Lingala Vijayakumar & Ors vs Public Prosecutor, Andhra Pradesh on 2 August, 1978

Equivalent citations: 1978 AIR 1485, 1979 SCR (1) 2, AIR 1978 SUPREME COURT 1485, (1978) 4 SCC 196, 1978 CRI APP R (SC) 309, 1978 UJ (SC) 788

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, D.A. Desai, O. Chinnappa Reddy

PETITIONER:
LINGALA VIJAYAKUMAR & ORS.

Vs.

RESPONDENT:
PUBLIC PROSECUTOR, ANDHRA PRADESH

DATE OF JUDGMENT02/08/1978

BENCH:
KRISHNAIYER, V.R.
BENCH:
KRISHNAIYER, V.R.
DESAI, D.A.
REDDY, O. CHINNAPPA (J)

CITATION:
1978 AIR 1485 1979 SCR (1) 2
1978 SCC (4) 196

ACT:
Sentence-Enhancement of the sentence by the High Court under Section 377 of the Criminal Procedure Code, 1973 explained.
Sentence-Correctional sentence, plea for-Prison justice vis-a-vis- social justice and right of the prisoners to humane treatment under Art. 19 of the Constitution.

HEADNOTE:
The appellants were duly prosecuted. convicted and awarded sentences of 2 1/2 years rigorous imprisonment each for the offence of having robbed the State Bank by committing dacoity. Appeals by the accused and the State ended in the enhancement of the sentence to seven years R.I. each. Hence the appeal by special leave.

Dismissing the appeal, but modifying the sentence as awarded by the Sessions the Court
^

HELD: The High Court has superseded the trial Court's discretionary impost for which it has power, provided error in principle or perverse exercise or like faux pas is pointed out and those reasons are stated. Appellate power to prune or protract is not unbridled when discretion once exercised is to be upset. And the higher Court can be draconic, if grounds exist, but it cannot be laconic. The specific reasons assigned by the Sessions Court must be countered by clear ratiocination and then the Supreme Court ordinarily keeps out. [6 A-B, E]

In the instant case, the four words which did justice to the trial court were "the ends of justice" without specifying what they were and there was no speaking order in the High Court's substantial enhancement. None of the reasons given by the Sessions Court have been expressly dissented from by the High Court or can be called impertinent. [6E, 7C]

Observations:

(i) "Cash awards for bravery" to witnesses when a criminal case is pending may be euphemistic officialese but may be construed by the accused as purchase price for testimonial fidelity. The overzealous antics and objectionable tactics are far from fair for a political Government which pays homage to judicial justice and betrays a mood of executive interference with the course of justice where political vendetta shows up. No one is above contempt power in our constitutional order. [5A-B]

(ii) Prison justice is part of social justice. The writ of the rule of law, if it runs within the jail system shall not permit inhumanity. On appropriate motion made to this Court showing violation of the residual rights of a prisoner by unnecessary cruelty and unreasonable impositions and denial and deprivations within the prison-setting, the judicial process will call to order the prison authorities and make them respect the fundamental rights of the appellants Prisoners are not non-persons. [8B-C, 10-B]
3

(iii) The Court has responsibility to see that punishment serves social defence which is the validation of deprivation of citizen's liberty. Correctional treatment with a rehabilitative orientation, is an imperative of modern penology which has abandoned jus talionis. The therapeutic basis of incarceratory lifestyle is not unknown to Gandhian India because the Father of the Nation regarded a criminal as a morally aberrant patient. A hospital setting and a humanitarian ethos must pervade our prisons if the retributive theory, which is but vengeance in disguise, is to disappear and deterrence as a punitive objective gain success not through the hardening practice of inhumanity inflicted on prisoners but by reformation and healing

whereby the creative potential of the prisoner is unfolded. These values have their roots in Art. 19 of the Constitution which sanctions deprivation of freedoms provided they render a reasonable service to social defence, public order and security of the State. [7D-G]

[The Court-directed that the appellants being "children" within the meaning of the "Saurashtra Children Act", though not under the Andhra Children Act, be separated from adult prisoners. More particularly the appellants should be allowed opportunities for improving themselves and nourishing their minds with wholesome reading so that on return to society they turn a new leaf.]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 257 of 1978.

Appeal by Special Leave from the Judgment and order dated 18-10-76 of the Andhra Pradesh High Court in Criminal Appeal No. 221 /75 and Criminal Appeal No. 749 of 1975.

R. K. Garg and V. J. Francis for the Appellant. P. P. Rao and G. N. Rao for the Respondent.

The order of the Court was delivered by KRISHNA IYER, J.-Seven dangerously ideological teenagers, politically impatient with the deepening injustice of the economic order and ebulliently infantile in their terrorist tactics, were sentenced to seven years in prison for the offence of having robbed the State Bank of a few thousand rupees with non-violent use of crude pistols, and country bombs which, ill the language of the Penal Code, amounts to dacoity-a grave property crime. They were duly prosecuted, convicted and awarded 2 1/2- years rigorous imprisonment. Appeals by the accused and the State ended in the enhancement of the sentence to seven years R.I. each.

We have, on a perusal of the judgment, under appeal and after hearing Sri Garg for the appellants, declined to demolish the conviction although the scenario of events is judicially disquieting. Why ? Because in our adversary system and 'umpire' tradition of the judicial process the weaker accused, sometimes anathematized as naxalite or by other unpopular appellation, is theoretically equal before the law but in real-life terms, thanks to practical handicaps, the scales of justice (not the judges) tend to incline against him. Law is what law does, not what law speaks. The Judge, tradition-bound plays an umpire's passive role in an adversary system. He holds on the basis of proof proffered by the prosecution, tested by the conventional process of cross-examination and the standard yardsticks of credibility. He has no activist alternative of further probe, for he has no independent assistance in that behalf. The technical power to summon court witness or put questions hardly helps in practice. And when the defence is financially, socially, politically or otherwise too weak to explore the investigatory veracity or explode the testimonial value of the prosecution and its witnesses or to undertake its own garnering of effective materials to establish innocence, the equal scales of justice operate queerly. Even so, we cannot travel beyond the record, and concurrent findings of fact acquire a judicial sanctity which stands in the way of our

reassessment of evidence at the tertiary stage. For this reason we confine ourselves to the conscientious issue of correctional sentence-that Cinderalla of Indian Criminology despite Section 235(2), Cr. P. Code.

Never-the-less, we must express our astonishment at the hasty impropriety of making cash awards to prosecution witnesses when the case was sub-judice, at a public ceremony where the Chief Minister himself presided. The factual foundation is furnished by the following paragraph in the judgment of the trial court:

> "Before parting with the case I wish to observe that the government by giving awards to some of the witnesses in the case at a public meeting held at Naidugudem presided over by the Chief Minister while the matter was still sub-judice for their having courageously chased the accused and caught them soon after the offence created an embarrassing situation for the court making it difficult to arrive at the truth without a prejudiced mind. But all the same I scrupulously kept this aspect of the case from my mind and arrived at the decision independently on merits. The government ought not to have prejudged the case and awarded any cash prizes to any of the witnesses. What an awkward figure the government would cut if due to some compelling legal requirements the court was obliged to come to a conclusion that the witnesses to whom it had given awards in advance were all got up witnesses unworthy of credit ? I think it will not be too much if I hope that things of this type will not be repeated by the government in future in its own interests and in the interests of administration of justice."

Emphatically we agree. 'Cash awards for bravery' to witnesses when a criminal case is pending may be euphemistic officialese but may be construed by the accused as purchase price for testimonial fidelity.

The overzealous antics and objectionable tactics are far from fair for a political government which pays homage to Judicial justice and betrays a mood of executive interference with the course of justice where political vendetta shows up. We enter this caveat to arrest repetition and to alert about consequences. No one is above contempt power in our constitutional order.

Now we reach the crucial question of the appropriate punishment The conspectus of facts relevant to this branch may be recapitulated. (i) all the seven sentences are around seventeen; (ii) all of them are self-less ideologues with revolutionary ardour impressed militantly with the Preamble declaration of the Constitution 'to secure economic justice'; (iii) none of them is a dacoit in the highway robbery sense but everyone is in the criminal connotation- more dangerous for the proprietariat because they violently and openly challenge the basis of 1 those capitalist values which find expression in the 118-year-old Penal Code. It is a matter for Parliamentary action whether the Code should shift its penal emphasis to the social justice concerns of Part III and IV more than Lord Macaulay meant.) The primary considerations which persuaded the trial Judge to 11: impose a lenient term of 30 months in jail have been succinctly stated:

"(i) All the accused persons are very young, accused No. 5 being only 17 years of age.

(ii) The behaviour of the accused persons in the Court throughout the trial was exemplary.

(iii) The accused persons are really anxious to relieve the suffering of the poor and are absolutely sincere in this regard.

(iv) In their teens, they have voluntarily denied themselves all comforts and are even risking their lives for the sake of poor.

(v) No amount of repression would bring them into the right path and that they should be won over only by psychological methods and by persuasion."

(We have borrowed from para 20 of the Special Leave Petition).

The High Court has superseded the trial court's discretionary impost for which it has power, provided error in principle or perverse exercise or like faux pas is pointed out and those reasons stated Appellate power to prune or protract is not unbridled when discretion once exercised is to be upset. And the higher court can be draconic, if grounds exist, but it cannot be laconic.

Dealing with the sentence the learned judge observed:

"Coming to the sentence taking into consideration that the accused are young people the learned Sessions Judge thought that the ends of justice would be met if they are sentenced to undergo R.I. for 2 1/2 years each. Under Section 395 of the Indian Penal Code whoever commits dacoity shall be punishable with imprisonment for life or R.I. for a period which may extend to ten years and-shall also be liable to fine. No doubt the accused are young persons. None the less the offence committed by them is a very grave one. I think the ends of justice require enhancement of sentence and it would simply be met if their sentences are enhanced to undergo R.I. for a period of seven years each and to pay a fine of Rs. 1,000 each and in default to undergo R.I. for a further period of six months each. The four words which do justice to the trial court are "the ends of justice". What are the ends of justice here ? The specific reasons assigned by the Sessions Court must be countered by clear ratiocination, and then the Supreme Court ordinarily keeps out.

What do we mean by "the ends of justice' ? Hans Kelsen in a farewell lecture in Berkeley, way back in 1952, raised the question and said:

"When Jesus of Nazareth was brought before Pilate and admitted that he was a king he said: 'It was for this that I was born, and for this that I came to the world, to give testimony for truth. Whereupon Pilate asked, 'What is truth?' The Roman procurator did not expect, and Jesus did not give, an answer to this question; for to give

> testimony for truth was not the essence of his mission as Hessianic King. He was born to give testimony for Justice, the justice to be realised in the Kingdom' of God, and for this justice he died on the cross. Thus behind the question of Pilate 'What is truth' ? arises, out of the blood of Christ, another still more important question, the eternal question of man kind. What is Justice ?
>
> No other question has been discussed so passionately; no other question has caused so much precious blood and so many bitter tears to be shed; no other question has been the object of so much intensive thinking by the most illustrious from Plato to Kant; and yet, this question is today as unanswered as it ever was. It seems that it is one of those questions to which the resigned wisdom applies that man cannot find a definitive answer, but can only try improve the question".

It fairly follows that Christian justice was not Roman justice, and social justice hardly squares with 'Haves' justice. To enhance the sentence to seven years R.I. by merely saying the 'ends of justice' demand it is to continue the question, as Prof. Kelsen put it, not to meet it. We find no speaking order in the High Court's substantial enhancement and restore the sentence of the Sessions Court imposed for stated reasons none of which have been expressly dissented from by the High Court or can be called impertinent.

Having desisted from interfering with the conviction and having reverted to the sentence of the trial court we feel impelled to make a few observations on prison justice since under the court's mandate these seven teenagers are being sent into that world within the world which is substantially sight-proof and sound-proof. The court has responsibility to see that punishment serves social defence which is the validation of deprivation of citizen's liberty. Correctional treatment, with a rehabilitative orientation, is an imperative of modern r penology which has abandoned jus talionis. The therapeutic basis of incarceratory life- style is not unknown to Gandhian India because the Father of the Nation regarded a criminal as a morally aberrant patient. A hospital setting and a humanitarian ethos must pervade our prisons if the retributive theory, which is but vengeance in disguise, is to disappear and deterrence as a punitive objective gain success not through the hardening practice of inhumanity inflicted on prisoners but by reformation and healing whereby the creative potential of the prisoner is unfolded. These values have their roots in Article 19 of the Constitution which sanctions deprivation of freedoms provided they render a reasonable service to social defence. public order and security of the State. By cruel treatment within the cell you injure his psyche and injury never improves. Nay, you make him recidivist, embittered and ready to battle with society on emerging from the jail gates. By karuna informing prison practices you instill a sense of dignity and worth in the prisoner- so that he awakens to a new consciousness and re-makes himself. It is obvious that it is unreasonable to be torture some, as it recoils on society and it is reasonable to be compassionate, educative and purposeful because it transforms the man and makes him more social. This brief divagation leads to one conclusion that within the jail these 7 youngmen shall not be treated with anything of brutality-a caveat which has become necessary when we remember that they are treated as 'naxalites' and the witnesses who have given evidence against them have been hurriedly rewarded officially by the Chief Minister. The writ of the rule of law, if it runs within the jail system, shall not permit inhumanity. On appropriate motion made to this Court

showing violation of the residual rights of a prisoner by unnecessary cruelty and unreasonable impositions and denials and deprivations within the prison-setting, the judicial process will call to order the prison authorities and make them respect the fundamental rights of the appellants. Prisoners are not non-persons. The American Court has taken the view and we agree with it even on the basis of our Constitution:

> "the responsible prison authorities .. have abandoned elemental concepts of decency by permitting conditions to prevail of a shocking and debased nature, then the courts must intervene and intervene promptly to restore the primal rules of a civilized community in accord with the mandate of the Constitution of the United States."

(257 F. Supp. 674 (S. D. Cal. 1966) Justice Douglas, speaking of American prisons in Sweeney v. Wood all, (1) observed:

> "(Petitioner) offered to prove that he was stripped to his waist and forced to work in the broiling sun all the day long without a rest period.
>
> He offered to prove that on entrance to the prison he was forced to serve as a "gal-boy" or female for homosexuals among the prisoners.
>
> Lurid details are offered in support of these main charges. If any of them is true, (petitioner) has been subjected to cruel and usual punishment in the past and can be expected upon his return to have the same awful treatment visited upon him.
>
> ....If the allegations of the petition are true, this (petitioner) must suffer torture and mutilation or risk of death itself to get relief in Alabama. 314 US. 86 (1952).
>
> ....I rebel at the thought that any human being....should be forced to run a gamut of blood and terror....to get his constitutional rights."

Our prisons are not laudably different even in the matter of homosexuality. The point of no return in social defence arrives if imprisonment is not geared to therapeutic goals. On release such an offender is 'caught in a "revolving door"

> -leading from arrest on the street through a brief unprofitable sojourn in jail back to the street and eventually another arrest. The jails overcrowded and put to use for which they are not suitable have a destructive effect upon.... inmates.' The appellants are militant men in a hurry with revolutionary zeal and the good of the society at heart insisting on social justice which under the Indian Sun is specialising on slow motion. They are violent and need to be weened off this self-defeating weapon.
>
> And one harrowing thought relevant to sentence and with a grim bearing on prison treatment is that some of these convicts arc. 'children' by definition in the Saurashtra Children Act(1) although a year or so older than 'children' under the Andhra Children

Act. Were they tried in Gujarat as 'children' they would have been neither in a criminal court nor in prison. This has a vicarious impact on the sentencing discretion. More importantly, these adolescents when ushered into jail with sex-starved 'Lepers' sprinkled about, become homosexual offerings with nocturnal dog-fights. These unspeakable prison facts perhaps receive. indifferent attention on Home Ministry files but must weigh with the court in inducing it to direct that the young incarcerates are separated dusk-to-dawn from sadistic adults. We direct the superintendent to do so, in the expansive powers under Sec. 482 Cr. P. Code.

Having regard to these circumstances, we direct that these prisoners be oriented on a humane course, be treated as 'B' class prisoners, allowed opportunities of improving themselves and nourishing their minds with wholesome reading so that on return thence they turn a new leaf retaining the flavour of their self-sacrificing spirit to change 'the sorry scheme of things entire' but without blood-letting barbarities and boomeranging terrorism. Recreational opportunities and other factors which will improve, rather than injure must be brought into play when dealing with these prisoners. These observations in the direction of prison reforms are relevant for the whole jail system, still of Raj vintage, because conditions there leave much to be desired in (1) Act XXI of 1954, S. 4(d).

2-520SCI/78 the matter of humanism and correctionalism. We are aware that there is a hopeful awakening on the part of the Government at the Central and State levels towards hospitalisation effect as against 'zoological' impact. If our observations did catalyse this trend it were good. After all, the Constitutional culture of our country imposes this obligation, as we have briefly indicated. Prison justice is part of social justice.

S.R. Appeal dismissed.