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STATE OF MADHYA PRADESH

v.

UDHAM AND OTHERS

(Criminal Appeal No. 690 of 2014)

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OCTOBER 22, 2019

**[N. V. RAMANA, MOHAN M. SHANTANAGOUDAR  
AND AJAY RASTOGI, JJ.]**

- Sentencing – Tests for – Complainant lodged report that*
- C *respondents-accused entered his house, attacked him and the others present with axes and sticks resulting in various injuries – Respondents then allegedly threatened the complainant that if he did not keep his cow confined, he would be killed – Respondents were convicted u/s.326 r/w s.34, IPC & s.452, IPC and sentenced to 3 years rigorous imprisonment u/s.326 r/w s.34 – They were also*
- D *sentenced rigorous imprisonment for 1 year for the offence u/s.452, IPC – High Court partly allowed the appeal and reduced the sentence to the period of imprisonment already undergone (4 days), while enhancing the fine amount by Rs.1500/- each – On appeal, held: In the present case, there is no detailed analysis of the facts of the case, nature of the injuries caused, weapons used, number of victims, etc. given by the High Court in the impugned order – While sentencing the accused, it did not consider the second charge proved against the respondents u/s.452, IPC – Even the fact that the respondents had only undergone sentence of 4 days at the time of passing of the impugned order, brings into question the High*
- E *Court pointing the same as reason for reducing their sentence – Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test – Facts of the case need to be balanced with the fact that this was the first offence committed by the respondents*
- F *and the motive, which is stated to be trivial – Occurrence of the crime is of 2008 and the respondents were only ordered to undergo 4 days of jail term with fine of Rs.1,500/- – Same needs to be enhanced to commensurate with the guilt of the respondents – For offence u/s.326, IPC r/with s.34, IPC, the respondent nos.1-3 to serve rigorous imprisonment for 3 months and pay fine of*
- G *Rs.1500/- each – The High Court has not considered the facts of the case, nature of the injuries caused, weapons used, number of victims, etc. given by the High Court in the impugned order – While sentencing the accused, it did not consider the second charge proved against the respondents u/s.452, IPC – Even the fact that the respondents had only undergone sentence of 4 days at the time of passing of the impugned order, brings into question the High Court pointing the same as reason for reducing their sentence – Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test – Facts of the case need to be balanced with the fact that this was the first offence committed by the respondents*
- H *and the motive, which is stated to be trivial – Occurrence of the crime is of 2008 and the respondents were only ordered to undergo 4 days of jail term with fine of Rs.1,500/- – Same needs to be enhanced to commensurate with the guilt of the respondents – For offence u/s.326, IPC r/with s.34, IPC, the respondent nos.1-3 to serve rigorous imprisonment for 3 months and pay fine of*

Rs. 75,000/- each, within 1 month – For the offence u/s.452, IPC, they are to serve rigorous imprisonment for 3 months and pay fine of Rs. 25,000/- each, within 1 month– On default of payment of fine, to suffer simple imprisonment for 3 months – For offence u/s.326, IPC r/w s.34, IPC, the respondent no.4, aged around 80 years, to serve rigorous imprisonment for 2 months and pay fine of Rs.50,000/- within 1 month – For offence u/s.452, IPC, he is to serve rigorous imprisonment for 2 months and pay fine of Rs.15,000/- within 1 month – On default of payment of fine, to suffer simple imprisonment for 1 month – Sentences to run concurrently – Respondents be taken into custody forthwith, to serve their remaining sentence – Penal Code, 1860 – s.326 r/w ss.34, 452.

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**Partly allowing the appeal, the Court**

**HELD:** 1.1 In the present case, it is clear that there is no detailed analysis of the facts of the case, the nature of the injuries caused, the weapons used, the number of victims, etc. given by the High Court in the impugned order. The High Court while sentencing the accused, has not taken into consideration the second charge proved against the respondents-accused herein, under Section 452 of IPC. Even the fact that the respondents-accused had only undergone sentence of 4 days at the time of passing of the impugned order, brings into question the High Court pointing to the same as a reason for reducing their sentence. Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list). Under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be

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- A ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach. The injuries on some of the victims are not specifically attributed. The respondent group was numerically matched with that of the victims and there were two respondents-accused within the group carrying lathis. The bodily integrity was compromised as a result of the injury caused, but there was no evidence led to indicate any permanent embellishments of any part. The scope of intrusion of privacy due to the assault is also minimal. There was no material destruction involved in the crime. [Paras 10, 12, 13-15][982-C-D; F-H; 983-A, E-F]
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- C 1.2 The facts of the case highlighted, however, need to be balanced with the fact that this was the first offence committed by the respondents-accused and that the motive, which is stated to be trivial. Having regard to the fact that the occurrence of the crime is of the year 2008 and the respondents-accused have been,
- D in a way, only ordered to undergo four days of jail term with a fine of Rs. 1,500/-, the same needs to be enhanced to commensurate with the guilt of the respondents-accused. For the commission of the offence under Section 326 of IPC read with Section 34 of IPC, the respondent nos. 1, 2 and 3 are sentenced to serve rigorous imprisonment for 3 months and to pay a fine of Rs.
- E 75,000/- each within a period of 1 month, on default of payment of which they are to suffer simple imprisonment for 3 months. For the offence under Section 452 of IPC, the respondent nos. 1, 2 and 3 are sentenced to serve rigorous imprisonment for 3 months and to pay a fine of Rs. 25,000/- each within a period of 1 month,
- F on default of payment of which they are to suffer simple imprisonment for 3 months. For the offence under Section 326 of IPC read with Section 34 of IPC, the respondent no. 4, who is presently aged around 80 years, is sentenced to serve rigorous imprisonment for 2 months and to pay a fine of Rs.50,000/- within a period of 1 month, on default of payment of which he is to suffer simple imprisonment for 1 month. For the offence under Section 452 of IPC, respondent no. 4 is sentenced to serve rigorous imprisonment for 2 months and to pay a fine of Rs.15,000/- within a period of 1 month, on default of payment of which he is to suffer simple imprisonment for 1 month. The sentences are to run
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- H concurrently. The respondents are directed to be taken into

**custody forthwith, to serve out their remaining sentence, as imposed. The impugned order of the High Court is modified in the afore-stated terms. [Paras 16-20] [983-G-H; 984-A-G]** A

*Accused 'X' v. State of Maharashtra (2019) 7 SCC 1 – relied on.*

*Yashwant v. State of Maharashtra AIR 2018 SC 4067* B  
– referred to.

**Case Law Reference**

<b>(2019) 7 SCC 1</b>	<b>relied on</b>	<b>Para 9</b>	
<b>AIR 2018 SC 4067</b>	<b>referred to</b>	<b>Para 16</b>	C

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 690 of 2014.

From the Judgment and Order dated 06.11.2012 of the High Court of Madhya Pradesh Bench at Gwalior in Criminal Appeal No. 659 of 2011. D

R.K. Rathore, Rahul Kaushik, Harsh Parasher, Mrs. Swarupama Chaturvedi, Advs. for the Appellant.

Soumen Talukdar, R.D. Rathore, Ms. S. Ramamani, Advs. for the Respondents. E

The judgment of the Court was delivered by

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 690 of 2014.

**N. V. RAMANA, J.**

1. The present appeal is directed by the appellant-State against the final order dated 06.11.2012, passed by the High Court of Madhya Pradesh (Gwalior Bench) in Criminal Appeal No. 659 of 2011, whereby the High Court partly allowed the appeal filed by the respondents-accused herein and reduced the sentence awarded by the Trial Court to the period already undergone for the offences under Section 326 of the Indian Penal Code [*hereinafter referred to as 'IPC'*] read with Section 34 of IPC, and Section 452 of the IPC. F

2. The prosecution's case is that the complainant lodged a report on 15.04.2008 that at around 9 p.m., while he was sitting inside his house G

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- A with three other people, the respondents-accused barged in, carrying weapons. More specifically, respondent nos. 1 and 3 were carrying axes, while respondent nos. 2 and 4 were carrying sticks. The respondents-accused asked the complainant why he had not kept his cow tied, and subsequently, on respondent no. 4's exhortation, the respondents-accused attacked the complainant and the others present at that time resulting in various injuries to them. Respondents-accused then allegedly threatened the complainant that if he did not keep his cow confined, he would be killed.
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- 3. The Trial Court tried the respondents-accused and ultimately convicted them for the offences under Section 326 read with Section 34 of IPC as well as the offence under Section 452 of IPC. The respondents-accused were sentenced to undergo 3 years rigorous imprisonment and a fine of Rs. 250/- (Rupees Two Hundred and Fifty Only) each for the offence under Section 326 read with Section 34 of IPC. They were further sentenced to undergo rigorous imprisonment for 1 year with a further fine of Rs. 250/- (Rupees Two Hundred and Fifty Only) each for the offence under Section 452 of IPC. In case of default of payment of fine, they were to undergo further rigorous imprisonment for 6 months. All sentences were made to run concurrently by the Trial Court.
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- 4. Being aggrieved, the respondents-accused filed an appeal before the High Court, challenging only the quantum of sentence imposed on them by the Trial Court. *Vide* impugned order, the High Court partly allowed the appeal and reduced the sentence to the period of imprisonment already undergone by them, which was a period of 4 days, while enhancing the fine amount imposed upon them by Rs. 1500/- (Rupees One Thousand Five Hundred Only) each. The respondents-accused were directed to deposit the enhanced fine within a period of 30 days, failing which they were to undergo simple imprisonment for a period of 30 days.
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- 5. Aggrieved by the impugned order, the State has filed the present appeal challenging the order of the High Court reducing the sentence awarded to the respondents-accused. The learned counsel for the appellant-State submitted that the High Court erred in not considering the gravity of the offence and the facts and circumstances of the case, particularly the fact that the respondents-accused had undergone imprisonment of only 4 days.
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6. On the other hand, the learned counsel for the respondents-accused submitted that the High Court has correctly appreciated the facts and circumstances of the case in passing the impugned order, and therefore, the same does not merit any interference from this Court. A

7. Heard learned counsel for the parties.

8. At the outset, it is pertinent to note that the reasoning of the High Court, for passing the impugned order and partly allowing the appeals of the respondents-accused herein, is limited to one sentence. The High Court states in its order that looking to the nature of the offence, the fact that this is the first offence of the respondents and the period of sentence already undergone by them, it is passing the impugned order. B

9. At this stage the observations of this Court in *Accused 'X' v. State of Maharashtra*, (2019) 7 SCC 1, in which two of us were part of the Bench, with respect to sentencing in India are relevant here- C

“49. Sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch. [Nicola Padfield, Rod Morgan and Mike Maguire, “Out of Court, Out of Sight? Criminal Sanctions and No Judicial Decision-making”, *The Oxford Handbook of Criminology* (5th Edn.).] This process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. It is established that sentencing is a socio-legal process, wherein a Judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the Judges to give punishment, it becomes important to exercise the same in a principled manner. We need to appreciate that a strict fixed punishment approach in sentencing cannot be acceptable, as the Judge needs to have sufficient discretion as well. D

50. Before analysing this case, we need to address the issue of the impact of reasoning in the sentencing process. The reasoning of the trial court acts as a link between the general level of sentence for the offence committed and to the facts and circumstances. The trial court is obligated to give reasons for the imposition of sentence, as firstly, it is a fundamental principle of natural justice that the adjudicators must provide reasons for E

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- A reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. Further, the appellate court is better enabled to assess the correctness of the quantum of punishment challenged, if the trial court has justified the same with reasons...”
- B *(emphasis supplied)*
- C 10. In the present case, it is clear that there is no detailed analysis of the facts of the case, the nature of the injuries caused, the weapons used, the number of victims, etc. given by the High Court in the impugned order. The High Court while sentencing the accused, has not taken into consideration the second charge proved against the respondents-accused herein, under Section 452 of IPC. Even the fact that the respondents-accused had only undergone sentence of 4 days at the time of passing of the impugned order, brings into question the High Court pointing to the same as a reason for reducing their sentence. As such, the order of the High Court merits interference by this Court.
- D 11. We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by the Courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.
- E 12. Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).
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13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach.

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14. Coming to the appropriate sentence which is to be imposed on the respondents-accused in this case, the facts of this case need closer scrutiny. The respondents-accused entered the house of the complainant, attacked the others present with axes and with sticks. Four people, including the complainant, were injured. The injuries caused were incised wounds on the hands and backs of the victims, an incised wound next to the ear of one of the victims and bruising, *etc.* The respondents-accused were convicted for the offence under Section 326 read with Section 34 of IPC, which carries a maximum sentence of life imprisonment, or of imprisonment of a term which may extend to ten years, and fine. They were also convicted under Section 452 of IPC, which carries a maximum sentence of seven years along with fine.

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15. The respondents-accused herein were males of age 33 years, 33 years, 28 years and 70 years respectively at the time of the incident. The main allegation as against the respondent nos. 1 and 3 is that they had used an axe to attack the victim. In this scuffle there is no dispute that some of the respondents-accused herein were also injured profusely. Further the motivation seems to be that the cow belonging to the victims had entered the household of the accused and the respondent no. 1 with his co-accused are proved to be the aggressor herein. From the perusal of the record, the injuries on some of the victims are not specifically attributed. The respondent group was numerically matched with that of the victims and there were two respondents-accused within the group carrying lathis. The bodily integrity was compromised as a result of the injury caused, but there was no evidence led to indicate any permanent embellishments of any part. The scope of intrusion of privacy due to the assault is also minimal. There was no material destruction involved in the crime.

16. In this context, we need to note that the facts of the case highlighted above, however, need to be balanced with the fact that this was the first offence committed by the respondents-accused and that the motive, which is stated to be trivial. There is a requirement to treat the crime committed herein differently than other objectionable situations

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A such as police atrocities etc. [refer to *Yashwant v. State of Maharashtra*, AIR 2018 SC 4067] Having regard to the fact that the occurrence of the crime is of the year 2008 and the respondents-accused have been, in a way, only ordered to undergo four days of jail term with a fine of Rs. 1,500/-, we need to enhance the same to commensurate with the guilt of the respondents-accused.

- B 17. Comparatively, having perused certain precedents of this Court, we are of the considered opinion and accordingly direct that for the commission of the offence under Section 326 of IPC read with Section 34 of IPC, the respondent nos. 1, 2 and 3 are sentenced to serve rigorous imprisonment for 3 months and to pay a fine of Rs. 75,000/- (Rupees Seventy-Five Thousand Only) each within a period of 1 month, on default of payment of which they are to suffer simple imprisonment for 3 months. For the offence under Section 452 of IPC, the respondent nos. 1, 2 and 3 are sentenced to serve rigorous imprisonment for 3 months and to pay a fine of Rs. 25,000/- (Rupees Twenty-Five Thousand Only) each within a period of 1 month, on default of payment of which they are to suffer simple imprisonment for 3 months.

- C 18. For the offence under Section 326 of IPC read with Section 34 of IPC, the respondent no. 4, who is presently aged around 80 years, is sentenced to serve rigorous imprisonment for 2 months and to pay a fine of Rs. 50,000/- (Rupees Fifty Thousand Only) within a period of 1 month, on default of payment of which he is to suffer simple imprisonment for 1 month. For the offence under Section 452 of IPC, respondent no. 4 is sentenced to serve rigorous imprisonment for 2 months and to pay a fine of Rs. 15,000/- (Rupees Fifteen Thousand Only) within a period of 1 month, on default of payment of which he is to suffer simple imprisonment for 1 month.

- D 19. The above sentences are to run concurrently. Further, the respondents are directed to be taken into custody forthwith, to serve out their remaining sentence, as imposed hereinabove.

- E 20. Accordingly, the appeal is partly allowed and the impugned order of the High Court is modified in the afore-stated terms.