

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.(S). 1217 OF 2015
(Arising out of SLP (CRL.) NO.3863 OF 2013)

STATE OF MADHYA PRADESH
Appellant(s)

A

VERSUS

BAIJNATH & ORS.
Respondent(s)

R

O R D E R

Leave granted.

This appeal arises out of an order dated 6th November, 2012

passed by the High Court of Madhya Pradesh, Bench at Gwalior,

whereby Criminal Revision No.609 of 2011 filed by the respondents has been allowed in part and while upholding the conviction of the respondents, the High Court has reduced the sentence awarded to them to the period already undergone besides a fine of Rs.1,000/- each.

The respondents were tried and convicted for offences punishable under Sections 323 and 326 read with Section 34 of the Indian Penal Code by the First Class Judicial Magistrate, Vidisha.

For the offence punishable under Sections 323 r/w 34 they were sentenced to undergo imprisonment for three months and a fine of Rs.200/-.

In default of payment of fine they were sentenced to undergo further imprisonment for a period of

three months.

Signature Not Verified
Digitally signed by
Mahabir Singh

For the offence punishable under Sections 326

r/w
Date: 2015.09.28
14:58:20 IST
Reason:

34 they were sentenced to rigorous imprisonment for a

period of two years with a fine of Rs.500/- each.

In default

of payment of fine they were sentenced to undergo further

imprisonment for a period of three months.

The conviction and sentence, awarded to the respondents, when challenged in appeal before the Court of Second Additional Sessions Judge, Vidisha, was affirmed by the said court in terms of a judgment and order dated 19th July, 2011. The respondents then preferred Criminal Revision No.609 of 2011 before the High Court of Madhya Pradesh in which they did not challenge their conviction as recorded by the courts below but confined their grievance to the quantum of sentence awarded to them. The High Court found favour with the contention regarding quantum of sentence and accordingly allowed the criminal revision in part, reducing the sentence awarded to the respondents to the period already undergone but enhancing the fine, imposed upon them, by a further sum of Rs.1,000/- and in default of payment of fine directed the respondents to undergo imprisonment for a period of thirty days each on both counts. The present appeal assails the correctness of the said order.

We have heard Mr. C.D. Singh, learned counsel appearing for the appellant-State and Mr. Yogesh Tiwari, learned counsel for the respondents. Relying upon a decision of this Court in State of Madhya Pradesh v. Najab Khan and Others - (2013) 9 SCC 509, Mr. C.D. Singh contended that the High Court was in palpable error in having interfered with the sentence awarded to the respondents. It was urged that the nature of the offence committed by the respondents, the weapon used and the unprovoked assault mounted on the victim did not justify any interference with the sentence awarded to the respondents by

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the courts below. The High Court, according to Mr. Singh, failed to notice that the respondents had undergone just four days of imprisonment which was wholly incommensurate with the gravity of the offence committed by the respondents leading to fracture of the hands and one of the legs of the complainant-victim. It was further submitted that the trial court and so also the appellate court had rejected the version given by the respondents in their defence and accepted the

theory that the assault was on account of certain previous enmity between the victim and the respondents.

On behalf of the respondents it was, on the other hand, submitted by Mr. Tiwari that even when the view taken by the High Court regarding quantum of sentence may be rather indulgent towards the respondents yet keeping in view the fact that the incident in-question took place in the year 1997 and also the fact that the respondents had suffered legal proceedings for nearly 14 years till the matter reached the High Court, this Court need not interfere with the rather lenient sentence awarded to them by the High Court. It was also contended that although the courts below had not accepted the version given by the respondents yet the fact remains that the incident in-question had its genesis in an alleged attempt to molest Kalabai, wife of accused-respondent Lakhan Singh, by the complainant-Ramsewak. Kalabai, it was argued, had been examined at the trial in defence by the respondents who had supported the version of the accused-respondents that Ramsewak-complainant had tried to molest her while she had gone to fetch water from the village well.

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We have given our anxious consideration to the submissions made at the Bar. As an abstract principle of law, there is no gainsaying that punishment for a crime must match the nature and the gravity of the offence. There is also no manner of doubt that while determining the quantum of sentence the court must apart from the nature of the offence take into consideration, the manner in which the crime was committed, the motive for the commission of the crime, the conduct of the accused, the nature of the weapon used and the attending circumstances. The decision of this Court in Najab Khan (supra) relied upon by Mr. Singh has, if we may with due respect, correctly enumerated the relevant factors that must enter the mind of the court determining the sentence to be awarded in each case. Having said that there is no denying the

fact that there is and cannot be any cut and dried formula for general application in the matter of awarding of sentence.

All

that can be said is that the court must in every case remain at all times conscious of the fact that the nature of the offence and other circumstances, mentioned above, have to be taken into consideration while determining the sentence to be awarded.

Coming to the facts of the case at hand we find that the incident is as old as the year 1997. There are two versions

about the motive for the commission of the offence, one set up by the prosecution which suggests some previous enmity between the two sides without elaborating what the enmity was and the other accusing the victim-the complainant in the present case

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of an attempted molestation of the wife of one of the respondents. In support of that version Kalabai, the alleged

victim of the attempted molestation, was examined at the trial.

It is unnecessary for us to appraise further the evidence available on record insofar as the motive for the commission of the offence is concerned. Suffice it to say that the version

given by the respondents is as probable as the one given by the prosecution insofar as the motive underlying the offence is

concerned. Having said that we cannot lose sight of the fact

that the conviction recorded by the courts below has attained

finality and the only question that we are called upon to

examine is whether the sentence awarded by the High Court is

justified. In the ordinary course the weapon used and the

injuries sustained by the victim may have justified award of a

sentence of imprisonment determined by the trial court and

upheld by the appellate court but what has put us to thought in

restoring that sentence is the motive for the commission of the

offence as suggested by the defence and the time lag between

the commission of the offence and the order passed by the High

Court. The trial had, it appears, continued for fairly long

period to conclude. The appeal and revisional proceedings

concluded only in the year 2012 with the disposal of the

revision petition by the High Court. Superadded to all these facts is the fact that the respondents have had no criminal antecedents. They are said to be farmers by vocation. It is also not in dispute that as on the date of the occurrence respondent-Baijnath was 50 years old while respondent no.2-Lakhan Singh was 45 years and respondent no.3-Prayag Singh was reported to be 43 years old. All of them are by now senior citizens.

There is no allegation that the incident in-question had led to any further bad blood among the two sides in the village or resulted in any other incident or litigation, civil or criminal in nature. In the totality of the circumstances, we are inclined to take a lenient view. In our opinion, while the respondents may not be committed to jail to serve any further sentence besides what has already been undergone by them, they must pay a higher fine than what was awarded by the courts below. Keeping in view the nature of the injuries suffered by the complainant, the weapon used and the attending circumstances, we are of the view that in addition to fine of Rs.200/- under Section 323 and Rs.500/- under Section 326 enhanced by another Rs.1000/- by the revision court, the respondents must pay a cumulative fine of Rs.25,000/- each for both offences for which they have been committed. On deposit of the said amount by the respondents, the same shall be disbursed to the victim towards the compensation under Section 357(1)(b) of the Code of Criminal Procedure, 1973.

We accordingly allow these appeals but only in part and to the extent that the fine amount shall stand enhanced by Rs. 25,000/- each against the respondents who shall deposit the same with the trial court within six weeks from today. The amount shall be over and above the amount already deposited in terms of the orders passed by the trial court, the appellate court and the High Court. Upon deposit, the amount shall be

released in favour of the victim towards compensation and in

case the victim is no longer alive, the same shall be released in favour of his legal heirs. We further direct that in the event of non payment of fine, as enhanced by us, the respondents shall undergo rigorous imprisonment for a further period of six months each under Section 326/34 of the IPC. The order passed by the Courts below shall to the above extent stand modified.

.....J.
(T.S. THAKUR)

.....J.
(KURIAN JOSEPH)

NEW DELHI
DATED 15th SEPTEMBER, 2015.

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ITEM NO.3

COURT NO.2

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Crl.) No(s). 3863/2013

(Arising out of impugned final judgment and order dated 06/11/2012 in CRLR No. 609/2011 passed by the High Court Of Madhya Pradesh At Gwalior)

STATE OF M.P.

Petitioner(s)

VERSUS

BAIJNATH & ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T.)

Date : 15/09/2015 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. C. D. Singh,Adv.
Ms. Sakshi Kakkar,Adv.

For Respondent(s) Mr. Yogesh Tiwari,Adv.
Mr. Vikrant Singh Bais,Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

In terms of the signed order, these appeals are allowed

but in part and to the extent indicated in the order:

"We accordingly allow these appeals but only

in part and to the extent that the fine amount shall stand enhanced by Rs. 25,000/- each against the respondents who shall deposit the same with the trial court within six weeks from today. The amount shall be over and above the amount already deposited in terms of the orders passed by the trial court, the appellate court and the High Court. Upon deposit, the amount shall be released in favour of the victim towards compensation and in case the victim is no longer alive, the same shall be released in favour of his legal heirs. We further direct that in the event of non payment

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of fine, as enhanced by us, the respondents shall undergo rigorous imprisonment for a further period of six months each under Section 326/34 of the IPC. The order passed by the Courts below shall to the above extent stand modified."

(MAHABIR SINGH)
COURT MASTER

(VEENA KHERA)
COURT MASTER

(Signed order is placed on the file)