

Neutral Citation No. - 2024:AHC-LKO:39331

Court No. - 13

Case :- CRIMINAL REVISION No. - 392 of 2009

Revisionist :- Surya Nath Singh

Opposite Party :- State of U.P.

Counsel for Revisionist :- Ajay Pratap Singh

Counsel for Opposite Party :- G.A.

AND

Neutral Citation No. - 2024:AHC-LKO:39331

Court No. - 13

Case :- CRIMINAL APPEAL No. - 1591 of 2009

Appellant :- Surya Nath Singh

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Pratap Singh, Ajay Pratap Singh, M.K. Dixit

Counsel for Respondent :- G.A., Nadeem Murtaza

AND

Neutral Citation No. - 2024:AHC-LKO:39331

Court No. - 13

Case :- CRIMINAL APPEAL No. - 1920 of 2009

Appellant :- Siddh Nath Singh

Respondent :- State of U.P.

Counsel for Appellant :- Ajay Pratap Singh, Ajay Pratap Singh, M.K. Dixit

Counsel for Respondent :- G.A.

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the appellant, Sri M.K. Dixit, learned Counsel for the appellants and learned A.G.A. for the State.

2. Assailing the correctness of judgment and order dated 09.07.2009 passed by Additional Sessions Judge (Court No.3), Sultanpur (in short 'trial court'), in S.T. No. 338 of 2006 (State Versus Siddh Nath Singh and Others), arising out of Case Crime No. 71 of 2004, related to Police Station Haliapur, District Sultanpur, the appellants namely Surya Nath Singh, Lok Nath Singh and Ran Vijay Singh have filed the Criminal Appeal No. 1591 of 2009 and appellant namely Siddh Nath Singh has filed the Criminal Appeal No. 1920 of 2009.

3. The genesis of the appeals indicated above, was the NCR lodged on 02.04.2004 under Sections 323 and 504 IPC and taking note of the injuries sustained, on 02.04.2004 NCR was converted in Case Crime No. 71/2004 under Sections 324, 323, 504 IPC and on 13.04.2004, during investigation based upon the Ex-ray report of injured Anjani Kumar, Section 325 IPC was added and after conclusion of investigation charge-sheet was filed and charges were framed under Sections 308/34, 323/34, 324/34, 325/34, 504 IPC and upon denial, the accused were put to trial.

4. From the story of the prosecution as narrated it appears that an altercation took place between the parties at about 9 A.M. in the morning on 02.04.2004 and in that incident injuries were sustained to the appellant namely Anjani Kumar and injured Anjani Kumar was examined by Dr. Subodh Kumar.

5. Injured Anjani Kumar, Ambika Prasad, Constable Narendra Bahadur Singh and Dr. S.K.Srivastava were examined before the trial court as P.W.1 to P.W.4.

6. As per medical report/injury report as also the Ex-Ray plate, the injury no.1 sustained by Anjani Kumar over head, was grievous injury and other injuries no. 2 to 11 were simple in nature.

7. Before the trial court the Doctors appeared as P.W.3 and P.W.5 and deposed that the injury no.1 can be caused by sharp edge object and as per story of the prosecution the injuries were caused by hard and blunt object.

8. Before the trial court the witnesses proved the documentary evidence and after recording the statements of witnesses of prosecution and based upon the evidence on record, the questions were put to the accused, as required under Section 313 Cr.P.C., and in response the accused denied the allegations and also stated that in the said altercation between the parties the accused Surya Nath also sustained injuries.

9. Before the trial court in support of contention made at the stage of Section 313 Cr.P.C. Ajay Kumar Singh was produced as D.W.1, to support the stand taken by the accused.

10. At this stage, it would be appropriate to indicate the facts related to Criminal Revision No. 392 of 2009 which was filed against the judgment dated 09.07.2009 passed in Sessions Trial No. 339 of 2004 (State Versus Anjani Kumar

and Others) as by this judgment the trial court dismissed the case and acquitted Anjani Kumar Singh, Sahab Baksh Singh, Ambika Singh, and Surya Prakash Singh alias Suddu.

11. The genesis of Session Trial No. 339 of 2004 (State Versus Anjani Kumar and Others), as indicated and also appears from record, was an application preferred by revisionist Surya Nath Singh (accused in the above indicated appeals) under Section 156(3) Cr.P.C. and in compliance of order passed on the said application on 24.04.2004 by the Additional Chief Judicial Magistrate, Court No. 20, District-Sultanpur, the case was registered and the case was committed to Sessions court.

12. Before the sessions court/Additional Sessions Judge, Court No.3, Sultanpur (in short 'trial court'), the charges were framed against Anjani Kumar Singh, Shah Baksh Singh, Ambika Singh and Surya Prakash Singh on 12.04.2007 under Section 323/34, 427, 504, 506 IPC.

13. To support the allegations made in the complaint the complainant Surya Nath Singh, Ajay Kumar Singh, Sudhir Singh and Dr. S.K.Srivastava, were examined as P.W.1 to P.W.4 before the trial court.

14. S.K.Srivastava before the trial court proved the medical report/injury report dated 03.04.2004 of injured Surya Nath Singh and as per medical report/injury report and statement of P.W.4 Dr. S.K.Srivastava all injuries i.e. injury nos. 1 to 3 were simple in nature.

15. After completion of evidence from the side of prosecution the question in terms of Section 313 Cr.P.C. were put to the accused in this case namely Anjani Kumar Singh, Surya Prakash, Ambika Singh. These accused stated that case set up in the complaint case is complete false and concocted and the complaint case under Section 156(3) Cr.P.C. was preferred only in counter blast to the NCR subsequently converted into Case Crime No. 71 of 2004.

16. The trial court after due consideration of the contents of the complaint and the evidence on record including the medical report/injury report and also statement of P.W.4 Dr. S.K.Srivastava, concluded as under:-

"अभियोजन की ओर से विद्वान सहायक जिलाशासकीय अधिवक्ता (फौ0) तथा अभियोगी के निजी अधिवक्ता की ओर से संयुक्त रूप से बहस की गयी है कि अभिलेखीय साक्ष्य एवं मौखिक साक्ष्य से यह स्पष्ट है कि अभियोगी सूर्यनाथ की पत्नी श्रीमती कलावती को बाग लगाने हेतु 30 वर्षीय पट्टा 2.00 हे0 व रामप्रसाद के पक्ष में 1.00 हे0 का हुआ था। उसी में उसका आवास गाटा संख्या-2055 में घर खलिहान है तथा बतौर अनुलग्नक भूमि उसका प्रयोग कर रहे हैं। उसका एकपक्षीय पट्टा, प्रतिवादीगण के पक्ष में चोरी चुपके कर दिया गया जिसके निरस्तीकरण का वाद उसकी पत्नी श्रीमती कलावती ने राकेश आदि के विरुद्ध दायर किया है जिसमें अपर जिलाधिकारी प्रशासन/अपर कलेक्टर द्वारा वाद सं0-430/466/629/95 अन्तर्गत धारा 198 (4) उ0प्र0 जमींदारी विनाश एवं भूमि सुधार अधिनियम ग्राम जरईकला परगना इसौली तहसील मुसाफिरखाना जिला सुलतानपुर की प्रमाणित प्रतिलिपि दाखिल की गयी है और इसी वाद से संबंधित वादपत्र की प्रमाणित प्रतिलिपि दाखिल की गयी है जिसके अवलोकन से यह स्पष्ट होता है कि उसमें 9 पक्ष, प्रतिवादी है जिसमें कि अभियुक्तगण में से कोई उसमें पक्षकार नहीं है। प्रतीत यह होता है कि अंजनीकुमार का खलिहान उक्त नम्बर के दक्षिण तरफ ही लगता है। स्वयं वादी के अनुसार गाटा सं0-2055 की कोई पैमाइश नहीं हुई है। अतः उसकी पत्नी के पक्ष में पट्टा गाटा सं0-2055 में किस सीमा तक हुआ है यह बिना पैमाइश के साबित नहीं माना जा सकता। जहां तक अपर जिलाधिकारी (प्रशासन) द्वारा दिये गये स्थगनादेश का प्रश्न है इस मामले में अभियुक्तगण पक्षकार नहीं है। वादी सूर्य नाथ सिंह की चोटें साधारण किस्म की है यद्यपि उसको चोट नम्बर-2 जो दाहिने कंधे के पिछले हिस्से पर है उसका एक्सरे कराया गया उसमें कोई हड्डी टूटी नहीं पायी गयी। उपरोक्त विवेचना के आधार पर मैं अभियुक्तगण विरुद्ध भा0दं0वि0 की धारा 323 के अन्तर्गत युक्तियुक्त सन्देह से परे साबित नहीं पाता हूं।

जहां तक भा0दं0वि0 की धारा 504 का प्रश्न है। यह आरोप भी अभियुक्तगण के विरुद्ध साबित नहीं है क्योंकि वादी ने अपने द0प्र0सं0 की धारा 156 (3) के अन्तर्गत दिये गये आवेदन में जिसे परिवाद के रूप में विद्वान मजिस्ट्रेट द्वारा मानते हुए कार्यवाही की गयी है, में कही वास्तविक अपमानजनक एवं अभद्र शब्दों का प्रयोग नहीं अंकित किया है और न भी अभियोजन साक्षीगण ने अपने बयान में उन अपमानित शब्दों का उल्लेख किया है जो अभियुक्तगण द्वारा प्रयोग किये गये और न ही अभद्र शब्दों का जैसा कि रामेश्वर प्रसाद श्रीवास्तव बनाम स्टेट आफ यू0पी0 1984 क्रि0ला0जर्नल पेज 996 पर माननीय उच्च न्यायालय द्वारा अवधारित किया गया है। इसी आशय का मत राम करन एवं अन्य बनाम स्टेट आफ यू0पी0 1984 (2) काइम्स पेज 27 में माननीय इलाहाबाद उच्च न्यायालय द्वारा अवधारित किया गया है। भा0दं0वि0 की धारा 504 के अन्तर्गत अपराध साबित करने के लिए यह भी दर्शाया जाना चाहिए कि अभियुक्तगण द्वारा जो अपमानजनक शब्द कहे गये हैं अथवा प्रयुक्त किये गये हैं, अभियुक्तगण

ने इस आशय तथा यह संभाव्य जानते हुए कि अभियोगी को प्रकोपित किया गया कि यह ऐसे प्रकोपन से शान्ति भंग या कोई अन्य अपराध कारित कर सकता था।

इसी प्रकार जहां तक अभियुक्तगण द्वारा अभियोगी को जान से मारने की धमकी दिये जाने का प्रश्न है इस अपराध को साबित करने के लिए मात्र जान से मारे जाने के शब्दों का प्रयोग किया जाना पर्याप्त नहीं है ऐसी धमकी वास्तविक होनी चाहिए और जिस व्यक्ति को ऐसी धमकी दी जा रही हो उसका तात्पर्य वही होना चाहिए जैसा कि वह कहता है और ऐसा व्यक्ति जिसे ऐसी धमकी दी जा रही है उसे महसूस करता हो कि वास्तव में उसे जान से मारने की धमकी दी जा रही है जैसा कि नोवल मोहनदास बनाम स्टेट 1989 किमिनल ला जर्नल पेज 669 में माननीय मद्रास उच्च न्यायालय की एकल पीठ द्वारा अवधारित किया गया है। अतः अभियुक्तगण के विरुद्ध भा0द0वि0 की धारा 506 का आरोप भी युक्तियुक्त सन्देह से परे साबित नहीं पाता हूँ।

जहां तक भा0द0वि0 की धारा 427 के आरोप का प्रश्न है, इस संबंध में अभियोगी ने अपने द0प्र0सं0 की धारा 156 (3) के अन्तर्गत दिये गये आवेदन में यह कहा है कि उसका अभियुक्तगण द्वारा सरपत हटाने से 100/-रु0 का नुकसान हुआ था जबकि अपनी जिरह में उसने यह भी कहा है कि उसने अपने प्रार्थना पत्र में सरपत फेंकने से 100/-रु0 का नुकसान होने की बात को लिखा है किन्तु न्यायालय में दिये बयान में यह कहा है कि उसका अभियुक्तगण द्वारा सरपत फेंकने से 1000/-रु0 का नुकसान हुआ था जिसकी वर्तमान में कीमत 2000/-रु0 है। अ0सं0-2 अजय कुमार सिंह ने यद्यपि जिरह में अवश्य यह कहा है कि जहां उसके पिता मारे जा रहे थे वहां उसका सरपत रखा था। सरपत जो रखा था उसको इधर उधर फेंक दिया था। किन्तु अपनी जिरह में उसने यह कहा है कि उसके घर के दक्षिण कोई खलिहान नहीं है। खलिहान का पट्टा कब हुआ नहीं जानता। जो सरपत इधर उधर फेंका गया था उसने उसे किसी को फेंकते नहीं देखा क्योंकि वह घर के अन्दर था। उसके पिता अंजनी को सरपत फेंकने से रोकन नहीं गये थे। वह नहीं बता सकता कि उसके पिताजी वहां कैसे पहुंच गये। जैसा मैं पूर्व में उल्लेख कर चुका हूँ कि वास्तव में यह साक्षी घटना के बाद पहुंचा होगा और अ0सं0-3 रणधीर सिंह इस साक्षी के बाद मौके पर पहुंचा होगा। इसके विपरीत अभियुक्तगण अंजनी कुमार आदि ने यह कहा है कि उसका खलिहान सैंकड़ों वर्षों से लगता चला आ रहा है वह जमीन ग्राम समाज तथा सरकार की है। उसका और अन्य गांव वालों का खलिहान सैंकड़ों वर्षों से लगता चला आ रहा है आज भी लगा है अब भी लगता है। उसने केवल एक फीट सरपत हटा कर मात्र खलिहान की जमीन को खाली किया था। मात्र इस तथ्य से कि उसने एक फीट सरपत को हटाकर खलिहान की जमीन को साफ किया था इससे यह नहीं कहा जा सकता कि अभियुक्तगण इस आशय से यह संभाव्य जानते हुए कि वह लोक या किसी व्यक्ति को दोष हानि कारित कर रहे हैं या किसी सम्पत्ति का नाश या किसी सम्पत्ति में उसकी स्थिति में ऐसी तबदीली की जिससे उसका मूल्य या उपयोगिता नष्ट या कम हो गयी है जैसा कि द0प्र0सं0 की धारा 427 में रिष्टि की परिभाषा दी गयी है। अतः मेरी राय में अभियुक्तगण के विरुद्ध अभियोजनपक्ष भा0द0वि0 की धारा 427 के अन्तर्गत युक्तियुक्त सन्देह से परे अपराध साबित करने में सफल रहा है। परिणामस्वरूप अभियुक्तगण उपरोक्त धारा में दोषयुक्त किये जाने योग्य हैं।

उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुंचता हूँ कि अभियोजन पक्ष अभियुक्तगण के विरुद्ध आरोपित अपराध अन्तर्गत धारा 323/34, 427, 504, 506 भा0द0वि0 युक्तियुक्त सन्देह से परे/साबित करने में असफल रहा है। परिणामस्वरूप अभियुक्तगण अपने विरुद्ध लगाये गये आरोप से दोषमुक्त किये जाने योग्य हैं। "

17. Reverting to the facts pertaining to the appeals, above noted, the trial court after considering the material evidence available on record, particularly the medico legal/injury report and the statement of injured witness Ambika Prasad who appeared as PW-1, passed the judgment of conviction dated 09.07.2009 convicting the appellants with rigorous imprisonment of 5 years under Section 308/34 with fine of Rs. 1,000/- each and in default of payment of fine further

six months sentence, under Section 325/34 IPC rigorous imprisonment of four years with fine of Rs. 700/- each and in default further four months sentence, rigorous imprisonment of 2 years under Section 324/34 with fine of Rs. 500/- each and in default of payment of fine further three months sentence and rigorous imprisonment of three months under Section 323/34 with fine of Rs. 250/- each and in default of payment of fine further one month sentence.

18. Assailing the judgment dated 09.07.2009, under appeals, it is stated that a perusal of the statement of injured witness and medico legal report/injury report indicates that the conviction of the appellants, is not sustainable in the eyes of law. It is also stated that from a conjoint reading of the story of prosecution and the statement of the witnesses of the facts of the prosecution it is evident that without premeditation of mind on spur of moment the incident took place and on account of altercation and scuffle between the parties, the injured/Anjani Kumar sustained injuries and all the injuries are simple in nature and injury no.1 could be sustained if someone falls on some hard object, such as a stone which could have been available as the place of incident is the place where *Sarpaths* were situated.

19. It is also stated that taking note of the aforesaid aspect of the case as also that the allegations against the appellants were to the effect that they caused injuries with *lathi and*

danda and the doctor opined that the injury no.1 can be caused by a sharp-edged object, it can easily be inferred that injury no.1 was sustained by the injured Anjani Kumar on account of the fact that in scuffle injured fallen down on the stone having sharp edged available at the place of incident covered with 'Sarpaths'.

20. It is also stated that all the injuries sustained by the injured Ambika Prasad/P.W.1, were not fatal in nature and injury no.1 was caused on account of the fact that injured had fallen down over the stone having sharp edge at the place covered with 'Sarpaths' where the incident took place and the case of the prosecution throughout was to the effect that appellants caused injuries with lathi and danda, which cannot be termed as 'Lethal' or 'Deadly' weapon in the light of injuries sustained by the injured and this aspect can be deduced from the injuries sustained by the injured as also the observations made in the judgment passed in the case(s) of *Dhanai Mahto Versus State of Bihar* reported in (2001) 10 SCC 657, *Phool Chand Yadav Versus State of U.P.* reported in 2022 SCC OnLine All 246, *State of U.P. Versus Indrajeet alias Sukhatha*, reported in (2000) 7 SCC 249 and *Mathai Versus State of Kerala* reported in (2005) 3 SCC 260 and also from the fact that the doctor concerned before the trial court deposed that injury no.1 can be caused by a sharp edged object.

21. It is further stated that considering the entire facts of the case including the injuries sustained, statement of doctor

before the trial court and the fact that without premeditation of mind on spur of moment the incident took place and on account of altercation and scuffle between the parties, the injuries were sustained, the trial court ought to have awarded punishment under Section 324 IPC and accordingly the sentence awarded by trial court is liable to be modified.

22. Reliance has been placed on the judgment of Hon'ble Supreme Court passed in the case of ***Ramesh vs. State of U.P. reported in (1992) SCC (Cri) 183***, relevant paras of the same on reproduction reads as under:-

"3. The learned counsel for appellant has assailed the finding recorded by the High Court and the trial Judge and has urged that the appellant was implicated due to enmity. He urged that even though the High Court held that in the FIR the main part was specifically assigned to the appellant and one Jagat Singh but in the evidence it was confined to the appellant as the relations between the two were strained. The learned counsel further urged that the case of the prosecution was that the complainant was bitten by Jagat Singh and there being no injury of biting, the High Court committed an error in maintaining the conviction. We are not impressed by the argument. The learned counsel then urged that the High Court committed an error in convicting the appellant under Section 307, Penal Code, 1860. We do not propose to decide it as a matter of law. But we agree with the learned counsel for the appellant that in peculiar circumstances of the case it being a case of single injury in the back of neck the conviction can be altered to be under Section 324, Penal Code, 1860.

4. In the result the appeal succeeds and is allowed in part. The conviction under Section 307/34, IPC is converted to under Section 324, IPC and the sentence is reduced to the period already undergone. The appellant shall deposit a sum of Rs 3000 as fine within six months which shall be paid to the complainant. In default of payment he shall serve out the entire sentence. On deposit of fine the bail bond shall stand discharged."

23. Reliance has been placed on the judgment of Hon'ble Supreme Court passed in the case of ***Shyam Sharma vs. State of Madhya Pradesh & Another reported in (2017) 9 SCC 362***, relevant paras of the same on reproduction reads as under:-

"3. The contention of Mr V. Giri, learned Senior Counsel, appearing for the appellant, is that the independent witnesses Anoop Bhargava (PW 1) and Ramprakash (PW 4) did not support the prosecution case. Manjeet Singh (PW 3) is an interested witness. The appellant is a computer engineer and has no criminal background. At the most, the appellant can be convicted under Section 324 IPC. On the other hand, the learned counsel appearing for the respondents has supported the judgment of the High Court.

4. We have carefully considered the submissions of the learned counsel made at the Bar and perused the materials placed on record. As rightly submitted by the learned counsel for the appellant, both Anoop Bhargava (PW 1) and Ramprakash (PW 4) have turned hostile. It was established that Manjeet Singh has sustained gunshot injury. Dr Vikram Singh Tomar (PW 2), on examination, found two entry wounds over the lateral aspect of left shoulder and interior aspect of upper part of left scapula region of Manjeet Singh. However, firearm injury suffered by Manjeet Singh (PW 3) could not be impeached in their cross-examination. It is also evident that the accused fired at Manjeet Singh without any premeditation. The injury suffered by Manjeet Singh was not on the vital part of his body. In our view, the prosecution has failed to prove that the accused intended to cause the death of the deceased. Therefore, the appellant can only be convicted under Section 324 IPC and not under Section 307 IPC. Therefore, the appellant is convicted under Section 324 IPC instead of Section 307 IPC.

5. The appellant has already been imprisoned for about four months. Having regard to the facts and circumstances of the case, it is just and proper to reduce the sentence to the period already undergone by the appellant Shyam Sharma. Ordered accordingly."

24. Further, reliance has also been placed by learned counsel for appellant on the judgment of Hon'ble Supreme Court passed in the case of ***Gopal Singh vs. State of Uttarakhand reported in (2013) 7 SCC 545***, relevant paras of the same on reproduction reads as under:-

"15. In Jameel v. State of U.P. [(2010) 12 SCC 532 : (2011) 1 SCC (Cri) 582] 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, the Court observed thus: (SCC p. 535, paras 15-16)

"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.

In the said case, there was a fracture of bone and the trial court had convicted the appellant therein under Section 308 IPC and sentenced him to undergo rigorous imprisonment for two years.

16. In Shailesh Jasvantbhai v. State of Gujarat [(2006) 2 SCC 359 : (2006) 1 SCC (Cri) 499] the Court has observed thus: (SCC pp. 361-62, para 7)

"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."

17. Recently, this Court in Guru Basavaraj v. State of Karnataka [(2012) 8 SCC 734 : (2012) 4 SCC (Civ) 594] , while discussing the concept of appropriate sentence has expressed that: (SCC pp. 744-45, para 33)

"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."

25. In addition, learned counsel for appellant has placed reliance on the judgment of Hon'ble Supreme Court passed in the case of ***State of Madhya Pradesh vs. Udham and others reported in (2019) 10 SCC 300***, relevant paras of the same reads as under:-

8. At the outset, it is pertinent to note that the reasoning of the High Court, for passing the impugned order and partly allowing the appeals of the respondent-accused herein, is limited to one sentence. The High Court states in its order that looking to the nature of the offence, the fact that this is the first offence of the respondents and the period of sentence already undergone by them, it is passing the impugned order.

9. At this stage the observations of this Court in *X v. State of Maharashtra* [*X v. State of Maharashtra*, (2019) 7 SCC 1 : (2019) 3 SCC (Cri) 10] , in which two of us were part of the Bench, with respect to sentencing in India are relevant here : (SCC p. 25, paras 49-50)

"49. Sentencing is appropriate allocation of criminal sanctions, which is mostly given by the judicial branch. [Nicola Padfield, Rod Morgan and Mike Maguire, "Out of Court, Out of Sight? Criminal Sanctions and No Judicial Decision-making", *The Oxford Handbook of Criminology* (5th Edn.).] This process occurring at the end of a trial still has a large impact on the efficacy of a criminal justice system. It is established that sentencing is a socio-legal process, wherein a Judge finds an appropriate punishment for the accused considering factual circumstances and equities. In light of the fact that the legislature provided for discretion to the Judges to give punishment, it becomes important to exercise the same in a principled manner. We need to appreciate that a strict fixed punishment approach in sentencing cannot be acceptable, as the Judge needs to have sufficient discretion as well.

50. Before analysing this case, we need to address the issue of the impact of reasoning in the sentencing process. The reasoning of the trial court acts as a link between the general level of sentence for the offence committed and to the facts and circumstances. The trial court is obligated to give reasons for the imposition of sentence, as firstly, it is a fundamental principle of natural justice that the adjudicators must provide reasons for reaching the decision and secondly, the reasons assume more importance as the liberty of the accused is subject to the aforesaid reasoning. Further, the appellate court is better enabled to assess the correctness of the quantum of punishment challenged, if the trial court has justified the same with reasons.

10. *In the present case, it is clear that there is no detailed analysis of the facts of the case, the nature of the injuries caused, the weapons used, the number of victims, etc. given by the High Court in the impugned order. The High Court while sentencing the accused, has not taken into consideration the second charge proved against the respondent-accused herein, under Section 452 IPC. Even the fact that the respondent-accused had only undergone sentence of 4 days at the time of passing of the impugned order, brings into question the High Court pointing to the same as a reason for reducing their sentence. As such, the order of the High Court merits interference by this Court.*

11. *We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by the courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.*

12. *Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).*

13. *Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach."*

26. He has also placed reliance on the decision dated 13.02.2020 passed by this Court in Criminal Appeal Nos.4156 of 2017 and 1807 of 2019 in the case of ***Hukam Singh & Ors. vs. State of U.P.***, relevant paras of the same on reproduction reads as under:-

"15-In Mohd. Giasuddin Vs. State of AP, AIR 1977 SC 1926, explaining rehabilitary & reformatory aspects in sentencing it has been observed by the Supreme Court:-

"Crime is a pathological aberration. The criminal can ordinarily be redeemed and the state has to rehabilitate rather than avenge. The sub-culture that leads to ante-social behaviour has to be countered not by undue cruelty but by re-culturization. Therefore, the focus of interest in penology in the individual and the goal is salvaging him for the society. The infliction of harsh and savage punishment is thus a relic of past and regressive times. The human today vies sentencing as a process of reshaping a person who has deteriorated into criminality and the modern community has a primary stake in the rehabilitation of the offender as a means of a social defence. Hence a therapeutic, rather than an 'in terrorem' outlook should prevail in our criminal courts, since brutal incarceration of the person merely produces laceration of his mind. If you are to punish a man retributively, you must injure him. If you are to reform him, you must improve him and, men are not improved by injuries."

16-In Sham Sunder vs Puran, (1990) 4 SCC 731, where the high court reduced the sentence for the offence under section 304 part I into undergone, the supreme court opined that the sentence needs to be enhanced being inadequate.

It was held: "The court in fixing the punishment for any particular crime should take into consideration the nature of 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 offence."

17-In State of MP vs Najab Khan, (2013) 9 SCC 509, the high court, while upholding conviction, reduced the sentence of 3 years by already undergone which was only 15 days. The supreme court restored the sentence awarded

by the trial court. Referring the judgments in *Jameel vs State of UP* (2010) 12 SCC 532, *Guru Basavraj vs State of Karnatak*, (2012) 8 SCC 734, the court observed as follows:-

"In operating the sentencing system, law should adopt the corrective machinery or the 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 dispensation system to undermine the public confidence in the efficacy of law. It is the duty of court to award proper sentence having regard to the nature of offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of victim of the crime but also the society at large while considering the imposition of appropriate punishment."

18-Earlier, "Proper Sentence" was explained in *Deo Narain Mandal Vs. State of UP* (2004) 7 SCC 257 by observing that Sentence should not be either excessively harsh or ridiculously low. While determining the quantum of sentence, the court should bear in mind the principle of proportionately. Sentence should be based on facts of a given case. Gravity of offence, manner of commission of crime, age and sex of accused should be taken into account. Discretion of Court in awarding sentence cannot be exercised arbitrarily or whimsically.

19-In subsequent decisions, the supreme court has laid emphasis on proportional sentencing by affirming the doctrine of proportionality. In *Shyam Narain vs State (NCT of delhi)*, (2013) 7 SCC 77, it was pointed out that sentencing for any offence has a social goal. Sentence is to be imposed with regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is that the society may not suffer again by

such crime. The principle of proportionality between the crime committed and the penalty imposed are to be kept in mind. The impact on the society as a whole has to be seen. Similar view has been expressed in Sumer Singh vs Surajbhan Singh, (2014) 7 SCC 323, State of Punjab vs Bawa Singh, (2015) 3 SCC 441, and Raj Bala vs State of Haryana, (2016) 1 SCC 463.

20-In Kokaiyabai Yadav vs State of Chhattisgarh(2017) 13 SCC 449, it has been observed that reforming criminals who understand their wrongdoing, are able to comprehend their acts, have grown and nurtured into citizens with a desire to live a fruitful life in the outside world, have the capacity of humanising the world.

21-In Ravada Sasikala vs. State of A.P. AIR 2017 SC 1166, the Supreme Court referred the judgments in Jameel vs State of UP (2010) 12 SCC 532, Guru Basavraj vs State of Karnatak, (2012) 8 SCC 734, Sumer Singh vs Surajbhan Singh, (2014) 7 SCC 323, State of Punjab vs Bawa Singh, (2015) 3 SCC 441, and Raj Bala vs State of Haryana, (2016) 1 SCC 463 and has reiterated that, in operating the sentencing system, law should adopt corrective machinery or deterrence based on factual matrix. Facts and given circumstances in each case, nature of crime, manner in which it was planned and committed, motive for commission of crime, conduct of accused, nature of weapons used and all other attending circumstances are relevant facts which would enter into area of consideration. Further, undue sympathy in sentencing would do more harm to justice dispensations and would undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to nature of offence and manner of its commission. The supreme court further said that courts must not only keep in view the right of victim of crime but also society at large. While considering imposition of appropriate punishment, the impact of crime on the society as a whole and rule of law needs to be balanced.

22- The judicial trend in the country has been towards striking a balance between reform and punishment. The protection of society and stamping out criminal proclivity must be the object of law which can be achieved by imposing appropriate sentence on criminals and wrongdoers. Law, as a tool to maintain order and peace, should effectively meet challenges confronting the society,

as society could not long endure and develop under serious threats of crime and disharmony. It is therefore, necessary to avoid undue leniency in imposition of sentence. Thus, the criminal justice jurisprudence adopted in the country is not retributive but reformatory and corrective. At the same time, undue harshness should also be avoided keeping in view the reformatory approach underlying in our criminal justice system.

23- In view of the above, it is clear that in our country the reformatory and corrective approach has been adopted in criminal justice administration. There is nothing on record to show that the accused-appellants are incapable of being reformed. The accused-appellants are in jail continuously for more than five years. Every convict is entitled for the advantage of reformatory and corrective jurisprudence."

27. Reliance has been placed on the judgment dated 13.03.2023 passed by this Court in ***Criminal Appeal No. 127 of 2003 (Khunna and others Versus State of U.P.)***. The relevant paragraphs of judgment dated 13.03.2023 reads as under:-

"6. The provisions of Cr.P.C. has not given any straitjacket formula for sentencing. According to law laid down by the Hon'ble Apex Court and High Courts, the sentence for the offence depends on so many factors like circumstances for commission of crime, character, antecedents of offenders, use of weapon, mode of crime, mental status and the age of offender. The socio economic condition also plays a vital role. In the case of B.G. Goswami vs. State of Delhi Administration 1973 AIR 1457, it has been held by the Hon'ble Apex Court that::

"Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations, which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act, which is not only harmful to the society of which he forms an integral part but is also

harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing 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 this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal. In the present case, after weighing the considerations already noticed by us and the fact that to send the appellant back to jail now after 7 years of the annoy and harassment of these proceedings when he is also going to lose his job and to earn a living for himself and for his family members and for those dependent on him, we feel that it would meet the ends of justice if we reduce the sentence of imprisonment to that already undergone but increase the sentence of fine from Rs- 200/- to Rs. 400/-. Period of imprisonment in case of default will remain the same."

7. It can be inferred that object for sentencing an accused should be reformatory.

8. In the case of Alister Anthony Pareira vs State Of Maharashtra (2012) SCC 648, the Hon'ble Apex court has observed that sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have devolved certain principles, twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.

9. *I have considered the argument advanced by the learned counsel for the appellants and taking into consideration the fact that the the date of occurrence was 13.9.1991, accordingly, approximately 32 years have gone by. The appellants had undergone for the period of approximately 51 days in furtherance of his sentencing order. According to the learned counsel for the appellants, the appellants are remorseful of their conduct to the society and they have feeling of transformation in themselves and are also ready to pay some compensation to the victims. They have no criminal history. No fruitful purpose will be served sending them in jail again after a long gap of time. The object of sentence is reformatory. Therefore, in the opinion of the Court, the appellants should be given a chance to reform themselves, hence, considering the facts and circumstances of the case, the prayer of learned counsel for the appellants is allowed. Consequently, without interfere into the order of conviction, the sentence awarded by learned trial court is modified to the period already undergone.*

10. *Since the Court is taking a lenient view by altering the sentence awarded by the court below, therefore, it will be just and proper to award an appropriate compensation to the victims namely Ranjit Singh and Surendra Bahadur Singh. Accordingly, appellants within two months from today, will deposit Rs. 5,000-5,000/- each as compensation to each injured before the trial court. The trial court will disburse the aforesaid amount of compensation to the victims (twenty thousand each). If victims are not alive the said amount be paid to their legal representatives.*

11. *It is made clear that if the aforesaid amount of compensation is not deposited by the appellants as directed above, the trial court will recover the aforesaid amount in accordance with law."*

28. With regard to the judgment passed in the revision on the same date i.e. on 09.07.2009, it is stated that the trial court while rejecting the complaint case failed to consider the evidence available on record in its true spirit in the light

of the case set up in the complaint case, as such, indulgence of this Court is required in aforesaid both appeals.

29. Opposing the appeals filed against the judgment dated 09.07.2009, it is stated by the counsel for the side opposite, as also learned A.G.A. for the State that the order under revision is not liable to be interfered with as the trial court minutely considered all the facts and evidence available on record in the light of the contents of the complaint case.

30. However, the side opposite fairly stated that from the conjoint reading of the story of the prosecution and the statement of the witnesses recorded before the trial court, it is apparent that without premeditation of mind on spur of moment the incident took place and in this incident Anjani Kumar sustained simple injuries and except injury no.1. It is also stated by Sri Dixit, learned Counsel for the complainant, that the parties, who are family members have settled the dispute out of Court amicably.

31. Considered the aforesaid and perused the records.

32. This Court took note of the entirety of the case including the weapon i.e. 'lathi' and 'danda', alleged to be used by appellants in the incident and the injuries sustained which are not fatal in nature, and also that in regard to the injuries sustained doctor concerned also deposed that injury no.1 can be caused by a sharp edged object and other injuries are simple in nature and also that the injured/Anjani Kumar, sustained injuries in the incident occurred on spur of

moment without premeditation of mind, which is also not in dispute. This Court also considered the fact, as stated, that injury no.1 would be sustained on account of the fact that the injured/Anjani Kumar had fallen on the stone having sharp edged at the place of incident covered by 'Sarpaths'. This Court also considered the observations made in the judgment(s) referred above and the fact that the incident took place almost 20 years back and from the material available on record, it appears that there is no criminal history of the appellants as also appellants have not misused the liberty granted by this Court. This Court also considered the observations made in the judgment(s) referred hereinabove on the issue of awarding the punishment/sentence and the fact, as stated by Sri Dixit that the parties have settled the dispute amicably.

33. Upon due consideration of evidence available on record, this Court is of the view that the trial court has rightly recorded the findings while passing the judgment dated 09.07.2009 in S.T. No. 339 of 2004 and these findings do not required any interference and judgment is liable to be up-held.

34. Having considered the aforesaid, this Court is of the view that appellants ought not to have been convicted under Section 308 IPC and 325 IPC and accordingly, it would be appropriate to alter the conviction of these section(s), under Section 324 IPC. Accordingly, the appellants are convicted under Section(s) 324 and 323 read with Section 34 IPC.

35. So far as the question of sentence to be imposed under Section(s) 324 and 323 IPC, which as per judgment dated 09.07.2009 is for a period of two years rigorous imprisonment and three months rigorous imprisonment, respectively, is concerned, this Court took note of the facts (i) that the occurrence took place on 02.04.2004 and accordingly 20 years have elapsed, (ii) parties have settled their dispute amicably, (iii) appellants have no criminal history, (iv) both the parties belong to same family, as stated, and now residing peacefully and after taking note of these facts of the case also the object of sentencing, this Court is of the view that at this juncture of time, sentencing the appellant to a custodial sentence would not serve ends of justice.

36. In view of aforesaid, the judgment and order dated 09.07.2009 passed by Additional Sessions Judge (Court No.3), Sultanpur (in short 'trial court'), in S.T. No. 338 of 2006 (State Versus Siddh Nath Singh and Others), arising out of Case Crime No. 71 of 2004, related to Police Station Haliapur, District Sultanpur, is hereby modified and the appellants are sentenced to the period already undergone alongwith fine of Rs. 10,000/- each under Section(s) 324 and 323 IPC, out of which an amount of Rs. 20,000/- shall be paid to the injured. In default of payment of fine accused/appellants shall undergo one year imprisonment. The fine shall be deposited within two months from the date of judgment. Bail bond of the appellant no.1 in Criminal Appeal No. 1591 of 2009 is cancelled and sureties

discharged. The accused/appellant nos. 2 and 3 namely Lok Nath Singh son of Amar Singh alias Amar Jeet Singh and Ran Vijay Singh son of Deena Nath in Criminal Appeal No. 1591 of 2009 (Surya Nath Singh Versus State of U.P.) and accused/appellant namely Siddhu Nath Singh son of Amar Singh alias Amar Jeet Singh in Criminal Appeal No. 1920 of 2009, who are in jail in compliance of order of this Court dated 12.10.2022 and in regard to whom the application(s) seeking bail and application(s) for recall of order dated 12.10.2022 are pending consideration, shall be released forthwith.

37. In view of aforesaid, all the pending applications stand *disposed of and appeals are partly allowed* in above terms and the revision is *dismissed*.

38. Let a copy of this judgment be sent forthwith to the trial court alongwith trial court's record for compliance.

Order Date :- 23.05.2024

Jyoti/-