
(1988) 11 MAD CK 0032

In the Madras High Court

Case No : Criminal Appeal No. 873 of 1979

State by Public Prosecutor

APPELLANT

Vs

Arumugan and 12 Others

RESPONDENT

Date of Decision : 21-11-1988

Acts Referred:

Arms Act, 1959 — Section 25, 3(1)
Criminal Procedure Code, 1973 (CrPC) — Section 35, 392
Penal Code, 1860 (IPC) — Section 302

Citation : (1988) 11 MAD CK 0032

Hon'ble Judges : Janarthanam, J; David Annoussamy, J

Bench : Division Bench

Advocate : N. Dinakar, app, for the Appellant; N. Natarajan, for Mr. K. Asohan, for the Respondent

Final Decision : Dismissed

Judgement

David Annoussamy, J.—This is an appeal by the State against the order of acquittal. The number of accused in this case were thirteen.

2. The Appeal was heard by a Division Bench consisting of S.S. Natarajan, J. and M.N. Moorthy, J., Natarajan, J. by judgment pronounced on 17-6-1983 was of the opinion that the findings of the Sessions Judge were fully sustainable and that the appeal by the State had to fail and accordingly, the appeal would stand dismissed. M.N. Moorthy, J. by judgment pronounced on the same date dismissed the appeal filed by the State against all the accused except accused 2 and 7. He convicted accused 2 and 7 u/s 302 I.P.C. on two counts under the second charge, and u/s 3(1) read with Section 25 of the Indian Arms Act, 1959, under sixth charge. He sentenced accused 2 & 7 to suffer imprisonment for life under each of the two counts u/s 302 I.P.C. with a direction that the two sentences should run concurrently. For the sixth charge, he sentenced them to suffer imprisonment for two years each with a direction that the sentences shall run concurrently with the sentences of imprisonment for life awarded under the

second charge. Thus, both the learned Judges in view of the differing judgments rendered by them directed the matter to be placed before the Honourable the Chief Justice for being posted before a third Judge for disposal of the appeal in accordance with Section 392 of the Code of Criminal Procedure. Accordingly, the appeal papers, by order of the Honourable the Chief Justice were placed before V. Ramaswami, J. on 6th November, 1985, V. Ramaswamy, J. went into the matter and gave his opinion in open Court as follows:

I am generally in agreement with S Natarajan, J. in all his findings. I am, therefore, of opinion that the acquittal of accused 2 and 7 by the Sessions Judge is legal and correct and does not call for any interference. The appeal accordingly fails and it is dismissed.

Then the matter was placed before a Division Bench consisting of Ratnavel Pandian, J. (as he then was) and Swamikkannu, J. for pronouncement of the judgment. At that time objections were raised by the learned Public Prosecutor that S. Natarajan, J. was elevated to the Supreme Court of India and M.N. Moorthy, J. passed away fond that therefore, the Division Bench consisting of Ratnavel Pandian, J. (as he then was) and Swamikkannu, J. could not deliver the judgment which should have been delivered by the Bench, which heard the appeal originally and that, therefore, the matter should be heard afresh by the new Bench. The case was adjourned and it has been argued elaborately before us today.

3. Learned Additional Public Prosecutor reiterated his objections and placed reliance on a judgment in Surendra Singh v. State of Uttar Pradesh AIR 1954 S.C. 195. wherein it was held:

Where, therefore, of the two Judges of the High Court who hear an appeal in a criminal case, one purporting to write a joint judgment, prepares a judgment, signs it and sends it to the other Judge but before it is delivered, dies, then the judgment, if delivered by the other Judge, is not a valid Judgment.

4. Learned Counsel appearing for the accused would contend that after the third Judge has given his opinion, the judgment has become crystallised and that there is no necessity of any further hearing.

5. We shall therefore proceed to examine the rival contentions of the parties. The relevant provision of law is to be found in Section 392 of the Code of Criminal Procedure which reads as follows:?

When an appeal under this Chapter is heard by a High Court before a Bench of Judges and they are divided in opinion, the appeal, with their opinion shall be laid before another Judge, of that Court, and that Judge, after such hearing as he thinks fit, shall deliver his opinion, and the judgment or order shall follow that opinion: Provided that if one of the judges constituting the Bench, or where the appeal is laid before another Judge under this Section, that Judge, so requires, the appeal shall be re-heard and decided by a larger Bench of Judges.

A plain reading of the Section shows that, after the delivery of the opinion by the third Judge in open Court, the matter is over. There is, therefore, no necessity of any pronouncement by the Division Bench, which gave dissenting judgments, or any other successor Bench. This is the view taken in *Jugal Kishore More Vs. Chief Presidency Magistrate Calcutta and Others*,

6. The above observation would be enough to close the matter. However, since arguments have been advanced from both sides regarding the propriety of this Court pronouncing the judgment, we shall deal with them. The practice of this Court appears to have been that when an opinion has been given by a third Judge u/s 392 of the Code of Criminal Procedure, the matter is placed before the original Bench for pronouncement and that formality, though not necessary, does not amount to any irregularity. The original Bench can therefore pronounce the operative portion of the judgment as it emerges from the opinion of the third Judge. When the original Bench is no longer available, the successor Bench would be entitled to perform that work as per the principle embodied in Section 35 of the Criminal Procedure Code.

7. The only point to be ascertained is whether the judgment has entirely taken shape. In this case, two dissenting judgments had been pronounced in open Court by S. Natarajan, J. and Moorthy, J. and the opinion by the third Judge, viz. V. Ramaswami, J has also been pronounced in open Court. Though they are no longer members of this Court, the judgment has become full and final in every respect and, therefore, there cannot be any objection whatsoever for this Bench to pronounce again the operative portion of the judgment. In the decision relied on by the learned Additional Public Prosecutor, the judgment did not take its final shape, because before the second Judge could agree to it, the first Judge died. When a matter is heard by a Bench, the judgment is the result of the meeting of minds of both the Judges. For that purpose, at the time of such meeting of minds, both the Judges should be alive, because, as pointed out by the Court, the Judge who expressed first his opinion may possibly change it before the second Judge agrees to it. So, if he dies before the expression of the opinion of the second Judge, there is no meeting of minds. We may add that a single Judge could not pronounce the judgment in the name of a Bench, when the other Judge is no longer a member of the Court. This case stands on a footing which is absolutely different from the circumstances surrounding the case which was dealt with in the decision relied on by the learned Additional Public Prosecutor and therefore, we find it unable to accept his contentions. The objection raised by the learned Additional Public Prosecutor is overruled. The operative portion of the judgment as it results from the opinion of V. Ramaswami, J., read with the judgments of Natarajan, J. and M.N. Moorthy, J. is formally pronounced afresh.

8. Accordingly, the appeal filed by the State stands dismissed.