

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 854 OF 2013

State of Madhya Pradesh  
...Appellant

Versus

Ram Bharosa  
...Respondent

O R D E R

1. This appeal has been filed by the State of Madhya Pradesh against the judgment and order dated 28.6.2012 passed by the High Court of Madhya Pradesh at Jabalpur in Criminal Revision No. 864 of 2007 by which it has partly affirmed the judgment and order dated 11.10.2007 of learned Additional Sessions Judge, Chachoda in Criminal Appeal No. 508 of 2007 whereby the judgment and order dated 17.8.2007 passed by the Judicial Magistrate First Class, Chachoda in Criminal Case No. 491 of 2005, whereby the respondent was convicted for the offence punishable under Section 25(1B)(i) of the Arms Act, 1959 (hereinafter referred to as the 'Act 1959') by sentencing him to undergo one year RI with a fine of Rs.2,000/-, was affirmed.

2. The High Court while affirming the conviction of the respondent under the Act 1959 confirmed the conviction of the respondent, however, reduced the sentence from one year to 21 days which the respondent had already undergone.

3. We have heard Shri C.D. Singh, learned counsel appearing on behalf of the appellant - State and Shri Akshat Shrivastava, learned counsel appearing on behalf of the respondent. As the matter had not been argued on merits so far as the conviction of the respondent is concerned in the revision before the High Court, it is neither desirable nor permissible under law to consider the issue of conviction on merit. Therefore, the case remains restricted to the quantum of punishment.

4. Section 25(1B) of the Act 1959 provides that an offence under the aforesaid provision "shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and shall also be liable to fine.

Provided that the Court may for any adequate and special reasons to be recorded in the judgment impose a sentence of imprisonment for a term of less than one year."

5. Therefore, it is evident from the aforesaid statutory provisions that legislature has prescribed the minimum one year sentence as a rule and only in exceptional circumstances, the discretion is given to court to award the sentence for less than one year by recording adequate reasons.

6. In State of U.P. v. Shri Kishan, AIR 2005 SC 1250, this Court has emphasised that just and proper sentence should be imposed. The Court held:

"..... 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'."

(Emphasis added)

(See also: Chinnadurai v. State of Tamil Nadu, AIR 1996 SC 546; Sadhupati Nageswara Rao v. State of Andhra Pradesh, AIR 2012 SC 3242; and Ajahar Ali v. State of West Bengal, (2013) 10 SCC 31).

7. In State of Rajasthan v. Vinod Kumar, AIR 2012 SC 2301, this Court while dealing with the issue of minimum sentence provided under the statute held:

"19. Awarding punishment lesser than the minimum prescribed under Section 376, IPC, is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition that exception clause is always required to be strictly interpreted even if there is a hardship to any individual. Exception is provided with the object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject-matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman, AIR 1985 SC 582; Union of India and Ors. v. M/s. Wood Papers Ltd. and Anr., AIR 1991 SC 2049; Grasim Industries Ltd. and Anr. v. State of Madhya Pradesh and Anr., AIR 2000 SC 66; Laxminarayan R. Bhattad and Ors. v. State of Maharashtra and Anr., AIR 2003 SC 3502; Project Officer, ITDP and Ors. v. P.D. Chacko, AIR 2010 SC 2626; and Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors., (2011) 1 SCC 236).

20. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/commensurate to the gravity of offence.... The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused .....and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation...

The court while exercising the discretion in the exception clause has to record "exceptional reasons" for resorting to the proviso. Recording of such reasons is sine qua non for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straight jacket formula can be laid down."

8. Undoubtedly, imposition of sentence is in the realm of discretion of the court and unless the sentence is found to be grossly inadequate, the appellate court would not be justified in interfering with the discretionary order of sentence. This view stands fortified by the judgment of this Court in Ram Sanjiwan Singh & Ors. v. State of Bihar, AIR 1996 SC 3265.

9. In the instant case, the High Court has not given any mitigating circumstance warranting to award the sentence for less than one year. Therefore, we are of considered opinion that there can be no justification to award the sentence less than minimum prescribed for such offence under the Act 1959 without recording any reason whatsoever. Therefore, the judgment so far as the sentence part is concerned, is not sustainable in the eyes of law.

10. In view of the above, the appeal succeeds and is allowed. The case so far as award of sentence is concerned, is remitted to the High Court to consider the case in accordance with law and pass an appropriate order on sentence. As the matter remains pending before this Court for a long time, we request the Hon'ble High Court to decide the case at the earliest preferable within a period of two (2) months from the date of filing of certified copy of this order before the High Court. With these observations, the appeal stands disposed of.

.....  
.J.  
(DR. B.S.

CHAUHAN)

.....J.  
New Delhi, (S.A. BOBDE)  
January 3, 2014

ITEM NO.5 Court No.4 SECTION IIA

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

CRLMP.NO. 21997/2013n in  
CRIMINAL APPEAL NO(s). 854 OF 2013

STATE OF M.P. Appellant(s)

VERSUS

RAM BHAROSA Respondent(s)

(With appln(s) for bail and office report)

Date:03/01/2014 This matter was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE B.S. CHAUHAN  
HON'BLE MR. JUSTICE S.A. BOBDE

For Appellant(s) Mr. C.D. Singh,Adv.

For Respondent(s) Mr.Akshat Shrivastava,Adv.  
Mr. Inderjeet Yadav,Adv.

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

The appeal is disposed of, in terms of the signed order. The case so far as award of sentence is concerned, is remitted to the High Court to consider the case in accordance with law and pass an appropriate order on sentence. As the matter remains pending before this Court for a long time, we request the Hon'ble High Court to decide the case at the earliest preferable within a period of two (2) months from the date of filing of certified copy of this order before the High Court.

(O.P. SHARMA)  
Court Master

(M.S. NEGI)  
Assistant Registrar

(Signed order is placed on the file)