Supreme Court of India
State Of Madhya Pradesh vs Kedar Yadav on 30 November, 2006
Author: A Pasayat
Bench: Arijit Pasayat, S.H. Kapadia

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                CASE NO.:
      Appeal (crl.)  1334 of 2004

      PETITIONER:
      State of Madhya Pradesh

      RESPONDENT:
      Kedar Yadav

      DATE OF JUDGMENT: 30/11/2006

      BENCH:
      ARIJIT PASAYAT & S.H. KAPADIA

      JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court. By the impugned judgment learned Single Judge while upholding the conviction of the respondent for an offence punishable under Section 307 of the Indian Penal Code, 1860 (in short the 'IPC') reduced the sentence to the period already undergone which was about 1 year and three months. The trial court had found the respondent guilty and had imposed sentence of ten years rigorous imprisonment and fine of Rs.1,000/- with default stipulation.

Background facts in a nutshell are as follows:

The respondent allegedly assaulted the complainant- Parvat Singh by an axe causing several grievous injuries. Complainant Parvat Singh (PW 10) lodged a report at the police station to the effect that while he was doing night duty at Dr. Ajay Lal Christian Hospital, the accused hit him on his head by the sharp edge of an axe and other parts of the body. Other persons were present there, who witnessed the incident. They carried the complainant to the hospital for treatment. Information was lodged at the Police Station and investigation was undertaken. The informant was treated at the hospital for multiple injuries sustained by him. After completion of investigation, charge sheet was filed and the matter was taken up for trial. Accused took the plea of false implication. According to the medical report and the statement of the doctor, there was a cut wound on the upper part of partial bone which was straight cut and there was a parallel straight cut below said injury and there was a cross cut wound on the left acromiyo caviculas wound and the doctor had advised to get x-ray of head, chest and left shoulder. According to statement of witnesses and doctors and medical report on the day of incident there were injuries on the body of complainant caused by sharp edged weapon. Therefore, there was no dispute as to presence of injuries on the body of the complainant.

Placing reliance on the evidence of the victim and others, the trial court found the accused guilty and convicted him and imposed sentence as afore-noted. The trial court took note of the evidence of the Doctor who had first examined the informant. The trial court noted that in the opinion of the doctor all the injuries were caused by sharp axe or another sharp-edged weapon and was enough to cause death of the victim. The doctor had advised to get X-ray of head, chest and left shoulder of the victim. Several fractures were also noticed. Taking note of the serious nature of the injuries inflicted and the weapon used, the trial court held the accused-respondent guilty and imposed sentence as afore-noted.

Respondent preferred an appeal before the High Court. Learned counsel appearing before the High Court for the accused-respondent did not question the finding of conviction. The only prayer related to sentence. The High Court without any discussion merely observed that the accused had undergone sentence of about one year and 3= months, at the commission of offence was aged about 20 years and an uneducated labourer coming from rural area. Accordingly, the period of sentence of imprisonment was reduced to the period already undergone.

Learned counsel for the appellant-State submitted that the sentence imposed by the High Court is very much on the lenient side. In a case of this nature no leniency should have been shown.

A bare perusal of the doctor's evidence shows that the accused in a merciless and cruel manner attacked the victim on his head and shoulder causing grievous injuries. Therefore, the reduction of sentence was uncalled for.

Learned counsel for the respondent on the other hand submitted that though confession appears to have been made before the High Court about conviction that was really not called for. In any event, the occurrence took place nearly two decades back. Even if prosecution version is accepted in its totality, the offence punishable under Section 307 IPC is not made out and at the most it is one under Section 324 IPC. Referring to a judgment of this Court in Kundan Singh v. State of Punjab (1982 (3) SCC 213) it is submitted that the High Court has rightly reduced the period of sentence.

Though it is not necessary to examine whether Section 307 IPC had any application, in view of the stand of the respondent that in reality that Section 307 IPC had no application, we have considered that plea.

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 such serious threats. It is, 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 etc. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of

really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCGDautha v. State of Callifornia: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. 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.

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

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".

It is to be noted that the alleged offence was of very serious nature. Section 307 relates to attempt to murder. It reads as follows:

"Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to (imprisonment for life), or to such punishment as is hereinbefore mentioned."

To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any

reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof.

It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

This position was highlighted in State of Maharashtra v. Balram Bama Patil and Ors. (1983 (2) SCC 28), Girija Shanker v. State of Uttar Pradesh (2004 (3) SCC 793) and R. Parkash v. State of Karnataka (JT 2004 (2) SC 348).

In Sarju Prasad v. State of Bihar (AIR 1965 SC 843) it was observed in para 6 that mere fact that the injury actually inflicted by the accused did not cut any vital organ of the victim, is not by itself sufficient to take the act out of the purview of Section 307.

Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.

Section 307 deals with two situations so far as the sentence is concerned. Firstly, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and secondly if hurt is caused to any person by such act the offender shall be liable either to imprisonment for life or to such punishment as indicated in the first part i.e. 10 years.

The nature of the injuries sustained, the weapon used and the opinion of the doctors as noted above to the effect that the injuries were enough to cause death, the trial court had rightly convicted the accused-respondent for offence punishable under Section 307 IPC. The decision In Kundan Singh's Case (supra) has no application to the facts of the present case. The decision was rendered in the background of the factual position as noticed in the judgment.

Considering the principles indicated above, the inevitable conclusion is that the High Court was not justified in reducing the sentence to the period already undergone. Taking into account all relevant aspects including long passage of time which per se is not a ground for reduction in sentence, order of the High Court, so far as it relates to the reduction of period of sentence, is set aside. The respondent shall undergo custodial sentence for three years subject to such remissions as may be available in law. Additionally, he shall pay a fine of Rs.10,000/-. Deposit of the amount shall be made within three months from today. If the amount is not deposited the default sentence will be one year rigorous imprisonment. In case the amount is deposited, a sum of Rs.8,000/- shall be paid to the victim-Parvat Singh.

Appeal is allowed to the aforesaid extent.