

Abdul Hameed Vs. State

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Court : Delhi

Decided On : Apr-06-1990

Reported in : II(1990)ACC92; 1991ACJ920; 1992(1)Crimes83; 41(1990)DLT306; 1990(18)DRJ327

Judge : P.K. Bahri, J.

Acts : [Indian Penal code, 1860](#) - Sections 279; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 360; [Probation of Offenders Act, 1958](#) - Sections 4

Appeal No. : Criminal Revision Appeal No. 41 of 1990

Appellant : Abdul Hameed

Respondent : State

Advocate for Pet/Ap. : B.K. Sharma and; B.T. Singh, Advs

Judgement :

P.K. Babri, J.

(1) This Criminal Revision has been admitted, only on the point of sentence. I have heard arguments for disposing of this petition finally on this point.

(2) Vide Judgment dated January 25, 1986, Metropolitan Magistrate, Shahdara convicted the petitioner for offences punishable under Sections 279, 338 and 304-

A of Indian Penal Code and vide order dated January 27, 1986 he has sentenced the petitioner to undergo rigorous imprisonment for two years under Section 304A, Indian Penal Code and six months rigorous imprisonment under Section 338 I.P.C. and two months rigorous imprisonment under Section 279 Indian Penal Code with the direction that all sentences shall run concurrently.

(3) In appeal, the learned Additional Sessions Judge had, while maintaining the conviction of the petitioner for the said offence reduced the sentence to one year rigorous imprisonment under Section 304-A, I, while maintaining the sentences under the other Sections. There was no need to impose any separate sentence for minor sentence under Section 279 because the offences under Sections 304-A and 338, Indian Penal Code are similar offences in aggravated forms and thus I set aside the sentence imposed under Section 279 Indian Penal Code .

(4) The learned counsel for the petitioner has however contended that as the trial in this case has protracted for about nine years before the learned Magistrate and the petitioner is the first offender, thus in view of the provisions of Section 360 of Criminal Procedure Code and Section 4 of Probation Offenders Act, the petitioner should have been released on probation instead of directing to undergo any imprisonment. I had called the report of the Probation Officer which is in favor of the petitioner. However, the question still remains to be decided whether it is a fit case for grant of probationary benefits to this petitioner. At the time the statement of the petitioner was recorded under Section 313 of Criminal Procedure Code, the petitioner had given his age as 30 years. So. he was admittedly aged more than 21 years at the time of the alleged incident.

(5) The findings of fact arrived at by the two Courts below are that on August 24, 1987 at about 8-30 A.M. Public Witness 4 Ram Perhaps was going to Delhi from Bhajanpura Along with Ram Bharose on their cycles that some buffaloes were crossing the road when a bus bearing No. U-6148 driven by the petitioner came from the side of Delhi when it struck one of the buffaloes and then swerved on the right side of the road striking the said cyclist and PW-4 fell down on the road and sustained injuries and thereafter the bus had struck Ram Bharose who along with the cycle was crushed by the bus and died at the spot. The petitioner had run

away from the spot after causing such a fatal injury to one of the persons and grievous injuries to another person and also injuries to one of the buffaloes. The defense version of the petitioner that he had swerved towards the right side in order to save the buffaloes and had thus caused accident was not believed by the two Courts below. Keeping in view this callous behavior of the petitioner running away from the spot after causing such a grave accident, the question arises whether such petitioner deserves probationary benefits or not.

(6) Counsel for the petitioner has referred to certain judgments of support of his contention that petitioner should be released on probation. He has cited *AithaChander Rao v .State of Andhra Pradesh*, 9181(Snpp) Supreme Court Cases 17. In the said case on facts it was found that there was some contributed negligence on the part of the appellant meaning thereby that even the deceased was not beyond fault and thus the Supreme Court thought it fit to maintain the order of Sessions Judge granting probation to such a person. On facts the case is distinguishable. Here the petitioner has caused the death of one person and grievous injuries to another person after killing a buffalo with his bus which shows that the petitioner was driving the vehicle in a very rash manner and was also callous to the victims when he just ran away from the spot Counsel for the petitioner has made then reference to *Wazir Singh v. The State of Punjab* 1982 (2) C.L.R. 437 in this case benefits of provisions of Section 360 and 361 were given to the petitioner who was convicted of offences punishable under Sections 420, 465, 468 and 471 of Indian Penal Code. Facts of the case are totally distinguishable. It is true that Court has to give reasons for not affording benefit of provisions of Section 360 read with Section 361 of the Code In the present case the reasons are writ large from the facts narrated above for denying the probationary benefits to this petitioner.

(7) Next reference is made to *Bishamber Dass v. The State*; 1987 (2) Cri 806 where in a Single Bench of the Punjab & Haryana High Court has given probationary benefits to the petitioner convicted of similar type of offences. The facts were that accident took place while petitioner was turning his bus and rear wheel of the bus struck the cycle being driven by the deceased. There it was noted that the trial has protracted and accused was Government servant and was only

bread earner in his family, the probationary benefits were given. On facts, this case is also distinguishable.

(8) Counsel for the petitioner also cited Muthuswamy v. State 1989 (1) Cri 75 where a Single Judge of Madras High Court had reduced the sentence to the period already undergone and a fine of Rs 2.000.00 keeping in view that the occurrence took place about 5 years prior to the giving of this judgment. One of the facts noticed in the said case was that there was another vehicle coming from the opposite side the lights of which had dazzled the accused and thus the Court found it fit to reduce the sentence. It depends on the facts of each case in order to see as to what sentence would be appropriate in a particular case.

(9) Learned counsel for the petitioner also cited Ghonshyam Das v. Municipal Corporation 1975 Ra LR (S.C.) 278 where benefit of Section 4 of the Probation of Offenders Act has been extended to a person guilty of an offence under the Food Adulteration Act. This judgment is not applicable to the facts of the present case. Rather in the said case the benefit was given by the Additional Sessions Judge which was set aside by the High Court and Supreme Court restored the order of the Sessions Judge.

(10) I had an occasion to deal with the same point in Criminal Revision No. 171 of 1989 Ram Sarup v State decided on 5th December 1989 and had held that facts of the case have to be seen in order to decide whether the probationary benefits should be given or not. In the said case the petitioner was not given probationary benefits in view of his callous and indifferent behavior after he had caused the accident. However, the sentence was reduced to six months imprisonment in that case. In the present case the petitioner has caused death of one person and has caused grievous injuries to another person and also has killed one animal and thus it cannot be said that petitioner is entitled to have any benefits of provisions of Section 360 read with Section 361 of the Code or Section 4 of the Probation of Offenders Act. The sentences awarded to him under Sections 304A and Section 338 Indian Penal Code, are not in any manner severe.

(11) Hence, I dismiss this criminal revision with the modification in the sentence as indicated above.

