

CASE DETAILS

PRAMOD KUMAR MISHRA

v.

THE STATE OF U.P.

(Criminal Appeal No. 2710 of 2023)

SEPTEMBER 04, 2023

[ABHAY S. OKA AND SANJAY KAROL, JJ.]

HEADNOTES

Issue for consideration: Appellant convicted u/s. 307 IPC and sentenced to undergo 5 years rigorous imprisonment, whether the sentence imposed by the Trial Court and as upheld by the High Court is just and proper.

Sentence/sentencing – Trial Court convicted A-2 (appellant) u/s. 307 IPC and sentenced him to undergo 5 years rigorous imprisonment – Conviction and order of sentence of appellant confirmed by the High Court – Limited question before the Supreme Court regarding the quantum of sentence:

Held: It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration – 39 years have passed since the date of offence and both the other accused persons have come to be acquitted – It is a matter of record that there was old enmity between the complainant and A1 relating to the piece of land where the offence came to be committed, while pertinently, the appellant (A2) is the nephew of A1 – There are no criminal antecedents of the appellant that have been brought on record – Further, from the record, it cannot be said that the appellant acted in a premeditated manner – Therefore, in the interest of justice and in consideration of the above mentioned mitigating factors, this Court reduces the sentence imposed on the appellant-accused from 5 years rigorous imprisonment to 3 years of rigorous imprisonment. [Paras 21, 22, 23]

LIST OF CITATIONS AND OTHER REFERENCES

Jagmohan Singh v. State of U.P. (1973) 1 SCC 20 : [1973] 2 SCR 541 – followed.

Mohammad Giassudin v. State of Andhra Pradesh (1977) 3 SCC 287 : [1978] 1 SCR 153; *Narinder Singh & Ors. V. State of Punjab & Anr.* (2014) 6 SCC 466 : [2014 (4) SCR 1012 – relied on.

State of Uttar Pradesh v. Sanjay Kumar (2012) 8 SCC 537 : [2012] 7 SCR 359; *Purushottam Dashrath Borate & Anr. v. State of Maharashtra* (2015) 6 SCC 652 : [2015] 5 SCR 1112; *Jasbir Singh v. Tara Singh & Ors.* (2016) 16 SCC 441 : [2015] 10 SCR 61; *Vetrivel v. State represented by its Deputy Superintendent of Police & Anr.* 2022 SCC Online SC 73; *Panneer Selvam v. State of Tamil Nadu* Criminal Appeal No. 871 of 2023 – referred to.

OTHER CASE DETAILS INCLUDING IMPUGNED ORDER AND APPEARANCES

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.2710 of 2023.

From the Judgment and Order dated 19.04.2019 of the High Court of Judicature at Allahabad in CRLA No.679 of 1987.

Appearances:

Vinod Prasad, Sr. Adv., Ajay Kumar Srivastava, Dhirendra Kumar, Bijender Singh, Ms. Jyoti Tiwary, Mrs. Sanno Kumar, Advs. for the Appellant.

Garvesh Kabra, Shantanu Singh, Advs. for the Respondent.

JUDGMENT / ORDER OF THE SUPREME COURT**JUDGMENT****SANJAY KAROL J.**

1. Leave granted.

2. The present appeal arises from the final judgment and order dated 19.04.2019 passed by the High Court of Judicature at Allahabad

in Criminal Appeal No. 679 of 1987, which confirmed the judgment and order dated 03.03.1987 passed by IInd Addl. District & Sessions Judge Varanasi (hereinafter “Trial Court”) vide which the present appellant, Pramod Kumar Mishra was convicted under Section 307 of the Indian Penal Code (hereinafter “IPC”) and sentenced him to undergo 5 years rigorous imprisonment. Co-accused Jawahar and Suresh were acquitted by the Trial Court.

3. This Court vide order dated 10.02.2023, had issued notice, limited to the question of sentence awarded to the appellant. Therefore, the question which arises before this Court is whether the sentence imposed by the Trial Court and as upheld by the High Court is just and proper?

4. The prosecution case emerging from the record, also as set out by the Courts below, is that on 12.08.1984, Kapil Deo Misir (hereafter “PW1”) was returning to his house at about 6:00 AM when he saw Pramod Kumar Mishra and other co-accused persons, destroying crops of *arhar* and *junhari* in his field. Seeing this, PW1 intervened, which led to all of these accused persons attacking him, armed with weapons i.e. lathis and ballam. This attack resulted in PW1 suffering injuries and becoming unconscious. Thereafter, FIR Case Crime No.67 of 1984 under Section 307 of IPC came to be registered on the same day at 7:30 AM by PW1 against Jawahar @ Munna Mishra (A1), Pramod Mishra (A2, present appellant) and Suresh Mishra (A3).

5. The investigation was conducted by S.I. Gauri Shankar Singh (hereafter “PW7”), who after completing the investigation submitted chargesheet against Jawahar @ Munna Mishra (A1), Pramod Mishra (A2, present appellant) and Suresh Mishra (A3). The Trial Court registered the case as S.T. No. 51 of 1985 and proceeded with the trial. Charges were framed against the accused persons under Section 307 read with Section 34 of the IPC.

6. The prosecution examined seven witnesses to substantiate its case. PW1 - Kapil Deo Misir is the injured complainant. PW2 - Doothnath and PW3 - Arjun Singh are eye-witnesses to the alleged incident. PW4 - Dr. Ramji Pandey conducted medical examination of the complainant and

prepared injury report Ex. Ka-2. PW5 - Dr. Barar Singoor and PW6 - Dr. S.K. Singh were present during the medical examination and x-ray of the injured complainant. The investigating officer was examined as PW7.

7. The appellant in his statement under Section 313 Cr.P.C. denied having committed such offence and stated that the case stood registered on account of old enmity.

8. After hearing the parties, the Trial Court convicted A2 - Pramod Kumar Mishra under Section 307 IPC and sentenced him to undergo 5 years rigorous imprisonment. A1 - Jawahar and A3 - Suresh were acquitted as found not being guilty. The findings of the Trial Court were that:

- a. The statement of PW1, complainant, that he was attacked by Pramod with ballam at 6:00 AM on 12.08.1994 is fully corroborated by documentary evidence (FIR Ex. Ka-1 and the medical examination Ex. Ka-2) and the medical opinion of PW4 - doctor that the injury could have been probably caused by the *ballam* which was shown to him in Court. Also, testimonies of PW2 - Doodhnath Singh and PW3 - Arjun Singh fully corroborate the testimony of PW1. The statements could not be disbelieved merely because they are close friends of Kapil Deo.

9. The findings of fact, judgment of conviction and order of sentence qua the present appellant stands affirmed by the High Court of Allahabad vide impugned order dated 19.04.2019.

10. In view of our order dated 10.02.2023, the present appeal is required to be considered only qua the quantum of sentence.

11. It is a well-established principle that while imposing sentence, aggravating and mitigating circumstances of a case are to be taken into consideration.

12. A Constitution Bench of this Court in **Jagmohan Singh v. State of U.P.¹** (5-Judge Bench), while considering the issue of constitutionality of imposition of death penalty emphasised that aggravating and mitigating

1. (1973) 1 SCC 20

circumstances need to be considered in awarding sentence to a convict. The result is dependent upon facts of each case.

13. India, till date, does not have a statutory sentencing policy in place. This Court, however, has proceeded to examine the objective behind sentencing and the factors to be kept in mind while imposing such punishments. In **Mohammad Giassudin v. State of Andhra Pradesh**² (2-Judge Bench), it stood observed that:

“9. Crime is a pathological aberration, that the criminal can ordinarily be redeemed, that the State has to rehabilitate rather than avenge. The sub-culture that leads to anti-social behaviour has to be countered not by undue cruelty but by re-culturisation. Therefore, the focus of interest in penology is the individual and the goal is salvaging him for society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The *human* today views sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of social defense. We, therefore, consider a therapeutic, rather than an “*in terrorem*” outlook, should prevail in our Criminal Courts, since brutal incarceration of the person merely produces laceration of his mind.

....

16. 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 conditions of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to 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 factors have to be taken into account by the Court in deciding upon the appropriate sentence.

17. It will thus be seen that there is a great discretion vested in the Judge, especially when pluralistic factors enter his calculations. ... innovation, in all conscience, is in the field of judicial discretion."

14. Similarly, in **Narinder Singh & Ors. V. State of Punjab & Anr.³** (2-Judge Bench), while considering the settlement between the parties concerning an offence under Section 307 IPC, observed :

- i. The goal of sentencing can be a combination of incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration.
- ii. In India we do not have any such sentencing policy till date. The prevalence of such guidelines may not only aim at achieving consistency in awarding sentences in different cases, such guidelines normally prescribe the sentencing policy as well, namely, whether the purpose of awarding punishment in a particular case is more of a deterrence or retribution or rehabilitation, etc. In the absence of such guidelines in India, the Courts go by their own perception about the philosophy behind the prescription of certain specified penal consequences for particular nature of crime.
- iii. For some deterrence and/or vengeance becomes more important whereas another Judge may be more influenced by rehabilitation or restoration as the goal of sentencing. Sometimes, it would be a combination of both which would weigh in the mind of the Court in awarding a particular sentence. However, that may be a question of quantum.

15. In **State of Uttar Pradesh v. Sanjay Kumar⁴** (2-Judge Bench), this Court held that Courts for the purpose of deciding just and appropriate sentence, have to delicately balance the aggravating and mitigating factors

3 (2014) 6 SCC 466

4 (2012) 8 SCC 537

and circumstances in which a crime has been committed. To balance the two, is the primary duty of Courts.

16. This Court has also noted the requirement for *deterrence* through punishments in certain categories of cases. In **Purushottam Dashrath Borate & Anr. v. State of Maharashtra**⁵ (3-Judge Bench), it was observed that it would be necessary for this Court to notice the rising violent crimes against women and the sentencing policy adopted by the Courts, in such cases, ought to have a stricter yardstick so as to act as a deterrent.

17. More recently, in **Jasbir Singh v. Tara Singh & Ors.**⁶ (2-Judge Bench), this Court observed that it is not possible to have strict principles on sentencing in absence of a sentencing policy for the State, however certain mitigating factors like the gravity of the offence, motive for commission of the crime, the manner in which it was committed need to be borne in mind and thereafter sentence be imposed.

18. In **Vetrivel v. State represented by its Deputy Superintendent of Police & Anr.**⁷, a Bench of 2 Judges, of which one of us (Oka J.) was a member, reduced the sentence of the appellant therein under Section 323 of the IPC from 3 years to 1 year of imprisonment, considering various mitigating factors including the fact that there was a prior quarrel between the accused and complainant over possession of their shop premises.

19. Again recently, this Court in **Paneer Selvam v. State of Tamil Nadu**⁸ (2-Judge Bench) reduced the substantive sentence under Section 304(ii) IPC from 7 years to 5 years of imprisonment in the interest of justice and since there was no premeditation on the part of the appellant.

20. Coming to the facts at hand, under Section 307 IPC, attempt to commit murder is a punishable offence, punishment for which is up to 10 years of imprisonment and if the act committed has caused hurt to the person, then punishment may extend to life imprisonment and fine or both.

5 (2015) 6 SCC 652

6 (2016) 16 SCC 441

7 2022 SCCOnline SC 73

8 Criminal Appeal No. 871 of 2023

21. Having regard to the submissions made by the counsel appearing for the parties and findings of the Courts below, it can be seen that 39 years have passed since the date of offence and both the other accused persons have come to be acquitted. From a reading of the impugned order, it is a matter of record that there was old enmity between the complainant and A1 relating to the piece of land where the offence came to be committed, while pertinently, the appellant (A2) is the nephew of A1.

22. There are no criminal antecedents of the appellant that have been brought on record. Further, from the record, it cannot be said that the appellant acted in a premeditated manner, whatsoever.

23. Therefore, in the interest of justice and in consideration of the abovementioned mitigating factors, this Court reduces the sentence imposed on the appellant - accused from 5 years rigorous imprisonment to 3 years of rigorous imprisonment. The appellant shall pay a fine amount of Rs.50,000/- (Rupees Fifty Thousand) within a period of 6 weeks from today. In default of payment of fine, the appellant shall undergo rigorous Imprisonment for 3 months. The fine to be paid to the Complainant by way of compensation.

24. The appeal is partly allowed in the abovementioned terms. The appellant is directed to undergo the remaining period of his sentence.

25. Pending application(s), if any, are disposed of.

Headnotes prepared by:
Ankit Gyan

Appeal partly allowed.