State of Maharashtra

Vs

Nasimkhan Ahmad Khan Mali Khan, Etc.

Criminal Appeals Nos. 181 and 182 of 1967

(K. S. Hegde I. D. Dua JJ)

17.08.1970

JUDGMENT

HEGDE, J. -

1. In these appeals by special leave, we are only concerned with the question of sentence. The respondents in Criminal Appeal No. 182 of 1967 are not represented though they were served with the notice of the appeal.

2. The question of sentence in this case has assumed considerable importance. In order to assess that question, it is necessary to refer to the incidents that led up to the prosecution of the respondents. The respondents in both the appeals were prosecuted in case No. 254 of 1964 in the Court of Sessions for Greater Bombay. They were charged with various offences. These respondents were members of a Union known as B.E.S.T. Union. In about the middle of August of 1963, that Union declared a strike. B.E.S.T. is running bus services in the city of Bombay. As a result of the declaration of the strike several workers struck work. It appears that some of the workers disregarded the call for strike and continued to work. On the third day of the strike when a single decker bus No. BMR 3561 was proceeding on the road, the respondents and others stopped the bus and the respondent in Criminal Appeal No. 181 of 1967 threw burning petrol on the conductor, Abdul Kadar, as a result of which Abdul Kadar sustained several severe injuries. His face was partially burnt up. At the time of the occurrence one of the respondents caused grievous hurt to the driver, Kamlashankar Mishra. During the course of the incident, injuries were also caused to police constable Namdeo Arjun Kharat who was on a bandobast duty in the bus. Injuries sustained by the conductor and the driver were quite serious. The conductor sustained burns on the face, left ear and on the arms and he had to be in the hospital for over 20 days. The driver's left ear was cut and the flap of the ear was hanging. Further there was a fracture of cartilage.

3. The learned trial judge summarised the prosecution case thus :

> "The miscreants had invaded the bus from both the sides : some came from the front side and some from the rear near the entrance. They were not bona side passengers. Though they rushed near the entrance they did not enter the bus but engaged the conductor in talking. Accused No. 2 was one of the persons invading the bus from the front. He tampered with the machine which stopped and the bus could not start. Some of them had assaulted the driver and accused No. 1 had thrown the container with the burning petrol into the bus which clearly shows that the common object of the offenders was to break down the bus service, run and operated by the loyal servants and to intimidate them by acts of violence and causing damage and

> destruction by fire to the vehicle. It is clear that on the rear side there were accused Nos. 1, 3, 5 and 6 and others. On the front side there were accused No. 2 and two others, who had assaulted the driver ....."

4. From this summary of the facts found, it is quite clear that the offence committed by the respondents was a serious one. It did not only result in serious damage to the bus but it also caused serious injuries to the conductor and the driver.

5. After taking all the facts into consideration, the learned trial judge convicted the respondents under various charges. The sentences imposed on various charges were made to run concurrently and the maximum sentence imposed on Accused No. 1 (respondent in Criminal Appeal No. 181 of 1967) is two years and on the rest one years. The sentences imposed by the learned trial judge cannot be considered by any standard as having been excessive.

6. The accused took up the matter in appeal to the High Court of Bombay and the same was heard by Paranjape, J. At the hearing Counsel for the accused did not challenge the conclusion reached by the Trial Court or the conviction of the respondents. They merely prayed alteration of the sentences. The learned judge, in our opinion, erroneously acceded to this request. He thought that on the facts and circumstances proved in this case, it is sufficient to take action against the respondent under Section 5(1)(a) of the Bombay Probation of Offenders Act, 1938. This is what the learned judge observed :

> "It is clear that these offences were committed by the accused who entertained wrong notions as to the manner in which they could make the strike successful. Obviously the persons who had sponsored the strike were the leaders of the Union of which the accused were members and no doubt the leaders of the Union could have observed greater restraint and could have controlled the members in a better manner. But the fact still remains that the accused have acted on a sudden impulse and on account of the heat and anger that was generated, they have committed these acts of violence. The accused do not belong to the regular class of criminals. They were honest workers and if on account of their wrong notions about the manner in which they could better the conditions of their lives they were committed these offences. I do not see how any useful purpose will be served by asking them to undergo a sentence of imprisonment immediately. I think a better social and useful purpose will be served if I direct each of these accused to enter into a bond under Section 5 (1)(a) of the Bombay Probation of Offenders Act, 1938, instead of sentencing them at once to undergo imprisonment ....."

7. Some of the findings reached by the learned judge are factually incorrect. His notions about the social purpose behind Section 5(1)(a) of the Bombay Probation of Offenders Act, 1938, may endanger law and order. It may encourage violence. The learned judge seriously erred in thinking that the respondents acted on a sudden impulse and on account of the heat and anger that was generated. It is clear from the facts established in the case that the acts complained of were done after premeditation. It was a concerted and a well planned attack. No one but a mad man commits a crime without some motive or some real or imaginary grievance. If perverted notions are considered as mitigating circumstances then there will be chaos in society. We do not know what the learned judge meant by saying that the accused did not belong to a regular class of criminals. Most accused who come up before courts are not old offenders nor do they belong to any criminal tribe. That does not mean that the offence committed by them should not be dealt with in accordance with law.

8. Section 5(1) of the Bombay Probation of Offenders Act, 1938, reads :

> "Notwithstanding anything contained in any enactment for the time being in force, when -
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> (a) any male person is convicted of an offence not punishable with death or transportation for life, or
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> (b) any women is convicted of an offence of any kind, if it appears to the court by which the offender is convicted, that regard being had to the age, character, antecedents or physical or mental condition of the offender, or to the circumstances in which the offence was committed, it is expedient that the offender should be released on probation of good conduct, the court, may for reasons to be recorded in writing instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period not being less than one year and not exceeding three years as the court may direct, and in the meantime to keep the peace and be of good behaviour."

9. In this case, the learned appellate judge did not take into consideration the age or the physical or mental conditions of the offenders. So far as the character of the accused is concerned, he could have considered it only in the context of what they did on the day of the occurrence. There was no other material before him. The offences committed by them show that they are desperate characters. The only thing that the learned appellate judge can be said to have considered is the circumstance in which the offences were committed. The fact that there was a call for strike is no ground for arson and assault of a grievous character. No section of the society can be permitted to take law into its own hand. There are ways to remedy social injustices. No individual can take upon himself the right to remedy any wrong done to him. It is impossible to have an orderly society, if we take to the ways of the jungle. There may be a genuine desire to change the present social order but that must and can be done through the instrumentalities of the State. In the final analysis, it is the people of this country through their representatives that must decide the social goals. If social wrongs are sought to be remedied in the streets then there can be neither peace nor progress. Without progress the attainment of social justice is impossible. Under our Constitution the Rule of Law has been made our way of life. It is a fallacy to think that Rule of Law and the law of the jungle can co-exist.

10. After having expressed our views on the question presented for our determination and thereby corrected the error of law committed by the High Court, we feel there is no need at present to send the respondents to jail by having recourse to our power under Article 136 of the Constitution. The offence in this case was committed as far back as in August, 1963. The respondents are all workers. We are told that as a result of this incident they have been dismissed from service. Most of them have not even put in their appearance in these appeals. The judgment of the High Court was delivered on 5-11-1966 nearly four years back. The suspended sentence imposed by the High Court has now been fully undergone by the respondents. We take it that the State field these appeals primarily to get an authoritative interpretation of Section 5(1) of the Bombay Probation of Offenders Act, 1938. That purpose is now achieved. Hence we dismiss these appeals subject to the observations made above.

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