

SUPREME COURT OF INDIA

Association of Victims of Uphaar Tragedy

Vs.

Sushil Ansal

Crl.A.No.600-602 of 2010

(Kurian Joseph and Adarsh Kumar Goel,JJ.,)

09.02.2017

ORDER

Kurian Joseph,J.,

1. Review Petitioners seek modification mainly of the sentence awarded to the accused - Sushil Ansal and Gopal Ansal as per the Orders of this Court dated 19.08.2015 and 22.09.2015 in the Criminal Appeals. It is the main contention of Mr. Harish N, Salve, learned Senior Counsel appearing for the Central Bureau of Investigation that there is no provision for substitution of sentence by fine. It is also the case of the Review Petitioners that the accused-1 and 2 deserve the maximum sentence under Section 304 A of The Indian Penal Code, 1860 (hereinafter referred to as "the Code"). Having also heard Mr. Ashok H. Desai, Mr. Salman Khurshid, Mr. K.T.S. Tulsi, Mr. K. Radhakrishnan and Ms. Rebecca John, learned Senior Counsels appearing on both sides, we feel it necessary to refer to the background of the case as reflected in the various orders passed by this Court.

2. In *Sushil Ansal v. State Through Central Bureau of Investigation*¹, at paragraphs-27 and 28, this Court dealt with the conviction and sentence of the trial court:

"27. In conclusion and on the basis of the findings recorded by it, the trial court convicted Sushil Ansal (A-1) and Gopal Ansal (A-2) for commission of the offences punishable under Sections 304-A, 337 and 338 read with Section 36 IPC and sentenced each one of them to undergo rigorous imprisonment for a period of two years with a fine of Rs 5000 and a default sentence of six months. They were also convicted under Section 14 of the Cinematograph Act, 1952 and sentenced to pay a fine of Rs 1000 or undergo two months' imprisonment in default. All the sentences were directed to run concurrently. The trial court further convicted S.S. Sharma (A-13) and N.D. Tiwari (A-14) who were officials of the Municipal Corporation of Delhi apart from H.S. Panwar (A-15), Divisional Officer, Delhi Fire Service under the above provisions and sentenced them similarly to undergo two years' rigorous imprisonment and a fine of Rs 5000 besides default sentence of six months' imprisonment. In addition, the trial court found the charges framed against the

Managers of GPT, namely, R.K. Sharma (A-5), N.S. Chopra (A-6) and Assistant Manager Ajit Choudhary (A-7) as well as gate-keeper Manmohan Uniyal (A-8) under Section 304 read with Section 36 IPC proved and sentenced them to undergo rigorous imprisonment for a period of seven years with a fine of Rs 5000 and a default sentence of six months. 28. B.M. Satija (A-9) and A.K. Gera (A-10) who happened to be DVB Inspectors at the relevant point of time and Bir Singh (A-11) who happened to be DVB Senior Fitter were similarly convicted under Section 304 read with Section 36 IPC and sentenced to undergo seven years' rigorous imprisonment besides a fine of Rs 5000 and a default sentence of six months' imprisonment. Proceedings against R.M. Puri (A-3), Director of GPT and K.L. Malhotra (A-4) Deputy General Manager, S.N. Dandona (A-12) Executive Engineer, PWD and Surender Dutt (A-16) Station Officer, Delhi Fire Service, all of whom died during the pendency of the trial, were held to have abated. Not only that, the trial court directed further investigation into the matter under Section 173(8) CrPC in regard to other persons including Amod Kanth, DCP (L) for allowing the Cinema to function on temporary permits and for not demanding the detailed inspection reports before issuing such permits."

(Emphasis supplied)

3. Paragraph-29 deals with details of appeals filed in High Court:

"29. Aggrieved by the judgment and order passed against them, all the 12 accused persons convicted by the trial court preferred appeals before the Delhi High Court. The Association of Victims of Uphaar Tragedy also filed a revision petition challenging the judgment and order of the trial court to the extent that the same convicted the accused persons only for offences punishable under Section 304-A IPC instead of Section 304 Part II IPC."

(Emphasis supplied)

4. Paragraph-45 deals with the order passed by the High Court:

"45. The High Court on the above findings upheld the conviction of Sushil Ansal (A-1) and Gopal Ansal (A-2). It also upheld the conviction of H.S. Panwar (A-15) for offences punishable under Sections 304-A, 337 and 338 read with Section 36 IPC but reduced the sentence awarded to them under Section 304-A to one year's rigorous imprisonment without interfering with the fine imposed by the trial court. The High Court also reduced the sentence awarded to the aforementioned three appellants under Section 337 to three months' rigorous imprisonment and under Section 338 to one year's rigorous imprisonment with the direction that the sentences shall run concurrently including the sentence awarded to the Ansal brothers (A-1 and A-2) under Section 14 of the Cinematograph Act for which too the said two accused persons were convicted."

(Emphasis supplied)

5. Paragraph-48 deals with the appeals before this Court:

"48. The appeals have been filed before us by all those convicted and sentenced to undergo imprisonment by the High Court, except for the convicted gatekeeper, Manmohan Uniyal (A-8) who has served out the sentence awarded to him by the courts below. We also have before us Criminal Appeals Nos. 605-616 of 2010 filed by CBI challenging the acquittal recorded by the High Court in favour of the four persons mentioned above. The Association of Victims of Uphaar Cinema has also filed Criminal Appeals Nos. 600-602 of 2010 in which they have challenged the order of acquittal recorded by the High Court and prayed for a retrial of the accused persons for the offence punishable under Section 304 Part II IPC."

(Emphasis supplied)

6. In short, the High Court upheld the conviction of Sushil Ansal-A-1 and Gopal Ansal-A-2 under Sections 304-A, 337 and 338 read with 36 of the Indian Penal Code 1860 but reduced the sentence under Section 304-A IPC, to one year rigorous imprisonment, under Section 337 to three months, and under Section 338 to one year. All sentences were to run concurrently.

7. All convicted persons filed appeals before this Court. Central Bureau of Investigation also filed Appeal Nos. 605-616 of 2010. The Association of Victims of Uphaar Cinema filed Appeal Nos. 600-602 of 2010 challenging the acquittal and for retrial of all accused for the offence punishable under Section 304 Part II of IPC.

8. Paragraph-222 deals with the operative portion of the Order passed by Thakur, J.:

"222.1. Criminal Appeals Nos. 597 and 598 of 2010 filed by Sushil Ansal (A-1) and Gopal Ansal (A-2) respectively are hereby dismissed upholding the conviction and sentences awarded to them.

222.2. Criminal Appeal No. 599 of 2010 filed by the Divisional Fire Officer, H.S. Panwar (A-15) is also dismissed upholding his conviction and sentence.

222.3. Criminal Appeals Nos. 617-627 of 2010 and No. 604 of 2010 filed by DVB Inspector B.M. Satija (A-9) and Senior Fitter Bir Singh (A-11) are partly allowed to the extent that the conviction of the said two appellants is altered to Sections 337 and 338 read with Section 36 IPC without interference with the sentence awarded to them.

222.4. Criminal Appeals Nos. 605-616 of 2010 filed by CBI and Criminal Appeals Nos. 600-602 of 2010 filed by the Association of Victims of Uphaar Tragedy are dismissed."

(Emphasis supplied)

9. Gyan Sudha Misra, J., at paragraph-262, was of the view that additional sentence of one year should be awarded but the same could be substituted by substantial amount of fine.

"262. Hence, I am of the view that the interest of justice to some extent would be served by imposing on the appellant-accused a substantial fine and not merely a jail sentence. Thus, while the sentence of one year imposed by the High Court is upheld, the additional sentence of one year further while allowing the appeal of AVUT, is fit to be substituted by a substantial sum of fine to be shared equally by the appellants Sushil Ansal and Gopal Ansal along with DVB which also cannot absolve itself from compensating the victims of Uphaar tragedy, represented by AVUT."

(Emphasis supplied)

10. At paragraph-263, it has been further held that the sentence already undergone by A-1-Sushil Ansal should be treated as sufficient.

"263. Thus, while I uphold the conviction and sentence of Appellant 2 Gopal Ansal in Criminal Appeal No. 598 of 2010 who was in fact conducting the business of running the Uphaar Theatre and had greater degree of responsibility to ensure safety of the cinema viewers, the appellant Sushil Ansal in Criminal Appeal No. 597 of 2010 was primarily a licensee who was conducting the business and running Uphaar Theatre essentially through his brother A-2 Gopal Ansal. Hence, while the sentence of one year awarded in Criminal Appeal No. 7597 of 2010 to Sushil Ansal is fit to be upheld, the sentence already undergone by him may be treated as sufficient in the said appeal as he has already served a major part of the sentence and in spite of dismissal of his appeal, he would at the most serve the balance three months' sentence further along with remission."

(Emphasis supplied)

11. At paragraph-267, it was further ordered that A-1 and A-2 will pay Rs.50 crores each in lieu of the enhanced sentence of one year.

"267. Therefore, for the reasons recorded here-inbefore, I am of the view that in lieu of the enhanced sentence of a period of one year which I allow in the appeals preferred by AVUT and CBI, the same be substituted with a fine of Rs 100 crores (one hundred crores) to be shared and paid by A-1 Sushil Ansal and A-2 Gopal Ansal in equal measure i.e. Rs 50 crores each and Rs 100 crores in all, and shall be paid by way of a demand draft issued in the name of the Secretary General of the Supreme Court of India which shall be kept in a fixed deposit in any nationalised bank and shall be spent on the construction of a trauma centre to be built in the memory of Uphaar Victims at any suitable place at Dwarka in New Delhi as we are informed that Dwarka is an accident-prone area but does not have any governmental infrastructure or public health care centre to treat accident victims... ."

(Emphasis supplied)

12. Order of the Court, to the extent relevant, is at paragraph-270.4:

"270.4. Criminal Appeals Nos. 597-599 of 2010 filed by the appellants in those appeals and Criminal Appeals Nos. 605, 606 and 613 of 2010 filed by the State and Criminal Appeals Nos. 600-602 of 2010 filed by the Association of Victims of Uphaar Tragedy to the extent that the said appeals involve the question of quantum of sentence to be awarded to the convicted appellants in the appeals mentioned above shall stand referred to a three-Judge Bench."

(Emphasis supplied)

13. The Order by the three-Judge Bench is reported in *Sushil Ansal v. State Through Central Bureau of Investigation*² .

Paragraphs-17 and 18 are relevant:

"17. We are conscious of the fact that matter of this magnitude may call for a higher sentence, but the Court has to limit itself to the choice available under the law prescribing sentence. The fact that remains is that the maximum sentence prescribed under the law is period of two years and the High Court had chosen, in the facts and circumstances of the case, to award sentence of one year which has been approved by Thakur, J. In the dissenting opinion by Misra, J. the modification is that the sentence be enhanced but giving an option to pay substantial amount in lieu of the enhanced sentence with further direction to reduce the jail sentence to the period already undergone, if the amount of fine in lieu of enhanced sentence is paid.

18. After having considered the facts of the case, the views expressed by both the learned Judges and the arguments advanced by the learned counsel appearing for both sides, we are in agreement with the view expressed by Misra, I. that sentence awarded by the High Court needs to be enhanced to the maximum period of two years under Section 304-A IPC but in lieu of additional period of sentence of one year, the substantial amount of fine needs to be imposed. We are further of the view that in case the said amount of fine is paid, the sentence should be reduced to the period already undergone, as indicated by Misra, I. in the case of Sushil Ansal (A-1). On the principle of parity, the case of Gopal Ansal (A-2) will stand on the same footing as that of Sushil Ansal (A-1). Thus, we are of the considered opinion that ends of justice would meet if the appellants are directed to pay fine so that the amount of fine can be used either for the purpose of setting up a trauma centre in NCT of Delhi or for upgrading trauma centres of hospitals managed in NCT of Delhi by the Government of Delhi."

(Emphasis supplied)

14. Thus, the emerging position is - Both Thakur, J. and Gyan Sudha Misra, J. were in agreement as far as minimum period of one year sentence is concerned. However, Gyan Sudha Misra, J. was also of the view that in the nature of the tragedy and the negligence on the part of A-1 and A-2 and Delhi Vidyut Board, they should pay a hefty amount of fine for the purpose of construction of a trauma centre. Yet, Gyan Sudha Misra, J. took note of the fact that Sushil Ansal has served major part of the sentence and considering also his age, took the view that the sentence already undergone by him should be treated as sufficient.

15. A close reading of the Order passed by Gyan Sudha Misra, J. would show that recovery of a large amount by way of fine to be used for the trauma centre was the underlying idea in enhancing the punishment. The three-Judge Bench, on Reference, also took the view that in larger public interest, the view taken by Gyan Sudha Misra, J. should be upheld, but reduced the fine to Rs. 30 crores each, apparently keeping in mind that the victims had already been compensated and that even, according to Gyan Sudha Misra, J., A-1 and A-2 and Delhi Vidyut Board are liable to pay the fine (paragraph-262).

16. Thus, Gyan Sudha Misra, J. and three-Judge Bench took the view that as far as A-1-Sushil Ansal is concerned, taking note of his age related complications, the period already undergone by him should be sufficient, in case he pays Rs.30 crores.

17. On principle of parity, the same benefit was extended to A-2-Gopal Ansal; but he never had a case of any age related complications. Therefore, it is not a case to apply the principle of parity. To that extent, the Order needs to be reviewed.

18. Yet another error is the substitution of sentence by fine. At paragraph-18 of the Order under Review, agreeing with the view expressed by Gyan Sudha Misra, J., the Bench enhanced punishment to the maximum period of two years but substituted the additional period of one year with substantial amount of fine. The idea was to impose a heavy fine and utilize the same for the benefit of the public, as has been done in the case of *State Through PS Lodhi Colony, New Delhi v. Sanjeev Nanda*³, popularly known as "BMW hit and run case". In that case, the conviction under Section 304-A was altered to 304 Part-II but reduced the period of sentence to the one already undergone and the court imposed a fine of Rs.50 lakhs to be used for the benefit of the victims in hit and run cases. There was also an order on two years of community service. In the peculiar facts of the present case, in larger public interest, Gyan Sudha Misra, J. and the three-Judge Bench essentially only thought it appropriate to modify the punishment to imposition of heavy fine in addition to the sentence of imprisonment.

19. Imposition of expiatory fine in addition to incarceration would also serve the penalogical purpose of deterrence having regard also to recidivism. It may also be noted that under Section 304 A of IPC, either imprisonment only or with fine or fine alone, is the prescribed punishment. Having regard to the wide discretion available to the court under Section 304 A, and having regard to the fact that the High Court and this Court, in appeal, had limited the

imprisonment to one year, in our view, the punishment which would serve deterrence and public purpose by both imprisonment and exemplary fine, would be an appropriate punishment in a case like this. Under Section 63 of IPC where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but should not be excessive. Having regard to the gravity of the offence and the illegal gains made by the accused, the fine imposed to the tune of Rs.60 crores is not excessive. However, there is no provision under the IPC for substitution of sentence by fine. The only provision is on default sentence under Section 65 of IPC. Hence, that part also requires correction.

20. Thus, the Orders dated 19.08.2015 and 22.09.2015 stand reviewed in the manner indicated herein below:

“(i) In the case of A-1-Sushil Ansal, having regard to the advance age related complications, as appreciated by the three-Judge Bench in the Order dated 22.09.2015, and having regard to the fact that, of the one year period imposed by the High Court, he has already undergone around nine months including remission, his sentence of imprisonment is reduced to the period undergone. However, he is also sentenced to a fine of Rs.30 crores. Thus, in the peculiar facts of the case, as appreciated by Gyan Sudha Misra, J. and the three-Judge Bench, we decline the prayer for review of sentence on A1-Sushil Ansal.

(ii) In the case of A-2-Gopal Ansal, the period of sentence of one year imprisonment, as imposed by the High Court and concurred both by Thakur, J. and Gyan Sudha Misra, J., is maintained, but he is also sentenced to a fine of Rs.30 crores.

(iii) The fine thus recovered should be utilized for the purposes indicated by Gyan Sudha Misra, J. in the Order dated 05.03.2014.

(iv) In default of payment of fine, both A-1 and A-2 shall undergo six months imprisonment, the maximum permissible under Section 65 of IPC

(v) A-2-Gopal Ansal is granted four weeks time to surrender and serve the remaining sentence.

ORDER

21. These Review Petitions seek review of the Orders of this Court dated 19.08.2015 & 22.09.2015 in Criminal Appeal Nos. 600-602 and Criminal Appeal Nos. 597,598, 605 and 606 of 2010. Since arguments have been addressed only with regard to the sentence awarded to accused Sushil Ansal and Gopal Ansal, consideration in this order is confined to this aspect.

22. The matters arise out of an incident dated 13.06.1997 of fire in Uphaar Cinema, Delhi wherein 59 persons lost their life and about 100 persons were injured. On charge of criminal negligence, apart from others, Sushil Ansal the licensee for running the cinema and his brother Gopal Ansal who was in fact conducting the business of cinema, were convicted under Sections 304-A, 337, 338 read with Section 36, IPC. The Trial Court sentenced them to undergo imprisonment upto two years which was reduced by the High Court to one year. A two Judge bench of this Court, dealing with their appeals against conviction and sentence, vide order dated 05.03.2014, upheld the conviction but differed on the quantum of sentence. The said judgment is reported in *Sushil Ansal versus State Through CBI(Supra)*. In view of difference of opinion the matter was referred to the three Judge Bench "to the extent that the said appeals involve the question of quantum of sentence to be awarded to the convicted appellants in the appeals mentioned above" .

23. The Three Judge Bench vide order dated 19.08.2015 held as follows:

"...the sentence awarded by the High Court needs to be enhanced to the maximum period of two years under Section 304-A but in lieu of additional period of sentence of one year, the substantial amount of fine needs to be imposed. We are further of the view that in case the said amount of fine is paid, the sentence should be reduced to the period already undergone, as indicated by Misra, J. in the case of Sushil Ansal (A1). On the principle of parity, the case of Gopal Ansal (A2) will stand on the same footing as that of Sushil Ansal (A1). Thus, we are of the considered opinion that ends of justice would meet if the appellants are directed to pay fine so that the amount of fine can be used either for the purpose of setting up a Trauma Centre in NCT of Delhi or for upgrading Trauma Centres of Hospitals managed in NCT of Delhi by the Government of Delhi.

19. We, therefore, direct that a fine of Rs.30 crore on each appellant should be imposed and if the said fine is paid within a period of three months, the sentence of the appellants be reduced to the sentence already undergone. We have noted the fact that as appellant no.1 is fairly aged, it may not be fruitful to ask him to undergo rigorous imprisonment. On the ground of parity and on the peculiar facts of this case, so far as appellant no.2 may also not be constrained to undergo the sentence, if he also pays the same amount of fine. If the aforesaid amount is not paid within three months from the date of order dated 19th August, 2015, the appellants shall undergo two years' rigorous imprisonment, including the sentence already undergone."

24. The review is sought mainly on the ground that once the Court expressed the view that sentence was required to be enhanced, the same could not be directed to be reduced on payment of fine. Reference has been made to Sections 63-65 of IPC which are as follows:

"63. Amount of fine.- Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

64. Sentence of imprisonment for non-payment of fine. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine. it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.--The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine."

25. It was submitted that the default sentence cannot exceed V* of the term of imprisonment prescribed for the offence. It was also submitted that undue sympathy in imposing inadequate sentence may lead to miscarriage of justice. There should be element of fear in the mind of offender for which adequate sentence was required to be imposed. It was also submitted that sentence prescribed under Section 304-A IPC was required to be revisited by the law makers in reference has been made to several judgments to which detailed reference does not appear to be necessary as there is no dispute about the principle that adequate sentence as warranted in a fact situation has to be awarded by a Court.

26. Opposing the above submissions learned counsel for Sushil Ansal and Gopal Ansal submitted that there is no patent error which may justify invocation of review jurisdiction. The arguments now sought to be raised were before the Court when the order was passed by this Court. The review petition cannot be treated as an appeal in disguise. Mere possibility of two views cannot be a ground for review. Reference was also made to several decisions of this Court , where long delay in pendency of proceedings, age, health and other factors have been taken into account for awarding sentence lesser than the maximum prescribed. It is not necessary to refer to the said decisions also as it is well settled that the sentence has to be awarded in the light of nature of offence, prescribed sentence, over all fact situation, mitigating and aggravating circumstances, including age of the offender, his background, possibility of return to normal life and need of the society.

27. It was submitted that since relief can be moulded in individual cases having regard to the fact situation, the sentence awarded in the present case is not in any manner illegal nor unjustified so as to be held to suffering from a patent error.

28. I have given deep consideration to the rival submissions and perused the record as well as the decisions relied upon by the learned counsel for the parties.

29. It may first be clarified that the reference before Three Judge Bench on account of difference of opinion on question of sentence was not limited to selection of one out of the two conflicting opinions but to determine the quantum of sentence in view of difference of opinion as the reference order quoted hereinabove clearly shows . It may further be noted that it is not factually correct to assume that there was no difference of opinion for imposing at least one year sentence. In para 269 (of SCC supra), Misra, J. observed -- "Thus, the appeals bearing Nos.597-598 of 2010 preferred by the appellants/respondents Sushil Ansal and Gopal Ansal are dismissed except that the sentence imposed on Appellant1 Sushil Ansal is reduced to the period already undergone considering his advanced age." In para 263, it was observed that ... "Hence, while the sentence of one year awarded in Criminal Appeal No. 597 of 2010 to Sushil Ansal is fit to be upheld, the sentence already undergone by him may be treated as sufficient in the said appeal as he has already served a major part of the sentence and in spite of dismissal of his appeal, he would at the most serve the balance three months' sentence further along with remission."

In the order of Three Judge Bench reference to the above observations have been made in the part of order already quoted above.

30. As regards Section 65 IPC which puts a limit of imprisonment for default sentence upto V* of the term of imprisonment, the grievance against higher default sentence, if any, can be only by the accused and not by the State. Moreover, it is not a case of higher default sentence being awarded but of giving option to pay higher for reduced sentence. There is, thus, no conflict with sentence prescribed by IPC as submitted by the review petitioners. There is also no merit in the contention that once the Court felt that higher sentence was required to be imposed, sentence less than one year cannot be awarded. Order of the Court has to be seen as a whole and cannot be split into different sentences . The operative part of the order has already been quoted hereinabove which shows that the Court has tried to balance the interest of justice and while holding that sentence was required to be enhanced, it was added that in lieu of additional period of enhanced sentence, substantial amount of fine was required to be imposed and the fine was to be utilized for setting up of or upgrading the trauma centres of hospitals managed by the Government of Delhi. It was also noted that having regard to the advanced age of Sushil Ansal (who was 74 years as per observations in Order dated 05.03.2014 and now must be 77 years) and who had already undergone sentence of 5-6 months and with remission of 9 months out of sentence of one year awarded by the High Court, further imprisonment was not necessary if he paid the imposed fine. Same sentence was applied to Gopal Ansal. Same principle was also followed for some other accused which has not been challenged. It is also necessary to mention that higher fine cannot be read as extra benefit to a rich person but has been imposed on account of capacity to pay. There is neither any illegality nor any impropriety warranting review of said order passed by this Court.

31. For above reasons, there is no merit in the Review Petitions and the same are dismissed.

Judgment Referred.

¹(2014) 6 SCC 0173

²(2015) 10 SCC 0359

³(2012) 8 SCC 0450