

STATE OF M.P.

v.

NAJAB KHAN AND ORS.

(Criminal Appeal No. 809 of 2013)

JULY 01, 2013

[P. SATHASIVAM AND M.Y. EQBAL, JJ.]

Sentence/Sentencing – Conviction u/s. 326/34 IPC by courts below – Sentence of 3 years RI imposed by trial court – Reduced by High Court to sentence for the period already undergone i.e. 14 days – On appeal, Held: In view of the serious nature of injuries, High Court was not justified in reducing the sentence to the period already undergone – Facts and circumstances of the case, nature of crime, manner of planning and commission of the offence, motive, conduct of accused, nature of weapons and all other attending circumstances are relevant while imposing sentence – It is duty of the Court to award appropriate sentence and not to show undue sympathy – Sentence awarded by trial court restored – Penal Code, 1860 – s.326/34.

The three appellants-accused alongwith another co-accused 'M' were charged u/ss. 307, 341 and 326 IPC. The proceedings against the co-accused 'M' were stayed by High Court. During trial, in view of the compromise between the parties, the appellants-accused were acquitted u/s. 341 IPC. Trial court convicted them for the offence punishable u/s. 326/34 IPC and sentenced them to 3 years RI and imposed fine of Rs.500/- each with default clause.

In appeal, the appellants accused did not challenge their conviction, but prayed for reducing their sentence. High Court, confirmed their conviction and reduced their sentence to the period already undergone, i.e. 14 days.

A Hence the present appeal by the State.

Allowing the appeal, the Court

B HELD: 1. It is settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. 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. 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 Courts 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. [Paras 9 and 15] [307-D; 308-B-E; 311-B-C]

F *Shailesh Jasvantbhai and Anr. vs. State of Gujarat and Ors.* (2006) 2 SCC 359; 2006 (1) SCR 477; *Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat* 2009 (8) SCR 719; (2009) 7 SCC 254; *Jameel vs. State of Uttar Pradesh* (2010) 12 SCC 532; 2009 (15) SCR 712; *Guru Basavaraj @ Benne Settapa vs. State of Karnataka* (2012) 8 SCC 734; 2012 (8) SCR 189; *Gopal Singh vs. State of Uttarakhand* JT 2013 (3) SC 444; *Hazara Singh vs. Raj Kumar and Ors.* 2013 (6) Scale 142 – relied on.

H 2. Considering the nature of injuries on the person

of the complainant, due to which he remained in hospital for 29 days, the High Court was not justified in reducing the sentence to the period already undergone without assigning any acceptable and special reason for the same. The High Court also failed to take note of the opinion of the doctor that the injuries inflicted could have posed threat to the complainant's life. Though both the parties have amicably settled, in view of the fact that the offence charged under Section 326 is non compoundable and also in the light of serious nature of the injuries and no challenge as to conviction, the High Court is not justified in reducing the sentence to the period already undergone. Accordingly, the order of the High Court is set aside and the sentence imposed on the respondents by the trial court is restored. [Paras 8, 16 and 17] [307-B-C; 311-C-E]

Case Law Reference:

2006 (1) SCR 477	referred to	Para 9
(2009) 7 SCC 254	referred to	Para 10
2009 (15) SCR 712	referred to	Para 11
2012 (8) SCR 189	referred to	Para 12
JT 2013 (3) SC 444	referred to	Para 13
2013 (6) Scale 142	referred to	Para 14

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 809 of 2013.

From the Judgment and Order dated 13.12.2011 of the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 150 of 2006.

C.D. Singh, Anshuman Shrivastava, Sakshi Kakkar., for the Appellant.

Lakhan Singh Chauhan, Anil Shrivastav, for the Respondents.

A The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 13.12.2011 passed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 150 of 2006 whereby the High Court partly allowed the appeal filed by the respondents herein by maintaining the conviction and reducing their sentence to the period already undergone (i.e. 14 days) while affirming the decision dated 08.02.2006 passed by the Additional Sessions Judge-I, Guna (MP) in Sessions Trial No. 311 of 2001 with respect to the conviction of respondents herein under Section 326 read with Section 34 of the Indian Penal Code, 1860 (in short "IPC").

D 3. *Brief facts:*

(a) On 11.08.2001, in the morning, when Mullo Bai, sister of Fida Hussain-the complainant, was passing through the field of Mohabbatdin - co-accused, at that time, Mohabbatdin abused her and told her not to pass through his field. On this, Mullo Bai assured him that she will not pass through his field in future. On the same day, in the evening, at about 7.00 p.m., when Fida Hussain, along with Ahmed Hussain, Gulabuddin and Guddu, was going to the shop of one Nawab, on their way near the hand pump, Najab Khan and Mohabbatdin having spade in their hands and Gani Khan holding a danda (stick) in his hand along with Munnawar Ali came at the spot and surrounded Fida Hussain. Fida Hussain tried to escape but could not succeed and Mohabbatdin attacked him with the spade due to which he sustained injury below his left shoulder and left arm. In order to save him, the other persons, viz., Guddu and Gulabuddin, who were accompanying Fida Hussain, intervened. After beating Fida Hussain, the accused persons fled away from the spot. Thereafter, Fida Hussain went to the Radhogarh Police Station and an FIR was lodged which was registered as Crime No. 248 of 2001.

(b) During the course of investigation, on 22.08.2011, Najab Khan was arrested and Gani Khan and Munnawar Ali were arrested on 10.09.2001. The police also got recovered the weapons (spades and stick) used in the commission of the aforesaid act.

(c) After the investigation, a charge-sheet was filed against the respondents herein under Sections 307, 341, 326 read with 34 IPC and the case was committed to the Court of the First Additional Sessions Judge-I, Guna (MP) which was numbered as Sessions Trial No. 311 of 2001. Further, besides the accused persons/respondents herein, Mohabbatdin was also charged under Sections 341 and 307 of IPC but vide order dated 11.10.2002, passed by the High Court in Revision No. 378 of 2002, it was directed to stay the proceedings against him and to continue the trial against rest of the persons i.e., the respondents herein.

(d) During the trial, on a compromise between the accused persons and Fida Hussain-the complainant, the accused persons were acquitted under Section 341 of IPC.

(e) By order dated 08.02.2006, the Additional Sessions Judge, convicted the respondents herein for the offence punishable under Section 326 read with Section 34 of IPC and sentenced them to undergo rigorous imprisonment (RI) for three years along with a fine of Rs.500/- each, in default, to further undergo RI for 3 months.

(f) Against the said order, the respondents moved an appeal being Criminal Appeal No. 150 of 2006 before the High Court. The High Court, by impugned judgment dated 13.12.2011, partly allowed the appeal by maintaining the conviction of the respondents herein and reduced their sentence to the period already undergone.

(g) Aggrieved by the said order, the State has filed this appeal by way of special leave.

A 4. Heard Mr. C.D. Singh, learned counsel for the appellant-State and Mr. Lakhan Singh Chauhan, learned counsel for the respondent-accused.

B 5. The only point for consideration in this appeal is whether the High Court is justified in reducing the sentence to the period already undergone, viz., 14 days, without providing any cogent reason for the conviction under Section 326 read with Section 34 IPC.

C 6. In view of the fact that the respondents herein-accused appellants before the High Court did not challenge the conviction but only prayed for reduction of sentence awarded by the trial Court, there is no need to traverse the details regarding the conviction. The fact remains that these persons were convicted by the trial Court under Section 326 read with D Section 34 IPC and sentenced to RI for three years along with a fine of Rs. 500/- each.

E 7. It is stated before the High Court that during the trial they were in custody for a period of 14 days and the offence has already been compounded by the complainant and the appeal is pending since 2006. The High Court, taking note of the above said aspects, reduced their sentence to the period already undergone.

F 8. It is relevant to point out that after the registration of the FIR, the complainant was sent for the medical examination which was conducted by Dr. Anupam Singh (PW-9) and after examination, the doctor found the following two injuries on the person of the complainant:

G "a. An incised wound of 15 inches long extending from left scapula to left shoulder joint bone deep bleeding present.

H b. An incised would of 1 inch long inter scapula bleeding was present. The doctor also opined that injuries has been caused by hard and sharp object and was of grievous nature. The doctor also opined that the said injuries could

have supposed a threat to the life of the complainant.” A

It is further seen that on 13.08.2011, the x-ray of the chest and shoulder of the complainant was examined by Dr. Sitaram Raghuvanshi (PW-8) who found fracture of left scapula divided into two pieces extending from glenoid cavity with dislocation of left shoulder joint. Considering such injuries, due to which the complainant remained in hospital for 29 days, we are of the view that the High Court is not justified in reducing the sentence to the period already undergone without assigning any acceptable and special reason for the same. The High Court also failed to take note of the opinion of the doctor that the injuries inflicted could have posed threat to the complainant's life. B
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9. It is settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases. In *Shailesh Jasvantbhai and Another vs. State of Gujarat and others*, (2006) 2 SCC 359, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eyes of law. It was further observed as under: D
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“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 F
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A 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.

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D 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."

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F 10. This position was reiterated by a three-Judge Bench of this Court in *Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat*, (2009) 7 SCC 254, wherein it was observed as follows:-

G "99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be.

H 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 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 and 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.”

In this case, the court further goes to state that meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of society.

11. In *Jameel vs. State of Uttar Pradesh*, (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -

“15. 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.

A 16. 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
B proceed to impose a sentence commensurate with the
gravity of the offence.”

12. In *Guru Basavaraj @ Benne Settapa vs. State of
Karnataka*, (2012) 8 SCC 734, while discussing the concept
C of appropriate sentence, this Court expressed that:

“It is the duty of the court to see that appropriate sentence
is imposed regard being had to the commission of the
crime and its impact on the social order. The cry of the
D collective for justice, which includes adequate punishment
cannot be lightly ignored.”

13. This Court, in *Gopal Singh vs. State of Uttarakhand*,
JT 2013 (3) SC 444 held as under:-

E “18. Just punishment is the collective cry of the society.
While the collective cry has to be kept uppermost in the
mind, simultaneously the principle of proportionality
between the crime and punishment cannot be totally
brushed aside. The principle of just punishment is the
F bedrock of sentencing in respect of a criminal offence.....”

14. Recently, the above proposition is reiterated in *Hazara
Singh vs. Raj Kumar & Ors.*, 2013 (6) Scale 142.

G 15. In view of the above, we reiterate that in operating the
sentencing system, law should adopt the corrective machinery
or deterrence based on factual matrix. 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
H 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. We also reiterate 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 Courts 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. A
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16. Though it is stated that both the parties have amicably settled, in view of the fact that the offence charged under Section 326 is non compoundable and also in the light of serious nature of the injuries and no challenge as to conviction, we are of the view that the High Court is not justified in reducing the sentence to the period already undergone. C
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17. Accordingly, we set aside the order of the High Court and restore the sentence imposed on the respondents herein. Consequently, the appeal filed by the State is allowed and the respondents-accused (A-1 to A-3) are directed to surrender within a period of four weeks from today, failing which, the trial Judge is directed to take appropriate steps for sending them to prison to undergo the remaining period of sentence. E

K.K.T.

Appeal allowed.