

A SAHDEV

v.

JAIBAR @ JAI DEV & ORS.

(Criminal Appeal No. 403 of 2009)

B FEBRUARY 27, 2009

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Criminal Law:

C *Sentencing – HELD: It is duty of court to award proper sentence having regard to nature of offence and the manner in which it was committed – Undue sympathy to impose inadequate sentence would do more harm – In the instant case, accused mercilessly beat the victims and one of them lost his memory – High Court though upheld conviction u/s 307 but without assigning any reason reduced the sentence from 10 years to 7 years – Sentence of 10 years restored as regards the accused who caused injuries to the victim resulting in loss of his memory – Penal Code, 1860 – ss. 307 and 326 r/w s.34.*

F *The informant filed the appeal challenging the judgment of the High Court, which though upheld the conviction of respondents nos. 1 to 4 for offences punishable u/ss 307 and 326, r/w s.34 IPC but reduced the custodial sentence from 10 years to 7 years. It was pleaded for the appellant that the victims were mercilessly beaten so much so that one of the victims lost his memory, and, in the circumstances, the High Court was not right in reducing the sentence.*

Allowing the appeal in part, the Court

HELD: 1.1. The criminal law adheres in general to the

principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. [Para 6] [727-E-H]

1.2. In order to award just and appropriate sentence for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced by the court in a dispassionate manner. Such act of balancing is indeed a difficult task. But undue sympathy to impose inadequate sentence would do more harm to the justice system and undermine the public confidence in the efficacy of law, and society can not long endure under such serious threats. It is, 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 committed. [Para 5, 6 and 8] [727-C-E; 728-D-E]

Mahesh v. State of M.P. (1987) 2 SCR 710; Sevaka Perumal etc. v. State of Tamil Naidu AIR 1991 SC 1463; Jashubha Bharatsinh Gohil v. State of Gujarat 1994 (4) SCC 353 and State of M.P. v. Ghanshyam Singh (2003) 8 SCC 13, referred to.

Dennis Councle MCGDautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711, referred to.

1.3. In the instant case, the injuries suffered by victim 'RS' were definitely of a very serious nature. The trial court has imposed a sentence of 10 years in respect of offence relatable to s. 307 IPC. The High Court has not indicated any reason for reducing the sentence to 7 years. The injuries on victim 'RS' were attributed to accused 'RK'. In the circumstances of the case, so far as

- A accused 'RK' is concerned, the appeal is allowed by enhancing the sentence from 7 years to 10 years in respect of offence relatable to Section 307 IPC. So far as the other two respondents-accused are concerned, though no reason has been indicated, considering the
- B nature of the injuries caused by them, the sentence as imposed by the High Court does not appear to be on the lower side. [Para 3, 10 and 11] [726-B-C; 729-D-F]

Case Law Reference:

- C (1987) 2 SCR 710 referred to para 4
- AIR 1991 SC 1463 referred to para 5
- 402 US 183: 28 L.D. 2d 711 referred to para 8
- D 1994 (4) SCC 353 referred to para 9
- (2003) 8 SCC 13 referred to para 9

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 403 of 2009.

- E From the Judgment & Order dated 4.1.06 of the High Court of Punjab & Haryana at Chandigarh in Criminal No. 493-SB/1994.

Prem Malhotra for the Appellant.

- F The Judgment of the Court was delivered by
- DR. ARIJIT PASAYAT, J.1. Leave granted.

- G 2. Challenge in this appeal by the informant is to the judgment of a learned Single Judge of the Punjab and Haryana High Court by which the High Court while upholding the conviction of respondents 1 to 4 for offence punishable under Sections 307 and 326 read with Section 34 of the Indian Penal

Code, 1860 (in short the 'IPC') reduced the sentence from 10 A years to 7 years in respect of first offence.

3. The factual scenario has been described in detail in Criminal Appeal No.16/2007 and Criminal Appeal No..... of 2009 (Arising out of SLP (Crl.) 2007 of 2008) disposed of by us today. In the present appeal filed by the complainant, who had suffered injuries the legality of the order so far as it relates to reduction of sentence is concerned, has been questioned. It has been stated that the victims were mercilessly beaten and large number of injuries were caused to them. Without even indicating any basis, the sentence has been reduced. Injured Ram Swarup could not be examined because, as per the opinion of the doctor, he has lost his memory due to the injury caused to him. So far as the injuries on Ram Swarup are concerned they are as follows:

1. An incised wound 10x4x2 cm. deep over front of the neck just above the thyrod cartilage. The trachea was cut and exposed. Advised E.N.T. Surgeon's opinion.
2. An incised wound 16x2 cm X bone deep over right side of the scalp extending from right eyebrow to the parietal region up to the mid line. Advised Surgeon's opinion.
3. Incised wound 6 cm x 1 cm bone deep over left side of the scalp extending from the left eyebrow over the scalp. Advised Surgeon's opinion.
4. Incised wound 4x1x1 cm deep over the left side of the forehead 1 cm deep over the left side of the forehead 1 cm. of mild line.
5. Incised wound 4 x 1 x 1 cm. over the anterior aspect of left shoulder.
6. Crush injury 16 cm x 8 cm x bone deep over the

A right shoulder underlying bone muscles were exposed.

The order of the High Court is supported by learned counsel for the accused persons.

B It is noticed that the injuries were definitely of a very serious nature, as these injuries noted above go to show. The trial Court has imposed a sentence of 10 years in respect of offence relatable to Section 307 IPC. The High Court has not indicated any reason for reducing the sentence to 7 years.

C 4. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a

D cross cultural conflict where living law must find 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

E be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone 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".

F Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process 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

G 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

H deep-seated mutual and personal rivalry may not call for penalty

of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh v. State of M.P.* (1987) 2 SCR 710), this Court while refusing to reduce the death sentence observed thus:

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"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."

5. Therefore, 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, 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).

6. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a

A departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

7. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

8. 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 MCGDautha 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.

9. In *Jashubha Bharatsinh Gohil v. State of Gujarat* (1994 4 SCC 353), it has been held by this Court that in the matter of death sentence, the Courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object to 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. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue. (See: *State of M.P. v. Ghanshyam Singh* (2003 8 SCC 13)).

10. The injuries on Ram Sarup were attributed to accused Raj Kumar. Therefore, so far as he is concerned, the appeal is allowed by enhancing the sentence from 7 years to 10 years. So far as the other two respondent accused persons are concerned, though no reason has been indicated, considering the nature of the injuries caused by them, the sentence as imposed by the High Court does not appear to be on the lower side.

11. The appeal is allowed to the extent that the sentence in respect of accused Raj Kumar is enhanced from 7 years to 10 years in respect of offence relatable to Section 307 IPC. The appeal fails so far as the other co-accused persons are concerned in relation to the prayer for enhancement of sentence.

12. The appeal is allowed to the aforesaid extent.

R.P.

Appeal partly allowed.