

Sagar

v.

State of Haryana

(Supreme Court Of India)

HON'BLE JUSTICE B. S. Chauhan HON'BLE JUSTICE S. A. Bobde

Special Leave to Petition (Criminal) No. 7052 Of 2013 | 13-09-2013

1. This petition was preferred by the Petitioner against the judgment and order dated 12.08.2013 in Criminal Revision No. 1804 of 2013 passed by the High Court of Punjab and Haryana at Chandigarh by which the revision was dismissed. The sentence awarded to the Petitioner by the courts below, i.e., for a period of 3 years upon being convicted under Sections 324 and 325 of Indian Penal Code, 1860 (hereinafter referred to as the 'Indian Penal Code') was reduced to a period of six months, though the amount of fine has been enhanced from ` 2500/- to ` 40,000/-. Facts and circumstances giving rise to this petition are that:

A. An FIR dated 6.4.2005 was filed by one Vikrant Sharma against the Petitioner for causing injuries to his cousin Ankit and, in view thereof, the law was put in motion.

B. After investigation of the case, the charges were framed against the Petitioner under Sections 324 and 326 Indian Penal Code and upon conclusion of the trial, the trial court vide judgment and order dated 13.10.2011 convicted the Petitioner under Section 324 Indian Penal Code awarded a sentence of 3 years; and while convicting under Section 326 Indian Penal Code sentence of 3 years RI alongwith a fine of ` 2500/- was imposed.

C. Aggrieved, the appeal was preferred by the Petitioner and the appellate court vide judgment and order dated 2.5.2013 did not find any merit in the appeal and did not interfere either with the quantum of punishment or conviction. However, a further amount of ` 10,000/- was imposed by the appellate court as a compensation to be awarded to the victim.

D. Aggrieved, the Petitioner preferred a criminal revision which had been partly allowed by the order dated 12.8.2013 reducing the sentence to six months and enhancing the amount of fine to ` 40,000/-.

E. Aggrieved, the Petitioner preferred a special leave petition before this Court contending that the sentence of six months awarded by the High Court is too harsh, and though the Petitioner has substantially served put the said sentence, it has been prayed that the benefit of

probation under Section 4 of the Probation of the Offenders Act, 1958 be given to the Petitioner.

2. This Court not only rejected the special leave petition on 27.8.2013 but also passed the following order:

After arguing for some time, learned Counsel for the Petitioner seeks leave to withdraw the petition. Permission to withdraw is rejected.

We do not find any force in the petition. It is other way round.

The Petitioner had been convicted under Sections 324 and 326 of the Indian Penal Code, 1860 (hereinafter referred to as 'Indian Penal Code') by the trial court and the first appellate court, the High Court in exercise of its revisional jurisdiction had shown the misplaced sympathy totally unwarranted and made a totally wrong observation that the victim had suffered simply injuries and reduced the sentence from 3 years R.I. to 6 months.

The injuries have been found on the person of the injured by Dr. Munish Purthi P.W. 4 which are quoted hereinbelow:

- i) An incised wound right frontal and parietal area 3.0 X 0.75 cm bone deep oblique with bleeding. Advised X-rays, Surgeon opinion & Ortho, Opinion;
- ii) An incised would left anterior supliiac spine area oblique with fresh bleedings 3 x 1.5 cm x bone deep, Ortho, opinion and X-rays were advised;
- iii) An incised would posterior and above to 1st above mentioned would oblique 4 x 1 x 0.5 cm;
- iv) An incised would left hand medical side middle part horizontal throughout the hand. 4 x 1 cm with tendons cut and bone exposed. Ortho opinion, and X-rays were advised;
- v) An incised would left wrists 5 x 1 x.25 cm oblique in direction;

vi) An incised wound left tibia lateral upper part 6.5 x 35 cm bone deep oblique. X-ray and Ortho opinion were advised;

vii) An incised wound left knee, dorsum oblique 4.5 x 1.5 cm

viii) An incised wound right forearm ventral aspect distal part right radial pulse absent. All intervening muscle and tendons cut 10 x 8 cm x bone deep, X-rays and Ortho opinion were advised.

The High Court ignored the head injury and held that there was an injury on the finger of the left hand and other injuries were simple in nature. Therefore, the finding recorded by the High Court are totally perverse and cannot be accepted.

In view of the above, the Petitioner is given show cause why the punishment awarded by the trial court and the first appellate court as 3 years R.I. be not restored. Reply may be made within three weeks.

We straight away reject the argument advanced on behalf of the Petitioner that the amount of compensation be enhanced as it would be adding insult to the injuries. An accused who is capable to pay money can make a suggestion that he has a right to cause injury and can afford to pay the compensation, thus should not be sent to jail.

3. In view of the above, it is evident that Ankit-victim, suffered grievous injury on the head which has been totally ignored by the High Court as it misunderstood the site of injury and only took into account the simple injury on the finger of the victim.

4. In *Mahesh and 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 reformatory jargon....

5. This Court in *State of Punjab v. Bira Singh and Ors. : (1995) Supp. 3 SCC 708*, has held that at the time of awarding the sentence, the court should not adopt the lenient view and show misplaced sympathy. When courts give such lenient punishments, the value of

deterrence of the punishment greatly reduces thereby encouraging rather than discouraging a criminal, allowing the whole society to suffer.

6. 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.

7. 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)

8. 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.

9. 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)

10. In *Dhananjay 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).

11. 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.

12. In view of 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 misplaced 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.

13. In view of the above, we are of the considered opinion that the High Court was not justified in reducing the sentence so drastically, and considering the number and nature of the injuries, the trial court had awarded the appropriate punishment. In view of above, this Court suo motu exercise its extraordinary power and set aside the order of sentence passed by the High Court and restore that of the trial court.

Special leave Petition is disposed of accordingly. A copy of this order be sent to learned Judicial Magistrate, 1st Class, Karnal, to ensure compliance of the order.