SURENDRAN

v.

SUB-INSPECTOR OF POLICE

(Criminal Appeal No. 536 of 2021)

JUNE 30, 2021

[ASHOK BHUSHAN, VINEET SARAN AND M. R. SHAH, JJ.]

Sentence / Sentencing – Trial Court (Magistrate) convicted appellant u/ss.279, 338 IPC and sentenced him to imprisonment for six months and fine of Rs.500/- u/s.337 IPC – Conviction upheld by Sessions Judge and High Court – Appellant, however, was on bail all throughout – Appeal before Supreme Court – Question of sentence – Plea of appellant that he was sole earning member of a poor family consisting of four children and his wife; and if he was sent to jail after so many years, he will suffer irreparable injury – Held: Conviction of appellant affirmed – However, on facts, specially the fact that 26 years had elapsed from the date of commission of offence, six months sentence u/ss. 279 and 338 IPC substituted by fine of Rs.1000/- each whereas fine u/s.337 IPC maintained – Penal Code, 1860 – ss. 279, 337 and 338.

Partly allowing the appeal, the Court

HELD: There is no error in conviction recorded by the Trial Court. The conviction of appellant is affirmed, however, looking to the facts and circumstances of the present case specially the fact that 26 years have elapsed from the incident, this Court is inclined to substitute the sentence of six months imprisonment under Section 279 and 338 IPC into fine. Six months sentence under Section 279 and 338 IPC are substituted by fine of Rs.1000/- each whereas sentence of fine under Section 337 IPC is maintained. [Para 11][174-A-B]

Prakash Chandra Agnihotri v. State of M.P. **(1990) Supp. SCC 764 - distinguished.**

A.P Raju v. State of Orissa **1995 Supp. (2) SCC 385 - referred to.**

A **Case Law Reference**

(1995) Supp. 2 SCC 385	**referred to**	**Para 7**
(1990) Supp. SCC 764	**distinguished**	**Para 9**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.
B 536 of 2021

From the Judgment and Order dated 01.09.2015 of the High Court of Kerala at Ernakulam in Crl.Rev.Pet. No.2525 of 2003.

P.A. Noor Muhamed, Ms. Giffara S., Bilal Niamathulla, Ms. Ruxana P.N., Advs. for the Appellant.

C

The Judgment of the Court was delivered by

ASHOK BHUSHAN, J.

1. Leave granted.

2. This appeal has been filed against the judgment of the High
D Court dated 01.09.2015 dismissing the Criminal Revision filed by the appellant challenging his conviction and sentence under Section 279, 337 and 338 IPC.

3. The appellant, a bus driver, while driving bus No.KL7D 4770 caused an accident on 16.02.1995 in which car driver of KL 10B 5634
E was injured. The appellant was charged with offence under Sections 279, 337 and 338 IPC. The learned Judicial First Class Magistrate vide his judgment dated 28.04.1999 convicted the accused under Section 279 IPC and 338 IPC and sentence him to undergo six months imprisonment and fine of Rs.500/- was imposed, in default to undergo simple
F imprisonment for one month under Section 337 IPC.

4. An appeal was filed by the appellant which was dismissed by the learned Sessions Judge by judgment dated 29.05.2003. Criminal Revision was filed in the High Court challenging the judgment of the learned Sessions Judge which Criminal Revision petition has been dismissed by the High
G Court vide the impugned judgment dated 01.09.2015.

5. This Court on 01.08.2016 issued notice only on the question of sentence. Service of notice is complete but no one has appeared for respondent.

6. Learned Counsel for the appellant contends that the appellant is
H sole bread earning member of a poor family consisting of four children

and his wife. It is submitted that the appellant if sent to jail after more than 21 years, will suffer irreparable injury.

7. Learned counsel for the appellant has placed reliance on judgment of this Court in **A.P. Raju versus State of Orissa, 1995 Supp.(2) SCC 385 and Prakash Chandra Agnihotri versus State of M.P., (1990) Supp. SCC 764.**

8. We have considered the submissions of learned counsel for the appellant and have perused the record.

9. The judgment of this Court in **Prakash Chandra Agnihotri (Supra)** as relied by learned counsel for the appellant does support his submissions. In the above case, the accused was convicted and sentenced for six months under Section 304A. This Court converted the sentence of imprisonment into fine of Rs.500/-. The Court was of the view that it would be harsh to send the appellant to the Jail after 18 years of the occurrence. Following was observed in paragraph 1 of the judgment: -

> "1. The Courts below have maintained the conviction of the appellant under Section 304-A Indian Penal Code. We have gone through the judgments of courts below and we find no infirmity therein. We uphold the conviction. The occurrence took place on February 18, 1972. The appellant has throughout been on bail. He has been sentenced to six months rigorous imprisonment and a fine of Rs.250. We are of the view that it would be rather harsh to send the appellant to jail after 18 years of the occurrence. The ends of justice would be met if the appellant is asked to pay a fine of Rs.2000/-. The sentence is thus converted to a fine of Rs.2000/-. On realisation the amount shall be paid to the family of the deceased girl. The amount be deposited with the Trial Court within two months from today and the trial court shall disburse the same to the parents of the girl and in absence of the parents to the next of kin of the girl. In default of the payment of fine the appellant shall undergo imprisonment for six months."

10. The incident took place on 16.02.1995 i.e. more than 26 years ago. It appears that appellant was throughout on the bail. The Trial Court after marshalling the evidence has recorded the conviction under Section 279, 338 and awarded sentence of imprisonment of six months and further sentenced to pay a fine of Rs.500/- under Section 337.

A 11. We do not find any error in conviction recorded by the Trial Court. The conviction of appellant is affirmed, however, looking to the facts and circumstances of the present case specially the fact that 26 years have elapsed from the incident, we are inclined to substitute the sentence of six months imprisonment under Section 279 and 338 into fine. Six months sentence under Section 279 and 338 IPC are substituted B by fine of Rs.1000/- each whereas sentence of fine under Section 337 IPC is maintained.

12. The accused may deposit the fine of Rs.1000+1000 i.e. Rs.2000/- within a period of one month in the Trial Court. The judgments C of the Courts below are modified to the above extent. The appeal is partly allowed accordingly.

Bibhuti Bhushan Bose Appeal partly allowed.