CASE NO.:
Appeal (crl.) 646 of 1999

PETITIONER:
Adu Ram

RESPONDENT:
Mukna and Ors.

DATE OF JUDGMENT: 08/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

[With Crl. Appeal no.647/1999]

ARIJIT PASAYAT, J.

In our country where large number of people live below the poverty line, destruction of a small quantity of crops, that too by animals in many cases lead to fights and invariably loss of lives. These are normally not pre-meditated and tempers rise at the spot, physical force is used and by the time sanity prevails, damage is done. Neighbours or even friends and relatives forget the existing comity, and animal instincts take over. The case at hand belongs to such category of cases.

These two appeals are inter-linked being directed against the same judgment rendered by a Division Bench of the Rajasthan High Court at Jodhpur. By the impugned judgment the High Court altered conviction of the 5 respondents from Section 302 read with Section 149 and 148, 341 of the Indian Penal Code, 1860 (in short 'the IPC') to Section 304 Part I read with Section 149, 148 and 341 IPC. Criminal appeal no.646/1999 has been filed by the informant while criminal appeal no.647/1999 has been filed by the State of Rajasthan.

Five respondents (hereinafter referred to as the 'accused') were found guilty of the offences punishable under Section 302 read with Sections 149 and 148, 341 of the IPC by the trial Court. Instead of life imprisonment as awarded for the first offence, the High Court restricted the custodial sentence to the period undergone which was about 3 years. Accused persons had not seriously contested the occurrence before the High Court. They have only contended that the offence was not covered by Section 302 read with Section 149.

A brief reference to the factual aspects would be necessary.

On 9.3.1995 over a trifle issue of damage of crop by goats there was altercation between Adu Ram-informant (appellant in criminal appeal no.646/1999) and Poora Ram (hereinafter referred to as the 'deceased') on one side and the accused persons on the other. According to the informant, when he noticed that the goats of the accused Chola had damaged part of the crop, there was exchange of hot words and the respondents-accused surrounded the deceased with the intention to kill him, started beating him with lathies and axes resulting his instantaneous death. Information was lodged at the police station and

investigation was undertaken and on completion thereof the charge sheet was placed.

Fourteen witnesses were examined to further the prosecution version. While the accused persons took the plea that they have found the dead body of the deceased in their fields and with the suspicion that they had caused his murder, they have been implicated. The trial court placed reliance on the evidence of eye-witness i.e. Ruparam (PW-1), Prahlad (PW-5) and Lata (PW-11). It is to be noted that doctor (PW-2) who conducted the post mortem found 34 injuries including several fracture injuries. Accordingly, the trial Court recorded conviction as aforesaid. The High Court noted the fact that the fracture injuries were all seen on the hand and other non-vital parts of the body and there was no grievous injury on the head. All the injuries on the head were simple in nature. Accordingly, the conviction was altered to Section 304 Part I IPC. Taking note of the fact that sometime has been spent during trial, custodial sentence was reduced to the period undergone. The fine from Rs.2,000/- was enhanced to Rs.10,000/-. It was directed that the fine as awarded if deposited, is to be paid to the widow of the deceased as compensation.

Learned counsel for the appellants submitted that alteration of conviction is indefensible. In any event, the imposition of sentence to period undergone is clearly irrational.

Learned counsel for the respondents-accused, however, submitted that there was no injury noticed on any vital part. On the other hand injuries on different part of the body clearly indicate that no particular injury was intended. As a matter of fact, there were only simple injuries on the vital parts of the body.

It was further submitted that considering long passage of time the custodial sentence as imposed is proper. It was pointed out that grievances of the prosecution party have been taken care of by the direction to pay compensation to the widow of the deceased by enhancing fine amount.

So far as the alteration of conviction is concerned, we find that the High Court has recorded adequate reasons for altering conviction. The number of injuries is always not determinative of the offence. It would depend on the weapon used, place where the injuries were inflicted and the nature of the injuries. Further, the assaults appear to have been made in the course of quarrel. That being so, no serious infirmity is noticed in the High Court’s view regarding the conviction. In fact, this is a case which falls under Section 304 Part II IPC.

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 corner-stone 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 \026 as it should be \026 a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the 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. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. (1987) 2 SCR 710), this Court while refusing to reduce the death sentence observed thus:

"It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

Therefore, 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).

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

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.

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.

In the instant case taking note of the background facts and special features of the case custodial sentence of six years would serve the ends of justice. Normally, sentence for conviction for offence relatable to Section 304 Part I IPC would be more. But this is a case which could be, on the facts of the case covered under Section 304 Part II IPC. Though there is no appeal on behalf of the accused persons, the same is apparently because of reduction of sentence. The enhanced fine has to be deposited, if not already done, within two months from today. In case the fine is not deposited the default custodial sentence will be two years RI.

Appeals are accordingly disposed of.