

STATE OF MADHYA PRADESH
v.
PAPPU @ AJAY
(Criminal Appeal No.1213 of 2008)

AUGUST 4, 2008

**[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]**

Penal Code, 1860; S. 376(1) r/w s.511 and Ss. 324 and 452:

Sentencing – Trial Court convicting accused for committing offences punishable u/s. 376(1) r/w s. 511 and Ss. 324 and 452 IPC and sentenced him to undergo imprisonment for 4 years – High Court reducing the sentence to the period already undergone viz. 5 months and 25 days – Correctness of – Held: Incorrect – No reason indicated by the High Court while directing reduction of sentence – It is duty of the Court to award proper sentence having regard to nature of the offence and the manner in which it was committed – For deciding just and appropriate sentence, the aggravating and mitigating circumstances in which crime was committed, to be delicately balanced in a dispassionate manner by the Court – Social impact of crime must not be lost sight of and per se require exemplary treatment – In the light of legal position on sentencing, the High Court's order clearly not sustainable and set aside – Judgment of the trial court restored.

Sentencing – Object and quantum of – Discussed.

Accused-respondent was convicted by the trial court for committing the offences punishable under Sections 376(1) read with Section 511 IPC and Sections 324 and 452 IPC and was sentenced to undergo rigorous imprisonment for four years. In an appeal preferred by the accused against the order of the trial court, High Court held

A that since the respondent had undergone imprisonment for about five months and 25 days, the sentence should be reduced to the period already undergone in respect of the first offence. Hence the present appeal.

B Appellant-State contended that considering the gravity of the offence involved, the High Court ought not to have reduced the sentence to the period undergone, which was less than six months.

Allowing the appeal, the Court

C HELD: 1.1 No reason has been indicated by the High Court to direct reduction of sentence. (Para – 8) [797-F]

D 1.2 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 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. (Para – 9) [797 G-H, 798-A]

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• “Law in Changing Society” by Friedman – referred to. *

G 1.3 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. (Para

H – 10) [798-D-E]

Sevaka Perumal etc. v. State of Tamil Nadu AIR (1991) SC 1463 – relied on. A

1.4 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. (Para – 11) [798 G-H, 799 A] B C

1.5 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. (Para – 12) [799 B-C] D

Dennis Councle MCGDautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711 – referred to. E

1.6 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, 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. (Para – 13) [799 F-H] F G

1.7 The punishment to be awarded for a crime must H

A 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. (Para – 14)

B [800 A-B]

State of M.P. v. Ghanshyam Singh (2003) 8 SCC 13 and *State of M.P. v. Babbu Barkare alias Dalap Singh (2005) 5 SCC 413* – relied on.

C 2. Considering the legal position, the High Court's order is clearly unsustainable and is set aside. (Para – 16) [800-D]

Case Law Reference

D	AIR (1991) SC 1463	Relied on	Para – 10
	402 US 183: 28 L.D. 2d 711	Referred to	Para – 12
	(2003) 8 SCC 13	Relied on	Para – 15
	(2005) 5 SCC 413	Relied on	Para – 15

E CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 1213 of 2008

From the final Judgment and Order dated 27.1.2004 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No. 1482 of 2002

F Govind Goel, C.D. Singh and Sunny Chaudhary for the Appellant.

Nirmal Chopra for the Respondent.

G The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

H 2. Since the only question involved in this appeal is whether learned Single Judge was justified in reducing the sentence, as imposed by the High Court on the respondent, detailed reference to the factual aspects is unnecessary.

3. The respondent faced trial for offences punishable under Sections 376(1) read with Section 511 of the Indian Penal Code, 1860 (in short 'the IPC') and Sections 324 and 452 IPC. For the first offence, he was sentenced to undergo rigorous imprisonment for four years with a fine of Rs.2,000/- with default stipulations. For the second offence, he was sentenced to undergo rigorous imprisonment for one year with a fine of Rs.500/- with default stipulations. Similarly, for the last offence, he was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.500/- with default stipulations.

4. He preferred an appeal before the High Court and the High Court, by the impugned order, held that since the respondent had undergone imprisonment for about five months and 25 days, the sentence should be reduced to the period already undergone in respect of the first offence.

5. The State of Madhya Pradesh has questioned correctness of the judgment on the ground that considering the gravity of the offence involved, the High Court ought not to have reduced the sentence to the period undergone which, as noted above, was less than six months.

6. Learned counsel for the respondent supported the judgment of the High Court.

7. In the instant case the victim was examined as PW-3. It is to be noted that three persons faced trial and the co-accused persons were acquitted of the charges.

8. As rightly submitted by learned counsel for the appellant – State, no reason has been indicated by the High Court to direct reduction of sentence.

9. 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 law must find answer to the new challenges and the courts are required to mould the sen-

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A tencing system to meet the challenges. The contagion of law-
lessness would undermine social order and lay it in ruins. Pro-
tection of society and stamping out criminal proclivity must be
B the object of law which must be achieved by imposing appro-
Friedman in his "Law in Changing Society" stated that, "State
of criminal law continues to be as it should be a decisive reflec-
C tion of social consciousness of society". Therefore, in operat-
ing the sentencing system, law should adopt the corrective
D 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 na-
D ture of weapons used and all other attending circumstances are
relevant facts which would enter into the area of consideration.

10. Therefore, undue sympathy to impose inadequate sen-
E tence 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 ex-
F ecuted or committed etc. This position was illuminatingly stated
by this Court in *Sevaka Perumal etc. v. State of Tamil Nadu*
(AIR 1991 SC 1463).

11. The criminal law adheres in general to the principle of
G proportionality in prescribing liability according to the culpabil-
ity 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 spe-
cial facts of each case. Judges in essence affirm that punish-
ment ought always to fit the crime; yet in practice sentences are
H 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.

12. 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 Council MCGDautha v. State of Callifornia*: 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.

13. 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.

A 14. 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.

15. These aspects have been elaborated in *State of M.P. v. Ghanshyam Singh* (2003(8) SCC 13), and *State of M.P. v. Babbu Barkare alias Dalap Singh* (2005 (5) SCC 413).

D 16. Considering the legal position as indicated above the High Court's order is clearly unsustainable and is accordingly set aside. The judgment of the Trial Court is restored. The respondent shall surrender to custody forthwith to serve the remainder of sentence.

E 17. The appeal is allowed.

S.K.S.

Appeal allowed.