

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15..06..2016

CORAM

THE HONOURABLE MR . JUSTICE S.NAGAMUTHU
AND
THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Criminal Revision Petition No.853 of 2016

Gopal ... Petitioner/appellant/Sole Accused

-Versus-

State Rep. by
The Inspector of Police,
Machinakudi Police Station,
Koodalur, The Nilgiris District.
[Crime No.86 of 2013] ... Respondent/Respondent/Complainant

Criminal Revision Petition under Sections 397 r/w 401 of Cr.P.C. challenging the conviction and sentence imposed against the revision petitioner on his pleading guilty by the learned Sessions Judge, Mahila Sessions [Fast Track] Court, Udhagamandalam, the Nilgiris District, in S.C.No.45 of 2013 dated 20.08.2014.

For Revision Petitioner : Mr.Philip Ravindran Jesudoss
For Respondent : Mr.M.Maharaja, APP
Amicus Curiae : Mr.A.Raghunathan, Senior Counsel

ORDER

(Order of the Court was delivered by S.NAGAMUTHU, J.)

The revision petitioner is the sole accused in S.C.No.45 of 2013 on the file of the learned Sessions Judge, Mahila Sessions [Fast Track] Court, Udhagamandalam. Challenging the conviction and sentence imposed on him by the trial court for offence under Section 302 of IPC, he has come up with this criminal revision petition.

2. The deceased in this case was one Mrs.Lakshmi. The revision petitioner/accused is her husband. There was misunderstanding between the accused and the deceased. It is alleged that on 09.06.2013 at 05.00 a.m., when the deceased was sleeping, the accused killed her by throwing a grinding stone on her head and also by strangulating her neck with a cloth. The respondent investigated the case and filed final report against the accused alleging that the accused had committed offence punishable

3. On committal, cognizance was taken by the learned Principal Sessions Judge of The Nilgiris Division and was thereafter made over to Fast Track Mahila Sessions Court, Udthagamandalam. On 08.08.2014, the trial court framed a lone charge against the accused under Section 302 of IPC. The said charge was read over and explained to the accused. When the court asked the accused as to whether he pleaded guilty of the offence or he claimed to be tried, he pleaded guilty and the same was recorded by the learned Judge. Thereafter, no witness, either on the side of the prosecution or on the side of defence was examined and no documentary evidence was also let in. Finally, by judgement dated 20.08.2014, acting on the said plea of guilty made by the accused, the trial court convicted him under Section 302 of IPC and sentenced him to undergo imprisonment for life. The accused has been in prison initially as an under trial prisoner and now as a convict prisoner.

4. Challenging the above said conviction and sentence, the accused filed a criminal appeal in Crl.A. SR No.32937 of 2013 with a delay of 190 days. After condoning the delay a Division Bench of this Court entertained the said criminal appeal and admitted the same. The said criminal appeal was numbered as Crl.A.No.479 of 2013. When the said criminal appeal came up before this Division Bench on 14.06.2016, it was noticed that since conviction of the accused was on his plea of guilty, the said appeal under Section 372 of the Code, 1973 is not maintainable in view of the bar contained in Section 375 of the Code, 1973. However, this court was not inclined to dismiss the appeal as not maintainable after having entertained the same inadvertently and kept the same pending for about 11 months. Since, the life and liberty of the accused is in jeopardy, we did not want to non suit him. Therefore, we directed the Registry to convert the said criminal appeal as a criminal revision case and accordingly, the same has been converted as a criminal revision and numbered as Crl.R.C.No.853 of 2016. That is how, the same is now before this Division Bench for disposal.

5. Considering the important legal issues involved in this criminal revision, we requested Mr.A.Raghunathan, the learned senior counsel, to assist the court as an amicus curiae. We have heard the learned senior counsel Mr.A.Raghunathan, the amicus curiae; the learned counsel Mr.Philip Ravindran Jesudoss appearing for the petitioner/accused; and the learned Additional Public Prosecutor Mr.M.Maharaja, appearing for the respondent/State and also perused the records carefully.

6. The learned counsel for the revision petitioner would submit that the conviction of the petitioner by the trial court in a mechanical fashion on accepting the plea of guilty made by the accused is totally erroneous and the same is liable to be set aside.

7. The learned senior counsel Mr.A.Raghunathan, the learned amicus curiae, while agreeing with the said argument of the learned counsel for the petitioner submitted that it is too well settled

that in a case of this nature, which involves an offence with capital punishment, such course of convicting the accused simply on accepting the plea of guilty is not legal.

8. The learned Additional Public Prosecutor Mr.M.Maharaja would submit that the plea of guilty was voluntary. And the accused pleaded so only after knowing the consequences of the said plea. Therefore, according to him, the conviction and sentence imposed by the trial court do not at all require any interference at the hands of this court.

9. We have considered the above submissions carefully.

10. In order to identify the correct legal position, let us now start our journey from post-1973 Code. Sub-section (1) of Section 271 of the Code of Criminal Procedure, 1898 [hereinafter referred to as "the old Code"] corresponds to Section 228 of the Code of Criminal Procedure, 1973 [hereinafter referred to as "the new Code"]. Sub-section (1) of Section 271 of the old Code reads as follows:-

"271. (1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon"

11. Section 228 of the new Code read as follows:-

"228. Framing of charge.- (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub- section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."

12.1. A comparative reading of these two provisions would make it clear that the accused has option, when he is questioned about the charge, either to plead guilty or to claim to be tried. There is no substantial difference between these provisions. Actually the difference lies between sub-section (2) of Section 271 of the old Code and Section 229 of the new Code. Sub-section (2) of Section 271 of the old Code reads as follows:-

"271. (1)
... ..
(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon"

12.2. Section 229 of the new Code reads as follows:-

"229. Conviction on plea of guilty.- If the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon."

[Emphasis supplied]

13. A close reading of these two provisions would make it ipso facto clear that so far as the old Code is concerned, if the accused pleads guilty, the plea shall be recorded and the accused may be convicted thereon. The expression "may" employed in the provision indicates that the court has option either to act on such a plea or to proceed with the trial. Thus, under the old Code, an element of discretion for the court was inbuilt. But, in the new Code, the law makers did not wish to leave any doubt as to whether the court has discretion or not. Therefore, they have made it explicitly clear that the court has discretion. As per Section 229 of the new Code, if the accused pleads guilty, the judge shall record the plea and may in his discretion convict him thereon. Thus, under the new Code, such discretion has been explicitly given to the court either to convict the accused or to proceed with the trial. This difference in language serves a purpose in the light of the constitutional mandate in Article 21 of the Constitution of India.

14. In the Constitution of India, several provisions have been enshrined for the purpose of ensuring the dignity of the individual and providing for his material, moral and spiritual development. These provisions would be meaningless and ineffectual unless there is rule of law to invest them with life and force. What is the necessary element of the rule of law is that the law must not be arbitrary and irrational and it must satisfy the test of reasons. Article 21 is the heart of all these provisions which guarantees dignified life and personal liberty. It mandates that no person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by law or in its converse positive form, a person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by a valid law. Undoubtedly, the

discretion vested in the court under Section 229 of the new Code is in tune with Article 21 of the Constitution of India to ensure a fair trial to an accused. Section 229 of the new Code, of course, makes it mandatory that if the accused pleads guilty, the court shall record the said plea. If once it is so recorded, the latter part of Section 229 of the new Code makes it undoubtedly clear that in its discretion, the court may convict the accused thereon. How the discretion should be exercised by the court has not been defined or no guidelines have been formulated by the legislature. The exercise of such undefined discretion is always more difficult and uncertain. It is left to the Judge to grope in the dark for himself and in the exercise of his unguided and unfettered discretion decide what reasons may be considered to use his discretion justifying conviction. What may appear to be the reasons justifying for conviction of an accused on the plea of guilty for one judge, may be found either unreasonable or insufficient to convict him on the plea of guilty, to the another judge. Thus, in the absence of any expected legislative policy guiding the said discretion under Section 229 of the new Code, it is for the judges to be guided by the judge-made laws and by using their judicial prudence.

15. In our considered view, in this scenario, before acting solely on the plea of guilty, essentially, the court should be fully satisfied that the accused had understood the nature of the charge levelled against him. A common man, more particularly, an illiterate poor man hailing from a remote corner of this country, may not know what the offence of murder in the context of the Indian Penal Code is. It is the common man's understanding that killing of a human being by another is a murder. The vast majority of people of this country do not know as to when a homicide amounts to a culpable homicide; when culpable homicide amounts to a murder and when the special exceptions appended to Section 300 of IPC would reduce the offence again into a culpable homicide. Similarly, the accused may not know as to whether his act would fall under anyone of the general exceptions. He may not know whether the death was directly due to the violence caused by him or due to some other natural cause. Whether the offence committed by the accused is a mere culpable homicide or murder requires a deep analysis of the back-ground of the entire occurrence. The accused may not know those back-grounds which actually may make out the difference between culpable homicide not amounting to murder and murder. Going by his common understanding that killing a person is a murder, when he is questioned under Section 228 of the new Code, he may plead guilty. When an accused, without knowing these nuances, pleads guilty, there is a danger of conviction for him for an offence that he has not committed. Similarly in the matter of sentencing also, vast discretion has been given to the court. For proper exercise of this discretion, the mitigating as well as aggravating circumstances which would guide the court to decide about the proportionate sentence for the offence committed are to be placed before the court. The mitigating circumstances may not be brought on record when the court simply acts upon the plea of

guilty. Thus, without judging the proportionate quantum of sentence to be imposed, if disproportionate sentence is imposed upon the accused by the court, it may amount to injustice.

16. For the reasons discussed above, in serious cases of this nature where capital punishment is provided for, exercising the discretion under Section 229 of the new Code mechanically to convict the accused on his plea of guilty may amount to arbitrary exercise of the discretion. Thus, we are of the considered view that not as an universal rule, but, at least, as a rule of caution founded on prudence, in cases where capital punishment is provided for, the court may use its discretion to proceed with the trial calling upon the prosecution to prove the charges.

17. In this regard, we may also have survey of few judgments both pre and post constitution eras. In Queen Empress v. Bhadu, (1896) ILR 19 All 120, the Allahabad High Court has held as follows:-

"In this country it is dangerous to assume that a prisoner of this class understands what are the ingredients of the offence under Section 302 of the Indian Penal Code, and what are the matters which might reduce the act committed to an offence under Section 304 of IPC. Even in England it is used to be the practice of some Judges, and probably is still, although they were not bound to do so, to advise persons pleading guilty to a capital offence to plead not guilty and stand their trial. The accused is charged with a capital offence, and it need hardly be pointed out that the usual practice in such cases is not to accept the plea of guilty, but to proceed to record evidence and base the order of conviction or acquittal according to the reliability or unreliability of that evidence."

[Emphasis supplied]

18. In Dalli v. Emperor, AIR 1922 All 233 (I) : (1922-23 Cri.L.J. 283), the Allahabad High Court held as follows:-

"In a case of murder it has long been the practice not to accept the plea of guilty. After all murder is a mixed question of fact and law and unless the Court is perfectly satisfied that the accused knew exactly what was necessarily implied by his plea of guilty, the case should be tried."

19. The Calcutta High Court in Netai Luskar v. Queen Empress, (1885) ILR 11 Cal 410 and the Bombay High Court in Emperor v. Chinia Bhika Koli, (1906) 3 Cri. L.J. 337 have taken the similar views. The Madras High Court in Queen Empress v. Chinna Pavuchi,

(1900) ILR 23 Mad 151, has fallen in line with the same view and has held as follows:-

"The Code (S.271) only says that 'the plea shall be recorded, and he may be convicted thereon'. As a matter of practice the Sessions trials-especially in murder cases -many Judges, as we think very properly, prefer not to act on the plea of guilty, but proceed to take the evidence just as if the plea had been one of not guilty, and decide the case upon the whole evidence, including the accused's plea."

20. The Hon'ble Supreme Court in State of Maharashtra v Sukhdeo Singh, 1992 CrL.J. 3454, has held as follows:-

"Where the Judge frames the charge, the charge so framed has to be read over and explained to the accused and the accused is required to be asked whether he pleads guilty of the offence charged or claims to be tried. Section 229 next provides that if the accused pleads guilty, the Judge shall record the plea and may, in his discretion, convict him thereon. The plain language of this provision shows that if the accused pleads guilty the Judge has to record the plea and thereafter decide whether or not to convict the accused. The plea of guilt tantamounts to an admission of all the facts constituting the offence. It is, therefore, essential that before accepting and acting on the plea the Judge must feel satisfied that the accused admits facts or ingredients constituting the offence. The plea of the accused must, therefore, be clear, unambiguous and unqualified and the Court must be satisfied that he has understood the nature of the allegations made against him and admits them. The Court must act with caution and circumspection before accepting and acting on the plea of guilt. Once these requirements are satisfied the law permits the Judge trying the case to record a conviction based on the plea of guilt. If, however, the accused does not plead guilty or the learned Judge does not act on his plea he must fix a date for the examination of the witnesses i.e. the trial of the case. There is nothing in this Chapter which prevents the accused from pleading guilty at any subsequent stage of the trial. But before the trial Judge accepts and acts on that plea he must administer the same caution unto himself. This plea of guilt may also be put

forward by the accused in his statement recorded under Section 313 of the Code."

These judgments have given sufficient guidelines as to how a judge should exercise his discretion under Section 229 of the new Code, when the accused pleads guilty. In the instant case, a perusal of the records, including the judgement of the trial court, would reveal that the learned trial Judge had not explained to the accused, the ingredients of the offence and the other circumstances which may be relevant for deciding the quantum of sentence. In our considered view, the trial judge, in the instant case, ought not to have acted on the plea of guilty and instead, she ought to have proceeded with the trial of the case. As has been held by the Hon'ble Supreme Court, while the accused is questioned under Section 313 of Cr.P.C. his plea of guilty as recorded under Section 229 of the new Code shall also be put to him so that he could explain under what circumstances, he made such a plea and that may also be one of the circumstances to be taken into account by the court while deciding the issue whether the accused had committed the offence charged or not. In simple terms, we regret to say that the learned trial Judge, in the instant case, had exercised her discretion not judiciously, but, unconstitutionally in an arbitrary manner. Therefore, we hold that the conviction and the sentence imposed on the revision petitioner by the trial Judge is liable to be set aside and the case is to be remitted back to the trial court for holding a fair trial in accordance with law after affording sufficient opportunity to both parties.

21. In the result, the Criminal Revision Petition is allowed. The conviction and sentence imposed on the petitioner/accused by the trial court are hereby set aside and the case in S.C.No.45 of 2013 on the file of the learned Sessions Judge, Mahila Sessions [Fast Track] Court, Udhagamandalam, is remitted back with a direction to the learned Sessions Judge, Mahila Sessions [Fast Track] Court to proceed with the trial of the case in accordance with law and to dispose of the case afresh within a period of four months from the date of receipt of a copy of this order. It is directed that the accused shall continue to be in prison as a remand prisoner subject to the orders of the trial court under Section 309 of Cr.P.C.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1.The Sessions Judge, Mahila Sessions [Fast Track] Court,
Udhagamandalam, the Nilgiris District.

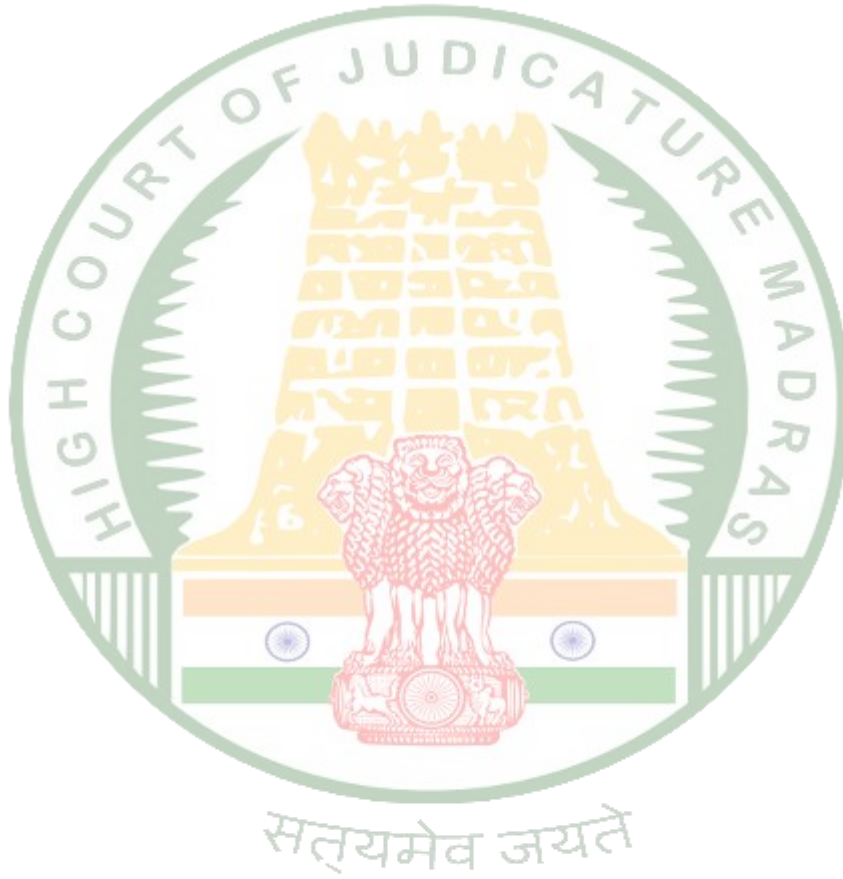
2.The Inspector of Police,Machinakudi P.S.,Koodalur,The Nilgiris District.

3.The Public Prosecutor, High Court, Chennai.

4.The Superintendent, Central Prison, Coimbatore.

gj(co)
krd 11/8

Cr1.R.C.No.853 of 2016



WEB COPY