

BIJENDER @ PAPU AND ANR.

v.

STATE OF HARYANA

(Criminal Appeal No. 463 of 2016)

JUNE 03, 2016

[DIPAK MISRA AND SHIVA KIRTI SINGH, JJ.]

Penal Code, 1860 – ss. 325/149, 148A, 308/149 and 323/149 – Claim of parity – Conviction of five persons u/ss.325/149, 148A, 308/149 and 323/149 and sentenced to RI for three years with fine for major offence and lesser sentences for remaining offences – High Court enhanced the sentence to RI for five years for the major offences – Three of them released on probation of good conduct – Claim of parity by appellants – On appeal, held: Trial was 19 years old and concession was shown to other three co-accused due to their extreme old age – High Court enhanced the sentence on account of sole head injury suffered by the victim but the victim was unable to depose due to his condition and as such no specific role could be assigned to any of the convicts – Considering the other facts and circumstances, the period of sentence reduced from five years to three years RI for the offences u/s. 325/149 IPC – However, the amount of fine and conviction and sentence for other offences maintained – Sentence/Sentencing.

Disposing of the appeal, the Court

HELD: The concession shown to other three convicts was mainly on the ground of their extreme old age and the special treatment was justified. The parity claimed by the appellants is misconceived. The High Court enhanced the sentence from three years to five years RI for the main offence because of the suffering of the injured 'B' on account of the sole head injury caused by lathi. 'B' was brought to court but was unable to depose because of mental impairment suffered by him. Had the prosecution witnesses been able to pinpoint the accused who caused the head injury on 'B', he would have been treated to be responsible of a graver offence meriting higher punishment but unfortunately no such specific role were assigned to any of the five convicts. Considering the other facts and circumstances, particularly the

A **genesis of the occurrence, the period of sentence is reduced from five years to three years RI for the offences u/s. 325/149 IPC in respect of both the appellants. However, the amount of fine and conviction and sentence for other offences are left intact. [Para 4] [515-C-F]**

B **CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 463 of 2016.**

From the Judgment and Order dated 17.09.2015 of the High Court of Punjab and Haryana at Chandigarh, in Criminal Appeal No. 1190-SB of 2000.

C **Sanjay Suri, Pankaj Kumar, Rishabh Relan, Ms. Varsha Rana, Ms. Rinku Mishra, Satpal Singh, Advs. for the Appellants.**

Vishwa Pal Singh, Dr. Sanjay Gupta, Advs. for the Respondents.

The Judgment of the Court was delivered by

D **SHIVA KIRTI SINGH, J.** 1. This criminal appeal arises from a special leave petition in which notice was issued solely on the question of sentence. From that point of view, it is necessary to keep in mind only the relevant broad features of the prosecution case that were accepted by the trial court leading to conviction of the two appellants as well as three others under Section 325 read with Section 149 and under Sections 148A, 308/149 and 323/149 of the IPC. The Trial Court imposed punishment of rigorous imprisonment for three years alongwith a fine of Rs.12,000/- each for the offence under Section 308/149 and lesser sentences including fines for the remaining offences. Rs.70,000/- out of the fine amount was ordered to be paid to the injured Budhram by way of compensation. The High Court heard the appeal of all the five convicts against their conviction and sentence together with a criminal revision filed on behalf of the injured Budhram for converting the conviction of all for the offence under Section 307 IPC and for enhanced punishment. The High Court considered the materials in detail and held the appellants as well as other three co-accused guilty of offence punishable only under Section 325 read with Section 149 of the Indian Penal Code. While maintaining the conviction and sentence for the other minor offences, the High Court, for the aforesaid major offence enhanced the sentence to RI for five years and fine of Rs.20,000/- each and in default the concerned convict has to undergo further imprisonment

H **for a period of one year.**

2. On behalf of the appellants it has been highlighted that the other three co-accused who were convicted for similar offences were ordered by the High Court to be released on probation of good conduct for the term of imprisonment. Although such relief was granted to those three co-accused mainly on consideration of their old age varying between 85 to 75 years, the appellants claim parity on account of similar rôle assigned to all the five convicts.

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3. It was also highlighted that the occurrence is of 1997 and the ordeal of long trial has been faced by the appellants for about 19 years.

4. The parity claimed by the appellants is misconceived. The concession shown to other three convicts was mainly on the ground of their extreme old age and that in our view justified the special treatment extended in their case. The High Court enhanced the sentence from three years to five years RI for the main offence because it was concerned and moved by the suffering of the injured Budhram on account of the sole head injury caused by lathi. Budhram was brought to court but was unable to depose because of mental impairment suffered by him. Had the prosecution witnesses been able to pinpoint the accused who caused the head injury on Budhram, we would have definitely treated him to be responsible of a graver offence meriting higher punishment but unfortunately no such specific rôle has been assigned to any of the five convicts. In such a situation, considering the other facts and circumstances, particularly the genesis of the occurrence which was on account of a dispute between the parties over a right to have a drain in a passage, we are persuaded to reduce the period of sentence for the offences under Section 325 read with Section 149 of the IPC in respect of both the appellants from five years to three years RI. However, the amount of fine and conviction and sentence for other offences are left intact.

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5. With the aforesaid modification in the sentence of the appellants, the Appeal is disposed of.

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