

2022 LiveLaw (SC) 288

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DR. DHANANJAYA Y. CHANDRACHUD; SURYA KANT, JJ.**

March 11, 2022

Criminal Appeal No 407 of 2022 (Arising out of SLP (Crl) No 7133 of 2019)
Vipul Rasikbhai Koli Jankher Versus State of Gujarat

Criminal Trial - Sentencing - In determining the quantum of sentence, the Court must bear in mind the circumstances pertaining to the offence and all other relevant circumstances including the age of the offender - The principles of restorative justice find place within the Indian Constitution and severity of sentence is not the only determinant for doing justice to the victims. [Referred to *Dharambir v. State of Uttar Pradesh* (1979) 3 SCC 645, *Maru Ram v. Union of India* (1981) 1 SCC 107] (Para 7, 8)

Summary: Appellant convicted under Section 376,363,366, 307, 354 and sentenced to life imprisonment sought modification of sentence- Sentenced to a term of 15 years' imprisonment - Appellant has undergone actual imprisonment for a period of 11 years as on date - The ends of justice would be met by directing that instead and in place of the sentence of life imprisonment which has been imposed for the conviction under Section 376, the appellant shall stand sentenced to a term of 15 years' imprisonment.

For Appellant(s) Mr. Harinder Mohan Singh, AOR Ms. Shabana, Adv.

For Respondent(s) Ms. Archana Pathak Dave, Adv. Ms. Deepanwita Priyanka, AOR

ORDER

1. Leave granted.
2. The appellant stands convicted for diverse offences punishable under the Indian Penal Code 1860. The conviction and sentence are as follows:
 - (i) Section 376 – life imprisonment and a fine of Rs 5000;
 - (ii) Section 363 – 5 years' rigorous imprisonment with a fine of Rs 5000;
 - (iii) Section 366 – 10 years' rigorous imprisonment with a fine of Rs 5000;
 - (iv) Section 307 – 10 years' rigorous imprisonment with a fine of Rs 5000; and
 - (v) Section 354 – 2 years' rigorous imprisonment.All sentences have been directed to run concurrently.
3. On 2 August 2019, this Court held that there was no reason to interfere with the conviction and issued notice confined to the quantum of sentence.
4. We have heard Mr Harinder Mohan Singh, counsel for the appellant, who has been nominated by the Supreme Court Legal Services Committee and Ms Archana Pathak Dave, counsel for the respondent – State.

5. Mr Harinder Mohan Singh has submitted that the appellant was twenty years old on the date of offence and has now undergone 11 years of imprisonment. Hence, it has been submitted that the quantum of sentence which has been imposed should be suitably modified to such an extent as the Court deems appropriate having regard to the need for reformation of the appellant.

6. On the other hand, Ms Archana Pathak Dave, counsel for the respondent has submitted that having regard to the fact that the victim was assaulted on the head after the alleged act, the sentence of life imprisonment meets the ends of justice.

7. In determining the quantum of sentence, the Court must bear in mind the circumstances pertaining to the offence and all other relevant circumstances including the age of the offender. The appellant has undergone actual imprisonment for a period of 11 years as on date. In ***Dharambir v. State of Uttar Pradesh, (1979) 3 SCC 645*** a two-Judge Bench of this Court specifically noted the impact of longer prison sentences on convicts who are young. Justice V R Krishna Iyer, speaking on behalf of the Court had noted the impact of prolonged incarceration:

“2. We, however, notice that the petitioners in this case are in their early twenties. We must naturally give thought to the impact on these two young lives of a life sentence which means languishing in prison for years and years. Such induration of the soul induced by indefinite incarceration hardens the inmates, not softens their responses. Things as they are, long prison terms do not humanise or rehabilitate but debase and promote recidivism. A host of other vices, which are unmentionable in a judgment, haunt the long careers of incarceration, especially when young persons are forced into cells in the company of callous convicts who live in sex-starved circumstances. Therefore, the conscience of the court constrains it to issue appropriate directions which are policy-oriented, as part of the sentencing process, designed to make the life of the sentence inside jail restorative of his crippled psyche. One of the principal purposes of punitive deprivation of liberty, constitutionally sanctioned, is decriminalisation of the criminal and restoration of his dignity, self-esteem and good citizenship, so that when the man emerges from the forbidding gates he becomes a socially useful individual. From this angle our prisons have to travel long distances to meet the ends of social justice.”

8. In our view, the ends of justice would be met by directing that instead and in place of the sentence of life imprisonment which has been imposed for the conviction under Section 376, the appellant shall stand sentenced to a term of 15 years' imprisonment. We are not inclined to uphold the argument of the respondent-state that only the sentence of life imprisonment would meet the ends of justice. The principles of restorative justice find place within the Indian Constitution and severity of sentence is not the only determinant for doing justice to the victims. In ***Maru Ram v. Union of India, (1981) 1 SCC 107*** Justice V R Krishna Iyer had poignantly highlighted the linkages between victimology and restorative justice:

“74.Some argument was made that a minimum sentence of 14 years' imprisonment was merited because the victim of the murder must be remembered

and all soft justice scuttled to such heinous offenders. **We are afraid there is a confusion about fundamentals in mixing up victimology with penology to warrant retributive severity by the back-door. If crime claims a victim criminology must include victimology as a major component of its concerns. Indeed, when a murder or other grievous offence is committed the dependants or other aggrieved persons must receive reparation and the social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty.** “Can storied urn or animated bust call to its mansion the fleeting breath?” Equally emphatically, given perspicacity and freedom from sadism, can flogging the killer or burning his limbs or torturing his psychic being bring balm to the soul of the dead by any process of thanatology or make good the terrible loss caused by the homicide? **Victimology, a burgeoning branch of humane criminal justice, must find fulfilment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn.** The State itself may have its strategy of alleviating hardships of victims as part of Article 41. So we do not think that the mandatory minimum in Section 433-A can be linked up with the distress of the dependants.”

(emphasis supplied)

9. Subject to the aforesaid modification of the sentence which has been imposed on the appellant for the conviction under Section 376 of the Indian Penal Code, the appeal shall stand disposed of.

10. Pending applications, if any, stand disposed of.

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