

Sanku Balan Vs. State

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Court : Kerala

Decided On : Sep-21-1972

Reported in : 1973CriLJ844

Judge : V. Khalid, J.

Appellant : Sanku Balan

Respondent : State

Judgement :

ORDER

V. Khalid, J.

1. The accused in C.C. Number 173 of 1971 on the file of the Additional First Class Magistrate's Court, Kottarakkara, and the appellant in Criminal Appeal No. 104 of 1971 before the Sessions Court, Quailing, is the revision petitioner. He was charged by the Sub-Inspector of Police, Kadakkal, for offences under Sections 279 and 304(A) of the Indian Penal Code for having caused the death of a child while driving his car MSX. 9049 on 15.6.1971. He was sentenced to rigorous imprisonment for six months by the trial Court and his driving licence was suspended for a period of three months among other minor sentences imposed. The conviction and sentence were confirmed in appeal.

2. The main attack against the finding of the trial Court is that there has not been a proper appreciation of the evidence in the case and that the learned Magistrate was to a large extent swayed by the consideration that the accused was seen on the wrong side of the road at the time of the incident. The learned Counsel for the petitioner contended before me that the mere fact that the car was driven on the wrong side in broad day light when there were no other vehicles on the road can never be taken as proof of negligence on the part of the driver. I am in agreement with him to this extent. However, it cannot be said that the evidence in this case has been disregarded by the trial Court. The only Point urged by the appellant before the Sessions Court appears to be whether the person who was driving the vehicle in question at the time of the incident was the accused himself or not. Therefore, the learned Sessions Judge did not consider the other evidence in the case to find out whether the offences were made out or not. He confined himself to the question of identification only and came to the conclusion that it was the petitioner himself who was driving the vehicle and therefore the conviction and sentence were confirmed.

3. This is a defective approach in criminal cases. Unlike in a civil case, a criminal Court has to arrive at its conclusion on the evidence irrespective of any concession by the counsel. Even though the counsel took the risk in arsines the case only on the point of identification of the accused, the appellate Court has to consider the evidence in toto and come to an independent conclusion.

4. In the decision reported in Kutub Ali v. State AIR 1968 Assam and Naga 14 : 1968 Cri LJ 895 (2) where the only point urged by the counsel for the appellant was that the sentence was severe, it is observed:

It is the duty of the Sessions Judge hearins and dealing with the appeal to study the evidence for himself, t0 examine it judicially. to welsh it properly afresh for himself, and if on such examination and on such scrutiny the Sessions Judge finds that the evidence is credible and that the Magistrate was right in accepting the evidence as reliable and in holding that the guilt of the accused had been established beyond reasonable doubt, he should find accordingly and uphold the conviction. In a criminal appeal, unlike in a civil appeal, it is the duty of the

Appellate Court to satisfy for itself, whether the matter was argued or not, that the evidence for the prosecution established the guilt of the accused person. The Sessions Judge is not absolved from performing that duty by reason of merely a concession made by the counsel of the appellant accused as in criminal matters a party cannot be bound down to the mere concessions made by the counsel.

I am in respectful agreement with the principle enunciated in this judgment. Even though a counsel presses only one point, a criminal court cannot abdicate its functions and convict the accused without a proper consideration of the materials before it.

5. It is contended before me that in spite of the fact that only the question of identification was argued before the Appellate Court, it was necessary for that Court to have come to an independent conclusion whether there was culpable negligence on the part of the driver and whether the incident took place on account of the negligence of the accused. It is also contended that in the absence of a finding about negligence on the evidence available, the appellate Court cannot confirm the conviction and sentence. This argument comes with little grace at this stage. I must observe that this is putting the appellate Court in an inconvenient position. Still, Courts have to be alive to their duties.

6. In *In re Nigappa* AIR 1960 Mys 294 : 1960 Cri LJ 1472 the Mysore High Court observed:

In an appeal from a conviction, the appellate Court has, while assessing the guilt or otherwise of the appellants before it not only the power but also the duty of examining the correctness of all findings of the trial Court and if necessary, reversing the same on a re-appreciation of the evidence.

In *R.G. Jadav v. State of Bombay* : 1960 CriLJ1156 the Supreme Court has laid down thus:

While an appellate Court has power to dismiss an appeal summarily, if it considers that there is no sufficient ground for interfering it has no power to direct that the appeal shall be heard only on the point of sentence. Such an order is not an order

of summary dismissal under Section 421 and neither is it an order in terms of Section 422 of the Code. The Appellate Court, after hearing the appeal, certainly has the power under Section 433, in finally disposing of the appeal, to reduce the sentence but that does not entitle it to direct that an appeal is admitted only on the question of sentence. Such an order if passed is invalid and the appellant is entitled to insist that the appeal should be heard on merits.

On the basis of the principles laid down in the decisions referred to above. I think the learned Sessions Judge should have considered the case on its merits and the evidence in the case in its entirety.

7. In the result, the conviction and sentence passed against the accused are set aside and the appeal is remanded back to the Sessions Court, Quilon for re-hearing in the light of the observations made above and for a decision on all points involved in the case. The criminal revision petition is disposed of as above.

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