SUPREME COURT OF INDIA

State of M.P.

Vs.

Babulal

Crl.A.No.1156 of 2013

(Dr.B.S.Chauhan and S.A.Bobde JJ.)

12.8.2013

JUDGMENT

Dr. B.S. CHAUHAN, J.

1. This appeal has been filed against the impugned judgment and order dated 14.12.2011 passed by the High Court of Madhya Pradesh, (Gwalior Bench) in Criminal Revision No. 74 of 2010, by way of which the conviction of the respondents has been maintained under Sections 148, 324, 326 and 149 of the Indian Penal Code, 1860 (hereinafter referred to as `IPC') as awarded by the learned trial court, however, the sentence has been reduced from 2 years to 3 months.

2. Facts and circumstances giving rise to this appeal are that:

A. One Sunil (PW.1) lodged a complaint with the police station Bhander on 21.3.2004 that his father Nahar Singh (PW.5) had gone to his agricultural field for guarding his crops, all the respondents came there on a tractor driven by Kallu, armed with axe, farsa and lathi etc. When the complainant Sunil tried to stop the tractor, the respondents started abusing him and on being asked not to abuse, the respondents caused injuries to the complainant Sunil (PW.1) with their respective weapons. When his father Nahar Singh (PW.5) came to rescue him, the respondents had beaten him of which he suffers injuries. In the meanwhile, on hearing hue and cry, brother of complainant, namely, Brijraj (PW.3) and one Kunwar Singh (PW.2) reached the spot and tried to intervene, they were also beaten by the respondents. When other persons namely, Kalyan Singh and Nirbhay Singh reached the

spot, the accused persons fled away from there hurling threats to kill the complainant side.

B. In view of the complaint filed by Sunil (PW.1), the law came into motion. The police arrested the accused persons, weapons etc. were recovered on the basis of the disclosure statements made by them, and various memos were prepared.

C. After completing the investigation, the police filed chargesheet against the respondents under Sections 147, 148, 149, 294, 323, 324 and 506-B IPC. On the basis thereof, the charges had been framed against the respondents/accused under Sections 147, 148, 294, 506 Part 2, 326/149 (two counts), 324/149 (two counts).

D. In order to prove their case, the prosecution examined large number of witnesses. The learned Magistrate vide impugned judgment and order dated 10.9.2009 convicted the respondents for commission of the offences punishable under Sections 148, 324/149 (two counts) and 326/149 (two counts) of IPC, and sentenced them to undergo one-one year simple imprisonment with fine of Rs.100-100/- and two-two years simple imprisonment with fine of Rs.150-150/- respectively, and in default of payment of fine, to further undergo simple imprisonment of 10-10 days.

E. Aggrieved, the respondents-accused filed Criminal Appeal No. 74 of 2009 before the learned Additional Sessions Judge (Fast Track), Datia. The said appeal was dismissed by order dated 15.1.2010.

F. The respondents further challenged the said order dated 15.1.2010 by filing Criminal Revision No. 74 of 2010 before the High Court which was disposed of vide impugned judgment and order dated 14.12.2011.

Hence, this appeal by the State.

3. Ms. Bansuri Swaraj, learned counsel appearing on behalf of the appellant State, has submitted that if the criminal proceedings has protracted for 7-1/2 years that could not be a ground for reducing the sentence from two years to 3 months only by the High Court. Such a reduction of sentence is not justified, particularly, when the respondents did not argue their case on merit at all. In case, the High Court earlier had reduced the sentence in a similar manner that cannot be a precedent as other case is to be decided on its own merit. Therefore, in the facts and

circumstances of the case, the sentence awarded by the learned trial court should be restored and the order of the High Court requires to be modified to that extent.

4. On the contrary, Shri Prashant Shukla, learned counsel appearing on behalf of the respondents, has submitted that the respondents faced the criminal prosecution for a long time and the sentence was reduced vide order dated 14.12.2011. The High Court was justified in following the earlier judgment wherein under the similar circumstances, the sentence had been reduced as undergone. Thus, the facts of the case do not warrant any interference whatsoever in the case and the appeal is liable to be dismissed.

5. We have considered the rival submissions made by the learned counsel appearing on behalf of the parties and perused the records.

6. Admittedly, the respondents did not argue the case on merit. It was prayed before the High Court that as a period of more than 7 years had elapsed when the incident had taken place, while upholding the guilt of the said accused, sentence may be reduced as undergone which was about 3 months and amount of fine may be imposed. Such a prayer has been accepted by the High Court. Even before us learned counsel appearing on behalf of the respondents has not argued anything on merit and the matter is restricted only to the quantum of punishment and nothing else.

7. Dr. G.L. Verma (PW.7) who had examined the victims/injured witnesses in this case proved the injuries as under: Nahar Singh (PW.5) had suffered 5 injuries including an incised wound (fracture) on his right hand thumb and an lacerated wound in the middle of his left leg. Brijraj (PW.3) got 7 injuries including an incised wound in the middle of his left leg, and incised wound in the right side of his head. Kunwar Singh (PW.2) was found to have 7 injuries including an incised would deep to skin on the right side of his B and a lacerated wound on his left hip. Sunil (PW.1) was found 11 injuries including an incised wound deep to bone in right side of his head, an incised wound deep to bone in left side of his head, an incised wound in the middle of his head, an incised wound deep to bone in the middle of his left leg, and a lacerated wound in the right hand thumb and an incised wound in the left leg.

8. In Mahesh & etc. v. State of Madhya Pradesh, AIR 1987 SC 1346, while dealing with a similar issue, this Court held as under: "….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 justicing 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 reformative jargon……"

9. This Court in State of Punjab v. Bira Singh & Ors., (1995) Supp. 3 SCC 708, has held that at the time of awarding the sentence, the court should not be confused with the principle of adopting the most lenient view and an accused may not be awarded lesser punishment so that there would be deterrence for committing the crime again and such a view may adversely affect not only the accused but the society as a whole.

10. In Chinnadurai v. State of Tamil Nadu, AIR 1996 SC 546, this Court rejected the plea for reduction of sentence in view of a considerable delay and other circumstances observing that sentence has to be awarded taking into consideration the gravity of the injuries.

11. In State of U.P. v. Shri Kishan, AIR 2005 SC 1250, this Court has emphasised that just and proper sentence should be imposed. The Court held:

> "…… 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 societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.
>
> 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 the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'." (Emphasis added)

12. In Sadhupati Nageswara Rao v. State of Andhra Pradesh, AIR 2012 SC 3242, this Court observed that the courts cannot take lenient view in awarding sentence on the ground of sympathy or delay as the same cannot furnish any ground for reduction of sentence.

13. In Alister Anthony Pareira v. State of Maharashtra, AIR 2012 SC 3802, this Court held as under:

> "Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.
>
> The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence." (Emphasis added)
>
> (See also: State of Karnataka v. Krishnappa, AIR 2000 SC 1470; and Dalbir Singh v. State of Haryana, AIR 2000 SC 1677)

14. In Dhananjoy Chatterjee @ Dhanna v. State of West Bengal (1994) 2 SCC 220, this Court observed:

> "…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 at large while considering the imposition of appropriate punishment."
>
> (See also: Ravji @ Ram Chandra v. State of Rajasthan, AIR 1996 SC 787).

15. In State of Uttar Pradesh v. Sanjay Kumar, (2012) 8 SCC 537, this Court examined the issue of sentencing policy and came to the conclusion:

> "21. Sentencing policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to prescribe punishment. By introducing more uniformity and consistency into the

sentencing process, the objective of the policy, is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgments of this Court, prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus, the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

22. Ultimately, it becomes the duty of the courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed, etc. The courts should impose a punishment befitting the crime so that the courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise."

16. In view if the above, the law on the issue can be summarised to the effect that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. The most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind the social interest and consciousness of the society. It is a mockery of the criminal justice system to take a lenient view showing mis-placed sympathy to the accused on any consideration whatsoever including the delay in conclusion of criminal proceedings. The Punishment should not be so lenient that it shocks the conscious of the society being abhorrent to the basic principles of sentencing. Thus, it is the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages a criminal and as a result of the same society suffers.

17. The case at hand is required to be decided on the basis of the aforesaid settled legal propositions in respect of principles of sentencing. Admittedly, four persons

were injured and two of them had more than one head injury. There were too many injuries on their persons and some of them had been inflicted on vital parts of the body. In our view, the High Court could not be justified in taking a lenient view which reduces the administration of the criminal justice system to a mockery.

18. We do not find any force in the submission advanced by Shri Prashant Shukla, learned counsel appearing for the respondents that the High Court has passed a correct order placing reliance on the earlier judgment in Ram Govind & Ors. v. State of M.P., (2002) 3 MPHT 301, wherein the accused therein had been convicted under Sections 147 and 325/149 IPC and awarded the sentence of 6 months RI under Section 147 IPC and a sentence of 1 year RI under Sections 325/149 IPC, and further a fine had been imposed. The High Court considering the fact that period of 16 years had elapsed took a lenient view further placing reliance on earlier judgments in Vijay Singh v. State of M.P., (1994) II MPWN 98; and Havaldar Singh v. State of M.P., (1995) I MPWN 275 and reduced the sentence to the period undergone by them which was only 6 days for the reason that none of the judgments referred to in Ram Govind (supra) can be approved.

19. All the judgments relied upon by learned counsel for the respondents are not in consonance with the law of sentencing policy laid down by this court in any of the judgments referred to hereinabove. Taking such a lenient view in awarding the sentence tantamounts to doing injustice of a crude form against the innocent victims and the society as a whole. Thus, the submission advanced is liable to be rejected.

20. In view of the above, the appeal succeeds and is allowed. The Judgment of the High Court is set aside and that of the Trial Court restored. The respondents are directed to surrender within four weeks from today failing which the learned Judicial Magistrate, Ist Class Bhander, Distt. Datia is directed to take them into custody and send them to jail to serve out the remaining part of the sentence. A copy of the order be sent to the learned Magistrate concerned.