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**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
SURYA KANT; J., ABHAY S. OKA; J.**

September 6, 2022

CRIMINAL APPEAL NO. 1499 OF 2022 (Arising out of SLP (Criminal) No. 2353 of 2017)

Sahebrao Arjun Hon v. Raosaheb s/o Kashinath Hon & Ors.

Criminal Trial - Sentencing - Gravity of crime is the prime consideration for deciding what should be the appropriate punishment - It is always the duty of the Court to balance aggravating circumstances and mitigating circumstances at the time of imposing sentence - If undue sympathy is shown by reducing the sentence to the minimum, it may adversely affect the faith of people in efficacy of law - The judicial discretion is always guided by various considerations such as seriousness of the crime, the circumstances in which crime was committed and the antecedents of the accused. (Para 12-13)

For Petitioner(s) Mr. Shivaji M Jadhav, Adv. for M/S. S.M. Jadhav and Company

For Respondent(s) Mr. Sudhanshu S. Choudhari, AOR Mr. Mahesh P Shinde, Adv. Ms. Rucha A Pande, Adv. Mr. Raagav Raghul, Adv. Mr. Siddharth Dharmadhikari, Adv. Mr. Aaditya A. Pande, AoR Mr. Bharat Bagla, Adv. Mr. Sachin Patil, Adv.

JUDGMENT

ABHAY S. OKA, J.

1. Leave granted.
2. The appellant is the complainant who is one of the victims of the offence subject matter of this appeal. The respondent nos.1 to 4 are the accused nos.7 to 10. On account of death of the respondent no.3-accused no.9, this appeal stands abated as against him.
3. The respondent nos.1 to 4 were convicted by a Court of Judicial Magistrate for the offences punishable under Sections 326, 324 and 447 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC'). For the offence punishable under Section 326 read with Section 34 of IPC, the learned Trial Judge sentenced the respondent nos.1 to 4 to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.3,000/- each. In default of payment of fine, they were sentenced to suffer simple imprisonment for 3 months each. For the offence punishable under Section 324 read with Section 34 of IPC, the said respondents were sentenced to suffer rigorous imprisonment for a period of one year and to pay fine of Rs.1,000/- each. In default of payment of fine, they were sentenced to undergo simple imprisonment for one month each. For the offence punishable under Section 447 read with Section 34 of IPC, they were sentenced to pay fine of Rs.500/- each and in default, to suffer simple imprisonment for 15 days each. All the substantive sentences were ordered to run concurrently. Out of the fine amount paid by them, the learned Trial Judge directed that compensation of Rs.1,000/- shall be paid to the appellant (PW-2) and to the other injured Arjun Dada Hon (PW-8). The learned Sessions Judge confirmed the conviction and sentence of the respondent nos. 1 to 4 in appeal. The respondent nos.1 to 4 preferred a revision application before the High Court.

By the impugned judgment dated 19th December, 2016, while confirming the conviction, the substantive sentence imposed on them of rigorous imprisonment for three years for the offence punishable under Section 326 read with Section 34 of IPC was brought down to rigorous imprisonment for one year. For the offence punishable under Section 324 read with Section 34, the respondent nos.1 to 4 were let off on the sentence already undergone by them. However, the respondent nos. 1,2 and 4 were directed to pay a sum of Rs. 20,000/- each to the two victims as compensation in terms of Section 357-A of the Code of Criminal Procedure, 1973 (for short 'CrPC').

4. According to the prosecution case, on 26th March 1992 at about 6.30 pm, when the appellant came near the pan shop of the accused no.11, he was called by the said accused. After getting his tractor repaired, the appellant came to the shop of the accused no.11. It is alleged that the accused no.11 objected to the appellant being in company of one Vithobanana. Accused no.11 described the said Vithobanana as a beggar. The appellant responded by telling the accused no.11 that he had no business to question him as the said Vithobanana was his relative. At that time, the respondent no.1 – accused no. 7 arrived at the spot and there was exchange of words between the appellant and the respondent no.1. At that time, Arjun Dada Hon (PW-8) who is also a victim of offence came there and tried to pacify the respondent no.1. It is alleged that at that time, the accused no.11 caught hold of collar of PW-8 and abused him. When the appellant tried to intervene, the accused no.11 slapped him. The incident ended there as the persons concerned dispersed from the spot.

5. On the same day, at about 7-7.30 pm, the appellant and PW-8 were sitting on a platform in front of their house. At that time, PW-5 Karna and his son also came there. At about 8-8.30 pm, the respondent nos.1 to 4 arrived there and started abusing the appellant and PW-8. At that time, the respondent no.1 was carrying a stick in his hand. He gave a blow of the stick on the appellant's head. The respondent no. 2 gave a blow by using a scythe on the neck and back of the appellant. It is the case of the prosecution that even Arjun (PW-8) was assaulted by the said respondents by using sticks. It is the case of the prosecution that one Sachin (PW-9) and Madhukar (PW-4) also suffered minor injuries.

6. The learned Trial Judge believed the testimony of the appellant (PW-2) and the other injured witness Arjun (PW-8) which was duly supported by the medical evidence as well as the evidence regarding recovery of the weapons of assault at the instance of the accused.

7. In support of the present appeal, Shri Shivaji M. Jadhav, the learned counsel for the appellant submitted that notwithstanding the seriousness of the injuries sustained by the appellant and PW-8, the Trial Court showed leniency while imposing sentence of three years of rigorous imprisonment for the offence punishable under Section 326 read with Section 34. The learned counsel submitted that the appellant suffered 11 injuries including depressed fracture on left parietal region. He suffered life threatening injuries on left parietal region and left side of the neck. He pointed out that the prosecution examined Dr. Vijay Gyanba Kshirsagar (PW-12) who deposed that the condition of the appellant was serious when he was brought to him for treatment. The learned Counsel

appearing for the appellant submitted that there was absolutely no reason for the High Court to reduce the substantive sentence to the period of one year.

8. Shri Sudhanshu S. Choudhari, the learned counsel for the respondent nos.1,2 and 4 submitted that if this Court is inclined to consider the submissions made by the appellant on merits, the revision application may be remanded to the High Court. He submitted that though submissions were made before the High Court on merits of the conviction, effectively what is considered by the High Court is only the submission made on behalf of the said respondents in the alternative for substantially reducing the sentence. He would, therefore, submit that the prayer for enhancement made by the appellant cannot be considered. If at all it is to be considered, the revision application may be remanded to the High Court.

9. After the submissions were substantially heard, we had suggested to the parties to explore possibility of an amicable settlement. However, the learned counsel reported to the Court that there is no possibility of any amicable settlement.

10. We have given careful consideration to the submissions made across the bar. The Trial Court and the Appellate Court have concurrently found that the offences punishable under Section 326 read with Section 34 and Section 324 read with Section 34 of IPC have been duly established by the prosecution. Though while deciding the revision application, the High Court may not have elaborately recorded reasons, in paragraph 4 of the impugned judgment, after considering the evidence on record, the learned Judge of the High Court has expressed a general agreement with the concurrent findings recorded by the two Courts. While exercising the revisional jurisdiction, the High Court was not expected to record detailed reasons for concurring with the reasons recorded by the Trial Court and Appellate Court. Perusal of paragraph 5 of the impugned judgment shows that the submission regarding reduction of sentence was made in addition to the contentions raised on merits.

11. The High Court has chosen to take a very lenient view by reducing the substantive sentence for the offences punishable under Section 326 read with Section 34 and Section 324 read with Section 34 of IPC. The substantive sentence of the offence under Section 326 has been reduced to one year. As far as Section 324 of IPC is concerned, the respondent nos.1,2 and 4 have been let off on the sentence already undergone.

12. As far as the sentencing is concerned, the judicial discretion is always guided by various considerations such as seriousness of the crime, the circumstances in which crime was committed and the antecedents of the accused. The Court is required to go by the principle of proportionality. If undue sympathy is shown by reducing the sentence to the minimum, it may adversely affect the faith of people in efficacy of law. It is the gravity of crime which is the prime consideration for deciding what should be the appropriate punishment.

13. Perusal of the judgment of the High Court shows that there is no finding recorded regarding the existence of any relevant mitigating circumstance in favour of the respondent nos.1,2 and 4. It is always the duty of the Court to balance aggravating circumstances and mitigating circumstances at the time of imposing sentence. Perusal of the findings recorded by the Trial Court shows that the appellant suffered total 11

injuries on his person. For four injuries, stitches were required to be applied. The evidence of Dr.Shinde (PW-11) describes the injuries in detail. On the basis of X-ray films produced on record, Dr.Shinde pointed out that depressed fracture on left parietal region was seen. Dr.Kshirsagar (PW-12), under whom the appellant was admitted as indoor patient has stated that the condition of the appellant was serious when he was brought to him. In fact, the case of the prosecution is that even a dying declaration of the appellant was recorded. Even the other injured witness Arjun (PW-8) suffered five injuries out of which one was on frontal parietal area. As against this, there are no major mitigating circumstances in favour of the respondent nos.1,2 and 4.

14. The maximum sentence for the offence punishable under Section 326 of IPC is imprisonment for life. Even after considering the nature of the serious injuries sustained by the appellant, the Trial Court took a lenient view by imposing sentence of imprisonment of only 3 years. There was no provocation for the respondent nos.1 to 4 to attack the appellant and the other victims. They came well prepared with the weapons of assault in front of the house of the appellant where the incident took place. Looking to the gravity of the offence, there was no warrant for showing leniency. Even though a case is made out for grant of enhancement in sentence or at least to restore the sentence imposed by the Trial Court, it must be remembered that the impugned judgment is of 19th December 2016 and the respondent nos.1, 2 and 4 must have undergone the entire sentence of one year. The incident is of the year 1992. Hence, we propose to enhance their sentence by six months' simple imprisonment. Moreover, we propose to grant a reasonable compensation to the victims in addition to the compensation made payable by the High Court. Therefore, we propose to direct the respondent nos. 1,2 and 4 to pay an additional sum of Rs.40,000/- to the present appellant and the injured witness, Arjun Dada Hon (PW-8).

15. By modifying the impugned judgment of the High Court, we direct that in addition to the substantive sentence imposed by the High Court for the offence punishable under section 326 read with section 34 of IPC, the respondent no.1,2 and 4 shall undergo simple imprisonment for six months. The respondent nos.1,2 and 4 shall surrender before the Trial Court within six weeks from today to undergo simple imprisonment for six months in addition to the sentence imposed by the High Court. The respondent nos.1,2 and 4 shall deposit the total sum of Rs.40,000/- with the Trial Court within a period of one month from today. The officer in charge of Kopargaon Police Station shall ensure that the additional compensation is equally distributed to the appellant and Arjun Dada Hon (PW-8).

16. To the above extent, the appeal is partly allowed, with no order as to costs.