

(2008) 07 SC CK 0124

In the Supreme Court Of India

Case No : Criminal Appeal No. 1066 of 2008 (Arising out of S.L.P. (Criminal) No. 1080 of 2007)

Manish Jalan

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 320, 320(9), 357, 357(1), 357(3)
Penal Code, 1860 (IPC) — Section 279, 304A

Citation : (2008) ACJ 2349 : AIR 2008 SC 3074 : (2008) AIRSCW 5160 : (2008) 2 ALD(Cri) 499 : (2008) CriLJ 3941 : (2008) 3 GLH 332 : (2008) 7 JT 643 : (2008) 6 KarLJ 228 : (2008) 3 KLT 390 : (2008) 41 OCR 175 : (2008) 3 RLW 2374 : (2008) 9 SCALE 814 : (2008) 8 SCC 22

Hon'ble Judges : D. K. Jain, J;C. K. Thakker, J

Bench : Division Bench

Advocate : Uday U. Lalit and Anil Kumar Tandale, for the Appellant; Anitha Shenoy, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.—Leave granted.

2. The sole appellant stands convicted u/s 279 of the Indian Penal Code, 1860 (for short 'IPC') for the offence of driving on public way so rashly or negligently as to endanger human life and also u/s 304A, IPC for causing death by rash or negligent act, not amounting to culpable homicide. The Trial Court sentenced him to undergo simple imprisonment for one year and to pay fine of Rs. 5000/- for both the offences and in default to undergo simple imprisonment for two months. On appeal to the High Court, vide its judgment dated 10th November, 2006 in Criminal Revision Petition No. 159 of 2005, the High Court of Karnataka at Bangalore has maintained the conviction but has reduced the sentence to simple imprisonment for one year and a fine of Rs. 5000/- for the offence u/s 279, IPC and simple imprisonment for six months and fine of Rs. 5000/- for offence u/s 304A, IPC. This judgment of the High Court is under challenge in this appeal by

special leave.

3. Since learned senior counsel for the appellant has not seriously questioned the correctness of the conviction and has confined his arguments to the quantum of sentence, we deem it unnecessary to refer to the accusations against the appellant in greater detail. It would suffice to note that the appellant was charge-sheeted for driving a tanker in a rash and negligent manner so as to endanger human life and in the process dashing against a Kinetic Honda scooter, being driven by the deceased, who fell down and was run over by the left wheel of the tanker. The deceased succumbed to the injuries on way to the hospital. As noted above, on appraisal of the evidence, both the courts below have found the appellant guilty of the offence under Sections 279 and 304A, IPC.

4. Mr. U.U. Lalit, learned senior counsel appearing for the appellant submitted that having regard to the fact that the mother of the victim has filed an affidavit, inter alia, stating that she does not have any grievance against the appellant as she believes that it was an act of God and it was their destiny that their son left them at an early age, the sentence of imprisonment awarded to the appellant may be set aside. Learned senior counsel also pleaded that the appellant was prepared to pay reasonable amount of compensation, which may be determined by this Court to the mother of the victim. In support, learned senior counsel drew our attention to the affidavit filed by the mother of the deceased, on issuance of notice to her. Para 6 of the affidavit, on which emphasis was laid by the learned Counsel, reads thus:

I state that being the mother and class I heir of the victim, late Shri Vasant Prabhu, I am competent and willing to compound the offence against Shri Manish Jalan. I state that I have no objection whatsoever if this Hon'ble Court wishes to set aside the conviction and sentence against Shri Manish Jalan. For this purpose, I am ready and willing to receive such additional compensation which this Hon'ble Court may feel appropriate, just and reasonable.

5. Having carefully glanced through the evidence on record and the reasoning of the courts below, we do not find any ground to interfere with the conviction of the appellant under the afore-mentioned provisions. Hence, we reject the challenge of the appellant made in this appeal to his conviction.

6. On the question of compounding of the offences, as prayed for in the affidavit, Section 320 of the Code of Criminal Procedure, 1973 (for short 'CrPC') dealing with "compounding of offences", provides that only such offences as are included in the two tables, provided thereunder can be compounded. Sub-section (9) of Section 320 CrPC imposes a specific bar on compounding of other offences, not included in the two tables. Admittedly, offences punishable under Sections 279 and 304A, IPC do not figure in the said tables and are, therefore, not compoundable. Conscious of the legal position, learned Counsel did not press for compounding of the offences. Accordingly, we reject the prayer for compounding.

7. The next question for consideration is whether facts of the case, particularly

the supervening circumstance brought on record by way of the affidavit of the mother of the victim, warrant interference in the quantum of sentence awarded to the appellant?

8. As noted above, pursuant to the notice issued to the heirs of the deceased, the mother of the deceased, namely, Smt. H. Sunanda Prabhu, has filed the afore- mentioned affidavit. Vide order dated 30th November, 2007, the District Judge, Mangalore was directed to make necessary inquiry through his own sources whether the said affidavit had, in fact, been sworn by Smt. H. Sunanda Prabhu and ascertain the authenticity thereof. In his report dated 8th January, 2008, the Principal District Judge, Mangalore, has reported that the said affidavit has been sworn by Smt. H. Sunanda Prabhu before a Notary on 9th July, 2007 and the same is authenticated.

9. The law which enables the Court to direct payment of compensation to the dependents of the victim is found in Section 357 CrPC (1973), corresponding to Section 545 of the 1898 Code. The relevant portion of Section 357 reads as follows:

357. Order to pay compensation.--(1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment order the whole or any part of the fine recovered to be applied--

(a) In defraying the expenses properly incurred in the prosecution;

(b) In the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a civil Court;

(c) When, any person is convicted of any offence for having caused the death of another person or of having abetted the commission of shelf all offence, in paying in, compensation to the persons who are, under the Fatal Accidents Act, 1855 (13 of 1855) entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) ...

(2) ...

(3) When a court imposes a sentence, of which fine does not form a part, the court may, when passing judgment order the accused person to pay, by way of compensation such amount as may be specified in the order to the person who has suffered any loss or injury reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by all Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

10. Sub-section (1) of Section 357 clothes the Court with the power to award

compensation to a victim of the offence out of the sentence of fine imposed on the accused. Sub-section (3) of the Section contemplates that when a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused to pay by way of compensation, such amount, as may be specified in the order, to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced. In other words, Sub-section (1) provides for application of an amount of fine as compensation when it forms part of the sentence whereas under Sub-section (3) the Court can direct the convicted person to pay compensation even in cases where fine does not form part of the sentence. The power vested in the Appellate Court or the High Court or the Court of Sessions (in revision) to award compensation under Sub-section (3) of Section 357 CrPC is wide and is in addition to any other sentence which may be awarded on conviction of a person. Needless to add that it is no substitute for sentence on conviction.

11. Though a comprehensive provision enabling the Court to direct payment of compensation has been in existence all through but the experience has shown that the provision has rarely attracted the attention of the Courts. Time and again the Courts have been reminded that the provision is aimed at serving the social purpose and should be exercised liberally yet the results are not very heartening. On this aspect, Law Commission in its 42nd Report at para 3.17, *inter alia*, observed:

We have a fairly comprehensive provision for payment of compensation to the injured party u/s 545 of the Criminal Procedure Code. It is regrettable that our courts do not exercise their salutary powers under this Section as freely and liberally as could be desired. The Section has, no doubt, its limitations. Its application depends, in the first instance, on whether the Court considers a substantial fine proper punishment for the offence. In the more serious cases, the Court may think that a heavy fine in addition to imprisonment for a long term is not justifiable, especially when the public prosecutor ignores the plight of the victim of the offence and does not press for compensation on his behalf.

12. In *Hari Kishan Vs. Sukhbir Singh and Others*, , while emphasising the need for making liberal use of the provisions contained in Section 357 CrPC, this Court has observed thus:

It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system.

13. However, in awarding compensation, it is necessary for the Court to decide if the case is a fit one in which compensation deserves to be awarded. If the Court is convinced that compensation should be paid, then quantum of compensation is

to be determined by taking into consideration the nature of the crime, the injury suffered and the capacity of the convict to pay compensation etc. It goes without saying that the amount of compensation has to be reasonable, which the person concerned is able to pay. If the accused is not in a position to pay the compensation to the injured or his dependents to which they are held to be entitled to, there could be no reason for the Court to direct such compensation. (See: Sarwan Singh and Others Vs. State of Punjab, .

14. Very recently in Dilip S. Dahanukar Vs. Kotak Mahindra Co. Ltd. and Another, explaining the scope and the purpose of imposition of fine and/or grant of compensation, this Court observed as follows:

The purpose of imposition of fine and/or grant of compensation to a great extent must be considered having the relevant factors therefore in mind. It may be compensating the person in one way or the other. The amount of compensation sought to be imposed, thus, must be reasonable and not arbitrary. Before issuing a direction to pay compensation, the capacity of accused to pay the same must be judged. A fortiori, an enquiry in this behalf even in a summary way may be necessary. Some reasons, which may not be very elaborate, may also have to be assigned; the purpose being that whereas the power to impose fine is limited and direction to pay compensation can be made for one or the other factors enumerated out of the same; but Sub-section (3) of Section 357 does not impose any such limitation and thus, power thereunder should be exercised only in appropriate cases. Such a jurisdiction cannot be exercised at the whims and caprice of a judge.

15. True that in the instant case the appellant has been found to be guilty of offences punishable under Sections 279 and 304A, IPC for driving rashly and negligently on a public street and his act unfortunately resulted in the loss of a precious human life. But it is pertinent to note that there was no allegation against the appellant that at the time of accident, he was under the influence of liquor or any other substance impairing his driving skills. It was a rash and negligent act simplicitor and not a case of driving in an inebriated condition which is, undoubtedly despicable aggravated offence warranting stricter and harsher punishment.

16. Having regard to all these facts and bearing in mind the fact that the mother of the victim has no grievance against the appellant and has prayed for some compensation, we are of the view that a lenient view can be taken in the matter and the sentence of imprisonment can be reduced. We are of the opinion that the ends of justice would be met if the sentence of imprisonment is reduced to the period already undergone but in addition thereto, the appellant should be directed to pay an amount of Rs. 1,00,000/- to the mother of the deceased by way of compensation. Learned Counsel for the appellant, in fact, indicated that his client was willing to pay that much amount. We order accordingly.

17. Accordingly, the conviction of the appellant under Sections 279 and 304A,

IPC is maintained. However, the substantive sentence of imprisonment is reduced to the period already undergone. Imposition of fine is also affirmed. Besides, the appellant shall pay an amount of Rs. 1,00,000/- to the mother of the victim, namely, Smt. H. Sunanda Prabhu, by way of compensation within three months from today. If the appellant fails to pay the said amount within the stipulated time, the same shall be recovered as per the procedure prescribed u/s 431 CrPC and be paid to Smt. H. Sunanda Prabhu.

18. The appeal is partly allowed and the order of the High Court is modified to the extent indicated above.