

A

STATE OF M.P.

v.

MEHTAAB

(Criminal Appeal No. 290 of 2015)

B

FEBRUARY 13, 2015

[T.S. THAKUR AND ADARSH KUMAR GOEL, JJ.]

C

Code of Criminal Procedure, 1973 – s.357-A – Conviction u/s. 304A and 337 IPC – Sentence of 1 year and of 3 months for respective offences – Reduced by High Court to the period already undergone i.e. 10 days – On appeal, held: It is duty of Court to award just sentence – It is also duty of the Court to consider the aspect of rehabilitating the victim

D

– Apart from the sentence, compensation is required to be paid by the accused – On failure of accused to pay the same, State is required to award the compensation – High Court not justified in reducing the sentence – Accused directed to pay compensation of Rs.2 lakhs and in default would undergo RI

E

for 6 months – State directed to pay interim compensation of 3 lakhs and if the accused fails to pay the compensation, the State to pay further amount of Rs. 2 lakhs towards the compensation – Sentence/Sentencing – Penal Code, 1860 – ss. 304A and 337.

F

Partly allowing the appeal, the Court

G

HELD: 1. It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court

H

to duly consider the aspect of rehabilitating the victim. Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section 357A when the accused is not in a position to pay fair compensation. [Para 8] [1120-C-D, E-F]

2. The respondent having been found guilty of causing death by his negligence, the High Court was not justified in reducing the sentence of imprisonment to 10 days without awarding any compensation to the heirs of the deceased. The order of the High Court can be upheld only with the modification that the accused will pay compensation of Rs.2 lakhs to the heirs of the deceased within six months. In default, he will undergo RI for six months. The compensation of Rs.2 lakhs is being fixed having regard to the limited financial resources of the accused but the said compensation may not be adequate for the heirs of the deceased. In such situation, in addition to the compensation to be paid by the accused, the State can be required to pay compensation under Section 357-A Cr.P.C. It will be appropriate, in the interests of justice, to award interim compensation of Rs.3 lakhs u/s. 357-A payable out of the funds available/to be made available by the State Government with the District Legal Services, Authority. In case, the accused does not pay the compensation, the State will pay the entire amount of compensation of Rs.5 lakhs within three months after expiry of the time granted to the accused. [Para 10] [1121-H; 1122-A-D, E-F]

Suresh vs. State of Haryana 2015 (2) SCC 227 – relied on.

Case Law Reference:

2015 (2) SCC 227

relied on

Para 8

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 290 of 2015.

From the Judgment and Order dated 06.11.2012 of the
High Court of Madhya Pradesh, Judicature at Jabalpur Bench
B at Gwalior in Crl. Revision No. 72 of 2007.

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

Pragati Neekhra for the Respondent.

C The Judgment of the Court was delivered by

ADARSH KUMAR GOEL J. 1. Leave granted.

2. This appeal has been preferred by the State of Madhya
D Pradesh against judgment and order dated 6th November,
2012 passed by the High Court of Madhya Pradesh at Gwalior
in Criminal Revision No.72 of 2007 reducing the sentence
awarded to the respondent under Section 304A of the Indian
Penal Code ("IPC") from RI for one year and under Section 337
E IPC from RI for three months to RI for 10 days which was the
period already undergone by him.

3. On 22nd November, 1997, the deceased Sushila Bai
wife of PW 4 Ram Charan along with her husband was returning
F from Village Ragho Garh to their home in village Kudhaidher.
The respondent accused had drawn electricity wire from the
pole upto his field which was not visible in the darkness. Ram
Charan got trapped in the wire and became unconscious. The
deceased Sushila Bai received electric shock in the process
G of removing the wire. On receiving the information PW 5
Mishrilal, brother of Sushila Bai and PW 1 Kallu reached the
site of the incident along with PW 3 Goverdhan and PW 2
Somlal. It was found that Sushila Bai had died while Ram
Charan was injured but alive. He was taken to the hospital. FIR

H

was lodged. Post mortem was conducted on the dead body and after investigation, the respondent accused was sent up for trial under Section 304-A/337 IPC. The accused denied the allegations and alleged that he was falsely implicated.

A

4. The prosecution examined PW 6 Dr. N.K. Sharma to the effect that the deceased and Ram Charan received injuries by electric current and that Sushila Bai had died due to shock of the current. PW 1 Kallu as well as PW 4 Ram Charan clearly deposed that the wire was laid by Mehtaab from the pole to the field which was lying naked and resulted in the death of Sushila Bai. This action clearly amounted to the offence alleged. The said evidence was corroborated by the other witnesses. Accordingly, the trial Court convicted the respondent-accused under Section 304A and 337 IPC and sentenced him to undergo RI for one year and pay fine of Rs.500/- in default to undergo further RI for one month under Section 304-A and to undergo RI for three months under Section 337 IPC. The conviction and sentence having been upheld by the Court of Session, the respondent preferred a revision petition before the High Court. The respondent did not challenge his conviction but only sought reduction in sentence of imprisonment. The said prayer was accepted and the sentence was reduced to the period already undergone.

B

C

D

E

5. Aggrieved by the order of the High Court, the State of Madhya Pradesh has preferred this appeal.

F

6. We have heard learned counsel for the parties.

7. Learned counsel for the State submitted that the accused respondent had installed a transformer in his field and left the electric wires naked which was a negligent act. The deceased Sushila Bai died on account of the said naked wire which had high voltage and was not visible in the dark. The

G

H

A offence having been fully proved by the evidence on record, the High Court was not justified in reducing the sentence to 10 days which was not just and fair. Even if liberal view on sentence of imprisonment was to be taken, the High Court ought to have enhanced the sentence of fine and awarded a reasonable compensation as a condition for reduction of sentence.

8. We find force in the submission. It is the duty of the Court to award just sentence to a convict against whom charge is proved. While every mitigating or aggravating circumstance may be given due weight, mechanical reduction of sentence to the period already undergone cannot be appreciated. Sentence has to be fair not only to the accused but also to the victim and the society. It is also the duty of the court to duly consider the aspect of rehabilitating the victim. Unfortunately, these factors are missing in the impugned order. No cogent reason has been assigned for imposing only 10 days sentence when an innocent life has been lost. Award of unreasonable compensation has also not been considered. Apart from the sentence and fine/compensation to be paid by the accused, the Court has to award compensation by the State under Section 357A when the accused is not in a position to pay fair compensation as laid down by this Court in *Suresh vs. State of Haryana* (Criminal Appeal No.420 of 2012 decided on 28th November, 2014). This Court held :

"14. We are of the view that it is the duty of the Courts, on taking cognizance of a criminal offence, to ascertain whether there is tangible material to show commission of crime, whether the victim is identifiable and whether the victim of crime needs immediate financial relief. On being satisfied on an application or on its own motion, the Court ought to direct grant of interim compensation, subject to final compensation being determined later. Such duty continues at every stage of a criminal case

where compensation ought to be given and has not been given, irrespective of the application by the victim. At the stage of final hearing it is obligatory on the part of the Court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. Award of such compensation can be interim. Gravity of offence and need of victim are some of the guiding factors to be kept in mind, apart from such other factors as may be found relevant in the facts and circumstances of an individual case. We are also of the view that there is need to consider upward revision in the scale for compensation and pending such consideration to adopt the scale notified by the State of Kerala in its scheme, unless the scale awarded by any other State or Union Territory is higher. The States of Andhra Pradesh, Madhya Pradesh, Meghalaya and Telangana are directed to notify their schemes within one month from receipt of a copy of this order. We also direct that a copy of this judgment be forwarded to National Judicial Academy so that all judicial officers in the country can be imparted requisite training to make the provision operative and meaningful."

9. As per information furnished by learned counsel for the State, the accused Mehtaab has three sons and he owns 10-12 bighas of land and his annual income was Rs.35-40,000/-. Similarly his sons were earning Rs.25-30,000/- per annum. The Court of Session has mentioned the age of the deceased to be thirty years at the time of her death in the year 1997. As per instructions of learned counsel for the State, deceased is survived by her husband Ram Charan, two sons Bundel Singh and Suraj Lal and two daughters Durgesh Bai and Babita Bai.

10. As already observed, the respondent having been

A found guilty of causing death by his negligence, the High Court was not justified in reducing the sentence of imprisonment to 10 days without awarding any compensation to the heirs of the deceased. We are of the view that in the facts and circumstances of the case, the order of the High Court can be upheld only with the modification that the accused will pay compensation of Rs.2 lakhs to the heirs of the deceased within six months. In default, he will undergo RI for six months. The compensation of Rs.2 lakhs is being fixed having regard to the limited financial resources of the accused but the said compensation may not be adequate for the heirs of the deceased. In such situation, in addition to the compensation to be paid by the accused, the State can be required to pay compensation under Section 357-A. As per judgment of this Court in Suresh (supra), the scheme adopted by the State of Kerala is applicable to all the States and the said scheme provides for compensation upto Rs.5 lakhs in the case of death. In the present case, it will be appropriate, in the interests of justice, to award interim compensation of Rs.3 lakhs under Section 357-A payable out of the funds available/to be made available by the State of Madhya Pradesh with the District Legal Services, Authority, Guna. In case, the accused does not pay the compensation awarded as above, the State of Madhya Pradesh will pay the entire amount of compensation of Rs.5 lakhs within three months after expiry of the time granted to the accused.

11. The appeal is accordingly allowed to the above extent.

G Kalpana K. Tripathy

Appeal Partly allowed.