

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL No.260 OF 2017

JUDGMENT:

This criminal appeal, under Section 374(2) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed against the Calendar and Judgment dated 10.03.2017 in S.C. No.38 of 2013 passed by the Sessions Judge, Mahila Court, Visakhapatnam, finding the appellant/ accused guilty for the offences punishable under Sections 376, 417 and 420 of the Indian Penal Code, 1860 (for short 'I.P.C.'), convicted and sentenced him to undergo rigorous imprisonment for a period of 7 years and to pay fine an amount of Rs.5,000/-, in default to suffer simple imprisonment for a period of six months for the offence punishable under Section 376 I.P.C., to undergo rigorous imprisonment for a period of 3 years and to pay fine an amount of Rs.2,000/-, in default to suffer simple imprisonment for a period of one year for the offence punishable under Section 417 I.P.C., and to undergo rigorous imprisonment for one year and to pay fine an amount of Rs.1,000/-, in default to suffer simple imprisonment for a period of one month for the offence punishable under Section 420 I.P.C. The substantive sentences shall run concurrently and default sentences shall run consecutively.

The main reason for recording the conviction is the admission of guilt by the accused, after framing charges under section 228 Cr.P.C., read over and explained to him in Telugu. Section 229 Cr.P.C. permits the court to record conviction on admission if the plea of guilty is an admission of all the facts on which the charge is framed, as well as an admission of the guilt in respect of them. Hence mere saying that the accused pleads guilty is not a plea of guilty. He

must admit in clear terms all the facts constituting the offence, only then he can be convicted on the plea of guilty. In order to convict the accused, the statement by the accused should be construed to be such an admission of guilt as to entitle the court to convict him on its sole basis, the admission in question must be clear, unequivocal and unambiguous and must be such as to cover all the ingredients of the offence. It must be unqualified, unconditional and direct. It is not possible to extract it from inference drawn from statements couched in cloudy terms and capable of dubious construction.

A plea of guilty is not less than a confession, it must be recorded with caution in the question and answer form and the exact words of the guilt should be recorded as held by the Bombay High Court in **EMPEROR V. ABDUL HUSSAIN SHAMSUDDIN**¹ and Gauhati High Court in **HAOBIJAM CHAOYAINA SINGH VS HEISNAM MANGI SINGH AND ORS.**²

Section 229 Cr.P.C. lays down that if the accused pleads guilty, the judge may in his discretion convict him thereon. Section employed the word “may”; the conviction need not follow the plea of guilty. The court has discretion to accept the plea or proceed to take evidence notwithstanding the plea. But the court would be wise in accepting such plea in serious offences like murder or culpable homicide not amounting to murder. Conviction for serious offence on the basis of plea of guilt is invalid where the court has recorded conviction, the accused understood the nature and effect of the charge to which he has pleaded guilty.

The rule of practice adopted by the various High Courts in not acting upon a plea of guilty in cases of serious offences of murder is a

¹ 5 Bom LR 999 at p. 1000 (E)

² 1957 Cr.L.J. 144

rule of caution and prudence. An offence of murder involves not only the physical act of violence, but also the mental element of intention or knowledge. A lay accused, when he pleads guilty is likely to be more concerned with the physical act and may not advert to the various ingredients constituting the offence. Whether act constitutes murder is a mixed question of law and fact. The court while holding an accused guilty of murder should also enter a finding that he did the act with the requisite intention or knowledge. For such a finding to be entered and to decide whether the offence is murder or a lesser offence, the court should have before it the details of the occurrence, the circumstances under which the act was done and the motive if any and for this purpose it is desirable that the entire evidence is placed before the court as held by the Kerala High Court in **RAMESAN V. STATE OF KERALA**³.

After amendment to Cr.P.C., discretion is conferred on the court, such discretion has to be exercised cautiously. Almost all the High courts of the country have taken the view that the court should not act upon the plea of guilty in serious offences, but should proceed to take evidence as if the plea had been not one of guilty and should decide the case upon the whole evidence including the accused plea.

I do not consider it necessary to refer to those decisions in detail. In **RAM KUMAR v. STATE OF U.P.**⁴ an identical question came up before the Allahabad High Court. In **MANISH MISRA v. STATE OF U.P.**⁵ where an accused of an offence under Section 21 of NDPS Act, was found guilty on the plea of guilty though it is of serious nature providing deterrent punishment. On appeal the High

³ 1981 CRL.L.J. 451

⁴ 1998 CRL.L.J. 1267

⁵ 2003 CRL.L.J. 4085

Court came to the conclusion that the conviction on plea of guilty is erroneous and the court ought to have proceeded to record evidence and decide the case as if there is no plea of guilty or ought to have ignored such plea of guilt and set aside the conviction.

In the present case the punishment prescribed under Sections 376, 417 and 420 I.P.C., are deterrent in nature, the learned Sessions Judge, at paragraph 4 of the judgment, it is noted that specific charges for the offences under Sections 376, 417 and 420 of I.P.C. were framed and read over to the accused in Telugu and explained to him and for which he pleaded guilty and is accepted. Basing on such confession of guilt, the court found the accused guilty for the serious offences, recording of conviction is without properly exercising discretion conferred on the court by Section 229 of Cr.P.C. In such serious offences, the Sessions Judge ought to have ignored and proceed to record evidence as if there is no plea of guilt, since it not only effects life of the accused but also seriously effects the life of victim. Therefore the conviction recorded by the learned sessions judge is against the canons of law referred supra and the same is liable to be set aside while remanding the sessions case for regular trial in accordance with law.

The learned Sessions Judge, without adhering to the law declared by various High courts and the Apex Court in plethora of perspective pronouncements, found the accused guilty for the offences referred above in view of under Section 229 Cr.P.C. and committed an error in convicting him.

Therefore, conviction and sentence dated 10.03.2017 in S.C. No.38 of 2013 passed by the Sessions Judge, Mahila Court, Visakhapatnam, against the appellant/accused for the offences

punishable under Sections 376, 417 and 420 I.P.C. are hereby set aside, while directing the learned Sessions Judge to conduct *denovo* trial and complete the same within four months from the date of receipt of a copy of this Judgment. The fine amount, if any, paid shall be refunded under due acknowledgment. The appellant/ accused is at liberty to apply for bail before the Sessions Judge, if he was on bail during trial.

Accordingly, the criminal appeal is allowed.

Miscellaneous petitions, if any, pending in this criminal appeal shall stand closed.

16.03.2017
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M.SATYANARAYANA MURTHY, J

