

SUPREME COURT OF INDIA

Puttaswamy

Vs.

State of Karnataka

Crl.A.No.2015 of 2008

(Altamas Kabir and Markandey Katju JJ.)

11.12.2008

JUDGMENT

Altamas Kabir, J.

1. Leave granted.

2. The appellant in this appeal was convicted for an offence punishable under Sections 279 and 304-A of the Indian Penal Code for causing the death of a seven year old girl on account of his rash and negligent driving of his tractor. The appeal from the said order and conviction and sentence having been dismissed by the learned Sessions Judge, the appellant moved in revision before the High Court. In revision, the Karnataka High Court, while confirming the conviction, set aside the sentence in respect of the offence punishable under Section 279 of the *Indian Penal Code* but maintained the conviction and sentence in respect of the offence under Section 304-A of the Indian Penal Code, whereby the appellant was sentenced to undergo simple imprisonment for 6 months and to pay a fine of Rs.2,000/-, and in default of such payment, to undergo further simple imprisonment for three months and also to pay a fine of Rs.600/- for the offence punishable under Section 279 I.P.C. and in default of such payment to undergo simple imprisonment for a month.

3. In this appeal the appellant has challenged the order of conviction and sentence passed by the Additional Civil Judge (Jr.Division) and Judicial Magistrate First Class, II Court, Hassan, and the subsequent orders passed by the Sessions Court and the High Court maintaining the conviction under Sections 279 and 304-A and the sentence in respect of the conviction under Section 304-A, I.P.C.

4. During the hearing of this appeal, at the admission stage, learned counsel for the appellant informed the Court that the matter had been settled between the parties and a compromise petition had been executed between the appellant and the complainant. On such submission, the complainant was impleaded as a party to the present proceedings and the short point which ultimately arose during the hearing is whether the offence under Section 304-A could at all be compounded since the same is not covered by the provisions of Section 320 I.P.C.

5. The aforesaid question has troubled this Court on different occasions, not only in connection with compounding of offences punishable under the criminal justice system, but also in respect of civil matters, and in respect of matrimonial matters in particular, where the Court had to strike a balance between the rigidity of the law and doing substantial justice to the parties. In order to meet certain unusual situations, this Court has from time to time taken recourse to innovations and the powers vested in it under Article 142 of the Constitution, in order to give a quietus to a litigation demanding a pragmatic solution. It has also been consistently held by this Court that when an offence did not come within the ambit of Section 320 of *Criminal Procedure Code* but the proceedings taken on the basis thereof deserved to be terminated, a sentence could always be reduced while maintaining the conviction and in most cases the sentence was reduced to the period of the sentence already undergone. In other cases, where circumstances so warranted, even the sentence was altered which at times brought the proceedings within the scope of Section 320 of Criminal Procedure Code and the offence was allowed to be compounded.

6. In this connection regard may be had to the decision of this Court in the case of *Surendra Nath Mohanty and another vs. State of Orissa*¹, which was disposed of by a Three-Judge Bench, wherein in respect of a conviction under Section 326 I.P.C. the sentence was reduced to the period already undergone together with fine. Of course, as mentioned hereinbefore, the said decision was rendered in the facts of the said case.

7. Reference was also made to two other decisions of this Court in i) *Ram Lal and another vs. State of J & K*² and ii) *Bachhu Singh vs. State of U.P.*³, wherein the same formula was applied.

8. As far as the other proposition is concerned, reference may be made to the decision of this Court in the case of *Avinash Shetty vs. State of Karnataka and another*⁴ where the conviction was altered from Section 326 to 324 I.P.C. and the offence was permitted to be compounded. There is yet another decision in the case of *Y. Suresh Babu vs. State of A.P.*⁵ which deals directly with a conviction under Section 326 IPC. This Court allowed the parties to compound the case in the special facts and circumstances of the case, but also directed that the same was not to be treated precedent.

9. What emerges from all these decisions is that even if an offence is not compoundable within the scope of Section 320 of Code of Criminal Procedure the Court may, in view of the compromise arrive at between the parties; reduce the sentence imposed while maintaining the conviction. In the present case, the appellant has been convicted under Sections 279 and 304-A of the Indian Penal Code and has been sentenced to undergo simple imprisonment for a period of 6 months and to pay a fine of Rs.2,000/-. The sentence as far as conviction under Section 279 I.P.C. is concerned has been set aside by the High Court. What remains after the judgment of the High Court is the conviction under Sections 279 and 304-A I.P.C. wherein the appellant was sentenced to undergo six months simple imprisonment along with a fine of Rs.2,000/-. In our view, this is one of those cases where instead of confining the appellant in

prison, the interest of justice will be better served if he is made to compensate the family of the deceased on account of the loss suffered by them.

10. Accordingly, while maintaining the appellant's conviction under Sections 279 and 304-A I.P.C., notwithstanding the agreement arrived at between the parties, we increase the amount of fine from Rs.2,000/- to Rs.20,000/- to be paid by the appellant to the parents of the deceased and reduce the sentence to the period already undergone, subject to payment of the fine. The aforesaid amount is to be deposited by the appellant in the Trial Court within three weeks from date, and on such deposit, the said amount shall be made over to the parents of the deceased and the appellant shall be released forthwith. In default of such deposit, this order shall remain in abeyance for a period of four weeks and if still no deposit is made within the said period the appeal will stand dismissed.

11. The appeal is disposed of accordingly.

¹[(1999) 5 SCC 238]

²[(1999) 2 SCC 213]

³[(2000) 10 SCC 313]

⁴[(2004) 13 SCC 375]

⁵[(2005) 1 SCC 347]