accused but the whole society has a stake. Questions which the Judge can put to the accused under section 235(2) and the answers which the accused makes to those questions are beyond the narrow constraints of the Evidence Act. The Court, while on the question of sentence, is in an altogether different domain in which facts and factors which operate are of an entirely different order than those which come into play on the question of conviction. The Sessions Judge, in the instant case, complied with the form and letter of the obligation which Section 235(2) imposes, forgetting the spirit and substance of that obligation.'

Again in Allauddin Mian, Sharif Mian v. State of Bihar, AIR 1989 SC 1456 :

'The requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fairplay that the accused who was hithereto concentrating on the prosecution evidence on the question of guilt should, on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentences. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed the legislature introduced sub-section (2) to Section 235. The said provision therefore satisfied a dual purpose; it satisfies the rule of natural justice by according to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality. Mr. Garg was, therefore, justified in making a grievance that the Trial Court actually treated it as a mere formality as is evident from the fact that it recorded the finding of guilt on 31st March, 1987, on the same day before the accused could absorb and overcome the shock of conviction they were asked if they had anything to say

on the question of sentence and immediately thereafter the decision imposing the death penalty on the two accused was pronounced. In a case of life or death as stated earlier, the presiding officer must show a high degree of concern for the statutory right of the accused and should not treat it as a mere formality to be crossed before making the choice of sentence. If the choice is made, as in this case, without giving the accused an effective and real opportunity to place his antecedents, social and economic background, mitigating and extenuating circumstances, etc., before the Court, the Court's decision on the sentence would be vulnerable. We need hardly mention that in many cases a sentenceing decision has far more serious consequences on the offender and his family members than in the case of a purely administrative decision; a fortiori, therefore, the principle of fair play must apply with greater vigour in the case of the former than the latter. An administrative decision having civil consequences, if taken without giving a hearing is generally struck down as violative of the rule of natural justice. Likewise a sentencing decision taken without following the requirements of sub-section (2) of S. 235 of the Code in letter and spirit would also meet a similar fate and may have to be replaced by an appropriate order. The sentencing court must approach the question seriously and must endeavour to see that all the relevant facts and circumstances bearing on the question of sentence are brought on record. Only after giving due weight to the mitigating as well as the aggrevating circumstances placed before it, it must pronounce the sentence. We think as a general rule the Trial Courts should after recording the conviction adjourn the matter to a future date and call upon both the prosecution as well as the defence to place the relevant material bearing on the question of sentence before it thereafter pronounce the sentence to be imposed on the offender. In the present case, as pointed out earlier, we are afraid that the learned Trial Judge did not attach sufficient importance to the mandatory requirement of sub-section (2) of Section 235 of the Code. The High Court also had before it only the scanty material placed before the learned Sessions Judge when it confirmed the death penalty.'

10. The provisions of Section 248(2) are identical to Section 235(2) of the Code and the purpose for which the 'hearing' is given to the accused in both the section is the same. In view of the above two decisions of the Supreme Court, it is clear that the fundamental requirement of hearing the accused before sentencing was

not followed in the instant case, as required under Section 248(2) of the Code. Therefore, the sentences awarded by the trial Court are vitiated and have to be set aside. The matter has to be remanded to the Trial Court only for the limited purpose of hearing the petitioner (accused) before sentencing, as required under Section 248(2) of the Code and in the light of the above two decisions of the Supreme Court, and to dispose of the case expeditiously. Accordingly, the convictions of the petitioner (accused) are confirmed and the case is remanded to the Trial Court for the limited purpose as stated above. With this direction the Crl. Revision Case is partly allowed.

11. Order accordingly.