CASE NO.:
Appeal (crl.) 1646 of 1996

PETITIONER:
STATE OF MADHYA PRADESH

RESPONDENT:
GHANSHYAM SINGH

DATE OF JUDGMENT: 11/09/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2003 Supp(3) SCR 618

The Judgment of the Court was delivered by :

ARIJIT PASAYAT, J.: State of Madhya Pradesh in Criminal appeal No. 1646 of 1996 has questioned correctness of the judgment rendered by Division Bench of Madhya Pradesh High Court, Gwalior Bench, holding that respodent (Ghanshyam Singh) was guilty of offence punishable under Section 304 of Indian Penal Code, 1860 (for short 'IPC'). The sentence imposed was restricted to the period already undergone, which was about 2 years and fine of Rs. 15,000 which, if deposited, was directed to be paid as compensation to the widow of Sarnam Singh (hereinafter referred to as 'the deceased') and in her absence to other dependents and heirs of the deceased. In default of payment of amount of fine, the default stipulation was further imprisonment of two years.

Six persons including accused Ghanshyam faced trial for allegedly having committed offences punishable under Sections 302 read with Section 149 IPC, Section 148 IPC, Section 307 read with Section 149 IPC. While the respondent-Ghanshyam Singh was found guilty of offence punishable udner Sections 302, and 307 read with Sections 148 and 149, other accused persons were convicted under Section 302 read with Section 149 IPC. They were also convicted under Sections 148 and 307 read with Section 149 IPC. Various sentences were imposed. All the six accused persons filed appeals before the High Court. As accused no. 6 Diwan Singh expired during the pendency of the appeal, it was held that the same stood abated so far as he is concerned.

Prosecution case in a nutshell is as follows :

On 8.4.1981 Devi Singh (PW-1) with his sister Sushilabai (PW-3), his sister's husband and elder brother Maharaj Singh went to bus stand of village Barod to see off Sushilabai and her husband, who were going by bus. At that time, all the six accused reached there with different weapons in their hands. Accused Ghanshyam Singh had a gun; Sitaram had a farsa and Harnam Singh and Diwan Singh had lathis. They all surrounded Devi Singh (PW-1) and jointly assaulted him. Sitaram gave a farsa blow on the backside of his head. Amar Singh gave a lathi blow on his head which, however, fell on the hand. When he raised a cry for help, Ghanshyam Singh then fiired at him but the bullet missed. Hearing the alarm, Hanumant Singh (PW-4), father of Devi Singh, deceased Sarnam Singh who was his uncle, and Jaswant Singh (PW-5) came on the spot. Accused Ghanshyam Singh then fired at Jaswant Singh and he received injury on the arm. He fired two shots thereafter which hit Sarnam Singh on his leg and abdomen. Harbir Singh gave a farsa blow on leg of Hanumant Singh (PW-4). Udham Singh (PW-12), Jagannath and Banjara were at that time at motor-stand and they tried to save the assault. Information was lodged at the police station. Injured persons were

sent for medical treatment. Subsequently, Sarnam Singh breathed his last. On completion of investigation charge sheet was placed. Accused persons pleaded innocence and false implication due to strained relationship. They claimed to have been assaulted by deceased and his companions. The trial Court convicted and sentenced the accused as indicated supra. Accused persons challenged the conviction and sentence.

On consideration of the evidence adduced by the prosecution, the High Court came to hold that the eye witnesses have given cogent and consistent version that two shots were fired by Ghanshyam Singh causing serious injuries to Sarnam Singh. It was noted that there were two parts of the incident. In the first part it was noted that when Devi Singh ran away from the bus stand to save himself and raised an alarm, accused-Ghanshyam Singh came on the spot with his gun and fired. In the second part, there was free fight between the parties. In this view the plea of self-defence by the accused was rejected. It was however held that the act of using fire-arm and firing two shot by Ghanshyam Singh would fall under Exception 4 of Section 300 IPC. As the act was done in the course of sudden and free fight the offence was not relatable to Section 302 IPC but was one under Section 304 Part-I IPC. He was acquitted of other charges. So far as other accused persons are considered, they were held guilty of offence punishable under Section 323 IPC. On the question of sentence, it was held that Ghanshyam Singh was liable to undergo sentence and fine as noted supra. The special leave petitions, so far as rest of the accused-respondents are concerned, have been dismissed by order dated 6.9.1996.

It needs to be noted that though the High Court had held that the appeal against Diwan Singh had abated, yet he was made a party in the special leave petition. But that is really of no consequence as the special leave petition has been dismissed so far as he and other accused 2 to 5 are concerned.

Learned counsel for the State submitted that the High Court was not justified in holding that case under Section 302 IPC was not made out. In any event, after having held that the case of homicide not amounting to murder has been made out against Ghanshyam Singh for offence punishable under Section 304 Part-I IPC, the custodial sentence of two years is too meager, considering the gravity of the offences and the brutal manner of attacks. He referred to the factual background and findings to substantiate both the above pleas.

In response learned counsel for the respondent - Ghanshyam Singh submitted that the High Court had rightly held that the offence was punishable under Section 304 Part-1, IPC. In view of the fact that the occurrence took place in 1981, the sentence awarded is just and proper. In any event, after two decades it would be unreasonable and inequitable to send the accused back to custody, particularly when the fine amount has been deposited. Reference was made to State of Punjab v. Bira Singh and Ors., [1995] Supp 3 SCC 708; Pashora Singh and Anr. v. State of Punjab, [1993] Supp 2 SCC 33, Dilbagh Singh v. State of Punjab, [1979] 2 SCC 103 to contend that liberal view is desirable in such matters.

We have considered the rival submissions.

So far as conclusion of the High Court about the applicability of Section 304 Part-I, IPC is concerned, the High Court has rightly held on the evidence on record that the offence committed by accused-Ghanshyam Singh is relatable to Section 304 Part-I and not Section 302 IPC.

The crucial question which needs to be decided is the proper sentence and merely because of lapse of time, the accused is to be waived from undergoing it. It is to be noted that the sentences prescribed for offences relatable to Section 304 Part-I are imprisonment for life or up to a period of 10 years. It is true that no minimum sentence has been prescribed. The sentences can be compared with prescription of similar sentences and other

provisions like Section 326 IPC and Section 307 IPC when hurt is caused. Section 304 Part-I is a species of homicidal death. It is statutorily described as culpable homicide though not amounting to murder as defined under the IPC. Taking note of the purpose for which a sentence is imposed, it cannot be laid down as a rule of universal application that long passage of time in all cases would justify minimal sentence. Long pendency of a matter by itself could not justify lesser sentence.

The law regulates social interests, arbitrates conflicting claims and damands. Security of persons and peoperty of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. 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. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. Friedman in his "Law in Changing Society" stated that, "State of criminal law continues to be - as it should be - 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, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the areas of consideration. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P., [1987] 2 SCR 710, this Court while refusing to reduce the death sentence observed thus :

"It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in Courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

Therefore, 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.

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. 2711 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.

In Jashubha Bharat Singh Gohil v. State of Gujarat, [1994] 4 SCC 353, it has been held by this Court that in the matter of death sentence, the Courts are required to answer new challenges and mould the sentencing system to meet these challenges. 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. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.

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 cirme, 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.

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. Similar view has also been expressed in Ravji v. State of Rajasthan, [1996] 2 SCC 175. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane

for consideration of appropriate punishment in a criminal trial. 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". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

Taking into account the all relevant aspects of this case in the background of principles governing award of appropriate sentence, we feel that even on a liberal approach, custodial sentence of 6 years would serve the ends of justice. While fixing the sentence we have taken note of the fine imposed which remains unaltered. It is said to have been paid. There was stipulation for 2 years RI in case of default. The respondent, who is on bail, shall surrender to custody to serve balance of sentence.

Criminal Appeal No. 1646 of 1996 is allowed to the extent indicated. In view of the order passed in Criminal Appeal No. 1646 of 1996, there is no necessity for passing any order in Criminal Miscellaneous Petition No. 489/1996 filed by the informant for enhancement of sentence and the same is rejected.

JUDIS