

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 29th October, 2014

+ **CRL.A. 583/2013**

SACHIN

..... Appellant

Through: Mr. K.K. Sharma and Mr. Vipin
Rathi, Advocates

Versus

STATE GOVT. OF NCT OF DELHI

..... Respondent

Through: Ms. Ritu Gauba, Additional
Public Prosecutor for the State
alongwith SI Sonal Raj, PS New
Usmanpur
Complainant in person

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The appellant – Sachin impugns the judgment dated 26.03.2013 and order on sentence dated 01.04.2013 in Sessions Case No.56/11 FIR No.242/11 under Section 302 of Indian Penal Code registered at Police Station New Usmanpur, Delhi where he was convicted under Section 304 Part-II of Indian Penal Code(hereinafter referred to as IPC 1860) and sentenced to undergo rigorous imprisonment for a term of 7 years with fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for six

(6) months.

2. The gravamen of the prosecution case is as follows.

3. Rani – daughter of deceased – Pramod Jha got married to Naveen Jha, brother of accused sometime in February, 2011. A few days prior to the incident, Rani was quite unwell as such her husband – Naveen Jha had dropped her at her parents' house. On the fateful day i.e. 05.07.2011 at about 9.30 pm, Pramod Jha along with his son Vikas went to the house of accused in order to talk about Rani. On reaching the house of Navin, the appellant – Sachin, who is the younger brother of Navin Jha met them and got angry by alleging that they had married an ailing girl to the family of accused and they are fed up with her continuous treatment. He started hurling abuses and then Pramod Jha came out of the house. However, the appellant - Sachin went inside the house, brought a knife and gave knife blow injuries as a result of which Pramod Jha sustained injuries. The police was informed, ambulance came and removed the injured to GTB Hospital. On receipt of DD No.42A SI Sunil Kumar went to the spot and came to know that injured has been removed to GTB Hospital as such he went to GTB Hospital where Pramod Jha was found admitted.

He was declared unfit for statement. Vikas was present in the hospital. He gave the statement Ex.PW1/A which became bedrock of investigation. An FIR under Section 324 of Indian Penal Code was registered. Eventually the deceased succumbed to his injuries on 7th July, 2011 whereupon Section 302 IPC was added to the case. Post mortem examination of the deceased opined the cause of death to be 'haemorrhagic shock as a result of ante mortem injury to left femoral vessels produced by sharp edged weapon'. Injury No. 12 was further opined sufficient to cause death in the ordinary course of nature. The accused was arrested. Pursuant to his disclosure statement Ex. PW11/C, a knife was recovered. The shirt of the victim – Pramod Jha with which his wound was tied was handed over to the police which was seized vide Ex.PW 1/B. Exhibits were sent to FSL. After completing investigation, charge-sheet was submitted against the accused for offence under Section 302 of IPC.

4. The charge for offence under Section 302 of IPC was framed against the appellant. He abjured his guilt and claimed trial.

5. In order to substantiate its case, prosecution in all examined 15 witnesses. All the incriminating evidence was put to the appellant

while recording his statement under Section 313 of Code of Criminal Procedure wherein he denied the case of prosecution. According to him, he did not cause injuries to Pramod Jha. In fact Vikas, son of Pramod Jha had picked up the knife from his house and wanted to assault him. He himself hit his father by that knife when the victim tried to intervene. After receiving injuries, Pramod Jha fell inside the house and Vikas ran away. The police arrived in 15-20 minutes, removed Pramod Jha from inside their house. In support of his defence, he examined his father Sushil Kumar Jha.

6. After meticulously examining the evidence led by the prosecution and defence, the learned Trial Court observed that it was appellant/accused who picked up the knife from the kitchen and caused injuries to Pramod Jha by that knife which proved fatal. However, it was observed that a single blow was inflicted on non-vital part of the body and the incident had occurred when the deceased and his son had come to the house of accused to lodge some protest as such the act of the accused was not pre-meditated. Therefore, although charge of murder was not proved but circumstances clearly proved that accused had knowledge that his act is likely to cause death and as

such he was convicted under Section 304 Part-II of Indian Penal Code and sentenced accordingly.

7. Feeling dissatisfied, the present appeal has been preferred by the appellant.

8. It was submitted by learned Counsel for the appellant that in the initial statement made by the complainant, it was alleged that the injuries were inflicted by knife on the leg of the deceased, however, subsequently a different version was given by alleging that a knife blow was given on chest which escaped and hit on thigh slightly and then again hit the thigh with greater force. It was submitted that this statement of complainant – PW1 Vikas Jha is at variance with the medical evidence. According to the doctor, there was only one stab wound. Challenge was also made to the recovery of knife by alleging that it was effected from an open place. Moreover, the injuries were not on vital parts of the body. It was a case of sudden quarrel without any premeditation, therefore, neither the intention nor knowledge could be attributed to the appellant. At the most, the allegation attracted Section 324 of Indian Penal Code. Reliance was placed on *Satpal v State*, 2012 [4] JCC 2477; *Kishan Pal v State*, 2004[2] JCC

1149; *Shan & Ors. v Emperor*, AIR 1934 Lah.111; *Mathew Omalt and Anr. v State of Orissa*, 1984(I) OLR 303; *Asu and Anr. v State of Rajasthan*, 2000 CrI.LJ 207; *Dalapati Majhi v State*, 53 (1982) CLT 106; *State of Karnataka v Shivalingaiah Alias Handigidda*, AIR 1988 SC 115; *Thomas v State of Kerala*, 1992 CrI.LJ 581 and *Golak Chandra Nayak and another v State of Orissa and others*, 1993 CrI.LJ 274. It was further submitted that prosecution has failed to bring home the guilt of the appellant/accused beyond reasonable doubt as such he is entitled to be acquitted. Alternatively, the appellant is a young boy; he has already remained in custody for quite some time as such he be released on the period already undergone.

9. Rebutting the submissions made by learned Counsel for the appellant, it was submitted by Ms. Ritu Gauba, learned Additional Public Prosecutor for the State that it was a clear case of intention on the part of the accused to kill the deceased inasmuch as after the quarrel was over and the deceased was leaving from the place, the accused went inside the house, brought a kitchen knife and inflicted as many as 13 injuries on his person. The testimony of complainant finds

substantial corroboration from the medical evidence as such no fault can be found with the findings of the learned Trial Court. Reliance was placed on *Bavisetti Kameshwara Rao @ Babal vs. State of AP*, AIR 2008 SC 1854. It was further submitted that the daughter of the deceased could not bear the loss of her father and as such within few months she also died as such compensation under Section 357(3) Cr.PC be also awarded to the legal heirs of the deceased. Reliance was placed on *State of Madhya Pradesh v Najab Khan and others*, (2014) SCC (Crl.) 153 and *Ankush Shivaji Gaikwad vs. State of Maharashtra*, AIR 2012 SC 2454.

10. I have given my considerable thoughts to the respective submissions of learned counsel for the parties and have perused the record. At the outset, it may be mentioned that all the submissions which have been made at bar for assailing the judgment passed by learned District and Sessions Judge/North East, Delhi were also made at the time of arguments which did not find favour and rightly so in view of the evidence which came on record.

11. The star witness of prosecution is PW1- Vikas Jha, brother of Rani and son of deceased Pramod Jha. This witness unfolded that his

sister Rani got married to Navin, brother of accused on 9th February, 2011. In July, 2011, her husband Navin Jha left her at her parents' house as she was unwell. On 05.07.2011, he along with his father went to the house of Navin Jha to talk about his sister at about 9/9.30 pm. Accused Sachin Jha, brother of Navin opened the door and when the witness and his father inquired from Sachin about Navin Jha, he got angry and started abusing them. Pramod Jha asked Sachin not to abuse them, thereupon accused Sachin physically assaulted Pramod Jha with fists and kicks blows. Vikas Jha came to the rescue of his father and brought him outside the house of accused. Thereafter, accused came there holding a knife in his hand and gave a knife blow aiming at the chest of his father. However, the knife fell on the thigh of the victim. The accused repeatedly gave knife blows. Vikas gave a call at 100 number. Police arrived and took the injured to GTB hospital where his statement Ex.PW1/A was recorded. He further deposed that he took off the shirt of his father and tied that shirt on his thigh wound in an attempt to stop bleeding and this shirt was given to the police which was seized vide memo Ex.PW1/B. On the intervening night of 5/6.07.2011, his father was declared dead.

12. The presence of the accused at the spot is not disputed either by him or by DW1, his father. It is also not in dispute that the deceased Pramod Jha along with his son Vikas had gone to the house of accused in order to have a talk regarding Rani who was married to Navin Jha and was left at her parents' house being unwell. There is also no dispute that Pramod Jha sustained injuries on his thigh by knife. However, the accused has given a different version regarding the manner in which Pramod Jha sustained injuries. It was suggested by the accused to the witness that he had taken Rani to her parents house at about 8 pm on the date of the incident and her further medical examination was recommended by AIIMS for HIV; the accused had given a call on the mobile phone of this witness somewhere between 9.30/10 pm inquiring as to where he was and the witness replied that he was in the house of accused and thereupon accused reached his house; the witness along with his father started beating the accused and when mother of Sachin tried to save her son, at that time Pramod Jha pressed her throat and she became unconscious; Pramod Jha pushed Sachin who fell on the ground and the victim sat on the chest of Sachin and started pressing his neck;

thereupon deceased took out a knife from his pant and tried to give knife blows on the person of Sachin and in that process Vikas Jha tried to snatch the knife from the hand of his father and the knife fell on the leg of the victim as a result of which he suffered injuries. All these suggestions were denied by the witness. It was also suggested to the witness that the entire incident had taken place on the first floor of house of the accused and the victim was lying on the first floor when police arrived and took him to hospital.

13. The father of the accused, however, tried to give a different version by deposing that on 05.07.2011, Pramod Jha and his son Vikas came to his house at about 9.30 pm. At that time, the appellant – Sachin was not present in the house and he came after about 10-15 minutes. Pramod Jha slapped Sachin and a quarrel took place. Vikas Jha took a knife from the slab of the kitchen. He intervened and in that process knife injuries were caused on the thigh of Pramod Jha at the hands of Vikas Jha who ran away from there. They removed the injured to GTB Hospital. In the emergency, the doctors demanded the blood for transfusion which could not be arranged. Due to negligence of the doctors and non-availability of blood, Pramod Jha expired on

07.07.2011.

14. Under the circumstances, it is clear that contradictory suggestions were given to PW1 Vikas Jha and the case set up by the father of the accused is completely at variance with the suggestion given to this witness. The mother of accused whose throat was allegedly tried to be throttled by Pramod Jha and allegedly became unconscious was not examined by the accused. Moreover, according to accused the entire incident had taken place on the first floor and blood was lying on the first floor. However, this stand is belied by the scaled site plan Ex.PW12/A according to which mark-A is the place where the accused attacked with knife on Pramod Jha i.e. in front of L-20/62, Gali No.9, A Block, Pahari Hotel Wali Gali, Kartar Nagar, Delhi. Moreover, the rukka Ex.PW3/A also mentions the place of incident as "Gali No.9 near transformer, Kartar Nagar in front of house number L-20/62, A Block, Pahari Hotel Wali Gali". There is absolutely no evidence to show that the incident of stabbing by knife took place on the first floor of the house as alleged by the accused or that any blood was lying on the first floor. Under the circumstances, the plea taken by the appellant is contradictory. On the other hand,

PW1 Vikas was subjected to gruelling cross examination by learned counsel for the appellant, but nothing material could be elicited to discredit his testimony and was rightly relied upon by the learned District & Sessions Judge.

15. The submission of learned counsel for the appellant that in the initial statement, the complainant had only stated that the accused gave a knife blow on the leg of the deceased and subsequently he made material improvements in his deposition before the Court by deposing that the accused inflicted knife blow on the chest of the deceased which however missed and fell on the leg of the deceased has been succinctly dealt with by the learned Trial Court by observing that although it is true that in the initial statement Ex.PW1/A, the witness had not stated regarding physical assault by blows and kicks and aiming of knife blow on the chest of the deceased which fell on the leg, however, his statement under Section 161 Cr.P.C. was recorded on the very next day which provided all the details of assault. Moreover, the fact that the witness deposed that repeated blows were given which did not find corroboration with the medical evidence at the most can tantamount to an exaggeration but

exaggeration per se do not render the evidence brittle. Same are not by themselves sufficient to discard the testimony of the witness because it is common knowledge that while giving an account of the incident, the witnesses have a tendency to exaggerate the version, but then grain has to be separated from chaff in order to find out the truth from the testimony of witnesses. (Ref. *Krishna Pillai vs. State of Kerala*, AIR 1981 SC 1237; *State of UP v. Naresh*, (2011) 4 SCC 324; *Ganga Bhavani v. Rayapati Venkat Reddy & Ors.*, 2013 (11) SCALE 132). In the instant case, there is no reason to discard the testimony of the witness that knife injury was caused by accused on the thigh of the deceased. The evidence to that effect is consistent and suffers from no infirmity for disbelieving him.

16. It was also proved that after arrest of the accused pursuant to his disclosure statement, a knife was recovered which was lying on the left side of the transformer. This recovery was challenged on the ground that it was lying in an open space and was visible to everybody. However, this suggestion has been denied by PW11—Constable Ravinder and PW13 SI Sunil. In *Tahir & Ors. v. State*, 87 (2000) DLT 207, it was observed that there is nothing in Section 27 of

the Evidence Act which renders statement of accused inadmissible if recovery of the article was made from any place which is open or accessible to others. It is a fallacious notion that when recovery of any incriminating article was made from a place which is open or accessible to others it would vitiate the evidence under Section 27 of the Evidence Act. Any object can be concealed in places which are open or accessible to others for example, if the article is buried on the main road side or if it is concealed beneath dry leaves lying on public places or kept hidden in a public office the article would remain out of the visibility of others in normal circumstances. Until such article is discovered its hidden state would remain unhampered. The person who had hid it alone know where it is until he discloses that fact to any other person. Hence the crucial question is not whether the place was accessible to others or not but whether it was ordinarily visible to others. If it is not, then it is immaterial that the place of concealment is accessible to others. Similar view was reiterated in *State of Himachal Pradesh v. Jeet Singh*, (1999) 4 SCC 370; *State of Maharashtra v. Bharat Fakira Dhiwar*, (2002) 1 SCC 622; *Ibrahim Musa Chauhan @ Babu Chauhan v. State of Maharashtra*, 2013(3)

SCALE 207.

17. During the course of investigation, half sleeve shirt, blood on gauze and the weapon of offence were sent to FSL and as per report Ex. X of Dr. Rajinder Kumar, Asstt. Director (Biology), blood was detected on all the exhibits. When they were further subjected to test by the Serologist, the blood on all the three exhibits was found to be of “human origin”. However, blood group on shirt and blood gauze was opined to be of B Group, but on the weapon of offence the grouping could not be given due to “no reaction”. This, however, does not provide any material benefit to the accused vide ***Ramnaresh & Ors. vs. State of Chattisgarh***, (2012) 4 SCC 257.

18. Furthermore, the testimony of PW1 Vikas find corroboration from medical evidence. Pramod Jha was initially examined by PW6 Dr. Nitin Chawla who prepared his MLC Ex.PW6/A and deposed that patient was brought by CATS with profuse bleeding from left side thigh. On local examination, there was stab wound measuring 3 cm x 2 cm on the antero medial aspect of the left thigh with sharp margins and active bleeding. A call was sent to the surgery emergency and the ICU for urgent management and proper examination. Request was

sent for urgent blood transfusion and blood sample was sent for cross matching. The patient was referred to surgery emergency for expert opinion and further management. The post-mortem was conducted by PW15 – Dr. Mukesh Kumar and as per the post-mortem report Ex.PW15/A as many as 13 injuries were found on the body of the deceased. The cause of death was haemorrhagic shock as a result of ante mortem injury to left femoral vessel produced by sharp edged weapon, injury no.12 was sufficient to cause death in ordinary course of nature. The weapon of offence was also sent for obtaining subsequent opinion and it was opined that since injury number 12 was surgically altered, no definite opinion about the type of weapon used could be given. However, the wound was possible with any sharp pointed weapon, including the weapon which was produced before the doctor. It was urged that as per death summary dated 07.07.2011, the patient had cardiac arrest at 12.40 am on 07.07.2011 and despite efforts he could not be revived and was declared dead at 1 am. Therefore, if the cause of death was cardiac arrest, then injury no.12 as per the post-mortem report and described to be the cause of death could not be accepted. This aspect of the matter was dealt with

succinctly by learned Trial Court by observing as under:

“21. A look at this death summary reveals that patient was taken to operation theatre for exploration and ligation of femoral vessel on 06.07.2011. Left femoral artery and left femoral vein were ligated. Report further records that patient developed left lower limb gangrene and he was taken up for amputation of left lower limb at around 11.30 pm on 06.07.2011 with due consent. After skin incision was given that patient developed ventricular tachy cardiac on the operation table. Surgery was abandoned and CPR was given to the patient to revive him and he was shifted to ICU and patient collapsed.

22. This death summary rather provides explanation to the contention of learned counsel that injury no.12 as per the post-mortem report is described 12 cm x 0.1 cm x muscle deep and described to be surgically altered incised wound. Death summary reveals that when this injured left leg found to have developed gangrene it was required to be amputated and skin incision was given but then victim deteriorated and could not be revived.”

19. Under the circumstances, the complicity of the accused in causing injuries to the deceased by inflicting knife blows stands established not only from the ocular testimony of the complainant but also from the medical evidence and the scientific evidence. All these aspects were dealt with in detail by learned Trial Court and no fault can be found with these findings.

20. It was next urged that even if the complicity of accused in the

said crime is accepted, even then since it was a case of sudden quarrel without premeditation and giving a single knife blow, the offence at best can fall under Section 324 of IPC. Reliance was placed by learned counsel for the appellant on *Satpal (supra)* where the appellant was charged with offence under Section 302 IPC. However, his conviction was altered to one under Section 325 of IPC. In this very case, it was observed by a Division Bench of this Court that intention to cause a specified result or actor's purpose has to be gathered and inferred from the action of the person and the surrounding circumstances such as motive of the accused, utterances made, nature of attack, the time and place of attack, the nature and type of weapon used, the nature of injuries caused and so on. Thus, other factors are to be taken into consideration to determine whether the accused had requisite intention. Knowledge means consciousness. The offender is reasonably expected to be aware of the consequences of his act even if he did not intend the death. In that case, the accused had caused injuries by stone and there was no evidence if that stone was thrown towards victim which happened to hit him on his head or was inflicted as blow by accused, what was the size of the stone and

what was the use of force with which that injury was caused by that stone. Under the circumstances, it was observed that the case attracted Section 325 of Indian Penal Code. **Kishan Pal** (*supra*) was a case where initially names of the assailants were not disclosed to the doctor at the time of admission of victim in the hospital. In the supplementary statement, names of three other persons were also added. There were contradictions regarding the place of incident. The ocular evidence was at variance with medical evidence. Under those circumstances, the conviction was set aside. **Shan & Ors** (*supra*) was a case where during a sudden fight a heavy stone was picked up by the accused and struck on the back of the head of the deceased as a result of which he fell down and died. It was observed that he could be imputed intention to cause grievous hurt and as such held guilty under Section 325 of IPC. On peculiar facts of the case in **Mathew Omalt and Anr.** (*supra*), the conviction of the appellant under Section 307 IPC was converted to 324 IPC by Orissa High Court. In **Asu** (*supra*) injury by sword was inflicted. The conviction was altered from Section 304 Part-I to Section 304 Part-II by Rajasthan High Court. In **Dalapati Majhi** (*supra*); **Shivalingaiah Alias Handigidda** (*supra*);

Thomas (supra); and *Krishnan Sreevalsan* (supra) respective High Courts passed orders in view of the facts and circumstances appearing in those cases.

21. In the instant case, evidence has come on record that initially altercation took place wherein the accused inflicted fists and kicks blows to the victim as a result of which he fell down. Thereafter, he was brought down from the first floor of the house and while he was in the street, the accused brought a knife from his house and caused injuries on the left thigh of the victim. The death summary suggested that femoral vessels and femoral veins were found cut which were ligated, but still the injured limb developed gangrene and required to be imputed on the next day. The gravity of the assault and the *mens rea* can be inferred from these facts. In *Bavisetti Kameshwara Rao @ Babal* (supra), even though the screw and pan knife were used and a plea was taken that the incident was sudden and without premeditation, still conviction under Section 302 of IPC was upheld by observing that even if there was a single injury caused, it was with such a force and on such a vital part of the body that it caused almost instantaneous death. *Satish Narayan Sawant v. State of Goa*, 2009

Crl.L.J 4655 was also a case where there was only one injury caused by stabbing on the back of deceased and had proved to be fatal. Initially the accused was unarmed and later on he had taken a kitchen knife with the help of which he stabbed the deceased. It had also come that only one injury was fatal in nature which was caused due to stabbing and, therefore, it was observed that it cannot be said that there was any intention to kill or to inflict an injury of a particular degree of seriousness. Therefore, the offence u/s 302 was converted to offence u/s 304 Part II of IPC.

22. Keeping in view the totality of facts and circumstances that single blow was inflicted and the incident had occurred when the deceased and his son had come to the house of accused to lodge some protest, charge of murder cannot be held to have been proved but the circumstances clearly suggest that the accused who caused knife injuries must have the knowledge that he was likely to cause death as such he was rightly convicted under Section 304 Part-II of Indian Penal Code. The findings of learned Trial Court does not call for any interference and are accordingly upheld.

23. Coming to the quantum of sentence, it is alleged that the

appellant is a young and unmarried boy and was aged about 24 years. He has remained in jail for more than three years hence he be released on the period already undergone. In **Najab Khan** (supra), Hon'ble Supreme Court dealt with the principles of sentencing and observed as under:-

*"11. It is a settled principle of law that the punishment should meet the gravity of the offence committed by the accused and courts should not show undue sympathy with the accused persons. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases. In **Shailesh Jasvantbhai and Anr. v. State of Gujarat and Ors.** (2006) 2 SCC 359, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eyes of law. It was further observed as under:*

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. 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. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. 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 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.

8. Therefore, 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."

12. This position was reiterated by a three-Judge Bench of this Court in **Ahmed Hussein Vali Mohammed Saiyed and Anr. v. State of Gujarat**, (2009) 7 SCC 254, wherein it was observed as follows:

"99...The object of awarding appropriate sentence should be to protect the society and to deter the criminal from 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. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. 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 victim of the crime and the society at large while considering the imposition of appropriate punishment. 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 both the criminal and the victim belong.

In that case, the court further goes to state that meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of society.

13. In **Jameel v. State of Uttar Pradesh**, (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -

"15. In operating the sentencing system, 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.

16. 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 sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

14.. In **Guru Basavaraj @ Benne Settapa v. State of Karnataka**, (2012) 8 SCC 734, while discussing the concept of appropriate sentence, this Court expressed that:

"33.....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. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

15. This Court, in **Gopal Singh v. State of Uttarakhand** , JT 2013 (3) SC 444 held as under:

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence...."

Recently, the above proposition is reiterated in **Hazara Singh v. Raj Kumar and Ors.** 2013 (6) Scale 142.

16. In view of the above, 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 Courts 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.”

24. Turning to the case in hand, a precious life has been lost on a trivial issue however, keeping in view the mitigating circumstances viz. his young age, coupled with the fact that no previous involvement in any criminal incident is alleged, the substantive sentence is modified to five (5) years rigorous imprisonment. At the same time, in view of the guidelines given by Supreme Court in **Ankush Shivaji**, compensation in the sum of Rs. One lakh is awarded to the legal heirs of the deceased, in view of S.357(3) of Cr.P.C. Appellant is granted three months time to deposit the compensation amount with the Registrar General of this Court who will, thereafter pay the same to the legal heirs of deceased.

The appeal stands disposed of accordingly.

Trial Court record be sent back forthwith along with a copy of

this judgment.

A copy of this judgment be also sent to Jail Superintendent for information to the appellant.

(SUNITA GUPTA)
JUDGE

OCTOBER 29, 2014
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