

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.REV.P. 577/2015**

Date of Reserve: 20.10.2015

Date of decision: 09.12.2015

BHARAT BHUSHAN & ANR Petitioners
Through Mr.Prerak Kakkar, Advocate.

versus

KANTA DEVI & ANR Respondents
Through Mr. Raghuvinder Varma, APP.
SI Vikas Sahu PS Vikas Puri.

+ CRL.REV.P. 578/2015

BHARAT BHUSHAN & ANR Petitioners
Through Mr.Prerak Kakkar, Advocate.

versus

DEEPAK @ RAJESH & ANR Respondents
Through Mr. Raghuvinder Varma, APP.
SI Vikas Sahu PS Vikas Puri.

+ CRL.REV.P. 579/2015

BHARAT BHUSHAN & ANR Petitioners
Through Mr.Prerak Kakkar, Advocate.

versus

PRADEEP @ PAPPU & ANR Respondents
Through Mr. Raghuvinder Varma, APP.
SI Vikas Sahu PS Vikas Puri.

+ CRL.REV.P. 580/2015

BHARAT BHUSHAN & ANR Petitioners
Through Mr.Prerak Kakkar, Advocate.

versus

BITTU @ SANJAY @ SURAJ SINGH
& ANR Respondents
Through Mr. Raghuvinder Varma, APP.
SI Vikas Sahu PS Vikas Puri.

+ CRL.REV.P. 581/2015

BHARAT BHUSHAN & ANR Petitioners
Through Mr.Prerak Kakkar, Advocate.

versus

ANIL & ANR Respondents
Through Mr. Raghuvinder Varma, APP.
SI Vikas Sahu PS Vikas Puri.

CORAM:
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ASHUTOSH KUMAR ,J.

Crl.M.A Nos.13239/2015, 13246/2015, 13247/2015, 13248/2015

Exemption granted subject to all just exceptions.

Applications stand disposed of.

CRL.REV.P. Nos.577-581/2015

1. The judgment and order dated 09.07.2015 passed by the learned Additional Sessions Judge-02, West, Delhi in Crl.Appeal No.24/4/2015 arising out of FIR No.772/1997 (P.S.Vikas Puri) whereby the conviction of the respondents under Section 325/34 of the

IPC has been upheld and they have been directed to furnish probation bond for the period of one year from the date of the order in the sum of Rs.25,000/- with one surety of like amount along with fine of Rs.20,000/- each (total sum of Rs.1 lakh) to be paid to the petitioners in the ratio of 2/3rd and 1/3rd, depending upon the nature of injuries sustained by them, has been assailed on the ground of the respondents being dealt with lightly so far as the sentencing is concerned.

2. The accused persons namely Kanta Devi (Respondent in Crl. Rev. P. No. 577/15), Deepak @Rajesh (Respondent in Crl. Rev. P. No. 578/15), Pradeep @Pappu (Respondent in Crl. Rev. P. No. 579/15), Bittu @Sanjay@Suraj Singh (Respondent in Crl. Rev. P. No. 580/15) and Anil (Respondent in Crl. Rev. P. No. 581/15) were charged for the offences under Sections 323/326/34 of the IPC for having assaulted and caused grievous hurt to petitioner No.1 and simple hurt to petitioner No.2.

3. On 15.12.1997, petitioner No.1 was accosted by the respondents and was assaulted near house No.P-7, Mohan Garden. Petitioner No.2 also, who had come to the rescue of petitioner No.1, was assaulted. A PCR call was made on which Head Constable Rajpal (PW-4) took the petitioners to DDU Hospital.

4. Upon receipt of DD No.25A Head Constable Manraj (PW-3) along with SI Sultan Singh (PW-9) reached the spot and learnt that the injured persons have been sent to DDU Hospital. The MLC of the petitioners were collected. The statement of petitioner No.1 was recorded which led to the registration of FIR No.772/1997 in Vikas

Puri Police Station for the offence under Sections 323/326 and 34 of the IPC.

5. During trial, nine witnesses were examined, though two of the witnesses were given the same number as PW-7.

6. Petitioner No.1 was examined as PW-1 who supported the prosecution version and spoke about specific overt act of all the respondents. The story of assault has also been supported by ASI Rishi Pal (PW-2), Head Constable Manraj (PW-3) and Head Constable Raj Pal (PW-4).

7. J.C.Vashisht (PW-5) has testified before the Trial Court that petitioners were examined by Dr.Vivek Sharma and Dr.Preeti and two separate MLCs were prepared namely MLC No.10667 and 10669 respectively.

8. Petitioner No.1 received grievous injuries whereas petitioner No.2 received simple injuries. Smt.Swarna Sharma (PW-6) has also supported the prosecution version.

9. Dr.Amitabh Bhasin (PW-7) examined the X-ray plates of the petitioners and did not find any fracture in them.

10. Three defence witnesses were examined by the respondents namely Deepak @ Rajesh (DW-1), Jarnail Kumar (DW-2) and Vinod Kumar (DW-3).

11. The learned Trial Court namely the Metropolitan Magistrate West-05, Delhi, on analysis of facts and records, convicted the respondents under Sections 325/34 of the IPC and sentenced them to undergo RI for one year, fine of Rs.1 lakh each and in default of

payment of fine one month SI for the offence under Sections 325/34 of the IPC vide judgment and order dated 20.12.2014.

12. The aforesaid judgment and order of conviction and sentence was challenged by the respondents in Crl.Appeal No.24/4/2015 wherein the respondents conceded to their conviction under Section 325 of the IPC but only questioned the quantum of sentencing viz a viz the offence.

13. The Appellate Court, on careful consideration of the relevant circumstances, upheld the conviction of the respondents under Section 325 of the IPC but reduced the sentence to their furnishing probation bond in the sum of Rs.25,000/- for a year from the date of the order along with one surety of the like amount and fine of Rs.20,000/- each (total sum of Rs. 1 lakh) in default of which the respondents were directed to suffer SI for seven days.

14. The petitioners are aggrieved by the reduction of sentence of the respondents by the Appellate Court.

15. It has been argued on behalf of the petitioners that the Appellate order is a mechanical order and relevant considerations have not been taken into account for reduction of sentence which was imposed upon the respondents. It was submitted that the attack on the petitioners was in a pre-planned manner, without any provocation. Since all the accused persons/respondents come from the same family, there was no doubt about the attack on the petitioners being premeditated.

16. Perused the appellate order on sentence. Respondent Kanta Devi is suffering from brain tumor for which she is being treated in AIIMS. Respondent Deepak @ Rajesh is a retired Army officer who

has to fend for a large family including two children who are studying and old parents. Respondent Pradeep @ Pappu is also required to look after his old and ailing mother and a large family. Respondent Bittu @ Sanjay and Ashok Kumar are also sailing the same boat. All the respondents have participated in the trial for about 17 long years and are the first offenders having completely clean antecedents.

17. Section 360 of the Code of Criminal Procedure reads as hereunder:-

“360. Order to release on probation of good conduct or after admonition.

(1) When any person not under twenty- one years of age is convicted of an offence punishable with fine only or with imprisonment for a term of seven years or less, or when any person under twenty- one years of age or any woman is-convicted of an offence not punishable with death or imprisonment for life, and no previous conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour: Provided that where any first offender is convicted by a Magistrate of the second class not specially empowered by the High Court, and the Magistrate is of opinion that the powers conferred by this section should be exercised, he shall record his opinion to that effect, and submit the proceedings to a Magistrate of the first class, forwarding the accused to, or taking bail for his appearance before, such

Magistrate, who shall dispose of the case in the manner provided by sub- section (2).

(2) Where proceedings are submitted to a Magistrate of the first class as provided by sub- section (1), such Magistrate may thereupon pass such sentence or make such order as he might have passed or made if the case had originally been heard by him, and, if he thinks further inquiry or additional evidence on any point to be necessary, he may make such inquiry or take such evidence himself or direct such inquiry or evidence to be made or taken.

(3) In any case in which a person is convicted of theft, theft in a building, dishonest misappropriation, cheating or any offence under the Indian Penal Code (45 of 1860), punishable with not more than two years' imprisonment or any offence punishable with fine only and no previous conviction is proved against him, the Court before which he is so convicted may, if it thinks fit, having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed, instead of sentencing him to any punishment, release him after due admonition.

(4) An order under this section may be made by any Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) When an order has been made under this section in respect of any offender, the High Court or Court of Session may, on appeal when there is a right of appeal to such Court, or when exercising its powers of revision, set aside such order, and in lieu thereof pass sentence on such offender according to law: Provided that the High Court or Court of Session shall not under this sub- section inflict a greater punishment than might have been inflicted by the Court by which the offender was convicted.

(6) The provisions of sections 121, 124 and 373 shall, so far as may be, apply in the case of sureties offered in pursuance of the provisions of this section.

(7) The Court, before directing the release of an offender under sub- section (1), shall be satisfied that an offender or his surety (if any) has a fixed place of abode or regular occupation in the place for which the Court acts or in which the offender is likely to live during the period named for the observance of the conditions.

(8) If the Court which convicted the offender, or a Court which could have dealt with the offender in respect of his original offence, is satisfied that the offender has failed to observe any of the conditions of his recognizance, it may issue a warrant for his apprehension.

(9) An offender, when apprehended on any such warrant, shall be brought forthwith before the Court issuing the warrant, and such Court may either remand him in custody until the case is heard or admit him to bail with a sufficient surety conditioned on his appearing for sentence and such Court may, after hearing the case, pass sentence.

(10) Nothing in this section shall affect the provisions of the Probation of Offenders Act, 1958 (20 of 1958), or the Children Act, 1960 (60 of 1960), or any other law for the time being in force for the treatment, training or rehabilitation of youthful offenders.”

18. Offenders with previous conviction or those who are found guilty of any offence punishable with death or imprisonment for life fall in the category of offenders who are beyond the scope of Section 360.

19. It is well settled that the provisions of Sections 360 & 361 are mandatory in nature. The benefit of probation can be denied only if there are special reasons which are required to be recorded by the Court and it is the duty of the Court to consider why compliance of Section 360 could be dispensed with even if the accused did not make any such request for his release on probation.

20. In *Soman Vs. State of Kerala, (2013) 11 SCC 382* the Supreme Court gave certain guidelines regarding sentencing and held that punishment should acknowledge the sanctity of human life but Courts ought to base sentencing decisions on various different rationale- most prominent amongst them being the proportionality and deterrence. The question of consequences of criminal action can be relevant from the point of view of both proportionality as also deterrence. The sentence must be commensurate with the seriousness or gravity of the offence and it must take into account as to what consequences would fall from the commission of such offences.

21. Tested on the aforesaid principles of sentencing as also the mandatory provisions of Section 360 of the Code of Criminal Procedure, this Court is of the opinion that the sentence imposed by the Appellate Court, for the reasons stated in the order on sentence, is justified and does not require any interference.

22. The revision petitions are accordingly dismissed.

ASHUTOSH KUMAR, J

DECEMBER 09, 2015

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