(1995) 09 P&H CK 0018

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Mann Prakash		APPELLANT
	Vs	
State of Haryana		RESPONDENT

Date of Decision: Sept. 7, 1995

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313, 360, 361
- Penal Code, 1860 (IPC) - Section 279, 304A, 337
- Probation of Offenders Act, 1958 - Section 4

Citation: (1996) 2 ACC 519 : (1996) 1 RCR(Criminal) 437

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Judgement

Swatanter Kumar, J.

The facts giving rise to the present revision petition are that one Ballu Ram, brother of Mahabir, was residing near National Service Station, Meham Gate, Bhiwani. Along with his brother they used to work as contractors in the M.I.T.C. Department. On 25.2.1989 at about 8.00 p.m. they were sitting in National Service Station. Later Ballu Ram and Umed, nephew of Ballu Ram, were strolling on the footpath on the right side. Truck No. HRY-3488 came from the Bus stand side, Bhiwani, with rash and negligent speed. That truck climbed on the footpath and caused the accident hitting Ballu Ram from behind. Umed Singh also sustained some injuries. The said truck was being driven by Mann Parkash son of Daya Nand, hereinafter referred to as the petitioner-accused. The said driver left the truck and fled away. The petitioner-accused was identified by Umed Singh, who lodged the complaint on the spot itself. Injured Ballu Ram was hospitalised in General Hospital, Bhiwani by Devi Chand Ex. Subedar, where Ballu Ram breathed his last. Case under FIR No. 20 dated 25.2.1989, under Sections 279/337/304A, IPC was consequently registered against the petitioner. Upon completion of investigation, challan was presented in Court.

2. Petitioner was charge-sheeted on 7.6.1989 to which he pleaded not guilty and claimed trial. The prosecution is stated to have examined seven witnesses in support of its case. The statement of the petitioner u/s 313, Cr.P.C. was recorded, on 4.6.1993. As per his statement, the accused was falsely implicated. However, upon completion of the trial, the learned Judicial Magistrate, 1st Class, Bhiwani, vide his judgment and order dated 15.9.1993 convicted the petition and sentenced him to undergo rigorous imprisonment for six months each under Sections 279, IPC and 337, IPC and for a period of two years u/s 304A, IPC.

3. Based on the above facts, the learned Counsel appearing for the petitioner has argued that the statements of two witnesses i.e., PW-1 Mahavir Singh and PW-2 Umed Singh suffer from basic and material contradictions and the petitioner cannot be convicted on the basis of the same.

4. Having heard the Counsel for the parties at some length I am of the considered view that this contention of the learned Counsel is not sustainable. The prosecution, as noted above, examined seven witnesses, out of which PW2 was an eye-witness and other two were the witnesses who came to the spot immediately after the occurrence. PW2 has categorically stated that the truck was driven by petitioner Mann. He has also stated that the driver ran away and that witnesses Mahavir Singh and Devi Chand had come to the spot immediately and they took Ballu Ram to the hospital. The police had also reached the spot and had taken the vehicle in custody as well as the blood-stains from the place of occurrence. Nothing material could be noticed in the cross-examination of this witness. This witness categorically stated that he can identify the accused and so identified him even in Court. He had denied a categorical suggestion that the accused was not driving the truck. The death of Ballu Ram has been duly proved and also the injuries suffered by PW2. The doctor was examined and the prosecution version has also been duly supported by the two other material witnesses i.e. Mahavir Singh and Devi Chand.

5. Both the learned Subordinate Courts have discussed the entire evidence in detail and the learned Counsel has not been able to pin-point any error in these judgments which could be considered material and a ground for setting aside the same. The plea of alibi reluctantly taken by the petitioner and his allegation of false implication remains totally unsubstantiated on record and is entirely unbelievable. The story of the prosecution is reasonable, probable and has been established beyond all reasonable doubts. In these circumstances the judgments of the learned Courts below in finding the petitioner guilty of the offences aforesaid and convicting him are liable to be sustained.

6. Learned Counsel for the petitioner then placed lot of stress on his submission that the petitioner has been incorrectly denied that benefit of releasing him on probation u/s 360 of the Criminal Procedure Code or under the provisions of Probation of Offenders Act. The submission of Counsel for the petitioner is that the petitioner is the sole bread-earner of the family and has already undergone substantial part of the sentence. The FIR was registered in February, 1989 and the petitioner was arrested on 11.3.1989 and since then

the petitioner has faced this protracted trial. It has also been brought to the notice of the Court that vide Ex. D/1, the parties had also settled their claim before the Motor Accident Claims Tribunal and the petition for compensation was dismissed as withdrawn.

7. There is some force in the submissions of learned Counsel for the petitioners. The purpose of providing benefit to an accused under the aforementioned provisions is primarily to give another chance to the accused to improve his conduct and to live as a better human-being in the society. The seriousness of the offence, the conduct of the accused and the likelihood of his repeating the offence are the basic criterion which would normally weigh with the Court while granting or refusing such benefit to the accused.

8. The learned Counsel for the petitioner has relied upon the judgment of the Supreme Court in 1982 CAR 5 Aitha Chander Rao v. State of Andhra Pradesh, where the accused-appellant in that case was allowed the benefit of probation without affecting the service career of the driver. It was observed by the Supreme Court as under:

The Sessions Judge has found that there was some amount of contributory negligence on the part of the appellant and having regard to me peculiar circumstances of this case we think it is eminently a fit case in which the appellant may be released on probation.

The learned Counsel also relies upon other cases reported as Gobind Ram v. The State of Haryana 1978 CLR 255 and Sadhu Ram v. State of Haryana 1983 (1) CLR 420. In these cases the FIRs were registered against the State Transport drivers u/s 304A, IPC etc., but they were ordered to be released on probation by the orders of this Court.

9. On the other hand, the State Counsel has relied upon the case of Gurcharan Singh v. State of Punjab 1983 (1) RCR 1 and submitted that the principles laid down in the said judgment are that the provisions of Section 360 and 361 of the Criminal Procedure Code are not applicable to such cases.

10. I find it difficult to uphold the contention of learned Counsel for the State as in the same judgment it was because of the peculiar facts and circumstances of the case that the Court had declined to give the benefit of Sections 360 and 361 of the Code of Criminal Procedure to the accused in that case. The learned Judge in para No. 7 of the judgment indicated the following reasons:

These offences are on the increase by leaps and bounds and, therefore, the provisions of Sections 360 and 361, Criminal Procedure Code, are to be applied to such cases only in a very rare and exceptional circumstances. The case in hand, in my view, is not of that kind.

Thus, the benefit to the accused in that case was declined, keeping in view the peculiar facts and circumstances of the case as two young children had lost their lives and 8 others were injured.

11. The Courts have emphasised that sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The Courts are required to collect material necessary to award just punishment and also to apply its mind to the facts and circumstances of the case whether an accused/convict can be given the benefit of the provisions of Section 360, Cr.P.C. or the provisions of Probation of Offenders Act. The Supreme Court in the case of Ved Prakash Vs. State of Haryana, while emphasising the need of dealing with the offenders in such a manner that he becomes a non-offender/observed as under:

We emphasise this because the legislations which relate to amelioration in punishment have been regarded as "Minor Acts" and, therefore, of little consequence. This is a totally wrong approach and even if the Bar does not help, the Bench must fulfil the humanising mission of sentencing implicit in such enactments as the Probation of Offenders Act.

12. In a very recent case titled as A.P. Raju v. State of Orissa 1995 SCC 675, the Supreme Court while dealing with a case of death by rash and negligent driving u/s 304A of the Indian Penal Code, held as under:

Taking in view all these factors, in our opinion, the interest of justice would be met if instead of now sentencing the appellant to serve a term of imprisonment and sending him to prison again, we order his release u/s 360, Criminal Procedure Code on the appellant"s entering . into a bond with one surety to keep good conduct and be of good behaviour and keep peace for a period of one year from the date of execution of the bond. We make an order accordingly. The bond shall be executed by the appellant within one month from today before the Trial Court. With the above modification of sentence, the appeal is disposed of.

The Courts, therefore, have to draw a balance between the chances of the offender becoming a non-offender and minimising the chances of such an offender repeating commission of such offences on the one hand, and, on the other hand, from the accused drawing a premium over the commission of the offence, in the event the accused is granted such benefit. This would depend upon various factors which have been settled by various pronouncements of all Courts and they form kind of guidelines for the Courts to strike this balance.

13. There can be no two opinions that the benefit of Sections 360 and 361 of the Criminal Procedure Code and the provisions of Probation of Offenders Act can neither be granted as a matter of rule nor can be declined as a matter of rule. Each case must be dealt with on its own merits. In the present day when the road accidents are certainly on the increase, the Courts will have to apply reasonable caution while granting such benefit to the accused in these cases.

14. Keeping in view the above discussion and while upholding the conviction of the petitioner, it is desirable that he should be released on probation. Number of persons are

dependent upon the petitioner. He is a first offender and belongs to a poor family. There is no complaint of his conduct during the trial. The parties had also settled their dispute, but that is certainly of not much help to the petitioner. He has already undergone part of the sentence. Consequently, it is directed that the petitioner be released on probation for a period of three years u/s 360 of the Criminal Procedure Code read with the provision of Section 4 of the Probation of Offenders Act, on his furnishing a personal bond in the sum of Rs. 10,000/-, with one surety in the like amount, for the said period, for keeping peace and be of good behaviour to the satisfaction of Chief Judicial Magistrate, Bhiwani. In the event, the petitioner is involved in any accident case while committing such offence during the abovesaid period, the benefit of probation granted to him under the afore-mentioned provision, shall be deemed to be withdrawn and the petitioner shall have to appear before the Court of competent jurisdiction to receive and undergo the remaining portion of sentence. The revision petition is disposed of accordingly.