Balan Vs. State

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Court : Kerala

Decided On : Jul-31-1981

Reported in : 1981CriLJ1549

Judge : Kumari P. Janaki Amma, J.

Appellant : Balan

Respondent : State

Judgement :
ORDER

Kumari P. Janaki Amma, J.

1. This revision case was taken up suo motu by this Court as it was found that an irregularity has been committed by the appellate Court in disposing of the appeal.

2. The accused in C. C. No. 353 of 1978 on the file of the Judicial Magis-strate. First Class, Hosdrug, was charge-sheeted for an offence punishable under Section 392 of the Penal Code. The case against him was that at 6.30 p. m. on 6-7-1978 while P. W. 1, Maniamma, was going along the varamba of a paddy field after her day's work, the accused took out a knife from his waist, put her in fright and snatched away a gold chain worn by her. The chain weighed 3/4 sovereign and was valued at Rs. 396/-. The accused after taking away the gold chain went to his house. The incident was watched by P. W. 2 a neighbour. P. W. 1 felt some pain

on her neck and she went to the Government Hospital at Kasaragod. On getting intimation from the hospital P. W. 5, Head Constable, attached t0 the Kasaragod Police Station, recorded her statement and regis- tered a crime. The case was subsequent-ly transferred to Bekal Police Station, within whose jurisdiction the incident took place, The accused was in due course charge-sheeted and tried for the offence under Section 392 of the Penal Code, He was convicted under Section 379 of the Penal Code and sentenced to rigorous imprisonment for six months. The judgment was pronounced on 17th May, 1980.

3. The accused filed an appeal against the above decision from the jail and it was received in the Sessions Court on 17-6-1980. The appeal was posted to 11-7-1980 for production of the accused. As the accused was not produced on that date it was adjourned to 23-7-1980. In the meanwhile, on 16-7-1980 the Superintendent, Central Jail, Cannanore sent a letter to the Sessions Judge that the accused had been released from prison on 1-7-1980 on the expiry of his sentence. The learned Additional Sessions Judge, holding that the appeal had become in-fructuous, dismissed the same. The learned Judge of this Court who perused the calendar felt that the disposal was irregular. Notice was thereupon sent to the accused, and, the Public Prosecutor. The accused did not appear.

4. Chapter XXIX of the Criminal P. C. deals with appeals Section 382 deals with the form of appeal. Section 383 deals with the mode of presentation of an appeal when the appellant is in jail. Under Section 384 if the appellate Court, on examining the petition of appeal and the copy of the judgment received, considers that there if no sufficient ground for interfering may dismiss the appeal summarily. No appeal filed under Section 382 is to be dismissed unless the appellant or his pleader has had reasonable opportunity of being heard in support of the same. No appeal presented under Section 383 is to be dismissed except after givtag the appellant a reasonable opportunity of being heard in support of the same, unless the appellate Court considers that the appeal is frivolous or that the production of the accused in custody would involve such inconvenience as would be disproportionate in the circumstances of the case. Section 384(3) directs that the Court of Sessions or the Chief Judicial Magistrate should record its reasons even in the case of a summary dismissal. If the appeal is not dismissed summarily it

should be disposed of on merits as provided in Section 385. Section 394 deals with, abatement of appeals, on the death of the accused or the appellant. Section 393 states that judgments and orders passed by an appellate Court are final' except in the cases specifically mentioned therein.

5. The Criminal P. C. unlike its counterpart on the civil side, does not contain any provision for dismissal of an appeal for default. Neither is there any provision for dismissal on the ground that the appeal has become in-fructuous. From the scheme of the Code and in view of the finality attached to the appellate judgment it appears that once the Court decides not to dismiss an appeal summarily, it should dispose it of giving reasons for its conclusion except where it abates due to death of the appellant (See Zahur Ahmed v. Emperor AIR 1948 Sind 23 : 48 Cri LJ 981. A Full Bench of the Lahore High Court held in Emperor v. Gulam Mohammed AIR 1942-1 Lah 296 : 44 Cri LJ 14, that once aw appeal is lodged and admitted neither the accused nor the Crown can withdraw it and the Court is bound to decide it on merits. Judicial decisions-have been uniform that the Court is not competent to dismiss an appeal1 for default (See Bansi Mirdha v. Bro-jeswar Dutta (1923) ILR 50 Cal 972 : 25-Cri LJ 1150, Kunhammad Haji, In re: (1923) ILR 46 Mad 382 : 24 Cri LJ 439; Emperor v. Nga Nyun 1936) 37 Cri LJ 94 (Rang), and, Emperor v. Balu-mal Hotchand (1938) 39 Cri LJ 890-(Sind).

6. In the instant case the appellant though sentenced to imprisonment for six months happened to be released within one and a half months of the judgment. This was because he became entitled to adjustment of the period of detention undergone during the investigation. The question is whether in spite of the release the Court is bound to hear the appeal on the1 merits, In the absence of specific provision otherwise it appears from the trend, of judicial pronouncements that the court is expected to dispose of the appeal only by a iudgment on the merits. It is to be bome in mind that even-after the sentence is suffered the ac- cused is entitled to see if the stigma attached to a conviction could be wiped out by a disposal of the appeal on the merits.

7. In the circumstances of the present case I do not think that a remand of the case is necessary. On an appraisal of the evidence I consider that the conviction

and sentence passed in the case should stand. PW-1. the de facto complainant has deposed to the facts of the case. Her evidence is corroborated by PW-2, who is a neighbour. It would appear that the accused was arrested on 9-7-1978 and at the time of the arrest he was in possession of M. O. 1 gold chain. P. Ws. 3 and 4 were present when M. O. 1 was recovered from him. The gold chain has been identified by P. W. 1 and P. W. 2. It is not made out that M. O. 1 gold chain belonged to the accused or to any member of his family. Therefore, the case put forward by P. W. 1 that M. O. 1 was the gold chain which was snatched from her has to be accepted. This means that the conviction of the accused has only to be upheld. The dismissal of the appeal does not call for interference.

The Criminal Revision Case is disposed of as above.