THE HIGH COURT OF SIKKIM: GANGTOK

(Criminal Appeal Jurisdiction)

D.B.: THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE.

Crl. A. No. 17 of 2016

State of Sikkim

.... Appellant

versus

Suren Rai,
S/o Shri Dhan Bahadur Rai,
R/o Near Karmatar Junior High School,
Darjeeling – West Bengal.

.... Convict

Appearance:

Mr. Karma Thinlay, Additional Public Prosecutor, Mr. Thinlay Dorjee Bhutia, Additional Public Prosecutor and Mr. S.K Chettri, Assistant Public Prosecutor for the Appellant.

Mr. B. Sharma, Senior Advocate with Mr. Bhola Nath Sharma, Advocate for the Convict.

ORDER ON SENTENCE

(21.06.2018)

Bhaskar Raj Pradhan, J

1. Heard Mr. Karma Thinlay, Learned Additional Public Prosecutor as well as Mr. B. Sharma, Learned Senior Advocate for the convict on sentence.

2. Mr. Karma Thinlay would draw the attention of this Court particularly to paragraph 1 and 117 of the judgment of conviction in the present case and submit that the crime

being homicidal and gruesome inflicting multiple chop wounds on the neck with the *"khukuri"* which caused the death of 27 years old youth the sentence must be adequate. He would draw the attention of this Court to the conduct of the convict after the assault of having run away while the victim was still alive to submit that the commission of the heinous act should necessarily attract the sentence of life as envisaged by paragraph 1 of Section 304 IPC. He would rely upon the judgment of the Hon'ble Supreme Court in re: ***State of M.P. v. Ghanshyam Singh***[1] as well as ***Alister Anthony Pareira v. State of Maharashtra***[2] to buttress his submissions.

3. *Per contra* Mr. B. Sharma would submit that while imposing sentence it would be important to keep in mind the age and the antecedents of the convict. He would submit that at the time of the alleged crime in the year 2013 he was 27 years old and as such would be only 32 years of age now. He would further submit that there is no allegation of any criminal antecedent of the convict by the prosecution. Mr. B. Sharma would also submit that the convict has already undergone 4 years and 9 months in custody counting the period of his incarceration between the date of his arrest on 24.05.2013 till the date of his release a day after his acquittal by the Learned Sessions Judge on 29.02.2016 and thereafter on his arrest on

[1] **(2003) 8 SCC 13**
[2] **(2012) 2 SCC 648**

22.07.2016 after the order of this Court for his arrest dated 22.07.2016 till date. He would submit that the convict had travelled to Sikkim to earn a living to take care of his poor parents from the neighbouring State and his further incarceration would cause immense hardship leaving his aging parents without any help in their time of need. Accordingly, Mr. B. Sharma would pray for set off from the period already undergone in custody. He would rely upon the judgment of the Supreme Court in re: ***Pritam Chauhan v. State (Govt. Of NCT Delhi)***[3].

4. In re: ***Ghanshyam Singh (supra)*** the Supreme Court would examine a sentence of about 2 years and fine of ₹15,000/- (Rupees fifteen thousand) imposed in a case where the accused was found guilty of offence punishable under Section 304 Indian Penal Code, 1860 (IPC) imposed by the High Court. The accused was found guilty of using a gun on the victim firing two shots, one on his leg and the other on the abdomen due to which the victim succumbed to his injuries subsequently. The Supreme Court would agree with the conclusion of the High Court about the applicability of Section 304 Part I of the IPC. On the question of proper sentence the Supreme Court would hold:

> ***"11.*** *The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and*

[3] **(2014) 9 SCC 637**

property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find an answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that, "State of criminal law continues to be — as it should be — a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process has to be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance, a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murder of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. [(1987) 3 SCC 80 : 1987 SCC (Cri) 379 : (1987) 2 SCR 710] this Court while refusing to reduce the death sentence observed thus: (SCC p. 82, para 6)

> *It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."*

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> ***"15.*** *After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US 183 : 28 L Ed 2d 711 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished."*
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> *xxxxxxxxxxxx*
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> ***"20.*** *Taking into account all the relevant aspects of this case in the background of principles governing award of appropriate sentence, we feel that even on a liberal approach, custodial sentence of 6 years would serve the ends of justice. While fixing the sentence we have taken note of the fine imposed which remains unaltered. It is said to have been paid. There was a stipulation for 2 years' RI in case of default. The respondent, who is on bail, shall surrender to custody to serve the balance of sentence."*

5. In re: ***Alister Anthony Pareira (supra)*** the Supreme Court would examine a case of drunken driving in which the High Court had set aside the acquittal of the Appellant under Section 304 IPC and convicted him for the offences under Section 304 Part II, Section 338 and Section 337 IPC and sentenced him to undergo rigorous imprisonment for

three years for the offence punishable under Section 304 Part II IPC with a fine of ₹ 5.00 lakhs. On account of the offence under Section 338 IPC, the Appellant was sentence to undergo rigorous imprisonment for a term of one year and for the offence under Section 337 IPC rigorous imprisonment for six months. The Supreme Court would hold:

> ***"84.*** *Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.*
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> ***85.*** *The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence."*
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> *xxxxxxxxxxxx*
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> ***"97.*** *The facts and circumstances of the case which have been proved by the prosecution in bringing home the guilt of the accused under Section 304 Part II IPC undoubtedly show a despicable aggravated offence warranting punishment proportionate to the crime. Seven precious human lives were lost by the act of the accused. For an offence like this which has been*

*proved against the appellant, sentence of three years awarded by the High Court is too meagre and not adequate but since no appeal has been preferred by the State, we refrain from considering the matter for enhancement. By letting the appellant away on the sentence already undergone i.e. two months in a case like this, in our view, would be travesty of justice and highly unjust, unfair, improper and disproportionate to the gravity of crime. It is true that the appellant has paid compensation of Rs 8,50,000 but no amount of compensation could relieve the families of victims from the constant agony. As a matter of fact, the High Court had been quite considerate and lenient in awarding to the appellant sentence of three years for an offence under Section 304 Part II IPC where seven persons were killed.***"***

6. In re: ***Pritam Chauhan (supra)*** the Supreme Court would examine a case in which the accused had been convicted for assault by knife causing two injuries on arm of the victim and convicted under Section 307 IPC by the Trial Court which conviction was altered by the High Court under Section 326 IPC with consequential modification of the sentence to rigorous imprisonment for a period of two years and a fine of ₹ 50,000/- as compensation of the victim. This was not a case where the victim had died due to the repeated blows inflicting upon the victim. The assault had caused grievous injury on his left forearm with deep extensive damage to most of the muscles and the back of his left forearm. Apart from the above there was another wound on the palm of his right hand. The Supreme Court would hold:

> ***"5.*** *The punishment contemplated under Section 326 IPC is imprisonment for life or with imprisonment of either description for a term which may extend to ten years, along with fine. In a recent pronouncement of this Court in Gopal Singh v. State of Uttarakhand [(2013) 7 SCC 545 : (2013) 3 SCC (Cri) 608] it has been held that the "principle of just punishment" is the bedrock of sentencing in respect of a criminal offence. The wide discretion that is vested in the courts in matters of sentencing must be exercised on rational parameters in the light of the totality of the facts of any given case. The doctrine of proportionality has to be invoked in the context of the facts in which the crime had been committed, the antecedents of the accused, the age of the accused and such other relevant factors.*
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> ***6.*** *In the present case, considering that the appellant-accused had gone to his house to fetch a knife and, thereafter, had given repeated blows to the victim resulting in multiple grievous injuries, we are of the view that the sentence of two years' rigorous imprisonment is just and adequate and will not require any modification. The submission of the learned counsel for the appellant that the appellant is willing to pay higher compensation under Section 357 IPC also cannot be accepted inasmuch as the provisions of Section 357 operate independently of the specific penal provisions of the Code under which the court is required to sentence an offender.***"**

7. We have given our anxious consideration to the facts of the present case as well as the submissions made by the Learned Counsels for the parties.

8. The sentence must keep the twin objective of the sentencing policy which is deterrence and correction. We had come to the conclusion that the convict is guilty of the offence punishable under paragraph 1 of Section 304 IPC.

9. In view of the submissions made by the Learned Counsels appearing for the parties and keeping in mind the facts and circumstances of the case we are of the view that the sentence of 6 years with a fine of ₹ 25,000/- (Twenty Five Thousand) only and in default, to suffer rigorous imprisonment for one year would be appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime was done. Set-off be given to the convict in respect of the period during which he was in jail in connection with this case. If the fine amount is recovered, the same shall be paid to the minor daughter of the deceased, resident of Thalthaley, Karmatar, District Darjeeling, West Bengal as compensation. The convict is in judicial custody. He shall continue there to serve out the rest of his sentence. During the period of his custody the prison authorities may consider helping the convict with anger management by providing him with professional help.

10. Mr. Karma Thinlay informs this Court that the victim has his dependent parents as well as a minor daughter. Under the Sikkim Compensation to Victims or His Dependents Schemes, 2011 the Sikkim State Legal Services Authority (SSLSA) is directed to pay compensation of ₹ 1.00 lakh to the minor daughter. Out of the said amount an amount of ₹ 75000/- (Rupees Seventy Five Thousand) shall

be deposited in fixed deposit in the name of the minor daughter payable to her on attaining majority. If the minor does not have any bank account the SSLSA shall ensure that the guardian of the minor shall open the said fixed deposit in her name. The rest of the amount of ₹25,000/- (Rupees Twenty Five Thousand) shall be deposited in the account of the guardian of the minor which shall be used by the guardian for the sole purpose of her education, health and welfare. This amount shall be accountable to the SSLSA which shall call for periodic reports of the expenditure from the guardian till exhausted. A further amount of ₹1.00 lakh shall be paid to the parents of the victim.

11. A certified copy of this order shall be furnished forthwith to the convict. Certified copy of the order on sentence along with the records shall be remitted to the Court of the Learned Sessions Judge, West Sikkim at Gyalshing.

(Bhaskar Raj Pradhan)
Judge
21.06.2018

(Meenakshi M. Rai)
Judge
21.06.2018

Approved for reporting: yes.
to Internet: yes.