Jeetu @ Jitendera & Ors vs State Of Chhattisgarh on 4 December, 2012

Equivalent citations: AIRONLINE 2012 SC 741, AIRONLINE 2012 SC 91

Author: Dipak Misra

Bench: Dipak Misra, K. S. Radhakrishnan

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2012
(Arising out of S.L.P. (Criminal) No. 8234 of 2012

Jeetu @ Jitendera & Ors. ... Appellants

Versus

State of Chhattisgarh ...Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. The present appeal by special leave is directed against the judgment of conviction and order of sentence passed by the High Court of Chattisgarh at Bilaspur in Criminal Appeal No. 639 of 2009 whereby the High Court affirmed the conviction of the appellant for offences punishable under Sections 147 and 327/149 of the Indian Penal Code (for short "the I.P.C."), but reduced the sentence from three years rigorous imprisonment on the second score to one year and maintained the sentence of rigorous imprisonment for three months in respect of the offence on the first score i.e. Section 147, I.P.C. Be it noted, both the sentences were directed to be concurrent.

3. The facts as has been exposited are that on the basis of an F.I.R. lodged by the informant, Aarif Hussain, PW-10, at 11.50 P.M. on 16.4.2008 alleging that about 10.00 P.M. when he was going towards Telibandha P.S., the accused persons met him near Telibandha chowk and demanded Rs.500/- for liquor and on his refusal they took him towards Awanti Vihar railway crossing in an auto rickshaw and assaulted him, Crime Case No. 129/2008 was registered under Sections 327, 366 and 323 read with Section 34 of the I.P.C. at the concerned police station. After the criminal law was set in motion, said Aarif Hussain was medically examined by Dr. Vishwanath Ram Bhagat, PW-1, and as per the injury report, Exhbt. P-1, he had sustained four injuries on his person. The

investigating officer, after completing the investigation, placed the charge sheet on 6.8.2008 against the accused persons for offences punishable under Sections 147, 327, 364-A, 323 and 34 of the I.P.C. before the learned trial Magistrate who committed the matter to the court of Sessions.

4. The learned Additional Sessions Judge, considering the material on record, framed charges for offences punishable under Sections 148, 329/149 and 364/149 of the I.P.C.

5. The accused persons abjured their guilt and pleaded false implication in the crime in question.

6. The prosecution, in order to substantiate its stand, examined eleven witnesses and exhibited number of documents. The defence, in support of its plea, chose not to adduce any evidence.

7. The learned trial judge, on the basis of the ocular and documentary evidence brought on record, came to hold that the accused persons were not guilty of the offences under Sections 148, 329/149 and 364/149 of the I.P.C. but found them guilty for the offences as mentioned earlier and sentenced them as has been stated hereinbefore.

8. Being aggrieved by the aforesaid decision of conviction and order of sentence, the accused-appellant preferred Criminal Appeal No. 639 of 2009. Before the High Court, the learned counsel for the appellants did not press the appeal as far as the conviction aspect is concerned and confined the submissions as regards the imposition of sentence highlighting certain mitigating circumstances.

9. At this juncture, we think it seemly to reproduce what the learned single Judge has recorded about the submission of the learned counsel for the accused-appellants: -

> "Learned counsel appearing for the appellants submits that he is not pressing this appeal as far as it relates to conviction part of the impugned judgment and would confine his argument to the sentence part thereof only. He submits that the incident had taken place more than four years back, there was no premeditation and on the spur of moment the incident had taken place, appellant Nos. 1, 4 & 5 have already remained in jail for 23 days and appellant No. 2 for 166 days whereas appellant No. 3 is in jail for last about 18 months, all the appellants are young boys having no criminal antecedents against them, therefore, the sentence imposed on them may be reduced to the period already undergone by them."

10. Be it noted, the learned counsel for the State resisted the aforesaid submission and contended that regard being had to the gravity of the offence, no leniency should be shown to the appellants.

11. The learned single Judge did not address himself with regard to the legal sustainability of the conviction. He took note of the submission advanced at the bar and reduced the rigorous imprisonment to one year from three years. As a consequence of the reduction in sentence, all the accused-appellants barring appellant No. 3 therein were sent to custody to suffer the remaining part of the sentence imposed on them. Being dissatisfied, the present appeal has been preferred by

accused Nos. 1, 4 and 5.

12. We have heard Mr. C.N. Sreekumar, learned counsel for the appellant, and Mr. C.D. Singh, learned counsel for the respondent State.

13. Questioning the legal substantiality of the decision passed by the learned single Judge, it is contended by Mr. Sreekumar that the conviction under Section 327 is not sustainable inasmuch as no charge was framed under Section 383 of the IPC. It is his further submission that the prosecution has miserably failed to establish its case beyond reasonable doubt; and had the evidence been appreciated in an apposite manner, the conviction could not have been sustained. Alternatively, it is argued that in any case, there could have been a conviction only under Section 323 of the I.P.C. and for the said offence, the sentence of one year rigorous imprisonment is absolutely disproportionate and excessive.

14. Mr. C.D. Singh, learned counsel for the State, per contra, propounded that for proving an offence under Section 327 of the I.P.C., framing of charge under Section 383 of the I.P.C is not warranted. It is urged by him that the material brought on record clearly prove the offences to the hilt against the accused-appellants and, therefore, no fault can be found with the delineation made by the High Court.

15. The hub of the matter, as we perceive, really pertains to the justifiability and legal propriety of the manner in which the High Court has dealt with the appeal. It is clear as day that it has recorded the proponement of the learned counsel for the appellants relating to non- assail of the conviction, extenuating factors for reduction of sentence and proceeded to address itself with regard to the quantum of sentence. It has not recorded its opinion as regards the correctness of the conviction.

16. The learned counsel for the appellants has made an effort to question the pregnability of the conviction recorded by the learned trial Judge on many a score. But, a significant one, the conclusion is sans delineation on merits. We are required to address whether deliberation on merits was the warrant despite a concession given in that regard by the learned counsel for the appellants. Section 374 of the Code of Criminal Procedure, 1973 (for short "the Code") deals with appeals from conviction. Section 382 of the Code deals with petition of appeal. Section 384 of the Code deals with summary dismissal of appeal. A three Judge Bench in Dagadu v. State of Maharashtra[1] referred to the decisions in Govinda Kadtuji Kadam and others v. The State of Maharashtra[2] and Sita Ram and others v. The State of Uttar Pradesh[3] and thereafter opined that even if the High Court chooses to dismiss the appeal summarily, some brief reasons should be given so as to enable this Court to judge whether or not the case requires any further examination. If no reasons are given, the task of this Court becomes onerous inasmuch as this Court would be required to perform the function of the High Court itself by reappraising the entire evidence resulting in serious harassment and expense to the accused.

17. It is apt to note that sometimes the accused enters into a plea bargaining. Prior to coming into force of Chapter 21 A dealing with plea bargaining under Sections 265 A and 265 L by Act 2 of 2006, the concept of plea bargaining was not envisaged under the Code. In Thippaswamy v. State of

Karnataka[4], the accused pleaded guilty and was eventually convicted by the learned Magistrate under Section 304 A of the IPC and was sentenced to pay a sum of Rs.1000/- towards fine. He did not avail the opportunity to defend himself. On an appeal preferred by the State, the High Court found him guilty maintaining the sentence of fine and additionally imposed a substantive sentence of rigorous imprisonment for a period of one year. A three-Judge Bench of this Court took note of the fact that it was a case of plea bargaining and observed that had the accused known that he would not be let off with a mere sentence of fine but would be imprisoned, he would not have pleaded guilty. In that context, this Court observed as follows:-

> "It would be clearly violative of Article 21 of the Constitution to induce or lead an accused to plead guilty under a promise or assurance that he would be let off lightly and then in appeal or revision, to enhance the sentence. Of course when we say this, we do not for a moment wish to suggest that the Court of appeal or revision should not interfere where a disproportionately low sentence is imposed on the accused as a result of plea-bargaining. But in such a case, it would not be reasonable, fair just to act on the plea of guilty for the purpose of enhancing the sentence. The Court of appeal or revision should, in such a case, set aside the conviction and sentence of the accused and remand the case to the trial court so that the accused can, if he so wishes, defend himself against the charge and if he is found guilty, proper sentence can be passed against him." After so holding, the conviction was set aside and the matter was sent back to the trial Magistrate with a direction that the accused shall be afforded a proper and adequate opportunity to defend himself. It was further ruled that if he was guilty as a result of the trial, the judicial Magistrate may impose proper sentence upon him and, on the other hand, if he is not found guilty, he may be acquitted.

18. As is evincible from the impugned judgment, the learned counsel for the appellants before the High Court did not challenge the conviction but sought imposition of a lenient sentence. In State of Uttar Pradesh v. Chandrika[5], the High Court in an appeal accepted the plea bargain and maintained the conviction of the respondent under Section 304 Part 1 of I.P.C but altered the sentence to the period of imprisonment already undergone and to pay a fine of Rs. 5000/-, in default of payment, to suffer R.I. for six months. Be it noted, the High Court had not stated the actual period of imprisonment undergone by the respondent therein. This Court took note of the judgment and order of conviction and sentence passed by the learned sessions Judge who had convicted him under Section 304 Part I of I.P.C and sentenced him to undergo eight years' R.I. At the time of hearing of appeal, the finding of conviction was not challenged with a view to bargain on the question of sentence. The learned single Judge accepted the bargain and partly allowed the appeal by altering the sentence. The legal acceptability of the said judgment was called in question by the State before this Court. Taking note of the fact situation, this Court observed that the concept of plea bargaining is not recognized and is against public policy under the criminal justice system. After referring to the decisions in Madanlal Ramchandra Daga v. State of Maharashtra[6], Murlidhar Meghraj Loya v. State of Maharashtra[7], Ganeshmal Jashraj v. Govt. of Gujarat[8] and Thippaswamy (supra), a two-Judge Bench ruled thus:-

> "It is settled law that on the basis of plea bargaining the court cannot dispose of the criminal cases. The Court has to decide it on merits. If the accused confesses his guilt, an appropriate sentence is required to be imposed. Further, the approach of the court in appeal or revisions should be to find out whether the accused is guilty or not on the basis of the evidence on record. If he is guilty, an appropriate sentence is required to be imposed or maintained. If the appellant or his counsel submits that he is not challenging the order of conviction, as there is sufficient evidence to connect the accused with the crime, then also the court's conscience must be satisfied before passing the final order that the said concession is based on the evidence on record. In such cases, sentence commensurating with the crime committed by the accused is required to be imposed. Mere acceptance or admission of the guilt should not be a ground for reduction of sentence. Nor can the accused bargain with the court that as he is pleading guilty the sentence be reduced." [Emphasis Supplied]

19. In Padam Singh v. State of U.P.[9], it has been held that in an appeal against conviction, the appellate court is under duty and obligation to look into the evidence adduced in the case and arrive at an independent conclusion.

20. At this stage, we may refer with profit to a two-Judge Bench decision in Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. And Another[10] wherein this Court, after referring to the pronouncements in Babu Rajirao Shinde v. State of Maharashtra[11] and Siddanna Apparao Patil v. State of Maharashtra[12], opined thus :-

> "An appeal is indisputably a statutory right and an offender who has been convicted is entitled to avail the right of appeal which is provided for under Section 374 of the Code. Right of appeal from a judgment of conviction affecting the liberty of a person keeping in view the expansive definition of Article 21 is also a fundamental right. Right of appeal, thus, can neither be interfered with or impaired, nor can it be subjected to any condition.
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> xxx xxx xxx xxx The right to appeal from a judgment of conviction vis-à-vis the provisions of Section 357 of the Code of Criminal Procedure and other provisions thereof, as mentioned hereinbefore, must be considered having regard to the fundamental right of an accused enshrined under Article 21 of the Constitution of India as also the international covenants operating in the field."

21. Tested on the touchstone of the aforesaid legal principles, it is luminescent that the High Court has not made any effort to satisfy its conscience and accepted the concession given by the counsel in a routine manner. At this juncture, we are obliged to state that when a convicted person prefers an appeal, he has the legitimate expectation to be dealt with by the Courts in accordance with law. He has intrinsic faith in the criminal justice dispensation system and it is the sacred duty of the adjudicatory system to remain alive to the said faith. That apart, he has embedded trust in his counsel that he shall put forth his case to the best of his ability assailing the conviction and to do full justice to the case. That apart, a counsel is expected to assist the Courts in reaching a correct

conclusion. Therefore, it is the obligation of the Court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice delivery system. We are compelled to note here that we have come across many cases where the High Courts, after recording the non- challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence. We may clearly state that the same being impermissible in law should not be taken resort to. It should be borne in mind that a convict who has been imposed substantive sentence is deprived of his liberty, the stem of life that should not ordinarily be stenosed, and hence, it is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law.

22. Ex consequenti, the appeal is allowed and the judgment and order passed by the High Court are set aside and the appeal is remitted to the High Court to be decided on merits in accordance with law. As the appellants were on bail during the pendency of the appeal before the High Court and are presently in custody, they shall be released on bail on the said terms subject to the final decision in the appeal.

.....J. [K. S. Radhakrishnan] .....J. [Dipak Misra] New Delhi;

December 04, 2012.

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[1] AIR 1982 SC 1218 [2] AIR 1970 SC 1033 [3] AIR 1979 SC 745 [4] AIR 1983 SC 747 [5] (1999) 8 SCC 638 [6] AIR 1968 SC 1267 [7] (1976) 3 SCC 684 [8] (1980) 1 SCC 363 [9] 2000 (1) SCJ 143 [10] (2007) 6 SCC 528 [11] (1971) 3 SCC 337 [12] (1970) 1 SCC 547