

(2018)2 SCeJ 1283

SUPREME COURT OF INDIA

*Present: Justice N. V. Ramana and Justice Mohan M. Shantanagoudar, JJ.*

The State of Rajasthan

*Versus*

Mohan Lal &amp; Another

Criminal Appeal No. 959 of 2018 (Arising out of SLP (Crl.) No. 3509 of 2016)

*1st August, 2018.*

(i) **Sentence - Sentencing guidelines - Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary - However, the Courts have framed certain guidelines in the matter of imposition of sentence - A Judge has wide discretion in awarding the sentence within the statutory limits - Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly - There cannot, therefore, be any uniformity - However, this Court has repeatedly held that the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation - In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender - The seriousness of an offence depends, apart from other things, also upon its harmfulness - The principle governing the imposition of punishment will depend upon the facts and circumstances of each case - However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed - The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence - The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process - The Courts must see that the public does not lose confidence in the judicial system - Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.** [Para 10, 13]

(ii) **Indian Penal Code, Sections 325 and 323 – High Court reduced the sentence from 3 years' rigorous imprisonment for the offences under Section 325, IPC and 6 months' rigorous imprisonment under Section 323, IPC to the period already undergone of 6 days – Fight emanating from due to old enmity relating to a land dispute causing grievous injuries - Accused had filed appeal questioning his conviction and sentence before the High Court, but during the course of arguments he did not press the appeal filed against the judgment of conviction, praying only for reduction of sentence - High Court accepting such request reduced the sentence to the period already undergone of 6 days - Trial Court and the High Court have taken a lenient view by convicting the accused for offences under Sections 325 and 323, IPC - Absolutely no reasons, much less valid reasons, are assigned by the High Court to impose the meagre sentence of 6 days - Such imposition of sentence by the High Court shocks the judicial conscience of this Court - It is brought to our notice that the parties have forgotten their differences and are living peacefully since 25 years, we impose a sentence of 6 months' rigorous imprisonment and a fine of Rs. 25,000/- against the accused - While doing so, we have taken into consideration the aggravating as well as mitigating factors under the facts of this case.**

JUDGMENT

**Mohan M. Shantanagoudar, J.**

Leave granted.

2. Judgment dated 25.05.2015 passed by the High Court of Judicature at Rajasthan, Jaipur Bench in Appeal No.215 of 1992 is questioned in this appeal by the State with the prayer for enhancement of sentence. By the impugned judgment, the High Court has confirmed the judgment and order of conviction passed by the Sessions Court, Sambharlake in Sessions Case No.14/1992 for the offences under Sections 325 and 323 of the Indian Penal Code (IPC), but has reduced the sentence from 3 years' rigorous imprisonment and fine of Rs.1000/- for the offences under Section 325, IPC and 6 months' rigorous imprisonment and fine of Rs. 250/- under Section 323, IPC to the period already undergone.

3. The accused (respondent herein) was charged with and tried for the offences punishable

under Sections 307, 326, 447, 323 and 341, IPC. The learned Additional Sessions Judge, Sambhar-lake, by the judgment dated 19.05.1992 in Sessions Case No. 14/1992 convicted the accused for the offences punishable under Sections 325 and 323, IPC. The Sessions Court imposed a sentence of 3 years' rigorous imprisonment and fine of Rs.1000/- for the offences under Section 325, IPC; and 6 months' rigorous imprisonment and fine of Rs. 250/- was imposed for the offence under Section 323, IPC. On appeal by the convicted accused, the High Court of Judicature at Rajasthan, Jaipur Bench confirmed the judgment of conviction but reduced the sentence to the period of imprisonment already undergone by the accused. By then, the accused had undergone 6 days' imprisonment only. Being aggrieved by the meagre sentence, the State is before us as an appellant praying for enhancement of sentence.

4. The case of the prosecution in brief is that due to old enmity relating to a land dispute, one Kapurchand was assaulted by the accused; one Phoolchand who intervened in the fight also sustained an injury because of the assault by the accused. As mentioned supra, the accused was tried for the offences under Sections 307 and 326, IPC apart from other offences, but was convicted for the offences under Sections 325 and 323, IPC.

5. During the course of the trial, the informant (PW1), the injured Kapurchand (PW2) and the second injured Phoolchand (PW5) were examined, apart from other witnesses, including the doctor who treated the injured. The trial court has found the evidence of PWs 1, 2 and 5 consistent, cogent, reliable and trustworthy and proceeded to convict the accused. The doctor fully supported the case of the prosecution. The medical records, including the evidence of the Doctor, conclusively prove that injury no.1 sustained by PW2-Kapurchand was a grievous injury, in as much as Kapurchand sustained a fracture of the right parietal bone.

6. It is clear from the judgment of the High Court that though the accused had filed an appeal questioning his conviction and sentence before the High Court, during the course of arguments he did not press the appeal filed against the judgment of conviction, praying only for reduction of sentence. The High Court decided the Criminal Appeal accepting such request, and reduced the sentence to the period already undergone. However, as a matter of fact, as mentioned supra, the accused had, by then, been in confinement only for 6 days.

7. Since the accused has not filed further appeal and as this appeal has been filed by the State praying for enhancement of sentence, we have decided this appeal confining ourselves to the sentence to be imposed.

8. The Medical Officer of the authorized Primary Health Centre, Kishangarh Renwal, examined the injuries sustained by the two injured, viz. Kapurchand and Phoolchand. While Phoolchand had sustained only one injury of a simple nature, which was inflicted by a blunt object, Kapurchand had sustained two injuries, out of which one was simple and the other was serious. Therefore, Kapurchand was advised to undergo an X-ray. The X-ray report (Exhibit-P4) revealed that his right parietal bone was fractured. The medical report (Exhibit-P1) discloses the injury no.1 as grievous in nature. The Medical Officer has given his opinion in Exhibit-P5 that the injury no.1 was life-threatening.

9. The High Court simply brushed aside the aforementioned material facts and sentenced the accused to the period already undergone by him, which is only 6 days in this case. In our view, the Trial Court and the High Court have taken a lenient view by convicting the accused for offences under Sections 325 and 323, IPC. Absolutely no reasons, much less valid reasons, are assigned by the High Court to impose the meagre sentence of 6 days. Such imposition of sentence by the High Court shocks the judicial conscience of this Court.

10. Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

11. This Court in the case of **Soman Vs. State of Kerala** [(2013) 11 SCC 382] observed thus:

“27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.”

12. The same is the verdict of this Court in **Alister Anthony Pareira Vs. State of Maharashtra** [(2012) 2 SCC 648] wherein it is observed thus:

“84. 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.”

13. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance.

14. In the matter at hand, it is proved that the victim has sustained a grievous injury on a vital portion of the body, i.e. the head, which was fractured. The doctor has opined that the injury was life threatening. Hence, in our considered opinion, the High Court was too lenient in imposing the sentence of six days only which was the period already undergone by the accused in confinement.

15. Having regard to the totality of the facts and circumstances, and as it is brought to our notice that the parties have forgotten their differences and are living peacefully since 25 years, we impose a sentence of 6 months' rigorous imprisonment and a fine of Rs. 25,000/- (Rupees Twenty Five Thousand) against the accused. While doing so, we have taken into consideration the aggravating as well as mitigating factors under the facts of this case.

16. Accordingly, the appeal is allowed. The accused (respondent herein) is imposed with a sentence of 6 months' rigorous imprisonment and a fine of Rs. 25,000/- (Rupees Twenty Five Thousand) for the offences under Section 325, IPC. In case of default of payment of fine, the accused shall undergo further rigorous imprisonment for 3 months. In case the fine is deposited by the convicted accused, the same shall be disbursed in favour of the injured PW2, viz. Kapurchand as compensation. The accused/respondent be taken into custody forthwith to serve out the sentence. However, he is entitled to the benefit of set-off of the period already undergone in confinement by him. The judgment of the High Court is modified accordingly.