STATE OF PUNJAB

v.

DIL BAHADUR

(Criminal Appeal No. 844 of 2023)

MARCH 28, 2023

[M. R. SHAH* AND C. T. RAVIKUMAR, JJ.]

Sentence/Sentencing – Principle of – High Court though confirmed the conviction of the respondent-accused for offences u/ss.279 and 304A, IPC, however, reduced the sentence from two years to eight months – Justification of – Held: While reducing the sentence, the High Court has not at all considered the gravity of the offence and the manner in which the accused committed the offence – Because of the rash and negligent driving on the part of the accused one innocent person died and two persons sustained injuries – High Court did not consider the fact that IPC is punitive and deterrent in nature – Principal aim and object are to punish offenders for offences committed under IPC and the principle of proportionality between the crime and punishment has to be borne in mind – Further, the principle of just punishment is the bedrock of sentencing in respect of a criminal offence – Though, the principle of sentencing recognises the corrective measures but there are occasions when deterrence is an imperative necessity depending upon the facts of the case – Impugned judgment showing undue sympathy to the accused is unsustainable, set aside – Sentence imposed by Trial Court confirmed by the Session Court, restored – Penal Code, 1860 – ss.279, 304A.

State of Madhya Pradesh v. Surendra Singh **(2015) 1 SCC 222 : [2014] 13 SCR 554;** *State of Punjab v. Saurabh Bakshi* **(2015) 5 SCC 182 : [2015] 3 SCR 590;** *State of Himachal Pradesh v. Ramchandra Rabidas* **(2019) 10 SCC 75 : [2019] 15 SCR 771 – relied on.**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 844 of 2023.

From the Judgment and Order dated 26.04.2017 of the High Court of Punjab & Haryana at Chandigarh in CRR No. 4113 of 2016.

* Author

Ms. Kanika Ahuja, Karan Sharma, Rishabh Sharma, Advs. for the Appellant.

Aftab Ali Khan, M. Z. Chaudhary, Advs. for the Respondent.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court of Punjab and Haryana at Chandigarh in Criminal Revision Application being CRR No. 4113/2016, by which, though the High Court has upheld the conviction of respondent herein for the offence under Section 304A of the Indian Penal Code, however, has reduced the sentence from two years to eight months, subject to a prior deposit of Rs. 25,000/- towards compensation to be paid to family/legal heir of the deceased, the State of Punjab has preferred the present appeal.

2. That respondent herein – original accused was driving a Scorpio Car rashly and negligently, due to which one person died while over taking the ambulance from the left side. Because of the rash and negligent driving on the part of the respondent – accused two persons sitting in the ambulance also suffered injuries. Due to the collision, in fact, the ambulance turned turtle, which shows the manner in which the accused was driving the Scorpio with high speed. The respondent herein came to be tried for the offences under Sections 279 and 304A of the IPC. The learned Trial Court convicted the accused for the offences under Sections 279 and 304A of the IPC and the sentence of the accused came to be confirmed by the learned Sessions Court. The accused preferred the present revision application before the High Court. By the impugned judgment and order, though the High Court has confirmed the conviction of the accused for the offence under Section 304A of the IPC, however, has reduced the sentence to eight months SI subject to a prior deposit of Rs. 25,000/-. At this stage, it is required to be noted that at the time when the High Court decided the revision application, the accused had undergone an actual sentence period of seven months and fifteen days and therefore, the High Court seems to have reduced the sentence to eight months only.

   2.1. Against the impugned judgment and order passed by the High Court by which the High Court has reduced the sentence to eight months for the offence under Section 304A of IPC, the State of Punjab has preferred the present appeal.

3. Ms. Kanika Ahuja, learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the High Court has seriously erred in interfering with the sentence imposed by the learned Trial Court confirmed by the First Appellate Court.

3.1. It is submitted that while reducing the sentence the High Court has shown undue sympathy to the accused. It is submitted that while reducing the sentence the High Court has not properly appreciated and/or considered the manner in which the accused committed the offence. It is submitted that the High Court has not properly appreciated the fact that because of the rash and negligent driving on the part of the accused one innocent person lost his life and two persons suffered injuries who were travelling in the ambulance.

3.2. It is submitted that the accused was driving the Scorpio (car) with such a high speed and that too when he was on the cross road, rashly and negligently and due to the collision, the ambulance turned turtle. It is submitted that therefore, the High Court ought not to have shown un-due sympathy in favour of such an accused person, because of whose act of rash and negligent driving one innocent person lost his life and two persons sustained injuries.

3.3. Making the above submissions and relying upon the decisions of this Court in the case of **State of Madhya Pradesh Vs. Surendra Singh (2015) 1 SCC 222** and in the case of **State of Punjab Vs. Saurabh Bakshi (2015) 5 SCC 182,** it is prayed to allow the present appeal and restore the sentence imposed by the learned Trial Court and confirmed by the learned Sessions Court.

4. While opposing the present appeal Shri Aftab Ali Khan, learned counsel appearing on behalf of the respondent – accused, appointed by the Supreme Court Legal Aid Committee, has submitted that when considering the mitigating circumstances the High Court has reduced the sentence to eight months on a prior deposit of Rs. 25,000/- towards compensation to be paid to the family/legal heir of the deceased, the same may not be interfered with by this Court.

4.1 It is submitted that the respondent – accused is a poor person and was only a driver and therefore, if he is sent to undergo two years RI, he and his family members will suffer. It is submitted

that when the aforesaid facts have been considered by the High Court and the High Court has reduced the sentence, the same may not be interfered with by this Court.

5. Heard learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the respondent – accused has been convicted for the offences under Sections 279 and 304A of IPC. His conviction for the aforesaid offences have been confirmed by the High Court by the impugned judgment and order. However, by the impugned judgment and order, the High Court has interfered with the sentence imposed by the learned Trial Court affirmed by the learned Sessions Court and has reduced the sentence from two years to eight months. However, while reducing the sentence, the High Court has not at all considered the gravity of the offence and the manner in which the accused committed the offence and driving the Scorpio in rash and negligent manner due to which one innocent person lost his life and two persons who were travelling in the ambulance sustained the injuries. The High Court has also not properly appreciated and considered the fact that due to collision the ambulance turned turtle. This shows the impact on the ambulance and the rash and negligent driving on the part of the accused. Cogent reasons were given by the learned Trial Court while sentencing the accused to undergo two years RI for the offence under Section 304A of IPC. From the impugned judgment and order passed by the High Court, it appears that the case on behalf of the accused that he is coming from a poor family, is considered as mitigating circumstance. However, the High Court has not properly considered that because of the rash and negligent driving on the part of the accused one innocent person died and two persons who were travelling in the ambulance sustained injuries.

5.1 The High Court has not at all considered the fact that the IPC is punitive and deterrent in nature. The principal aim and object are to punish offenders for offences committed under IPC. Sections 279 and 304A can be invoked only if act of the accused is negligent and rash. As observed by this Court in the case of **State of Himachal Pradesh Vs. Ramchandra Rabidas (2019) 10 SCC 75,** this Court time and again emphasised on the need to strictly punish offenders responsible for causing motor vehicle accidents. With rapidly increasing motorisation, India is facing an increasing

burden of road traffic injuries and fatalities. The financial loss, emotional and social trauma caused to a family on losing a bread winner, or any other member of the family, or incapacitation of the victim cannot be quantified. As observed and held, the principle of proportionality between the crime and punishment has to be borne in mind. As observed that the principle of just punishment is the bedrock of sentencing in respect of a criminal offence.

5.2 At this stage, the decision of this Court in the case of **Saurabh Bakshi (supra),** in which this Court was considering the offence under Section 304A of IPC is required to be referred to. On the principle of sentencing, this Court has observed and held as under: -

"The eminent thinker and author, Sophocles, said centuries back : "Laws can never be enforced unless fear supports them." The statement has its pertinence, in a way, with the enormous vigour, in today's society. It is the duty of every right-thinking citizen to show veneration to law so that an orderly, civilised and peaceful society emerges. It has to be borne in mind that law is averse to any kind of chaos. It is totally intolerant of anarchy. If anyone defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognises. It can never be forgotten that the purpose of criminal law legislated by the competent legislatures, subject to judicial scrutiny within constitutionally established parameters, is to protect the collective interest and save every individual that forms a constituent of the collective from unwarranted hazards. It is sometimes said in an egocentric and uncivilised manner that law cannot bind the individual actions which are perceived as flaws by the large body of people, but, the truth is and has to be that when the law withstands the test of the constitutional scrutiny in a democracy, the individual notions are to be ignored. At times certain crimes assume more accent and gravity depending on the nature and impact of the crime on the society. No court should ignore the same being swayed by passion of mercy. It is the obligation of the court to constantly remind itself that the right of the victim, and be it said, on certain occasions the person aggrieved as well as the society at large can be victims, never be marginalised. In this context one may recapitulate the saying of Justice Benjamin

N. Cardozo "Justice, though due to the accused, is due to the accuser too." And, therefore, the requisite norm has to be the established principles laid down in precedents. It is neither to be guided by a sense of sentimentality nor to be governed by prejudices."

5.2.1 It is further observed that the principle of sentencing recognises the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case.

5.2.2 In the aforesaid decision, the High Court reduced the sentence and shown the mercy while applying the principle that payment of compensation is a factor for reduction. To that, this Court has observed that it is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. It is observed and held as under:-

"Needless to say, the principle of sentencing recognises the corrective measures but there are occasions when the deterrence is an imperative necessity depending upon the facts of the case. In our opinion, it is a fit case where we are constrained to say that the High Court has been swayed away by the passion of mercy in applying the principle that payment of compensation is a factor for reduction of sentence to 24 days. It is absolutely in the realm of misplaced sympathy. It is, in a way mockery of justice. Because justice is "the crowning glory", "the sovereign mistress" and "queen of virtue" as Cicero had said. Such a crime blights not only the lives of the victims but of many others around them. It ultimately shatters the faith of the public in judicial system."

5.2.3 Showing the concern about increasing the road accidents, it is observed in the said decision as under: -

"India has a disreputable record of road accidents. There is a nonchalant attitude among the drivers. They feel that they are the "Emperors of all they survey." Drunkenness contributes to careless driving where the other people become their prey. The poor feel that their lives are not safe, the pedestrians think of uncertainty and the civilised persons drive in constant fear but still apprehensive about the obnoxious attitude of the

people who project themselves as "larger than life." In such obtaining circumstances, the lawmakers should scrutinise, relook and revisit the sentencing policy in Section 304-A IPC, so with immense anguish."

5.3 At this stage, another decision of this Court in the case of **Surendra Singh (supra)** which is also on the offences under Sections 279 and 304A of IPC, is required to be referred to. In the case before this Court, the learned Trial Court while convicting the accused for the offence under Section 304A sentenced the accused to undergo two years RI. The High Court while maintaining the conviction, reduced the sentence awarded by the learned Trial Court from two years RI to the period already undergone and granted a further compensation of Rs. 2000/- payable to the widow/mother of the deceased. While disapproving the view taken by the High Court and setting aside the order passed by the High Court reducing the sentence, this Court has observed in paragraphs 6 to 14 as under: -

"**6.** In the instant case, after proper appreciation of evidence the trial court came to the conclusion that the accused had endangered the life of Vijay by driving the jeep on a public road in a rash and negligent manner. The accused dashed the jeep against a pulia first and then against a babul tree. As a result of such accident Vijay Singh, who was travelling in the jeep got injured and died, and another person Mangilal, who was also in the jeep, received injuries. We are of the opinion that the trial court has not committed any illegality in passing the order of conviction and in the appeal preferred by the accused findings of the trial court were affirmed. However, without proper appreciation of the evidence and consideration of gravity of the offence, the learned Single Judge of the High Court has shown undue sympathy by modifying the conviction to the period already undergone.

7. In our considered opinion, the High Court while passing the impugned order [*Surendra Singh v. State of M.P.,* Criminal Revision No. 3 of 2008, decided on 22-8-2012 (MP)] has completely failed to follow the principles enunciated by this Court in a catena of decisions. Undue sympathy by means of imposing inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and the society cannot

endure long under serious threats. If the courts do not protect the injured, the injured would then resort to personal vengeance. Therefore, the duty of any court is to award proper sentence having regard to the nature of the offence and the manner in which it was committed. (See *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463])

8. In *Dhananjoy Chatterjee v. State of W.B.* [(1994) 2 SCC 220 : 1994 SCC (Cri) 358] this Court held as under: (SCC p. 239, paras 14-15)

"*14.* In recent years, the rising crime rate—particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences, in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting to the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment."

9. While considering this aspect, the Supreme Court in *Mahesh v. State of M.P.* [(1987) 3 SCC 80 : 1987 SCC (Cri) 379 : (1987) 2 SCR 710] remarked that: (SCC p. 82, para 6)

"*6.* … it will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this 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. When we say this, we do not ignore the need for a reformative approach in the sentencing process."

10. In *Hazara Singh v. Raj Kumar* [(2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159] this Court has observed that: (SCC p. 521, para 10)

"*10.* … it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict."

This Court further observed that: (*Hazara Singh case* [(2013) 9 SCC 516 : (2014) 1 SCC (Cri) 159], SCC p. 521, para 11)

"*11.* The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."

11. In *Shailesh Jasvantbhai v. State of Gujarat* [(2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] the Apex Court opined that: (SCC pp. 361-62, paras 7-8)

"*7.* 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 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 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 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 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.

8. 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."

12. *A three-Judge Bench of this Court in Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat [(2009) 7 SCC 254 : (2009) 3 SCC (Cri) 368] observed as follows: (SCC p. 281, paras 99-100)*

"99. … The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) 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. 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 resultwise counterproductive

in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime but the society at large while considering the imposition of appropriate punishment. 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 both the criminal and the victim belong."

13. We again reiterate in this case that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is 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. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

14. In a recent decision in *State of M.P. v. Bablu* [(2014) 9 SCC 281 : (2014) 6 SCC (Cri) 1], after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser

sentence encourages any criminal and, as a result of the same, the society suffers.

5.4 Applying the law laid down by this Court in the case of **Surendra Singh (supra)** to the facts of the case on hand, the impugned judgment and order passed by the High Court interfering with the sentence imposed by the learned Trial Court confirmed by the First Appellate Court by showing undue sympathy to the accused is unsustainable and the same deserves to be quashed and set aside.

6. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order passed by the High Court reducing the sentence while maintaining the conviction for the offence under Section 304A of IPC from two years RI to eight months SI is hereby quashed and set aside. The sentence imposed by the learned Trial Court confirmed by the First Appellate Court (learned Sessions Court) is hereby restored. Now the accused be taken into custody to undergo the remaining sentence. The accused is granted four weeks' time to surrender. Present appeal is accordingly, allowed.

Headnote prepared by: Divya Pandey (*Assisted by:* Abhishek Agnihotri and Shevali Monga, LCRAs)

Result of the case: Appeal allowed.