
(2014) 07 AHC CK 0088
In the Allahabad High Court
Case No : Criminal Revision No. 1155 of 1987

Mahendra Pal

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 17-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202
Penal Code, 1860 (IPC) — Section 114, 211, 307, 392, 500

Citation : (2014) 3 ACR 3478 : (2014) 7 ADJ 427

Hon'ble Judges : Ranjana Pandya, J

Bench : Single Bench

Advocate : G.P. Tandon, D.S. Tiwari, P.S. Tewari and Mohit Kumar Shukla,
Advocate for the Appellant

Judgement

Ranjana Pandya, J.—This criminal revision has been preferred against the judgment and order dated 22.7.1987 passed by the learned VIIIth Additional Sessions Judge, Bulandshahr in Criminal Appeal No. 12 of 1985 arising out of Criminal Case No. 408 of 1984 passed by the learned Judicial Magistrate-II, Khurja dated 9.1.1985 convicting the applicant under Sections 500/211 IPC and sentencing him to undergo 6 months" rigorous imprisonment and a fine of Rs. 1000/- on each count. Brief facts of the case are that on 16.5.1984, the complainant filed a complaint before the Judicial Magistrate-II, Khurja with the allegation that the revisionist with intention of causing loss to the complainant and defaming him maliciously lodged a false report at the police station Pahasu on 1.5.1984. On the basis of this report, case punishable u/s 392 IPC was registered at the police station. After investigation of the case, the police found the case to be false. The complainant was put to great harassment and to defamation, hence he filed a complaint. The statement of the complainant was recorded u/s 200 Cr.P.C. and in inquiry u/s 202 Cr.P.C. the statement of Basudeo was recorded. The learned Magistrate later on summoned the revisionist. After taking all the evidence in support, the Magistrate convicted the revisionist for six months" imprisonment u/s 500 IPC and a fine to the tune of Rs. 1000/- with

defaulting clause and six months" imprisonment u/s 211 IPC coupled with fine to the tune of Rs. 1000/- with defaulting clause. He further ordered that in case the fine is recovered Rs. 1000/- to be paid to the complainant Ram Autar as damages. Feeling aggrieved the accused revisionist filed an appeal being Criminal Appeal No. 12 of 1985, which was dismissed on 22.7.1987. Feeling aggrieved, the appellant preferred the present revision.

2. I have heard Shri Mohit Kumar Shukla, learned counsel for the revisionist and the learned AGA for the State.

3. There are two judgments of both the Courts below arriving at the conclusion that the accused-revisionist committed the offence. The appeal was also dismissed by the Appellate Court.

4. Learned counsel for the revisionist has argued that the proceedings are pending since long, hence the sentence be reduced.

5. As far as reduction of sentence is concerned, this Court cannot loose sight of the fact that the Apex Court is now and again not justifying the reduction of sentence awarded to the accused persons in heinous offences. The Hon'ble Apex Court has laid down that the cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.

6. The factual matrix of this case is similar to the facts and circumstances of the case in Shailesh Jasvantbhai and Another Vs. State of Gujarat and Others, wherein the accused was convicted u/s 307/114 IPC and for the same the trial Court sentenced the accused for 10 years. However, the High Court, in its appellate jurisdiction, reduced the sentence to the period already undergone. In this case, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eyes of law. This Court, observed thus:

"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 and 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.

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."

7. This position was reiterated by a three-Judge Bench of this Court in Ahmed Hussein Vali Mohammed Saiyed and Another Vs. State of Gujarat, wherein it was observed as follows:

"99..... The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. 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 the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. 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 both the criminal and the victim belong."

8. In this case, the Court further goes to state that meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of society.

9. In Jameel Vs. State of U.P., this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus:

"15. 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.

16. It is 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."

10. In *Guru Basavaraj @ Benne Settappa Vs. State of Karnataka*, while discussing the concept of appropriate sentence, this Court expressed that:

"It is the duty of the Court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

11. Recently, this Court in *Gopal Singh Vs. State of Uttarakhand*, held as under:

"18. 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. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence....."

12. It was reiterated that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. 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. Hence, it is 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 Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

13. With these principles, I think it would be appropriate in the present case to modify the sentence of punishment since the occurrence relates to the year 1985, the trial ended on 9.8.1985 and the appeal was decided on 22.7.1987. Thus, it is about twenty seven years since this matter has been pending. This is a petty matter, in which the Court should have exercised leniency in imposing the sentence.

14. However, having regard to the facts of the case, nature of offence, gravity of punishment, I think it a fit case, in which the sentence be modified and the

revision is liable to be allowed. The revision is dismissed with modification. The conviction is confirmed. As far as the sentence u/s 500 IPC is concerned, the sentenced is modified to Rs. 2000/- as fine and in case of default to pay, the revisionist shall undergo simple imprisonment for one month. As far as the sentence u/s 211 IPC is concerned, a fine of Rs. 2000/- is imposed on the revisionist and in default, he shall undergo simple imprisonment for one month. The revisionist is directed to deposit the entire fine before the learned trial Court within a month from the date of production of certified copy of this order. Failing which, the trial Court shall get the sentence implemented.