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

ibrahim Vs. State

ibrahim Vs. State

SooperKanoon Citation : sooperkanoon.com/472481

Court : Allahabad

Decided On : May-01-1974

Reported in : 1974CriLJ993

Judge : Hari Swarup, J.

Appellant : ibrahim

Respondent : State

Judgement :
ORDER

Hari Swarup, J.

1. This revision was admitted on the question of sentence. The applicant was convicted under Sections 279 and 304A, I.P.C. and sentenced to undergo R. I. for one year under Section 304A, I.P.C. The prosecution case which has been believed is that while the applicant was driving a truck a three year old child was struck down and succumbed to the injuries. The applicant has served out a part of the sentence. Having regard to the offence committed by the applicant the sentence awarded cannot be said to be excessive and cannot therefore be reduced.

2. Learned counsel has pressed that the applicant be given the benefit of Section 360(3) of the Code of Criminal Procedure 1973; in the alternative he has urged

that the benefit of Section 360(1) be given. For Section 360(3) of Cr.P.C. the offence must be of trivial nature. The offence is an aggravated form of the offence under Section 279, I.P.C. and though punishable with the maximum sentence of two years, cannot be said to be an offence of a trivial nature. Clause (3) of Section 360 Cr.P.C. cannot, therefore, apply.

3. An affidavit was filed by the father-in-law of the applicant to show the antecedents and the character of the applicant. Today the applicant has himself appeared in the Court and furnished full details about himself. He has, according to the reply given to the questionnaire issued to him, stated that he had been working as a cleaner and driver. His father is dead and his mother is living with him. He has a younger brother who is working as labourer. He has a sister who is widow and is dependant on him, he has a son aged about 5 years. The applicant had been living with his family. He has thus a fixed abode and family responsibilities to meet. He has further stated that he does not take liquor.

4. In addition to this statement he has also given an undertaking that in future he will not commit any act which might be adverse to the interest of any individual or the society or which might in the eye of law be an offence. He has also promised that he will do his best to become a noble citizen of India and that he will always keep up the undertaking he has given today to this Court of behaving as a good citizen.

5. The offence committed by the applicant does not contain mens rea as a necessary element, and criminal intent is not the basis of the offence. The person struck was aged about three years only and the appellant might not have been able to judge properly the likely movement of the child who was with its parents. The child was struck by the left wheel. If the appellant had exercised caution the child could no doubt have been saved, but that will not mean the accused had a guilty mind.

6. What the applicant requires for becoming a better citizen is the acquisition of greater care and caution, which he can hardly learn by remaining in prison. He can acquire it only by learning to exercise greater control over himself. He will, naturally, now after the conviction, not get the licence for driving a motor vehicle

unless he undergoes a fresh course in driving and gives proof of his ability to drive a vehicle with greater care and caution.

7. Taking into consideration the circumstances under which the offence was committed, the nature of the offence which involves no criminal intent, the low quantum of the maximum sentence awardable for the offence and the character, the antecedents and the undertaking of the offender, it appears to be a case in which the applicant should be given an opportunity to prove that he will be of good behaviour in future.

8. I accordingly direct that the applicant, be released on probation of good conduct for a period of one year. The sentence awarded to him is conditionally set aside and he is directed to be released after his entering into a bond in the sum of Rs. 1000/- and furnishing two sureties in the same amount to the satisfaction of the Chief Judicial Magistrate Jalaun at Orai for appearing and receiving sentence when called upon during this period of one year and for keeping the peace and being of good behaviour. If the bond and sureties as directed above are not furnished within a period of five weeks the applicant will be taken into custody and brought before this Court for receiving the sentence.

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