

Nasru Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-11-1988

Reported in : 1989CriLJ326; 1988(2)WLN60

Judge : S.N. Bhargava and; G.K. Sharma, JJ.

Appellant : Nasru

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Dhankhad, Mr. Dhankhar

Judgement :

S.N. Bhargava, J.

1. This revision petition has been filed challenging the conviction and sentences passed by the Additional Sessions Judge No. 1, Alwar, Under Section 304A, I.P.C.

2. This revision petition came up for admission. Learned single Judge (Mrs. Kapur, J.) was of the opinion that it does not call for any interference in revision with regard to the merits of the case but she admitted the revision petition on the ground of sentence in view of a decision of this Court in Amar Lal v. State of Raj. (S.B. Criminal Revn. Petn. No. 65/83, decided on 6-5-87 : (reported in 1988 Cri LJ 1). When this revision petition came up for final disposal before Hon'ble V. S. Dave, J. after hearing the arguments at length, he passed detailed order dated 27-

7-87 referring the following question for consideration by the larger bench,

Whether the decision in the aforesaid case lays down a general proposition that in all automobile accident cases there should not be a lesser punishment than one year's imprisonment and a fine of Rs. 15,000/-?

Therefore, this matter has come up before us. Since this is a very important question, we thought it proper to issue notice to the learned Counsel, inviting them if they wanted to submit arguments on the above question.

3. We have heard S/Shri Jagdeep Dhankhar and R. M. Lodha, for the petitioner, Mr. H. C. Rastogi for the complainant. In our humble opinion, there was no necessity of making any reference to larger bench as a judgment in a particular case by High Court cannot lay down a general proposition to apply in all similar cases. Generally, a judgment in a criminal case is a judgment in personam and not judgment in rem nor it can lay down any general law. However, since detailed submissions have been made, we shall like to mention them as under:

4. Criminal Revn. Petn. No. 65/83 Amar Lal v. State was a revision petition against the judgment passed by Additional Sessions Judge, confirming the sentence passed by the trial court, convicting the accused Amar Lal, Under Section 304A IPC and sentencing him to one year R. I. and a fine of Rs. 500/-, and in default, further 2 months' Section 1. While disposing of this revision petition, Hon'ble G. M. Lodha, as he then was, passed the order dismissing the revision petition and made very strong observations that there should be a minimum sentence of one year RI and a fine of Rs. 15,000/- for offences Under Section 304A IPC which has raised the present controversy.

5. Section 304A IPC reads as under:

Causing death by negligence.- Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6. Mr. Dhankhad, learned Counsel for the petitioner, submitted that in view of Section 360 Cr. P.C. and the provisions of Probation of Offenders Act, since the maximum punishment is of two years, benefit of probation should be given to an offender who is found guilty Under Section 304A IPC and if the court does not give the benefit of probation, it has to record special reasons for not having done so, and in this connection, he has drawn our attention to the observations of the Supreme Court in Bishnu Deo Shaw v. State of West Bengal : 1979 CriLJ841 wherein it has been observed that if the Court refrains from dealing with an offender Under Section 360 Cr. P.C. or under the provisions of the Probation of Offenders Act, Section 361 Cr. P.C. which is a new provision in the 1973 Code, makes it obligatory for the court to record in its judgment special reasons for not doing so. Section 361 Cr. P.C. casts a duty upon the Court to apply the provisions of Section 360 Cr. P.C. wherever it is possible to do so and to state the special reasons if it does not do so.

7. Our attention has also been drawn to Aitha Chander Rao v. State of Andhra Pradesh 1981 SCC (Suppl) 17 in which the accused was convicted Under Section 304A, IPC and sentenced to two years, R.I. and a fine of Rs. 500/-, by the Sessions Judge, and affirmed by the High Court but the Supreme Court released the offender on probation looking to the facts and circumstances of the case having been mentioned in that judgment.

8. Reliance was also placed on Jagdish Chander v. State of Delhi : [1974]1SCR204 in which the incident had taken place in the year 1965. Accused was convicted Under Section 304A, IPC and sentenced to six months' R.I. and a fine of Rs. 500/- which was confirmed on appeal, by the Sessions Judge and revision was rejected by the High Court. On special leave petition having been filed, the Supreme Court confirmed the conviction but sentenced the accused to the term of imprisonment already undergone and increased the fine from Rs. 500/- to Rs. 700/-, for the reason that the accident had taken place eight years ago, and that for collision between the truck and the auto-scooter rickshaw, both were to be blamed.

9. Mr. Dhankhad, learned Counsel for the petitioner also drew our attention to Sections 235(2) and 248(2), Cr. P.C. which run as under:

235. Judgment of acquittal or conviction-

(1)....

(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.

248. Acquittal or conviction- (1)...

(2) Where, in any case under this Chapter, the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of Section 325 or Section 360, he shall, after hearing the accused on the question of sentence, pass sentence upon him according to law.

(3)...

10. These two sub-sections also envisage that the Judge should consider whether benefit of Section 360, Cr. P.C. is to be given to the accused on the facts of the case, and if not then, he should hear the accused before passing sentence against him. These two sub-sections were added by the amendments made in 1973, In this connection, learned Counsel for the petitioner has placed reliance on *Muniappan v. State of Tamil Nadu* : 1981 CriLJ726 wherein, while commenting on Section 235(2), Cr. P.C. it has been observed that the occasion to apply the provisions of Section 235(2), Cr. P.C. arises only after the conviction is recorded. What then remains is the question of sentence; the court while on the question of sentence, is in an altogether different domain in which facts and factors which operate, are of an entirely different order than those which come into play on the question of conviction. A Judge must make a genuine effort to elicit from the accused all information which will eventually bear on the question of sentence. The court should approach the question of sentence from broad sociological point of view.

11. Our attention has also been drawn to the following observations of the Supreme Court in *Dilbag Singh v. State of Punjab* : 1979 CriLJ636 :

But penal humanitarianism, strategies or non-institutional rehabilitation and a complex of other considerations in making an offender a non-offender have revolutionised the judicial repertory in resocialising the criminal. The sentence hearing for which the Criminal Procedure Code, 1973 provides in Section 248(2) and Section 235(2) has hardly received the serious concern of the courts despite the International Probation Year and the reuapeutic accent in penological literature. If the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella's illegitimate baby'. Pre-sentence investigation reports, bestowal of intelligent care on the choice between institutional and non-institutional disposition and habitual neglect of new avenues open to the court have constrained us to grant leave in the case so that guidelines may be laid down and probation and community-oriented methods lying in the legal limbs may be reactivated. Our prisons are over-crowded, our prisoners are subjected to iatrogenic incarceration, our penal drills are self-defeatingly callous to correctional measures and our jail budes bulge without countervailing community benefits because the Bench and the Bar have dismissed as below judicial visibility such patterns as probation, conditional release. The time has come for courts to abandon the Monroe Doctrine towards penology and concern itself with innovative sentences.

12. Our attention has also been drawn to the following observations of the Supreme Court in *Ved Prakash v. State of Haryana* : [1981]1SCR1279 :

Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The trial court...it is the duty of the sentencing court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant.

13. Their Lordships while dealing with the provisions of Section 360, Cr. P.C. observed that the courts should keep in mind the social background and the personal factors of the crime-doer and should pay attention to the social milieu of the personal circumstances of the offender.

14. Attention has also been drawn to Nand Ballabh Pant v. State (Union Territory of Delhi) : AIR 1977 SC892 , wherein the Supreme Court maintained the conviction Under Section 304A, IPC and reduced the sentence of imprisonment to 1 month and enhanced fine to Rs. 1000/-, keeping in mind the special facts and circumstances of that case.

15. This Court also in Bhagirath Singh v. State of Rajasthan 1984 WLN (UC) 316 while maintaining the conviction Under Section 304A, IPC, reduced the sentence of six months' RI to the sentence already undergone which was only 13 days but enhanced the amount of fine from Rs. 300/- to Rs. 700/- keeping in mind the fact that the petitioner in that case faced criminal proceedings for about 14 years, during which he must have suffered a great mental agony and harassment and must have incurred huge expenses in defending the case.

16. Mr. Dhankhar, learned Counsel for the petitioner, brought to our notice the observations of Beaumont, C.J. in Emperor v. Khanmahomed Shermahomed AIR 1937 Bom 96 : 1937-38 Cri LJ 60 where their Lordships have observed that the mere fact that a human life is lost due to negligent driving of a motor car does not justify the Court in passing a deterrent sentence, if the loss of life could not have been reasonably anticipated by the accused. In considering the question of enhancement of sentence, one has to consider whether the rash and negligent act of the accused shows callousness on his part as regards the risk to which he was exposing other persons. The severity of the sentence must depend to a great extent on the degree of callousness which is present in the conduct of the accused. Driving motor car has become an essential part of human activity and it is impossible to avoid certain number of accidents and circumstance of each case must be considered in imposing sentence.

17. Shri R. M. Lodha, Advocate, has also brought to our notice as a decision of the Supreme Court in Sharwan Singh v. State of Punjab : 1978 CriLJ1598 wherein their Lordships while dealing with Section 357 IPC with reference to compensation, have observed as under:

The object of the section is to provide compensation payable to the persons who are entitled to recover damages from the person sentenced even though fine does

not form part of the sentence.

In awarding compensation it is necessary for the court to decide whether the case is a fit one in which compensation has to be awarded. If it is found that compensation should be paid, then the capacity of the accused to pay a compensation has to be determined. In directing compensation, the object is to collect the fine and pay it to the person who has suffered the loss. The purpose will not be served if the accused is not able to pay the fine or compensation, for, imposing a default, sentence for non-payment of fine would not achieve the object.

It is the duty of the court to take into account the nature of the crime, the injury suffered, the justness of the claim for compensation, the capacity of the accused to pay and other relevant circumstances in fixing the amount of fine or compensation.

18. On the other hand, Mr. H. C. Rastogi, learned Counsel for the complainant has brought to our notice a decision of the Supreme Court in *Baldevji Bhathiji Thakore v. State of Gujarat* : 1979 CriLJ1136 where their Lordships while upholding conviction, did not interfere in the discretion exercised by the High Court refusing to grant the benefit of Probation of Offenders Act. In that case, their Lordships observed that there was a clear finding to show that the appellant had caused the death of the deceased by rash and negligent driving. He had tried to run over the deceased while the deceased was trying to cross the road. The appellant did not make any attempt to save the deceased by swerving to other side when there was sufficient space.

19. Mr. Rastogi also brought to our notice *Ratan Singh v. State of Punjab* : 1980 CriLJ11 where their Lordships refused to interfere with the order sentencing the accused (truck driver) to two years' R.I. Their Lordships observed that 'sentencing must have a policy of correction. This driver if he has to become a good driver, must have a better training in traffic laws and moral responsibility with special reference to the potential injury to human life and limb. Punishment in this area must, therefore, be accompanied by these components. The State should attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving, offences.

20. Mr. Rastogi also brought to our notice still another recent judgment of the Supreme Court in *State of Karnataka v. Krishna alias Raju* (1987) 1 UJ (SC) 354 : 1987 Cri LJ 776 wherein their Lordships enhanced the sentence to six months' R.I. and a fine of Rs. 1,000/- in default, further two months', R.I. in which case the accused had been charged for offences Under Section 279, IPC, 337 IPC, 304A IPC, 89(a) r/w Section 112 of the Motor Vehicles Act and Section 89(b) r/w Section 112 of the Motor Vehicles Act and was convicted by the Magistrate. On appeal, the High Court, though felt that the sentence awarded was a lenient one but it declined to exercise its power Under Section 377, Cr. P.C. On special leave petition by the State, the Supreme Court observed that here was a case where the respondent had not only driven his bus in a reckless manner and caused the death of one person and injuries to another, but he had also attempted to escape prosecution by failing to report the accident to the police authorities. Considerations of undue sympathy in such cases will not only lead to miscarriage of justice but will also undermine the confidence of the public in the efficacy of the criminal judicial system.

21. We have given our thoughtful consideration to the whole matter and have also gone through the various authorities cited before us.

22. It cannot be disputed nor it can be ignored that the road traffic has increased enormously. Number of vehicles on the roads are increasing everyday. Driving of a motor car or other vehicle has become an essential part of human activity and it is impossible to avoid road accidents which are bound to happen. It can also not be disputed that the public, in general, always puts the responsibility of the accident on a heavier vehicle - between a car and a bus, on the bus; between a car and a scooter, on the car; between a scooter and a bicycle, on the scooter, irrespective of the fact that the accident occurred on account of negligence or rashness of a rickshaw or a cycle or a scooter or a car. Merely because an accident has happened and some life has been lost, it cannot be held that deterrent sentence/punishment should be passed and deterrent fine should be imposed. The Court has to exercise judicial discretion while awarding sentence. It will depend on many factors which cannot be enumerated at one place. The Court generally takes into consideration as to whether action of the accused while driving

a vehicle was rash and negligent, or the accident occurred on account of the mistake and rash and negligent act of the deceased/injured; whether he tried his best to avoid the accident and after the accident whether he tried to help the victim; took him to the hospital or whether the accident occurred on account of some mechanical failure. No Court can lay down a general proposition to apply in all cases relating to motor accidents. A judgment in a criminal case depends on the facts of that particular case and it cannot be a judgment in rem but it is always a judgment in personam. The Court cannot ignore the provisions of Sections 235(2), 248(2) and 360, Cr. P.C. Supreme Court in Aitha Chandra Rao (1981 SCC (Suppl) 17) (supra) had released the accused on probation, meaning thereby that if the Court thinks proper, in the facts and circumstances of that case, it can release an offender on probation.

23. Under the new Criminal Procedure Code, 1973, the Court has to hear the accused person on the question of sentence, and at that time, it has also to keep in mind the provisions of Section 360, Cr. P.C. Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. While passing an order of sentence or fine, the Court has to keep in mind the status and capacity of the accused person to pay. The object of imposing a fine and awarding compensation to the injured or the kith and kin of the deceased, is to compensate for the injury suffered in the accident, and if the fine is imposed beyond the capacity to pay, of the accused, he is only to undergo sentence of imprisonment for a longer time in view of non-payment of fine, and that does not help the injured or the kith and kin of the deceased.

24. In our humble opinion, this reference was, in fact, not called for but since it has come up before us, and lengthy arguments have been advanced, we have given our observations as noted above.

25. In the result, we answer the question referred to as, under:

Decision in Amar Lal v. State of Rajasthan (S.B. Criminal Revn. Petn. No. 65/83), decided on 6-5-87 (reported in 1988 Cri LJ 1) does not lay down a general proposition that in all automobile accident cases, there should not be a lesser punishment than one year's imprisonment and a fine of Rs. 15,000/-.

26. Before parting with the case, we shall I like to observe that in view of the fact that number of accidents are increasing every day and traffic is also increasing day by day, the Government should make provisions in the relevant rules that driving licences for certain vehicles should be renewed after every three years, and before renewing the licences, medical check-up, specially of the eyes, should be got done. Before giving the licences, the licensing Authority should physically ascertain that the person desirous of obtaining driving licence is fully acquainted with the traffic rules, and only after taking a strict test about the driving, he should be given driving licence. The Government should also enforce strictly that no person having taken liquor should drive the vehicle. For this purpose, surprise checking should be done on the highways quite often and the offenders should be brought to book. Severe punishment should be awarded to the offenders and their driving licences should be cancelled. It is very surprising that the Government has given licences for liquor shops just on the highways which enable the motor vehicle drivers to get liquor on the highways very conveniently. Therefore, necessary amendment in the Excise Act and the Rules should be made or instructions should be issued that no licence for sale of liquor shall be given within one Kilometer on both sides of the highways.

27. Accidents generally take place because of high speed of the motor vehicle. There should be a regular check-up and special checking on the speed of the plying vehicles, and if it is found that the vehicle is being driven at a faster/excessive/high speed, strict action should be taken. Speed governors should be applied compulsorily for heavy vehicles.

28. Another reason for accidents is the dazzling head-lights of the vehicles by which the driver is not able to see very clearly. Though, there is a provision in the relevant Act and the Rules that the head-light of the vehicles should be blackened up to the extent of 1/3rd but that is not being observed, either by the plying vehicles or by the traffic authorities. This rule should be strictly observed. Another method of over-coming this difficulty is that the manufacturers of head-lights should be instructed/directed to manufacture the head-lights for motor vehicles only after complying with the provisions of the Rules. The other reason that seems is that the driver because of long driving sometimes have nap, therefore, for the vehicles

going on long distances, provision should be made that they should have an alternative driver.

29. We may also mention here that road signs, markings and warnings should be put up more liberally on appropriate places Reflective articles should also be used to improve the visibility of road signs and markings. Use of dipper should be encouraged. Reflectors at the back of the vehicle should be made compulsory on slow moving vehicles, specially camel and bullock cart etc.

30. We may further mention here that to avoid accidents, drivers should be physically fit, mentally alert, temperamentally sound and morally stable. Physical fitness includes eye-sight, hearing, colour blindness and night blindness. A driver may have adequate driving skill and possess good judgment but still he may get involved in accidents, frequently due to mistakes of other road users such as a child running across the road, an auto rickshaw making a sudden U-turn and a bus stopping all of a sudden. The drivers should be imparted training to develop defensive attitude to perceive such mistakes of other road users and thus avoid accidents.

31. A copy of this judgment may be sent to the Home Secretary, Law Secretary and Director General of Police, Rajasthan, Jaipur.