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STATE OF U.P.

v.

KISHAN

NOVEMBER 30, 2004

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[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Indian Penal Code, 1860 :

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S. 304 (Part-II)—Conviction by trial court—Seven years RI imposed—High Court, by non-speaking order, reducing the sentence to the period already undergone merely on the ground of lapse of time—Held, as the High Court disposed of the matter by an unreasoned order, matter remitted back to it for decision afresh on the question of sentence.

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Criminal Law :

Sentencing—A liberal attitude by imposing meager sentence merely for lapse of time would be counter-productive—It is the duty of every court to award proper sentence having regard to the nature of offence and the manner in which it was committed.

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Respondent-accused was prosecuted under Section 302 IPC for causing homicidal death of the victim by inflicting a spade injury on his person over a land dispute. The trial court convicted the accused of the offence under section 304 (Part-II) IPC and sentenced him to seven years R.I. In the appeal filed by the accused before the High Court, it was pleaded that the incident having taken place in 1988, a lenient view as regards the sentence be taken. The High Court, by a non-speaking order, reduced the sentence to the period already undergone. Aggrieved, the State filed the appeal.

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Disposing of the appeal, the Court

HELD : 1.1. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time will be result-wise counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence

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inbuilt in the sentencing system. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society’s cry for justice against the criminal”. [533-G-H; 534-A-B]

State of M.P. v. Ghanshyam Singh, [2003] 8 SCC 13 and *Sevaka Perumal Etc. v. State of Tamil Nadu*, AIR (1991) SC 1463, relied on.

Dennis Councle MCG Dautha v. State of Callifornia, 402 US 183; 28, L.D. 2d 711, referred to.

1.2. Since the matter was disposed of by the High Court in a most unsatisfactory manner, practically by an unreasoned order, it would be appropriate for the High Court to re-hear the appeal on the question of sentence. It is rather surprising that the High Court has not even indicated what period of custody the respondent has suffered. While deciding the matter afresh the High Court shall keep in view the position in law as highlighted by this Court in *Ghansyam Singh’s* case. [534-B-D]

State of M.P. v. Ghanshyam Singh, [2003] 8 SCC 12, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1381 of 2004.

From the Judgment and Order dated 1.4.2003 of the High Court judicature at Allahabad, Lucknow Bench in CrI. A. No. 37 of 1995.

R.K. Singh and Jatinder Kumar Bhatia for the Appellant.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

The State of U.P. is in appeal against the judgment of the learned

- A Single Judge of the Allahabad High Court, Lucknow Bench. By the said impugned judgment, Criminal Appeal No. 37 of 1995 was disposed of by reducing the respondent's sentence of 7 years RI imposed in respect of offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') to the period already undergone with a direction to pay fine of Rs.15,000 with default stipulation of one year RI.
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The respondent (hereafter referred to as the 'accused') was found guilty by the learned Sessions Judge, Sitapur. The accused had faced trial for offence punishable under Section 302 IPC for having caused homicidal death of one Chetai (hereinafter referred to as the 'deceased') on 7.5.1988.

- C The injury was caused by a spade over a land dispute. Though the accused was charged for commission of offence punishable under Section 302 IPC, the trial Judge held that appropriate conviction would be under Section 304 Part II IPC and rigorous imprisonment for 7 years was awarded. Before the High Court the accused did not press appeal on merits but only addressed on the question of sentence. It was submitted that the alleged occurrence took place in 1988 and a lenient view should be taken. The High Court practically by an unreasoned and non-speaking order which is impugned in this appeal disposed of the appeal reducing the custodial sentence as afore-noted. All that the High Court said in the judgment is as follows:
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- E "Considering all facts and circumstances of the case as well as age, character and other antecedents of the appellant, I find that it will meet the ends of justice if the sentence awarded to the appellant is modified and reduced.

- F The appeal is accordingly dismissed. The conviction recorded against the appellant under Section 304 (Part II) IPC is maintained, but the sentence awarded is reduced to the period already undergone and to pay a fine of Rs.15,000 and in default of payment of fine to further undergo RI for a period of one year."

- G The logic behind the sentence in a criminal trial has been highlighted by this Court in *State of M.P. v. Ghanashyam Singh*, [2003] 8 SCC 13.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is,

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therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in *Sevaka Perumal etc. v. State of Tamil Naidu*, AIR (1991) SC 1463.

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 MCG Dautha v. State of California*, 402 US 183: 28 L.D. 2d 711 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.

The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and *per se* require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

The Court will be failing in its duty if appropriate punishment is not

- A awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society’s cry for justice against the criminal”.
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It is rather surprising that the High Court has not even indicated what period of custody the respondent has suffered.

- C Since all these aspects have not been noted by the High Court and by practically unreasoned order the matter was disposed of in a most unsatisfactory manner, it would be appropriate for the High Court to re-hear the appeal on the question of sentence. It goes without saying that while deciding the matter afresh the High Court shall keep in view the position in law as highlighted by this Court in *Ghanshyam Singh’s* case (supra). We make it clear that we have not expressed any opinion on the quantum of punishment to be awarded.
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The appeal is accordingly disposed of.

E R.P.

Appeal disposed of.