

Santosh Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Mar-20-2003

Reported in : 2003(3)MPHT98

Judge : Bhawani Singh, C.J. and ;S.L. Jain, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 353, 354 and 374;
Indian Penal Code (IPC) - Sections 34, 201 and 302

Appeal No. : Criminal Appeal No. 938/2002

Appellant : Santosh

Respondent : State of M.P.

Advocate for Def. : G.S. Ahluwalia and ;S.K. Gangrade, Govt. Adv.

Advocate for Pet/Ap. : S.C. Datt, Sr. Adv.

Disposition : Criminal appeal dismissed

Judgement :

ORDER

Bhawani Singh, C.J.

1. This appeal is directed against the judgment of the Third Additional Sessions Judge, Hoshangabad, in S.T. No. 112/97, dated May 30, 2002, whereby Santosh

(accused) has been convicted for offence under Sections 302/34 and 201, IPC, though acquitted for offence under Section 377, IPC.

2. It is not necessary to make mention of the facts of the case, since the question for consideration in this appeal is whether the appeal is competent at this stage. By the impugned judgment, the accused has been convicted for the aforesaid offences. The conviction is not followed by imposition of sentence or any other consequential order, the Trial Court having come to the conclusion that the accused is a juvenile under the Juvenile Justice (Care and Protection of Children) Act, 2000 (for brevity 'Act of 2000'), therefore, instead of passing any sentence, forwarded him to the Board constituted under Section 4 of Chapter II of the Act of 2000. Against this judgment, the accused filed this appeal.

3. During pendency of this appeal, the complainant filed Criminal Revision No. 655/2002 challenging the finding of the Trial Court that the accused is a juvenile. By order dated 12-8-2002, the revision has been allowed, the Trial Court has been directed to decide the question whether the accused is a juvenile, in accordance with law, after hearing the parties and recording evidence. This order seems to have become final, since it has not been challenged before the Apex Court. Therefore, solitary question which falls for consideration is whether this appeal is competent. Chapter XVIII Code of Criminal Procedure, 1973, comprising 225 to 237, deals with trial before a Court of Session, while Chapter XIX comprising Sections 238 to 250, deals with trial of warrant-cases by Magistrates. This case is of trial before the Court of Session in the context of the offence with which the accused has been charged. Section 235 reads as under :--

'Section 235. Judgment of acquittal or conviction.--(1) After hearing arguments and points of law (if any), the Judge shall give a judgment in the case.

(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of Section 360, hear the accused on the question of sentence, and then pass sentence on him according to law.'

Chapter XXVII deals with 'Judgment'. Section 353 reads as under :--

'Section 353. Judgment.---(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,--

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

(2) Where the judgment is delivered under Clause (a) of Sub-section (1), the presiding officer shall cause it to be taken down in short-hand, sign the transcript and every page thereof as soon as it is made ready, and write on it the date of the delivery of the judgment in Open Court.

(3) Where the judgment or the operative part thereof is read out under Clause (b) or Clause (c) of Sub-section (1), as the case may be, it shall be dated and signed by the presiding officer in the Open Court, and if it is not written with his own hand, every page of the judgment shall be signed by him.

(4) Where the judgment is pronounced in the manner specified in Clause (c) of Sub-section (1), the whole judgment or a copy thereof shall be immediately made available for the perusal of the parties or their pleaders free of cost.

(5) If the accused is in custody, he shall be brought up to hear the judgment pronounced.

(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted :

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in disposal of the case,

pronounce the judgment notwithstanding their absence.

(7) No judgment delivered by any Criminal, Court Shall be deemed to be invalid by reason only of the absence of any party or his pleader on the day or from the place notified for the delivery thereof, or of any omission to serve, or defect in serving, on the parties or their pleaders, or any of them, the notice of such day and place.

(8) Nothing in this section shall be construed to limit in any way the extent of the provisions of Section 465.' Further, it is profitable to quote Section 354 :

'Section 354. Language and contents of judgment.--(1) Except as otherwise expressly provided by this Code, every judgment referred to in Section 353,--

(a) shall be written in the language of the Court;

(b) shall contain the point or points for determination, the decision thereon and the reasons for the decision;

(c) shall specify the offence (if any) of which, and the section of the Indian Penal Code (45 of 1860) or other law under which, the accused is convicted and the punishment to which he is sentenced;

(d) if it be a judgment of acquittal, shall state the offence of which the accused is acquitted and direct that he be set at liberty.

(2) When the conviction is under the Indian Penal Code (45 of 1860) and it is doubtful under which of two sections, or under which of two parts of the same section, of that Code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.

(4) When the conviction is for an offence punishable with imprisonment for a term of one year or more, but the Court imposes a sentence of imprisonment for a term

of less than three months, it shall record its reasons for awarding such sentence, unless the sentence is one of imprisonment till the rising of the Court or unless the case was tried summarily under the provisions of this Court.

(5) When any person is sentenced to death, the sentence shall direct that he be hanged by the neck till he is dead.

(6) Every order under Section 117 or Sub-section (2) of Section 138 and every final order made under Section 125, Section 145 or Section 147 shall contain the point or points for determination, the decision thereon and the reasons for the decision.' Conjoint reading of both the sections in substance mean that the judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in Open Court by the presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders. While doing so, either the whole judgment is delivered or read or operative part thereof may be read out and substance of the judgment explained in the language understandable by the accused or his pleader. The whole judgment is to be made available to the accused in case of conviction with a view to enable him to challenge the same. Under Section 354, judgment includes punishment. The trial is concluded by the pronouncement of the judgment and not by mere recording of conviction, judgment being part of the trial. With this background, Section 374 of Chapter XXIX is to be understood. This view finds support from the Apex Court decision in Ram Narang v. Ramesh Narang and Ors. [(1995) 2 SCC 513]. In Paragraph 15, Ahmadi, learned Chief Justice said :-- '15..... An order of condition by itself is not capable of execution under the Code. It is the order of sentence or an order awarding compensation or imposing fine or release on probation which are capable of execution and which, if not suspended, would be required to be executed by the authorities. Since the order of conviction does not on the mere filing of an appeal disappear it is difficult to accept the submission that Section 267 of the Companies Act must be read to apply only to a 'final order of conviction'. Such an interpretation may defeat the very object and purpose for which it came to be enacted.....'

Another decision with similar view is reported in *Nanda Chhittar v. State of Rajasthan* (1982 RLR 223). It is held that expression 'conviction' or 'convicted' in Section 374 Code of Criminal Procedure, means a finding of guilt of a person of an offence and some consequential order. Hence, the accused cannot get right of appeal against the conviction merely on finding of guilt and before any consequential sentence is passed. Consequently, we hold that this appeal is not maintainable, therefore, dismissed.

4. Shri S.C. Datt, learned Senior Counsel, submits that the accused was on bail during trial. However, he has been taken into custody after recording of conviction by the Trial Court. In case, the Trial Court judgment is taken to be correct, the accused is to be dealt with by the Board under the Act of 2000. Admitted position is that no Board has been constituted by the State Government, though process for constitution thereof has been set in motion. But the fact remains that the Board has not been constituted. On the other hand, the Trial Court has to record evidence with regard to the age of the accused for determination of question whether he is juvenile, pursuant to the decision in Criminal Revision No. 655/2002. This would necessarily take time and accused deserves to be released on bail.

5. Shri S.K. Gangrade, learned Public Prosecutor, submits that the accused has been found guilty of serious offence, therefore, he does not deserve to be released on bail. Shri S.C. Datt, learned Senior Counsel, submits that in case the accused is to be dealt with by the Board after finding that he is a juvenile, he cannot be sentenced to imprisonment by the Board under the Act of 2000, in view of Section 15 thereof. Giving serious consideration to the matter, we are of the considered opinion that the accused deserves to be released on bail during pendency of the matter before the Trial Court. Till otherwise held, the Trial Court has given a finding that the accused is a juvenile. It is found on the basis of arrest memo (Ex. P-7) that the accused was 17 years old on 8-3-1997. Even otherwise, there is no likelihood of his absconding, associating with known criminals and expose him to immoral activities or repeat offence and defeat the ends of justice; keeping him in custody may be against the policy of juvenile justice and make hardened criminal. Accordingly, we direct his release on bail subject to following conditions :--

(i) He shall furnish personal bond in the sum of Rs. 5,000/- with one surety in the like amount to the satisfaction of the Trial Court, undertaking to appear before it regularly and punctually during trial, not to commit any other offence, maintain peace and good behaviour, not to associate with any criminals and not to leave the jurisdiction of that Court without permission. Ordered accordingly.

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