STATE OF U.P. A

v.

VIRENDRA PRASAD

FEBRUARY 3, 2004

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

Penal Code, 1860—Section 302, 304 Part II & 307/Arms Act, 1958—Section 28—Accused killed one policeman and injured two others when he attempted to flee—Trial court convicted the accused for murder under section 302 IPC—High Court, taking the view that there was a scuffle, convicted the accused under section 304 Part II IPC—Correctness of—Held, on facts and evidence, accused shot seven rounds on policemen from very close range with intention to kill—Hence rightly convicted under section 302 IPC by the trial Court. C

D

A police party raided the house of respondent on getting information that he was operating a gambling den. When the respondent tried to flee, the deceased and two other policemen PWs 4 and 5 chased him. The respondent fired at the policemen with his rifle killing the deceased and injuring PWs 4 and 5. Other policemen caught hold of the respondent. Trial Court found the respondent guilty of offences punishable under sections 302 and 307 IPC and Section 28 of the Arms Act, 1959 and sentenced him to life imprisonment. High Court altered the conviction of the respondent to Section 304 Part II IPC and the sentence was restricted to the period already undergone. E

In appeal to this Court, appellant State contended that the High Court on surmises and conjectures came to hold wrongly that the firing took place during scuffle; that the evidence clearly shows that the respondent snatched the gun from his father and fired seven rounds at the police party and hence the commission of offence punishable under section 302 IPC is clearly established; that the deceased laid his life while performing his official duty and hence the awarding of a sentence with smaller terms is illegal and inappropriate. F G

Respondent contended that from the evidence, it is clear that the firing was done by the respondent without premeditation ruling out

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A operation of section 302 IPC; and that there was a delay in filing FIR; and that respondent had received seven injuries which were not explained by the prosecution.

Allowing the appeal, the Court

B HELD: 1.1. The High Court has completely misread the evidence of PW6. It is nowhere stated therein about any scuffle. On the contrary, the evidence of eyewitnesses clearly shows that after the father of the respondent fired the gun and while the police officials were trying to take the gun from him, the respondent snatched away the gun from his father and started firing. There was no question of fight or scuffle as such. As C evidence on record clearly establishes, seven rounds of bullets were fired by the respondent from very close range which hit the deceased and the two injured witnesses PWs. 4 and 5. He aimed at the deceased and other police officials. Though the bullets did not hit PWs. 4 and 5 on vital parts, yet the intention of the respondent was crystal clear. The deceased was D hit on the chest. Merely because there was firing all round, it would not bring the accused within ambit of Section 304 Part II IPC because the intention was to hit police officials. [49-C, D, E]

1.2. The evidence of PW 6 goes to show that the shots were fired before the attempt to disarm the respondent was made. Additionally, the E evidence of PWs. 4 and 5 clearly shows as to how the occurrence took place and how the respondent fired from close range. Their evidence does not suffer from any infirmity to throw any suspicion on its veracity. From the factual position, the inevitable conclusion is that the case is covered under Section 302 IPC. The High Court was not justified in altering the F conviction or directing acquittal so far as the offence punishable under Section 307 is concerned. No reason whatsoever has been indicated for holding that a case under Section 307 was not made out. The respondent shall surrender to custody to serve remainder of sentence as was awarded by the trial Court. [49-H; 50-A-D]

G *Rajwant Singh* v. *State of Kerala,* AIR (1966) SC 1874; *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465; *State of A.P.* v. *Rayavarapu Punnayya,* [1976] 4 SCC 382; *Abdul Waheed Khan alias Waheed and Ors.* v. *State of A.P.,* [2002] 7 SCC 175 and *State of Karnataka* v. *Puttaraja,* [2004] 1 SCC 475, referred to.

H *Dennis Councle MCGDautha* v. *State of Callifornia,* 402 US 183, 28

L.D. 2d 711, referred to. A

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 998 of 1997.

From the Judgment and Order dated 11.4.96 of the Allahabad High Court in Crl. A. No. 2951 of 1978. B

Garvesh Kabra for Ravi Prakash Mehrotra for the Appellant.

Sudamaji Shandilya, R.D. Upadhayay, Syed Ali Ahmed, Syed Tanweer Ahmeed, Awadesh Kumar Singh and Vikas Bansal for the Respondent. C

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. This appeal by the State of Uttar Pradesh questions legality of the judgment rendered by a Division Bench of the Allahabad High Court holding that the respondent Virendra Prasad was guilty of offence punishable under Section 304 Part II of the Indian Penal Code, D 1860 (in short 'the IPC') and not under Section 302 IPC as was contended by the prosecution. Custodial sentence of the respondent was limited to the period undergone by him in custody i.e. about 8 months. Though the State had filed appeal against the two persons including respondent Virendra who had faced trial, the special leave petition so far as the other accused i.e. Ram E Prasad was dismissed by order dated 20.10.1997.

Background facts giving rise to the present appeal are essentially as follows:

On getting information that accused Ram Prasad and his two sons F (accused Virendra and one Gorakh) were operating gambling den in his house, S.K. Astik (PW-6) organized a raid after obtaining search warrant. The search party consisted of ASI, Gokaran Nath Pandey (hereinafter referred to as 'the deceased', ASI R.P. Tripathi (PW-4) and, head constable Anand Shanker Tiwari (PW-5) amongst others. The raid was conducted after lot of G meticulous planning, because the accused Ram Prasad was known to be a notorious anti-social. The plan to raid the house was chalked out and the raiding party consisted of policemen and public men. They were divided into three groups. The first party was to stay outside the house, the second party was to be on the ground floor of the house and the third party was to go upstair. It consisted of circle inspector O.P. Agnihotri, PW-6, the deceased, H

injured PWs 4 and 5 and others. Police officials Ram Pal and Dinanath were deputed to proceed ahead to get the door opened. Members of the third group went behind those two constables. They covered the doors of the accused and gave necessary signal to the raiding party. Thereupon the members of the second and third groups entered into the house of the accused. On reaching the first floor of the house the members of the third group found 11 persons engaged in gambling. Both accused Ram Prasad and Virendra Prasad were making collections. They entered the eastern room where the gambling was going on and produced the search warrant to accused Ram Prasad. All the 11 persons engaging in gambling were required to stand up to facilitate their search by the police officials. When the search was in progress, both the accused persons and Gorakh slipped out of that room and ran towards the western room. Gorakh disappeared and managed to escape. Both the accused persons entered into the western room. Hearing the shouts of PW-6 that the accused were running away, the deceased and the two injured PWs 4 and 5 chased them. Accused Ram Prasad fired his rifle which did not hit anybody. Deceased caught hold of Ram Prasad and dragged him outside the room to the balcony. Accused-respondent Virendra Prasad snatched the rifle from the hands of his father, and started firing on the members of the raiding party. In all he fired seven rounds. Because of gunshots, deceased, PWs 4 and 5 received injuries. PW-6 managed to reach behind the accused Virendra and caught him from behind. He tried to snatch the rifle from his hand. But accused-respondent Virendra Prasad was not prepared to part with it. Then some members of the police party hit him with the batons which they were holding, and managed to take possession of the rifle. PW-6 found a live cartridge in the magazine of that rifle and one live cartridge was found in its chamber. Eight blank cartridges were also found at the scene of offence. The injured persons were immediately sent to the hospital, where deceased breathed his last. Case was registered on the basis of report on 4.11.1972 at 4.30 a.m. In view of the deceased's death the case which was originally registered for offence punishable under Section 307 IPC was converted to Section 302 IPC. Investigation was undertaken and charge sheet was filed. Twenty two persons were examined to further the prosecution version. Apart from PWs. 5 and 6 to whom reference has been made (supra) PWs. 10, 14, 18 and 22 were also stated to be the eyewitnesses. They described the scenario leading to the death of the deceased and injury to PWs. 4 and 5. One witness was examined to show that Virendra had sustained injuries. The Trial Court on consideration of the evidence on record found the accused persons guilty. While accused Ram Prasad was found guilty of offence punishable under Sections 27 and 28 of the Arms Act, 1959 (in short 'the Arms Act'), accused-respondent

Virendra was found guilty of offences punishable under Sections 302, 307 IPC and 28 of the Arms Act. While Ram Prasad was convicted to undergo imprisonment for one year each for the offences noted above, accused-respondent Virendra was sentenced to undergo imprisonment for life, five years and one year respectively for the offences attributed to him.

In appeal, by the impugned judgment the High Court came to hold that it would not be desirable to send accused persons to jail because of passage of time. It altered the custodial sentence to fine of Rs.1,000 each in respect of the offences relatable to the Arms Act so far as accused Ram Prasad is concerned. Conviction of accused Virendra was altered to Section 304 Part II IPC. His custody was restricted to the period already undergone. Additionally fine of Rs.10,000 was imposed. The alteration of conviction and the period of sentence as directed by the High Court is the subject matter of challenge in this appeal.

Learned counsel for the appellant submitted that case of Section 302 IPC was clearly made out. The High Court on surmises and conjectures came to hold that firing took place during scuffle between accused-respondent Virendra and PW 3 for the weapon. The evidence, according to him, clearly shows that Virendra had snatched away the weapon from his father and had fired seven rounds. It was submitted that the evidence of PW6 did not in any way show that there was a scuffle for the gun. In fact, the evidence of PW-6 goes to show that he tried to snatch away the gun after firing was done by accused-respondent Virendra. In any event, the evidence clearly established commission of offence punishable under Section 302 IPC. Further the meagre custodial sentence of 8 months awarded for altered conviction to Section 304 Part II cannot be maintained. This was a case where the protectors of life and properties of citizen and those who had to maintain law and order were attacked by criminals operating gambling dens. One officer lost his life while performing his official duty. Any leniency by awarding sentence of smaller term would be not only illegal but also inappropriate.

Per contra, learned counsel appearing for the accused-respondent Virendra submitted that the prosecution version itself goes to show that Ram Prasad fired one gunshot when the police personnel were chasing his sons, he was dragged from the roof to balcony. Further, Virendra received seven injuries and Ram Prasad had received two injuries. The prosecution has not established as to how these injuries were sustained. Therefore, the prosecution has not come with clean hands. The evidence of PWs 4 and 5 shows that the

A deceased caught hold of accused Ram Prasad when firing was done by him. Virendra has not acted with cruelty and the firing was clearly without premeditation. This clearly rules out operation of Section 302 IPC. The first information report was also lodged after considerable delay. The respondent has suffered agony of criminal trial for more than three decades and, therefore, the judgment of the High Court should not be interfered with. It is urged that B the prosecution has tried to suppress the genesis of occurrence. It was denied that accused-respondent was beaten by any person. On the contrary, doctor on examination, of accused persons has found several injuries on Ram Prasad and Virendra. In essence, prayer was made to dismiss the appeal. By way of clarification counsel for the State submitted that Ram Prasad was examined C at 2.10 a.m. on 4.11.1972 along with other accused, and injured PWs.

This brings us to the crucial question as to which was the appropriate provision to be applied. In the scheme of IPC "culpable homicide" is the genus and "murder", its specie. All "murder" is "culpable homicide" but not *vice versa*. Speaking generally, "culpable homicide" sans "special D characteristics of murder is culpable homicide not amounting to murder". For the purpose of fixing punishment, proportionate to the gravity of the generic offence, IPC practically recognizes three degrees of culpable homicide. The first is, what may be called, "culpable homicide of the first degree". This is the gravest form of culpable homicide, which is defined in Section 300 as "murder". The second may be termed as "culpable homicide of the second E degree". This is punishable under the first part of Section 304. Then, there is "culpable homicide of the third degree". This is the lowest type of culpable homicide and the punishment provided for it is also the lowest among the punishments provided for the three grades. Culpable homicide of this degree is punishable under the second part of Section 304.

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The academic distinction between "murder" and "culpable homicide not amounting to murder" has always vexed the courts. The confusion is caused, if courts losing sight of the true scope and meaning of the terms used by the legislature in these sections, allow themselves to be drawn into minute abstractions. The safest way of approach to the interpretation and application G of these provisions seems to be to keep in focus the keywords used in the various clauses of Sections 299 and 300. The following comparative table will be helpful in appreciating the points of distinction between the two offences:

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Section 299	Section 300
A person commits culpable homicide if the act by the death is caused is done-	Subject to certain exceptions culpable homicide is murder if the act by which the death is caused is done -
INTENTION	
(a) with the intention of causing death; or	(1) with the intention of causing death; or
(b) with the intention of causing such bodily injury as is likely to cause death; or	(2) with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused; or
	(3)With the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death; or
KNOWLEDGE	
(c) with the knowledge that the act is likely to cause death.	(4) with the knowledge that the act is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as is mentioned above.

Clause (b) of Section 299 corresponds with clauses (2) and (3) of Section 300. The distinguishing feature of the *mens rea* requisite under clause (2) is the knowledge possessed by the offender regarding the particular victim being in such a peculiar condition or state of health that the internal harm caused to him is likely to be fatal, notwithstanding the fact that such harm would not in the ordinary way of nature be sufficient to cause death of a person in normal health or condition. It is noteworthy that the "intention to cause death" is not an essential requirement of clause (2). Only the intention

A of causing the bodily injury coupled with the offender's knowledge of the likelihood of such injury causing the death of the particular victim, is sufficient to bring the killing within the ambit of this clause. This aspect of clause (2) is borne out by Illustration (b) appended to Section 300.

Clause (b) of Section 299 does not postulate any such knowledge on
B the part of the offender. Instances of cases falling under clause (2) of Section 300 can be where the assailant causes death by a fist-blow intentionally given knowing that the victim is suffering from an enlarged liver, or enlarged spleen or diseased heart and such blow is likely to cause death of that particular person as a result of the rupture of the liver, or spleen or the failure of the
C heart, as the case may be. If the assailant had no such knowledge about the disease or special frailty of the victim, nor an intention to cause death or bodily injury sufficient in the ordinary course of nature to cause death, the offence will not be murder, even if the injury which caused the death, was intentionally given. In clause (3) of Section 300, instead of the words "likely to cause death" occurring in the corresponding clause (b) of Section 299, the
D words "sufficient in the ordinary course of nature" have been used. Obviously, the distinction lies between a bodily injury likely to cause death and a bodily injury sufficient in the ordinary course of nature to cause death. The distinction is fine but real and if overlooked, may result in miscarriage of justice. The difference between clause (b) of Section 299 and clause (3) of Section 300
E is one of degree of probability of death resulting from the intended bodily injury. To put it more broadly, it is the degree of probability of death which determines whether a culpable homicide is of the gravest, medium or the lowest degree. The word "likely" in clause (b) of Section 299 conveys the sense of probability as distinguished from a mere possibility. The words "bodily injury ... sufficient in the ordinary course of nature to cause death"
F mean that death will be the "most probable" result of the injury, having regard to the ordinary course of nature.

For cases to fall within clause (3), it is not necessary that the offender intended to cause death, so long as the death ensues from the intentional bodily injury or injuries sufficient to cause death in the ordinary course of
G nature. *Rajwant Singh* v. *State of Kerala,* AIR (1966) SC 1874 is an apt illustration of this point.

In *Virsa Singh* v. *State of Punjab,* AIR (1958) SC 465 *Vivian Bose, J.* speaking for the Court, explained the meaning and scope of clause (3). It was
H observed that the prosecution must prove the following facts before it can

bring a case under Section 300 "thirdly". First, it must establish quite objectively, that a bodily injury is present; secondly, the nature of the injury must be proved. These are purely objective investigations. Thirdly, it must be proved that there was an intention to inflict that particular injury, that is to say, that it was not accidental or unintentional or that some other kind of injury was intended. Once these three elements are proved to be present, the enquiry proceeds further, and fourthly, it must be proved that the injury of the type just described made up of the three elements set out above was sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender.

The ingredients of clause "thirdly" of Section 300 IPC were brought out by the illustrious Judge in his terse language as follows :

> "12. To put it shortly, the prosecution must prove the following facts before it can bring a case under Section 300 'thirdly';
>
> First, it must establish, quite objectively, that a bodily injury is present;
>
> Secondly, the nature of the injury must be proved; These are purely objective investigations.
>
> Thirdly, it must be proved that there was an intention to inflict that particular bodily injury, that is to say, that it was not accidental or unintentional, or that some other kind of injury was intended.
>
> Once these three elements are proved to be present, the enquiry proceeds further and,
>
> Fourthly, it must be proved that the injury of the type just described made up of the three elements set out above is sufficient to cause death in the ordinary course of nature. This part of the enquiry is purely objective and inferential and has nothing to do with the intention of the offender."

The learned Judge explained the third ingredient in the following words (at page 468):

> "The question is not whether the prisoner intended to inflict a serious injury or a trivial one but whether he intended to inflict the injury that is proved to be present. If he can show that he did not, or if the totality of the circumstances justify such an inference, then, of course,

A the intent that the section requires is not proved. But if there is nothing beyond the injury and the fact that the appellant inflicted it, the only possible inference is that he intended to inflict it. Whether he knew of its seriousness, or intended serious consequences, is neither here nor there. The question, so far as the intention is concerned, is not whether he intended to kill, or to inflict an injury of a particular
B degree of seriousness, but whether he intended to inflict the injury in question; and once the existence of the injury is proved the intention to cause it will be presumed unless the evidence or the circumstances warrant an opposite conclusion."

C These observations of *Vivian Bose, J.* have become *locus classicus.* The test laid down by *Virsa Singh* case, (supra) for the applicability of clause "thirdly" is now ingrained in our legal system and has become part of the rule of law. Under clause thirdly of Section 300 IPC, culpable homicide is murder, if both the following conditions are satisfied i.e. (a) that the act which causes death is done with the intention of causing death or is done
D with the intention of causing a bodily injury; and (b) that the injury intended to be inflicted is sufficient in the ordinary course of nature to cause death. It must be proved that there was an intention to inflict that particular bodily injury which, in the ordinary course of nature, was sufficient to cause death viz. that the injury found to be present was the injury that was intended to
E be inflicted.

Thus, according to the rule laid down in Virsa Singh case (supra) even if the intention of the accused was limited to the infliction of a bodily injury sufficient to cause death in the ordinary course of nature, and did not extend to the intention of causing death, the offence would be murder. Illustration
F (c) appended to Section 300 clearly brings out this point.

Clause (c) of Section 299 and clause (4) of Section 300 both require knowledge of the probability of the act causing death. It is not necessary for the purpose of this case to dilate much on the distinction between these corresponding clauses. It will be sufficient to say that clause (4) of Section
G 300 would be applicable where the knowledge of the offender as to the probability of death of a person or persons in general as distinguished from a particular person or persons - being caused from his imminently dangerous act, approximates to a practical certainty. Such knowledge on the part of the offender must be of the highest degree of probability, the act having been
H committed by the offender without any excuse for incurring the risk of causing

death or such injury as aforesaid. A

The above are only broad guidelines and not cast-iron imperatives. In most cases, their observance will facilitate the task of the court. But sometimes the facts are so intertwined and the second and the third stages so telescoped into each, that it may not be convenient to give a separate and clear cut treatment to the matters involved in the second and third stages. B

The position was illuminatingly highlighted by this Court in *State of A.P.* v. *Rayavarapu Punnayya,* [1976] 4 SCC 382 and *Abdul Waheed Khan alias Waheed and Ors.* v. *State of A.P.* [2002] 7 SCC 175.

In the case at hand the High Court appears to have completely misread C the evidence of PW6. It is nowhere stated therein about any scuffle. On the contrary, the evidence of eyewitnesses clearly shows that after accused Ram Prasad fired the gun and while the police officials were trying to take the gun from him, accused-respondent Virendra snatched away the gun from his father and started firing. There was no question of fight or scuffle as such. D No foundation has been led to substantiate the plea that there was fighting or scuffle. As evidence on record clearly establishes, seven rounds of bullets were fired by accused Virendra from very close range which hit the deceased and the two injured witnesses PWs. 4 and 5. He aimed at the deceased and other police officials. Though the bullets did not hit PWs. 4 and 5 on vital parts, yet the intention of the accused was crystal clear. The deceased was hit E on the chest. Merely because there was firing all around, it would not bring the accused within ambit of Section 304 Part II IPC because the intention was to hit police officials. The reasoning given by the High Court is cryptically indicated as follows:

> "The evidence of the prosecution is that Ram Prasad fired and F then nobody was hurt and Virendra Prasad snatched the rifle from which he started firing. If Virendra really wanted to kill any person he easily would have armed with a rifle and persons who were close to him he could not have found target on which bullets have been fired. No bullet injury on the person of any of the witnesses indicated G that the intention of the appellant was neither to kill nor did actually aim to kill".

To say the least, the reasons indicated are vague, lack cohesion and have been arrived at without any material to support them. The conclusions have been arrived at by a complete misreading of evidence of PW-6 who did H

A not in any manner state in his evidence that there was any fighting or scuffle. On the contrary, his evidence goes to show that the shots were fired before the attempt to disarm the accused-respondent Virendra was made. Additionally the evidence of PWs. 4 and 5 clearly shows as to how the occurrence took place and how the accused Virendra fired from close range. Their evidence does not suffer from any infirmity to throw any suspicion on its veracity. B When the factual position is judged in the background of legal position noted above, the inevitable conclusion is that the case is covered under Section 302 IPC. The High Court was not justified in altering the conviction or directing acquittal so far as the offence punishable under Section 307 is concerned. No reason whatsoever has been indicated for holding that a case under Section C 307 was not made out. The other points raised by the respondent have been dealt with in detail by the Courts below and rightly rejected.

We, therefore, set aside the impugned judgment of the High Court and restore that of the Trial Court. The accused-respondent shall surrender to custody to serve remainder of sentence as was awarded by the trial Court. D

Since we have restored the sentences awarded by the Trial Court, it is not necessary to deal with the question whether the sentence awarded by the High Court was without application of mind. It is, however, necessary to note that sentence should commensurate with the gravity of offence.

E 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; F 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 departure from just desert as the basis of punishment G and create cases of apparent injustice that are serious and widespread.

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 H departure from the principle of proportionality has disappeared from the law

only in recent times on account of misplaced sympathies to the perpetrator of crime leaving the victim or his family into oblivion. 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 gravity of the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

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 Callifornia:* 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.

These aspects were highlighted by us in *State of Karnataka* v. *Puttaraja,* [2004] 1 SCC 475.

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.

Appeal is allowed.

B.S. Appeal allowed.