Bed Raj vs The State Of Uttar Pradesh on 28 September, 1955

Equivalent citations: 1955 AIR 778, 1955 SCR (2) 583, AIR 1955 SUPREME COURT 778, 1956 ALL. L. J. 79, 1956 B L J R 96, 1956 S C J 38, 58 PUN L R 167, ILR (1956) 1 ALL 45

Author: Vivian Bose

Bench: Vivian Bose, B. Jagannadhadas, Bhuvneshwar P. Sinha

PETITIONER:
BED RAJ

Vs.

RESPONDENT:
THE STATE OF UTTAR PRADESH.

DATE OF JUDGMENT:
28/09/1955

BENCH:
BOSE, VIVIAN
BENCH:
BOSE, VIVIAN
JAGANNADHADAS, B.
SINHA, BHUVNESHWAR P.

CITATION:
1955 AIR 778 1955 SCR (2) 583

ACT:
Sentence, Enhancement of-By the High Court-Principles applicable thereto.

HEADNOTE:
A question of sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment.
In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate.
In the circumstances and bearing all the considerations of

the present case in mind it was impossible to hold that the Sessions Judge did not impose a substantial sentence.
The Supreme Court set aside the sentence imposed by the Court and restored that of the Sessions Judge as no adequate reason bad been assigned by the High Court for considering the sentence passed by the Sessions Judge as manifestly inadequate.
Dalip Singh v. State of Punjab ([1954] S.C.R. 145) and Nar Singh v. State of Uttar Pradesh ([1956] 1 S.C.R. 238), referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 88 of 1954.

Appeal by Special Leave from the Judgment and Order dated the 7th January, 1954 of the Allahabad High Court in Criminal Appeal No. 377 of 1953 connected with Criminal Revision No. 461 of 1953 arising out of the Judgment and Order dated the, 17th November, 1952 of the Court of Additional Sessions Judge at Meerut in Session Trial No. 113 of 1952.

B.B. Tawakley, (K. P. Gupta, with him), for the appellant. K.B. Asthana and C. P. Lal, for the respondent. 1955. September 28. The Judgment of the Court was delivered by BOSE J.-The only. question here is about sen. tence.

The appellant Bed Raj and another, Sri Chand, were jointly charged with the murder of one Pheru. The Sessions Judge convicted Bed Raj under section 304, Indian Penal Code, and sentenced him to three years' rigorous imprisonment. He acquitted Sri Chand. I Bed Raj appealed to the High, Court and that Court, on admitting the appeal for hearing, issued notice to the appellant to show cause why the sentence should not be enhanced. The appeal and the revision were heard together. The appeal was dismissed and the High Court enhanced the sentence to ten years.

Now, though no limitation has been placed on the High Court's power to enhance it is nevertheless a judicial act and, like all judicial acts involving an exercise of discretion, must be exercised along, well known judicial lines. The only question before us is whether those lines have been observed in the present case.

The facts that have been found by the Sessions Judge and accepted by the High Court are to be found in the opening paragraph of the learned Sessions Judge's judgment. They are as follows:

> "Roop Chand, the son of Bed Raj accused, was removing the dung. of the bullocks of Pheru deceased from an open space near his cattle shed. Pheru protested to, the boy and turned down the basket in which the boy had put the dung. The two accused who are brothers then came to the scene from their own cattle shed which was near by and there was an exchange of abuses between them and Pheru. The accused Sri Chand then caught hold of Pheru by the waist and Bed Raj accused took out a knife and

> stabbed him in 3 or 4 places. The knife was then left sticking in the neck of the deceased and the accused ran away".

The assault occurred about 8 o'clock on the morning of the 23rd February 1952. Pheru was removed to the hospital and the Medical Officer Dr. Fateh Singh examined him and found that he was suffering from shock. He found three injuries on his person:

> all "simple". He gave the following description of them:
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> right side lower part.
>
> (2) Incised wound: 1 " x 1/3" X1/3" right deltoid region frontal and lower part above downward. (3) Incised wound 1/2" X 1/6" X 1/4"Epigastric region".

He said-

> "When Pheru was admitted in the hospital he was under shock but his condition was not dangerous. When Pheru came he could speak. He was not unconscious. As he was under shock no report was made for recording his dying declaration. I cannot give the definite cause of death. I cannot tell if sucH an InjurY can cause death. There was no Haemorrhage from Pheru's neck after his arrival in my hospital. Speaking:of the inJurieis, the doctor said- "Injuries 2 and 3 on the person of Pheru which were incised wounds were not punctured. It was not possible to inflict them from a sharp pointed weapon".

The appellant was also examined by the doctor and a slight simple injury, which could have; been caused by a simple blunt weapon, was discovered. This indicates that there was a scuffle between the appellant and the deceased, in which the appellant was hit over the nose and, up to a point, bears out what the appellant says in his defence, namely that Pheru was beating the appellant's son Rup Chand; he went there and tried to extricate Rup Chand; Pheru started beating him (the appellant) and he, the appellant, received a flat blow on the nose.

The depth of the injury on Pheru's neck was I of an inch. In this connection the doctor says-

> "A knife can penetrate 1 1/2 or 2 inches in a case of deliberate stabbing".

Pheru died about 12-45 A.M. on the 24th February 1952, that is to say, about 16 or 17 hours after the assault. The post-mortem was conducted by another doctor, Dr. J. K. Dwivedi. Describing the injury on the neck-the only one we need consider as the other two were slight-he said that clotted blood was present all round injury No, 1, and, that--

> "the:right side dome of pleura is punctured under injury No. 1 and clotted blood present all round it. Upper lobe of right lung (appex) is punctured for 1/4" X 1/4" X 1/2".

Clotted blood present over the lung surface all round the punctured area. A branch of the external jugular vein was divided in right side neck under injury No. I. Death was due to shock, and haemorrhage as a result of injury to neck". In cross-examination he said-

> "It was possible and impossible also that the bleeding could be stopped. Such injury as injury No. I are more likely to cause death". After reviewing the evidence 'the learned Sessions Judge held-
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> "It is evident that the whole scene took just a few moments. Both of the accused must have been in a moment of heat and before either of them could think of doing any act, the whole thing was over..... That the injuries with the knife were likely to cause death is clear but they were caused at a time when the parties were in a heat and there was a sudden fight and no room for premeditation".

Because of this, and seeing that there was no reason to infer pre-concert, he acquitted the other accused, and by reason of those circumstances he considered that three years would be sufficient punishment and sentenced the appellant accordingly. This was on 17-11-1952.

The appellant filed an appeal to the High Court on 1.8-12- 1952 and that Court thereupon issued notice to him to show cause why the sentence I should not be enhanced. The High Court directed enhancement on 7-1-1954. On the same day the State Government ordered the release of the appellant on probation, under section 2 of the U.P. Prisoners' Release on Probation Act, 1938, for the full term of the sentence imposed by the Sessions Court. We are not concerned with the State Government's order except in so far' as it indicates the view that that Government took of the antecedents and conduct in prison of the appellant, matters that are also relevant for consideration by a Court when determining a, question of sentence-' a prisoner can only be released on probation under that Act if the State Government is satisfied "from his antecedents and his conduct in the prison that he is likely to abstain from crime and lead a peaceable life, if he is released from prison".

These facts were not known to the High Court when it made its order of enhancement' but it is a matter relevant for our consideration now that the appeal is before us. Now the High Court accept the findings of the Sessions Judge about the circumstances in which the offence took place. They agree that the attack was not premeditated and that there was a sudden quarrel and that the blows were inflicted in the heat of passion,. They also say that there was counter-abuse and they notice the abrasion on the appellant's nose. Despite this they hold-that' "it is possible that this injury was received by the appellant in the attempt of the deceased to resist the attack made by the appellant. There was therefore no fight'.

This is a very half-hearted finding and ignores the fact that the benefit of all doubts must be given to the accused. If it was only "possible" that the injury was due to Pheru's attempt to ward off an attack by the appellant, then it must be equally "possible" that it was received in the course of a, scuffle. The appellant very definitely says in his examination that there was a fight and the abrasion on his nose which the doctor says was caused by a blunt weapon, bears out his version that Pheru struck him with his fist. The circumstances also indicate that there must have been a scuffle. Why else

should it be necessary for the second accused to come and hold him down by the waist? When villagers or any man for that matter, come to blows after hot words and an interchange of abuse, there is nearly always resistance to the initial attack. Very rarely does a man "turn the other cheek". It must also be remembered that the incident started with the use of force by Pheru. It was he who took hold of the basket of cow dung and overturned it. That occasioned the quarrel, and the finding is that there was abuse and counter-abuse. It was then that the second accused rushed in and caught Pheru by the waist. That accused was acquitted because there was nothing to suggest that that was done in aid of the appellant's intention to-assault Pheru and he -was absolved of all intention to assault on his own account; and the finding is that even the appellant had no such intention till the last moment. If that was the case, then why should the second accused rush in and hold Pheru by the waist? If he had no intention to assault on his own account and none to assist the appellant in his assault, the only other reasonable conclusion is that he tried to stop a fight. It would be fair in the circumstances to reach that conclusion, for the accused is as much entitled to the benefit of any doubt when a co-accused is acquitted as in any other case. In any case, it was incumbent on the High Court to reach a more definite finding than the one given before -deciding to enhance the sentence.

The only reason that the learned Judges give is that Pheru was unarmed and as the attack was made with a knife it cannot be said that the appellant did not act in a cruel or unusual manner. Nevertheless, they uphold the finding that the offence falls under section 304, Indian Penal Code, and not under section 302.

A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; see for example the observations in Dalip Singh v. State of Punjab(1) and Nar Singh v. State of Uttar Pradesh (2). In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. In our opinion, these principles have not been observed. It is (1) [1954] S.C.R. 145, 156.

(2) [1955] 1 S.C.R. 238, 241, impossible to hold in'the circumstances described that the Sessions Judge did not impose a substantial, sentence, and no adequate reason has been assigned by the learned High Court Judges for considering the sentence, manifestly inadequate. In the circumstances, bearing all the considerations of this case in mind, we are of opinion that the appeal (which is limited to the question of sentence) should be allowed and that the sentence imposed by the High Court should be set aside and that of the Sessions Court restored. Ordered accordingly.