Gopal Singh vs State Of Uttarakhand on 8 February, 2013

Equivalent citations: AIR 2013 SUPREME COURT 3048, 2013 (7) SCC 545, 2013 AIR SCW 4455, AIR 2013 SC (CRIMINAL) 1904, 2013 (5) ALL LJ 379, 2013 (4) AJR 507, (2013) 2 CRILR(RAJ) 570, (2013) 3 ALLCRIR 2986, 2013 CRILR(SC&MP) 570, (2014) 2 ALLCRILR 682, 2013 (3) CALCRILR 367, 2013 (3) SCC(CRI) 608, 2013 (2) SCALE 533, (2013) 124 ALLINDCAS 240 (SC), (2013) 116 CUT LT 686, 2013 CRILR(SC MAH GUJ) 570, (2013) 81 ALLCRIC 289, (2013) 2 ALLCRILR 302, (2013) 55 OCR 43, (2013) 4 RECCRIR 458, (2013) 1 CURCRIR 623, (2013) 2 SCALE 533

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Bench: Dipak Misra, G. S. Singhvi

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 291 OF 2013
(Arising out of S.L.P. (Crl.) No. 9897 of 2012)

Gopal Singh ... Appellant

Versus

State of Uttarakhand ..Respondent

J U D G M E N T

Dipak Misra, J.

Leave granted.

2. In this appeal preferred by Special Leave, the appellant calls in question the legal substantiality of the judgment of conviction and order of sentence dated 15.3.2012 passed by the High Court of Uttarakhand at Nainital in Criminal Appeal No. 137 of 2001 whereby the learned Single Judge has set aside the conviction under Sections 307 and 380 of the Indian Penal Code (for short “the IPC”)

but maintained the conviction and sentence under Section 324 of the IPC passed by the learned Sessions Judge, Almora in Sessions Trial No. 24 of 1994.

3. The facts which are essential to be stated for adjudication of this appeal are that an FIR was lodged by Prem Singh, PW-2, alleging that about 9.00 p.m. on 20.10.1992, on hearing a gunshot sound and simultaneously the cry of his brother, Gopal Singh, PW-1, that he was being assaulted and his life was in danger, he rushed to the shop of Gopal Singh and found that accused Gopal Singh and his brother Puran Singh were beating him with hands, fists and stones. He saw Har Singh, the father of the assailants, standing outside the shop along with two unknown persons. It was alleged that Narain Singh, PW-3, son of Prem Singh, had sustained a gunshot injury. The informant and his nephew, Surendra Singh, took the injured Gopal Singh and Narain Singh to Ranikhet Hospital. It was further alleged that the accused persons had took away Rs.25,000/- from the shop of PW-1 and Rs.1200/- from his pocket. Be it noted that after taking the injured persons to the hospital for treatment, an FIR was lodged with the Patwari, Bilekh. After the criminal law was set in motion, the Investigating Officer recorded the statements of the witnesses under Section 161 of the Code of Criminal Procedure, prepared the site plan, Ext.-7, recovered the pellets, seized the blood-stained clothes of the injured persons and got them examined by the doctor, PW-4, and, eventually, on completion of investigation, placed the charge-sheet for the offences punishable under Sections 147, 148, 452, 307 and 395 of the IPC before the learned Magistrate who, in turn, committed the matter to the Court of Session.

4. The accused persons abjured their guilt and pleaded false implication due to animosity which was founded on the harassment of Har Singh in the Gram Sabha election that was contested by Gopal Singh. Be it stated, during the pendency of the trial, Puran Singh expired as a consequence of which the trial proceeded against the accused persons, namely, Gopal Singh and Har Singh.

5. The prosecution, in order to substantiate the charges framed against the accused persons, examined five witnesses, namely, Gopal Singh, PW1, the injured, Puran Singh, PW2, the brother of the injured, Narain Singh, PW3, who received the gunshot injury, Dr. N. K Pande, PW4, who examined the injured persons and Bachhi Singh Bora, PW5, the investigating officer, and got number of documents exhibited. The defence chose not to adduce any evidence in support of the plea taken.

6. The learned Sessions Judge, on the basis of the material brought on record, acquitted Har Singh of all the charges. However, he convicted accused Gopal Singh under Sections 307, 324 and 380 of the IPC giving credence to the testimony of PWs 1,3,4 and partly of PW 2 and sentenced him to suffer rigorous imprisonment for seven years, one year and four years respectively under said scores with the stipulation that all the sentences shall be concurrent.

7. Aggrieved by the aforesaid conviction and sentence, the accused appellant preferred Criminal Appeal No. 137 of 2001. The learned Single Judge noted the fact that Gopal Singh had not sustained the gunshot injury but injuries were caused because of blows by fist, kicks and stones as a result of which there was fracture on the 10th rib of the said injured. However, the High Court was of the opinion that Puran Singh might have applied the same means and same force and as he had died

during the trial, it was advisable to extend the benefit of doubt to the appellant. Being of this view, it came to hold that the appellant is not guilty of the offence punishable under Section 307 of the IPC. At this juncture, we may state that whether the analysis of the High Court on this score is correct or not, need not be gone into as the State has not assailed the impugned judgment. Therefore, we are compelled to leave it at that.

8. As is perceivable, the High Court has found that the appellant had fired a gunshot at Narain. For the commission of the said crime, the learned trial Judge had convicted him under Section 324 of IPC and sentenced him to undergo rigorous imprisonment for three years. The High Court did not find any flaw in the analysis of the learned Sessions Judge on that count and gave its stamp of approval to the same. As far as the conviction under Section 380 is concerned, the High Court acquitted the accused-appellant.

9. Mr. Sunil Kumar Bharti, learned counsel for the appellant, contended that the finding that the appellant had fired a gunshot has not been proven beyond reasonable doubt inasmuch as the 'Katta' (country made pistol that was fired) has not been seized. In the alternative, it is urged by him that regard being had to the nature of the injury, the age of the appellant at the time of the incident, the evidence on record that there was no fracture and no injury barring a muscle injury, the rigorous imprisonment of three years is excessive and it deserves to be reduced.

10. Dr. Abhishek Atrey, learned counsel for the State supporting the judgment of conviction as well as the order of sentence, submitted that the learned Sessions Judge has correctly analysed the testimony of PWs who have deposed about the occurrence and further taken note of the fact that there has been recovery of pellet from the wall of the shop room of Gopal Singh and, accordingly has opined that the injury was caused on Narain Singh from the gunshot fired from the 'Katta' (country made pistol) by the accused and, therefore, the conclusion arrived at on that base cannot be found fault with. Meeting the alternative argument which pertains to the imposition of excessive sentence, the learned counsel for the State would urge that in a case of the present nature, the rigorous imprisonment of three years cannot be regarded as disproportionate.

11. At the very outset, we may state with profit that a counter case was filed by the accused persons but there was no allegation in the FIR that the gunshot was fired from the licensed gun of Prem Singh and, eventually, the said case has ended up in acquittal.

12. Coming to the evidence on record, it is noticeable that PW-1 has clearly stated that accused Gopal Singh had fired from his country made pistol which had hit his nephew, Narain Singh. In the cross-examination, what has been elicited is that Prem Singh, father of Narain Singh, an ex-serviceman, is a holder of licensed gun. He has categorically stated that the occurrence had taken place inside his shop room. There has been no cross-examination on these counts. Similarly, Prem Singh, the father of injured Narain Singh, has vividly narrated the incident. The cross- examination basically relates to enmity and theft of money. PW 3 is the injured Narain Singh. It has come in his testimony that when his uncle, Gopal Singh, was preparing accounts in his shop, he was suddenly hit by bullet fired by the accused, Gopal Singh. It is interesting to note that what has been elicited from the testimony is that his father had a licensed gun. From the medical evidence, it is limpid that

the injury was caused by firearm. PW5, the investigating officer, has deposed that he had recovered the pellets of 'Katta' from the wall of the shop room, the place of the incident. Under these circumstances, we are disposed to think that solely because the 'Katta' has not been recovered, the prosecution version should not be disbelieved. In this context, we may refer with profit to the decision in Anwarul Haq v. State of U.P.[1] wherein it was held that solely because the knife that was used in committing the offence had not been recovered during the investigation could not be a factor to disregard the evidence of the prosecution witnesses who had deposed absolutely convincingly about the use of the weapon. That apart, the Court also referred to the evidence of the doctor which mentioned about the use of weapon It is worth noting that this Court observed that though the doctor's opinion about the weapon was theoretical, yet it cannot be totally wiped out. Regard being had to the aforesaid, this Court maintained the sentence of one year rigorous imprisonment under Section 324 of IPC as imposed by the trial Court and concurred with by the High Court.

13. We may hasten to clarify that we are placing reliance on the aforesaid dictum as in the case at hand there is the doctor's evidence that the injury has been caused by the gunshot and the pellets have been recovered from the walls of the shop room of the accused appellant and no explanation for the same has been offered by the defence. What has been elicited in the cross-examination is that Prem Singh, the father of the injured, had a licensed gun. We really fail to fathom how the said elicitation would render any assistance to the defence. The learned sessions Judge, taking into consideration the nature of the injury and the weapon used, has convicted the accused under Section 324 of IPC which has been accepted by the High Court. We perceive no fallacy either in the analysis or in the finding recorded on that score.

14. The alternative submission of the learned counsel for the appellant is that when the learned Sessions Judge as well as the High Court has only found that the conviction under Section 324 is sustainable, then the sentence of rigorous imprisonment of three years should not have been awarded. In this regard, it is fruitful to refer to the pronouncement in Santa Singh v. The State of Punjab[2] wherein Bhagwati, J. (as his Lordship then was), speaking for the Court, while interpreting the words used in Section 235(2) of the Code of Criminal Procedure, adverted to the concept of proper sentence and opined thus: -

> "..... a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances — extenuating or aggravating — of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence. These are factors which have to be taken into account by the court in deciding upon the appropriate sentence, and, therefore, the legislature felt that, for this purpose, a separate stage should be provided after conviction when the court can hear the accused in regard to

> these factors bearing on sentence and then pass proper sentence on the accused." The aforesaid principle has been followed in many a dictum of this Court.

15. In Jameel v. State of Uttar Pradesh[3], this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, the Court observed thus: -

> "15. 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.

16. 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 relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence." In the said case, there was a fracture of bone and the trial Court had convicted the appellant therein under Section 308 of IPC and sentenced him to undergo rigorous imprisonment for two years.

16. In Shailesh Jasvantbhai and another v. State of Gujarat and others[4], the Court has observed thus:

> "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
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> -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".

17. Recently, this Court in Guru Basavaraj v. State of Karnataka[5], while discussing the concept of appropriate sentence has expressed that:

> "It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice [pic]which includes adequate punishment cannot be lightly ignored."

18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect – propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasize, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a strait-jacket formula nor a solvable theory in mathematical exactitude. It would be dependant on the facts of the case and rationalized judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

19. A Court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of Court in such situations becomes a complex one. The same has to be performed with due reverence for Rule of La, the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any

kind of personal philosophy or individual experience or any a-priori notion.

20. Keeping in view the aforesaid analysis, we would refer to the view in respect of sentence this Court had imposed under Section 324 of IPC, regard being had to the concept of appropriate sentence. In Dharma Pal and others v. State of Punjab[6], while converting the conviction under Section 307 of the IPC to Section 324 of IPC, this Court thought it appropriate to sentence the convicts to one year rigorous imprisonment. Be it noted, the Court observed that though the injuries inflicted by the appellants therein were somewhat serious, yet the conviction under Section 307 of the IPC was not made out.

21. In Merambhai Punjabhai Khachar and others v. State of Gujarat[7], while this Court took note of the fact that the injury was caused by pellet, the ingredients of Section 307 of IPC were not satisfied and, accordingly, the Court converted the offence under Section 324 and sentenced the accused to undergo R.I. for one year and pay a fine of Rs. 1000/-, in default, S.I. for one month.

22. In Para Seenaiah and another v. State of Andhra Pradesh and another[8], regard being had to the obtaining factual matrix therein, the sentence of rigorous imprisonment of one year under Section 324 of IPC with a fine of Rs.1,000/- and, in default, imprisonment for three months was held to be justified.

23. At this juncture, we may repeat at the cost of repetition that imposition of sentence, apart from the illustrations which have been stated to be mitigating factors would depend upon many a other factors which will depend/vary from case to case. The legislature in respect of an offence punishable under Section 124 of the IPC has provided punishment which may extend to three years or with fine or with both. The legislative intent, as we perceive, is to confer discretion on the judiciary in imposition of sentence in respect of such offence where it has not provided the minimum sentence or made it conditional. We have already highlighted that the discretion vested cannot be allowed to roam in the realm of fancy but is required to be embedded in rational concepts based on sound facts.

24. In the case at hand, the doctor has not stated the injury to be grievous but on the contrary, he has mentioned that there is no fracture and only a muscle injury. The weapon used fits in to the description as provided under Section 324 of IPC. The occurrence has taken place almost 20 years back. The parties are neighbours and there is nothing on record to show that the appellant had any criminal antecedents. Regard being had to the totality of the facts and circumstances, we think it appropriate that in the obtaining factual score, the sentence of rigorous imprisonment of one year under Section 324 of IPC would be adequate. That apart, we are inclined to direct that the appellants shall pay a sum of Rs. 20,000/- towards compensation as envisaged under Section 357 (3) of the Code to the victim. The said amount shall be deposited before the learned trial Judge who shall disburse the same in favour of the victim on proper identification.

25. With the aforesaid modification in the sentence, the appeal stands disposed of.

.....J. [G. S. Singhvi] .....J. [Dipak Misra] New Delhi;

February 08, 2013

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[1] (2005) 10 SCC 581
[2] (1976) 4 SCC 190
[3] (2010) 12 SCC532
[4] (2006) 2 SCC 359
[5] (2012) 8 SCC 734
[6] AIR 1993 SC 2484
[7] AIR 1996 SC 3236
[8] (2012) 6 SCC 800