

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2009
(Arising out of S.L.P. (Crl.) No. 4917 of 2009)

Jameel Appellant(s)

Versus

State of U.P. Respondent(s)

J U D G M E N T

P. Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the judgment and order of the High Court of Judicature at Allahabad, Lucknow Bench passed in Criminal Appeal No. 8 of 1996 dated 04.07.2007 in and by which, it dismissed the appeal insofar as the appellant herein is concerned and confirmed the conviction and sentence imposed on him by the Addl. District and Sessions Judge, Lucknow in Sessions Trial No. 323 of 1994 under Section 308 IPC for a period of two years.

3) Brief facts:

a) According to the prosecution, on 21.04.1989, at about 4.00 p.m. in the evening the accused persons Dastgir and Jameel injured Hasib Mohammad, son of Ikram Ali-the Complainant assaulting with lathis on the way near granary while carrying seeds to the fields in village Khwaja Ka Purwa, hamlet of Rojoli under Police Station Chinhat, District Lucknow. The said incident was witnessed by Rashid and Siddique. The cause of the incident as stated was that one day before the incident, the accused persons Jameel and Dastagir reaped two bundles of hay more from the fields of informant Ikram Ali. It was he, who made a complaint to the police which was registered at 7.30 p.m. on 21.04.1989. Injured Md. Hasib was sent to Balrampur hospital for medical examination where Dr. T.N. Singh, the emergency medical officer Balrampur, Lucknow examined him at 8.45 p.m. on 21.04.1989 and found the following injuries:-

- i) One ruptured wound 4 X 1.5 cm deep under observation on the left side of the head, 7 cm above the eye-brow.
- ii) It was bleeding and swelling around the injury.
- b) The X-ray of injury on the head of Hasib was conducted on 22.04.1989 by Dr. Amit Kumar - Radiologist Balrampur. After completion of the investigation, charge-sheets being exhibits K-5 and K-6 were filed against Jameel and Dastgir on 31.05.1989 and 09.06.1989 respectively under Section 308 IPC.
- c) The prosecution examined the informant Ikram Ali as PW-1, Smt. Mehrunisa wife of injured Hasib as PW-2, injured Hasib as PW-3, Dr. T.N. Singh as PW-4, Dr. Amit Kumar as PW-5 and Police Inspector/Investigating Officer Shri Mahraj Singh as PW-6.
- d) The accused denied the charges leveled against them in the statement under Section 313 CrPC and stated that the case was instituted due to enmity. In defence, no evidence was produced on behalf of the accused persons. However, they filed an application stating that the

prosecution case does not fall under Section 308 and it falls under Section 324 IPC.

- e) The trial Court found that in the incident both the accused persons participated in inflicting injury to Hasib with the common intention and were liable equally in inflicting one injury on Head, therefore, the offence under Section 308 is proved against the accused persons. In view of the said conclusion, the trial Court convicted the accused persons i.e. Dastgir and Jameel under Section 308 IPC on 22.12.1995 and punished with two years rigorous imprisonment.
- f) Aggrieved by the aforesaid conviction and sentence, both the accused persons preferred Criminal Appeal No.8 of 1996 before the High Court of Judicature at Allahabad, Lucknow Bench. The High Court by the impugned order and taking note of the statement of the injured found Dastgir not guilty and acquitted him, however, confirmed the conviction and sentence insofar as Jameel and dismissed his appeal on 04.07.2007. Questioning the

same, the present appellant-Jameel has filed the above appeal by way of special leave.

4) We heard Mr. R.K. Singh, learned counsel for the appellant and Mr. Ratnakar Das, learned senior counsel for the State of U.P.

5) On 17.07.2009, this Court issued notice only on the question of sentence; hence, there is no need to traverse all the factual details as stated in the trial Court and the High Court. The only question that arises for consideration in this appeal is whether the quantum of sentence, namely, two years' rigorous imprisonment awarded for an offence under Section 308 IPC is reasonable and acceptable.

6) Learned counsel appearing for the appellant, after taking us through all the relevant materials, contended that in the facts and circumstances led in by prosecution the only offence made out is Section 323 and in view of the fact that the appellant had undergone nearly eight months in custody, the conviction and sentence awarded by the trial Court and confirmed by the High Court are to be modified accordingly, and he may be set at liberty forthwith. On the other hand,

learned senior counsel appearing for the State of U.P. by pointing out the injury, medical report and ingredients of Sections 320, 324 and 325 IPC submitted that taking note of the head injury by use of lathi which is a grievous injury in terms of clause 7 of Section 320 IPC as certified by doctor, there is no ground for interference and reduction of sentence is not warranted.

7) We have carefully perused all the oral and documentary evidence as well as considered the rival contentions of both the parties. In view of the limited notice only as regards to question of sentence, let us find out whether the prosecution has established its case and award of two years' rigorous imprisonment is quite reasonable and acceptable.

8) Before going into the acceptability or reasonableness about the sentence awarded to the appellant-accused, let us consider the well-established principles in awarding proper and appropriate sentence.

9) Recently, this Court, in **Gurmukh Singh v. State of Haryana**, JT 2009 (11) SC 122 = 2009 (11) SCALE 688,

enumerated the various considerations which will be taken into account while determining the sentence which read as under:

“24. These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- a) Motive or previous enmity;
- b) Whether the incident had taken place on the spur of the moment;
- c) The intention/knowledge of the accused while inflicting the blow or injury;
- d) Whether the death ensued instantaneously or the victim died after several days;
- e) The gravity, dimension and nature of injury;
- f) The age and general health condition of the accused;
- g) Whether the injury was caused without pre- meditation in a sudden fight;
- h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- i) The criminal background and adverse history of the accused;
- j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- k) Number of other criminal cases pending against the accused;

l) Incident occurred within the family members or close relations;

m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused. The list of circumstances enumerated above is only illustrative and not exhaustive. In our considered view, proper and appropriate sentence to the accused is the bounded obligation and duty of the court. The endeavour of the court must be to ensure that the accused receives appropriate sentence, in other words, sentence should be according to the gravity of the offence. These are some of the relevant factors which are required to be kept in view while convicting and sentencing the accused.”

10) The general policy which the courts have followed with regard to sentencing is that the punishment must be appropriate and proportional to the gravity of the offence committed. Imposition of appropriate punishment is the manner in which the Courts respond to the society's cry for justice against the criminals. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime.

11) 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.

12) It was 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. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.

13) As far as complicity of the appellant-Jameel is concerned, the prosecution has established its case beyond doubt that he hit on the head with a lathi and injured Md. Hasib. It has been established and proved from the statement of the injured PW-3 and his wife PW-2. It is also clear from the evidence of

PW-2 that she had accompanied her husband-PW-3 and father-in-law to the Police Station.

14) From the medical report Ext. Ka-2 and supplementary medical report, it is clear that injury was inflicted on the left side head i.e. 7 cm above left eye-brow. There was a fracture of left parital bone and according to Dr. Amit Kumar - PW-5 the bone of the head of Hasib was found fractured. As per Section 323 IPC, whoever, except in the case provided for by Section 334, voluntarily causes hurt, shall be punished with the imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both. In the light of the evidence of the doctors' medical report, Section 323 is not at all applicable as argued by learned counsel for the appellant. On the other hand, grievous hurt has been defined in Section 320 which reads thus:-

“320. Grievous hurt.—The following kinds of hurt only are designated as “grievous”:-

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear,

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of the head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.”

In view of strong medical evidence in the form of oral and documentary, the injuries sustained by the injured PW-3 comes under ‘Seventhly’ of Section 320 i.e. fracture or dislocation of a bone. Voluntarily causing hurt by dangerous weapons or means has been explained in Section 324 and punishment for voluntarily causing grievous hurt is with imprisonment which may extend to seven years and shall also be liable to fine. The trial Court as well as the High Court, taking note of the enmity and intention of the accused and nature of injuries, evidence of both oral and documentary and medical evidence, concluded and awarded punishment under Section 308 IPC. The relevant Section is as follows:-

“308. Attempt to commit culpable homicide.—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 culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”

In view of the materials placed by prosecution, analyzed by the trial Court and approved by the High Court, we are not inclined to reduce the sentence. We have already pointed out about the proof regarding enmity, intention and causing grievous hurt.

15) In those circumstances and in the light of the materials placed, we are of the view that there is no valid ground for reduction of sentence as claimed by the appellant. Consequently, the appeal fails and the same is dismissed.

.....J.
(P. SATHASIVAM)

.....J.
(J.M. PANCHAL)

NEW DELHI;
NOVEMBER 06, 2009.

SUPREME COURT OF INDIA



JUDGMENT