
(1999) 11 AHC CK 0163
In the Allahabad High Court
Case No : Criminal Revision No. 1146 of 1999

Gyan Singh and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 26-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 235(2), 248(2)
Penal Code, 1860 (IPC) — Section 325, 34

Citation : (2000) CriLJ 2802

Hon'ble Judges : J.C. Gupta, J

Bench : Single Bench

Advocate : Surendra Singh Rajput and Arun Kumar Shukla, for the Appellant;
Standing Counsel, for the Respondent

Final Decision : Disposed Of

Judgement

J.C. Gupta, J.—This revision has been filed by the accused persons against the judgment and order dated 31-3-1999 passed by the trial Court and the order dated 5-5-1999 passed by the appellate Court convicting and sentencing the applicants in revision to undergo R.I. for one year each and to pay a fine of Rs. 500/- u/s 325 read with Section 34 I.P.C.

2. When this revision came up for admission before this Court, the same was admitted only on the question of sentence by the order dated 8-6-1999. By the same order as far as the conviction of the applicants u/s 325 read with Section 34 I.P.C. was concerned, this Court found no sufficient ground to interfere with the concurrent finding of facts recorded by the Courts below and this Court affirmed the order of conviction passed against the applicants in revision.

3. Learned counsel for the applicants in revision argued before this Court that the order of sentence as recorded by the Court below is vitiated in law as there has been no compliance of the provisions of Section 248(2) of the Cr.P.C. inasmuch as no opportunity as contemplated under the said provision had been afforded to the applicants.

4. A perusal of the record indicates that neither in the trial Court nor before the appellate Court the applicants in revision were given any opportunity to adduce evidence or place on record material having a bearing on the question of sentence and the sentence was passed only on the basis of hearing oral submission.

5. The question as to what is the import and meaning of the expression "hearing the accused on the question of sentence" as occurring in Sections 235(2) and 248(2) Cr.P.C. is no more debatable as the same has been answered in a number of decisions of Supreme Court wherein it has been held that the requirement of hearing the accused on the question of sentence is mandatory and an integral part of every criminal trial and confers a right on the convict to be heard on the question of sentence. Such a hearing is not confined merely to hearing oral submission of the accused and/or his counsel but the accused has to be given an effective opportunity to produce before the Court material or evidence bearing on the question of sentence, (see *Santa Singh v. State of Punjab* AIR 1976 SC 2386.

6. In a later decision in *Allauddin Miyan v. State of Bihar* 1989 AWC 911 : AIR 1981 SC 1456 it was held that the requirement of hearing the accused is intended to satisfy the rule of natural justice. It is a fundamental requirement of fair play that the accused who was hitherto concentrating on the prosecution evidence on the question of guilt should on being found guilty, be asked if he has anything to say or any evidence to tender on the question of sentence. This is all the more necessary since the Courts are generally required to make the choice from a wide range of discretion in the matter of sentencing. To assist the Court in determining the correct sentence to be imposed, the Legislature introduced the provision of hearing the accused on the question of sentence. This provision satisfies a dual purpose; it satisfies the rule of natural justice by affording to the accused an opportunity of being heard on the question of sentence and at the same time helps the Court to choose the sentence to be awarded. Since the provision is intended to give the accused an opportunity to place before the Court all the relevant material having a bearing on the question of sentence there can be no doubt that the provision is salutary and must be strictly followed. It is clearly mandatory and should not be treated as a mere formality.

7. In a recent decision a Division Bench of this Court of which I was also a member, in Criminal Appeal No. 124 of 1998 decided on 6-9-1999 has laid down certain guide lines simplifying the procedure which may be adopted by the subordinate Courts for making compliance of the said provision :

1. After the evidence adduced by the prosecution and defence, if any, is over the Judge or the Magistrate, as the case may be, shall hear arguments and points of law, if any, of both the sides and then deliver the judgment either acquitting or convicting the accused.

2. If the accused is acquitted nothing more is to be done in the proceedings and the trial comes to an end then and there.

3. However, if the accused is convicted then as a general rule the Court should adjourn the proceedings to a future date.

4. On the adjourned date, the Court shall ask the accused if he has anything to say on the question of sentence and the statement given by the accused in answer to the said question shall be recorded in writing in the own words of the accused and that statement shall form part of the record.

5. Thereafter the accused shall be asked if he has any material to produce or evidence to tender in regard to various factors bearing on the question of sentence and if the accused intends to produce or tender the same he shall be given a reasonable opportunity for that purpose. Again the question so put to the accused and the answer given by him shall also be recorded in writing and the same shall form part of the record.

6. While putting the aforesaid questions and before having answers of the accused thereon, the accused should be apprised clearly that neither his statement so recorded nor the material and the evidence produced at the post convicting stage will be used against him as far as his innocence or guilt is concerned and the answers and material/evidence will be considered only for the purpose of awarding an appropriate sentence.

7. Where the accused produces material and adduces evidence that shall form part of the record and if they are contested by the prosecution it shall also be given an opportunity to meet the material and evidence produced by the convict.

However, while doing all this a care will have to be taken by the Court to see that this process of hearing the accused on the question of sentence is not misused for delaying the proceeding. The Court must be vigilant to exercise proper control over the proceedings so that the trial is not unavoidably or unnecessarily delayed.

8. The Court then shall hear both the prosecution and defence and pronounce the sentence after giving due weight to the mitigating as well as the aggravating circumstances placed before it.

8. Under the new Code of Criminal Procedure sentencing procedure is a sensitive exercise of discretion and not routine or mechanical prescription acting on hunch. While selecting the appropriate sentence, on one hand, the Courts are required to keep in mind that the offender of the crime is suitably and adequately punished and the society and the judicial conscience get satisfied while on the other hand, the Courts must also consider the variety of factor including mitigating and extenuating circumstances and after considering them and taking an over all view of the situation should select the sentence which they consider to be appropriate. It is the duty of the Court to weigh not only the aggravating circumstances but also the mitigating and extenuating circumstance going in favour of the accused. The new Code recognizes the theory that punishment should be awarded with reformatory angle *Mohammad Giasuddin Vs. State of Andhra Pradesh*, . In judging the adequacy of sentence the nature of offence, the

circumstances of its commission, the weapon used, the manner in which the crime was executed, injury to individual and the society, effect of punishment on the offender and its import on the society are some amongst many other factors which should ordinarily weigh with the sentencing Court.

9. Since in the present case neither the trial Court nor the appellate Court have made due compliance of the provision of Section 248(2), Cr.P.C. and the said provision has been given a complete go-bye, this Court called upon the applicants in revision to have a say on the question of sentence and to either adduce evidence or produce material having a bearing on the question of sentence. In response thereof, an application with an affidavit has been filed by the applicants in revision wherein it is stated that the incident had occurred about 8 years ago and by this time their socio economic condition had gone a radical change. The applicants in revision have large families to support and their responsibilities have increased immensely. It is further stated that they have already remained in jail during the pendency of the case for 42 days and they have no criminal history or bad antecedents. It is further stated in the affidavit that they do not want to adduce any further evidence or produce any documents on the question of sentence. State does not controvert the averments made in the affidavit and has not sought time to file any counter-affidavit.

10. In the present case even as per the prosecution story the incident had occurred on 27-6-1991 i.e. about 8 and half years ago. It is further pointed out that in the medical evidence fracture was found only under injury No. 2 which injury was specifically attributed to applicant No. 4-Raj Kumar only who is now aged about 30 years and at the time of incident he must have been a young boy of 21 years of age. Rest of the injuries of the victim were found to be simple. The applicants were convicted by the trial Court on 31-3-1998 and they were sentenced to undergo R.I. for one year each and to pay a fine of Rs. 500/-. Their appeal before the Court below remained pending for more than one year. There is nothing on record to indicate that during the pendency of the case in the trial Court or the appeal before the appellate Court, any of the applicants in revision misused the bail or committed any other crime.

11. Having regard to the entire facts and circumstances and taking into account the age, character, socio economic condition of the applicants, the nature of injury sustained by the victim and the circumstances in which the crime was committed this Court feels that the ends of justice will be met sufficiently if the sentence of imprisonment is reduced to the period already undergone. However, fine imposed on each of the accused is enhanced to Rs. 2000/- for which none of the applicants in revision has any objection as has been stated in the affidavit filed before this Court.

12. For the reasons stated above, this revision is disposed of finally. The conviction of the applicants in revision u/s 325 read with Section 34, I.P.C. is maintained. However, the order of sentence is modified to the extent that the applicants in revision are sentenced to a period already undergone by them and

they are further ordered to pay fine of Rs. 2000/- each. In default of fine each of applicants shall serve out R.I. for one month. The applicants in revision are allowed six weeks time to deposit the aforesaid fine. While making deposit, any amount of fine already deposited shall be liable to adjustment. Out of the fine so deposited or realized, half of the same shall be paid to the victim Pratap and if he is dead to his legal representatives.