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Ali Akabbar Vs. Kasem Ali

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Court : Kolkata

Decided On : Feb-01-1929

Reported in : AIR1929Cal785a,121Ind.Cas.305

Appellant : Ali Akabbar

Respondent : Kasem Ali

Judgement :

Mukerji, J.

1. This rule has been issued at the instance of the complainant in a case in which the accused has been convicted by the Additional Sessions Judge of Backergunj under Sections 304(ii), 326 and 148, I.P.C. and sentenced to undergo rigorous imprisonment for one year under Section 304(ii), I.P.C. and for six months under Section 148, I.P.C. the sentences to run concurrently, no separate sentence under Section 326, I.P.C., being considered necessary by the learned Judge. The accused had pleaded guilty to the charges and prayed for mercy. The learned Judge in passing the sentence has observed that he had considered the circumstances under which the offences had been committed and also taken into consideration the age of the accused.

2. The Crown has not moved in this matter nor has the Crown appeared to back up the application for enhancement though the rule was issued upon the District Magistrate.

3. Apart from the reasons which I have set out in full in my judgment in Superintendent and Remembrancer of Legal Affairs, Bengal v. Jnanendra Nath : AIR1929 Cal747 , which have led me to hold that in a case like this it is not possible to enhance the sentence unless there has been a regular trial of the case in spite of the accused's plea of guilty. I think the rule should be discharged on the simple ground that the Crown has not supported it. For the view I take I have given my reasons in full in Pramatha Nath v. Ganga Charan : AIR1929 Cal340 .

4. I would discharge the rule.

Graham, J.

5. In this case a rule was issued to show cause why the sentence passed upon the accused Kasem Ali should not be enhanced.

6. The case for the prosecution was that on 13th December 1927 at about 1 p.m. one Asmat Ali, uncle of the petitioner, was going to a place called Baliakhali to receive instructions in connexion with a civil suit when he was waylaid and severely beaten by the above mentioned Kasem Ali and others, and Asmat Ali, who raised an alarm, received a spear wound in the chest from Kasem Ali which resulted in his death some 10 days later.

7. The accused was committed for trial to the Court of Sessions on charges under Sections 304(2), 326 and 148, I.P.C. and pleaded guilty. The learned Additional Sessions Judge accepting the plea convicted the accused under these three sections and sentenced him under Section 304(ii) to one year's rigorous imprisonment and to six months' rigorous imprisonment under Section 148, I.P.C. both sentences to run concurrently. No sentence was passed under Section 326, I.P.C. Thereafter the present rule was obtained.

8. The question is whether the sentence is so manifestly inadequate that we ought to interfere. In my opinion there can be no doubt that the sentence which has been inflicted is altogether out of proportion to the offence committed. It seems to be clear that Asmat Ali was deliberately waylaid by a number of persons including the accused Kasem Ali the motive for the attack being civil and criminal litigation

between the parties. Afsar Ali appears to have gone to the spot where Asmat Ali was lying and was thereupon speared through the chest by Kasem Ali. The medical evidence shows that it was a penetrating wound on the left side of the chest and was severe in character.

9. The learned Additional Sessions Judge has referred to the circumstances under which the offence was committed and accused's age as his reasons for inflicting a lenient sentence. But neither of these reasons appears to me to carry much weight. The attack seems to have been a deliberate pre-arranged affair and as there was no evidence before the Judge it is difficult to know what circumstances he was referring to.

10. As regards the question of age it appears that the accused's age is given as 23 so that there can be no question of leniency on that account.,

11. In my judgment the sentence passed is inadequate and I would make the rule absolute and enhance it from 1 year to 3 years' rigorous imprisonment.

(On difference the matter came before Buckland, J.)

Buckland, J.

12. In this case a rule has been issued at the instance of the complainant calling upon the accused to show cause why the sentence should not be enhanced.

13. The accused was convicted on his plea of guilty by the Additional Sessions Judge of Bakarganj under Sections 304(ii), 326 and 148, I.P.C., and sentenced to one year's rigorous imprisonment under Section 304(ii) and six months' rigorous imprisonment under Section 148, the sentences to run concurrently. The learned Judge stated that considering the circumstances under which the offence was committed and having regard to the accused's age he accepted the accused's plea and convicted him accordingly. The rule was issued by this Court at the instance of the complainant on the ground that in considering the nature of the offence and the circumstances in which the occurence took place the learned Sessions Judge ought to have passed a more severe sentence. Notices were

issued to the person convicted as the law requires and to the District Magistrate of Bakarganj.

14. Upon the hearing of the rule nobody has appeared for the Crown. This is a matter of some importance because it makes it clear that the Crown has not thought it necessary in the interest of public justice either to apply or, on the matter being brought to the notice of the Court at the instance of the complainant, to appear in support of the rule. On behalf of the complainant ;it is stated that he is actuated solely by the desire to further the ends of justice and that nothing is further from his mind than to gratify his personal vindictiveness, but this cannot be taken literally. That the gratification of personal spite should be discouraged is no doubt the reason why the Court has consistently refused to entertain applications of this nature at the instance of a private prosecutor. At the same time there is no absolute rule, and in a case where there is manifestly a ground for interference beyond all reasonable doubt, it matters not whether the case comes before the Court of its own motion or at the instance of a private prosecutor or through any other channel whatever and the Court will interfere. This aspect of the matter was considered by my learned brothers Mukerji and Graham, JJ. in Pramatka Nath v. Ganga Charan : AIR1929 Cal340 , in in which they differed and the case was thereupon laid before C.C. Ghose, J. who appears to have taken the view that a rule having been issued there was nothing to be done but to consider whether or not the sentence should be enhanced, which he did by restoring the sentence passed upon the person convicted by the trial Court and which had been reduced on appeal. I do not take the same view for the reason that a rule is issued exparte and matters have to be taken into consideration upon the hearing of the rule which are not before the Court at the time when it is issued, for instance, contentions urged on behalf of the accused, the attitude of the Crown and other possible contingencies. In this case it has been urged before me by the learned advocate for the accused that the circumstances of the occurrence were all taken into consideration by the learned Sessions Judge, that the deceased man was injured in the course of an affray, and consequently it cannot be affirmatively held that a more severe sentence should have been passed.

15. I have considerable doubt whether the sentence is adequate, and had the application been made at the instance of the Crown I should have been more inclined to enhance it. The learned Judge has not stated what circumstances he took into consideration and it would have been helpful had he stated what the circumstances were which led him to pass what appears at first sight to be too lenient a sentence. But as I take a decided view that applications of this nature ought not to be encouraged at the instance of a complainant or private prosecutor, I am not disposed to give such an application any support unless it is clear beyond all question that it should be allowed. In my judgment this is not such a case, for in the circumstances I 'will give the accused the benefit of a very doubtful supposition that there were sufficient reasons present to the mind of the learned Sessions Judge for the sentence which he passed. The rule will be discharged.

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