A UGGARSAIN

v.

THE STATE OF HARYANA & ORS.

(Criminal Appeal No(s). 1378-1379 of 2023)

B JULY 03, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

Sentence/Sentencing – Appropriateness of sentences – Eight accused persons were charged with and tried for offences C *punishable u/ss. 148, 149, 302, 304 Part-II and 323 of IPC for having causing death of deceased and causing injury on others – Trial Court convicted all the accused persons and sentenced them to rigorous imprisonment for life u/s. 302 r/w s.149 and one year rigorous imprisonment u/s. 148 and six months rigorous imprisonment u/s.323 r/w. s.149 – The High Court partially allowing the appeal* D *by the accused persons converted their conviction u/s. 302 r/w. s. 149 IPC to s.304 Part II r/w. s.149 IPC and affirmed convictions u/s.148 and s.323 r/w. s.149 IPC – High Court observed that the case fell under Exception 4 to s.300 IPC – Appellants contended that impugned judgment gravely erred in adopting the standard of sentence undergone, which resulted in widely different and disparate* E *results – On appeal, held: Appeals confined to the extent of appropriateness of sentences undergone by different accused persons for causing the same offence – All eight accused have undergone different periods under imprisonment varying from 9 years to 11 months – Principle of proportionality should guide the sentencing process – In the instant case, the sentencing was* F *inexplicable – No rationale appeared from the reasoning of the High Court for this wide disparity – The judgment of High Court fell into error having not considered the gravity of the offence – Having held all the accused criminally liable, u/s. 304 Part II r/w s.149 IPC and also not having found any distinguishing feature in the form of separate roles played by each of them, the imposition of* G *the "sentence undergone" criteria, amounted to aberration, and the sentencing is for that reason, flawed – Considering totality of circumstances, appropriate sentence of five years rigorous imprisonment imposed – However, two accused (A-1 and A-6) having served more than that period, the impugned judgment, as far as* H *they are concerned is left undisturbed.*

Partly allowing the appeals, the Court

HELD: 1. The sentencing in this case, to put it mildly, is inexplicable (if not downright bizarre). On the one hand, A-1 underwent sentence for 9 years 4 months- at the other end of the spectrum, accused A-8 underwent only 11 months. No *rationale* appears from the reasoning of the High Court for this wide disparity. It is not as though the court took note of the role ascribed to the accused (such a course was not possible, given the nature of the evidence). If it were assumed that the age of the accused played a role, then A-1, at 61 years- who served 9 years and A-6, who had served in the army, and was detained for over 8 years got the stiffest sentence. On the other end of the scale, younger persons were left relatively unscathed, having served between 3 years and 11 months. [Para 15][81-G; 82-A, B]

2. The impugned judgment, in this court's opinion, fell into error in not considering the gravity of the offence. Having held *all* the accused criminally liable, under Section 304 Part II read with Section 149 IPC and also not having found any distinguishing feature in the form of separate roles played by each of them, the imposition of the "sentence undergone" criteria, amounted to an aberration, and the sentencing is for that reason, flawed. This court is, therefore, of the view that given the totality of circumstances (which includes the fact that the accused have been at large for the past four years), the appropriate sentence would be five years rigorous imprisonment. However, at the same time, the court is cognizant of the fact A-1 and A-6 served more than that period. Therefore, the impugned judgment, as far as they are concerned, is left undisturbed. [Para 16][82-C-E]

Jameel v. State of U. P. **[2009] 15 SCR 712;** *Shyam Sunder v Puran & Anr* **[1990] Suppl 1 SCR 662 – relied on.**

Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat **[2009] 8 SCR 719;** *Guru Basavaraj v. State of Karnataka* **[2012] 8 SCR 189;** *B.G. Goswami v. Delhi Administration* **[1974] 1 SCR 222;** *Ravda Sashikala v State of Andhra Pradesh* **[2017] 2 SCR 379;** *M.P. v. Bablu* **[2014] 9 SCR 467;** *Raj Kumar* **[2013] 5 SCR 979;** *State of Punjab v. Saurabh Bakshi* **[2015] 3 SCR 590 – referred to.**

A **Case Law Reference**

[2009] 8 SCR 719	**referred to**	**Para 10**
[2009] 15 SCR 712	**relied on**	**Para 10**
[2012] 8 SCR 189	**referred to**	**Para 11**
[1974] 1 SCR 222	**referred to**	**Para 11**
[1990] Suppl 1 SCR 662	**relied on**	**Para 12**
[2017] 2 SCR 379	**referred to**	**Para 12**
[2014] 9 SCR 467	**referred to**	**Para 12**
[2013] 5 SCR 979	**referred to**	**Para 12**
[2015] 3 SCR 590	**referred to**	**Para 12**

B

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos.1378-1379 of 2023.

From the Judgment and Order dated 27.08.2019 and 03.09.2019 of the High Court of Punjab and Haryana at Chandigarh in CRAD No.249 of 2016.

D

Rakesh Mudgal, A.A.G., Himanshu Shekhar, M.L. Lahoty, Paban K. Sharma, Anchit Sripat, Pranab Kumar Nayak, Arvind Kumar, Varinder Kumar Sharma, Yugal Kishor Prasad, Parul Sharma, Shantanu Sharma, Bishan Dass, Deeksha Gaur, Dr. Nirmal Chopra, C. Solomon, Dr. Monika Gusain, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

S. RAVINDRA BHAT, J.

1. These appeals, by special leave, arise from the judgment and orders[1] passed by the High Court of Punjab and Haryana[2], converting the decision of conviction given by the trial court from Section 302 of the Indian Penal Code, 1860 (hereafter "IPC") to Section 304-Part II IPC. These appeals have been preferred by the informant/complainant.

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2. The prosecution alleged that on the eve of *Holika Dahan*, i.e., 07.03.2012, Krishan (A-1) abused Subhash (the deceased). On the next day, Brahmjit, son of Krishan (A6), inflicted *danda* blows upon Subhash at about 10.00/11.00 AM. Due to this, at about 3.00 PM, when Pawan, Uggarsain and Subhash (deceased) were sitting in front of their house, Brahmjit came near their house and started abusing them, which

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[1] Dated 27.08.2019 and 03.09.2019.

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[2] In Criminal Appeal bearing No. 249 DB of 2016

aggravated the situation. Thereafter, all the accused, namely Raju, son of Krishan (A2), Krishan, Parveen (A3), Sunder- son of Amit (A4), Sunder-son of Rajpal (A8), Nar Singh (A-7), Sandeep (A-5) and others reached the spot, with weapons. Raju inflicted blow on the right shoulder of Sita Ram (PW1). Krishan inflicted a blow at the back of Sita Ram with an iron pipe and Brahmjit inflicted a *farsa* blow on the right of Sita Ram's head. Sunder was armed with a rod; Nar Singh and Sandeep were carrying *farsas* with them. They caused injuries on Pawan, Uggarsain and Subhash. The injured were taken to hospital.

3. On 09.03.2012, on the receipt of intimation, the police registered the case under Sections 147, 148, 149 and 323 IPC. Subash, who was gravely wounded, having received multiple injuries, was removed to the hospital; later, a surgery too was performed on him. However, he did not survive and passed away on 12.3.2012. Thereupon, Section 302 IPC was added in the FIR, on 13.3.2012. Postmortem was conducted, and the doctor (PW5- Dr. Kunal Khanna) recorded in the post-mortem report that the death was caused by injuries sustained by the deceased on the head and its attendant complications. The police arrested the accused. Later, weapons were recovered on the basis of disclosure statements made by them. On the statement of PW1-Sita Ram, the prosecution moved an application under section 319 of the Criminal Procedure Code (hereafter "Cr.P.C.") for summoning an additional accused, namely Sunder.

4. All the eight accused persons were charged with and tried for offences punishable under Sections 148, 323 and 302 read with section 149 IPC. The prosecution examined twenty-two witnesses and recorded their deposition. PW.3- Dr. Sant Lal Beniwal did medico-legal examination of Sita Ram (PW1), Uggarsain (PW2) and Pawan. He recorded different injuries caused on the complainants' bodies and stated that the probable duration of injuries was within six hours by blunt weapon. PW8- Dr. Pradeep Kumar stated that Subash (deceased) had received only one injury. PW4- Dharmender Singh prepared the site plan. The defence examined two witnesses. DW1-Bikram Singh deposed that he was authorized to produce, and accordingly brought a computerized attendance register stating that on 8.3.2012 (the day of the incident), one accused, i.e., Parveen Parmar had performed his duties as a security guard from 7.00 AM to 7.00 PM. DW2- Dr. Naresh Kumar, who had medico legally examined the accused Krishan and Brahmjit and recorded a fracture of

A the right clavicle bone of Krishan and a nasal bone fracture of Brahmjit, also deposed in favour of the defence.

5. The trial court held that all the accused persons reaching the spot together armed with weapons and their attack on the victims, including the deceased exhibited the intention of an unlawful assembly, B to inflict deadly injuries. The nature of injuries found on the deceased indicated common intention of the assembly extended to causing death, which in fact, occurred. The trial court held that the prosecution's inability to explain the injuries on the accused did not absolve them of their role in the attack and causing the death of Subhash, because the evidence relied C on was credible. The evidence of two witnesses consistently supported the prosecution case in their statements before the police as well as in court. Their testimonies were corroborated by medical evidence. The trial court[3] convicted all the accused as charged and sentenced them to rigorous imprisonment for life under Section 302 r/w Section 149 IPC and one-year's rigorous imprisonment under Section 148 IPC; six months D rigorous imprisonment for the offence under Section 323 read with Section 149 IPC.

6. The accused appealed to the High Court, which by the impugned judgment, partly allowed their pleas and converted their convictions under Section 302 read with 149 IPC to Section 304 Part II read with Section E 149 IPC. It, however, affirmed the convictions under Section 148 and Section 323 read with Section 149 IPC. The High Court observed that the lack of explanation of injuries received by Krishan and Bharmjit undermined the prosecution story and that Subash, the deceased, had received only one injury, according to PW.8- Dr. Pardeep Kumar. Finally, F the High Court held that the case fell under Exception 4 to Section 300 IPC, as tempers were running high between the parties, and a sudden fight occurred when the complainant party reached in front of Krishan's house, which meant that the accused did not act in a pre-meditated manner. Aggrieved, the informant Uggarsain appealed to this court, against the conversion of conviction and corresponding reduction of G sentence.

7. During the hearing, this court indicated that these appeals would be confined to the extent of appropriateness of sentences undergone by

[3] Judgment dated 11.02.2016 and order dated 17.02.2016, in Sessions Trials No. 160 of H 30.07.2012, 275 of 04.12.2012 and 114 of 15.04.2013.

different accused persons for causing the same offence. The different periods undergone by convicts are: Krishan had undergone 09 years, 05 months and 04 days of imprisonment with remissions; Raju underwent 03 years, 01 month and 01 day of imprisonment; Parveen had suffered 01 year, 11 months and 27 days of imprisonment; Sunder s/o Amit Lal had undergone 02 years and 05 days of imprisonment; Sandeep had undergone 01 year, 11 months and 12 days of imprisonment; Brahamjit had undergone 08 years, 11 months and 19 days of imprisonment (including remissions); Nar Singh had undergone 01 year and 04 months of imprisonment and Sunder s/o Rajpal had undergone 11 months and 16 days of imprisonment.

8. The appellants argued that the High Court was wrong in inferring that the injuries were caused due to a sudden fight. Counsel highlighted that the accused who were convicted concurrently, had deliberately gone near the informant/victims' house to cause deadly injuries- in fact, one of the informant parties died as a consequence. Having regard to the established facts, the object of the assembly was for use of such force, which resulted in death. Therefore, the sentencing in the present case had to be fit and appropriate, and the impugned judgment gravely erred in adopting the standard of sentence undergone, which resulted in widely different and disparate results. At one end of the spectrum, one of the accused (Sundar s/o Rajpal) suffered incarceration for a little over 11 months, whereas Krishan had undergone 09 years, 05 months and 04 days. The appellant informants urged that this court should adopt a somewhat uniform sentencing standard when the role of each accused was practically indistinguishable.

9. On behalf of the accused, it was pointed out that the High Court had, in fact, gone by the salutary principles indicated by this court, in that the relative ages of the accused, their family circumstances, the length of time they spent in custody, as well as the length of time that had elapsed since the commission of the crime, all were considered.

10. This court has, time and again, stated that the principle of proportionality should guide the sentencing process. In *Ahmed Hussein Vali Mohammed Saiyed* v. *State of Gujarat,*[4] it was held that the sentence should *"deter the criminal from achieving the avowed object*

[4] 2009 [8] SCR 719

A *to (sic break the) law,"* and the endeavour should be to impose an *"appropriate sentence."* The court also held that imposing *"meagre sentences""merely on account of lapse of time"* would be counterproductive. Likewise, in *Jameel* v. *State of U. P.,*[5] while advocating that sentencing should be fact dependent exercises, the court also emphasised that *"the 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."*

11. Again, in *Guru Basavaraj* v. *State of Karnataka,*[6] the court stressed 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"* and that sentencing includes *"adequate punishment"*. In *B.G. Goswami v. Delhi Administration*[7], the court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

12. In *Shyam Sunder v Puran & Anr*[8], the accused-appellant was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e., six months. However, it enhanced the fine. This court ruled that sentence awarded was inadequate. Proceeding further, it opined that: - "... *The court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to*

[5] 2009 [15] SCR 712
[6] 2012 [8] SCR 189
[7] 1974 (1) SCR 222
[8] 1990 Suppl [1] SCR 662

the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of opinion that to meet the ends of justice, the sentence has to be enhanced...". This court enhanced the sentence to one of rigorous imprisonment for a period of five years. This court has emphasized, in that sentencing depends on the facts, and the adequacy is determined by factors such as *"the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected"* [*Ravda Sashikala v State of Andhra Pradesh*[9]]. Other decisions, like: *State of M.P.v. Bablu*[10]*; Raj Kumar*[11] and *State of Punjab v. Saurabh Bakshi*[12] too, have stressed the significance and importance of imposing appropriate, "adequate" or "proportionate" punishments.

13. In the present case, the High Court noted the respective ages of the accused-i.e., Krishan (61 years); Raju (40 years); Parveen (32 years); Sundar (39 years); Sandeep (25 years); Nar Singh (41 years) and Sunder s/o Rajpal (36 years). The court noted that Bramhajit had served in the army. Apart from these, the court noted the relative family circumstances: the number of children each accused had. It then adopted a uniform rule, i.e., the period of sentence undergone by the accused, as the appropriate sentence.

14. As noted earlier, all the accused were found concurrently guilty under Section 148 IPC; they were armed with different kinds of implements and weapons, that were capable of inflicting deadly injuries. The postmortem report of Subhash revealed at least six serious head injuries, including fracture and haemorrhage in different places. Pawan, Uggarsain and Sita Ram, others from the complainant party also concededly suffered injuries. Though the High Court was of the opinion that no explanation was given by the prosecution about the injuries on the accused, their nature does not seem to have been serious. At any rate, the court did not find that sufficient reason to upset the sentence under Section 149 read with Section 304 II IPC.

15. The sentencing in this case, to put it mildly, is inexplicable (if not downright bizarre). On the one hand, Krishan underwent sentence for 9 years 4 months- at the other end of the spectrum, Sunder s/o

[9] 2017 [2] SCR 379
[10] 2014 [9] S.C.R. 467
[11] 2013 (5) SCR 979
[12] 2015 (3) SCR 590

A Rajpal underwent only 11 months. No *rationale* appears from the reasoning of the High Court for this wide disparity. It is not as though the court took note of the role ascribed to the accused (such a course was not possible, given the nature of the evidence). If it were assumed that the age of the accused played a role, then Krishan, at 61 years- who
B served 9 years and Brahmajit, who had served in the army, and was detained for over 8 years got the stiffest sentence. On the other end of the scale, younger persons were left relatively unscathed, having served between 3 years and 11 months.

16. The impugned judgment, in this court's opinion, fell into error
C in not considering the gravity of the offence. Having held *all* the accused criminally liable, under Section 304 Part II read with Section 149 IPC and also not having found any distinguishing feature in the form of separate roles played by each of them, the imposition of the "sentence undergone" criteria, amounted to an aberration, and the sentencing is for that reason, flawed. This court is, therefore, of the view that given
D the totality of circumstances (which includes the fact that the accused have been at large for the past four years), the appropriate sentence would be five years rigorous imprisonment. However, at the same time, the court is cognizant of the fact Krishan and Bramhajit served more than that period. Therefore, the impugned judgment, as far as they are
E concerned, is left undisturbed. Consequently, the sentence of Raju, Parveen, Sunder s/o Amit Lal, Sandeep, Nar Singh, and Sunder s/o Rajpal is hereby modified; they are hereby sentenced to undergo Rigorous Imprisonment for five years. They shall surrender and serve the rest of their sentences within six weeks from today.

F 17. The appeals are partly allowed, in the above terms. No costs.

Ankit Gyan Appeals partly allowed.
(Assisted by : Kritika and Aarsh Choudhary, LCRAs)