

SUPREME COURT OF INDIA

State of Himachal Pradesh

Vs.

Vijay Kumar Alias Pappu

CrI.A.No.753 of 2010

(A.M.Khanwilkar and Ajay Rastogi, JJ.,)

15.03.2019

JUDGMENT

Ajay Rastogi, J.,

1. The challenge in this appeal is against the judgment of the Division Bench of the High Court of Himachal Pradesh at Shimla dated 24th March, 2008 filed at the instance of the State of Himachal Pradesh whereby the High Court was pleased to partially allow the appeal filed by the respondents and altered the nature of offence from one under Section 307/34 IPC to one under Section 326 IPC and reduced the sentence of 10 years Rigorous imprisonment and fine of Rs. 5,000/- each to 5 years rigorous imprisonment and increased the fine to Rs. 25,000/- each and in default, to undergo further imprisonment of six months.

2. In the instant case, the victim has suffered 16% burn injury which was caused due to acid attack on the darkest day of her life, i.e. on 12th July, 2004. To unfold the prosecution version in nutshell that, on 12th July, 2004 at about 9.00 a.m. PW-13 Shami Verma resident of Mashobra, who was present at BCS at Khalini-Dhalli By-Pass saw PW-5 Kumari Ishita(victim) crying with burn injuries, who had jumped into the water tank nearby. PW-13 Shami Verma took out PW-5 Kumari Ishita-victim from the tank and informed to the Police Post, New Shimla, that a girl with burn injuries was present near her residence and this information(Exhibit PR) was recorded by the Incharge of the Police Post, New Shimla, who deputed a police officer on wireless set to go to the site. PW-36 Shakuntla Sharma went to the site and shifted the victim to the hospital and recorded her statement on which a case was registered. During investigation, PW-5 Kumari Ishita(victim) stated that when she was going to college, two boys came on a scooter and threw some acid over her from a jug and run away from the spot. After investigation, challan was filed against both the accused respondents who were tried by the learned trial Court leading to their conviction which convicted them for offence under Section 307/34 IPC and sentenced them to undergo rigorous imprisonment of 10 years with a fine of Rs. 5,000/- each by judgment dated 30th November, 2005 which came to be challenged by them in appeal before the High Court of Himachal Pradesh.

3. Taking note of the chemical burns caused by sulphuric acid of around 16%, which is

evident from the report of Dr. Piyush Kapila(PW-2), Department of Forensic Medicine, the High Court arrived at the conclusion that the offence under Section 307/34 IPC was not made out and converted the offence from Section 307/34 IPC to Section 326 IPC and sentenced them for a period of 5 years rigorous imprisonment with a fine of Rs. 25,000/- each vide impugned judgment dated 24th March, 2008.

4. The accused respondents have accepted the conviction and have undergone their sentence in terms of the judgment impugned dated 24th March, 2008 and have deposited the fine amount of Rs. 25,000/- each as informed to this Court and were released on 9th December, 2008 after undergoing sentence in terms of the impugned judgment.

5. The main thrust of the submission of the learned counsel for the appellants is that it was a case of acid attack on innocent young victim of 19 years and learned trial Court has rightly convicted the accused respondents under Section 307/34 IPC and sentenced them to 10 years rigorous imprisonment and there was no reasonable and cogent justification for the High Court to interfere with the impugned judgment of the learned trial Court dated 30th November, 2005 and once they had been held guilty, their alteration of punishment is uncalled for and prayed for restoring the conviction and sentence held by the learned trial Court dated 30th November, 2005. Learned counsel further submitted that if this Court is not inclined to restore the conviction and sentence passed by the learned trial Court dated 30th November, 2005, at least the victim is entitled for compensation admissible under the law.

6. Learned counsel for the respondents has supported the judgment of the High Court dated 24th March, 2008 and submitted that the respondents were young at the given point of time on the date of incident dated 12th July, 2004 and looking into the chemical burns of 16% which the victim had suffered, by no stretch of imagination, it could be considered to be a case of Section 307 IPC of committing an attempt to murder. Further, in the given facts and circumstances, it was not even a case of Section 326 IPC but they have accepted the wrong which had been committed by them and after undergoing sentence in terms of the impugned judgment, both were released on 9th December, 2008 and there is no justification to restore the conviction and sentence awarded by the learned trial Court dated 30th November, 2005. In support of his submission, reliance is placed on the judgment of this Court in Sachin Jana and Another Vs. State of West Bengal 2008(3) SCC 390 and submitted that it was a case where the victims suffered more than 50% burn injury caused due to acid and the conviction was under Section 307 IPC and yet this Court had reduced the sentence to 5 years rigorous imprisonment with fine of Rs. 25,000/-.

7. In this background, the question for consideration is whether the imposition of sentence by the High Court is proportionate to the crime in question and whether the victim is entitled for any compensation in addition to what has been awarded under the impugned judgment.

8. Learned counsel for the appellants submits that by no stretch of imagination, the period undergone, can be regarded as appropriate for the offence under Section 326 IPC and definitely not when there is acid attack. She submitted that there may not be any misplaced

sympathy and exhibition of unwarranted mercy to pave the path of injustice to the victim.

9. Learned counsel for the respondents submitted that the incident has happened long back on 12 th July, 2004 and by this time, the victim as well as the respondents have been living their individual lives and respondents have undergone the sentence passed and were released on 9th December, 2008. They are leading a reformed life and after a long lapse of time, to send them to custody would tantamount to a gross injustice to them.

10. The two-Judge Bench of this Court in Sachin Jana and another's case(supra) where the accused persons faced trial for offence under Sections 148, 323, 324 and 307 read with Section 149 IPC on account of 50% burn injury which was caused due to acid attack were convicted by the High Court for offence under Section 307/34 IPC but their custodial sentence was reduced to 5 years and a fine of Rs. 25,000/-. The relevant extract is as under:-

“9. It is to be noted that three persons suffered injuries on account of acid poured on them. The doctor had indicated that each of the injured persons suffered more than 50% burn injury which was caused due to acid and the same was sufficient to cause death if not attended by medical aid at appropriate time.

12. When the evidence on record is analysed, it is clear that Section 307 read with Section 34 IPC has clear application. The acid burns caused disfigurement.

13. Considering the nature of dispute the custodial sentence is reduced to 5 years. However, each of the appellants is directed to pay a fine of Rs 25,000. If the amount is deposited by the appellants within six weeks from today, out of each deposit, Rs 10,000 shall be paid to each of the victims PWs 1, 2 and 3; in case the amount of fine imposed is not deposited, the default custodial sentence of one year each.”

11. The matter in reference to the victim suffered due to acid attack was further considered by a two-Judge Bench of this Court in *Ravada Sasikala Vs. State of Andhra Pradesh and Another*¹ where learned trial Court convicted the accused person under Section 326 and 448 IPC and sentenced him to suffer rigorous imprisonment for one year and directed to pay a fine of Rs. 5,000/-. The High Court while confirming the conviction under Section 326 IPC released the accused to the period which he had already undergone of 30 days which came to be interfered by this Court and the punishment and sentence of one year under Section 326 IPC was restored. But while doing so, this Court also ousted the compensation which the victim may be entitled for under Section 357 and Section 357-A of the Code of Criminal Procedure, 1973(hereinafter being referred to as “CrPC”).

12. Indeed, it cannot be ruled out that in the present case the victim had suffered an uncivilised and heartless crime committed by the respondents and there is no room for leniency which can be conceived. A crime of this nature does not deserve any kind of clemency. This Court cannot be oblivious of the situation that the victim must have suffered an emotional distress which cannot be compensated either by sentencing the

accused or by grant of any compensation.

13. After going through the material on record, we are of the considered view that the accused respondents have rightly been held guilty and their conviction under Section 326 IPC and sentence for 5 years at least needs no interference but at the same time, we are disposed to address on victim compensation which may at least bring same solace to the victim for the sufferings which she had suffered.

14. In *Ankush Shivaji Gaikwad Vs. State of Maharashtra*², a two-Judge Bench of this Court referred to the amended provision, 154th Law Commission Report that has devoted entire chapter of victimology, wherein the emphasis was on the victim.

15. In *Laxmi Vs. Union of India and Others*³, this Court observed that Section 357-A came to be inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31st December, 2009 which, inter alia, provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. This Court further directed that acid attack victims shall be paid compensation of at least Rs. 3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost.

16. In *State of M.P. Vs. Mehtaab*⁴, this Court directed the compensation of Rs. 2 lakhs noticing the fact that occurrence took place in 1997 and it observed that the said compensation was not adequate and accordingly, in addition to the said compensation to be paid by the accused, held that the State was also required to pay compensation under Section 357- A CrPC and reliance was placed on the decision in *Suresh Vs. State of Haruana*⁵.

17. Victim Compensation Scheme has been considered by this Court in *State of H.P. Vs. Rampal*⁶ and this Court opined that compensation of Rs. 40,000/- was inadequate taking note of the fact that the life of young child aged 20 years was lost and taking note of the precedents observed that in the interest of justice, the accused is required to pay a sum of Rs. 1 lakh and the State to pay a sum of Rs. 3 lakhs as compensation.

18. Taking note of the precedents of which reference has been made, we consider it appropriate to observe that both the accused shall pay the additional compensation of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand) each and the State of Himachal Pradesh shall pay the compensation as admissible under the Victim Compensation Scheme as in vogue to the acid victim (Ishita Sandhu, D/o Late Shri Rikhi Ram Sandhu) (Appellant No. 2). If the accused does not pay the additional compensation amount of Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand) each within six months, the defaulting accused shall suffer rigorous imprisonment of six months. The State shall deposit the compensation before the trial Court within three months from today and the learned trial Court, after proper identification of the victim, disburse at the earliest.

19. The impugned judgment of the High Court stands modified and the appeal is accordingly disposed of.

20. Pending application(s), if any, stand disposed of.

Judgment Referred.

¹(2017) 4 SCC 0546

²(2013) 6 SCC 0770

³(2014) 4 SCC 0427

⁴(2015) 5 SCC 0197

⁵(2015) 3 SCC 0227

⁶(2015) 11 SCC 0584