

PETITIONER:
PALANIAPPA GOUNDER

Vs.

RESPONDENT:
STATE OF TAMIL NADU & ORS.

DATE OF JUDGMENT 04/03/1977

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
GOSWAMI, P.K.

CITATION:
1977 AIR 1323 1977 SCR (3) 132
1977 SCC (2) 634
CITATOR INFO :
R 1978 SC1525 (11)

ACT:

Compensation to persons injured out of amount realised by sentence of fine--Propriety of imposition of heavy fine, while sentencing-Guidelines to the Courts for imposing sentence of fine--Section 357 of the Code of Criminal Procedure (Act 11 of 1974), 1973.

HEADNOTE:

The appellant was convicted by the Sessions Judge. Salem for an offence under s. 302 I.P.C. and was sentenced to death. The High Court modified the sentence of death to one of life imprisonment. However, exercising its powers under s. 367(4) of the Criminal Procedure Code, 1973, the High Court imposed a fine of Rs. 20,000/- under s. 357(1)(c) of the Code. Special Leave was granted, by the court, limiting it into the question of propriety of the fine imposed by the High Court.

Allowing the appeal in part and reducing the fine the Court, HELD: (i) A saving provision which saves the inherent powers of the court cannot over-ride an express provision contained in the statute which saves that power. That did not however affect the power of the High Court to deal with the application merely because the application was wrongly described as having been made under a wrong section. In the instant case, the High Court correctly passed an order of compensation not under s. 482 but under s. 357(1)(c) of the Code and the application filed in the High Court was maintainable at the instance of the son and daughter of the deceased. [133 H, 135 F-G]

(ii) Under s. 302 I.P.C. not only a sentence of imprisonment for life but even a sentence of death can legitimately be combined with a sentence of fine. For the offence of murder, the court do have the power to impose the sentence of fine. [136 B-C]

(iii) Legitimacy is not to be confused with propriety and the fact that the court possesses a certain power does not mean that it must exercise it. Though there is power to combine a sentence of death with a sentence of fine that power is to be sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that

grave penalty a sentence of fine is hardly calculated to serve any social purpose. [136 C-E]

(iv) The first concern of the court, after recording an order of conviction, ought to be to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and the sentence, including the sentence of fine, must not be unduly excessive. In fact, the primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realised which can happen only when the fine is not unduly excessive, having regard to all the circumstances of the case, including the means of the offender. [137 D-F]

(v) Since by s. 357(1)(c) of the code of 1973 and its precursor s. 545(1)(bb) of the code of 1898 compensation can only come out of fine, it is always necessary to consider in the first instance whether the sentence of fine is at all called for, particularly when the offender is sentenced to death or life imprisonment. If so, the fine must not be excessive, having regard to all the circumstances of the case like motivation of the offence, the pecuniary gain likely to have been made by the offender by committing the offence and his means to pay the fine. The High Court in the instant case instead of applying its mind to these factors, considered only what compensation the heirs ought to receive. There is no warrant for the assumption made by the High Court as regards the retention of "abilities in fact" or as regards the "extent of loss to the dependants." [137 A-C, 138 A-C]

133

State v. Pandurang Shinde, A.I.R. [1956] Born 711, 714 referred to.

Adamji Umar Dalai v. The State of Bombay, [1952] S.C.R. 172, applied.

(vi) In view of the fact that the appellant was under the sentence of death since its imposition by the Sessions Court and its reduction to life imprisonment by the High Court since a sentence of life imprisonment has been imposed on the appellant that being the only other sentence permissible under the law, the fine of Rs. 20,000 is unduly excessive and a sum of Rs. would meet the ends of justice. [138 C-D]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 190 of 1976.

(Appeal by Special Leave from the Judgment and Order dated 15-7-1975 of the Madras High Court in Criminal Appeal No. 162/ 75.

Vineet Kumar and M. Mudgal, for the appellant.

A.V. Rangam and Miss A. Subhashni, for respondent No. 1

K. Jayaram and K. Ram Kurnar, for respondents Nos. 2-4.

The Judgment of the Court was delivered by

CHANDRACHUD, J. The appellant, Palaniappa Gounder, was convicted by the learned Principal Sessions Judge, Salem, under s. 302 of the Penal Code and was sentenced to death on the charge that on August 23, 1974 he had committed the murder of one Sengoda Goundar. Two appellant's son and daughter-in-law were convicted by the learned Judge for abetting the murder and were sentenced to life imprisonment. The three accused filed an appeal in the High Court of Madras which upheld the appellant's conviction under s. 392 but reduced the sentence from death to imprisonment of life.

However, while reducing the substantive sentence the High Court imposed a fine of Rs. 20,000/- on the appellant and directed that out of the fine, if realised, a sum of Rs. 15,000/- should be paid to the son and daughters of the deceased under s. 357(1) (c) of the Criminal Procedure Code, 2 of 1974. The other two accused were acquitted by the High Court. We are not concerned in this appeal with the legality of the appellant's conviction or with the acquittal of his daughter and son-in-law. The special leave granted by this Court is limited to the question of the propriety of the fine imposed by the High Court.

The reason and occasion for imposing the sentence of fine was that an application was filed before the High Court under s. 482 of the Criminal Procedure Code by a son and two daughters of the deceased praying that the appellant, his son and daughter-in-law be asked to pay to them, as heirs of the deceased, compensation in the sum of Rs. 40,000/- for the death of their father.

Section 482 of the Code under which the heirs of the deceased filed the application for compensation corresponds to s. 561-A of the Criminal Procedure Code of 1898. It saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. A provision

134 which saves the inherent powers of a Court cannot over-ride any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provision in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter. From this it will be clear that the application made by the heirs of the deceased for compensation could not have been made under s. 482 since s. 357 expressly confers power on the court to pass an order for payment of compensation in the circumstances mentioned therein. That did not, however, affect the power of the High Court to deal with the application because though the application was wrongly described as having been made under s. 482 the High Court could deal with it as if it were made under s. 357 of the Code. That in fact is what the High Court proceeded to do, for it passed the order of compensation not under s. 482 but under s. 357(1)(c) of the Code.

Section 357 of the Code of Criminal Procedure, 2 of 1974, reads thus:

"357. Order to pay compensation.

(1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied :--

(a) in derraying the expenses properly incurred in the prosecution;

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court;

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, in paying compensation to the

persons who are, under the Fatal Accidents Act, 1855 (13 of 1855), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal misappropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reasons to believe the same to be stolen, in compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

135

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed or of an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a Part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Sessions when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section."

Clauses (a), (b) and (d) of s. 357(1) need not be considered firstly because the High Court has passed the order of compensation under cl. (c) and secondly because those clauses have no application. No order having been passed by the High Court for derraying the expenses incurred in the prosecution cl. (a) does not come for consideration. Clause (b) has no application to cases in which the heirs of a person whose death has been caused apply for compensation because that clause deals with the payment of compensation to the very person to whom any loss or injury has been caused as a result of the offence committed against him or his property and when compensation is recoverable by such person in a Civil Court. Clause (d) deals with a different Class of cases altogether and need not detain us.

Clause (c) of s. 357(1) under which the High Court has passed the order for compensation enables the Court to direct that the whole or any part of the fine recovered may be applied in paying compensation to the persons who are under the Fatal Accidents Act, 1855 entitled to recover damages from the person sentenced for the loss resulting to them from the death of the person whose heirs, as described in the Act of 1855, they claim to be. Since under the Act of 1855, persons who may be compensated are the wife, husband, parent (including grand-parents) and child (including grand-children and step-children), the application filed in the High Court was maintainable at the instance of the son and daughters of the deceased.

It cannot however be overlooked that the order for compensation can be passed under s. 357(1)(c) only when "a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part". We are concerned in this appeal to examine primarily the legality and propriety of the sentence of fine imposed by the High Court because upon that would depend the efficacy and indeed the very existence of the order for payment of compensation to the heirs of the deceased. The compensation, as

10--240SC1/77

136

provided in the section, has to come out of the fine. Therefore, if on a proper application of the principles of sentencing, the fine imposed by the High Court is found to be excessive and has therefore to be reduced, the order regarding the payment of compensation must suffer a corresponding variation.

There can be no doubt that for the offence of murder Courts have the power to impose a sentence of fine under s. 302 of the Penal Code.. That section provides that whoever commits murder shall be punished with death, or imprisonment for life, and "shall also be liable to fine". That is why section. 357(1) of the Code speaks of "a sentence (including a sentence of death) of which fine forms a part." That is only an instance of the practical application of s. 302 under which not only a sentence of imprisonment for life but even a sentence of death can legitimately be combined with a sentence of fine.

But legitimacy is not to be confused with propriety and the fact that the Court possesses a certain power does not mean that it must always exercise it. Though, therefore, the High Court had, the power to impose on the appellant a sentence of fine alongwith the sentence of life imprisonment the question still arises whether a sentence of fine of Rs. 20,000/- is justified in the circumstances of the case. Economic offences are generally visited with heavy fines because an offender who has enriched himself unconscionably or unjustifiably by violating economic laws can be assumed legitimately to possess the means to pay that fine. He must disgorge his ill-gotten wealth. But quite different considerations would, in the generality of cases, apply to matters of the present kind. Though there is power to combine a sentence of death with a sentence of fine that power is sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated to serve any social purpose. In fact the common trend of sentencing is that even a sentence of life imprisonment is seldom combined with a heavy sentence of fine. We cannot, of course, go so far as to express approval of the unqualified view taken in some of the cases that a sentence of fine for an offence of murder is wholly "inapposite" (See, for example, *State v. Pandurang Shinde*(1), but before imposing the sentence of fine, particularly a heavy fine, alongwith the sentence of death or life imprisonment, one must pause to consider whether the sentence of fine is at all called for and if so, what is a proper or adequate fine to impose in the circumstances of the case. As observed by this Court in *Adam Ii Umar Dalal v. The State of Bombay*, (2) determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by a variety of considerations but the court must always bear in mind the necessity of maintaining a proportion between the offence

and the penalty proposed for it. Speaking for the Court Mahajan J. observed in that case that: "in imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons as to the

(1) A.I.R. [1956] Bom. 711,714.

(2) [1952] S.C.R. 172.

137

character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not accompany it except in exceptional cases" (p. 177). Though that case related to an economic offence, this Court reduced the sentence of fine from Rs. 42,300/- to Rs 4,000/- on the ground that due regard was not paid by the lower Court to the principles governing the imposition of a sentence of fine.

The High Court imposed in the instant case a fine of Rs. 20,000/on the ground that "the deceased was aged about 48 years and was actively supervising the cultivation of the family lands and would have lived for another 15 to 20 years with his abilities in tact, and the loss to the dependents, viz., the son and daughters would be about Rs. 20,000/-". Except for the bald and bare statements contained in the petition for compensation filed by the heirs of the deceased, there is no warrant for the assumption made by the High Court as regards the retention of "abilities in tact" or as regards the extent of "loss to the dependents".

It appears to us that the High Court first considered what compensation ought to be awarded to the heirs of the deceased and then imposed by way of fine an amount which was higher than the compensation because the compensation has to come out of the amount of fine. Apart from the fact that even the compensation was not fixed on any reliable data, the High Court, with respect, put the cart before the horse in leaving the propriety of fine to depend upon the amount of compensation. The first concern of the Court, after recording an order of conviction, ought to be to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and the sentence, including the sentence of fine, must not be unduly excessive. In fact, the primary object of imposing a fine is not to ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realized, which can happen only when the fine is not unduly excessive having regard to all the circumstances of the case, including the means of the offender.

Section 357(1) (c) of the new Code corresponds to s.545(1) (bb) of the Code of 1898 which was introduced by s. 110 of Amending Act 26 of 1955. The statement of objects and reasons of that Act shows that the Joint Committee took the view that, in suitable cases, the person who causes death should compensate the heirs and dependents of the deceased for the loss resulting from the death. The Joint Committee was in full agreement with the view that in a case where death has resulted from homicide, the Court should award compensation to the heirs of the deceased because that would result "in settling the claim once for all by doing away with the need for a further claim in a civil Court, needless worry and expense to both sides of the party". The views of the Joint Committee incorporated in the Statement of Objects and Reasons to the Amending Act of 1955 are undoubtedly entitled to consideration but those views only reflect that there should reside in the criminal Court the power in appropriate cases to pass an order of compensation in favour of the heirs of the

138

deceased. It cannot, however, be overlooked that since by s. 35:7 (1) (c) of the new Code and its precursor, s. 545(1)(bb) of the old Code, compensation can only come out of fine, it is always necessary to consider in the first instance whether the sentence of fine is at all called for, particularly when the offender is sentenced to death or life imprisonment. If so, the fine must not be excessive, having regard to all the circumstances of the case like motivation of the offence, the pecuniary gain likely to have been made by the offender by committing the offence and his means to pay the fine.

The High Court, instead of applying its mind to these factors, considered only what compensation the heirs of the deceased ought to receive. And that question it decided on inadequate data. In view of the fact that the appellant was under the sentence of death since its imposition by the Sessions Court and its reduction to life imprisonment by the High Court and since a sentence of life imprisonment has been imposed on the appellant, that being the only other sentence permissible under the law, the fine of Rs. 20,000 imposed by the High Court seems to us unduly excessive. In the circumstances we reduce it to a sum of Rs. 3,000/- and direct that the fine or so much of it as is recovered shall be paid to the son and daughters of the deceased who had filed the petition in that behalf in the High Court.

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139

Appeal allowed in