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SURJIT SINGH
v.
NAHARA RAM AND ANR.

AUGUST 5, 2004

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[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

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Criminal Law—Appropriate sentence—Award of—General principles—Held : There should be adherence to the principle of proportionality according to the culpability of each kind of criminal conduct—It allows some significant discretion to the judge in awarding a sentence in each case—But undue sympathy to impose inadequate sentence would do more harm to justice system—Therefore, Court must award proper sentence having regard to the nature of offence and the manner in which it was committed—On facts, High Court not justified in reducing custodial sentence—Enhanced fine having been paid, custodial sentenced reduced to 18 months—Out of the fine Rs. 10,000 be paid to the appellant—Directions issued—Penal Code, 1860—Section 306—Arms Act, 1959—Section 27.

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On the allegation that the respondent-accused fired several shots resulting in injuries to the appellant, trial court convicted the respondent under section 326 IPC and Section 27 of Arms Act and sentenced him to five years rigorous imprisonment, fine of Rs. 2000 with default stipulation and one year rigorous imprisonment under Arms Act. On appeal, High Court upheld the conviction but reduced the sentence to the period of custodial sentence already undergone. However, it enhanced the fine to Rs. 25,000. Hence the present appeals.

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Appellant-informant contended that in view of the nature of the injuries sustained, High Court should have interfered with the sentence; and that the High Court has not indicated any reason to justify the reduction of custodial sentence.

Allowing the appeals, the Court

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HELD : 1.1. 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 special facts of each case. Judges in essence affirms that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations like the correctional needs of perpetrator, desirability of keeping him out of circulation, tragic results of his crime which inevitably cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread. 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. Therefore, it is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was committed. [359-D-E; 359-F-H]

1.2. In the instant case, taking into account the facts and the principle of law, High Court was not justified in reducing the custodial sentence. Further, in view of the enhanced fine as imposed by High Court having been paid, the custodial sentence is fixed at eighteen months. Out of the fine deposited, a sum of Rs. 10,000 shall be paid to the appellant. [360-B-C]

State of M.P. v. Ghanshyam singh, [2003] 8 SCC 13, referred to.

Law in changing society by Friedman, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 799-800 of 2004.

From the Judgment and Order dated 13.1.2003 of the Punjab & Haryana High Court in CrI. Appeal No. 81-SB of 1992.

Amar Vivek, Jasbir Singh Malik and Ms. Kamakshi and S. Mehlwal for the Appellant.

Ajay Bansal, Addl. Adv. Genl., C.L. Sahu, Amit Yadav and Bimal Roy Jad for the Respondents.

The Judgment of the Court was delivered by

A **ARIJIT PASAYAT, J. :** Leave granted.

The present appeals are by the informant against the respondents (hereinafter referred to as the 'accused'). Law was set into motion by the appellant alleging that while he was spraying his paddy crop in his field, the accused had fired several shots resulting in major or minor injuries to him. The accused was charged for alleged commission of offence punishable under Section 307 of the Indian Penal Code 1860 (hereinafter called the 'IPC') and Section 27 of the Arms Act, 1959 (in short the 'Arms Act'). The learned Additional Sessions Judge, Barnala found the accused guilty of offence punishable under Section 326 IPC and Section 27 of the Arms Act. He was sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs. 2,000 with default stipulation for the offence relating to Section 326 IPC. He was also sentenced to undergo rigorous imprisonment for one year in respect of the offences under the Arms Act. The matter was carried in appeal before the Punjab and Haryana High Court by the accused. The appellant also filed a Criminal Revision under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (in short the 'Code'). Appeal was numbered as CrI. A. N. 81 SB of 1992 and the Criminal Revision was numbered as CrI. Rev. 580 of 1992. Both the appeal and the revision have been disposed of by the common judgment which is impugned in the present appeals. The High Court while upholding the conviction reduced the sentence to the period of custodial sentence already undergone. The fine was, however, enhanced to Rs. 25,000.

In support of the appeals, learned counsel for the appellant submitted that looking at the nature of the injuries sustained, the High Court should have interfered with the sentence, more particularly when the accused had undergone only 63 days of custodial sentence. Moreover, the High Court has not indicated any reason to justify the reduction of custodial sentence.

In response, learned counsel for the accused submitted that the High Court has indicated sufficient basis for reduction of the custodial sentence. It had, in fact, noted that at the time of hearing of the appeal by the High Court, the accused was nearly 60 years of age and since the accused and the informant are co-villagers it would have had effect so far as the peace in the village is concerned and enmity in the families is likely to increase further if he is sent back to custody. The purpose of criminal law justice system is not only to bring discipline, peace and harmony in the society,

but also it give opportunity to erring individual to reform himself. The A
fine of Rs. 25,000 has already been deposited.

The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property 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 B
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 C
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 D
deterrence based on factual matrix.

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 E
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.

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal F
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 G
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 H
serious and widespread.

A These aspects were highlighted by this Court in *State of M.P. v. Ghanshyam Singh*, [2003] 8 SCC 13.

B When the factual scenario as noted by the trial court, and the principles of law as noted above are considered, the inevitable conclusion is that the High Court was not justified in reducing the custodial sentence.

C Taking into account the enhanced fine as imposed by the High Court which admittedly have been paid it would be appropriate to fix the custodial sentence at eighteen months. The accused respondent No. 1 shall surrender to custody forthwith to serve the remainder of sentence. The custodial sentence has been fixed taking note of the peculiar fact of the case. Out of the fine deposited a sum of Rs. 10,000 shall be paid to the appellant.

The appeals are allowed.

D N.J.

Appeals allowed.