

CASE NO.:
Appeal (crl.) 822 of 2005

PETITIONER:
State of Madhya Pradesh

RESPONDENT:
Saleem @ Chamaru and Anr.

DATE OF JUDGMENT: 13/07/2005

BENCH:
Arijit Pasayat & S.H. Kapadia

JUDGMENT:
JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

This is another sad example where a learned Single Judge, Madhya Pradesh High Court, totally oblivious of the consequences has passed an order directing reduction of the custodial sentence to the period already undergone. We have come across a large number of such cases which have been disposed of in very casual and mechanical manner with no trace of application of mind regarding the question of sentence.

The respondents (hereinafter referred to as the 'accused') faced trial for commission of offences punishable under Sections 294, 307, 333, and 506 (II) of the Indian Penal Code, 1860 (in short the 'IPC'). Allegation was that on 2.4.2002 around 9 P.M. at a public place near the bookstall on platform nos. 2 & 3 of Harda Railway Station, they misbehaved and abused constable complainant Umesh Singh in vulgar words. They committed criminal intimidation by threatening to kill him. Accused Deepak alias Deepu was charged for commission of offence punishable under Sections 307 and 333 IPC for assaulting the complainant on the right side of his neck with sharp edged weapon with the intention to kill him and also for deterring a public servant from performing his public duty by voluntarily causing grievous hurt with a sharp-edged weapon. Accused Salim @ Chamaru was charged under Sections 333 and 307 with the aid of Section 34 IPC. Learned Third Additional Sessions Judge, Hoshangabad found accused Salim @ Chamaru guilty of having committed offence punishable under Section 307 read with Section 34 IPC and Section 333 read with Section 34 IPC. He was sentenced to undergo rigorous imprisonment for five years and four years respectively. Fine of Rs. 1,000 was also imposed for the first named offence with default stipulation and Rs. 250 for the second named offence with default stipulation. Accused Deepak was found guilty of offences punishable under Sections 307 and 333 IPC and was directed to undergo custodial sentence of five and four years respectively with a fine of Rs. 1,000 and Rs. 500 respectively with default stipulation. The accused persons preferred Criminal Appeal No. 267 of 2003. At the time of hearing of the appeal learned counsel appearing for the accused person submitted that the fine amounts had been deposited and since they had suffered custodial sentence of nearly six months 23 days, leniency should be shown. It is to be noted that the conviction was not challenged. The High Court found that the accused persons are illiterate persons belonging to lower income group and on consideration of the fact that at the time of commission of offence they were of 23 years of age, the sentence of imprisonment deserved to be reduced to the period already undergone. Appeal was accordingly disposed of.

Learned counsel for the appellant-State submitted that the offences were quite serious in nature and, therefore, the undeserved sympathy shown by

the High Court and that too on clearly untenable grounds cannot be maintained.

In response, learned counsel for the respondents submitted that the High Court has taken note of the ground realities and the reasons indicated justified reduction of sentence. It was further submitted that apart from the reasons indicated other grounds were also pressed into service by the accused persons to substantiate their prayer for reduction in sentence. These have not been noted by the High Court.

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.

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 Counce 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 to be noted that the alleged offences are of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

"Whoever does any act with such intention or knowledge, and under

such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned.''

To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

This position was highlighted in *State of Maharashtra v. Balram Bama Patil and Ors.*, [1983] 2 SCC 28, *Girija Shanker v. State of Uttar Pradesh*, [2004] 3 SCC 793 and *R. Parkash v. State of Karnataka*, JT (2004) 2 SC 348.

In *Sarju Prasad v. State of Bihar*, AIR (1965) SC 843 it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. The basic differences between Sections 333 and 325 IPC are that Section 325 gets attracted where grievous hurt is caused whereas Section 333 gets attracted if such hurt is caused to a public servant.

Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years. The maximum punishment provided for Section 333 is imprisonment of either description for a term which may extend to 10 years with a liability to pay fine. The maximum sentence in each case goes to show the gravity which is attached to respective

offences. Unfortunately, High Court has not kept these features in view.

We remit the matter to the High Court to hear the matter only relating to sentence. Normally, in view of the established law on the subject we would have closed the matter. But learned counsel for the accused submitted that the High Court has not noted several other mitigating factors which were placed for consideration and granted relief on the indicated reasons. The High Court shall consider factors to be placed for consideration and decide the question of sentence keeping in view the principles indicated above.

The appeal is accordingly disposed of.

JUDIS