ILR 2006 KAR 3904

K. SREEDHAR RAO, J

Venkataraju and Others vs The State of Karnataka by the Police of Rampura*

CODE OF CRIMINAL PROCEDURE, 1908-CRIMINAL TRIAL UNDER-DISCRETION OF CRIMINAL COURTS - EXERCISE OF-INCIDENT IS OF THE YEAR 1988-JUDGMENT RENDERED BY THE TRIAL COURT IN THE YEAR 2000-LONG TRIAL FOR OVER A PERIOD OF 12 YEARS-ACCUSED HAVE ATTENDED 48 HEARING DATES- HELD, Attendence on each date hearing has the effect of a day's confinement - The unscientific convention of posting the cases invariably once in a month or two has caused multiple harm to the system and results in wasting of judicial time-Besides it encroaches upon the Constitutional liberty guaranteed to the Accused who is called upon to appear on all the hearing dates whether or not the effective hearing takes place-Therefore, there is impending need to evolve scientifically legislated norms in the matter of Trial of criminal cases.

Sri H.S. Chandramouli, Advocate for Appellants.
Sri G. Bhavanisingh Addl.SPP, Advocate for Respondent,

* CRL.A.No.287/2000 Dated: 23rd March, 2006

JUDGEMENT

Sreedhar Rao, J

1. The appellant-accused 1 to 5 are convicted for an offence punishable u/s. 143, 144, 147 307 r/w. Section 149 IPC. The prosecution discloses that P.W.2 on 22-2-1998 got down from the bus at 9-20 a.m. at Kuretty Hosur. At bus stand lot of people had gathered and there was commotion. The accused persons carrying deadly weapons exhorted one another to assault P.W.2 on the ground that he belongs to Puttashetty group thus all the accused persons come rushing towards P.W.2 and assualted him causing as many as three fractures with the deadly weapons.

The prosecution proves the guilt of the accused by the evidence of P.W.2 the victim, P.W.4 the wife of the victim, P.W.1 is the doctor who has treated and issued wound certificate at Ex.P.1 to corroborate the version of P.W.1 regarding the fracture injuries. In the cross-examination of P.Ws. 2 and 4 nothing is elicited to dent the veracity. On over all consideration, it is to be seen that the accused are liable for conviction u/s. 326 IPC and not Section 307 IPC.

2. The incident is of the year 1988. The Trial Court has rendered judgment on 17-2-2000. The accused have undergone the ordeal of long Trial for over a period of 12 years. The order sheet discloses that the accused persons have attended 48 hearing dates. Attendance on each date of hearing has the effect of a day's confinement.

3. It has been the routine habit of the criminal courts to post the cases tentatively for framing charge or for evidence and adjourn them. The unscientific convention of posting the cases invariably once in a month or two has caused multiple harm to the system. The tentative posting of the large number of cases in the day's Board results in wasting of time unnecessarily for calling work which can otherwise be devoted for effective judicial work. Besides it encroaches upon the constitutional liberty guaranteed to the accused who is called upon to appear on all the hearing dates whether or not the effective hearing takes place. The adjournment of cases is totally in the discretionary domain of the Trial judge. The past experience discloses that the discretion is not well exercised in the matter of posting and adjournment of cases. Therefore there is impending need to evolve scientificaly legislated norms for court and case management incorporated in Cr.P.C. and Criminal Rules of Practice.

4. The Criminal Trial has six phases namely (1) appearance (2) hearing before charge and framing charge (3) evidence (4) record of statement u/s. 313 Cr.P.C. (5) argument (6) judgment. The accused's presence is necessary on the date of framing of the charge, evidence and on the date of conviction judgment. The Trial Court should insist at the time of filing of charge sheet a draft charge to be submitted by the prosecutor. The defence counsel on his apperance could be asked to submit a draft charge by the next date. Whether or not defence counsel submit a draft charge on the basis of the charge sheet material, draft charge submitted by the prosecutor and after hearing the defence counsel, the charge is to be immediately framed and plea to be recorded immediately or on the next day without unnecessary long adjournment. Some times when there are more accused if all the accused are not

present, the plea of the accused who are present to be recorded a shorter date of adjournment to be given for the absentee accused to appear for recording the plea. The Court should also liberally permit the Counsel to plead proxy for the accused in the case of denial of charge. The said practice to a great extent avoids unnecessary adjournments in framing charge and recording plea.

5. After the charge is framed, there should not be any tentative posting of the case for evidence, on the basis of month-wise or year-wise seniority, the date should be set for recording of evidence. For each working day's Board about 5 to 6 cases should be posted for evidence. Many a time it may warrant the cases to be posted for evidence for a longer date may be after 6 or 7 months for sometimes a year it does not matter. The avoidance of tentative posting will have a salutary effect of obviating needless attendance and presence of accused on the unnecessary tentative dates of hearing. The witness summons in a case posted for evidence should be issued 15 days prior to the date of evidence. This procedure if successfully operated would avoid uncessary attendance of witnesses and to great extent reduce work burden of the ministerial staff.

6. In the present practice the attendance of accused on tentative dates of hearing is as good as a day's confinement and an unwritten punishment suffered by the accused on account of the irrational convention of case management by the Trial Courts. In the instant case, the accused have attended as many as 48 hearing dates which means four months of attendance which is almost equivalent to four months imprisonment.

7. The Counsel for the accused submits that accused and P.W.2 are all cousins. The family disputes have been settled and

there is absolute cordiality between the accused and the victim. A harsher punishment of imprisonment will have only an adverse reaction not only on the accused but on the members of the family and that the social atmosphere of the village may also get vitiated.

8. Every crime is necessarily a tort. The Cr.P.C. provide jurisdiction to criminal court to award compensation from the fine amount. Therefore, the courts while imposing sentence have to do a delicate balancing of rendering punishment to the offender and as well should compensate the victim in the same proceedings without unnecessarily driving the victim to approach a civil court for seeking compensation. The provisions of Section 354(4) of Cr.P.C. mandates that when the conviction is for an offence punishable with imprisonment for a term of one year or more the minimum sentence of imprisonment is to be three months. In that view, I deem it just and necessary that the accused are sentenced to R.I. for a period of three months and to pay a fine of Rs.5,000/- each in default to undergo S.I. for a period of three months. Out of the fine amount a sum of Rs. 25,000/- shall be payable as compensation to P.W.2.