Sumer Singh vs Surajbhan Singh & Ors on 22 April, 2014

Author: Dipak Misra

Bench: Dipak Misra, Sudhansu Jyoti Mukhopadhaya

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 942 OF 2014
(Arising out of S.L.P. (Crl.) 9658 of 2009)

Sumer Singh … Appellant

Versus

Surajbhan Singh and others …Respondents

J U D G M E N T

Dipak Misra, J.

1. The centripodal question that arises for consideration in this appeal, by special leave, preferred by the injured, is whether the learned single Judge of the High Court of Judicature for Rajasthan, Bench at Jaipur, while converting the conviction of the respondent- accused from one under Section 307 IPC to one under Section 308 IPC and sustaining the conviction under Sections 148, 147, 326 and 323 IPC read with Section 149 IPC is justified in restricting the period of sentence to seven days which the respondent had already undergone and to impose a fine of Rs.50,000/-, in default of payment of fine, to suffer additional rigorous imprisonment of two years.

2. The factual score, as has been undraped, is that on 19.7.1982 about 3.30 p.m. when Sumer Singh, PW-4, Janak Singh, PW-5, and his younger brother Jai Singh, PW-7, having availed a tractor of another person, were carrying out certain agricultural operation in their field, accused persons, namely, Surajbhan Singh, Bhanwar Singh, Vikram Singh, Surendra Singh and Prithvi Raj alias Pappu, being armed with weapons, arrived at the field. Accused Surajbhan Singh was carrying a sword and other accused persons were having lathis. On coming to the field, the accused persons stopped the tractor and Sumer Singh, PW-4, and Mool Singh, PW-6, came to defend the driver of the tractor. At that juncture, accused Vikram Singh gave a lathi blow on Mool Singh, PW-6, and Surajbhan inflicted a sword injury on the left elbow of Mool Singh, PW-6. Thereafter, when he attacked Sumer Singh on the head with the sword, he put his hand in defence, as a consequence of which the sword hit the wrist of the left hand due to which the hand got chopped off from the wrist

and Sumer Singh lost his consciousness and collapsed. As the narration would further show, the accused persons assaulted others and left the place. Jai Singh, PW-7, and the driver of the tractor took the injured persons to Rajgarh Hospital where they were admitted and the First Information Report was lodged by Janak Singh, PW-5, and on the base of the F.I.R. crime was registered for offences under Sections 147, 148, 149, 307, 323, 326 and 447 IPC.

3. After the criminal law was set in motion, the investigation commenced and, eventually, the charge-sheet was placed before the learned Magistrate, who committed the matter to the Court of Session. The accused persons refuted the allegations and stated that they had been falsely implicated due to land disputes. Because of such a plea, matter was tried by the learned Additional District and Sessions Judge No. 2, Alwar. During the trial the prosecution examined 24 witnesses and brought on record 37 documents which are marked as exhibits. The defence, in support of its plea, examined two witnesses and got certain documents exhibited.

4. The learned trial Judge appreciating the evidence on record, convicted Surajbhan Singh under Section 307 IPC for five years rigorous imprisonment and a fine of Rs.3000/- and in default to further undergo one year rigorous imprisonment. Under Section 447 IPC three months rigorous imprisonment, under Section 326 IPC four years rigorous imprisonment and fine of Rs.2,000/- and in default to further undergo one year rigorous imprisonment and under Section 323/149 IPC three months rigorous imprisonment. As far as other accused persons, namely, Prithvi Raj @ Pappu, Surendra Singh, Vikram Singh and Bhanwar Singh are concerned, each one of them was convicted under Section 147 IPC to undergo rigorous imprisonment for six months, under Section 447 IPC to undergo rigorous imprisonment for three months, under Section 307/149 IPC to undergo rigorous imprisonment for three years and to pay fine of Rs.1000/-, in default of payment of fine to undergo further rigorous imprisonment for one year and for offence under Section 323 IPC to rigorous imprisonment for six months with the stipulation that all the sentences would be concurrent.

5. Grieved by the aforesaid judgment and conviction the accused persons preferred Criminal Appeal No. 455 of 1984 and the High Court, as far as Surajbhan Singh is concerned, found him guilty for offence under Sections 308, 148, 447, 326 and 323/149 IPC and sentenced him to suffer imprisonment of seven days which he had already undergone and to pay a fine of Rs.50,000/-. As far as other accused-appellants were concerned, the High Court found them guilty for offences under Sections 324/149, 147, 447 and 323 IPC and considering their age, restricted the sentence to the period already undergone in respect of some and released some of them under Sections 4 and 12 of Probation of Offenders Act. As far as accused-appellants Prithvi Raj @ Pappu and Vikram Singh are concerned a fine amount of Rs.15,000/- was imposed. The High Court has further directed that the fine amount by all the accused persons to be deposited within three months with the stipulation that the same shall be paid to the injured Sumer Singh and on their failure to deposit the amount of fine to suffer rigorous imprisonment for two years.

6. We have heard Mr. Sushil Kumar Jain, learned senior counsel for the appellant and Mr. Ratnakar Dash, learned senior counsel for the respondent No. 1. Be it noted, as the respondent No. 5 has died during the pendency of the proceedings before this Court, the appeal abates against him. At the outset, we must record that Mr. Jain has confined his submissions to the imposition of inadequacy

of sentence on Surajbhan Singh and, we are inclined to think, rightly so. Criticizing the justifiability of the reduction of sentence to seven days under Section 326 IPC Mr. Jain, learned senior counsel, has contended that by such a lenient delineation especially regard being had to the circumstances under which the crime was committed and the severity of the crime is a mockery of the criminal justice dispensation system because the plight of the victim who has suffered a grievous injury as a consequence of which has lost the use of his left hand permanently. That apart, submits Mr. Jain, imposition of such an inadequate sentence is a travesty of justice and its impact on the collective in the absence of any special features and circumstances, is not only extremely painful but also would act as a catalyst for destroying the fabric of rule of law. The learned senior counsel would contend that in such a case only grant of compensation does not subserve the cause of justice but on the contrary destroys the milieu of an orderly society.

7. Mr. Dash, learned senior counsel appearing for the respondent, in his turn has propounded that the conviction recorded is absolutely flawed and, in fact, if the circumstances would have been properly appreciated keeping in view the factum that the accused persons had exercised their right of private defence, the case would have ended in acquittal. It is urged by him that assuming that it would have been held that they had exceeded right of private defence even then the offence would have converted to one punishable under Section 324 IPC and in that background, restriction of the sentence to the period already undergone could have not invited the frown of the concept of just and adequate sentence. It is urged by him that occurrence had taken place long back; and there was a cavil over possession and further in the interregnum period nothing has been brought on record that the accused has been involved in any criminal offence and, therefore, the order of sentence does not call for any interference.

8. First we intend to deal with the submission of Mr. Dash whether in an appeal preferred by the injured, the convict can question the legal substantiality of his conviction. In this regard, reference to Section 377(3) of the Code of Criminal Procedure (for short "the Code") would be apt. It reads as follows: -

> "377. Appeal by the State Government against sentence. – (1) .....
>
> (2) .....
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> (3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."

9. Section 386 of the Code, being relevant, is reproduced below: -

> "386. Powers of the Appellate Court. – After perusing such record and hearing the appellant or his pleader, if he appears, and the Public Prosecutor if he appears, and in case of an appeal under Section 377 or Section 378, the accused, if he appears, the

Appellate Court may, if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may –

a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be re-tried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law;

b) in an appeal from a conviction –

i) reverse the finding and sentence and acquit or discharge the accused, or order him to be re-tried by a Court of competent jurisdiction subordinate to such Appellate Court or committed for trial, or

ii) alter the finding, maintaining the sentence, or

iii) with or without altering the finding, after the nature or the extent, or the nature and extent, of the sentence, but not so as to enhance the same;

c) in an appeal for enhancement of sentence –

i) reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court competent to try the offence, or

ii) alter the finding maintaining the sentence, or

iii) with or without altering the finding, alter the nature or the extent, or the nature and extent, of the sentence, so as to enhance or reduce the same;

d) in an appeal from any other order, alter or reverse such order;

e) make any amendment or any consequential or incidental order that may be just or proper:

Provided that the sentence shall not be enhanced unless the accused has had an opportunity of showing cause against such enhancement:

Provided further that the Appellate Court shall not inflict greater punishment for the offence which in its opinion the accused has committed than might have been inflicted for that offence by the Court passing the order or sentence under appeal."

10. Section 377(3), and its effect, and application in appeal preferred after grant of special leave were considered in State of U.P. v. Dharmendra Singh and another[1], wherein the two-Judge Bench has ruled that a perusal of said provision shows that it is applicable only when the matter is before the High Court and the same is not applicable to this Court when an appeal for enhancement of

sentence is made under Article 136 of the Constitution. It is to be noted that an appeal to this Court in criminal matters is not provided under the Code except in cases covered by Section 379 of the Code. It has been further observed that an appeal to this Court under Article 136 of the Constitution is not the same as a statutory appeal under the Code, for this Court under Article 136 of the Constitution is not a regular court of appeal to which an accused can approach as of right. It is an extraordinary jurisdiction which is exercisable only in exceptional cases when this Court is satisfied that it should interfere to prevent a grave or serious miscarriage of justice, as distinguished from mere error in appreciation of evidence. Proceeding further the court held:

> "While exercising this jurisdiction, this Court is not bound by the rules of procedure as applicable to the courts below. This Court's jurisdiction under Article 136 of the Constitution is limited only by its own discretion (see Nihal Singh v. State of Punjab[2]). In that view of the matter, we are of the opinion that Section 377(3) of the Code in terms does not apply to an appeal under Article 136 of the Constitution.
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> Thereafter, the Court relied upon the authority in Chandrakant Patil v. State through CBI[3] and distinguished the decision in U.J.S. Chopra v. State of Bombay[4] and came to hold as follows: -
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> "This does not mean that this Court will be unmindful of the principles analogous to those found in the Code including those under Section 377(3) of the Code while moulding a procedure for the disposal of an appeal under Article 136 of the Constitution. Apart from the Supreme Court Rules applicable for the disposal of the criminal appeals in this Court, the Court also adopts such analogous principles found in the Code so as to make the procedure a "fair procedure" depending on the facts and circumstances of the case." Eventually, the Court convicted the respondent to argue for an acquittal in the appeal preferred by the State of U.P. for enhancement of the sentence by adopting the analogous provision found in Section 377(3) of the Code.

11. Relying on the said decision in State of Rajasthan v. Kishan Lal[5], the Court thought that it was an appropriate case where it should permit the learned amicus curiae to argue for acquittal of the respondent and, eventually, reversed the judgment of conviction and acquitted the respondent of all the charges levelled against him.

12. At this juncture, it is useful to refer to the decision by the Constitution Bench in P.S.R. Sadhanantham v. Arunachalam and another[6]. In the said case, the petitioner, an accused, was convicted in appeal by way of special leave preferred by the brother of the deceased who was not even the first informant. The convict-petitioner preferred a writ petition under Article 32 of the Constitution to upset the conviction on the ground that the proceedings were unconstitutional being violative of Article 21. The Constitution Bench, adverting to the same, opined that though Article 136 does not confer a right of appeal on a party as such in express terms, yet it confers a wide discretionary power on the Supreme Court to interfere in suitable cases. The discretionary dimension is considerable but that relates to the power of the Court. The larger Bench proceeded to

state thus: -

> "In our view, it does. Article 136 is a special jurisdiction. It is residuary power; it is extraordinary in its amplitude, its limit, when it chases injustice, is the sky itself. This Court functionally fulfils itself by reaching out to injustice wherever it is and this power is largely derived in the common run of cases from Article 136." The Court further analyzing the point, observed that:-
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> "We have hardly any doubt that here is a procedure necessarily implicit in the power vested in the summit court. It must be remembered that Article 136 confers jurisdiction on the highest court. The founding fathers unarguably intended in the very terms of Article 136 that it shall be exercised by the highest judges of the land with scrupulous adherence to judicial principles well established by precedents in our jurisprudence." Thereafter, the larger Bench proceeded to observe as follows: -
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> "9. We may eye the issue slightly differently. If Article 21 is telescoped into Article 136, the conclusion follows that fair procedure is imprinted on the special leave that the court may grant or refuse. When a motion is made for leave to appeal against an acquittal, this Court appreciates the gravity of the peril to personal liberty involved in that proceeding. It is fair to assume that while considering the petition under Article 136 the court will pay attention to the question of liberty, the person who seeks such leave from the court, his motive and his locus standi and the weighty factors which persuade the court to grant special leave. When this conspectus of processual circumstances and criteria play upon the jurisdiction of the court under Article 136, it is reasonable to conclude that the desideratum of fair procedure implied in Article 21 is adequately answered.
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> 10. Once we hold that Article 136 is a composite provision which vests a wide jurisdiction and, by the very fact of entrusting this unique jurisdiction in the Supreme Court, postulates, inarticulately though, the methodology of exercising that power, nothing more remains in the objection of the petitioner. It is open to the court to grant special leave and the subsequent process of hearing are (sic is) well-established. Thus, there is an integral provision of power-cum-procedure which answers with the desideratum of Article 21 justifying deprivation of life and liberty."

13. The said principle has been reiterated in Esher Singh v. State of A.P.[7] by stating that this Court can entertain appeals against acquittal by the High Court at the instance of interested private parties, for the circumstances that the Code does not provide for an appeal to the High Court against an order of acquittal by a subordinate court, at the instance of the private party, has no relevance to the question of the power of this Court under Article

136.

14. From the aforesaid enunciation of law two principles are absolutely clear; first, an injured who is an aggrieved party can prefer an appeal by special leave and this Court's power under Article 136 being of wide amplitude, it can remove injustice when it witnesses it and second, in an appeal preferred by State for enhancement of sentence the accused can plead that he is entitled to an acquittal as there is no material on record to sustain the conviction.

15. In the case at hand, the State has not preferred any appeal but the injured has been permitted to file the appeal after obtaining leave. We have already stated that the principles which are analogous to 377 (3) of the Code are applicable and the power under Article 136 is of wide amplitude. Thus viewed, we do not see any reason why this Court, while entertaining an appeal at the instance of an injured, cannot impose adequate sentence when the facts and circumstance so warrant. But prior to that, for applying the requisite test, we should appreciate the material on record to come to a conclusion whether the recording of conviction is unjustified, and whether the High Court has absolutely erred in restricting the sentence to the period already undergone.

16. Presently, to the delineation on the first score. As stated earlier, the singular contention of Mr. Dash is that the accused persons exercised their right of private defence and even assuming they exceeded that right, they could only have been convicted for a lesser offence. Per contra, Mr. Jain would contend that no plea for exercise of right of private defence was taken under Section 313 of the Code. Statement and, in any case, the appellants had done nothing to provoke the accused persons to commit the crime in such a heinous manner. It is well settled in law that exercise of right of private defence even if not specifically taken in Section 313 of the Code, it can always be gathered from surrounding facts and circumstances. The said position has been stated in Vidya Singh v. The State of Madhya Pradesh[8], Sikandar Singh and Others v. State of Bihar[9] and State of Rajasthan v. Manoj Kumar[10].

17. In the instant case, the trial court has held that it is undisputed that by the judgment, Ex. P4, of the Revenue, Appellate Officer, Alwar the decision about the disputed field was given in favour of the Sumer Singh, PW-4 and Janak Singh, PW-5, and order was issued about giving the possession to these persons from the Receiver. Ram Bilas, PW-15, Patwari, had delivered possession of the land in compliance of the said order of the Revenue Appellate Officer and it is clear from the evidence brought on record. It is demonstrable that the Assistant Collector, Rajgarh, took possession of this land from the Receiver and handed it over to Sumer Singh on 14.4.1982. A finding has been returned that on the day of occurrence, that is, 19.7.1982 possession was with Sumer Singh, PW- 4, and others and the accused had no right to forcibly evict them. Be that as it may, it is manifest from the evidence on record that the victims were not armed with weapons and peacefully carrying on their agricultural activities when the accused persons came armed with weapon and attacked them. The injury reports of Sumer Singh, PW-4, Mool Singh and Umrao Singh contained in Ext. P-17 to Ext. P-19 clearly show that they had received injuries and the injuries inflicted on Sumer Singh were grievous in nature. The injuries sustained by Mool Singh and Umarao Singh, as opined by the treating doctor, were caused by sharp weapon. Mr. Dash, learned senior counsel for the respondent would contend that the accused persons had also received injuries and that would show that they were in possession and while defending their right there was a fight which establishes exercise of right of private defense and possibly exceeding the said right. On a scrutiny of the injury report, it

appears that the injuries were absolutely simple in nature. Regard being had to the finding recorded on the basis of evidence as regards the possession of the injured persons and also the nature of injuries sustained by the accused persons, it cannot be said that the defence had been able to establish the plea of right of exercise of private defense, the question of exceeding the said right does not arise. Therefore, the irresistible conclusion is that the accused persons had assaulted the injured persons and the High Court has correctly recorded the conviction against the respondent under Section 326 IPC.

18. The next question that is required to be addressed is whether adequate sentence has been imposed for the offence under Section 326 IPC regard being had to the injuries caused. In Sham Sunder v. Puran and another[11], the High Court had convicted the accused- appellant therein under Section 304 Part-I IPC and reduced the sentence to the term of imprisonment already undergone, i.e. six months, while enhancing the fine. In that context, the Court opined that the sentence awarded was rather inadequate. Proceeding further it has been opined as follows: -

> "No particular reason has been given by the High Court for awarding such sentence. 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 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." After so stating the Court enhanced the sentenced to one of rigorous imprisonment for a period of five years.

19. In Sevaka Perumal and another v. State of Tamil Nadu[12], after referring to the decision in Mahesh v. State of M.P.[13], the Court observed that 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 serious threats. The Court further observed that if the courts do not protect the injured, the injured would then resort to private vengeance and, 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.

20. In State of M.P. v. Saleem alias Chamaru and another[14], the Court opined that the object of sentencing should be to protect society and to deter the criminal that bing the avowed object of law. It further ruled that it is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

21. In Ravji alias Ram Chandra v. State of Rajasthan[15] the Court while giving emphasis on relevance of imposition of adequate sentencing in the social context observed thus:-

> 10. 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". In our view, if for such heinous crimes the most deterrent punishment for wanton and brutal murders is not given, the case of deterrent punishment will lose its relevance."

22. In State of Karnataka v. Krishnappa[16], a three-Judge Bench, while discussing about the purpose of imposition of adequate sentence, opined that protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence and the sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.

23. In Jameel v. State of Uttar Pradesh[17], the trial court had convicted the appellant therein under Section 308 IPC along with another and punished them with two years rigorous imprisonment. In appeal, the conviction and sentence of the appellant were affirmed. By the time the matter came to be considered by this Court, the appellant had already undergone eight months in custody. While reducing the sentence, the Court observed as under: -

> "15. In operating the sentencing system, 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.
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> 16. It is 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. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

24. In Shyam Narain v. State (NCT of Delhi)[18], it has been ruled that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes, for it serves as a deterrent. The Court observed, true it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between

an offence committed and the penalty imposed are to be kept in view. It has been further opined that while carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

25. In Guru Basavaraj v. State of Karnataka[19], the Court, discussing about the sentencing policy, had to say this: -

> "33. There can hardly be any cavil that there has to be a proportion between the crime and the punishment. 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. The cry of the collective for justice which includes adequate punishment cannot be lightly ignored."

26. In Rattiram v. State of M.P.[20] though in a different context, it has stated that: -

> "64. ... the criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries.... it is the duty of the court to see that the victim's right is protected."

27. In State of Madhya Pradesh v. Najab Khan and others[21], the State had preferred an appeal as the High Court, while maintaining the conviction under Section 326 IPC read with Section 34 IPC, had reduced the sentence to the period already undergone, i.e., 14 days. In that context, the Court, after referring to number of authorities and reiterating the principles, stated that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. 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. It was further observed that undue sympathy in imposing inadequate sentence would do more harm to the justice dispensation system and undermine the public confidence in the efficacy of law. It is 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. The courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. After so stating the sentence imposed by the High Court was set aside and that of the trial Judge, whereby he had convicted the accused to suffer rigorous imprisonment for three years, was restored. Similar principle has been assertively reiterated in Hazara Singh v. Raj Kumar and others[22].

28. The factual matrix of the instant case has to be tested on the touchstone of aforesaid principles. On a perusal of the judgment of the High Court, we find that no reason whatsoever has been ascribed. The manner in which the crime was committed speaks eloquently about its brutality. The gravity of the offence speaks for itself. A young man's hand has been cut off from the wrist. How the

fear psychosis would have reigned in the society at the relevant time does not require Solomon's wisdom to visualize. It is difficult to fathom what possible reason the High Court could have envisioned or thought of while reducing the sentence to the period already undergone, i.e., seven days for such an offence. Possibly, the High Court felt that increase of fine amount would serve the cause of justice and ameliorate the grievance of the victim and pacify the collective cry. We are not inclined to think so.

29. It is seemly to state here that though the question of sentence is a matter of discretion, yet the said discretion cannot be used by a court of law in a fanciful and whimsical manner. Very strong reasons on consideration of the relevant factors have to form the fulcrum for lenient use of the said discretion. It is because the ringing of poignant and inimitable expression, in a way, the warning of Benjamin N. Cardozo in The Nature of the Judicial Process[23]: -

> "The Judge even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knight errant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to 'the primordial necessity of order in social life'."

30. In this regard, we may usefully quote a passage from Ramji Dayawala & Sons (P.) Ltd. v. Invest Import[24]: -

> "... when it is said that a matter is within the discretion of the court it is to be exercised according to well established judicial principles, according to reason and fair play, and not according to whim and caprice. 'Discretion', said Lord Mansfield in R. v. Wilkes, ((1770) 98 ER 327), 'when applied to a court of justice, means sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, but legal and regular' (see Craies on Statute Law, 6th Edn., p. 273)."

31. In M/s. Aero Traders Pvt. Ltd. v. Rvinder Kumar Suri[25] the Court observed: -

> "According to Black's Law Dictionary "Judicial discretion" means the exercise of judgment by a judge or Court based on what is fair under the circumstances and guided by the rules and principles of law; a Court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See 27 Corpus Juris Secundum page 289). When it is said that something is to be done within the discretion of the authorities that something is to be done according to the

> rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him." Thus, the judges are to constantly remind themselves that the use of discretion has to be guided by law, and what is fair under the obtaining circumstances.

32. Having discussed about the discretion, presently we shall advert to the duty of the court in the exercise of power while imposing sentence for an offence. It is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the Court's accountability to remind itself about its role and the reverence for rule of law. It must evince the rationalized judicial discretion and not an individual perception or a moral propensity. But, if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined. Law cannot tolerate it; society does not withstand it; and sanctity of conscience abhors it. The old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. True it is, it has its own room, but, in all circumstances, it cannot be allowed to occupy the whole accommodation. The victim, in this case, still cries for justice. We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society. Therefore, striking the balance we are disposed to think that the cause of justice would be best subserved if the respondent is sentenced to undergo rigorous imprisonment of two years apart from the fine that has been imposed by the learned trial judge.

33. Before parting with the case we are obliged, nay, painfully constrained to state that it has come to the notice of this Court that in certain heinous crimes or crimes committed in a brutal manner the High Courts in exercise of the appellate jurisdiction have imposed extremely lenient sentences which shock the conscience. It should not be so. It should be borne in mind what Cicero had said centuries ago: -

> "it can truly be said that the magistrate is a speaking law, and the law a silent magistrate.[26]"

34. A few decades ago thus spoke Felix Frankfurter: -

> "For the highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians – those impersonal convictions that make a society a civilized community, and not the victims of personal rule."[27]

35. We part with the aforesaid reminder.

36. Consequently, the appeal is allowed in part, the conviction recorded by the trial court as well as by the High Court is maintained and the sentence imposed by the learned trial Judge and that by the High Court is modified to the extent indicated hereinabove.

.....J. [Sudhansu Jyoti Mukhopadhaya] .....J. [Dipak Misra] New Delhi;

May 05, 2014.

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[1] (1999) 8 SCC 325
[2] AIR 1965 SC 26
[3] (1998) 3 SCC 38
[4] AIR 1955 SC 633
[5] (2002) 5 SCC 424
[6] (1980) 3 SCC 141
[7] (2004) 11 SCC 585
[8] AIR 1971 SC 1857
[9] (2010) 7 SCC 477
[10] (2014) 4 SCALE 724
[11] AIR 1991 SC 8
[12] (1991) 3 SCC 471
[13] (1987) 3 SCC 80
[14] (2005) 5 SCC 554
[15] (1996) 2 SCC 175
[16] AIR 2000 SC 1470
[17] (2010) 12 SCC 532
[18] (2013) 7 SCC 77
[19] (2012) 8 SCC 734
[20] (2012) 4 SC 516
[21] (2013) 9 SCC 509
[22] (2013) 9SCC 516
[23] Yale University Press, 1921 Edn., p.114
[24] AIR 1981 SC 2085
[25] AIR 2005 SC 15

[26] CICERO, De Republica, De Legibus (Loeb Classical Library, Keyes, Clinton Walker, trans., Cambridge, Massachusetts: Harvard University Press, 1928), p. 461.

[27] Frankfurter, Felix, in Clark, Tom C., "Mr. Justice Frankfurter: 'A Heritage for all Who Love the Law'". 51 A.B.A.J. 330, 332 (1965)