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STATE OF M.P.

v.

UDAIBHAN

(Criminal Appeal No. 182 of 2016 etc.)

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MARCH 01, 2016

[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

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Sentence /Sentencing – Conviction of one accused inter alia u/s. 307 IPC and other two accused u/s. 307/34 IPC – Sentence of 10 years RI – High Court altered the conviction u/s.307 & 307/34 to one u/s.326 and 326/34 and reduced the sentence to the period already undergone (i.e. one year nine months) – Appeal by State – Held: It is duty of the court awarding sentence to ensure justice to both the parties – Undue leniency in awarding sentence needs to be avoided – Reducing of sentence by High Court in absence of any mitigating circumstance, suffers from the vice of being over-lenient – Sentence is altered to three years imprisonment, in place of the period already undergone – Penal Code, 1860 – s.326 and 326/34.

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Partly allowing the appeals, the Court

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HELD: 1. It is the duty of the Court awarding sentence to ensure justice to both the parties and therefore undue leniency in awarding sentence needs to be avoided because it does not have the necessary effect of being a deterrent for the accused and does not re-assure the society that the offender has been properly dealt with. It is not a very healthy situation to leave the injured and complainant side thoroughly dissatisfied with a very lenient punishment to the accused. In the present case the order of punishment imposed by the High Court suffers from the vice of being over-lenient even in absence of any mitigating circumstance. The High Court failed to keep under focus various relevant factors for a proper decision on the quantum of sentence which should have been imposed even for the altered conviction under Section 326 or Section 326/34 of the IPC. The High Court did not even note down the six injuries on the complainant. [Paras 4 and 5][1082-D, G, H; 1083-A-B]

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2. The ends of justice would be satisfied by imposing on all the three accused persons a sentence of rigorous imprisonment for three years in place of period already undergone, for the offence under Section 326 as well as Section 326/34 of the IPC. The other sentence which has been maintained by the High Court is left intact. However, it is clarified that sentence of imprisonment for different offences against the respondents shall run concurrently. [Para 6][1083-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 182 of 2016

From the Judgment and Order dated 14.12.2011 in Criminal Appeal No. 92 of 2002 passed by the High Court of Madhya Pradesh Bench at Gwalior.

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

Dr. Pooja Jha, Amlan Kumar Ghosh for the Respondent.

The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. These appeals by special leave have been preferred by State of Madhya Pradesh against common judgment and order dated 14.12.2011 passed in Criminal Appeal Nos.92/2002 and 106/2002.

2. By the impugned judgment and order the High Court has partly allowed criminal appeals preferred by the three accused, namely, Rajaram, Udaibhan and Hakim Singh, respondents in these appeals so as to convert their conviction under Section 307 of IPC for Rajaram and under Section 307 read with Section 34 of the IPC for the other two appellants into one under Section 326 for Rajaram and 326/34 for the other two. The High Court did not interfere with the fine imposed on the respondents for the offence noted above as well as for the offence under Section 323 IPC but reduced the sentence for imprisonment which was R.I. for 10 years for the offence punishable under Section 307 as well as Section 307 read with Section 34 of the IPC to a period already undergone by the respondents which was of one year and nine months only.

3. Since the High Court did not disbelieve the substratum of the prosecution case and has maintained the conviction of respondents, albeit

A for an offence minor to one under Section 307 or Section 307 read with
Section 34 of IPC, the only material issue worth consideration in these
appeals is whether the High Court in the matter of awarding of
punishment has ignored the relevant considerations and adopted an
erroneous approach. The High Court accepted the contention advanced
on behalf of the accused that the evidence on record did not establish
B any intention on the part of the accused persons to kill the complainant
or his brother, the two injured in this case. The High Court did not doubt
nor did the accused persons raise any contention that the injury sustained
by the complainant on head was not a grievous injury. Being an incised
wound on temporal region of the head, it was clearly caused by a sharp
cutting weapon and dangerous to life. The doctor held the aforesaid
C injury no.1 on the head to be grievous on the basis of X-ray which showed
fracture of the skull bone.

4. The High Court in our considered opinion failed to keep under
focus various relevant factors for a proper decision on the quantum of
D sentence which should have been imposed even for the altered conviction
under Section 326 or Section 326/34 of the IPC. The prosecution case
which has been accepted as true disclosed that the complainant Kriparam
was called to Panchayat Bhawan where the accused persons were
already present with weapons. Rajaram was having *farsa* whereas
Hakim was armed with an iron rod and Udaibhan with *lathi*. As soon as
E the complainant arrived he was threatened and assaulted by all the three
with their respective weapons. Rajaram caused a *farsa* injury on the
head, Hakim caused an injury with iron bar on the eyebrow near the
right eye. Udaibhan gave more than one *lathi* blows. When complainant's
brother Prabhu came for his rescue then he was also assaulted with
F *lathi* blows by Udaibhan.

5. The High Court did not even note down the six injuries on the
complainant which included a grievous injury on the temporal part, a
reddish blue mark on the upper side of right eye, another injury having
blue mark on the forehead and another wound on the eyebrow on the
G right eye. There was hardly any mitigating circumstance to take such a
lenient view as has been done by the High Court. The law on the
principles governing proper sentencing has been elaborated by this Court
in large number of cases. It is the duty of the Court awarding sentence
to ensure justice to both the parties and therefore undue leniency in

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awarding sentence needs to be avoided because it does not have the necessary effect of being a deterrent for the accused and does not reassure the society that the offender has been properly dealt with. It is not a very healthy situation to leave the injured and complainant side thoroughly dissatisfied with a very lenient punishment to the accused. In the present case the order of punishment imposed by the High Court suffers from the vice of being over-lenient even in absence of any mitigating circumstance.

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6. In such a situation, the interest of justice requires interference with the punishment imposed by the High Court. The ends of justice would be satisfied by imposing on all the three accused persons a sentence of rigorous imprisonment for three years in place of period already undergone, for the offence under Section 326 as well as Section 326/34 of the IPC. The other sentence which has been maintained by the High Court is left intact. However, it is clarified that sentence of imprisonment for different offences against the respondents shall run concurrently. The impugned judgment and order are modified accordingly. The Trial Court shall take all necessary steps to ensure that the respondents are taken into custody forthwith to serve out the remainder period of imprisonment in connection with Sessions Case No. 16/2001, tried by Third Additional Sessions Judge, Shivpuri (Madhya Pradesh). The appeals preferred by the State are allowed to the aforesaid extent only.

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Kalpana K. Tripathy

Appeals partly allowed.