

**2023 STPL(WEB) 31 SC
SUPREME COURT OF INDIA**

(S. RAVINDRA BHAT AND DIPANKAR DATTA JJ.)

UGGARSAIN

Appellant

VERSUS

STATE OF HARYANA & ORS.

Respondents

Criminal Appeal No(s). 1378-1379 of 2019-Decided on 3-7-2023

Sentence: Same sentence awarded to each accused for same offence

Cases Referred:
1. Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat[2009 (8) SCR 719]
2. Jameel v. State of U. P.[2009 (15) SCR 712],
3. Guru Basavaraj v. State of Karnataka, [2012 (8) SCR 189]
4. B.G. Goswami v. Delhi Administration[1974 (1) SCR 222],
5. Shyam Sunder v Puran & Anr[1990 Suppl [1] SCR 662],
6. Ravda Sashikala v State of Andhra Pradesh[2017 [2] SCR 379]].
7. State of M.P. v. Bablu[2014 [9] S.C.R. 467]; Raj Kumar[2013 (5) SCR 979]
8. State of Punjab v. Saurabh Bakshi[2015 (3) SCR 590]

JUDGMENT

S. Ravindra Bhat, J.-These appeals, by special leave, arise from the judgment and orders[Dated 27.08.2019 and 03.09.2019.] passed by the High Court of Punjab and Haryana[In Criminal Appeal bearing No. 249 DB of 2016], converting the decision of conviction given by the trial court from Section 302 of the Indian Penal Code, 1860 (hereafter “IPC”) to Section 304-Part II IPC. These appeals have been preferred by the informant/complainant.

2. The prosecution alleged that on the eve of Holika Dahan, i.e., 07.03.2012, Krishan (A-1) abused Subhash (the deceased). On the next day, Brahmjit, son of Krishan (A6), inflicted danda blows upon Subhash at about 10.00/11.00 AM. Due to this, at about 3.00 PM, when Pawan, Uggarsain and Subhash (deceased) were sitting in front of their house, Brahmjit came near their house and started abusing them, which aggravated the situation. Thereafter, all the accused, namely Raju, son of Krishan (A2), Krishan, Parveen (A3), Sunder- son of Amit (A4), Sunder-son of Rajpal (A8), Nar Singh (A-7), Sandeep (A-5) and others reached the spot, with weapons. Raju inflicted blow on the right shoulder of Sita Ram (PW1). Krishan inflicted a blow at the back of Sita Ram with an iron pipe and Brahmjit inflicted a farsa blow on the right of Sita Ram’s head. Sunder was armed with a rod; Nar Singh and Sandeep were carrying farsas with them. They caused injuries on Pawan, Uggarsain and Subhash. The injured were taken to hospital.

3. On 09.03.2012, on the receipt of intimation, the police registered the case under Sections 147, 148, 149 and 323 IPC. Subash, who was gravely wounded, having received multiple injuries, was removed to the hospital; later, a surgery too was performed on him. However, he did not survive and passed away on 12.3.2012. Thereupon, Section 302 IPC was added in the FIR, on 13.3.2012. Postmortem was conducted, and the doctor (PW5- Dr. Kunal Khanna) recorded in the post-mortem report that the death was caused by injuries sustained by the deceased on the head and its attendant complications. The police arrested the accused. Later, weapons were recovered on the basis of disclosure statements

made by them. On the statement of PW1-Sita Ram, the prosecution moved an application under section 319 of the Criminal Procedure Code (hereafter "Cr.P.C.") for summoning an additional accused, namely Sunder.

4. All the eight accused persons were charged with and tried for offences punishable under Sections 148, 323 and 302 read with section 149 IPC. The prosecution examined twenty-two witnesses and recorded their deposition. PW.3- Dr. Sant Lal Beniwal did medico-legal examination of Sita Ram (PW1), Uggarsain (PW2) and Pawan. He recorded different injuries caused on the complainants' bodies and stated that the probable duration of injuries was within six hours by blunt weapon. PW8- Dr. Pradeep Kumar stated that Subash (deceased) had received only one injury. PW4- Dharmender Singh prepared the site plan. The defence examined two witnesses. DW1-Bikram Singh deposed that he was authorized to produce, and accordingly brought a computerized attendance register stating that on 8.3.2012 (the day of the incident), one accused, i.e., Parveen Parmar had performed his duties as a security guard from 7.00 AM to 7.00 PM. DW2- Dr. Naresh Kumar, who had medico legally examined the accused Krishan and Brahmjit and recorded a fracture of the right clavicle bone of Krishan and a nasal bone fracture of Brahmjit, also deposed in favour of the defence.

5. The trial court held that all the accused persons reaching the spot together armed with weapons and their attack on the victims, including the deceased exhibited the intention of an unlawful assembly, to inflict deadly injuries. The nature of injuries found on the deceased indicated common intention of the assembly extended to causing death, which in fact, occurred. The trial court held that the prosecution's inability to explain the injuries on the accused did not absolve them of their role in the attack and causing the death of Subhash, because the evidence relied on was credible. The evidence of two witnesses consistently supported the prosecution case in their statements before the police as well as in court. Their testimonies were corroborated by medical evidence. The trial court [*Judgment dated 11.02.2016 and order dated 17.02.2016, in Sessions Trials No. 160 of 30.07.2012, 275 of 04.12.2012 and 114 of 15.04.2013.*] convicted all the accused as charged and sentenced them to rigorous imprisonment for life under Section 302 r/w Section 149 IPC and one-year's rigorous imprisonment under Section 148 IPC; six months rigorous imprisonment for the offence under Section 323 read with Section 149 IPC.

6. The accused appealed to the High Court, which by the impugned judgment, partly allowed their pleas and converted their convictions under Section 302 read with 149 IPC to Section 304 Part II read with Section 149 IPC. It, however, affirmed the convictions under Section 148 and Section 323 read with Section 149 IPC. The High Court observed that the lack of explanation of injuries received by Krishan and Bharmjit undermined the prosecution story and that Subash, the deceased, had received only one injury, according to PW.8- Dr. Pardeep Kumar. Finally, the High Court held that the case fell under Exception 4 to Section 300 IPC, as tempers were running high between the parties, and a sudden fight occurred when the complainant party reached in front of Krishan's house, which meant that the accused did not act in a pre-meditated manner. Aggrieved, the informant Uggarsain appealed to this court, against the conversion of conviction and corresponding reduction of sentence.

7. During the hearing, this court indicated that these appeals would be confined to the extent of appropriateness of sentences undergone by different accused persons for causing the same offence. The different periods undergone by convicts are: Krishan had undergone 09 years, 05 months and 04 days of imprisonment with remissions; Raju underwent 03 years, 01 month and 01 day of imprisonment; Parveen had suffered 01 year, 11 months and 27 days of imprisonment; Sunder s/o Amit Lal had undergone 02 years and 05 days of imprisonment; Sandeep had undergone 01 year, 11 months and 12 days of imprisonment; Brahmjit had undergone 08 years, 11 months and 19 days of imprisonment (including remissions); Nar Singh had undergone 01 year and 04 months of imprisonment and Sunder s/o Rajpal had undergone 11 months and 16 days of imprisonment.

8. The appellants argued that the High Court was wrong in inferring that the injuries were caused due to a sudden fight. Counsel highlighted that the accused who were convicted concurrently, had deliberately gone near the informant/victims' house to cause deadly injuries- in fact, one of the

informant parties died as a consequence. Having regard to the established facts, the object of the assembly was for use of such force, which resulted in death. Therefore, the sentencing in the present case had to be fit and appropriate, and the impugned judgment gravely erred in adopting the standard of sentence undergone, which resulted in widely different and disparate results. At one end of the spectrum, one of the accused (Sundar s/o Rajpal) suffered incarceration for a little over 11 months, whereas Krishan had undergone 09 years, 05 months and 04 days. The appellant informants urged that this court should adopt a somewhat uniform sentencing standard when the role of each accused was practically indistinguishable.

9. On behalf of the accused, it was pointed out that the High Court had, in fact, gone by the salutary principles indicated by this court, in that the relative ages of the accused, their family circumstances, the length of time they spent in custody, as well as the length of time that had elapsed since the commission of the crime, all were considered.

10. This court has, time and again, stated that the principle of proportionality should guide the sentencing process. In Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat[2009 (8) SCR 719] it was held that the sentence should “deter the criminal from achieving the avowed object to (sic break the) law,” and the endeavour should be to impose an “appropriate sentence.” The court also held that imposing “meagre sentences” “merely on account of lapse of time” would be counterproductive. Likewise, in Jameel v. State of U. P.[2009 (15) SCR 712], while advocating that sentencing should be fact dependent exercises, the court also emphasised that “the 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.”

11. Again, in Guru Basavaraj v. State of Karnataka, [2012 (8) SCR 189] the court stressed 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” and that sentencing includes “adequate punishment”. In B.G. Goswami v. Delhi Administration[1974 (1) SCR 222], the court considered the issue of punishment and observed that punishment is designed to protect society by deterring potential offenders as well as prevent the guilty party from repeating the offence; it is also designed to reform the offender and reclaim him as a law-abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining the question of awarding appropriate sentences.

12. In Shyam Sunder v Puran & Anr[1990 Suppl [1] SCR 662], the accused-appellant was convicted under Section 304 Part I IPC. The appellate court reduced the sentence to the term of imprisonment already undergone, i.e., six months. However, it enhanced the fine. This court ruled that sentence awarded was inadequate. Proceeding further, it opined that: -

“... The court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of opinion that to meet the ends of justice, the sentence has to be enhanced...”. This court enhanced the sentence to one of rigorous imprisonment for a period of five years. This court has emphasized, in that sentencing depends on the facts, and the adequacy is determined by factors such as “the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected” [Ravda Sashikala v State of Andhra Pradesh[2017 [2] SCR 379]]. Other decisions, like: State of M.P. v. Bablu[2014 [9] S.C.R. 467]; Raj Kumar[2013 (5) SCR 979] and State of

Punjab v. Saurabh Bakshi[2015 (3) SCR 590] too, have stressed the significance and importance of imposing appropriate, “adequate” or “proportionate” punishments.

13. In the present case, the High Court noted the respective ages of the accused-i.e., Krishan (61 years); Raju (40 years); Parveen (32 years); Sundar (39 years); Sandeep (25 years); Nar Singh (41 years) and Sunder s/o Rajpal (36 years). The court noted that Bramhajit had served in the army. Apart from these, the court noted the relative family circumstances: the number of children each accused had. It then adopted a uniform rule, i.e., the period of sentence undergone by the accused, as the appropriate sentence.

14. As noted earlier, all the accused were found concurrently guilty under Section 148 IPC; they were armed with different kinds of implements and weapons, that were capable of inflicting deadly injuries. The postmortem report of Subhash revealed at least six serious head injuries, including fracture and haemorrhage in different places. Pawan, Uggarsain and Sita Ram, others from the complainant party also concededly suffered injuries. Though the High Court was of the opinion that no explanation was given by the prosecution about the injuries on the accused, their nature does not seem to have been serious. At any rate, the court did not find that sufficient reason to upset the sentence under Section 149 read with Section 304 II IPC.

15. The sentencing in this case, to put it mildly, is inexplicable (if not downright bizarre). On the one hand, Krishan underwent sentence for 9 years 4 months- at the other end of the spectrum, Sunder s/o Rajpal underwent only 11 months. No rationale appears from the reasoning of the High Court for this wide disparity. It is not as though the court took note of the role ascribed to the accused (such a course was not possible, given the nature of the evidence). If it were assumed that the age of the accused played a role, then Krishan, at 61 years- who served 9 years and Brahrajit, who had served in the army, and was detained for over 8 years got the stiffest sentence. On the other end of the scale, younger persons were left relatively unscathed, having served between 3 years and 11 months.

16. The impugned judgment, in this court’s opinion, fell into error in not considering the gravity of the offence. Having held all the accused criminally liable, under Section 304 Part II read with Section 149 IPC and also not having found any distinguishing feature in the form of separate roles played by each of them, the imposition of the “sentence undergone” criteria, amounted to an aberration, and the sentencing is for that reason, flawed. This court is, therefore, of the view that given the totality of circumstances (which includes the fact that the accused have been at large for the past four years), the appropriate sentence would be five years rigorous imprisonment. However, at the same time, the court is cognizant of the fact Krishan and Bramhajit served more than that period. Therefore, the impugned judgment, as far as they are concerned, is left undisturbed. Consequently, the sentence of Raju, Parveen, Sunder s/o Amit Lal, Sandeep, Nar Singh, and Sunder s/o Rajpal is hereby modified; they are hereby sentenced to undergo Rigorous Imprisonment for five years. They shall surrender and serve the rest of their sentences within six weeks from today.

17. The appeals are partly allowed, in the above terms. No costs.
