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Case Analysis of Rafiq Ahmed @ Rafi Vs. State of UP

RADHIKA[1]

ABSTRACT

According to Section 396 of Indian Penal Code, 1860 dacoity with murder refers to the offence of committing murder along with dacoity by five or more persons conjointly and every person shall be punishable with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. This is one of the most heinous crime and accordingly the punishment is also very stringent therefore, becomes necessary to understand the nature of crime especially when the substantial question of law is involved.

This case deal with heinous crime of Dacoity and Cold- blooded murder. However, there are various other facts that were covered in this case but primarily including these crimes. The earlier FIR was lodged by police against five accused under section 364 of Indian Penal Code. Further as the investigation proceeded various other sections i.e; section 302, 201, 396, 411 of Indian Penal Code was got involved. The acts involved under this case is Indian Penal Code, 1860 and Criminal procedural code, 1973 which is substantive and procedural laws respectively. The issues for determination are the substantive question of laws which needed an answer in the light of above-mentioned enactments. Both the petitioner and defendant side had made the fiery arguments and various cases have also taken into account as precedents while pronouncing the judgment by the court.

The case has been analyzed with great depth so as to understand the reasoning and nature of the judgment passed by the court of law. This case analysis will help us to understand the point of view of court when some serious questions of fair trial, right to defense, granting more punishment than prosecuted for, has come up in front of the court to determine.

I. FACTS OF THE CASE

1. That the deceased (Jagdish Chandra) left his house/shop for Nehtaur on 30.09.77 to realize the amount from customers. Then he was seen in Nehtaur Kasba by PW-2 Ved Prakash and PW-4 Gyan Chand on that day who saw him occupying taxi no. UPS 7293.

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2. That the deceased was sitting in the taxi along with others and appellant Rafiq Ahmad was found on the driver seat;the taxi in question proceeded for Dhampur from Agency Chauraha, Nehtaur in the presence of PW-4 Gyan Chand.

3. That all the five accused, namely, Rafiq Ahmad, Ahsan, Imamuddin, Arun Kumar and Yashwant Singh, according to the prosecution, in the intervening night of 30th September, 1977 and 1st October, 1977 committed dacoity in Ambassador Car No.UPS 7293 belonging to Rafiq Ahmad.

4. That the appellant (Rafiq Ahmad) was arrested by the police on 2.10.77 alongwith his taxi and he made a confession to the IO in the presence of two public witnesses that he had concealed the dead body in a sugarcane field near village Kashmir.

5. That subsequent recovery of the dead body of deceased (Jagdish Chandra) from the sugarcane field at the pointing out of the appellant in the night indicates that Rafiq Ahmad alongwith some others looted the cash and other valuables from the person of the deceased.

6. After investigation the police arrested all the five accused and then the trial proceeded against all of them.

7. The trial court, by a detailed judgment dated 17th August 1981, can to the conclusion that Rafiq Ahmed was guilty of charge under Section 302 and 201 IPC under which the accused was liable for conviction and punishment.

8. The court held that Ahsan was guilty of a charge under Section 411 IPC but acquitted and three other accused, namely. Imamuddin, Arun Kumar and Yashwant Singh under Section 396 of IPC by giving them benefit of doubt.

9. The Court awarded rigorous imprisonment for life to Rafiq Ahmad under Section 302 IPC and seven years rigorous imprisonment under Section 201 IPC. Both the sentences were ordered to run concurrently.

10. The Trial Court ordered the accused Ahsan to undergo rigorous imprisonment for period of one year and to pay a fine of Rs. 500/- under section 411 of IPC and in default to undergo Imprisonment for the further period of six months.

11. His conviction and sentence was maintained while the appeal preferred by Ahsan was accepted and he was acquitted even of the charge under section 411 IPC. Rafiq Ahmed, in the present appeal, has impugned the judgment of the high court.

12. The argument is that appellant was charged for an offence under Section 396 IPC and without reformulation/alteration of the charge, the appellant has been convicted for an offence

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under Section 302 IPC. This according to the learned counsel, has deprived the appellant of a fair opportunity of defence and has caused him serious prejudice.

13. That section 302 IPC is a graver offence than an offence punishable under Section 396 of the IPC and as such the entire trial and conviction of the appellant is vitiated in law.

II. ISSUES RAISED

1. Whether the charge against Rafiq Ahmad under Section 396 alone could have been convicted for an offence under Section 302 of IPC without alteration of charge?
2. Whether the accused has suffered any prejudice in relation to right to defence, fair trial and in relation to the case of the prosecution?

III. ARGUMENTS ADVANCED BEFORE THE HON'BLE COURT

(A) Appellant's Arguments

1. The whole focus of the appellant's pleadings is on the resolution of an issue of law, which, if resolved in the appellant's favour, would entitle the appellant to an order of acquittal, according to the learned counsel standing for the appellant. The argument is that the appellant was charged with an offence under Section 396 IPC and was convicted of an offence under Section 302 IPC without reformulation or modification of the charge. According to the experienced counsel, the appellant has been denied a fair opportunity to defend himself and has suffered severe prejudice as a result of this.

2. Therefore, the offence under section 302 is graver than the offence under section 396 and hence the entire trail and conviction of the appellant is vitiated by the law.

3. It is further claimed that both the learned trial court and the High Court made factual and legal errors, failing to comprehend the evidence in its proper context, and that there are major inconsistencies in the witnesses' testimony. It is also argued that because this is a matter of circumstantial evidence, the prosecution has failed to establish the sequence of events that point to the accused's guilt.

(B) Respondent's Arguments

1. On the other hand, the State claims that, despite the fact that this is a matter of circumstantial evidence, the prosecution has been able to prove its case beyond a reasonable doubt. The appellant has experienced no harm as a result of his conviction under Section 302 of the Indian Penal Code.

2. State has also referred to the case of Babulal Choukhani v. The King Emperor[2][3] and concluded that the accused knew that for what he was tried for and was defended himself by keeping in mind those charge and therefore until unless there was any discrepancy in criminal trial, accused should not be said to have suffered from prejudice.

IV. JUDGMENT

1. The court has first answered the question regarding any prejudice suffered by the appellant as preliminary there were charges under section 396 but without any alteration he was sentenced under section 302 which has deprived the appellant from fair opportunity to present and defend against that charge as the offence under section 302 is more graver that the offence under section 396 of IPC.

2. A Constitution Bench of this Court in the case of Willie (William) Slaney v. State of Madhya Pradesh[4][5] dealt with a question as to whether omission to frame a charge was a curable irregularity. The finding of the court was-

"The Code's goal is to guarantee that an accused individual has a complete and fair trial that follows a set of well-established and well-understood guidelines that are consistent with our conceptions of natural justice. If he does, if he is tried by a competent court, if he is told and clearly understands the nature of the offence for which he is being tried, if the case against him is fully and fairly explained to him, and he is given a full and fair opportunity to defend himself, then, as long as there is substantial prejudice suffered by him, mere procedural errors and mere inconsequence's will be overlooked."

3. We are of the considered opinion that the appellant has suffered no prejudice as a result of his conviction for an offence punishable under Section 302 IPC, notwithstanding the fact that he was first charged with an offence punishable under Section 396 IPC read with Section 201 IPC. The 'prejudice' must be assessed in light of the accuser's rights and/or protections. In his statement under Section 313 Cr.P.C., the accused was clearly presented with the damning material. Because Section 302 IPC is an inherent element of an offence punishable by Section 396 IPC, the conditions that constitute an infraction under Section 302 were actually stated to him.

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2. Babulal Choukhani v. The King Emperor on 17 February, 1938, available at: https://indiankanoon.org/doc/1022884/ (last visited on August 21, 2021)
3. 1956 AIR 116, 1955 SCR (2)1140
4. Willie (William) Slaney v. The State Of Madhya Pradesh on 31 October, 1955, available at: https://indiankanoon.org/doc/1347962/ (last visited on August 21, 2021)

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4. Further, there was no dispute that the charges under section 396 and 201 of IPC were framed against accused. At this point, we can turn to a Constitution Bench decision in the matter of Shyam Behari v. State of Uttar Pradesh[6][7], in which the accused was convicted under Section 302 IPC after being charged under Section 396 IPC. In the above-mentioned ruling, the Court decided as follows:

"However, it is unnecessary to do so since, given the facts and circumstances of the instant case, the appellant is liable to be convicted of the offence under Section 302 of the Indian Penal Code without more evidence." The charge was made under Section 396 of the Indian Penal Code, which had two elements: (1) the commission of the dacoity, and (2) the commission of the murder in the process of committing the dacoity."

5. The first element was proven beyond a reasonable doubt and was not contested by the appellant's experienced counsel. In any case, the second element was proven in respect to the commission of the murder since the accused's attention was concentrated not only on the commission of the offence while performing the dacoity, but also on his own role in the commission of that murder. In his case, he was aware that the allegation leveled against him attempted to hold him accountable not only for the conduct of the dacoity, but also for the murder committed while performing the dacoity. Therefore, it could not be argued that the appellant could not be convicted of the offence under Section 302 of the Indian Penal Code if such a charge could be made out against him in these circumstances.

6. By considering this judgment, the court in present case has concluded that the appellant has rightly convicted under section 302 and section 396 of IPC and should be punished accordingly. When the appellant has not experienced any prejudice, much alone significant prejudice, his conviction under Section 302 IPC cannot be overturned just because a specific/alternative charge for an offence punishable under Section 302 IPC was not framed. It's much more so because the dimensions and aspects of an infraction under Section 302 are included into the offence punishable under Section 396 IPC by explicit terminology. As a result of the application of the principle of 'cognate crimes', there is no damage to the appellant's rights.

7. For the reasons afore-stated, the court finds no merit in this appeal and the same is dismissed.

5. 1957 AIR (SC) 320, Appeal (crl.) 72 of 1956
6. Shyam Behari v. State of U.P. on 5 October, 1956, https://indiankanoon.org/doc/1988749/ (last visited on August 21, 2021)

V. REASONING

1. The court while passing the judgment, has clarified the meaning of "Dacoity and "Murder with dacoity". The offence of dacoity refers to the robbery committed by five or more persons. Similarly, the offence of murder with dacoity is when five or more persons commit murder along with dacoity then all the accused will be charged for murder as per the fiction of law.

2. The court after observing the Iman Ali and Anr. v. State of Assam[8][9] case made another distinction between section 302 and 396 of IPC which is that under Section 396 the court has discretion of awarding punishment which could be ten year imprisonment or even fine or life imprisonment or death as the case may be whereas, under section 302 the court cannot, in its discretion, sentence punishment less than life imprisonment. So, court concluded that the ingredients in section 302 become integral part in constituting the offence under section 396 of IPC.

3. So far as the judicial precedents are concerned, it has always been established that if the accused has charged with grave offence then he can be punished for less grave offence, if the grave offence is not proved beyond reasonable doubt.

4. The court in this regard has also observed the case of Willie (William) Slaney v. State of Madhya Pradesh, which concluded that if the accused was given reasonable chance to defend himself against the charges and he is able to understand the nature of charges then the trial is not vitiated until the accused show some serious prejudice.

5. The fact that the absence of a charge, or a significant mistake in it, is a serious lacuna will naturally work to the benefit of the accused, and if there is any reasonable and substantial doubt about whether he was, or was reasonably likely to have been, misled in the circumstances of any particular case, he is as much entitled to the benefit of it here as he is in any other case.

If it wasn't, it might be appropriate to conclude in a given case that the accused was satisfied and knew exactly what he was being tried for and what was being alleged against him, and that he didn't need any more information, as long as it's remembered that "no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the accused's advocate."

7. 1968 AIR 1464, 1968 SCR (3) 610
8. Iman Ali & Anr v. State of Assam on 28 March, 1968, available at: https://indiankanoon.org/doc/1384903/ (last visited on August 22, 2021)

6. The court while defining 'Prejudice' has laid down the following elements for determination of whether the accused has suffered any prejudice or not as follows-

- the accused have freedom to maintain silence during investigation and before court
- presumption of innocence until proven guilty
- right to fair trial
- prosecution to proved allegation beyond any reasonable doubt

7. Therefore, court has stated all these reasons to hold that accused has suffered no prejudice in whatsoever manner.

8. The alike or similar offences can be termed as 'Cognate offences'. The word cognate literally means 'akin in nature' as described in Ram Briksh v. State[10][11]. Not just in the Indian system, but also in other areas of the world, this phrase has been accepted and used to criminal jurisprudence. Such offences have been labelled as "cognate crimes" since they have basic core characteristics and are largely differentiated by degrees of severity.

9. Therefore, if the offences are cognate and share a similar characteristic, the Courts can always use their discretion to punish the accused for one or the other, as long as the accused does not incur any prejudice as a result of the punishment. In this regard court also referred to the case of Lakhjit Singh v. State of Punjab[12][13].

10. As a result, under Section 464 Cr.P.C., an appellate or revisional court can condemn an accused for an offence for which no charge has been filed unless the court believes that a failure of justice has occurred. To determine whether there has been a failure of justice, it will be necessary to look into whether the accused was aware of the basic elements of the crime for which he is being prosecuted, whether the main facts sought to be established against him were clearly explained to him, and whether he was given a fair chance to defend himself.

11. As the above mentioned principles of law in various decisions show, there is no absolute prohibition or barrier in law to penalising a person for an offence less serious than the offences

9. 1978 All Cri C 253, 1978 ACR 241, 1978 AWC 490 ALL, 1978 ACR 241, 1978 AWC 490 ALL, LQ/AllHC/1978/333
10. Ram Briksh v. State Ram Briksh v. State, available at: https://www.legitquest.com/case/ram-briksh-v-state/152205 (last visited on August 22, 2021)
11. 1994 SCC, Supl. (1) 173
12. Lakhjit Singh vs State Of Punjab on 31 March, 1993, available at: https://main.sci.gov.in/jonew/judis/26073.pdf (last visited on August 25, 2021)

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for which the accused was charged throughout the course of the trial if the fundamental conditions for doing so are met.

12. For the reasons stated, the court believes that the appellant has suffered no prejudice as a result of his conviction for an infraction under Section 302 IPC, notwithstanding the fact that he was first charged with an offence punishable under Section 396 IPC read with Section 201 IPC.

VI. CASE ANALYSIS

The two main statutes discussed in this case are IPC and CrPC. IPC is a consolidating statute whereas CrPC is a procedural law defining the procedure in which an accused should be tried. IPC has prescribed punishments for various offences but it should always be kept in mind that these punishments should be given only after having fair trial as given under CrPC. The accused was previously charged under section 396 and section 201 of IPC but convicted under section 302, which was then challenged but the question was resolved through sections 237 and 238 that deal with cases in which there is a charge to begin with, and then go on to say that in some cases the trial can go beyond the matter actually charged, and that a conviction for an offence disclosed in the evidence in that type of case will be valid despite the lack of a charge in that case. The court hence used two statutes co- jointly to reach to a conclusion.

The court has gone through the question of whether the accused can be convicted with grave offence if accused with less grave offence. The court has used external aid of interpretation in this regard which is it has read the provision of IPC along with the provisions of CrPC. The court was of the opinion that if no prejudice has happened with the accused then he can be convicted with grave offence. The court has referred various judgments in this regard like Sanagaraboina Sreenu v. State of A.P.[14][15], Dalbir Singh v. State of U.P.[16][17] and Multtani vs. State of Karnataka[18][19].

The court has also tried to interpret the meaning of prejudice by widening its scope specifying the various ingredients like fair trail, prove beyond any reasonable doubt and presumption of

13. AIR 1997 SC 3233, 1997 (1) ALD Cri 889, 1998 (1) ALT Cri 20, 1997 (2) BLJR 1041, 1997 CriLJ 3955, 1997 (2) Crimes 55 SC, JT 1997 (5) SC 47, 1997 (3) SCALE 611, (1997) 5 SCC 348, 1997 3 SCR 957, 1997 (2) UJ 48 SC
14. Sangaraboina Sreenu v. State Of Andhra Pradesh on 23 April, 1997, available at: https://indiankanoon.org/doc/1639002/ (last visited on August 28, 2021)
15. Appeal (crl.) 479 of 1999
16. Dalbir Singh v. State Of U.P on 8 April, 2004, available at: https://indiankanoon.org/doc/573333/ (last visited on August 28, 2021)
17. Appeal (crl.) 907 of 1998
18. Shamnsaheb M.Multtani vs State Of Karnataka on 24 January, 2001, available at: https://indiankanoon.org/doc/1919674/ (last visited on August 28, 2021)

innocence has to satisfy before adjudicating any case in a fair manner and has observed various cases for better explanation like K. Prema S. Rao and Anr. v. Yadla Srinivasa Rao and Ors[20][21], Kammari Brahmaiah and Ors. v. Public Prosecutor, High Court[22][23], Dalbir Singh v. State of U.P. [24], Kamalanantha and Ors. v. State of T.N[25][26]. Prejudice occur when there is damage or detriment to one's legal right or claim resulting which the case can be dismissed. When we talk of bias against an accused person, we have to establish that the accused has been deprived of some of the safeguards given to him under Indian criminal law. It is also a well-established canon of criminal law that this has resulted in a failure of justice for the accused. One of the other fundamental principles of criminal justice administration is that the courts should conduct a thorough investigation to determine if there was a genuine failure of justice or if the term "failure of justice" is being used too loosely. The court in the present case concluded that the accused has got the fair chance to defend himself against all the allegations therefore dismissing his claim of prejudice happened with him.

The court while deciding this case has applied the "Retributive Theory" of punishment which states that the offender should be punished as such so that punishment is equivalent to the seriousness of offence. The idea behind this theory is that of satisfaction by the state of the wronged individual's desire to be avenged. In the present case, crime committed is dacoity with murder which is a heinous crime and therefore court has punished him as severe which is life imprisonment.

According to me, the court has referred to various judicial precedents to reach to a concrete decision as it was important to look into the various aspects of the law while determining any question of law, and especially in such a heinous crime in order to meet the ends of justice. One should not ignore the fact that how repeatedly the crimes like murder and dacoity is increasing and hence criminals should understand the consequences. The court has provided with wide discretionary power so that they can provide justice and not provide any loopholes for the criminals hence should be punished strictly because even the today's generation is more aware about the crimes and its seriousness in the society but still continue to commit those

19. 2002 Supp(3) SCR 339, Appeal (crl.) 1457 of 1995
20. K. Prema S. Rao And Anr vs Yadla Srinivasa Rao And Ors on 25 October, 2002, available at: https://indiankanoon.org/doc/1250057/ (last visited on August 28, 2021)
21. 1999 (1) SCR 361, Appeal (crl.) 64 of 1994
22. Kammari Brahmiah And Ors v. Public Prosecutor, High Court... on 3 February, 1999, available at: https://indiankanoon.org/doc/863509/ (last visited on August 28, 2021)
23. *Supra* note 16
24. Appeal (crl.) 611-612 of 2003
25. Kamalanantha And Ors vs State Of Tamil Nadu on 5 April, 2005, available at: https://jajharkhand.in/wp/wp-content/judicial_updates_files/07_Criminal_Law/50_sentencing/Kamalanantha_And_Ors_vs_State_Of_Tamil_Nadu_on_5_April,_2005.PDF (last visited on August 28, 2021)

crimes.

VII. CONCLUSION

To conclude, I believe that the decision of court is right in context that they awarded punishment by keeping in mind the heinousness of the crime after considering the practical aspect of the case which I believed is important to be considered in cases like this. Sometimes the court has to go beyond the black and white letter of law and has to follow the spirit of law which in present case was to punish the offender for committing such a serious and inhuman act. The accused had the knowledge of the crime which he had committed and therefore given the fair opportunity to represent and hence, was not be provided with any loophole to protect himself and on the same hand treating him in the fair manner.

In this case the court has also set the landmark that the punishment for grave offence is going to be graver which will warn the persons before committing the crime. Even though no state can be crime free but still courts in each of its judgment try to set a precedent for the persons who even think of committing any of such offences. Both legislature and judiciary have to work together in order to fill the loopholes which criminals may use in order to reduce or get away from punishments.

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