Baba Natarajan Prasad vs M. Revathi on 15 July, 2024

Author: C.T. Ravikumar

Bench: C.T. Ravikumar, Prashant Kumar Mishra

2024 INSC 523

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. of 2024
(@ Special Leave Petition (Crl.) No. 11461 of 2022)

Baba Natarajan Prasad …Appellant

Versus

M. Revathi …Respondent

With

Criminal Appeal No. of 2024
(@ Special Leave Petition (Crl.) No. 11824 of 2022)

JUDGMENT

C.T. RAVIKUMAR, J.

1. Leave granted.

2. Salmond defined ‘crime’ as an act deemed by law to be harmful for society as a whole although its immediate victim may be an individual. Long-long ago, Kautilya said: “it is the power of punishment alone which when exercised impartially in proportion to guilt and irrespective of whether the person punished is the king’s son or the enemy, that protects this world and the next”. In the decision in State of Punjab v. Bawa Singh1, this Court held that 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 executed or committed. The sentencing courts are expected to consider all the relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim but also the society at large while considering the imposition of appropriate punishment. Meagre sentence

imposed solely on account of lapse of time without considering the degree of the offence will be counterproductive in the long run and against the interest of the society, it was further held. In Bawa Singh's case (supra), this Court referred to the earlier decisions in Hazara Singh v. Raj Kumar & Ors.2, and Shailesh Jasvantbhai & Anr. v. State of Gujarat & Ors.3, with agreement, in paragraphs 13 and 14 thereof, as under:-

> "13. In Hazara Singh v. Raj Kumar, this Court has observed that:
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> (2015) 3 SCC 441 (2013) 9 SCC 516 (2006) 2 SCC 359 "10. ... it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict." This Court further observed that:
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> "11. ... The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases."
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> 14. In Shailesh Jasvantbhai v. State of Gujarat, the Apex Court opined that:
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> "7. 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 cornerstone 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 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 area of consideration.
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> 8. 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."

3. Besides the decisions in Hazara Singh and Shailesh Jasvantbhai's cases (supra), this Court also referred to the decisions in Ahmed Hussein Vali Mohammed Saiyed & Anr. v. State of Gujarat4, State of Madhya Pradesh v. Bablu5, and State of Madhya Pradesh v. Surendra Singh6 therein. Thereupon, in (2009) 7 SCC 254 (2014) 9 SCC 281 (2015) 1 SCC 222 paragraph 17 of Bawa Singh's case (supra) this Court held thus:-

> "17. Recently, in State of M.P. v. Bablu and State of M.P. v. Surendra Singh, after considering and following the earlier decisions, this Court reiterated the settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which commensurate with gravity, nature of crime and the manner in which the offence is committed. One should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, solemn duty of the court to strike a proper balance while awarding the sentence as awarding lesser sentence encourages any criminal and, as a result of the same, the society suffers."

4. Thus, the clamour or claim for comeuppance viz., deserved punishment proportionate to the gravity of the offence is a continuous and continuing demand based on civic sense and unfailing in categories of serious offences where more than individual interest is also involved, the above rule of proportionality in providing punishment is not failed as otherwise it will impact the society. At the same time, we may hasten to add that we shall not be understood to have held that imposition of sentence on such offenders shall be to satisfy the society and we are only on the point that following the rule of proportionality in imposing punishment would promote and bring order and orderliness in society.

5. The case on hand unfolds as grievance of grave deviation of the principle of sentencing thus laid down by this Court and it carries a consequential prayer for enhancement of punishment for conviction for the offence under Section 494 of the Indian Penal Code, 1860 (for short, 'I.P.C.'). The appellant-complainant assails the common judgment passed in Crl. Appeal Nos.647/2021 and 635/2021 respectively in the captioned appeals dated 26.08.2022 of the High Court of Judicature at Madras to the extent it imposed only a flea- bite sentence for the conviction of the respondent-accused for the offence under Section 494 I.P.C., and confirmed the acquittal of the co-accused of the said respondents. The fact is that despite the restoration of the conviction entered against them by the trial Court after reversing their acquittal by the First Appellate Court and the consequential imposition of sentence, the respondents in both the appeals who were accused Nos.1 and 2 have not chosen to challenge the common judgment dated 26.08.2022.

Facts leading to the appeals

6. The appellant herein is the husband of the respondent in the former appeal and he filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973, (for short the 'Cr.P.C.') against the said respondent and the respondent in the latter appeal, for having committed offence punishable under Section 494 I.P.C. In fact, on the ground of abetting them for committing the said offence the parents of the respondent in the former appeal were also arraigned as accused. For the sake of convenience, hereafter in this judgment, the respondent in the former appeal and the respondent in the latter appeal are referred to only as accused No.1 and 2 respectively, viz., their respective order of status before the trial Court.

7. The allegation in the complaint was that the first accused who is his wife, pending the proceedings for dissolution of their marriage between them before the Family Court, Coimbatore, and during subsistence of their nuptial bond, married the second accused and that in the wedlock of the first accused with the second accused a child was born. Therefore, the appellant accused them of committing bigamous marriage and the parents of the first accused were accused of abetting them for committing the said offence. After the culmination of the trial, the trial Court acquitted the parents of the first accused who were accused Nos.3 and 4, and convicted the first and second accused, under Section 494 I.P.C., and sentenced them to undergo one- year rigorous imprisonment each and imposed a fine of Rs. 2,000/- each. In default of payment of fine they were ordered to suffer three months simple imprisonment. Aggrieved by the conviction and the consequently imposed sentence, first and second accused filed Crl. Appeal Nos.249/2019 and 250/2019 respectively. The appellant herein filed appeal as Crl. Appeal No.273/2019 against the acquittal of the parents of the first accused, viz., accused Nos.3 and 4 before the trial Court and filed Crl. Appeal No.304/2019 seeking enhancement of the sentence given to the first and second accused. As per common judgment dated 19.04.2021, the court of Additional District and Sessions Judge-III, Coimbatore, dismissed the Appeal Nos.273/2019 and 304/2019 filed by the appellant herein and allowed Crl. Appeal Nos.249/2019 and 250/2019 filed by the accused Nos.1 and 2 and acquitted them. Aggrieved by the said common judgment, the appellant filed Crl. Appeal Nos.635/2021 and 647/2021 against the acquittal of accused Nos.1 and 2 and a common appeal viz., Crl. Appeal No.648/2021 against the dismissal of his appeals viz., Crl. Appeal Nos.273/2019 and 304/2019. In and vide the said appeals the appellant prayed to set aside the common order dated 19.04.2021 reversing the conviction of accused Nos.1 and 2 and confirming the acquittal of accused Nos.3 and 4. The appellant also sought for enhancement of the sentence of one-year rigorous imprisonment imposed on accused Nos.1 and 2 contending that it is too inadequate.

8. We have already noted that despite the restoration of the conviction for the offence under Section 494 I.P.C., entered against accused Nos.1 and 2 they have not chosen to challenge the same and at the same time they preferred to undergo the sentence imposed therefor. Naturally, in the said circumstances, against the conviction no argument was advanced on behalf of accused Nos.1 and 2 and their contention was that no interference with the impugned order is invited in the captioned appeals.

9. Heard Sh. R. Basanth, learned senior counsel appearing for the appellant, and Sh. Ratnakar Das, learned counsel appearing for the respondent.

10. The learned senior counsel appearing for the appellant herein would submit that a scanning of the judgment of the trial Court would reveal that the Court had appropriately appreciated the evidence on record and convicted accused Nos.1 and 2 upon satisfying itself that the ingredients to attract the offence punishable under Section 494 I.P.C., have been made out by the appellant. Furthermore, it is submitted that a bare perusal of the impugned judgment would reveal that the High Court had rightly considered the contentions of the appellant herein against the reversal of their conviction by the First Appellate Court that it was founded on surmises and conjectures. We are of the considered view that no more narrative on the correctness of the reversal of the judgment of the First Appellate Court by the High Court under the impugned judgment is required as the indisputable and undisputed position is that its reversal was accepted by accused Nos.1 and 2 and they had undergone the sentence imposed by the High Court consequent to the reversal of the First Appellate Court's judgment. We may note here that the learned senior counsel for the appellant would submit that the appellant had not accepted any compensation and in the same breath, would further submit that the appellant did not want any such compensation.

11. In the aforesaid circumstances, the sole question surviving for consideration is whether the High Court was right in not restoring the sentence imposed for the conviction under Section 494 I.P.C., by the trial Court when it accepted the contentions of the appellant and reversed the acquittal of accused Nos.1 and 2 and restored the conviction entered on them by the trial Court. In other words, the question is whether the High Court had shown undeserving leniency and sympathy to accused Nos.1 and 2 even after finding that they have committed the serious offence of bigamy punishable under Section 494 I.P.C., and whether they were let off with a flea-bite sentence and whether an enhancement of sentence is invited?

12. In this context, we may say that we are not oblivious of the position of law laid down by this Court in Dalbir Singh & Ors. v. State of Punjab7. In the said decision this (1979) 3 SCC 745 Court held that decision on question of sentence could never be regarded as precedent. Bearing in mind the said decision, we will proceed to consider the question based on the rule of proportionality in providing punishment followed by this Court. In this context, it is to be noted that under the impugned common judgment the High Court after restoring conviction for the offence under Section 494 I.P.C., sentenced accused Nos.1 and 2 to undergo imprisonment till the rising of the court and to pay a fine of Rs.20,000/- each with default sentence to undergo simple imprisonment for a period of three months. It was also ordered that out of the total fine amount paid, a sum of Rs. 20,000/- shall be paid to the appellant as compensation.

13. We will consider the requirement or otherwise of enhancement of the corporeal sentence imposed on accused Nos.1 and 2 based on the settled principle of sentencing being followed by this Court that it is the solemn duty of the Court to strike a proper balance awarding sentence proportionate to the gravity of the offence committed by the accused concerned upon his conviction for serious offence(s). For considering the said question, it is only appropriate to look into the question whether the offence under Section 494 I.P.C., is regarded as a serious offence. The appellant herein contended that a reading of Section 494 I.P.C., would reveal that the said offence, if proved to have been committed, the offender deserves no leniency as it is a serious offence. To buttress the said contention, the learned senior counsel relied on the decision of this Court in Gopal

Lal v. State of Rajasthan8, wherein this Court held that where the offence of bigamy is proved, the Court could not take a lenient view.

14. A reading of Sections 494 and 495 I.P.C., would reveal that the legislature viewed the offence of bigamy as a serious offence. Though no minimum sentence is prescribed under Section 494 I.P.C., the maximum sentence of imprisonment prescribed thereunder for a conviction thereunder is seven years of imprisonment of either description. It is also to be noted that the said offence is compoundable only by the husband or wife of the person so marrying with the permission of the Court. The same offence under Section 494 I.P.C., with concealment of former marriage from person with whom subsequent marriage is contracted would visit the offender with imprisonment of either description for a term which may extend to ten years and with fine. This (1979) 2 SCC 170 offence, which is an aggravated form of bigamy, is non- compoundable. The decision in Gopal Lal's case (supra), and the prescription of maximum corporeal sentence imposable under Sections 494 and 495 I.P.C., would undoubtedly suggest that the offence under Section 494 I.P.C., has to be treated as a serious offence.

15. When once it is found that an offence under Section 494 I.P.C., is a serious offence, the circumstances obtaining in this case would constrain us to hold that the imposition of 'imprisonment till the rising of the court' is not a proper sentence falling in tune with the rule of proportionality in providing punishment as mentioned hereinbefore.

16. It is a fact that earlier certain High Courts maintained a view that sentencing an accused to undergo 'imprisonment till the rising of the court' would be no sentence at all, according to law. (See the decisions in Shew Shankar Singh v. The State and Ors.9, Assan Musaliarakath Kunhi Bava In Re.10, and The Public Prosecutor v. Kanniappan11). In the said decisions of the Madras High Court, it was held that a sentence of 'imprisonment till the rising of the court' is an MANU/WB/0349/1968 AIR 1929 Mad 226 AIR 1955 Mad 424 evasion of the statutory provision. In this context, it is also to be noted that a contra view was taken by a Division Bench of the Madras High Court in Muthu Nadar, In Re.12. The Division Bench held that unless the penal provision provides any fixed term as the minimum, the court has full discretion to pass a sentence of imprisonment for any period if it would be fit. In the decision in Prahlad Dnyanoba Gajbhiye v. State of Maharashtra and Anr.13, the High Court of Bombay held that every confinement of person and every restraint of liberty of free men is imprisonment. It is to be noted that taking into account the proviso to Section 418(1), Cr.P.C., in the decision in Raveendran v. Food Inspector, Pinarayi Panchayat14, the High Court of Kerala held that the proviso to Section 418(1), Cr.P.C., recognises sentence of detention till the rising of court is imprisonment of the description simple imprisonment. We refer to the aforesaid decisions and provisions to say that now it cannot be said that imposing a sentence of 'imprisonment till the rising of the court' is impermissible or an action amounting to evasion of statutory AIR 1945 Mad 313 (1994) Cri LJ 2555 1977 KLT 155 provision(s). The said provision viz., Section 418(1), Cr.P.C., and its proviso reads thus:-

> "418. Execution of sentence of imprisonment. — (1) Where the accused is sentenced to imprisonment for life or to imprisonment for a term in cases other than those provided for by section 413, the Court passing the sentence shall forthwith forward a

> warrant to the jail or other place in which he is, or is to be, confined, and, unless the accused is already confined in such jail or other place, shall forward him to such jail or other place, with the warrant:
>
> Provided that where the accused is sentenced to imprisonment till the rising of the Court, it shall not be necessary to prepare or forward a warrant to a jail, and the accused may be confined in such place as the Court may direct."

17. The proviso to Section 418(1), Cr.P.C., together with the penal provision under Section 494 I.P.C., prescribing no minimum imprisonment, but only the maximum, would definitely make imposition of 'imprisonment till the rising of the court' intra vires.

18. This will take us to the next question as to whether such a flea-bite sentence is sufficient when a conviction is entered under Section 494 I.P.C., only because no minimum sentence is prescribed thereunder. We have already noted that in the matter of awarding sentence for conviction of an offence which may impact the society, it is not advisable to let off an accused after conviction with a flea-bite sentence. We may hasten to add that we are not oblivious of the decision of this Court in Adamji Umar Dalal v. State of Bombay15, wherein this Court held that zeal to crush the evil should not carry the Court away from its judicial mind, and the sentence should not be so unduly harsh as to defeat the ends of justice. But then, the decision in State of Karnataka v. Krishna alias Raju16 is also equally relevant. This Court, while enhancing the sentence observed, after characterising the punishment as unconscionably lenient or a 'flea-bite' sentence, that consideration of undue sympathy in such cases will lead to miscarriage of justice and undermine confidence of the public in the efficacy of the criminal justice system. In short, there cannot be any doubt with respect to the position that in imposing sentence the Court is to take into consideration the nature of the offence, circumstances under which it was committed, degree of deliberation shown by the offender, antecedents of the offender upto the time of AIR 1952 SC 14 (1987) 1 SCC 538 sentence, etc., and, in the absence of any exceptional circumstances, impose sentence in tune with the rule of proportionality in providing punishment though it falls within the realm of judicial discretion.

19. Now bearing in mind all the aforesaid provisions and decisions, if the question whether accused Nos.1 and 2 are granted a proper sentence or what was granted was only a flea-bite sentence, we have no option but to hold that imposition of sentence of 'imprisonment till the rising of the court' upon conviction for an offence under Section 494 I.P.C., on them was unconscionably lenient or a flea-bite sentence.

20. Certain circumstances revealed from the evidence on record cannot go unnoticed while deciding the question of proper sentence. Earlier, the appellant herein filed HMOP 515/2012 before the Family Court, Coimbatore, seeking divorce. In the judgment of the trial Court, taking note of the evidence adduced, it was noted that the first accused had filed a petition seeking interim maintenance in the above HMOP and based on a petition in that regard the Court had ordered the appellant to pay Rs. 5,000/- per month to the first accused and she had received the maintenance till 13.07.2017. The evidence would further show that a child was born to the first and second accused in their wedlock in November, 2017. The evidence on record would reveal that on

22.01.2019, the first accused herself filed HMOP No.84 of 2019 seeking dissolution of her marriage with the appellant. In such circumstances, it is evident that the first accused married the second accused while the marriage between the appellant and the first accused was subsisting and not only that, during its subsistence, she had also begotten a child through the second accused. Taking into account all the circumstances, it can be said that undeserving leniency was shown in the case on hand. But then, taking into account the fact that the child born to the first and second accused was aged less than two years when the trial Court passed the sentence and that no minimum term of imprisonment is prescribed for the conviction under Section 494 I.P.C., and that the maximum sentence imposable for conviction thereunder is seven years, we are of the considered view that the trial Court had virtually struck a balance in fixing the term of one year as the corporeal sentence. But then, taking note of the fact that the said child is now aged only about six years and the sentence for the conviction under Section 494 I.P.C., can be of both descriptions. We think it appropriate to use our judicial discretion to modify the sentence imposed under the impugned judgment. Accordingly, we modify the term of the sentence awarded to accused Nos.1 and 2 for the conviction under Section 494 I.P.C., to six months each, making the nature of the sentence as simple imprisonment for the said period. We further modify the fine imposed by reducing the same from Rs. 20,000/- each to Rs. 2,000/- each, as originally awarded by the trial Court. Needless to say, that the default sentence therefor, awarded by the trial Court i.e., to undergo simple imprisonment for three months is also restored. If in terms of the impugned judgment, accused Nos.1 and 2 had already deposited Rs. 20,000/-, after making deduction in terms of the sentence of fine mentioned hereinbefore, the balance amount shall be refunded to them in accordance with the law. In the said circumstances, accused Nos.1 and 2 shall surrender before the trial Court so as to serve out the unserved period of sentence imposed on them by this judgment. Taking note of the fact that the child of accused Nos.1 and 2 is now aged only about 6 years, we further order that firstly the second accused shall surrender before the trial Court, within a period of 3 weeks from today to serve out the rest of the sentence. Upon his release from the jail, on suffering the sentence, the first accused shall surrender before the Court to serve her remaining period of sentence and such surrender shall be made by the first accused within a period of 2 weeks from the release of the second accused from the jail. This arrangement shall not be treated as a precedent as it was ordered in these special circumstances. In case the accused Nos.1 and 2 do not surrender in terms of this judgment on their own, the trial Court shall resort to appropriate steps in accordance with law to place them in custody and make them suffer the sentence as mentioned hereinbefore. The appeals are allowed as above.

21. Pending application(s) are disposed of.

....., J.

(C.T. Ravikumar) ....., J.

(Sanjay Kumar) New Delhi;

July 15, 2024