Dilbag Singh vs State Of Punjab on 25 January, 1979

Equivalent citations: 1979 AIR 680, 1979 SCR (2)1134, AIR 1979 SUPREME COURT 680, (1979) 1 APLJ 33, (1979) 2 SCJ 158, 1979 (3) MAH LR 215, 1979 CRI APP R (SC) 115, 1979 SCC(CRI) 376, (1979) 2 SCR 1134 (SC), 1979 ALLCRIC 104 (2), ILR (1979) HP 5, 1979 CRILR(SC MAH GUJ) 390, 1979 CHANDLR(CIV&CRI) 130, (1979) SC CR R 235, (1979) MAD LJ(CRI) 534, (1979) ILR SC 5, 1979 (2) SCC 103

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, D.A. Desai, A.P. Sen

PETITIONER:
DILBAG SINGH

Vs.

RESPONDENT:
STATE OF PUNJAB

DATE OF JUDGMENT25/01/1979

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
DESAI, D.A.
SEN, A.P. (J)

CITATION:
1979 AIR 680 1979 SCR (2)1134
1979 SCC (2) 103

ACT:
Sentence-Sentencing power under Section 248(2) and s. 235(2) of the Criminal Procedure Code, 1973 (Act II of 1974)-Need for non-institution alised sentencing and value of pre-sentencing investigation reports while exercising the right to sentence-Guidelines to be laid down-Purpose of s. 360 of Criminal Procedure Code highlighted.

HEADNOTE:
In the case of a trial before a court of session, under s. 235(2) Criminal Procedure Code "if the accused is

convicted, the Judge shall, unless he proceeds in accordance with the provisions of s. 360, hear the accused on the question of sentence, and then pass sentence on him according to law." Similarly, in the case of trial of warrant cases by Magistrates, under s. 248 (2) of the Code, "where the Magistrate finds the accused guilty, but does not proceed in accordance with the provisions of s. 325 or s. 360, he shall after hearing the accused on the question of sentence, pass sentence upon him according to law."

Section 361 of the Code mandates that "where in any case, the court could have dealt with:-

(a) an accused person under s. 360 or under the provisions of the Probation of Offenders' Act, 1958 (Act XX of 1958) or;

(b) a youthful offender under the Children Act, 1960 (Act LX of 1960) or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders, but has not done so, it shall record in its judgment, the special reasons for not having done so." Thus, under the Criminal Procedure Code, 1973, recourse to the provisions of s. 360 is a must.

In a trial against four persons charged by the Police with offences under ss. 302, 324, 323 IPC, including constructive liability under s. 34, two were, acquitted by the trial court and two were convicted. The appellant was sentenced to rigorous imprisonment for one year and a fine of Rs. 200/- for causing simple injury to one Arjan Singh. He was held vicariously guilty under ss. 324 IPC and awarded two years rigorous imprisonment and a fine of Rs. 1000/-. In addition he was convicted under s. 323 IPC, for causing hurt to the daughter of the deceased and on this count punished with R.I. for one year together with a fine of Rs. 200/-.

Releasing the appellant on probation, the Court

^

HELD: 1. Enacted law is guilty of inaction; because its obscure presence on the statute book escapes the vigilance of the Bar. Where even the Court ignores what is vital to the little man the guarantee of sentencing legality becomes a casualty. [1135H, 1136A]

1135

2. To jail an accused is mechanical farewell to the finer sentencing sensitivity of the Judge of salvaging a redeemable man by non-institutionalised treatment. If the judge has before him a complete and accurate pre-sentence investigation report which sets forth the conditions, circumstances, background, and surrounding of the accused and the circumstances underlying the offence which has been committed, the judge could then impose sentence with greater assurance that he has adopted the proper course. The purpose of s. 360 of the Code is precisely this and the goal of s. 235(2) is just this. [1138H, 1140B-C]

3. Sentencing legality is violated when the judge

shirks. And the Bar is often alien to correctional alternatives and concentrates its ammunition on culpability and extenuatory scaling down of imprisonment. [1189F]

4. Calling pre-sentence investigation reports, bestowal of intelligent care on the choice between institutional and non-institutional disposition like probation, conditional release and such community methods must form part of innovative sentences. But this should be based on careful study of the convict and his potentiality for reform; not guess-work, nor insensitive assessments. [1137B-E]

Williams v. New York, 337 U.S. 241, 249; quoted with approval.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 313 of 1978.

Appeal by Special Leave from the Judgment and Order dated 22-3-78 of the Punjab and Haryana High Court in Criminal Appeal No. 189/75.

A. S. Sohal and S. K. Jain for the Appellant.

Hardev Singh for the Respondent.

The Judgment of the Court was delivered by KRISHNA IYER, J. Every litigative appeal has a docket number but beneath the paper lurks a human factor, often forgotten in the forensic pugilists but now and then brought to the fore, as in this criminal appeal limited to the issue of appropriate sentence.

Surely, 'the law must keep its promises.' Justice Holmes expressed the obvious when he said this, but the breach of promise by the law on delivering criminal justice is daily experience, from police arrest to prison trauma. The focus in this case is on the sentencing alternatives in the Criminal Procedure Code; and the grievance pressed by counsel, when traditional grounds on the merits failed, was that the compassion of s. 360 professionally suffering benign neglect, be kindled and he be released. Enacted law is guilty of inaction, because its obscure presence on the statute book escapes the vigilance of the Bar. Where even the court ignores what is vital to the little man the guarantee of sentencing legality becomes a casualty. This case is an instance in point.

Now the brief story which enlivens the 'sentencing' submissions. Four villagers of rural Punjab, of whom the appellant is one, set upon Arjan Singh, a small official, while on his way back home. The sound and fury of the attack with sticks brought out the ill-starred, innocent Srimati Rakhi, Arjan Singh's brother's wife. Her daughter too came to the spot attracted by the fracas. Arjan Singh received blows, being the angry target of the assailants. But poor Rakhi, who came in accidentally, was hit on the head with a takua by Jagir Singh, one of the accused. She eventually died; and her daughter and Arjan Singh were hurt by the beating.

Four persons were charged by the police with offences under s. 302, 324 and 323 I.P.C. including constructive liability under s. 34. Two of them were acquitted by the trial court and the other two were convicted but appealed to the High Court. The man who dealt the fatal cut was Jagir Singh. His conviction under s. 302 I.P.C. and award of life imprisonment by the Sessions Court was converted into one under s. 304 Part 1, I.P.C. with a consequential reduction of sentence to seven years' rigorous imprisonment. His conviction on certain other counts was maintained but we are not concerned with him at all, since the appellant in this Court is the other accused Dilbag Singh. His role was lesser and related to causing simple injury to Arjan Singh for which he was sentenced to rigorous imprisonment for one year and a fine of Rs. 200/-. He was held vicariously guilty under ss. 324/34 I.P.C. and awarded two years' rigorous imprisonment and a fine of Rs. 1000/-. In addition he was convicted under s. 323 I.P.C. for causing hurt to the daughter of the deceased and on this count punished with R.I. for one year together with a fine of Rs. 200/-.

Having declined leave on the question of guilt, we confine our attention to the contentions on the sentence. We proceed on the footing of the facts found and ask ourselves whether any basic flaw in sentencing technology affords appellate intervention and re-designing of reformatory treatment in the conspectus of circumstances present in the case.

The courts in our country consult the punitive tariffs prescribed in the Penal Code, consult the prison period awarded in practice for such offences and with marginal variations mechanise the process. Judged by that test, conviction under s. 324 I.P.C. read with s. 34 plus substantive guilt under s. 323 I.P.C. is visited with two years for the former and one year R.I. especially when the incident has ended in death. But penal humanitarianism, strategies of non-institutional rehabilitation and a complex of other considerations in making an offender a non-offender have revolutionized the judicial repertory in re-socializing the criminal. The sentence hearing for which the Criminal Procedure Code, 1973 provides in s. 248(2) and s. 235(2) has hardly received the serious concern of the Courts despite the International Probation Year and therapeutic accent in penological literature. 'If the criminal law as a whole is the Cinderella of jurisprudence, then the law of sentencing is Cinderella's illegitimate baby'. Pre-sentence investigation reports, bestowal of intelligent care on the choice between institutional and non institutional disposition and habitual neglect of new avenues open to the court have constrained us to grant leave in the case so that guidelines may be laid down and probation and community-oriented methods lying in the legal limbs may be re-activated. Our prisons are overcrowded, our prisoners are subjected to iatrogenic incarceration, our penal drills are self-defeatingly callous to correctional measures and our jail budgets bulge without countervailing community benefits because the Bench and the Bar have dismissed as below judicial visibility such patterns as probation, conditional release. The time has come for Courts to abandon the Monroe Doctrine towards penology and concern itself with innovative sentences.

But this involves careful study of the convict and his potentiality for reform, not guess-work nor insensitive assessments. Therefore, we directed, right at the start, the Chief Probation Officer, Punjab, to make a report to this Court "as to the social circumstances and other relevant factors bearing on the consideration of eligibility of the petitioner to probation." That report has been received and its contents indicate competent advertence to pertinent criteria which we may briefly

sum up.

The appellant is 32 years old. His behavioral attitude is stated to be "obedient and law-respecting in nature". The officer goes on to state that the prisoner's character is fairly good, that he is upright, alert and interested in rural games. Of course, he seems to be wrestler of the locality which is good if it is practised as a game but dangerous if he exercises his muscles on other people's flesh. More importantly are the social influences that bear upon restraint and good behaviour. He is a petty farmer who left school in his teens, has ten acres of land belonging to the joint family of himself and five brothers and the mother. Being a cultivator and living in the joint family circumstances the officer finds no adverse remarks against him in the locality. On the other hand, the report refers to his great respect for the former Sarpanch of the village. His family circumstances evoke commiseration because his father is dead having been murdered in 1960. His mother is alive and has to be maintained by himself and his two brothers who are truck drivers and the third a jawan. He has his own nuclear family to maintain with a young wife and four children. A pitiable factor is that his elder daughter is paralytic from birth. His social position shows that he belongs to a lower middle class family, lives by agriculture, loves his mother and brothers and has earned the good-will of his neighbours who think that the occurrence was induced by an irritating land issue and temporary intoxication. A Sense of remorse has overcome him according to the Probation Officer who says that he is a first offender and not a recidivist. It is a painful fact, as noted in the report that this criminal case has cost him a tidy sum, loss of prestige and even family separation.

In the unrefined English of the Probation Officer we may summarise his assessment of the offender:

> "It was met of an accident as offender-client Dilbagh Singh seems to be law abiding and God fearing. His one weakness is wine and that is the route cause of the present diviation, otherwise on the whole offender's behaviour is normal and adjustable. The offender is in curable stage as crime has not gone deep into him. He can be adjustable amicably within his normal and natural environmental factors. The client can easily be reformed as he is neither professional criminal nor exhibits any tendency to future deviation."

The social milieu, the domestic responsibilities, the respect for the former Sarpanch he shows, the general goodwill he commands are plus points. The tragic fact of his father's murder and the running misfortune of his young daughter's paralysed limbs are sour facets of his life. The circumstance that he is gainfully employed as agriculturist and his brothers, though in diverse occupations, remain joint family members, are hopeful factors. The aggressive episode which led to his conviction was induced by the company of his cousin who serves a seven year sentence and the inebriation due to drinking habit. This simple villager responsible and gentle, sad and burdened, repentant and drained of his little wealth by the criminal case, has a long way to go in life being in his early thirtys. The drinks vice was the minus point. Many a peaceable person, on slight irritation, suffers bellicose switch-over under alcoholic consumption.

How does judicial discretion operate in this skew of circumstances? To jail him is mechanical farewell to the finer sentencing sensitivity of the judge of salvaging a redeemable man by

non-institutionalised treatment. The human consequences of the confinement process here will be no good to society and much injury to the miserable family and, above all, hardening a young man into bad behaviour, with prestige punctured, family injured, and society ill-served. Nor was the crime such, so far as his part was involved, as to deserve long deterrent incarceration. Our prison system, until humane and purposeful reforms pervades, surely injures, never improves. Prison justice has promises to keep, and ethological changes geared to curative goals are still alien-from dress and bed, refusal of frequent parole and insistence of mechanical chores, bonded labour, nocturnal tensions, and no scheme to reform and many traditions to repress-such is the zoological institutional realism and rehabilitative bankruptcy which inflict social and financial costs upon the State.(1) It is wasted sadism to lug this man into counter-productive imprisonment for one year.

Long years ago, Franklin D. Roosevelt, in a forward- looking speech on John Day, said:

> "If the criminal's past history gives good reason to believe that he is not of the naturally criminal type, that he is capable of real reform and of becoming a useful citizen, there is no doubt that probation, viewed from the selfish standpoint of protection to society alone, is the most efficient method that we have. And yet it is the least understood, the least developed, the least appreciated of all our efforts to rid society of the criminal."(2) The appellant has served a substantial part of his sentence in jail because of judicial innocence of the normae in the area of non-institutional disposition. It is easy to imprison, hard to individualise punishment. Sentencing legality is violated when the judge shirks. And the Bar is often alien to correctional alternatives and concentrates its ammunition on culpability and extenuatory scaling down of imprisonment.
>
> The observations of the United States Supreme Court in Williams v. New York (337 U.S. 241, 249) lay the right stress on pre-sentence reports:
>
> "have been given a high value by conscientious judges who want to sentence persons on the best available information rather than on guess-work and inadequate infor-
>
> mation. To deprive sentencing judges of this kind of information would undermine modern penological procedural policies that have been cautiously adopted throughout the nation after careful consideration and experimentation."

Judge F. Rayan Duffy has written:

> "If the judge has before him a complete and accurate pre-sentence investigation report which sets forth the conditions, circumstances, background, and surroundings of the defendant, and the circumstances underlying the offense which has been committed, the judge can then impose sentence with greater assurance that he has adopted the proper course. He can do so with much greater peace of mind."(1) The purpose of s. 360 of the Code is precisely this; the goal of s. 235(2) is just this. And yet, the exacting art is more honoured in the breach than in the observance if we

many wrongly use a Shakespearean passage to drive home our point. We stress the legal position so that subordinate courts may not treat conviction as the terminal point but the end of one chapter. We are mindful of the complexity and remove the impression that easy resort to s. 360 is right. No; it is wrong. Two quotes set the record straight. "Imprisonment is the appropriate sentence when the offender must be isolated from the community in order to protect society or if he can learn to readjust his attitudes and patterns of behaviour only in a closely controlled environment."(2) "The consequences of a sentence are of the highest order. If too short or of the wrong type, it can deprive the law of its effectiveness and result in the premature release of a dangerous criminal. If too severe or improperly conceived, it can reinforce the criminal tendencies of the defendant and lead to a new offence by one who otherwise might not have offended so seriously again.

The decision which is presented at sentencing is also enormously complex. It properly is concerned, and often predominantly, with the future which can be predicted for the particular offender. But any single- valued approach to sentencing is misdirected. A sentence which is not in some fashion limited in accordance with the particular offence can lead to a system of incomparable brutality. Per contra, a sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law."(1) In this case, after perusal of the report of the Probation Officer, counsel for the State, Sri Hardev Singh, with fair candour and shared correctness, consented to a release of the prisoner under S. 360. We agree. But one fact needs emphasis. The close nexus between violence and alcohol is a call to the State in every criminal investigation to identify the role of alcohol in the commission of the offence and in every prisoner's treatment to provide for anti-alcoholic therapy. To fail here is vicarious guilt of the State to Society. We direct release of the appellant forthwith. He will enter into a bond before the trial court together with Shri Dilbag Singh S/o Babu Singh as surety in the amount of Rs. 1000/- within two weeks of his release to keep the peace, be of good behaviour, to abjure alcohol and not to commit offence for a period of three years and to appear and receive sentence, if called upon in the meantime. The appeal is allowed with this direction which is the Q.E.D. of sentencing justice.

V.D.K. Appeal allowed.