

(2019) 11 DEL CK 0538

In the Delhi High Court

Case No : Criminal Appeal No. 1256 Of 2019, Criminal Miscellaneous Application No. 39532 Of 2019

State (Govt. Of Nct Of Delhi)

APPELLANT

Vs

Sonu

RESPONDENT

Date of Decision : 21-11-2019

Acts Referred:

Code of Criminal Procedure, 1973 — Section 320
Indian Penal Code, 1860 — Section 34, 302, 307I, 307, 324

Citation : (2019) 10 AD(Delhi) 353 : (2019) 4 JCC 4000

Hon'ble Judges : Manmohan, J; Sangita Dhingra Sehgal, J

Bench : Division Bench

Advocate : Aashaa Tiwari

Final Decision : Dismissed

Judgement

Manmohan, J

1. Present appeal has been filed on behalf of the State challenging the order on sentence dated 27th May, 2019 passed by ASJ/Special Judge (NDPS), North District, Rohini Courts, Delhi in Sessions Case No. 506/2017 arising out of FIR No. 111/2017 registered with Police Station, Swaroop Nagar whereby the respondent-accused had been sentenced to undergo imprisonment for the time already undergone by him for the offences punishable under Sections 307 and 324 IPC.

ARGUMENTS ON BEHALF OF THE STATE

2. Ms. Aashaa Tiwari, learned APP for the State contended that the Trial Court in its impugned order, had failed to appreciate that the respondent-accused had attempted to commit murder of Ashish and had caused injuries with a knife. She submitted that the sentence awarded to the respondent-accused was inadequate and should be enhanced. In support of her submission, she relied upon the Supreme Court judgment in State of Madhya Pradesh vs Saleem @ Chamaru &

Anr., 2005 (5) SCC 554 wherein it has been held as under:-

"3.The High Court found that the accused persons are illiterate persons belonging to lower-income group and on consideration of the fact that at the time of commission of offence they were of 23 years of age, the sentence of imprisonment deserved to be reduced to the period already undergone. Appeal was accordingly disposed of.

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6. 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. This position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724 : AIR 1991 SC 1463].

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10. 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".

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13.Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt."

3. She submitted that in the present case the Trial Court had erroneously accepted the contention advanced by the respondent-accused of "plea bargaining". She stated that the concept of negotiated settlement in criminal cases is not permissible. She further submitted that neither the State nor the Public Prosecutor or even the Judge can bargain that evidence would not be led or appreciated in consideration of getting a lesser sentence by pleading guilty. In support of her submission, she relied upon the judgment in *State of Uttar Pradesh vs. Chandrika* (1999) 8 SCC 638, wherein the Supreme Court has held as under:-

"2. These appeals by special leave are filed by the State of U.P. against the judgment and order dated 28-11-1997 passed by the High Court of Judicature at Allahabad in Criminal Appeals Nos. 2747-48 of 1980 whereby the High Court accepted the plea bargain and maintained the conviction of the respondent under Section 304 Part I IPC but altered the sentence to the period of imprisonment

already undergone (without stating the actual period of imprisonment undergone by the respondent) plus a fine of Rs 5000, in default of payment RI for six months. The respondent along with two others was charged under Section 302 read with Sections 307 and 34 IPC for committing the murder of one Shyamadeo in Sessions Case No. 233 of 1980.....

3. It is apparent that the order passed by the High Court is, on the face of it, illegal and erroneous. It appears that the learned Judge has overlooked the settled law or is unaware that the concept of "plea bargaining" is not recognised and is against public policy under our criminal justice system. Section 320 CrPC provides for compounding of certain offences with the permission of the court and certain others even without permission of the court. Except the above, the concept of negotiated settlement in criminal cases is not permissible. This method of short-circuiting the hearing and deciding the criminal appeals or cases involving serious offences requires no encouragement. Neither the State nor the Public Prosecutor nor even the Judge can bargain that evidence would not be led or appreciated in consideration of getting flea-bite sentence by pleading guilty.

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7. This Court strongly disapproved the practice of plea bargain in *Kuchhia Patel Shantilal Koderlal v. State of Gujarat and Another* [(1980) 3 SCC 120]. The Court held that practice of plea bargaining is unconstitutional, illegal and would tend to encourage corruption, collusion and pollute the pure fount of justice...."

RELEVANT FACTS

4. Briefly stated the facts of the present case are that the respondent-accused had injured Ashish with a knife after he had refused to give money to the respondent-accused. During trial, the respondent-accused pleaded guilty to the charges framed against him under Sections 307 and 324 IPC. The Trial Court vide judgment dated 01st May, 2019 held the respondent-accused guilty of the said offences. The relevant portion of the said judgment is reproduced hereinbelow:-

"6. Trial proceeded and during the course of trial, prosecution in order to substantiate its case against the accused, examined PW 1 Ashish, PW 2 Ajay Kumar Yadav and PW 3 W Ct. Rajpati. In the meantime, Ld. Counsel for the accused Sh. Kunal Yadav had moved an application for pleading guilty to the offence committed U/s 307/324 IPC.

7. After hearing the accused, this Court is satisfied that the accused voluntarily pleaded his guilt to the offence committed by him. Therefore, accused is held guilty for the offence U/s 307/324 IPC and is held guilty for the said offence and he is convicted U/s 307/324 IPC."

(emphasis supplied)

5. The Trial Court vide the impugned order dated 27th May, 2019 sentenced the

respondent-accused to period already undergone, which amounted to two years one month and fourteen days imprisonment. The relevant portion of the impugned order is reproduced hereinbelow:-

"3. On the other hand it is submitted on behalf of the accused that he is aged 23 years. He has to support his family consisting of old aged parents and one younger brother. He is in JC since 13.04.2017. He was working in the jeans factory. He has studied only up to 5th class. Hence, he prays for lenient view as his family will suffer if he is sent behind the bars.

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6. Accused/Convict has pleaded guilty voluntarily without any threat, pressure or coercion. Hence, lenient view may be taken against him.

7. After weighing the consideration as discussed here in above and keeping in view the fact that convict have pleaded guilty without any threat, pressure or coercion, a lenient view is taken Convict Sonu is in JC since 13.04.2017. It is also considered that the convicts be given an opportunity to reform themselves and to join the mainstream of the society so that they may be given an opportunity to prove themselves a better citizen of the nation and society. Thus, keeping in view the above facts and circumstances, the convict is directed to undergo imprisonment for the already undergone by him for the offence punishable U/s 307/34 IPC. Further, convict is directed to pay a fine of Rs.10,000/- for the offence U/s 307 IPC. In default of payment of fine, he is directed to under SI for six months. Convict is further directed to pay a fine of Rs.5000/- for the offence punishable U/s 324 IPC. In default of payment, he is directed to undergo SI for four months. Fine paid."

(emphasis supplied)

COURT'S REASONING

SECTION 307 IPC PRESCRIBES NO MINIMUM SENTENCE. HOWEVER, SENTENCE IMPOSED ON AN ACCUSED HAS TO BE APPROPRIATE AND PROPORTIONATE WITH THE CRIME COMMITTED. CONSEQUENTLY, THE COURT WHILE AWARDING A SENTENCE HAS TO CONSIDER ALL THE MITIGATING AS WELL AS THE AGGRAVATING CIRCUMSTANCES THAT ARISE IN EACH CASE.

6. The question that arises for consideration of this Court is whether the impugned order on sentence requires any interference.

7. This Court is of the view that the question as to how the judicial discretion while sentencing should be exercised is a complex issue. The solution to the said issue requires a working compromise between competing views based upon reformatory, deterrent, preventive and retributive theories of punishment.

8. However, it is settled law that the sentence imposed on an accused person should be appropriate and proportionate with the crime that he/she has committed. The Supreme Court in the following judgments while elucidating

upon the concept of sentencing in India has held as under:-

A. Hazara Singh vs. Raj Kumar & Ors., (2013) 9 SCC 516 :-

"Sentencing policy

11. 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.

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17. We reiterate 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. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. 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."

(emphasis supplied)

B. State of Madhya Pradesh vs. Udham and Ors., 2019 SCC OnLine SC 1378:-

"9. At this stage the observations of this Court in Accused "X" v. State of Maharashtra, (2019) 7 SCC 1, in which two of us were part of the Bench, with respect to sentencing in India are relevant here-

"49. Sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch. [Nicola Padfield, Rod Morgan and Mike Maguire, "Out of Court, Out of Sight? Criminal Sanctions and No Judicial Decision-making", The Oxford Handbook of Criminology (5th Edn.).] This process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. It is established that sentencing is a socio-legal process, wherein a Judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the Judges to give punishment, it becomes important to exercise the same in a principled manner. We need to appreciate that a strict fixed punishment approach in sentencing cannot be acceptable, as the Judge needs to have sufficient discretion as well.

50. Before analysing this case, we need to address the issue of the impact of reasoning in the sentencing process. The reasoning of the trial court acts as a

link between the general level of sentence for the offence committed and to the facts and circumstances. The trial court is obligated to give reasons for the imposition of sentence, as firstly, it is a fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. Further, the appellate court is better enabled to assess the correctness of the quantum of punishment challenged, if the trial court has justified the same with reasons..."

(emphasis supplied)

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12. Sentencing for crimes has to be analyzed on the touch stone of three tests viz., crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defense, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list)."

(emphasis supplied)

9. Perusal of Section 307 IPC reveals that there is no minimum sentence prescribed under the said provision. The Trial Court has to exercise its judicial discretion within statutory limits while awarding any sentence under the said provision. It is abundantly clear from the language of the provision that the Court can award the maximum punishment provided therein i.e. life imprisonment or any sentence upto ten years after taking into account all the aggravating and mitigating circumstances of the case. Section 307 IPC reads as under:-

"307 Attempt to murder - 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 murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts. - When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

(emphasis supplied)

10. Consequently, the Court while awarding a sentence has to consider all the mitigating as well as the aggravating circumstances that arise in each case.

ENHANCEMENT OF A SENTENCE BY AN APPELLATE COURT IS JUSTIFIED IN CASES ONLY WHERE THE SENTENCE IS MANIFESTLY INADEQUATE.

11. In the United States of America, appeals against sentencing are not possible since the trial judge is considered to be the best person to deal with the sentencing part. This assumption is based on the belief that sentencing involves questions of judgment and not of law and that appellate judges are less able to assess an appropriate sentence because of their inability to observe the accused.

12. In India, appeals against inadequate sentences are possible to the superior Courts i.e. High Courts and ultimately to the Supreme Court under the powers given to them in the Criminal Procedure Code and the Constitution. The scope of challenge to the sentence awarded by the Trial Court in appeals is, however, limited as is made clear in the various pronouncements of the Apex Court. The question of sentence is normally a matter of judicial discretion of the trial court and the superior Court does not as a rule interfere with the exercise of such discretion. In a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment. Enhancement of a sentence by an appellate Court is justified in cases only where there is a "particular and cogent" ground warranting interference.

13. Consequently, interference is only called for when it is manifestly inadequate. The Supreme Court in *Ram Narain and Ors. Vs. State of U.P.* 1970 (3) SCC 493 has held as under:-

"5.Merely because the appellate court feels that left to itself it would have preferred to impose the sentence of death is by itself and without more not a sufficient ground to justify enhancement. It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that enhancement of the sentence may be justified by the appellate Court.

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7. It is true that this Court normally does not interfere with the discretion exercised by the High Court on the question of sentence even though the same has been enhanced but where the trial court has exercised its discretion on proper consideration of the material on record and its order cannot be described to be either contrary to recognised principle or otherwise having caused failure of justice and further when the State does not consider that the ends of justice require enhancement of the sentence but the High Court interferes at the instance of a private complainant this Court would be fully justified in considering for itself the propriety of the sentence as enhanced by the High Court."

(emphasis supplied)

14. In broad terms, the appellate Court will interfere when:-

- a) The sentence is not justified by law, in which case it will interfere not as a matter of discretion, but of law;
- b) Where sentence has been passed on a wrong factual basis;
- c) Where some matter has been improperly taken into account or there is some fresh matter to be taken into account; or
- d) Where the sentence was wrong in principle or manifestly excessive/inadequate.

15. The above-mentioned categories are not exhaustive and they may overlap.

THE CONCEPT OF "PLEA BARGAINING" IS ENTIRELY DIFFERENT FROM "PLEADING GUILTY" WITHOUT ANY CONDITIONS ATTACHED.

FURTHER AS THE RESPONDENT-ACCUSED HEREIN HAD VOLUNTARILY ENTERED AN UNCONDITIONAL PLEA OF GUILT, IT CANNOT BE TERMED AS "PLEA BARGAINING".

16. Further, the concept of "plea bargaining" is entirely different from "pleading guilty" without any conditions attached. Law in India does not permit "plea bargaining" in serious offences such as an offence punishable under Section 307 IPC. Yet there is no statutory bar to an accused charged under Section 307 IPC pleading guilty on his/her own volition.

17. The Gujarat High Court while distinguishing between the "plea of guilty" and "plea bargaining" in *State of Gujarat vs. Natwar Harchandji Thakor*, 2005 SCC Online Guj 320 has held as under:-

"73. We make it clear that the grievance and voice raised by the learned single Judge against impermissible "plea-bargaining" is not, hereby, sought to be belittled or in any way intended to be diluted. But the "plea-bargaining and the raising of "plea of guilty", both things should not have been treated, as the same and common. There it appears to be mixed up. Nobody can dispute that "plea-bargaining" is not permissible, but at the same time, it cannot be overlooked that raising of "plea of guilty", at the appropriate stage, provided in the statutory procedure for the accused and to show the special and adequate reasons for the discretionary exercise of powers by the trial Court in awarding sentences cannot be admixed or should not be treated the same, and similar. Whether, "plea of guilty" really on facts is "plea bargaining" or not is a matter of proof. Every "plea of guilty", which is a part of statutory process in criminal trial, cannot be said to be a "plea-bargaining" ipso facto. It is a matter requiring evaluation at factual profile of each accused in criminal trial before reaching a specific conclusion of it being only a "plea-bargaining" and not a plea of guilty simpliciter. It must be based upon facts and proof not on fanciful or surmises without necessary factual supporting profile for that."

(emphasis supplied)

18. Consequently, the judgment of the Supreme Court in *Uttar Pradesh vs. Chandrika* (supra) has no application to the present case inasmuch as the respondent-accused herein had voluntarily entered an unconditional plea of guilt. The impugned order makes no mention of any bargaining done by the respondent-accused. This Court is of the view that in absence of any evidence stating otherwise, 'plea of guilty' taken by the respondent-accused cannot be termed as 'plea bargaining'.

AS "JUDICIAL CAPITAL" IN TERMS OF MANPOWER AND RESOURCES IS EXTREMELY LIMITED, THE ACCUSED WHO ENTERS THE PLEA OF GUILT CANNOT STAND ON THE SAME PEDESTAL AS AN ACCUSED WHO IS CONVICTED AND SENTENCED AFTER A FULL-FLEDGED TRIAL. ALSO, THE FACT THAT THE RESPONDENT-ACCUSED HAD VOLUNTARILY PLEADED GUILTY, INDICATES THAT HE IS CAPABLE OF REFORMATION. THIS COURT IS OF THE VIEW THAT THE IMPUGNED ORDER OF SENTENCE IS NOT MANIFESTLY INADEQUATE.

19. The fact that the respondent-accused had voluntarily pleaded guilty merits consideration especially in view of our overburdened judicial system. As "judicial capital" in terms of manpower and resources is extremely limited, the accused who enters the plea of guilt cannot stand on the same pedestal as an accused who is convicted and sentenced after a full-fledged trial. The Law Commission in its 142nd Report titled "Concessional

Treatment For Offenders Who On Their Own Initiative Choose To Plead Guilty Without Any Bargaining" has observed as under:-

"It is not just and fair that an accused who feels contrite and wants to make amends or an accused who is honest and candid enough to plead guilty in the hope that the community will enable him to pay the penalty for the crime with a degree of compassion and consideration should be treated on par with an accused who claims to be tried at considerable time-cost and money-cost to the community."

(emphasis supplied)

20. This Court is also of the opinion that the fact that the respondent-accused had voluntarily pleaded guilty, without any threat, pressure or coercion indicates that he is capable of reformation. One of the main objectives of sentencing is the possibility of the convict being reformed and the society benefiting at large.

21. The Supreme Court in *Sunder Singh vs. State of Uttaranchal* (2010) 10 SCC 611 while reiterating *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 and *Machhi Singh v. State of Punjab* (1983) 3 SCC 470 has held that while awarding a sentence, one of the mitigating factors to be considered is the possibility of the accused person being reformed. The relevant portion of the said judgment is reproduced hereinbelow:-

"51. The law is now well settled in the decision in *Bachan Singh v. State of Punjab* where it was held that the death penalty can be inflicted only in the

gravest of the grave cases. It was also held that such death penalty can be imposed only when the life imprisonment appears to be inadequate punishment. Again it was cautioned that while imposing the death sentence, there must be balance between circumstances regarding the accused and the mitigating circumstances and that there has to be overall consideration of the circumstances regarding the accused as also the offence. Some aggravating circumstances were also culled out, they being:

(a) where the murder has been committed after previous planning and involves extreme brutality; or

(b) where the murder involves exceptional depravity.

52. The mitigating circumstances which were mentioned in that judgment were:

(a) that the offence was committed under the influence of extreme mental or emotional disturbance;

(b) the age of the accused. If the accused is young or old, he shall not be sentenced to death;

(c) the probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society;

(d) the probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy Conditions (c) and (d) above;

(e) that in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence;

(f) that the accused acted under the duress or domination of another person; and

(g) that the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

53. The law was further settled in the decision in *Machhi Singh v. State of Punjab* where this Court insisted upon the mitigating circumstances being balanced against the aggravating circumstances. The aggravating circumstances were described as under:

(a) When the murder is in extremely brutal manner so as to arouse intense and extreme indignation of the community.

(b) When the murder of a large number of persons of a particular caste, community, or locality is committed.

(c) When the murder of an innocent child, a helpless woman is committed."

(emphasis supplied)

22. The impugned order notes that the respondent-accused was aged about 23 years and had a family to support. The Apex Court in Santa Singh vs. State of Punjab (1976) 4 SCC 190 has held as under:-

"3. xxx xxx xxx

The reason is that a proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances - extenuating or aggravating - of the offence, the prior criminal record, if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, sobriety and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community, the possibility of treatment or training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by others and the current community need, if any, for such a deterrent in respect to the particular type of offence....."

(emphasis supplied)

23. Consequently, the Trial Court committed no error while passing the order on sentence. There had been no undue sympathy shown to the respondent-accused. Accordingly, the judgment of the Supreme Court in State of Madhya Pradesh vs. Saleem @ Chamaru (supra) offers no assistance to the State.

24. In view of the aforesaid facts and mandate of law, this Court is of the view that the impugned order was passed after consideration of all relevant factors and the sentence awarded is not manifestly inadequate. Accordingly, present appeal and application, being bereft of merit, are dismissed.