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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.A. 246/2003**

Date of Decision: 26th August, 2013

1. GURBACHAN SINGH @ PYARE LAL
2. BALDEV SINGH @ BALDEV RAJ Appellants
Through: Mr. Gurbaksh Singh, Advocate
with appellants in person.

versus

STATE OF DELHI Respondent
Through: Mr. P.K. Sharma, Standing
Counsel for CBI.

CORAM:
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The appellant Gurbachan Singh and Baldev Singh have preferred the present appeal against the judgment dated 27th February, 2003 and order on sentence dated 28th February, 2003 vide which the appellants were convicted for offences under Section 120 B IPC, Section 25(1AA) of Arms Act r/w Section 120B IPC and under

Section 5 of Explosives Substances Act r/w Section 120 B IPC and wee sentenced as under:-

- (i) Rigorous imprisonment for 10 years with fine of Rs.5,000/- under Section 120B IPC, Section 25 (1AA) of Arms Act r/w Section 120 B IPC and under Section 5 of Explosives Substances Act r/w Section 120 B IPC.
- (ii) Rigorous imprisonment for seven years with fine of Rs.5,000/- under Section 474 IPC against Gurbachan Singh.
- (iii) In case of default in payment of fine each convict was to undergo further RI for six months on each count.
- (iv) Substantive sentences were to run concurrently.

2. Prosecution case, succinctly stated, is as follows:-

On the basis of secret information allegedly received in SU – XI Branch of CBI on 14th October, 2000 to the effect that some unknown person indulging in the supply of arms/ammunitions and explosives will be carrying huge consignment of the arms and ammunitons and explosives etc. concealed in a steel trunk bags at Libaspur Transport Area, G.T. Karnal Road Delhi for transportation to some unknown destination in a truck, a raiding party was constituted. At about 7.30 p.m., a person was seen coming on cycle

rickshaw with one big steel trunk and rexine bag. The rickshaw stopped at a place opposite Baba Dhaba, Libaspur, G.T. Karnal Road, Delhi. After about 5-10 minutes another person came and was found conversing with the said person sitting on the cycle rickshaw. The activities of both the persons were found to be suspicious. As such, CBI team intercepted the said cycle-rickshaw. On enquiries, the suspects disclosed their names and addresses as Pyare Lal, S/o Sh. Bhagat Ram aged about 65 years, R/o H.N. 4, Gali No. 2, Mohalla Putlighar, Amritsar and Baldev Raj, S/o late Sh. Darshan Lal, aged about 25 years, R/o H.No. 2, Gali No. 2, Cinema Road, Raiya Distt. Amritsar. The rickshaw puller, on inquiry, disclosed his name as Jeewan Lal. On opening the steel trunk, it was found to be containing the following items:-

- (I) Twenty pistols with Star mark bearing the numbers mentioned in the bracket hereafter engraved on the body.
[(i) 32020118, (ii) 31072245, (iii) 31072152, (iv) 32017075, (v) 31067078, (vi) 31068350, (vii) 31069383, (viii) 32056190, (ix) 32017760, (x) 31067288, (xi) 32020011, (xii) 32022305, (xiii) 32022445, (xiv)

31011322, (xv) 32022589, (xvi) 32021345, (xvii)
32006896, (xviii) 32015959, (xix) 31072982, (xx)
without number having mark 66].

- (II) 40 (forty) pistol magazines.
- (III) 717 live Pistol Cartridges (.30 mm)
- (IV) 2 AK-56 Rifles bearing numbers 19100293 and
18072261
- (V) 163 live cartridges of AK-56 (7.62 mm)
- (VI) Six Magazines of AK-56
- (VII) (i) Seven Pencil Packets (Total 13 Nos. of Pencil)
(ii) Six Detonators in small plastic container with
mark "SB"
(iii) Nine electric Detonators along with double red
colour wire. (six single and three double)
- (VIII) Six Time Devices (Green Colour)
- (IX) White Cordex wire-12 feet (approx.)
- (X) Match Fuse (Black) -2 rolls
- (XI) 2 Magazines pouch of AK-56 (Green Colour)

3. Similarly on opening the black coloured rexine bag following items were recovered:-

(i) RDX (Yellowish color) – 22 packets weighing 22.670 kgs.

(ii) RDX (Black color) – 6 Packets weighing 6.560 kgs.

4. Both the accused persons were arrested and interrogated. During investigation, it was revealed that both the accused persons had disclosed their false names at the time of arrest as well as during interrogation. Investigation established that the real name of Pyare Lal was Gurbachan and he was resident of village Pandori Sukha Singh of PS Ajnala, Distt. Amritsar that he is a “bad character” of PS Ajnala and had been involved in a case of gold smuggling having links with Pakistani smugglers in the year 1977, having past record of indulgence in gold, narcotic, counterfeit currency, arms and explosive smuggling.

5. The real name of Baldev Raj was Baldev Singh @ Pappu and he was resident of village Ghuman Khurd, PS Dhariwal, Distt. Gurdaspur, Punjab and that he had been an associate of Gurbachan Singh who was involved with him in the case of narcotic smuggling

detected by Customs and BSF officials in the year 1989. During the course of investigation, accused Gurbachan Singh disclosed that he had received the consignment of arms/ammunition and RDX concealed in a steel trunk and a rexine bag from a Muslim person named Daleep of Rajasthan, that the consignment had come from Pakistan and was intended for “Babbar Khalsa” a militant group in Punjab, that as per the instructions received from Pakistan, he was supposed to deliver the consignment to one Chhinda. Investigation also revealed that a driving licence in the name of Pyare Lal, S/o Mangat Ram purportedly issued by RTA Faridabad recovered during the course of personal search of Gurbachan Singh was a fake document. The seized arms/ammunition and explosives were sent to CFSL for examination and report. The CFSL report opined that the contraband items are all prohibited items and are firearms as defined in Arms Act 54 of 1959 and are components of improvised explosive devices and, therefore, explosive substances as defined in Explosive Substances Act, 1908. After completing the investigation, charge sheet was submitted.

6. Prosecution examined 14 witnesses in order to substantiate its case, Statement of both the accused was recorded u/S 313 Cr.P.C. wherein they denied the case of prosecution and pleaded innocence. They, however, opted not to lead any defence evidence. Vide impugned orders, the appellants were convicted and sentenced separately. Feeling aggrieved by the same, the present appeal was preferred.

7. During the course of arguments, both the appellants were present in person along with the learned counsel. Learned counsel, on instructions from the appellants, stated that he has opted not to challenge the conviction of the appellants. It was further submitted that as regards the sentence, appellant Baldev Singh had already undergone the entire sentence and has also deposited the fine. He, however, prayed for modification of the order on sentence qua appellant Gurbachan Singh on the ground that he has already undergone a period of about seven years in jail. He is 75 years of age and is also not medically fit. As such, he be released on the period already undergone. Reliance was placed on *Bachan Singh vs. State of Punjab*, (1980) 2 SCC 684, *Bishnupada Sarkar & Anr. vs. State*

of West Bengal, AIR 2012 SC 2248; *Jagat Singh vs. State of H.P.*, 2011 [1] JCC 296 and *Om Prakash Vs. State of Haryana*, JT 1999 (1) SC 599.

8. Leniency in sentence was opposed by learned standing counsel for CBI on the ground that keeping in view the gravity and seriousness of the offence and the large quantity of prohibited arms/ammunition and explosive substances recovered from the possession of the convicts, the advance age of the accused is not a ground for showing any mercy on him. Reliance was placed on *Ram Pati Beldar Vs. State of Bihar*, 1999 SCC (Cri) 1152.

9. While considering the legality, desirability and propriety of reducing the sentence after conviction in a case under Narcotic Drugs and Psychotropic Substances Act, 1985, the following observations of Hon'ble Supreme Court in *Union of India V. Kuldeep Singh* in SLP (Crl.) 2827/2003 may be reproduced for convenience:-

“.....Law regulates social interests, arbitrates conflicting claims and demands. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Friedman in his "Law in Changing

Society" stated that, "State of criminal law continues to be as it should be a decisive reflection of social consciousness of society". Therefore, in operating the sentencing system, law should adopt the corrective machinery or the 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, and all other attending circumstances are relevant facts which would enter into the area of consideration.

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 etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a

sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Counce MCGDautha v. State of California: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment

in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be.

Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences relating to narcotic drugs or psychotropic substances which have great impact not only on the health fabric but also on the social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time or personal inconveniences in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making

justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

Similar view has also been expressed in Ravji v. State of Rajasthan, (1996 (2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. 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".

10. The offence relating to possession of arms/ammunitions and explosive substances is more heinous than a culpable homicide because the latter affects only an individual while the former affects and leaves its deleterious impact on the society, besides shattering the

economy of the nation as well. Thus the legislature intended to make the offences under the Act so serious to be dealt with sternly and with an iron hand. None of the authorities relied upon by learned counsel for the appellant help him inasmuch as in ***Bachan Singh's*** and ***Om Prakash's*** cases while laying down various considerations which the Court may take into consideration while imposing capital punishment, it was observed that age of the accused is one of the factor. ***Bishnupada Sarkar*** (supra) was a case in which the appellant was convicted u/s 304 Part I. There was no enmity between the parties. The appellant had no intention to kill the deceased. Appellant No.1 was over 65 years of age. Taking into consideration all these circumstances, the sentence was reduced from 10 years to 3 years. ***Jagat Singh*** (supra) was a case where conviction was altered from Section 302 to Section 323 IPC. Under those circumstances, keeping in view the age of the convict coupled with his old age ailments and the period of sentence already undergone, he was ordered to be released.

11. As observed above, the cases relied upon by learned counsel for the appellant affected only the individual whereas the offence

relating to possession of huge quantity of arms, ammunition and explosive substances, adversely affects the nation as a whole. *Alafdin@ Alfa vs. State of Punjab* - CrI.A.No.1233-SB/2008 was also a case where the appellant was convicted for offences u/s 3, 4 and 5 of the Explosives Act and it was held by the High Court of Punjab and Haryana that no leniency can be extended in case of such an offender who was not only destroying the peace of Punjab but of the country as a whole, as such they do not deserve any leniency on the quantum of sentence.

12. *Tarun Bora @ Alok Hazarika vs. State of Assam*, (2002)7 SCC 39 was also a case where the appellant was convicted u/s 365 IPC read with Section 3(1)/3(5) of Terrorist and Disruptive Activities (Prevention) Act and similar prayer for leniency was made. However the plea was repelled by observing that human consideration is no ground for showing leniency to the perpetrator of the crime against organised civilised society which is abhorrent to the concept of rule of law. Such acts not only strike a terror in the mind of the people but have effects on the civilized society and have to be condemned by imposing punishment.

13. Under the circumstances in *Ram Pati Beldar* (supra) relied upon by learned Standing Counsel for CBI, it was observed that once the Court has convicted the accused of the offence with which he was charged, sentences will have to follow whatever be the age of the accused at the time of order of the Court sentencing him to imprisonment for life. There is no general exception in the Indian Penal Code that an accused of advanced age should not be deemed to be guilty of the offence.

14. What can be culled out from the aforesaid judgments is that the age of the accused is not the sole criteria for taking a liberal view in the matter. Keeping in view, the huge quantity of arms/ammunition and RDX recovered from the possession of the appellant, there is no ground for reducing the sentence imposed upon him by the learned Additional Sessions Judge. That being so, there is no merit in the appeal and the same is accordingly dismissed. Appellant Gurbachan Singh shall surrender to suffer the remaining sentence as awarded by the Trial Court within a week, failing which copy of the order be sent to the learned Trial Court for getting the appellant arrested for serving the remaining sentence.

Copy of the order along with the Trial Court record be sent
back.

**SUNITA GUPTA
(JUDGE)**

AUGUST 26, 2013
rs/as