CASE NO.:
Appeal (crl.) 959 of 2006

PETITIONER:
Siddarama and Ors.

RESPONDENT:
State of Karnataka

DATE OF JUDGMENT: 15/09/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
J U D G M E N T
(Arising out of S.L.P. (Crl.) No. 1939 of 2006)

ARIJIT PASAYAT, J.

Leave granted.

Appellants call in question legality of the judgment rendered by a Division Bench of the Karnataka High Court holding appellant no.1 guilty of the offence punishable under Section 326 read with Section 149 of the Indian Penal Code, 1860 (in short the 'IPC'). Each of the accused appellants was sentenced to undergo rigorous imprisonment for 8 years and to pay a fine of Rs.500/-. The appellants and 9 others faced trial for offences punishable under Sections 143, 147, 341, 307 read with Section 149 IPC. The Trial Court convicted accused numbers 1 to 6 and 8 to 13 and sentenced each to undergo rigorous imprisonment for one year in respect of offences punishable under Sections 143, 147 and 341 read with Section 149 IPC, and in respect of offence punishable under Section 307 read with Section 149 IPC, each was sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.500/- with default stipulation. It had been reported to the Trial Court that accused no.7 died during the pendency of the trial. The judgment was assailed before the High Court both by the accused persons and State. While accused persons questioned conviction and sentence, State on the other hand prayed for enhancement of sentence. The appeals were disposed of as aforenoted.

Background facts in a nutshell are as follows:

T. Kumar (the injured/P.W.7) is a resident of Annechakanahally. As his female child had been left by his wife in his father-in-law's place in Aramballi village of K.R. Nagar Taluk, he went to his father-in-law's place on 7.5.1990 to bring the child. On 8.5.1990 he stayed back there and on 9.5.1990 he was returning to his village Annechakanahally along with his child. His brother-in-law - Puttaswamy (P.W.4) accompanied him. When they came near Hosa Agrahara Railway Station, Puttaswamy proceeded further to purchase the tickets. By the time Kumara came near the signal cabin in Hosa Agrahara Railway Station, he saw all the accused standing near the signal cabin. They were armed with choppers. When they saw Kumara with the child, they suddenly came and surrounded him and before he boarded

the train, the accused Nos.1 and 2 gave a blow on the right hand of Kumara by means of a chopper on account of which, Kumara sustained an injury and lost one of his fingers. He left his child, who was snatched by the accused No.11 Ramakrishna. Then all the accused together caught hold of Kumara and dragged him to a little distance and near the hedges at a distance of about 50 to 60 feet from the railway cabin, they began to assault him. His left leg was severely crushed by the assault and Kumara sustained injuries due to the assault on his right leg and other parts of the body a1so. In the meantime, Puttaswamy (P.W.4), who had returned to the place after purchasing tickets and Niruvanigouda (P.W.3) and Jayabharathi (P.W.1), who had come in the said train, which had arrived by that time at the railway station, saw the incident. When Nirvanegouda (P.W.3) and Puttaswamy (P.W.4) attempted to go near the accused to rescue Kumara, they were threatened by the accused. In the meantime, the train had left the railway station and the accused left the place and ran away. Kumara was grievously injured. Leaving others to look after Kumara, Puttaswamy took the child and went to his village to inform Kumara's father-in-law - Rajegowda (P.W.5). Karthikeyan, Railway Station Master (P.W.17), who had by then come to know of the assault, came to the spot. When Rajegowda and Annegouda assured him that they would shift the injured to the hospital and also inform the police, he returned to the office. In a tempo, the injured was shifted to Bherya Clinic. Since there was no sufficient facility to treat the injured, he was shifted to K.R. Nagar hospital. There, they were advised to take the injured to K.R. Hospital, Mysore and, therefore, the injured was taken there. Dr. B. Suhasini, Assistant Surgeon in K.R. Hospital (P.W.18) examined Kumara at about 12 noon and gave treatment. In the meantime, Kuchela Shetty who was the S.H.O. (P.W.13) of Saligrama Police Station had come to the hospital. He could not take the statement of Kumara, since Kumara was undergoing emergency treatment. Immediately after the treatment, at about 4.00 p.m. P.W.13 recorded the statement of Kumara. On the basis of the same, D.V. Suresh (P.W.16), who was P.S.I. of Saligrama Police Station (P.W.16) registered a case in Crime No.14/1990 and forwarded the FIR to the jurisdictional Magistrate. He went to the spot and conducted spot mahazar as per Ex.P5. He also took steps to apprehend the accused who were found absconding. The accused Nos.1 to 4 were arrested on 19.7.1990 and on the voluntary information furnished by them, choppers allegedly used by the accused for assault were recovered. The accused Nos.5 and 6 were arrested on 28.7.1990 and accused No.7 was arrested on 27.3.1991. Other accused were found absconding. Despite treatment, Kumara's left leg could not be saved and it had to be amputated in view of the grangrene that had set in by that time. After completion of the investigation, a charge sheet was filed against all the accused showing the accused No.11 absconding. Later accused No.11 Ramakrishna was arrested and a separate case registered against him was also tried along with S.C.No. 109/1990.

Accused persons pleaded not guilty. In order to establish the accusations, 20 witnesses were examined by the prosecution. PWs 1 and 3 are the eye witnesses and PW7 was the injured. PWs 2, 5, 9 and 17 went to the place of incidence immediately after the occurrence. PW5 was examined to prove the motive. PW 18 was the doctor who examined the injured. The accused persons pleaded innocence and in their examination in terms of Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Cr.PC'), false accusations were

pleaded. Accused no.11 examined himself as DW1 to establish the plea of alibi.

On considering the evidence of the witnesses and the injured, the trial Court found accused persons version credible so far as accused numbers 1, 2, 6 and 9 are concerned but found the evidence insufficient to fasten guilt of the rest of the accused persons. The conviction and sentence as noted above were accordingly recorded.

The convicted accused persons filed an appeal (Criminal Appeal No.888/2000) while the State of Karnataka filed Criminal Appeal No.12/2001 for enhancement of sentence and to set aside the acquittal. By the impugned judgment the High Court allowed both the appeals in part. While maintaining the conviction and sentence imposed in respect of the offence relatable to Section 143, 147 and 341 read with Section 149 IPC and the consequential sentence the conviction in terms of Section 307 read with Section 149 IPC was altered to Section 326 read with Section 149 IPC and the sentence of 8 years rigorous imprisonment with a fine of Rs.500/- was thought to be appropriate. But the High Court did not interfere with the acquittal of the accused persons as done by the trial Court.

The present appeal is filed by accused persons 1, 2, 6 and 9. Though various points were urged in support of the appeal, learned counsel for the appellants submitted that the sentence is highly disproportionate to the nature of the offence committed. The prosecution version itself is to the effect that the allegations had foundation on political differences.

Learned counsel for the respondent-State on the other hand supported the judgment of the High Court and submitted that this is a case to which Section 307 IPC read with Section 149 IPC is clearly applicable. More than 5 accused persons were involved and in fact one of the major players in the whole incident i.e. A-7 had died. The sentence according to him is liberal.

Law regulates social interests, arbitrates conflicting claims and demands. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be \026 as it should be \026 a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, and all other attending circumstances are relevant facts which would enter into the area of consideration.

Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the

nature of the offence and the manner in which it was executed or committed etc. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCGDautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

Imposition of sentence without considering its effect on

the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences 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.

In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. (See Union of India v. Kuldeep Singh (2004 (2) SCC 590), Abu Ram v. Mukna and Ors. (2005 (10) SCC 597) and Shailesh Jaswantbhai v. State of Gujarat and Ors. (2006 (2) SCC 359).

The offence committed is certainly gruesome but the State has not questioned alteration of conviction from Section 307 read with Section 149 IPC to Section 326 read with Section 149 IPC.

Considering the background facts it would be appropriate to reduce the custodial sentence to five years but enhance the fine in respect of each appellant to Rs.20,000/-. In case the fine amount is not deposited within two months, the default custodial sentence would be two years. In case the amount is deposited, 3/4th of the amount deposited shall be paid to the victim PW-7 within one month of the deposit.

With the above modification of sentence, the appeal is dismissed.