

Poonma Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-02-1998

Reported in : 1998CriLJ4377; 1999(2)WLC632; 1998(1)WLN613

Judge : B.J. Shethna, J.

Acts : Probation of Offenders Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 304A; Code of Criminal Procedure (CrPC) - Sections 233(2), 248(2), 360 and 377

Appeal No. : Criminal Appeal No. 651 of 1981

Appellant : Poonma Ram

Respondent : State of Rajasthan

Advocate for Def. : C.R. Jakhar, PP

Advocate for Pet/Ap. : D.P. Sarawat, Adv.

Disposition : Appeal dismissed

Judgement :

B.J. Shethna, J

1. Learned counsel Shri Sarawat for the appellant accused initially cited two judgments of this Court reported in Nanhe Khan v. State of Rajasthan 1996 (2) RCD 103 (Raj) and Om Prakash v. State of Rajasthan 1996 (2) RCD 170 (Raj)

and submitted that in this case the accused has remained in jail for seven days and the offence under Section 304A IPC is an old one committed on 22-4-81 i.e. almost 17 years from today, therefore, order of sentence already undergone be passed. When it was pointed out to the learned counsel Shri Sarswat about the latest judgment of this Court in case of Narendra Singh v. State of Rajasthan 1997 (3) WLC 319 wherein this Court took the different view of the matter, Mr. Sarswat prayed for time to cite one Division Bench judgment of this Court. Accordingly, time was granted and the matter was kept in the second sitting after recess. Mr. Sarswat pointed out Division Bench judgment of this Court in case of Mangi Lal v. State of Rajasthan 1988 Cr LR (Raj) 495 and submitted that the accused be given benefit of probation or an order of sentence of already undergone be passed.

2. At the outset it may be stated that the judgment of Single Bench of this Court in Nanhe Khan's case (supra) and Om Prakash's case (supra), the earlier judgments of the Supreme Court in case of Ratan Singh v. State of Punjab AIR 1980 SC 84: (1980 Cri LJ 11) and in case of State of Karnataka v. Krishna alias Raju 1987 (1) UJ (SC) 354: (1987 Cri LJ 776) and one more judgment of the Supreme Court in case of Baldevji Bhathiji Thakore v. State of Gujarat AIR 1979 SC 1327 : (1979 Cri LJ 1136) were not brought to the notice of the Court. In Baldevji Bhathiji's case (supra), the driver crushed the deceased, who was trying to cross the road and did not make any attempt to save the life of the deceased by swerving to other side when there was a sufficient space. The accused was convicted by the trial Court and the conviction was upheld by the Gujarat High Court. While upholding the conviction, their Lordships refused to grant the benefit of Probation of Offenders Act and also refused to interfere with the order of sentence passed by the trial Court. In turn, their Lordships of the Supreme Court also refused to interfere with the discretion exercised by the High Court and refused to grant the benefit of probation to the accused.

3. In Ratan Singh's case (supra), the Apex Court came down very heavily and observed that, 'Many dangerous drivers plead in Court, with success, that someone else is at fault. In the present case, such a plea was put forward with a realistic touch but rightly rejected by the Courts below'. In Ratan Singh's case (supra) the trial Court imposed maximum sentence of two years' R. I. It was

argued before the Apex Court that so many years have passed after the commission of the offence, therefore, the sentence be reduced. Their lordships rejected that contention by observing 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 Apex Court made several other observations and recommendations to the State which was in fact adopted by the Division Bench of this Court in *Nasru v. State of Rajasthan* 1988 Cr LR (Raj) 488 : (1988 Cri LJ 326). Recently, the Apex Court issued certain directions to the State in a case wherein several school children lost their lives in a motor accident case at Delhi because of the rash and negligent driving of the driver of the bus.

4. In *Krishna alias Raju's case* (supra), their Lordships of the Supreme Court enhanced the sentence to six months R. I. and ordered to pay a fine of Rs. 1000/- where the accused was convicted for offence punishable under Section 304A IPC by the trial Court. The State preferred an appeal against the order of sentence before the High Court under Section 377 Cr.P.C. but the High Court declined to exercise its powers though it felt that the sentence was a lenient one. On SLP being filed by the State, the Supreme Court while enhancing the sentence observed that it 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.

5. All the aforesaid judgments of the Apex Court have been considered by the Division Bench of this Court in *Nasru's case* (supra). Shri Sarswat, learned counsel for the appellant accused, however, picked up only four lines from para 22 of the judgment viz., 'The Court cannot ignore the provisions of Sections 233(2), 248(2) and 360 Cr.P.C. Supreme Court in *Aitha Chandra Rao* (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'. The judgment has to be read as a whole and not in this piecemeal manner. On the contrary, after answering the question, which was referred to its

adjudication, the Division Bench made very strong observations in para No. 26 onwards and also directed a copy of the judgment to be sent to the Home Secretary, Law Secretary and Director General of Police, Rajasthan, Jaipur. In para No. 26 of that judgment, their lordships have clearly observed that, 'Severe punishment should be awarded to the offenders and their driving licences should be cancelled'. This judgment was delivered by the Division Bench of this Court on 11-7-88. Almost ten years have passed by now but the graph of accident in the State is going higher and higher. Almost every day there is an accident at one place or the other where several persons are losing their lives and several persons, are seriously injured. Then what is the effect of granting probation to a driver, who caused accident while driving the vehicle in rash and negligent manner or reducing the substantive sentence of one year or maximum sentence of two years R. I. imposed by the trial Court as sentence undergone. Such accused, who remained in jail for few days or few weeks, but would it be a sufficient punishment. In fact the Court must pass a deterrent sentence in such cases, which would set up an example to the other erring drivers, who drivers their vehicles in a very rash and negligent manner in the cities and on the high ways.

6. When this Court made it clear that merely because 16 or 17 years period has passed by now, the sentence is not going to be reduced as sentence already undergone then it was tried to be argued by learned counsel Shri Sarawat that the trial Court committed an error in convicting the accused. I must state that initially the order of conviction was not challenged and the matter was straightway on the point of sentence. But, when it was made clear by this Court that this prayer may not be accepted, then after citing one more judgment, an attempt was made to argue the case on merits. In the interest of justice, Mr. Sarawat was allowed to argue the matter on merit.

7. Mr. Sarawat, learned counsel appearing for the appellant, vehemently submitted that the identity of the accused is not proved. He submitted that the accused was not driving the tractor but one Shiv Ram was driving and he was falsely involved because of the enmity between the parties. This submission of Mr. Sarawat cannot be accepted for the simple reason that the parties were known to each other. In fact, there was a dispute regarding common wall between the parties. On the

fateful day, injured Bhikha Ram was carrying his brother deceased Mangi Lal on his bicycle at about 6.00 p.m. on 22-4-81. When they saw the accused coming from the opposite side driving tractor, they swerved their cycle on the Kuchha road. But the accused deliberately drove the tractor in such a manner and went on the wrong side of the road and nobbed down bothy who were riding on the bicycle. Mangi Lal was crushed under the wheel of the tractor whereas Bhikha Ram was thrown out and became unconscious. Instead of helping the injured and removing them to the hospital, the accused ran away. He did not even lodge any complaint to the police about the incident. When Bhikha Ram regained consciousness, he immediately gave the name of accused Poonma Ram, who was driving tractor. The incident took place in broad daylight, therefore, identification of the driver of the tractor was not a difficult task for injured witness Bhikha Ram. Hence, this statement of Mr. Sarswat that accused was not driving the vehicle, cannot be accepted. In fact, this theory was never put to the witness in his cross-examination. It is only at the fag end of the defence that this theory was developed at a very late stage. This case is little bit similar to the case of Krishna alias Raju (Supra) wherein the Supreme Court enhanced the sentence after so many years mainly on the ground that the driver has not only driven his vehicle in 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 about the incident. Under the circumstances, the accused deserves no mercy from this Court. It is true that after he was convicted on 30-11-81 and he was released by this Court on admitting this appeal in 1981 and since then he is on bail. The accident took place on 22-4-81 i.e. almost 17 years from today. But, that itself would not be a ground to reduce the sentence or to pass an order of sentence as already undergone. The accused has hardly remained in jail for seven days. It would be a mockery of justice if the sentence is reduced in such cases. It is unfortunate that the appeals of 1981 are finally heard only in 1998 after 17 years. However, as stated earlier, it is no ground to reduce the sentence. It is true that now the accused will have to surrender and undergo the remaining part of the sentence, which is awarded against him by the trial Court but he has to pay for his mischief. Such accused persons cannot be let out.

8. In view of the above discussions, this appeal fails and is dismissed. The appellant accused is on bail. His bail bonds stand cancelled. He shall now surrender within four weeks falling which non-bailable warrant of arrest would be issued against him.

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