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STATE OF M.P.

v.

MOHAN & OTHERS

(Criminal Appeal No. 1052 of 2013)

JULY 30, 2013

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**[K.S. RADHAKRISHNAN AND
PINAKI CHANDRA GHOSE, JJ.]**

Penal Code, 1860:

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s.307 read with s.319 – Attempt to murder – Ingredients of – Explained – Held: A gun shot, as in the instant case, may miss the vital part of the body and may result in a lacerated wound, that itself is sufficient to attract s.307 — High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body – Sentence/Sentencing.

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Sentence/Sentencing:

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Trial court sentencing the accused to 3 years RI u/s 307 IPC for causing gun shot injuries to victims – High Court reducing the sentence to period already undergone – Held: In spite of various judicial pronouncements of Supreme Court, High Courts are reducing the sentence without application of mind and stating any reasons — In a case where accused persons have found been guilty u/s 307 IPC, the sentence already undergone, of about 20 to 50 days or 211 days, would not be an adequate sentence and not commensurate with the guilt established — If High Court considers it fit to reduce the sentence, it must state reasons, for the reduction – Administration of justice – Judgments/Orders.

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The respondents-accused, who were prosecuted for causing gun-shot injuries to complainants, were

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convicted by the trial court u/s 307 IPC and were sentenced to 3 years RI each. On appeal, the High Court reduced the sentence to the period already undergone, which was 50 days, 211 days, 39 days, and 23 days respectively, in respect of the four respondents, holding that injury was not caused on the vital parts of the body.

Allowing the appeal, the Court

HELD: 1.1. A gun shot, as in the instant case, may miss the vital part of the body and may result in a lacerated wound, that itself is sufficient to attract s.307. The High Court, while reducing the sentence, has not properly appreciated the scope of s.307, IPC under which the respondents were found guilty. In order to attract s.307, causing of hurt is sufficient and the injury need not be on the vital parts of the body. If anybody does any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 IPC uses the word 'hurt' which has been explained in s.319, IPC and not "grievous hurt" within the meaning of s.320, IPC. Therefore, in order to attract s.307, the injury need not be on the vital part of the body. High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body. Period undergone by way of sentence also is not commensurate with the guilt established. There is no good reason to interfere with the judgment of the trial court. The judgment of the High Court reducing the sentence is set aside and that of the trial court restored. [para 15, 16 and 18] [860-D-E, G-H; 811-A-C; 812-D]

1.2. In spite of various judicial pronouncements of this Court, the High Courts are committing the same mistake and reducing the sentence without application of mind and stating no reasons. In a case where the accused persons have been found guilty u/s 307 IPC, the sentence already undergone of about 20 to 50 days or

A 211 days would not be an adequate sentence, nor would it be commensurate with the guilt established. If the High Court considers it fit to reduce the sentence, it must state reasons, for the reduction. [para 14] [810-B-D]

B *Sadha Singh and Another v. State of Punjab* (1985) 3 SCC 225; *State of M.P. v. Sangram and Others* 2005 (1) Suppl. SCR 562 = AIR 2006 SC 48; and *State of Madhya Pradesh v. Saleem @ Chamaru and Anr.* 2005 (1) Suppl. SCR 562 = AIR 2005 SC 3996 – relied on

C Case Law Reference:

(1985) 3 SCC 225 relied on para 12

AIR 2006 SC 48 relied on para 13

D 2005 (1) Suppl. SCR 562 relied on para 17

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1052 of 2013.

E From the Judgment and Order dated 13.12.2011 of the High Court of Madhya Pradesh, Judicature Jabalpur, Bench at Gwalior in Criminal Appeal No. 898 of 2007.

B.P. Singh, C.D. Singh for the Appellant.

Arvind Kumar for the Respondents.

F The Judgment of the Court was delivered by

K.S. RADHAKRISHNAN, J. 1. Leave granted.

G 2. State is aggrieved by the order of the High Court dated 13.12.2011 passed in CRLA No. 898 of 2007, reducing the sentence awarded by the trial Court from three years Rigorous Imprisonment with a fine of Rs.1,000/- to each of the accused persons, with default clause, to that of the period already undergone.

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3. Respondents herein were charge-sheeted for the offences punishable under Sections 294, 307 read with Section 34 IPC and were convicted and sentenced as stated above. The incident leading to the above charges occurred on 11.6.2006 at 11.00 O'clock in the night when complainants attempted to drive away the animals of the accused persons trespassed into their courtyard. Accused persons, infuriated by the conduct of the complainants, reached the spot of the incident and started abusing them. One of the accused, Ummed Singh, using his fire arm, fired a gun shot, which hit Lalaram, one of the complainants on his back and the complainant including Lalaram in order to save their lives ran away from the spot. Ummed Singh again fired another gunshot, which hit Mogh Singh, another complainant. Due to the injuries sustained by Lalaram, he fell down. The accused persons committed the same in furtherance of their common intention or knowledge that their actions would result in causing death to the complainants.

4. The prosecution, in order to establish the guilt of the accused persons, examined large number of witnesses including PW14, the doctor who examined the injured persons. The defence also adduced oral evidence.

5. Dr. Sudhir Rathore (PW-14) examined the injured Lalaram on 12.6.2006 and found the following injuries on his person:

- (i) Lacerated wound having diameter of 0.5 cm. over scalp occipital region and skin deep blackening seen all around the wound.
- (ii) Lacerated wound of 0.5cm over left scapular region and muscle deep blackening seen all around the wound.
- (iii) Lacerated wound of 0.5 cm. over right arm middle, 1/3rd medial aspect and blackening seen all around.

A P.W.14, after examining Kamar Lal on 12.2.2006, noticed the following injuries on him:

(i) Lacerated wound of 0.5 cm on the right thumb and the blackening was present all around the injury.

B (ii) Lacerated wound of 0.5 cm on the lateral aspect.

6. P.W.14 also examined the father of the complainant and found lacerated wound of 0.5 cm on the vertex part of the head and the blackening was found all around the wound. Doctor
C deposited that the injuries were caused by the use of the firearm.

7. The trial court after appreciating the entire evidence held as follows:

D "46. In the night at 11 O' clock coming of the accused persons equipped with weapons and firing at the informant side not only once rather several times and to do so without any provocation and at the time of occurrence there intention also that killed all of them, show this common intention of the accused persons that in reality the intention
E of the accused persons was to kill the informant side.

48. In such circumstance for concluding the intention of the accused persons the selection of the vehicle used in the crime by them is very important, which is in the
F circumstance of the present case is gun and according to the report (Exhibit P.26), the pellet, article 'D' has been examined this can be fired from the gun, article 'A-1' and an one barreled gun of 12 bore even the examination of which has been done by the Assistant Chemical Examiner and the Senior Scientist Officer, according to that it was
G in the operative condition and from the residue found in the barreled of which the presence of nitrite has been found to be positive which shows this that this gun has been used and although conclusively this cannot be said that when it has been used for the last time, because
H scientifically it is not possible to tell this with certainty."

8. The trial Court, after holding the accused persons guilty of the charges leveled against them, took a lenient view, though the term of the sentence under Section 307 IPC may extend to life imprisonment, if hurt is caused to any person by such an act and held as follows:

"58. The entire circumstances was studied. The accused persons are farmers and both the side are of same family. Among them the dispute of partition is pending. Prominently and importantly the injuries which have been sustained by the injured persons, except the injury of thumb others are of superficial nature the doctor has not given report regarding any injury to be fatal; therefore in the well-thought opinion it is very essential to give this much sentence to the accused persons, due to which they can realize the seriousness of their crime and which is in accordance with the offence committed by them."

9. Taking note of the above aspects, the trial Court, as already indicated, sentenced all the accused persons to suffer three years' rigorous imprisonment and to pay a fine of Rs.1,000/- each and in case of default of payment of fine, the accused persons were ordered to undergo rigorous imprisonment for further one year.

10. In the appeal before the High Court, the accused persons stated that they had already deposited the fine and are challenging only on the quantum of sentence. Further, it was also submitted that the accused persons were not persons of criminal antecedent. The High Court, we may say so, by a cryptic order reduced the sentence awarded to the accused persons to the period already undergone by them. The relevant portion of the order of the High Court is extracted hereunder:

"Considering the nature of offence and the period which has already undergone by the appellants, further

A considering the fact that the injury has not been caused on vital part, seems to be sufficient for the ends of justice. Therefore, the appeal filed by the appellants is partly allowed maintaining the conviction of the appellants and their jail sentences are reduced to already undergone."

B 11. Even though the High Court has stated that the sentence is being reduced taking note of the nature of the offence and the fact that injury has not been caused on the vital parts of the body, we notice, it has neither been discussed nor referred to the nature of the offence or the injuries. The High Court also not examined whether the period undergone would be sufficient and commensurate with the guilt established. The following chart also would indicate the period the accused persons spent in judicial custody:

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S. No.	Name of the accused	Date of arrest	Date of release	Days of Custody
1.	Mohan Singh Dhakad	12.06.06	31.07.06	50 days
E 2.	Ummed Singh Dhakad	13.06.06	08.01.2007	211 Days
3.	Balbir Singh Dhakad	17.06.2006	25.07.2006	39 Days
F 4.	Hiralal Yadav	03.07.2006	25.07.2006	23 Days

12. PW14, the doctor, has explained the nature of injuries and use of the firearm for causing the injuries. Fire arm, it is proved, was used repeatedly against the complainants, causing bodily hurt. This Court had occasion to consider the scope of Section 307, IPC in *Sadha Singh and Another v. State of Punjab* (1985) 3 SCC 225, wherein the trial Court awarded the substantive sentence of three years of rigorous imprisonment and also imposed a fine, which were reduced by the High Court to a period of three months of imprisonment already undergone

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by the accused, but by enhancing the fine. This Court held that the reduction of the sentence was not justified. In that case also, the doctor opined that the injuries were caused by firearm, just like the present case. This Court, reversing the judgment of the High Court and upholding that of the trial Court, held as follows:

"8. If the learned Judge had in mind the provisions of Section 360 of CrPC so as to extend the benefit of treatment reserved for first offenders, these appellants hardly deserve the same. Admittedly, both the appellants were above the age of 21 years on the date of committing the offence. They have wielded dangerous weapons like firearms. Four shots were fired. The only fortunate part of the occurrence is that the victim escaped death. The offence committed by the appellants is proved to be one under Section 307 of IPC punishable with imprisonment for life. We were told that the appellants had hardly suffered imprisonment for three months. If the offence is under Section 307 IPC i.e. attempt to commit murder which is punishable with imprisonment for life/and the sentence to be awarded is imprisonment for three months, it is better not to award substantive sentence as it makes mockery of justice....."

13. This Court in *State of M.P. v. Sangram and Others* (AIR 2006 SC 48) took strong exception in the manner in which the High Court, while disposing of the criminal appeal, reduced the sentence without application of mind. That was also a case where the accused was charge-sheeted for offence punishable under Section 307 IPC. The trial Court imposed the sentence of seven years rigorous imprisonment, which was reduced by the High Court to one year, without stating any satisfactory reasons for reduction of sentence. This Court held as follows:

"5. The High Court has not assigned any satisfactory reasons for reducing the sentence to less than one year.

6. That apart, the High Court has written a very short

A and cryptic judgment. To say the least, the appeal has been disposed of in a most unsatisfactory manner exhibiting complete non-application of mind. There is absolutely no consideration of the evidence adduced by the parties."

B 14. We are of the view that in spite of various judicial pronouncements of this Court, we have come across several cases where the High Courts are committing the same mistake and reducing the sentence without application of mind and stating no reasons. In a case where the accused persons have
C already been found guilty under Section 307 IPC, we fail to see how the sentence of about 20 to 50 days or 211 days in the case of accused Ummed Singh, would be an adequate sentence. Sentence already undergone, in our view, is not commensurate with the guilt established. If the High Court
D considers it fit to reduce the sentence, it must state reasons, for the reduction.

15. High Court, in our view, while reducing the sentence, has not properly appreciated the scope of Section 307, IPC under which the respondents were found guilty.

E The relevant portion of Section 307 reads as follows:

"307. Attempt to murder.— Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder,
F shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore
G mentioned....."

16. High Court was of opinion that injuries has not been caused on vital parts of the body. In order to attract Section 307, the injury need not be on the vital parts of the body. In order to attract Section 307, causing of hurt is sufficient. If anybody does
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any act with intention or knowledge that by his act he might cause death and hurt is caused, that is sufficient to attract life imprisonment. Section 307 uses the word 'hurt' which has been explained in Section 319, IPC and not "grievous hurt" within the meaning of Section 320, IPC. Therefore, in order to attract Section 307, the injury need not be on the vital part of the body. A gun shot, as in the present case, may miss the vital part of the body, may result in a lacerated wound, that itself is sufficient to attract Section 307. High Court is, therefore, in error in reducing the sentence, holding that the injury was not on the vital part of the body. Period undergone by way of sentence also in our view is not commensurate with the guilt established.

17. We also have to remind ourselves the object and purpose of imposing adequate sentence. Reference may be made to the judgment of this Court in *State of Madhya Pradesh v. Saleem @ Chamaru and Anr.*, AIR 2005 SC 3996.

"8. 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.

9. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude -or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing 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

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

B 10. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

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D 18. We, therefore, find no good reason to interfere with the judgment of the trial court. Consequently, the appeal is allowed and judgment of the High Court reducing the sentence is set aside and the judgment and order of the trial Court are restored.

R.P.

Appeal allowed.