

[2013] 10 S.C.R. 21

STATE OF M.P.
v.
BABULAL & ORS.
(Criminal Appeal No. 1156 of 2013)

AUGUST 12, 2013

[DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.]

Sentence/Sentencing – Conviction u/ss. 148, 324/149 and 326/149 IPC and sentence of 3 years SI by trial court and appellate court – Revisional Court upheld the conviction, but reduced the sentence to 3 months on the ground of delay in criminal proceedings – Held: It is solemn duty of Court to strike a proper balance while awarding sentence – Taking a lenient view showing misplaced sympathy to the accused on any consideration reduces the criminal justice system into a mockery – In the present case, in view of the serious nature of injuries on the victims, High Court was not justified in reducing the sentence – Penal Code, 1860 – ss. 148, 324/149 and 326/149.

Trial court convicted the respondents-accused for commission of offences punishable u/ss. 148, 324/149 (two counts) and 326/149 (two counts) IPC and sentenced them to 3 years SI and imposed fine with default clause. In appeal, High Court confirmed the conviction and sentence. In Revision Petition, accused prayed only for reducing heir sentence in view of the fact that criminal proceedings had protracted for about 7 years. The Revisional Court reduced the sentence from 3 years to 3 months. Hence the present appeal by the State.

Allowing the appeal, the Court

HELD: 1. One of the prime objectives of criminal law

A is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. The most relevant determinative factor of sentencing is proportionality between crime and

B punishment keeping in mind the social interest and consciousness of the society. It is a mockery of the criminal justice system to take a lenient view showing misplaced sympathy to the accused on any consideration whatsoever including the delay in conclusion of criminal

C proceedings. The Punishment should not be so lenient that it shocks the conscience of the society being abhorrent to the basic principles of sentencing. Thus, it is the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages a criminal and as a result of the same, the

D society suffers. [Para 16] [31-B-E]

E 2. In the present case, four persons were injured and two of them had more than one head injury. There were too many injuries on their persons and some of them had

F been inflicted on vital parts of the body. High Court could not be justified in taking a lenient view which reduces the administration of the criminal justice system to a mockery. Therefore, the Judgment of the High Court is set aside and that of the Trial Court is restored. [Paras 17 and 20] [31-E-G; 32-E]

G *Mahesh and etc. vs. State of Madhya Pradesh* AIR 1987 SC 1346; 1987 (2) SCR 710; *State of Punjab vs. Bira Singh and Ors.* (1995) Supp. 3 SCC 708; *Chinnadurai vs. State of Tamil Nadu* AIR 1996 SC 546; 1995 (3) Suppl. SCC 686;

H *State of U.P. vs. Shri Kishan* AIR 2005 SC 1250; *Sadhupati Nageswara Rao vs. State of Andhra Pradesh* AIR 2012 SC 3242; 2012 (6) SCR 1143; *Alister Anthony Pereira vs. State of Maharashtra* AIR 2012 SC 3802; 2012 (1) SCR 145; *State of Karnataka vs. Krishnappa* AIR 2000 SC 1470; 2000 (2) SCR 761; *Dalbir Singh vs. State of Haryana* AIR 2000 SC

1677: 2000 (3) SCR 1000; Dhananjoy Chatterjee @ Dhanna vs. State of West Bengal (1994) 2 SCC 220: 1994 (1) SCR 37; Ravji @ Ram Chandra vs. State of Rajasthan AIR 1996 SC 787: 1995 (6) Suppl. SCR 195; State of Uttar Pradesh vs. Sanjay Kumar (2012) 8 SCC 537: 2012 (7) SCR 359 – relied on.

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Ram Govind and Ors. vs. State of M.P. (2002) 3 MPHT 301; Vijay Singh vs. State of M.P. (1994) II MPWN 98; Havaladar Singh vs. State of M.P. (1995) I MPWN 275 – disapproved.

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Case Law Reference:

1987 (2) SCR 710	relied on	Para 8	
(1995) Suppl. 3 SCC 708	relied on	Para 9	
1995 (3) Suppl. SCC 686	relied on	Para 10	D
AIR 2005 SC 1250	relied on	Para 11	
2012 (6) SCR 1143	relied on	Para 12	
2012 (1) SCR 145	relied on	Para 13	E
2000 (2) SCR 761	relied on	Para 13	
2000 (3) SCR 1000	relied on	Para 13	
1994 (1) SCR 37	relied on	Para 14	F
1995 (6) Suppl. SCR 195	relied on	Para 14	
2012 (7) SCR 359	relied on	Para 15	
(2002) 3 MPHT 301	disapproved	Para 18	
(1994) II MPWN 98	disapproved	Para 18	G
(1995) I MPWN 275	disapproved	Para 18	

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1156 of 2013.

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A From the Judgment & Order dated 14.12.2011 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in Criminal Revision No. 74 of 2010.

Bansuri Swaraj, C.D. Singh for the Appellant.

B Prashant Shukla, Nikilesh Ramachandran for the Respondents.

The Judgment of the Court was delivered by

C **DR. B.S. CHAUHAN, J.** 1. This appeal has been filed against the impugned judgment and order dated 14.12.2011 passed by the High Court of Madhya Pradesh, (Gwalior Bench) in Criminal Revision No. 74 of 2010, by way of which the conviction of the respondents has been maintained under
D Sections 148, 324, 326 and 149 of the Indian Penal Code, 1860 (hereinafter referred to as 'IPC') as awarded by the learned trial court, however, the sentence has been reduced from 2 years to 3 months.

E 2. Facts and circumstances giving rise to this appeal are that:

A. One Sunil (PW.1) lodged a complaint with the police station Bhandar on 21.3.2004 that his father Nahar Singh (PW.5) had gone to his agricultural field for guarding his crops,
F all the respondents came there on a tractor driven by Kallu, armed with axe, farsa and lathi etc. When the complainant Sunil tried to stop the tractor, the respondents started abusing him and on being asked not to abuse, the respondents caused injuries to the complainant Sunil (PW.1) with their respective weapons. When his father Nahar Singh (PW.5) came to rescue
G him, the respondents had beaten him of which he suffers injuries. In the meanwhile, on hearing hue and cry, brother of complainant, namely, Brijraj (PW.3) and one Kunwar Singh (PW.2) reached the spot and tried to intervene, they were also
H beaten by the respondents. When other persons namely, Kalyan

Singh and Nirbhay Singh reached the spot, the accused persons fled away from there hurling threats to kill the complainant side.

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B. In view of the complaint filed by Sunil (PW.1), the law came into motion. The police arrested the accused persons, weapons etc. were recovered on the basis of the disclosure statements made by them, and various memos were prepared.

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C. After completing the investigation, the police filed chargesheet against the respondents under Sections 147, 148, 149, 294, 323, 324 and 506-B IPC. On the basis thereof, the charges had been framed against the respondents/accused under Sections 147, 148, 294, 506 Part 2, 326/149 (two counts), 324/149 (two counts).

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D. In order to prove their case, the prosecution examined large number of witnesses. The learned Magistrate vide impugned judgment and order dated 10.9.2009 convicted the respondents for commission of the offences punishable under Sections 148, 324/149 (two counts) and 326/149 (two counts) of IPC, and sentenced them to undergo one-one year simple imprisonment with fine of Rs.100-100/- and two-two years simple imprisonment with fine of Rs.150-150/- respectively, and in default of payment of fine, to further undergo simple imprisonment of 10-10 days.

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E. Aggrieved, the respondents-accused filed Criminal Appeal No. 74 of 2009 before the learned Additional Sessions Judge (Fast Track), Datia. The said appeal was dismissed by order dated 15.1.2010.

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F. The respondents further challenged the said order dated 15.1.2010 by filing Criminal Revision No. 74 of 2010 before the High Court which was disposed of vide impugned judgment and order dated 14.12.2011.

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Hence, this appeal by the State.

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A 3. Ms. Bansuri Swaraj, learned counsel appearing on
behalf of the appellant State, has submitted that if the criminal
proceedings has protracted for 7-1/2 years that could not be a
ground for reducing the sentence from two years to 3 months
only by the High Court. Such a reduction of sentence is not
B justified, particularly, when the respondents did not argue their
case on merit at all. In case, the High Court earlier had reduced
the sentence in a similar manner that cannot be a precedent
as other case is to be decided on its own merit. Therefore, in
the facts and circumstances of the case, the sentence awarded
C by the learned trial court should be restored and the order of
the High Court requires to be modified to that extent.

4. On the contrary, Shri Prashant Shukla, learned counsel
appearing on behalf of the respondents, has submitted that the
respondents faced the criminal prosecution for a long time and
D the sentence was reduced vide order dated 14.12.2011. The
High Court was justified in following the earlier judgment
wherein under the similar circumstances, the sentence had
been reduced as undergone. Thus, the facts of the case do not
warrant any interference whatsoever in the case and the appeal
E is liable to be dismissed.

5. We have considered the rival submissions made by the
learned counsel appearing on behalf of the parties and perused
the records.

F 6. Admittedly, the respondents did not argue the case on
merit. It was prayed before the High Court that as a period of
more than 7 years had elapsed when the incident had taken
place, while upholding the guilt of the said accused, sentence
may be reduced as undergone which was about 3 months and
G amount of fine may be imposed. Such a prayer has been
accepted by the High Court. Even before us learned counsel
appearing on behalf of the respondents has not argued anything
on merit and the matter is restricted only to the quantum of
punishment and nothing else.
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7. Dr. G.L. Verma (PW.7) who had examined the victims/
injured witnesses in this case proved the injuries as under:

Nahar Singh (PW.5) had suffered 5 injuries including an
incised wound (fracture) on his right hand thumb and an
lacerated wound in the middle of his left leg. Brijraj (PW.3) got
7 injuries including an incised wound in the middle of his left
leg, and incised wound in the right side of his **head**. Kunwar
Singh (PW.2) was found to have 7 injuries including an incised
wound deep to skin on the right side of his B and a lacerated
wound on his left hip. Sunil (PW.1) had found 11 injuries
including an incised wound deep to bone in right side of his
head, an incised wound deep to bone in left side of his **head**,
an incised wound in the middle of his **head**, an incised wound
deep to bone in the middle of his left leg, and a lacerated wound
in the right hand thumb and an incised wound in the left leg.

8. In *Mahesh & etc. v. State of Madhya Pradesh*, AIR
1987 SC 1346, while dealing with a similar issue, this Court
held as under:

“....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
reformatory jargon.....”

9. This Court in *State of Punjab v. Bira Singh & Ors.*,
(1995) Supp. 3 SCC 708, has held that at the time of awarding
the sentence, the court should not be confused with the principle
of adopting the most lenient view and an accused may not be
awarded lesser punishment so that there would be deterrence
for committing the crime again and such a view may adversely
affect not only the accused but the society as a whole.

A 10. In *Chinnadurai v. State of Tamil Nadu*, AIR 1996 SC 546, this Court rejected the plea for reduction of sentence in view of a considerable *delay* and other circumstances observing that sentence has to be awarded taking into consideration the gravity of the injuries.

B 11. In *State of U.P. v. Shri Kishan*, AIR 2005 SC 1250, this Court has emphasised that just and proper sentence should be imposed. The Court held:

C “..... Any liberal attitude by imposing meager 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.

D 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.

E 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’.” (Emphasis added)

F 12. In *Sadhupati Nageswara Rao v. State of Andhra Pradesh*, AIR 2012 SC 3242, this Court observed that the courts cannot take lenient view in awarding sentence on the ground of sympathy or delay as the same cannot furnish any ground for reduction of sentence.

G 13. In *Alister Anthony Pareira v. State of Maharashtra*, AIR 2012 SC 3802, this Court held as under:

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"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.

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." (Emphasis added)

(See also: *State of Karnataka v. Krishnappa*, AIR 2000 SC 1470; and *Dalbir Singh v. State of Haryana*, AIR 2000 SC 1677)

14. In *Dhananjay Chatterjee @ Dhanna v. State of West Bengal* (1994) 2 SCC 220, this Court observed:

"...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 the imposition of appropriate punishment."

(See also: *Ravji @ Ram Chandra v. State of Rajasthan*, AIR 1996 SC 787).

A 15. In *State of Uttar Pradesh v. Sanjay Kumar*, (2012) 8 SCC 537, this Court examined the issue of sentencing policy and came to the conclusion:

B “21. Sentencing policy is a way to guide judicial discretion
C in accomplishing particular sentencing. Generally, two
D criteria, that is, the seriousness of the crime and the
E criminal history of the accused, are used to prescribe
F punishment. By introducing more uniformity and
consistency into the sentencing process, the objective of
the policy, is to make it easier to predict sentencing
outcomes. Sentencing policies are needed to address
concerns in relation to unfettered judicial discretion and lack
of uniform and equal treatment of similarly situated
convicts. The principle of proportionality, as followed in
various judgments of this Court, prescribes that, the
punishments should reflect the gravity of the offence and
also the criminal background of the convict. Thus, the
graver the offence and the longer the criminal record, the
more severe is the punishment to be awarded. By laying
emphasis on individualised justice, and shaping the result
of the crime to the circumstances of the offender and the
needs of the victim and community, restorative justice
eschews uniformity of sentencing. Undue sympathy to
impose inadequate sentence would do more harm to the
public system to undermine the public confidence in the
efficacy of law and society could not long endure under
serious threats.

G 22. Ultimately, it becomes the duty of the courts to award
H proper sentence, having regard to the nature of the offence
and the manner in which it was executed or committed, etc.
The courts should impose a punishment befitting the crime
so that the courts are able to accurately reflect public
abhorrence of the crime. It is the nature and gravity of the
crime, and not the criminal, which are germane for
consideration of appropriate punishment in a criminal trial.

Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise.”

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16. In view of the above, the law on the issue can be summarised to the effect that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. The most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind the social interest and consciousness of the society. It is a mockery of the criminal justice system to take a lenient view showing mis-placed sympathy to the accused on any consideration whatsoever including the delay in conclusion of criminal proceedings. The Punishment should not be so lenient that it shocks the conscience of the society being abhorrent to the basic principles of sentencing.

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Thus, it is the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages a criminal and as a result of the same society suffers.

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17. The case at hand is required to be decided on the basis of the aforesaid settled legal propositions in respect of principles of sentencing. Admittedly, four persons were injured and two of them had more than one head injury. There were too many injuries on their persons and some of them had been inflicted on vital parts of the body. In our view, the High Court could not be justified in taking a lenient view which reduces the administration of the criminal justice system to a mockery.

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18. We do not find any force in the submission advanced by Shri Prashant Shukla, learned counsel appearing for the respondents that the High Court has passed a correct order placing reliance on the earlier judgment in *Ram Govind & Ors. v. State of M.P.*, (2002) 3 MPHT 301, wherein the accused

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- A therein had been convicted under Sections 147 and 325/149 IPC and awarded the sentence of 6 months RI under Section 147 IPC and a sentence of 1 year RI under Sections 325/149 IPC, and further a fine had been imposed. The High Court considering the fact that period of 16 years had elapsed took
- B a lenient view further placing reliance on earlier judgments in *Vijay Singh v. State of M.P.*, (1994) II MPWN 98; and *Havaladar Singh v. State of M.P.*, (1995) I MPWN 275 and reduced the sentence to the period undergone by them which was only 6 days for the reason that none of the judgments referred to in
- C *Ram Govind (supra)* can be approved.

19. All the judgments relied upon by learned counsel for the respondents are not in consonance with the law of sentencing policy laid down by this court in any of the judgments referred to hereinabove. Taking such a lenient view in awarding
- D the sentence tantamounts to doing injustice of a crude form against the innocent victims and the society as a whole. Thus, the submission advanced is liable to be rejected.

20. In view of the above, the appeal succeeds and is
- E allowed. The Judgment of the High Court is set aside and that of the Trial Court restored. The respondents are directed to surrender within four weeks from today failing which the learned Judicial Magistrate, 1st Class Bhandar, Distt. Datia is directed to take them into custody and send them to jail to serve out the
- F remaining part of the sentence. A copy of the order be sent to the learned Magistrate concerned.

K.K.T.

Appeal allowed.