

SUPREME COURT OF INDIA

State of M.P.

Vs.

Udaibhan

Crl.A.No.182 of 2016

(Dipak Mishra and Shiva Kirti Singh, JJ.)

01.03.2016

JUDGMENT

Shiva Kirti Singh, J.

[Arising out of S.L.P.(Crl.)No.8006 of 2012]

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 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 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 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 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 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 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 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 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.

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.