Pradeep Kumar Vs State Of H.P.

Court: High Court Of Himachal Pradesh

Date of Decision: Jan. 10, 2025

Acts Referred: Bharatiya Nagarik Suraksha Sanhita, 2023 â€" Section 430(1), 430(2), 528
Indian Penal Code, 1860 â€" Section 279, 304AA, 337, 338
Motor Vehicles Act, 1988 â€" Section 185, 187

Hon'ble Judges: Sushil Kukreja, J

Bench: Single Bench

Advocate: Parmod Singh Thakur, Jitender Sharma, Gautam Sood, Niyati Thakur

Final Decision: Dismissed

Judgement

Sushil Kukreja, J

1. This order shall dispose of an application filed by the applicant/appellant under Section 430(1) & (2), read with Section 528 of the Bharatiya Nagarik

Suraksha Sanhita, 2023 (for short Ã¢â‚¬Å“BNSSÃ¢â‚¬), seeking suspension of sentence awarded by the learned Additional Sessions Judge, Kinnaur at

Rampur Bhshahr, H.P., vide judgment of conviction, dated 01.12.2023 and order of sentence dated 02.12.2023 in Case No. 29/2019, for the

commission of offences punishable under Sections 279, 337, 338, 304AA of the Indian Penal Code (for short Ã¢â‚¬Å“IPCÃ¢â‚¬) and Sections 185 & 187 of

the Motor Vehicles Act (for short Ã¢â‚¬Å“MV ActÃ¢â‚¬). It has been averred in the application that the applicant has good prima facie case in his favour

and the appeal is likely to be succeeded in all eventualities. It has further been mentioned in the application that the applicant has already undergone

313 days of sentence and since the appeal pertains to the year 2024, the same is not likely to be taken up for hearing in near future, therefore, it has

been prayed that the present application may be allowed.

2. In reply filed by the respondent/State, it has been averred that the prosecution has succeeded in proving the guilt of the accused beyond reasonable

doubt by leading relevant and cogent evidence and the judgment of conviction passed by the learned trial Court suffers from no infirmity. It is also

been averred in the application that the applicant has been convicted after full fledged trial, as such, there is no presumption of innocence in his favour.

3. I have heard the learned counsel for the applicant/appellant as well as learned Additional Advocate General and have also gone through the

material available on record.

4. The learned Counsel for the appellant/applicant contended that the learned trial Court has based its decision on the basis of surmises and

conjectures and has not appreciated the evidence in its right perspective, as there are material contradictions in the statements of prosecution

witnesses, which cannot be believed. He further contended that the whole case of the prosecution was that the accident had occurred on account of

rash and negligent driving of the applicant, however, there was no injury on his person, which shows that the prosecution story is concocted one.

Therefore, he prayed that the sentence imposed upon the applicant/appellant by the learned Trial Court be suspended in the interest of justice and fair

play.

5. Per contra the learned Additional Advocate General contended that the appellant/applicant is not entitled for suspension of sentence, as the

prosecution has succeeded in proving the guilt of the accused beyond reasonable doubt by leading relevant and cogent evidence and the judgment of

conviction passed by the learned trial Court suffers from no infirmity. He further contended that the applicant has been convicted after full fledged

trial, as such, there is no presumption of innocence in his favour and the instant application, being devoid of merits, deserves to be dismissed.

6. The perusal of the record reveals that learned ld. Additional Sessions Judge Kinnaur at Rampur Bushahr, District Shimla, H.P., vide judgment of

conviction, dated 01.12.2023 and order of sentence dated 02.12.2023, convicted the applicant/appellant to undergo simple imprisonment for a period of

one month for the commission of offence punishable under Section 279 IPC, simple imprisonment for a period of one month for the commission of

offence punishable under Section 337 IPC, simple imprisonment for a period of six months for the commission of offence punishable under Section

338 IPC, rigorous imprisonment for a period of seven years for the commission of offence punishable under Section 304AA IPC with fine of Rs.

10,000/-, simple imprisonment for a period of one month for the commission of offence punishable under Section 185 of MV Act and simple

imprisonment for a period of one month for the commission of offence punishable under Section 187 of MV Act.

7. Before adverting to the rival contentions raised by the learned counsel for the applicant/appellant as well as learned Additional Advocate General

for the non-applicant/State, it would be beneficial to refer to the settled legal position, to the effect that when the appellant/accused is convicted by the

competent Criminal Court, the initial presumption of innocence is no more available to him. In case Sidhartha Vashisht alias Manu Sharma vs.

State (NCT Delhi), reported in 2008(5) SCC 230, it has been observed in paragraphs 19, 29 & 30 as under:

19. We are conscious and mindful that the main matter (appeal) is admitted and is pending for final hearing. Observations on merits, one way or the other,

therefore, are likely to prejudice one or the other party to the appeal. We are hence not entering into the correctness or otherwise of the evidence on record. It,

however, cannot be overlooked that as on today, the applicant has been found guilty and convicted by a competent criminal court. Initial presumption of

innocence in favour of the accused, therefore, is no more available to the applicant.

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29. The other consideration, however, is equally important and relevant. When a person is convicted by an appellate Court, he cannot be said to be an `innocent

person' until the final decision is recorded by the superior Court in his favour.

30. Mr. Gopal Subramanyam, learned Addl. Solicitor General invited our attention to Akhilesh Kumar Sinha v. State of Bihar, (2000) 6 SCC 461, Vijay Kumar v.

Narendra & Ors., (2002) 9 SCC 364 : JT 2004 Supp (1) SC 60, Ramji Prasad v. Rattan Kumar Jaiswal & Anr., (2002) 9 SCC 366 : JT 2002 (7) SC 477, State of

Haryana v. Hasmat, (2004) 6 SCC 175 : JT 2004 (6) SC 6, Kishori Lal v. Rupa & Ors., (2004) 7 SCC 638 : JT 2004 (8) SC 317 and State of Maharashtra v.

Madhukar Wamanrao Smarth, (2008) 4 SCALE 412 : JT 2008 (4) SC 461. In the above cases, it has been observed that once a person has been convicted,

normally, an appellate Court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate Court to

suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar that in considering the prayer for bail in a case

involving a serious offence like murder punishable under Section 302, IPC, the Court should consider all the relevant factors like the nature of accusation made

against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail

after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases is not to

suspend the sentence and it is only in exceptional cases that the benefit of suspension of sentence can be granted.Ã¢â‚¬â€‹

8. In a recent judgment by the HonÃ¢â‚¬â„¢ble Apex Court in Om Prakash Sahni vs. Jai Shankar Chaudhary and Another, (2023) 6 Supreme Court

Cases 123, it has been held that once the accused is held guilty, the presumption of innocence gets erased. The relevant portion of the aforesaid

judgment reads as under:

Ã¢â‚¬Å“23. The principle underlying the theory of criminal jurisprudence in our country is that an accused is presumed to be innocent till he is held guilty by a court

of the competent jurisdiction. Once the accused is held guilty, the presumption of innocence gets erased. In the same manner, if the accused is acquitted, then the

presumption of innocence gets further fortified.

24. From perusal of Section 389 of the Cr. PC, it is evident that save and except the matter falling under the category of sub-Section 3 neither any specific

principle of law is laid down nor any criteria has been fixed for consideration of the prayer of the convict and further, having a judgment of conviction erasing the

presumption leaning in favour of the accused regarding innocence till contrary recorded by the court of the competent jurisdiction, and in the aforesaid

background, there happens to be a fine distinction between the prayer for bail at the pre-conviction as well as the post-conviction stage, viz Sections 437, 438,

439 and 389(1) of the Cr. PC. 25 to 32 xxx

33. Bearing in mind the aforesaid principles of law, the endeavour on the part of the Court, therefore, should be to see as to whether the case presented by the

prosecution and accepted by the Trial Court can be said to be a case in which, ultimately the convict stands for fair chances of acquittal. If the answer to the

above said question is to be in the affirmative, as a necessary corollary, we shall have to say that, if ultimately the convict appears to be entitled to have an

acquittal at the hands of this Court, he should not be kept behind the bars for a pretty long time till the conclusion of the appeal, which usually take very long for

decision and disposal. However, while undertaking the exercise to ascertain whether the convict has fair chances of acquittal, what is to be looked into is

something palpable. To put it in other words, something which is very apparent or gross on the face of the record, on the basis of which, the Court can arrive at a

prima facie satisfaction that the conviction may not be sustainable. The Appellate Court should not reappreciate the evidence at the stage of Section 389 of the

Cr. PC and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.Ã¢â‚¬â€‹

9. Taking into consideration the position of law, as can be gathered from various judgments of the HonÃ¢â‚¬â„¢ble Supreme Court, it is very clear that

discretion at the time of considering the plea of the accused for suspension of sentence pending final hearing of appeal has to be exercised judiciously

and not as a matter of course as once the conviction is recorded, the presumption of innocence is no longer available to the appellant. A perusal of

Section Section 430 of The Bharatiya Nagarik Suraksha Sanhita, 2023, would show that suspension of sentence during pendency of appeal is not the

absolute right of the convict. The discretion to suspend the sentence vests in the court and it is required to be exercised judicially keeping in view all

facts and circumstances and the nature of offence. The Court has to exercise this discretion with utmost care and caution, balancing one's right and

liberty on one hand and the interest of the society on the other.

10. In the case on hand, the allegations against the applicant are that on 06.10.2018 at about 1:00 A.M. (midnight), he was driving the vehicle in

question in a rash and negligent manner in a very high speed under the influence of liquor and had hit one Suleman, due to which, he received multiple

injuries over his body and while being taken to IGMC, Shimla, expired midway. Besides deceased, two buffaloes were also allegedly killed by the

applicant on the spot. After conclusion of trial, the learned trial Court found the applicant guilty and convicted him as aforesaid. During medical

examination of the applicant, his blood samples were taken and as per the report of FSL, quantity of alcohol found in his blood was 174.41 mg%. i.e.

much more than 30 mg % i.e. the limit as prescribed under Section 185 of the Motor Vehicles Act.

11. Learned counsel for the applicant pointed out certain contradictions in the statements of prosecutions witnesses. He contended that learned trial

Court has erred in placing reliance on the statement of PW-1 Yusuf, who was the only eye witness and was accompanying the deceased and

buffaloes. He contended that even though he was declared hostile, however, he categorically stated that it was dark, where incident had occurred and

he could neither identify the jeep nor the driver. He also contended that in examination in chief of PW-1, he stated that the proceedings were

conducted by the police on the spot, however, in cross-examination he stated that the police had recorded his statement at Police Station Rampur. He

further contended that in the complaint, the incident is reported to have occurred at 1:00 (midnight), whereas in cross-examination, PW-1 stated that

the accident had occurred at about 10:30-10:45 P.M. He also contended that PW-2, Imran stated that he reached the spot after about 20 minutes of

the accident and they immediately taken the injured Suleman to MGMSC Khaneri, whereas PW-13, Investigating Officer, Aman Singh, stated that he

reached the spot at about 1:30 A.M. and injured was found alongwith his brother and was then shifted to MGMSC Khaneri. It is a settled law that

only contradictions in material particulars and not minor contradictions can be a ground to discredit the testimony of the witnesses. The HonÃ¢â‚¬â„¢ble

Supreme Court in the case of Mritunjoy Biswas v. Pranab alias Kuti Biswas & Anr. reported in (2013) 12 SCC 796, has held that minor

contradictions, inconsistencies or insignificant embellishments which do not affect the core of the prosecution case should not be taken to be a ground

to reject the prosecution evidence. The relevant portion of the aforesaid judgment reads as under:-

28.....Ã¢â‚¬Â¦It is well settled in law that the minor discrepancies are not to be given undue emphasis and the evidence is to be considered from the point of view of

trustworthiness. The test is whether the same inspires confidence in the mind of the court. If the evidence is incredible and cannot be accepted by the test of

prudence, then it may create a dent in the prosecution version. If an omission or discrepancy goes to the root of the matter and ushers in incongruities, the defence

can take advantage of such inconsistencies. It needs no special emphasis to state that every omission cannot take place of a material omission and, therefore,

minor contradictions, inconsistencies or insignificant embellishments do not affect the core of the prosecution case and should not be taken to be a ground to

reject the prosecution evidence. The omission should create a serious doubt about the truthfulness or creditworthiness of a witness. It is only the serious

contradictions and omissions which materially affect the case of the prosecution but not every contradiction or omission.Ã¢â‚¬‹

12. In the instant case, prima facie, in the opinion of this Court, these contradictions are minor contradictions of trivial nature which do not affect the

core of the prosecution case. Moreover, at this stage of deciding the application for suspension of sentence, these contradictions cannot be taken into

consideration to reject the entire case of prosecution, as the applicant has been convicted after full fledged trial and there is no presumption of

innocence in his favour.

13. Consequently, in view of my aforesaid discussion, the application, being devoid of merits, deserves dismissal and is accordingly dismissed.

14. Be it stated that any expression of opinion given in this order does not mean an expression of opinion on the merits of the case and the same has

been given only for the purpose of deciding the present application. The application stands disposed of.

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