

CASE NO.:
Appeal (crl.) 1381 of 2004

PETITIONER:
State of U.P.

RESPONDENT:
Shri Kishan

DATE OF JUDGMENT: 30/11/2004

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
J U D G M E N T

(Arising out of SLP (Crl.) No. 4982 of 2003)

ARIJIT PASAYAT, J

Leave granted.

The State of U.P. is in appeal against the judgment of the learned Single Judge of the Allahabad High Court, Lucknow Bench. By the said impugned judgment, Criminal Appeal No.37 of 1995 was disposed of by reducing the respondent's sentence of 7 years RI imposed in respect of offence punishable under Section 304 Part II of the Indian Penal Code, 1860 (in short the 'IPC') to the period already undergone with a direction to pay fine of Rs.15,000/- with default stipulation of one year RI.

The respondent (hereafter referred to as the 'accused') was found guilty by the learned Sessions Judge, Sitapur. The accused had faced trial for offence punishable under Section 302 IPC for having caused homicidal death of one Chetai (hereinafter referred to as the 'deceased') on 7.5.1988. The injury was caused by a spade over a land dispute. Though the accused was charged for commission of offence punishable under Section 302 IPC, the trial Judge held that appropriate conviction would be under Section 304 Part II IPC and rigorous imprisonment for 7 years was awarded. Before the High Court the accused did not press appeal on merits but only addressed on the question of sentence. It was submitted that the alleged occurrence took place in 1988 and a lenient view should be taken. The High Court practically by an unreasoned and non-speaking order which is impugned in this appeal disposed of the appeal reducing the custodial sentence as afore-noted. All that the High Court said in the judgment is as follows:

"Considering all facts and circumstances of the case as well as age, character and other antecedents of the appellant, I find that it will meet the ends of justice if the sentence awarded to the appellant is modified and reduced.

The appeal is accordingly dismissed. The conviction recorded against the appellant under Section 304 (Part II) IPC is maintained, but the sentence awarded is reduced to the period already undergone and to pay a fine of Rs.15,000/- and in default of payment of fine to further undergo RI for a period of one year."

The logic behind the sentence in a criminal trial has been

highlighted by this Court in State of M.P. v. Ghanashyam Singh (2003 (8) SCC 13).

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 Nadu (AIR 1991 SC 1463).

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 California: 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 of 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 against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on 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 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.

The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal".

It is rather surprising that the High Court has not even indicated what period of custody the respondent has suffered.

Since all these aspects have not been noted by the High Court and by practically unreasoned order the matter was disposed of in a most unsatisfactory manner, it would be appropriate for the High Court to re-hear the appeal on the question of sentence. It goes without saying

that while deciding the matter afresh the High Court shall keep in view the position in law as highlighted by this Court in Ghanshyam Singh's case (supra). We make it clear that we have not expressed any opinion on the quantum of punishment to be awarded.

The appeal is accordingly disposed of.

JUDIS