

(1977) 03 SC CK 0016
In the Supreme Court Of India
Case No : Appeal Criminal 190 of 1976

Palaniappa Gounder

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 04-03-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357, 357(1), 482
Penal Code, 1860 (IPC) — Section 302

Citation : AIR 1977 SC 1323 : (1977) CriLJ 992 : (1977) 2 SCC 634 : (1977) 3 SCR 132 : (1977) 9 UJ 339

Hon'ble Judges : Y. V. Chandrachud, C.J; P. K. Goswami, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

Y.V. Chandrachud, J.—The appellant, Palaniappa Gounder, was convicted by the learned Principal Sessions Judge, Salem, u/s 302 of the Penal Code and was sentenced to death on the charge that on August 23, 1974 he had committed the murder of one Sengoda Gounder. The appellant's son and daughter-in law were convicted by the learned Judge for abetting, the murder and were sentenced to life imprisonment. The three accused filed an appeal in the High Court of Madras which upheld the appellant's conviction u/s 302 but reduced the sentence from death to imprisonment of life. However, while reducing the substantive sentence the High Court imposed a fine of Rs. 20,000/- on the appellant and directed that out of the fine, if realised, a sum of Rs. 15,000/- should be paid to the son and daughters of the deceased u/s 357(1)(c) of the Criminal Procedure Code, 2 of 1974. The other two accused were acquitted by the High Court. We are not concerned in this appeal with the legality of the appellant's conviction or with the acquittal of his daughter and son-in-law. The special leave granted by this Court is limited to the question of the propriety of the fine imposed by the High Court.

2. The reason and occasion for imposing the sentence of fine was that an applications was filed before the High Court u/s 482 of the Criminal Procedure

Code by a son and two daughter of the deceased praying that the appellant, his son and daughter-in-law be asked to pay to them, as heirs of the deceased, compensation in the sum of Rs. 40,000/- for the death of their father.

3. Section 482 of the Code under which the heirs of the deceased filed the application for compensation corresponds to Section 561-A of the Criminal Procedure Code of 1898. It saves the inherent powers of the High Court to make such orders as may be necessary to give effect to any orders under the code or to prevent abuse of the process of any Court or otherwise to secure ends of justice. A provision which saves the inherent powers of a Court cannot override any express provision contained in the statute which saves that power. This is put in another form by saying that if there is an express provision in a statute governing a particular subject matter there is no scope for invoking or exercising the inherent powers of the Court because the Court ought to apply the provisions of the statute which are made advisedly to govern the particular subject matter. From this it will be clear that the application made by the heirs of the deceased for compensation could not have been made u/s 482 since, Section 357 expressly confers power on the court to pass an order for payment of compensation in the circumstances mentioned therein. That did not, however, affect the power of the High Court to deal with the application because though the application was wrongly described as having been made u/s 482 the High Court could deal with it as if it were made u/s 357 of the Code. That in fact is what the High Court, proceeded to go, for it passed the order of compensation not u/s 482 but u/s 357(1)(c) of the Code.

4. Section 357 of the CrPC, 2 of 1974, reads thus:

357. Order of to pay compensation. (1) When a Court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the court may, when passing judgment, order the whole or any part of the fine recovered to be applied-

(a) in defraying the expenses properly incurred in the prosecution:

(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a Civil Court:

(c) when any person is convicted of any offence for having caused the death of another person or of having abetted the commission of such an offence, is paying compensation to the persons who are, under the Fatal Accident Act, 1853(13 of 1853), entitled to recover damages from the person sentenced for the loss resulting to them from such death;

(d) when any person is convicted of any offence which includes theft, criminal mis-appropriation, criminal breach of trust, or cheating, or of having dishonestly received or retained, or of having voluntarily assisted in disposing of, stolen property knowing or having reasons to believe the same to be stolen, in

compensating any bona fide purchaser of such property for the loss of the same if such property is restored to the possession of the person entitled thereto.

(2) If the fine is imposed in a case which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal has elapsed, or, if an appeal be presented, before the decision of the appeal.

(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or in jury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Sessions when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

5. Clause (a),(b) and (d) of Section 357(1) need not be considered firstly because the High Court has passed the order of compensation under Clause (c) and secondly because those clauses have no application. No order having been passed by the High Court for defraying the expenses incurred in the prosecution Clause (a) does not come for consideration. Clause (b) has no application to cases in which the heirs of a person whose death has been caused apply for compensation because that clause deals with the payment of compensation to the very person to whom any loss or injury has been caused as a result of the offence committed against him or his property and when compensation is recoverable by such person in a Civil Court. Clause (d) deals with a different class of cases altogether and need not detain us.

6. Clause (c) of Section 357(1) under which the High Court has passed the order for compensation enables the Court to direct that the whole or any part of the fine recovered may be applied in paying compensation to the persons who are under the Fatal Accidents Act, 1855 entitled to recover damages from the person sentenced for the loss resulting to them from the death of the person whose heirs, as described in the Act of 1855, they claim to be. Since under the Act of 1855, persons who may be compensated are the wife, husband, parent (including grand-parents) and child (including grand-children and step-children), the application filed in the High Court was maintainable at the instance of the son and daughters of the deceased.

7. It cannot however be overlooked that the order for compensation can be overlooked that the order when "a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part". We are concerned in this appeal to examine primarily the legality and propriety of the sentence of fine imposed by the High Court because upon that would depend the efficacy and

indeed the very existence of the order for payment of compensation to the heirs of the deceased. The compensation, as provided in the section, has to come out of the fine. Therefore, if on a proper application of the principles of sentencing, the fine imposed by the High Court is found to be excessive and has thereafter to be reduced, the order regarding the payment of compensation must suffer a corresponding variation.

8. There can be no doubt that for the offence of murder Courts have the power to impose a sentence of fine u/s 302 of the Penal Code. That section provides that whoever commits murder shall be punished with death, or imprisonment for life, and "shall also be liable to fine". That is why Section 357(1) of the Code speaks of a sentence (including a sentence of death) of which fine forms a part". That is only an instance of the practical application of Section 302 under which not only a sentence of imprisonment for life but even a sentence of death can legitimately be combined with a sentence of fine.

9. But legitimacy is not to be confused with propriety and the fact that the Court possesses a certain power does not mean that it must always exercise it. Though, therefore, the High Court had the power to impose on the appellant a sentence of fine alongwith the sentence of life imprisonment the question still arises whether a sentence of fine of Rs. 20,000/- is justified in the circumstances of the case. Economic offences are generally visited with heavy fines because an offender who has enriched himself unconscionably or unjustifiably by violating economic laws can be assumed legitimately to possess the means to pay that fine. He must disgorge his ill gotten wealth. But wrote different considerations would, in the generality of cases, apply to matters of the present kind. Though there is power to combine a sentence of death with a sentence of fine that power is sparingly exercised because the sentence of death is an extreme penalty to impose and adding to that grave penalty a sentence of fine is hardly calculated of life imprisonment is seldom combined with a heavy sentence of fine. We cannot, of course, go so far as to express approval of the unqualified view taken in some of the cases that a sentence of fine for an offence of murder is wholly "inapposite" (see, for example), *State Vs. Pandurang Tatyasaheb Shinde*, , but before imposing the sentence of fine, particularly a heavy fine, alongwith the sentence of death or life imprisonment, one must pause to consider whether the sentence of fine is at all called for and if so, what is a proper or adequate fine to impose in the circumstances of the cases. As observed by this Court in *Adamji Umar Dalal Vs. The State of Bombay*, determination of the right measure of punishment is often a point of great difficulty and no hard and fast rule can be laid down, it being a matter of discretion which is to be guided by a variety of considerations but the Court must always bear in mind the necessity of maintaining a proportion between the offence and the penalty proposed for it. Speaking for the Court Mahajan J. observed in that case that: "in imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused persons as to the character and magnitude of the offence, and where a substantial term of imprisonment is inflicted, an excessive fine should not

accompany it except in exceptional cases" (p. 177). Though that case related to an economic offence, this Court reduced the sentence of fine from Rs. 42,300/- to Rs. 4,000/- on the ground that due regard was not paid by the lower Court to the principles governing the imposition of a sentence of fine.

10. The High Court imposed in the instant case a fine of Rs. 20,000/- on the ground that "the deceased was aged about 48 years and was actively supervising the cultivation of the family lands and would have lived for another 15 to 20 years with his abilities in fact, and the loss to the dependents, viz., the son and daughters would be about Rs. 20,000/-". Except for the bald and bare statements contained in the petition for compensation filed by the heirs of the deceased there is no warrant for the assumption made by the High Court as regards the retention of "abilities in fact" or as regards the extent of "loss to the dependents."

11. It appears to us that the High Court first considered with compensation ought to be awarded to the heirs of the deceased and then imposed by way of fine an amount which was higher than the compensation because the compensation has to come out of the amount of fine. Apart from the fact that even the compensation was not fixed on any reliable date, the High Court with respect, put the cart before the horse in leaving the property of fine to depend upon the amount of compensation. The first concern of the Court, after recording an order of conviction, ought to be to determine the proper sentence to pass. The sentence must be proportionate to the nature of the offence and the sentence, including the sentence of fine, must not be unduly excessive. In fact, the primary object of imposing a fine is not ensure that the offender will undergo the sentence in default of payment of fine but to see that the fine is realized which can happen only when the fine is not unduly excessive having regard to all the circumstances of the case, including the means of the offender.

12. Section 357(1)(c) of the new Code corresponds to Section 545(1)(b) of the Code of 1898 which was introduced by Section 110 of Amending Act 36 of 1955. The statement of objects and reasons of that Act shows that the Joint Committee took the view that, in suitable cases, the person who causes death should compensate the heirs and dependents of the deceased for the loss resulting from the death. The Joint Committee was in full agreement with the view that in a case where death has resulted from homicides, the Court should award compensation to the heirs of the deceased because that would "result in settling the claim once for all the doing away with the need for a further claim in a civil Court, needless worry and expense to both sides of the party". The views of the Joint Committee incorporated in the Statement of Objects and Reasons to the Amending Act of 1955 are undoubtedly entitled to consideration but those views only reflect that there should reside in the criminal court the power in appropriate cases to pass an order of compensation in favour of the heirs of the deceased. It cannot however, be overlooked that since by Section 357(1)(c) of the new Code and its precursor, Section 545(1)(bb) of the old Code,

compensation can only come out of fine, it is always necessary to consider in the first instance whether the sentence of fine is at all called for, particularly when the offender is sentenced to death or life imprisonment. If so, the fine must not be excessive, having regard to all the circumstances of the case the motivation of the offence, the pecuniary gain likely to have been made by the offender by committing the offence and his means to pay the fine.

13. The High Court, instead of applying its mind to these factors, considered only what compensation the heirs of deceased ought to receive. And that question it decided on inadequate data. In view of the fact that the appellant was under the sentence of death since its imposition by the Session Court and its reduction to life imprisonment by the High Court and since a sentence of life imprisonment has been imposed on the appellant, that being the only other sentence permissible under the law, the fine of Rs. 20,000/- imposed by the High Court seems to us unduly excessive. In the circumstances we reduce it to a sum of Rs. 3000/- and direct that the fine or as much of it as is recovered shall be paid to the son and daughters of the deceased who had filed the petition in that behalf in the High Court.