# Shailesh Jasvantbhai & Anr vs State Of Gujarat & Ors on 19 January, 2006

**Equivalent citations: 2006 AIR SCW 436, (2006) 39 ALLINDCAS 94 (SC), 2006 CRI. L. J. 1132, 2006 (39) ALLINDCAS 94, 2006 CRILR(SC&MP) 167, 2006 (1) SCC(CRI) 499, 2006 (1) SCALE 561, 2006 ALL MR(CRI) 884, 2006 (2) SCC 359, 2006 (3) SRJ 325, (2006) 1 SCJ 756, (2005) 2 HINDULR 325, (2005) 3 ALLCRILR 476, (2006) 1 PAT LJR 459, (2006) 1 RECCRIR 704, (2006) 1 SCALE 561, (2006) 1 SUPREME 389, (2006) 2 GUJ LR 1428, (2006) 86 DRJ 625, (2006) 2 EASTCRIC 97, (2006) 33 OCR 824, (2006) 1 GCD 681 (SC), (2006) 54 ALLCRIC 890, (2006) 1 CHANDCRIC 317, (2006) 2 ALLCRILR 245, (2006) 1 CRIMES 196, (2006) 1 CURCRIR 99, (2006) 1 ALLCRIR 821, (2006) SC CR R 622, 2006 CRILR(SC MAH GUJ) 1 167, MANU/SC/638/2006, 2006 (1) ANDHLT(CRI) 257 SC**

**Author: Arijit Pasayat**

**Bench: Arijit Pasayat, S.H. Kapadia**

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           CASE NO.:
Appeal (crl.)  118 of 2006

PETITIONER:
Shailesh Jasvantbhai & Anr.

RESPONDENT:
State of Gujarat & Ors.

DATE OF JUDGMENT: 19/01/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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JUDGMENT (Arising out of SLP(Crl.) No. 1494 of 2004) With CRIMINAL APPEAL NO. 119 OF 2006 (Arising out of SLP(Crl.) No. 3908 of 2004) ARIJIT PASAYAT, J.

Leave granted.

Of these two appeals, one is by the State of Gujarat and the other by the victim of the crime. They assail correctness of the judgment rendered by a Division Bench of the Gujarat High Court. By the impugned judgment while upholding the conviction recorded by the trial court the High Court

reduced the sentence to the period already undergone; but awarded compensation to the victims.

Background facts in a nutshell are as under:

> On 30th March, 2002, first information report was lodged alleging that the respondents Pratapji and Jayantubha (hereinafter referred to as accused by their respective names) assaulted the informant Sameer Kumar and the appellant Shailesh Jasvantbhai causing serious injuries. On the basis of the information lodged, investigation was undertaken and the accused persons were tried for alleged commission of offence punishable under Sections 307,324, 504 read with Section 114 of the Indian Penal Code,1860( in short the 'IPC') and section 135 of the Bombay Police Act. The trial court held the accused persons to be guilty and sentenced each to undergo rigorous imprisonment for 10 years with fine of Rs.3,000/- with default stipulation for the offences punishable under Sections 307 and 114 IPC. No separate sentence was imposed for the offences punishable under Sections 324 and 114 IPC. The accused persons were, however, acquitted of the charges relating to Section 504 IPC and Section 135 of the Bombay Police Act. The incident as described in the first information report and as unfolded during trial was that the incident in question happened on 30th March, 2002 when complainant Sameer Kumar and his friend appellant Shailesh were standing near a pan shop situated on Bhabhar Highway.

After having their pans, both the accused came there and asked the complainant to pay the charges for their pans. A quarrel started as the complainant refused to accept the demand of the accused. Thereafter at about 9.30 p.m. on the next day, when complainant and his friend's, Balmukund and Shailesh were standing at the pan shop situated opposite a PCO, both the accused came there, each was armed with a knief and started abusing the complainant. Accused No. 2 Jayantubha caught hold of the complainant and accused No. 1 Pratap gave knife blow on the right hand of the complainant. He also gave another blow on the left hand of the complainant. When the complainant shouted for help, appellant Shailesh intervened. Both the accused diverted their attention to Shailesh by inflicting blows with knife on him. Shailesh sustained injury on the left side of the neck and fell down on the ground. Thereafter Balmukund and Bharat also intervened. Accused thereafter fled. Both the injured were taken to Dr. Dhirajbhai (PW1) for the treatment who also informed the police. The police thereafter recorded the complaint and started investigation, submitted the chargesheet against accused. Trial was held as accused persons pleaded innocence. As noted above, the trial court found them guilty and convicted and sentenced them. Trial Court's judgment was assailed before the High Court.

During the hearing of the appeal before the High Court conviction was not questioned, but it was submitted that the accused Pratapji had appeared in Standard X examination before a week of the incident, the sentence was harsh, had the likelihood of spoiling the careers of the accused persons. It was, therefore, submitted that a lenient view should be taken in the matter by providing adequate compensation to the injured persons. The plea was resisted by the State. But the High Court was of the view that even though the conviction was not seriously questioned, the same was rightly so done because the conviction was in order. However, it was held that as both the accused persons were in

prison and one of them had appeared in Standard X examination, and had no criminal antecedent the sentence was restricted to the period already undergone i.e. for about two years with the fine of Rs.60,000/- (Rupees sixty thousand) which was to be paid as compensation to the injured.

In support of the appeal learned counsel for the appellants submitted that no sympathy or leniency should have been shown to the accused persons. The order was passed even without any notice to the injured persons who would have shown as to how no leniency was warranted. The factor which weighed with the High Court i.e. the accused persons being student with no criminal antecedent had merely no relevance. It was also factually not correct that the accused persons had no criminal antecedent. In reality they were involved in large number of similar cases.

Learned Counsel for the respondents supported the impugned judgment.

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 corner-stone 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 the 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.

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. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Nadu (1991 (3) SCC 471).

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation,

and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCGDautha v. State of Callifornia (402 US 183: 28 L.D. 2d 711) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC

220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

Similar view has also been expressed in Ravji v. State of Rajasthan (1996 (2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. 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 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". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will loss its relevance. In State of M.P. vs. Ghanshyam Singh (2003(8) SCC 13), Surjit Singh Vs. Nahara Ram and Anr. (2004 (6) SCC 513) and State of M.P. Vs. Munna Choubey and Anr. (2005 (2) SCC 710) the position was again highlighted.

We find from the record that before learned Additional Sessions Judge, Deesa an affidavit was filed by the sub inspector of Police that accused Pratapji was involved in large number of cases and details of nine cases were given. Similarly it was stated that the accused no.2 Jayantubha, who was an accomplice of accused no.1 was also involved in nine cases. The trial court while dealing with the bail application filed by the accused also noted about the pendency of the cases. It further appears that during pendency of the trial the bail granted to accused Pratapji was cancelled for breach of conditions imposed by the court for grant of bail. These aspects do not appear to have been considered by the High Court. It proceeded on factually erroneous premises without keeping in view correct principles relating to punishment.

Above being the position we set aside the impugned judgment of the High Court and remit the matter to the High Court for a fresh hearing on the question of sentence, uninfluenced by any observation made in these appeals.

The appeals are allowed to the aforesaid extent.