State Vs. Govindsingh and ors.

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Court : Madhya Pradesh

Decided On : Nov-03-1960

Reported in : AIR1962MP36

Judge : S.B. Sen, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 367(2) and 562

Appeal No. : Criminal Revn. No. 312 of 1959

Appellant : State

Respondent : Govindsingh and ors.

Advocate for Def. : S.L. Garg, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Judgement :
ORDER

S.B. Sen, J.

1. This is a revision filed by the State.

2. The non-applicant Govindsingh has been convicted under Section 304 (Part I) and also under Sections 323 I. P. C. Sajjansingh has been convicted only under Sections 324 I. P. C. The sentence awarded to Govindsingh, non-applicant No. 1,

under Sections 304(1) was for three and half years R. I., but none of the non-applicants have been sentenced in spite of their convictions under Sections 323 and 324 I. P, C. on the ground that they were in Jail for about ten months and that was considered to be sufficient punishment for the offences committed by them.

3. The only question that has to be determined in this revision petition is whether the Court hag acted illegally in not awarding any sentence after conviction and accepting their detention as under trial prisoners for about ten months as sufficient punishment.

4. First therefore we have to consider is whether a sentence must follow in every case of conviction. The Judicial Commissioner's Court of Nagpur had occasion to consider this. In Sitaram v. Emperor, AIR 1928 Nag 188, Halifax, A. J. C. is of the view that there is no law that says a penalty must always follow a conviction. The maximum penalty for each breach of the law is fixed by it but there is no minimum except in a few special cases. A, Division Bench of the Orissa High Court however dissented from this view of the Nagpur Judicial Commissioner's Court. In The King v. Tustipada, AIR 1951 Orissa 284 their Lordships of the Orissa High Court were of the view that it is imperative that every conviction of an offence shall be followed by the prescribed punishment; while in case no minimum is prescribed, to reduce it to something nominal is completely within the discretion of the Court. In Queen Empress v. Wazir Jai, ILR 10 All 58 Mr. Justice Mahmood has observed:-

'I have to consider the third question, namely, whether the learned Sessions Judge was right in law in declining to pass any sentence in respect of the conviction under Sections 170 of the I. P. C. I am of the opinion that such an omission was illegal. Just as the maxim ubi jus ibi remedium is a rule of jurisprudence, so it is a principle of criminal law that where there is an offence there must be a punishment, the general rule being in either case affected by exceptional previsions of the law, whether provided by the -Statute or by some other legal authority, disturbing the uniformity of the application of general maxims. No such provision or authority is to be found in our criminal law, whether belonging to the domain of substantive law or of adjective law.'

In Emperor v. Mi Hlwa, AIR 1934 Rang 338 a Division Bench of that High Court has also followed the Allahabad view and held that a sentence, even though it may be nominal, should be passed on conviction on each of the offences charged.

5. A reading of these decisions namely of Orissa, AIR 1951 Orissa 284, Rangoon, AIR 1934 Rang 338 and Allahabad, ILR 10 All 58, would show that their Lordships were considering whether it was necessary to give a separate sentence for each separate conviction. According to them, it may be a nominal sentence, but it should be passed for each conviction. In Allahabad case the point that was considered was that there was a conviction under Sections 170 and 383 of the I. P. Code, but the Sessions Judge declined to pass any sentence in respect of Sections 170 because according to him "it was unnecessary to record any sentence in respect of the conviction under Sections 170 I. P. C'. Similarly in Rangoon case the accused was found guilty under Sections 37 and 30(d) of the Excise Act but though the Magistrate convicted him he did not pass any sentence for the offence under Sections 37.

6. In the instant case however the problem is not whether a separate sentence should have been given. The question to be decided is whether in view of the long detention during the trial the Court was justified in saying that such a detention was sufficient punishment for the offence committed by them. In other words whether the period during which prisoners were detained could be considered to be a punishment as contemplated under the Penal Code. The Nagpur case does not decide this point either. It merely says that a sentence need not be given looking to the nature of the case. In that case the Nagpur Court held that the sentence could be altered to one of nothing at all.

7. We have therefore to see what is penalty after all. It does not make any difference to the status of a man who has been convicted for an offence if he is sentenced to a period of one day or one year. For the purpose of his status he is a previous convict. Similarly it has been held by all the High Courts that a previous detention is very relevant consideration for the sentence to be awarded. This, in other words means detention in jail is also a sort of punishment. Carrying the logic further, it can be said that if detention as under trial can be regarded as some

punishment then the Court which wants to give a very nominal punishment can say that the period of long detention can be considered to be a sufficient punishment. But unfortunately the criminal law does not provide such a retrospective punishment and the rules governing under trials are different from the rules governing convicts.

8. Chapter III of the I. P. Code deals with punishments. In Section 53 imprisonment mentioned is of two kinds, rigorous or simple. An undertrial does not fit in any of this category. In case of conviction the magistrate has to pass sentence 'according to law'. Sentences according to law are given in Chapter III. Unless the Magistrate takes recourse to Sections 562 Criminal Procedure Code or other analogous provision, he must punish 'according to law'. Only maximum has been prescribed. Hecan give the minimum, but he must give it. As period of detention can never be taken as punishment, it is illegal to refuse to give a punishment,however nominal it may be.

9. I therefore remand the case to the trialCourt (corrected as per order dated 12-11-60) concerned for giving any punishment according to lawas he deems fit under the circumstances of thecase.