A TUKARAM DNYANESHWAR PATIL

v.

STATE OF MAHARASHTRA & ORS.

B (Criminal Appeal No. 442 of 2015)

MARCH 13, 2015

[V. GOPALA GOWDA AND C. NAGAPPAN, JJ.]

C *Penal code, 1860: s.302 r/w s.34; s.304 Part II r/w s.34 – Dispute between victim-deceased and accused persons over the boundary of the field – On the fateful day, A-1 assaulted the deceased with sickle on his left ear and A-2* D *and A-3 assaulted him by means of sticks on his head and mouth – When PW-1, brother of the deceased intervened, A-1 to A-3 assaulted him with sticks on his arm and head – Later the deceased succumbed to injuries – Trial court convicted the accused u/s.302 r/w s.34 – High Court modified* E *conviction to s.304 Part II r/w s.34 and directed the accused to pay Rs.105000 to PW1 and family members of the deceased – Held: In view of the evidence on record, there was no error in impugned order convicting the accused u/s.304 Part II – However, the sentence awarded was* F *inappropriate – Respondents 2 to 4 had undergone only eleven months imprisonment – High Court while altering the conviction to s.304 Part-II, altered the sentence to imprisonment for period already undergone and directed to* G *pay a sum of Rs.35000/- each to the complainant – The facts and circumstances of the case proved by the prosecution in bringing home the guilt of the accused u/s.304 Part-II undoubtedly show a despicable aggravated offence warranting punishment proportionate to the crime – The* H *sentence of eleven months was too meagre – The*

imposition of five years rigorous imprisonment on each of the accused would meet the ends of justice – Sentence/ Sentencing.

Disposing of the appeals, the Court

HELD: 1. After analyzing the evidence, the High Court held that there was quarrel which led to the occurrence and the accused had also injuries and they cannot be held guilty of the offence of murder and since they had knowledge that their act is likely to cause death they are liable to be convicted for the offence under Section 304 Part-II IPC. There was no error in the said conclusion of the High Court. [Para 9] [532-C-D]

2. Respondents 2 to 4/accused nos.1 to 3 were arrested on 29.10.1997 and they were ordered to be released on bail on 28.9.1998 and they have undergone only eleven months imprisonment. The High Court while altering the conviction to Section 304 Part-II IPC, altered the sentence to imprisonment for period already undergone and directed to pay a sum of Rs.35000/- each to the complainant. Both the State and complainant have challenged this alteration of sentence. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. [Paras 10, 11] [532-E-H; 533-A]

State of U.P. v. Shri Kishan **(2005) 10 SCC 420: (2004) 6 Suppl. SCR 530 – relied on.**

3. The facts and circumstances of the case which have

been proved by the prosecution in bringing home the guilt of the accused under Section 304 Part-II IPC undoubtedly show a despicable aggravated offence warranting punishment proportionate to the crime. The sentence of eleven months awarded by the High Court to the respondents for the said conviction is too meagre and not adequate and it would be travesty of justice. It is true that each of the appellant was directed to pay compensation of Rs.35000/- but no amount of compensation could relieve the family of victim from the constant agony. The imposition of five years rigorous imprisonment on each of the respondent nos.2 to 4 for the conviction under Section 304 Part-II IPC would meet the ends of justice. [Para 12] [534-B-E]

Case Law Reference

(2004) 6 Suppl. SCR 530	**relied on**	**Para 11**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 442 of 2015

From the Judgment and Order dated 14.07.2011 of the High Court of Bombay at Nagpur Bench in Criminal Appeal No. 284 of 1998

WITH

Crl. A. Nos. 443/2015 @ SLP (Crl.) No. 1505/2012

Shankar Chillarge, A.G.A., Satyajit A. Desai, Ms. Anagha S. Desai, Aniruddha P. Mayee, Kishor Lambat, Rabin Majumder for the Appearing Parties.

The Judgment of the Court was delivered by

C. NAGAPPAN, J. 1. Leave granted in both the appeals.

2. Both the appeals are preferred against the judgment dated 14.7.2011 passed by the High Court of Judicature at Bombay, Nagpur Bench at Nagpur in Criminal Appeal No.284 of 1998, whereby the High Court partly allowed the said Criminal Appeal filed by respondents 2 to 4 herein/accused 1 to 3 and thereby set aside their conviction and sentence under Section 302 read with Section 34 IPC and instead convicted them for offence under Section 304 Part-II read with Section 34 IPC and sentenced them to imprisonment for period already undergone and directed them to pay jointly and severally a sum of Rs.1,05,000/- to PW1 Narayan Patil and family members of the deceased as compensation in default to undergo rigorous imprisonment for two years and the High Court maintained the conviction of the accused persons under Section 324 read with Section 34 IPC but reduced the sentence to the period already undergone. Aggrieved by the same the State has preferred Criminal Appeal No. 443 of 2015 (@ SLP(Crl.) No.1505 of 2012. The complainant Tukaram Dnyaneshwar Patil also preferred appeal in Criminal Appeal No. 442 of 2015 (@ SLP(Crl.) No.1506 of 2012. Since both the appeals have been preferred against the same judgment, they are heard together and a common judgment is rendered.

3. Briefly the facts are stated as follows : The accused and the deceased belonged to village Tuljapur Tah. Wardha. PW1 Narayan Patil is the brother of deceased Dnyaneshwar Patil and he was also residing in the same village. Tukaram is the son of the deceased. There was a dispute between the deceased Dnyaneshwar Patil and accused A1-Dipak, A2-Prashant and A3-Pawan over the boundary of the field and on 22.10.1997 accused no.1 assaulted Dnyaneshwar Patil by means of sickle on the left ear and A2 and A3 assaulted him by means of sticks on his head and mouth. When PW1 Narayan Patil intervened, accused nos.1 to 3 assaulted him

A with sticks on his arm and head. PWs 2 to 4, PW8 and PW9 witnessed the occurrence. The injured were taken to Sewagram Hospital.

4. PW6 Dr. Rajeshkumar examined and found the following
B injuries on the person of Dnyaneshwar Patil :

(i) Bleeding from nose and left ear.

(ii) Lacerated wound on left mastoid, 5 cm x 2 cm.

C (iii) Lacerated wound on medial aspect of pinna.

(iv) Fracture of mandible.

Exh.64 injury report was issued by him.

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PW6 Dr. Rajeshkumar found the following injuries on the person of PW1 Narayan Patil :

(i) Lacerated would on left side of the back 5 cm x 3 cm.

E (ii) Abrasion on left upper arm 7 cm x 5 cm.

(iii) Abrasion on right upper arm 7 cm x 4 cm.

(iv) Abrasion on right side of back 10 cm x 4 cm.

F He opined that all the above injuries were simple in nature and caused by blunt object.

5. The head constable of medical booth Sewagram Hospital recorded the complaint given by PW1 Narayan Patil
G and sent the same to Sindi Police Station, on which a case in Crime no.122 of 97 came to be registered under Section 326 read with Section 34 IPC and PW14 P.S.I. of Sindi Police Station took up the case for investigation. In the meantime, both injured were shifted to Nagpur Medical College Hospital.
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Dnyaneshwar Patil died on 25.10.1997 in the hospital and on receiving the intimation the case was altered to one under Section 302 IPC. Inquest was conducted and witnesses were examined.

6. PW12 Dr. Pradip Jadhao and Dr. V.R. Agrawal conducted post mortem on the body of Dnyaneshwar Patil in the Nagpur Hospital on 26.10.1997 and they found fracture base of skull and haematoma under the scalp over left temporo parieto occipital region. The opinion was given that death was caused due to injuries no.3 and 4 mentioned in the post mortem report. After the investigation charge sheet came to be filed and the case was committed to the court of Sessions. Charges under Section 302 read with Section 34 and Section 324 read with Section 34 were framed against the accused and they were convicted and sentenced as stated supra. Challenging the same accused nos.1 to 3 preferred appeal and the High Court altered the conviction and sentence as mentioned above. Aggrieved by the same, the State as well as the complainant, have preferred the present appeals.

7. We heard learned counsel for the appellant in both the appeals and the learned counsel for the respondents. The ocular witnesses PWs1 to 4, PW8 and PW9 have testified about the attack made by respondents 2 to 4/accused nos.1 to 3 on Dnyaneshwar Patil at the time of occurrence. Relying on their testimonies the courts below have rightly concluded that the occurrence stands proved.

8. After the occurrence Dnyaneshwar Patil was taken to Sewagram Hospital and PW6 Dr. Rajeshkumar examined him and found lacerated wounds on left mastoid, medial aspect of pinna and noticed fracture of mandible. He was shifted to Nagpur Medical College Hospital where he succumbed to injuries. PW12 Dr. Pradip Jadhao along with another surgeon

A conducted autopsy on his body and they found fracture of skull with haematoma present under the scalp over left temporo parieto occipital region. They have expressed opinion that the death has occurred due to the injuries found on left mastoid region and over left pinna. PW12 Dr. Pradip Jadhao has also B stated in the chief-examination that the said injuries are sufficient to cause death in the ordinary course of nature. Accepting the medical evidence it is clear that Dnyaneshwar Patil died of homicidal violence.

C 9. After analyzing the evidence the High Court held that there was quarrel which led to the occurrence and the accused had also injuries and they cannot be held guilty of the offence of murder and since they had knowledge that their act is likely to cause death they are liable to be convicted for the offence D under Section 304 Part-II IPC. We do not find any error in the said conclusion of the High Court.

10. The disturbing feature is the sentence awarded by the High Court to the respondents 2 to 4 for the conviction E under Section 304 Part-II IPC. As mentioned in the impugned judgment the respondents 2 to 4/accused nos.1 to 3 were arrested on 29.10.1997 and they were ordered to be released on bail on 28.9.1998 and they have undergone only eleven F months imprisonment. The High Court while altering the conviction to Section 304 Part-II IPC, altered the sentence to imprisonment for period already undergone and directed to pay a sum of Rs.35000/- each to the complainant. Both the State and complainant have challenged this alteration of G sentence.

11. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate H sentence commensurate with the nature and gravity of crime

and the manner in which the crime is done. With reference to sentencing by courts, this Court in the decision in **State of U.P.** vs. **Shri Kishan** (2005) 10 SCC 420 made these weighty observations :

"**5.** 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.....

7. 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.

8. .....Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive 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.

9. 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

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".

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12. The facts and circumstances of the case which have been proved by the prosecution in bringing home the guilt of the accused under Section 304 Part-II IPC undoubtedly show a despicable aggravated offence warranting punishment C proportionate to the crime. The sentence of eleven months awarded by the High Court to the respondents for the said conviction is too meagre and not adequate and in our view it would be travesty of justice. It is true that each of the appellant was directed to pay compensation of Rs.35000/- but no amount D of compensation could relieve the family of victim from the constant agony. We are of the considered view that imposition of five years rigorous imprisonment on each of the respondent nos.2 to 4 for the conviction under Section 304 Part-II IPC would E meet the ends of justice. We sustain the other conviction and sentence imposed on the said respondents.

13. In the result both the criminal appeals are partly allowed and the sentence of imprisonment for period already F undergone for the conviction under Section 304 Part-II IPC is set aside and instead the respondents 2 to 4/accused nos.1 to 3 are sentenced to undergo five years rigorous imprisonment each. All other conviction and sentence imposed on them by the High Court are maintained. They are directed to surrender G before the 2nd Additional Sessions Judge, Wardha to serve out the remaining sentence, failing which the learned 2nd Additional Sessions Judge is requested to take them into custody and send them to jail to serve their left over sentence.

H Devika Gujral Appeals disposed of.

SUJITENDRA NATH SINGH ROY

v.

STATE OF WEST BENGAL & ORS.

Civil Appeal No. 7535 OF 2011

MARCH 13, 2015

[VIKRAMAJIT SEN AND SHIVA KIRTI SINGH, JJ.]

West Bengal Land Reforms and Tenancy Tribunal Act, 1997: s.15 – Writ application against an order of W.B. Land Reforms and Tenancy Tribunal refusing to initiate contempt proceedings against an authority – High Court held the writ petition to be not maintainable – Propriety of – Held: The power of judicial review of the High Court u/Articles 226/227 of the Constitution cannot be taken away by a law or even by a constitutional amendment – Hence, it will be a rare case where High Court can hold a writ petition against any order of inferior court or tribunal to be not maintainable – However, it is always open for the High Court, in appropriate cases, to hold that a writ petition is not entertainable on account of propriety, constitutional scheme, some settled rules of self-restraint or its peculiar facts – Matter remitted back to High Court for considering the writ petition afresh on its own merits and as per law – Contempt of Courts Act, 1971 – s.19 – Constitution of India, 1950 – Articles 226, 227.

Allowing the appeal, the Court

HELD: 1. Under Section 15 of the West Bengal Land Reforms and Tenancy Tribunal Act, 1997, the Tribunal has been vested with such power to punish for its contempt as is vested in the High Court under the

A **provisions of the Contempt of Courts Act, 1971. Under Section 19 of the Act of 1971, an appeal lies before the Supreme Court only against such order of the High Court which imposes punishment for contempt and no appeal will lie against an interlocutory order or an order dropping**
B **or refusing to initiate contempt proceedings. [Paras 4 and 5] [538-F-G; 539-D]**

2. It is incorrect to say that writ petition under Article 226/227 of the Constitution is not maintainable
C **when the Tribunal refuses to initiate a contempt proceeding. The submission that because of similar powers of contempt vested in the Tribunal under Section 15 of the Act of 1997, the Tribunal ceases to be inferior to**
D **the High Court for exercise of writ jurisdiction is devoid of any substance because it ignores that High Courts have constitutional status and are vested with extraordinary writ jurisdiction whereas the Tribunal is only a creature of statute. The power of judicial review**
E **of the High Court under Article 226/227 of the Constitution cannot be taken away by a law or even by a constitutional amendment. The matter is remitted back to the High Court for considering the writ petition of the appellant afresh on its own merits and as per law. [Paras**
F **8 to 10] [540-E-F; 541-A-B, D and F-G]**

Manju Banerjee v. Debabrata Pal **2006 (1) WBLR (Cal) 147 –disapproved.**

G *L. Chandra Kumar v. Union of India* **(1997) 3 SCC 261:1997 (2) SCR 1186 – relied on.**

State of Maharashtra v. Mahboob S. Allibhoy **(1996) 4 SCC 411: 1996 (1) Suppl. SCR 166;** *Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda* **(2006) 5**
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SCC 399: 2006 (2) Suppl. SCR 986 – referred to. A

Case Law Reference

2006 (1) WBLR (Cal) 147	**disapproved.**	**Para 1**
1997 (2) SCR 1186	**relied on.**	**Para 3** B
1996 (1) Suppl. SCR 166	**referred to.**	**Para 5**
2006 (2) Suppl. SCR 986	**referred to.**	**Para 5**

C

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7535 of 2011.

From the Judgment and Order dated 20.03.2009 of the Calcutta High Court in W.P.L.R.T. No. 54 of 2009.

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Bhaskar Gupta, R. K. Gupta, S. K. Gupta, M. K. Singh, B. P. Gupta, Shekhar Kumar for the Appellant.

Anip Sachthey, Saakaar Sardana for the Respondents.

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The Judgment of the Court was delivered by

SHIVA KIRTI SINGH, J. 1. Heard learned counsel for both the parties. This appeal has been preferred to assail an order dated 20th March 2009 by the High Court at Calcutta in W.P.L.R.T. No.54 of 2009. The High Court placed reliance upon a Division Bench judgment of that very Court in the case of ***Manju Banerjee v. Debabrata Pal*** reported in (2006) 1 WBLR (Cal) 147 and held the writ petition preferred by the appellant to be not maintainable.

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2. The issue raised in this appeal is whether a writ application is maintainable against an order of West Bengal Land Reforms and Tenancy Tribunal ('the Tribunal'), refusing to initiate contempt proceedings against an authority arrayed

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A as respondent no.5 before the Tribunal. Such pristine question of law does not require any reference to the facts which led the appellant to file O.A.No.2744 of 2007 corresponding to M.A.No.24 of 2008 before the Tribunal with a prayer to initiate proceeding under the Contempt of Courts Act, 1971.

B

3. Learned counsel for the appellant has placed before us the Division Bench judgment of Calcutta High Court in the case of ***Manju Banerjee*** (supra) and has submitted that the view taken therein that there is no right of appeal against C dismissal of contempt proceeding, is correct and requires no discussion but the further view that even in gross cases of palpable contempt the concerned informant aggrieved by refusal to initiate contempt proceeding can move only the Supreme Court under Article 136 of the Constitution of India, D has been assailed on the ground that such observation in the judgment is on account of non-appreciation of relevant facts in the judgment of the Constitution Bench of Supreme Court in the case of ***L. Chandra Kumar v. Union of India*** (1997) 3 E SCC 261.

4. On behalf of appellant, it was further submitted that judgment in the case of ***L. Chandra Kumar*** (supra) was rendered on 18th March 1997. The relevant Act, i.e., The West F Bengal Land Reforms & Tenancy Tribunal Act, 1997 (for brevity referred to as the 'Act of 1997') was enacted subsequently in terms of the enabling provisions under Article 323B of the Constitution of India. Under Section 15 of the Act of 1997 the Tribunal has been vested with such power to punish for its G contempt as is vested in the High Court under the provisions of the Contempt of Courts Act, 1971. For convenience, Section 15 is set out hereinbelow :

"15. *Power to punish for contempt of Tribunal.*-The H Tribunal shall have, and shall exercise, the same

jurisdiction, power and authority in respect of contempt of the Tribunal as a High Court has and may exercise, and, for this purpose, the provisions of the Contempt of Courts Act, 1971, shall have effect, subject to the modifications that –

(a) the reference therein to a High Court shall be construed as a reference to the Tribunal, and

(b) the reference therein to the Advocate-General in Section 15 of the said Act shall be construed as a reference to the Advocate-General of the State."

5. There is no caveat to the proposition of law that under Section 19 of the Contempt of Courts Act, 1971 an appeal lies before the Supreme Court only against such order of the High Court which imposes punishment for contempt and no appeal will lie against an interlocutory order or an order dropping or refusing to initiate contempt proceedings. This was clearly laid down in the case of ***State of Maharashtra v. Mahboob S. Allibhoy*** (1996) 4 SCC 411. This view was also followed in several cases including in the case of ***Midnapore Peoples' Coop. Bank Ltd. v. Chunilal Nanda*** (2006) 5 SCC 399.

6. In the case of ***L. Chandra Kumar*** (supra) a Constitution Bench of this Court declared certain clauses in Articles 323A and 323B of the Constitution of India to be unconstitutional to the extent they excluded the jurisdiction of the High Courts and the Supreme Court under Articles 226/227and 32 of the Constitution. This was on the premise that power of judicial review is a basic and essential feature of the Constitution and, therefore, could not be taken away even by constitutional amendment. Paragraphs 91, 92 and 93 of this judgment were highlighted by learned counsel for the appellant

A in support of his submission that all decisions of tribunals created pursuant to Article 323A or Article 323B of the Constitution have been held to be subject to the High Courts' writ jurisdiction under Article 226/227 of the Constitution.

B 7. On the other hand, learned counsel for the respondents relied upon paragraph 4 in the case of ***Mahboob S. Allibhoy*** (supra) wherein it was clarified that no appeal is maintainable against an order dropping proceeding for contempt or refusing to initiate a proceeding for contempt in C terms of Section 19 of the Contempt of Courts Act, 1971. It was also submitted that since under Section 15 of the Act of 1997 the Tribunal enjoys same jurisdiction, power and authority as a High Court in respect of contempt under the provisions of the Contempt of Courts Act, therefore, High Court cannot D exercise power of judicial review when the Tribunal exercises same powers as that of the High Court to reject or drop a contempt petition.

8. On a careful consideration of judgment of the Division E Bench in the case of ***Manju Banerjee*** (supra) which has been followed in the impugned order, we are unable to agree with the view that writ petition under Article 226/227 of the Constitution is not maintainable when the Tribunal refuses to F initiate a contempt proceeding. Such inference has been drawn by the Division Bench on the basis of some judgments of this Court such as in the case of ***D.N. Taneja v. Bhajan Lal*** (1988) 3 SCC 26. In those cases the order refusing to initiate proceeding had been passed by the High Court and not by a G tribunal and, therefore, this Court observed that in a fit and proper case the aggrieved person who informed the court of the alleged act of contempt can approach the Supreme Court under Article 136 of the Constitution of India. Obviously in those cases there could be no occasion to observe that the aggrieved

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person can also approach the High Court under Article 226/227. The submission that because of similar powers of contempt vested in the Tribunal under Section 15 of the Act of 1997, the Tribunal ceases to be inferior to the High Court for exercise of writ jurisdiction is devoid of any substance because it ignores that High Courts have constitutional status and are vested with extraordinary writ jurisdiction whereas the Tribunal is only a creature of statute. Hence, in our considered view, in the case of ***Manju Banjerjee*** (supra) the Division Bench of the Calcutta High Court does not lay down the law correctly that when the tribunal refuses to initiate contempt proceeding, the aggrieved person has remedy only under Article 136 and not under Article 226/227 of the Constitution.

9. As held by the Constitution Bench in the case of ***L. Chandra Kumar*** (supra) the power of judicial review of the High Court under Article 226/227 of the Constitution cannot be taken away by a law or even by a constitutional amendment. Hence, it will be indeed a rare case where the High Court can hold that a writ petition against any order of inferior court or tribunal is not maintainable. However, we hasten to add that it is always open for the High Court, in appropriate cases, to hold that a writ petition is not entertainable on account of propriety, constitutional scheme, some settled rules of self-restraint or its peculiar facts.

10. In view of the aforesaid discussion, the impugned order is set aside and the matter is remitted back to the High Court for considering the writ petition of the appellant afresh on its own merits and as per law. We make it clear that we have not applied ourselves to the merits of the matter. The appeal is allowed to the aforesaid extent. No costs.

Devika Gujral

Appeal allowed.