REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 1049-1050 OF 2015

(@ SLP(Crl) Nos. 4099-4100 of 2015)

Raj Bala ... Appellant

Versus

State of Haryana & Ors. Etc. Etc. ... Respondents

J U D G M E N T

Dipak Misra, J.

1. In ***Gopal Singh v. State of Uttrakahand***[1], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

> "Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside.

[1] (2013) 7 SCC 545

The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect — propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment."

[Emphasis added]

2. Seven years prior to that, in ***Shailesh Jasvantbhai v. State of Gujarat***[2], it has been held that:-

> "7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: "State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society." Therefore, 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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> 8. Therefore, <u>undue sympathy to impose inadequate sentence would do more harm to the</u>

[2] (2006) 2 SCC 359

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* v. *State of T.N.*[3]"

[Emphasis supplied]

And again:-

"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 the 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"."

3. It needs no special emphasis to state that prior to the said decision, there are series of judgments of this Court emphasizing on appropriate sentencing. Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal

[3] (1991) 3 SCC 471

perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft-quoted saying of Justice Benjamin N. Cardozo "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability.

4. We have commenced the judgment with the aforesaid pronouncements, and our anguished observations, for the present case, in essentiality, depicts an exercise of judicial discretion to be completely moving away from the objective parameters of law which clearly postulate that the prime objective of criminal law is the imposition of adequate, just and proportionate punishment which is commensurate with the gravity, nature of the crime and manner in which the offence is committed keeping in mind the social interest and the conscience of the society, as has been laid down in ***State of M.P. v. Babu Lal***[4], ***State of M.P. v. Surendra Singh***[5] and ***State of Punjab v. Bawa Singh***[6].

[4] (2014) 9 SCC 281
[5] (2015) 1 SCC 222
[6] (2015) 3 SCC 441

5. We sadly and indubitably with a pang proceed to pen the narrative. The respondent nos. 2 to 4 stood trial for the offence punishable under Section 306 IPC. Be it noted, initially the FIR was registered under Section 302 IPC but during investigation, the investigating agency had converted the offence to one under Section 306 IPC. The charge was framed in respect of the offence under Section 306 IPC and the plea of the accused persons was one of complete denial. The allegations against the accused persons were that on 23.10.2000, when ASI Daya Nand along with other police officials were patrolling at Qumaspur, informant Dharam Singh met him and stated that he is a resident of Village Qumaspur and working as Peon in the office of the Public Works Department (B&R), Sub Division No.4, Engineering College, Murthal and on that day about 1.00 p.m., Joginder, son of Dariyao Singh had informed the informant on telephone that his eldest son Krishan Kumar, aged 19 years, had died. After receipt of the information, the informant along with JE Sushil Kumar, JE Nafe Singh and SDC Ramesh Kumar went to his house at village Qumaspur where he found his son was lying dead on a cot. On queries

made about death of his son, Ishwar Singh S/o. Hari Chand, Chet Ram s/o. Mir Singh, Shanti w/o Karan Singh and Ganga Die w/o. Mir Singh told the informant that on the same day at about 12.30 p.m., accused Satbir, Rajesh and Mukesh first gave severe beatings to his son and after that they brought him to his house and hanged him and thereafter left for their respective homes. It was also stated by the informant that Dariya s/o. Lakhi, Sandeep s/o. Rajender Singh and Rinku s/o. Bijender after tearing the rope removed the deceased Krishan from the hand and put him on the cot. On the basis of the statement of the informant, the criminal law was set in motion and investigation commenced. After completion of investigation, charge sheet was placed under Section 306 IPC before the competent court which in turn committed the matter to the Court of Session.

6. To bring home the charge, the prosecution examined as many as 16 witnesses. The learned trial Judge on the basis of the material brought on record found the accused persons guilty of the offence punishable under Section 306 IPC. It is pertinent to state here that the learned trial Judge

posed the question whether the deceased committed suicide by hanging himself with a rope or the accused persons hanged him to the rope which resulted in his death. He took note of the fact that initially the case was registered under Section 302 IPC but during investigation the police had found that the deceased had teased one Seema, daughter of the accused Satbir, and that is why he was assaulted at the spot and thereafter they brought him to his house. The trial court found that there was evidence on record that Seema was teased by the deceased while she was in her house and at that time she has raised an alarm which attracted the attention of the other witnesses and due to the said incident he was assaulted, and he eventually committed suicide. The trial court has recorded a finding that on being injured there was apprehension in the mind of the deceased of further maltreatment and harassment at the hands of the accused, and that led him to commit suicide by hanging himself with a rope inside his house and thus, he was found in a hanging condition. Analysing the evidence the trial court found that the charge leveled

against the accused had been proved and accordingly found them guilty for the offence under Section 306 IPC.

7. After determining the guilt, while imposing the sentence, the learned trial Judge has held that:-

> "As per record, all the convicts are the first offender and they also belong to a weaker section of the society. While it has also come on record that the deceased had teased Seema, daughter of accused Satbir Singh. As such, all of them have committed an offence punishable u/s 306 of the Indian Penal Code. So, keeping in view the nature of the offence and other circumstances of the case and in order to meet the ends of justice, I think that a lenient view is required to be taken on the quantum of sentence. So, I sentence all the three convicts to undergo rigorous imprisonment for a period of three years each with a fine of Rs.3,000/- (Rs. Three thousand only) each and in default of payment thereof to undergo R.I. for six months. "

8. Being aggrieved by the said judgment of conviction and order of sentence, the respondents preferred a criminal appeal before the High Court which affirmed the conviction. It is necessary to mention here that the informant had preferred a criminal revision for conversion of the criminal offence but the same did not find favour with the High Court and accordingly it dismissed the same.

9. As far as the criminal appeal is concerned, the High Court gave the stamp of approval to the conviction but as regards the sentence, it held thus:-

> "As regards the quantum of sentence of imprisonment, this Court, hereby, refers to the jail custody certificates, as per which each of the appellants has undergone a period of 4 months and 20 days. They are not found to be involved in any other criminal case.
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> In view of the totality of the circumstances, this Court is of the considered view that no useful purpose will be served by sending the appellants back to jail for remaining sentences of imprisonment. Ends of justice would be amply met if their substantive sentences of imprisonment are reduced to the one already undergone by them.

10. The reduction of sentence is the primary grievance in one of the appeals herein. As far as the dismissal of revision petition by the High Court is concerned, no infirmity is perceived, for there could neither have been conversion of the offence nor enhancement of sentence. Thus, we restrict our delineation as regards the reduction of sentence by the High Court while dealing with the Criminal Appeal No. 1460 of 2004 arising out of judgment of conviction and order of sentence passed by the learned

Additional Sessions Judge, Sonepat in Sessions Case No. 161 of 2003.

11. Analysed on the touchstone of aforesaid principles stated and reiterated by this Court, as regards the imposition of sentence, it is really unfathomable how the High Court could have observed that no useful purpose would be serve by sending the accused persons to jail for undergoing their remaining sentences of imprisonment, for the High Court itself has recorded that the appellants therein had remained in custody only for a period of four months and twenty days. Section 306 IPC deals with abetment of suicide and further stipulates that whoever abets in the crime would be punished with imprisonment for either description for a term which may extend to ten years and shall also be liable to fine. The two ingredients are essential to prove the offence, that is, the death should be suicidal in nature and there must be abetment thereof. The learned trial Judge has arrived at the conclusion that the respondents had committed the offence under Section 306 IPC. He has applied the test that the accused persons are first offenders and belong to weaker section of the

society. Another mitigating fact that has been recorded is that daughter of the accused Satbir Singh was teased. He has also mentioned the nature of the offence and other circumstances of the case. It is also not discernible how the principle of "first offender" would come into play in such a case. Once the offence under Section 306 IPC is proved, there should have been adequate and appropriate punishment. The learned trial Judge has, on the basis of the appreciation of the evidence on record, come to the conclusion that the deceased was assaulted and being apprehensive of further torture, he committed suicide. The mitigating factors which have been highlighted by the learned trial Judge are absolutely non-mitigating factors and, in a way, totally inconsequential for imposing a sentence of three years. The approach of the High Court, as the reasoning would show, reflects more of a casual and fanciful one rather than just one. A Court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the Court but the duty of the court in such a situation becomes more difficult and complex. It has to

exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the "finest part of fortitude" is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He

should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.

12. In the instant case, we are constrained to say that the learned Single Judge while dealing with the appeal preferred by the respondents has remained quite unmindful and unconcerned to the obvious and, therefore, the reduction of sentence by the High Court to the period already undergone is set aside and the sentence imposed by the learned trial Judge is restored.

13. We may hasten to add though we have commented on the approach of the learned trial Judge, we cannot change the scenario in the absence of any appeal either by the State or the persons aggrieved in that regard. Though a revision preferred by the informant has been dismissed by the High Court, the same did not pertain to the challenge to the quantum of sentence as it could not have.

14. Consequently, the appeal, as far as the challenge to the reduction of sentence by the High Court is concerned, is allowed and the judgment of conviction and order of sentence by the trial Judge is restored. The appeal challenging the order passed in the revision by the High

Court is dismissed. The respondent nos. 2 to 4 be taken into custody forthwith to undergo the remaining part of their sentences.

.....J.
[Dipak Misra]

.....J.
[Prafulla C. Pant]

NEW DELHI
AUGUST 18, 2015.