

A STATE OF MADHYA PRADESH

v.

SURENDRA SINGH

B (Criminal Appeal No. 2401 of 2014)

NOVEMBER 13, 2014

[M. Y. EQBAL AND SHIVA KIRTI SINGH, JJ.]

C *Sentencing/Sentencing policy – Duty of the courts to consider all relevant factors to impose appropriate sentence – Accident caused by jeep due to rash and negligent driving by driver of the jeep (respondent) leading to death of a person travelling in the jeep – Conviction of respondent by trial court*
D *– Revision petition – High Court maintained conviction but reduced sentence awarded by trial court to the period already undergone – Propriety – Held: On facts, the trial court did not commit any illegality in passing the order of conviction –*
E *However, without proper appreciation of the evidence and consideration of gravity of the offence, the High Court showed undue sympathy by modifying the conviction to the period already undergone – Penal Code, 1860 – ss.279, 337 and 304-A.*

F **Allowing the appeal, the Court**

HELD: 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

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sentence and proceed to impose a sentence A
 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 B
 considering the degree of the offence will be counter-
 productive in the long run and against the interest of the
 society. It is solemn duty of the court to strike a proper
 balance while awarding the sentence as awarding lesser C
 sentence encourages any criminal and, as a result of the
 same, the society suffers. The impugned order of the
 High Court reducing the sentence to the period already
 undergone is set aside and, to avoid miscarriage of
 justice, the sentence imposed by the trial court is D
 restored. [Paras 14, 15 and 16][563-B-E; G-H; 564-A-B]

Sevaka Perumal v. State of Tamil Nadu (1991) 3
SCC 471 : 1991 (2) SCR 711; Dhananjoy
Chatterjee @ Dhanu v. State of West Bengal
(1994) 2 SCC 220 : 1994 (1) SCR 37; Mahesh E
and others v. State of Madhya Pradesh (1987) 3
SCC 80 : 1987 (2) SCR 710; Hazara Singh v.
Raj Kumar (2013) 9 SCC 516 : 2013 (5) SCR 979;
Shailesh Jasvantbhai v. State of Gujarat (2006) 2 F
SCC 359 : 2006 (1) SCR 477; Ahmed Hussein
Vali Mohammed Saiyed v. State of Gujarat (2009)
7 SCC 254 : 2009 (8) SCR 719 and State of
Madhya Pradesh v. Bablu, 2014 (9) SCALE 678
 – relied on. G

Case Law Reference:

1991 (2) SCR 711	relied on	Para 8	
1994 (1) SCR 37	relied on	Para 9	H

A	1987 (2) SCR 710	relied on	Para 9
	2013 (5) SCR 979	relied on	Para 10
	2006 (1) SCR 477	relied on	Para 11
B	2009 (8) SCR 719	relied on	Para 12
	2014 (9) SCALE 678	relied on	Para 13

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2401 of 2014.

C From the Judgment and Order dated 22-08-2012 of the High Court of Madhya Pradesh Bench at Gwalior in Criminal Revision No. 03 of 2008.

D C.D. Singh, Annirudh Sharma, Advs. for the Appellant.

Prashant Shukla, Nikilesh Ramachandran, Advs. for the Respondent.

The Judgment of the Court was delivered by

E **M. Y. EQBAL, J. 1.** Leave granted.

F 2. State of Madhya Pradesh has preferred this appeal by special leave against the judgment and order dated 22.8.2012 passed by learned Single Judge of High Court of Madhya Pradesh, Bench at Gwalior, who allowed the appeal, preferred by the respondent-accused, in part maintaining his conviction but reducing the sentence awarded by the trial court to the period already undergone subject to depositing further compensation of Rs.2,000/- to the widow/mother of the deceased.

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3. The prosecution case, in brief, is that on 11.5.1998 a ward boy of Sabalgarh Hospital lodged a written report at Sabalgarh police station to the effect that one Vijay Singh of

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village Mangroli died in accident caused by a jeep bearing registration no.SP 7H 6045. Thereafter, case was investigated and challan was filed against the respondent-accused, who was driver of the jeep and the accident occurred due to his rash and negligent driving. After completion of trial, the Judicial Magistrate, First Class, Sabalgarh convicted the respondent-accused for the offence punishable under Sections 279, 337, 304-A of the Indian Penal Code and sentenced him to undergo six months and two years rigorous imprisonment respectively with fine of Rs.2,500/-. Aggrieved by the order of conviction passed by the trial court, respondent filed appeal before the Additional Sessions Judge, Sabalgarh, who upheld the order of conviction passed by the trial court.

4. Aggrieved by the judgment of conviction, the respondent-accused moved the High Court in revision. Learned counsel for the respondent assailed the order and in the alternative submitted before the High Court that the accused, who is a poor person, has already served substantive part of jail sentence and prayed that his sentence may be reduced to the period already undergone and the amount of fine may reasonably be enhanced. Learned counsel for the State objected and submitted that revisional jurisdiction of the High Court is limited and no interference is called for in the concurrent findings recorded by the courts below. The High Court partly allowed revision petition of the accused maintaining findings of conviction of the accused with the modification to the extent that the jail sentence awarded to the accused is reduced to the period already undergone subject to depositing further compensation of Rs.2,000/- payable to the widow/mother of the deceased Vijay Singh.

5. Dissatisfied with the order of the High Court, State of Madhya Pradesh has preferred this appeal contending that the High Court has limited revisional jurisdiction and ought not

A to have interfered with the concurrent findings of the courts below. It is further contended that High Court has erred in passing impugned order of partly allowing the revision petition of the accused without taking into consideration the gravity of the act committed by the respondent, whereby an innocent man
B lost his life due to negligence of the respondent.

6. We have heard learned counsel for the parties appearing on either side.

C 7. 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
D 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
E accused findings of the trial court were affirmed. However, without proper appreciation of the evidence and consideration of gravity of the offence, learned Single Judge of the High Court shown undue sympathy by modifying the conviction to the period already undergone.

F 8. In our considered opinion, the High Court while passing the impugned order has completely failed to follow the principles enunciated by this Court in catena of decisions. Undue sympathy by means of imposing inadequate sentence
G 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

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having regard to the nature of the offence and the manner in which it was committed. (See *Sevaka Perumal vs. State of Tamil Nadu*, (1991) 3 SCC 471) A

9. In the case of *Dhananjay Chatterjee @ Dhana vs. State of West Bengal*, (1994) 2 SCC 220, this Court held as under: B

“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 over-all 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. C
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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 G

A for justice against the criminals. Justice demands that
courts should impose punishment fitting 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
B at large while considering imposition of appropriate
punishment.”

10. While considering this aspect, the Apex Court in the
case of ***Mahesh and others vs. State of Madhya Pradesh***,
C (1987) 3 SCC 80, remarked that,

“...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
Justice 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. When we say this, we do not ignore
the need for a reformatory approach in the sentencing
process.”

11. In the case of ***Hazara Singh versus Raj Kumar***,
(2013) 9 SCC 516, this Court has observed that 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
the cardinal principle of sentencing policy is that the sentence
imposed on an offender should reflect the crime he has

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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. A

12. In *Shailesh Jasvantbhai vs. State of Gujarat*, (2006) 2 SCC 359, the Apex Court opined that B

“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. C D E F G

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A 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
B proper sentence having regard to the nature of the
offence and the manner in which it was executed or
committed, etc.”

C 13. A three-Judge Bench of this Court in **Ahmed Hussein
Vali Mohammed Saiyed vs. State of Gujarat**, (2009) 7 SCC
254, observed as follows:

D “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
E 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
F for and strengthened by string of deterrence inbuilt in the
sentencing system.

G 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

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which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong.” A

14. 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 counter-productive in the long run and against the interest of the society. B
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15. In a recent decision in the case of ***State of Madhya Pradesh vs. Bablu*** - Criminal Appeal No.1845 of 2014, 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 commensurate with 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, 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. E
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- A 16. In view of the above, we set aside the impugned order reducing sentence to the period already undergone and, to avoid miscarriage of justice, this appeal is allowed restoring the sentence imposed by the trial court. The respondent is directed to surrender within two weeks from today, failing which,
- B the trial Judge is directed to take appropriate steps for sending him to prison to undergo the remaining period of sentence.

Bibhuti Bhushan Bose

Appeals allowed.