

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.325 OF 1998

The State of Maharashtra

Appellant

versus

1. Shripati Rama Kanase,
Age 50 years, Occ.Aгри;

2. Annappa Shripati Kanase,
Age 55 years,

3. Appa Shripati Kanase,
Age 27 years,

All R/o.Kardyal, Tal.Kagal, Dist.Kolhapur

Respondents

Mrs.M.M.Deshmukh, APP, for Appellant-State.

Mr.Tejas Hilage for Respondent nos.2 and 3.

**CORAM : NARESH H. PATIL AND
PRAKASH D. NAIK, JJ.**

Date of Reserving the Judgment : 23rd June 2016

Date of Pronouncing the Judgment : 8th August 2016

JUDGMENT - (Per : Prakash D. Naik, J.) :-

1. This appeal is preferred by the Appellant-State of Maharashtra under Section 378(1) and 377(1) of Code of Criminal Procedure, 1973 ('Code'). The Appellant had challenged the judgment and order of acquittal passed by learned Second Additional Sessions

Judge, Kolhapur in Sessions Case No.212 of 1996. The Appellant also seeks enhancement of the sentence awarded by the said Court in the aforesaid judgment.

2. Respondents were prosecuted for offence punishable under Section 302 read with Section 34 of Indian Penal Code, 1860 ('IPC') and they were tried before the Court of Second Additional Sessions Judge, at Kolhapur, vide Sessions Case No.212 of 1996.

3. Brief facts of the prosecution case are as follows :

(a) The accused no.1-Respondent no.1 is the father of accused nos.2 and 3-Respondent nos.2 and 3;

(b) The daughter of accused no.1 was married to Gundu Satvekar (deceased). The deceased was residing at village Arjunwada. He was looking after his agricultural lands. The wife of the deceased was cultivating the said land by bringing some persons from the village of her parents namely Kardyal. However, Gundu (deceased) had objected for such an arrangement;

(c) The wife of the deceased had brought persons from her parental village for agricultural work two days prior to the incident in question. The said persons were driven away by Gundu and he was annoyed with his wife;

(d) The first informant is the brother-in-law of the deceased. There were repeated quarrels between Gundu and his wife. Gundu

was also suspecting the character of his wife and was annoyed with the engagement of persons from village Kardyal for cultivation of land by his wife;

(e) On 21 July 1996, the complainant was informed by one Parsu Satvekar that his brother-in-law Gundu is being assaulted by the accused and they have carried him by tying his hands and legs with the help of stick towards the area of village Kardyal;

(f) The complainant approached the Police Patil of the village and informed him about the incident. Both of them proceeded to Police outpost and gave information about the incident. Police then tried to search the injured. He was found lying at some distance from the border of river. He had found sustained injuries on his person. The injured was admitted to hospital at Chikhali. The incident was then intimated to Murgud Police Station. The injured succumbed to the injuries. On the basis of statement of Dinkar Patil, First Information Report ('FIR') was registered vide CR No.38 of 1996 for offence punishable under Section 302 read with Section 34 of IPC;

4. The investigating officer conducted the investigation. Statements of witnesses were recorded. On completing the investigation, a charge sheet was filed before the concerned Court and the case was committed thereafter to the Court of Sessions;

5. The Sessions Judge framed the charge vide order dated 22 January 1997 against the Respondents. The charge was framed under Section 302 read with Section 34 of IPC. The accused had pleaded not guilty and claimed to be tried.

6. The prosecution examined thirteen witnesses in support of its case. The complainant was examined as Prosecution Witness ('PW') no.9. The doctor who treated the deceased and also conducted the post mortem, was examined as PW No.11. the prosecution examined three eye witnesses to the incident, viz. PW No.3 Dadasaheb Patil, PW No.4 Tanaji Satvekar and PW No.7 Smt.Tarubai Satvekar. Investigation was conducted by PW No.13 who submitted a report under Section 173 of the Code.

7. The Additional Sessions Judge recorded evidence of the witnesses, exhibited relevant documents in evidence and also recorded statements of accused under Section 313 of the Code. The said Court convicted the accused for offence punishable under Section 304, Part-II, of IPC. Accused no.1 was sentenced to suffer simple imprisonment for two months and to pay fine of Rs.1,000/- in default to suffer simple imprisonment for one month. Accused nos.2 and 3 were sentenced to suffer simple imprisonment for eight months each and to pay a fine of Rs.1,000/- in default to suffer simple imprisonment for one month each. The Additional Sessions Judge has arrived at the conclusion that the guilt of the accused is proved beyond reasonable doubt. However, in paragraph 102 of the judgment, it is observed that offence under Section 302 of IPC is not made out and the case falls within the purview of Section 299 i.e. culpable homicide not amounting to murder and the accused could be convicted under Section 304, Part-II, of IPC. It was opined that there was no intention to kill the deceased by the accused.

8. The Additional Sessions Judge in paragraph 105 of the judgment has assigned reasons for taking a lenient view on the sentence to be imposed upon the accused, who were convicted for the said offence. It is observed that there were no antecedent against the accused. Accused no.1 was aged about 60 years and he was a senior member of family. Accused nos.2 and 3 were bachelors and young boys. Accused had no intention to kill the deceased, who is the son-in-law of accused no.1 and brother-in-law of accused nos.2 and 3. It appears that the accused wanted to teach a lesson to the deceased on account of ill-treatment given to the daughter of accused no.1 and sister of accused nos.2 and 3. Accused belongs to shepherd community and are financially poor. Taking into consideration the said circumstances, a lenient view is being shown while awarding sentence to the accused.

9. In view of the aforesaid judgment and order, the State had preferred an appeal and challenged the acquittal of the accused for offence under Section 302 of IPC and alternatively it was prayed that sentence imposed on the accused may be enhanced, in the event the appeal against acquittal is not allowed.

10. We have heard learned APP for Appellant-State and learned counsel for Respondents. During the course of hearing it was pointed out that Respondent no.1/original accused no.1 has expired on 31 August 2012. The said fact is also reflected in the report submitted by Assistant Police Inspector, Murgud Police Station to the Assistant Registrar of this Court vide communication dated 23 July 2015. Hence, appeal as against Respondent no.1/accused no.1

stands abated. It is pertinent to note that the Respondents/accused had not preferred any appeal challenging the impugned judgment and order convicting them for offence under Section 304, Part-II of IPC. However, learned counsel appearing for the Respondents submitted that he has a right to plead for acquittal even in the appeal preferred by the State. Learned counsel for Respondents took recourse to Section 377(3) of Code, which reads as follows :

"377. Appeal by the State Government against sentence.-

(1)

(2)

(3) *When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Sessions or, as the case may be, the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence."*

There is substance in the submission advanced by learned counsel for the Respondents, which is apparent from the aforesaid provision, which has been incorporated vide amendment which has come into force on 23 June 2006. It is categorically stated that the Court of Sessions or the High Court shall not enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for reduction of the sentence. Present appeal was preferred by the State challenging acquittal under Section 302 of IPC as well as seeking enhancement of sentence vide Section 377 of the Code.

11. We have gone through the evidence on record which includes notes of evidence as well as documents exhibited by the Court. We have perused the evidence of witnesses. PW No.1 Baburao Lugde is a panch witness to the panchanama of the house of the deceased. PW No.2 Baliram Lugde was also examined as a panch witness for the recovery of clothes of the accused. PW No.3 Dadaso Patil is a paan shop vendor who is supposedly an eye witness of the incident of assault. PW No.4 Tanaji Satvekar is another paan shop vendor who is an eye witness to the incident. PW No.5 Haribhau Bainade is panch for the inquest panchanama. PW No.6 Parsharam Satvekar who had witnessed the injured lying at one end of the river being surrounded by three persons. He also gave opinion about injured being assaulted to the complainant. PW No.7 Smt.Tarubai Satavkar is the step mother of deceased and an eye witness to the incident. PW No.8 Parshu Satvekar saw the accused near injured person who was lying near the river. PW No.9 Dinkar Morey is the first informant who is related to the deceased. PW No.10 Mahadev Patil is Police Patil of the village who had assisted PW No.9 in lodging the complaint with Police. PW No.11 Dr.Vishwas Shinde admitted the victim in the hospital and treated him. He also conducted post mortem. PW No.12 Krishna Patil is Head Police Constable attached to Murgud Police Station and PW No.13 Rajendra Maney is PSI attached to Murgud Police Station, who conducted the investigation and filed a charge sheet.

12. We have heard Mrs.M.M.Deshmukh, learned APP, for Appellant-State and Mr.Tejas Hilage appearing for Respondents/accused. We have perused the evidence on record.

13. Learned APP made following submissions :

(a) The prosecution has proved its case beyond reasonable doubt;

(b) The prosecution has established charge under Section 302 of IPC and the Trial Court has committed an error in acquitting the accused for the said charge;

(c) It is submitted that assuming that conviction under Section 304, Part-II, IPC is sustainable, the sentence imposed by the Trial Court is inadequate and in the interest of justice, the sentence is required to be enhanced;

(d) The reasons assigned by the Trial Court for convicting the accused for lesser offence i.e. Section 304, Part-II of IPC, is not convincing;

(e) The reasons assigned for showing leniency while imposing sentence upon accused, are not cogent and since the accused have committed heinous crime, they deserve to be punished accordingly.

14. Learned counsel appearing for the Respondents-accused has made following submissions :

(a) Both the accused have not preferred an appeal challenging the impugned judgment and order of conviction under

Section 304, Part-II of IPC and they are entitled to plead for acquittal by invoking Section 377(3) of the Code;

(b) The prosecution has failed to establish its case beyond doubt and the accused ought to have been acquitted;

(c) The evidence of the witnesses is concocted and the fact that it is contradictory to each other, shows that the witnesses are not speaking the truth;

(d) The evidence of eye witnesses does not inspire confidence and the said witnesses ought not to have been believed by the Trial Court;

(e) Assuming that conviction under Section 304, Part-II of IPC is maintained, the sentence imposed upon the accused is adequate and the same should not be interfered with after a lapse of long period of time. The sentence is justifiable in the facts and circumstances of present case;

(f) The prosecution has not put forth any evidence of any person from village Kardyal. The relation between persons from Kardyal including the complainant, near relatives of the deceased and his wife were strained. All the witnesses examined by the prosecution are from same village where the complainant and other witnesses are residing;

(g) The evidence of PW No.11, the medical officer, does not help the prosecution. The witness is not sure as to which injuries are ante mortem and post mortem;

(h) The real FIR in the present case was not placed before the Court. The FIR relied upon by prosecution is the second one;

(i) There are several infirmities in the prosecution case and the benefit of doubt ought to have been given to the accused;

15. The Trial Court had appreciated the evidence in the proper perspective and has given the findings by assigning cogent reasons. We find that the Trial Court has properly appreciated the evidence of the witnesses and the documents on record while convicting the accused for offence under Section 304, Part-II of IPC. The submissions made by defence counsel that the accused ought to have been acquitted, are devoid of any merits. It is true that the accused has a right to plead for acquittal in an appeal preferred by the State for enhancement of punishment vide amended Section 377(3) of the Code. However, we find that the prosecution has relied upon the evidence of three eye witnesses viz. PW No.3, PW No.4 and PW No.7. The case is further supported by evidence of PW No.6, PW No.8, PW No.9 and PW No.10. The medical officer who is PW No.11 has deposed about the injuries sustained by the deceased. It is pertinent to note that the Trial Court has believed the evidence of said witnesses, but instead of convicting the accused for the offence of murder under Section 302 of IPC, they were convicted for the offence of culpable homicide not amounting to murder. We do not

find any reason to interfere in the conviction awarded by the Trial Court for the offence under Section 304, Part-II of IPC. Learned prosecutor submitted that in the event of confirming the order of Trial Court for conviction under Section 304, Part-II of IPC, the sentence may be enhanced. It was submitted that period of imprisonment awarded by the Trial Court is lesser considering the nature of crime committed by the accused.

16. On scanning the evidence it is apparent that PW No.3 Dadaso Patil is an eye witness to the incident. He has attributed overt acts to the accused. The defence has not been able to demolish his evidence in the cross examination. The witness, however, has not attributed specific overt act to the accused. According to him, the accused were beating the deceased. Accused no.1 was holding a stick and two other accused were holding a stick and iron bar respectively. PW No.4 Tanaji Satvekar is a paan shop vendor from the village and an eye witness to the incident. He deposed that accused have entered the house of Gundu (deceased). They started assaulting him and on hearing the shouts, he went to the house of the deceased. The role attributed to the accused by the said witness is also in consonance with the evidence of PW No.3. The evidence of PW No.7 Tarubai Satavkar also inspires confidence. She is step mother of the deceased. She is an eye witness of the incident. She referred to the assault by the accused, although no specific overt act has been attributed to them. She has referred to weapons used by the accused. The prosecution case is further assisted by the evidence of PW No.6 and PW No.8. PW No.6 gave information about the assault to PW No.9. PW No.8 had seen the accused near the injured person.

PW No.9 is the brother-in-law of the deceased who lodged the FIR after intimating about the incident to PW No.10 who is Police Patil of the village. The evidence of PW No.10 clearly states that he along with PW No.9 had proceeded to police station and set law into motion. There is no reason to doubt the veracity of evidence of the said witness.

17. From the nature of evidence brought on record, we are of the opinion that the accused are responsible for the death of deceased Gundu. The question is whether it is a case of murder or culpable homicide not amounting to murder. We are posed with a question whether sentence imposed by the Trial Court is adequate in the event of confirming the conviction under Section 304, Part-II of IPC and whether after a long gap of time we should interfere with the sentence imposed by the Trial Court.

18. The Trial Court in paragraph 102 of the judgment has dealt with the question as to whether the guilt of the accused attracts provisions of Section 302 of IPC or otherwise. It is observed by the Trial Court that the deceased is the son in law of accused no.1. Accused nos.2 and 3 were his brother-in-laws. Prior to occurrence of incident in question, there were quarrels between the deceased Gundu and his wife and the parents of wife of the deceased were annoyed. It is further observed that there is every possibility that immediately on the next day morning, the accused had come to the house of the deceased to teach him lesson. If at all there was any intention to commit murder of Gundu, the accused would not have left him in injured condition. There was no intention of the accused

to cause death of the deceased. There was no reason to commit murder of the son-in-law or brother-in-law by the accused. The Court further observed that there were injuries on the person of the deceased. However, no vital part of the body was damaged and the deceased died on account of severe bleeding from the injuries. It is further observed that injuries found on the person of the deceased show that accused had a knowledge that injuries may cause death of the deceased. The case, therefore, falls within the purview of culpable homicide not amounting to murder and particularly Section 304, Part-II of IPC, as there was no intention to kill the deceased.

19. The Trial Court after giving finding of fact under Section 304, Part-II of IPC, has further taken into consideration the aspect of sentence to be imposed upon accused. In paragraph 105 of the judgment, the Trial Court has observed that accused no.1 is aged about 60 years and there are no antecedents against him. He is a senior member of the family and the entire family is dependent upon him as there are no earning members in the family. He is also required to look after his widow daughter and her son. Accused nos.2 and 3 were young boys who were bachelors and aged about 24 and 20 years respectively. Accused did not intend to put an end to the life of the deceased and it can be gathered that at most, they intended to teach him a lesson on account of ill-treatment being given to his wife. The accused belongs to shepherd community and their financial condition is very poor. On the basis of said observations, the Trial Court had imposed the sentence as appearing in the operative part of the order.

20. We do not find any infirmity in the findings given by the Trial Court that offence under Section 302 of IPC is not made out but accused deserve to be convicted under Section 304, Part-II of IPC. The deceased was married to the daughter of accused no.1 and sister of accused nos.2 and 3. The cause of quarrel is apparently deployment of workers from village of wife of the deceased by her for the purpose of cultivation of the agricultural land. It is also on record that the deceased was suspecting the character of his wife Taibai. The prosecution has not established strong motive for committing the murder of the deceased. However, the circumstances would show that the accused wanted to teach him a lesson. There is no evidence on record to show that accused had visited the village armed with weapons to commit murder of the deceased. No specific overt act is being attributed to the accused. Serious injuries are not inflicted on the vital parts of the body of deceased. From the evidence of PW No.11 Dr.Vishwas Shinde, it is apparent that he had examined the deceased while he was admitted in the hospital and then conducted the post mortem after his death. He has stated that the victim had succumbed to the injuries after he was admitted in the hospital. From his evidence it is brought on record that the deceased has sustained eleven injuries which included CLW over various parts of the body, which are not vital and one incised wound over the abdomen. It is deposed that injury nos.1 to 8 may be caused by hard and bounded object and injury no.9 can be caused by hard and long object. Similarly injury no.10 may be caused by hard and bounded object. The cause of death was mentioned as shock due to severe blood hemorrhage from wounds. The deceased has died because of severe bleeding through the injuries. He further deposed that injury

nos.1 to 8 are possible by stick used in th crime and injury no.9 is also possible with the stick used in the crime. Injury no.10 is also possible with the article Exhibit-34. He further opined that injuries are sufficient to cause death.

21. Cross examination of the aforesaid witness is, however, dilutes the evidence in chief. It is deposed by the said witness that there was no internal damage to the patient. Even no fracture was detected. There was no major vascular damage. All the important internal organs were intact and the injuries were skin deep. Injury no.10 was also superficial. It is pertinent to note that injury no.10 was an incised wound over abdomen. He further deposed that in the post mortem report, he has not mentioned presence of bleeding against the injuries. In case of forcible blow, there may be possibility of echimosses. No such mention is there against any injury. He has not mentioned in the post mortem report as to whether injuries were ante mortem or post mortem. The incised wounds were caused by sharp and cutting instrument and in this case it may have been caused by sharp and cutting instrument. On perusal of the post mortem report it could be seen that opinion as to the cause of death is mentioned as shock due to cardio respiratory failure due to dypovolemia due to severe blood hemorrhage due to wound.

22. Taking into consideration the evidence of witnesses, the nature of overt act attributed to the accused, the nature of weapons used in the crime and circumstances under which the alleged incident had occurred, it cannot be said that there was any intention to commit offence of murder. The requisite ingredients to constitute offence of

murder as incorporated under Section 300 of IPC are absent. The deceased was son-in-law of accused no.1 and brother-in-law of accused nos.2 and 3. The motive for the incident is engaging labours from the village of accused by the daughter of accused no.1, who was wife of the deceased and also that the deceased was suspecting the character of his wife. From the facts it does not appear that the accused had arrived at the village of the deceased with an intention to commit murder. They would not have left the deceased in injured condition if they had intention to kill him. The purport appears to be to teach him a lesson. The cause of death primarily appears to be on account of severe bleeding through the wounds sustained by the deceased. The injuries do not appear to be on the vital parts of the deceased and injury no.10 which is inflicted over the area of abdomen is superficial as spelt out in the evidence of PW No.11. It can be said that while inflicting injuries, they could have a knowledge that the act done by them is likely to cause death but without any intention to cause death. The offence would, therefore, fall under Section 304, Part-II of IPC. We are, therefore, not inclined to interfere in the finding of Trial Court that offence under Section 302 of IPC is not made out and that accused could be convicted for offence under Section 304, Part-II of IPC.

23. Learned APP submitted that even though conviction under Section 304, Part-II of IPC is confirmed, the sentence imposed on the accused is inadequate and they deserve severe punishment as their act has resulted into death of the deceased. The accused had mercilessly assaulted the deceased and therefore, the meager sentence imposed by the Trial Court is not compatible with the crime committed by them.

24. We have perused the reasons assigned by the Trial Court for taking a lenient view while imposing sentence in paragraph 105 of the impugned judgment. It is to be noted that the incident had occurred on 21 July 1996. The accused were convicted on 30 September 1997. The learned counsel for Respondents submitted that the accused-Respondents had undergone the sentence imposed upon them. The accused no.1 has expired during pendency of this appeal on 31 August 2012. The accused nos.2 and 3 i.e. Respondent nos.2 and 3 were young boys at the time of incident. In the light of these circumstances, it could be appropriate to analyse whether there is necessity to interfere in the sentence imposed by the Trial Court.

25. Learned counsel for Respondent nos.2 and 3 prayed for leniency in awarding sentence and submitted that sentence imposed by the Trial Court may not be disturbed at this stage. It was submitted that the accused were young boys at the time of alleged crime which had occurred in the year 1996. They have undergone the sentence imposed by the Trial Court. The Trial Court has assigned reasons for taking a lenient view while imposing the sentence. The accused are now settled in their life and sending them to jail now, would cause hardships to them and their families.

26. Learned counsel for the Respondents placed reliance upon the decision of Apex Court in the case of **State of Punjab Vs. Mohinder Singh**¹. In the said case the accused was convicted for offence under Section 304, Part-II of IPC and was sentenced to suffer rigorous

¹ 1994-AIR(SC)-113

imprisonment for five years and a fine of Rs.2,000/- by the Trial Court. The said decision was challenged in the High Court. However, the High Court found that there was no scope for interference with the conviction. However, sentence was reduced to the period already undergone and fine was enhanced from Rs.2,000/- to Rs.4,000/-. The State has challenged the sentence imposed to the accused by preferring an appeal before the Apex Court. While deciding the said issue, the Apex Court was pleased to observe that High Court having confirmed the conviction under Section 304, Part-II of IPC, was wholly unjustified in reducing the sentence to the extent it did. The High Court should have noticed that accused was through out on bail and he did not deserve any sympathy because of the acts committed by him of molesting an innocent person who took a lift in his vehicle. It was further noticed that the accused had hardly served two and a half months jail which is grossly inadequate. However, having regard to the fact that occurrence took place on 5 August 1975 and having regard to the long lapse of time, the Court did not think that the accused should be sent to jail. The Court found that a heavy fine should meet the ends of justice and fine was enhanced by additional sum of Rs.10,000/- over and above what has been paid by the accused.

27. Learned counsel also placed reliance upon following decisions :

1	2014-ALL.M.R. (Cri)-1609	Bhaskar Dnyanu Shinde and others Vs. The State of Maharashtra and another
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2	2007-ALL.M.R. (Cri)-2539	Ramesh Sadashiv Khatpe and others Vs. State of Maharashtra and others
3	2001(5)-Bom.C.R.-604	Walu @ Walmik Popat Khairnar and others Vs. State of Maharashtra
4	1996(2)-ALL MR-342	The State of Maharashtra Vs. Mahipal Singh Satyanarayan Singh
5	1996-Cr.L.J. 562	Namdeo Kisan Bhakare Vs. State of Maharashtra and another
6	1994(3)-Bom. CR-675	Bistir Laxman Bhavar and others Vs. State of Maharashtra

In all the aforesaid decisions, the Courts have taken lenient view while awarding sentence on account of the circumstances enumerated therein. In the case of **Bhaskar Shinde (supra)**, this Court was pleased to observe that in the peculiar facts of the case and particularly in the light of the fact that sword of the conviction and sentence had been hanging on the head of the accused for last sixteen years as well as trauma of the trial from 1988, the Court acceded to request of taking a lenient view while awarding sentence for offence under Section 304, Part-II of IPC and confined the sentence to the period of imprisonment already undergone by the accused. The said accused had undergone actual imprisonment of two months. The Court, although found that the sentence was wholly insufficient, in the facts of the case, leniency was shown to the accused.

28. In the case of **Ramesh Sadashiv Khatpe and others (supra)**, this Court had considered the submissions for awarding lesser sentence. Taking into consideration the fact that almost eighteen

years have gone by since the accused had committed the offence; the accused had no criminal antecedents and no crimes were reported after the incident in question; the Court had observed that no purpose would be served by incarcerating the accused any further, especially since they have reformed and hence the sentence imposed on the accused was reduced to the term of imprisonment they had undergone.

29. Similar view was taken in case of **Walu @ Walmik Popat Khairnar and others (supra)**. In the said decision of this Court, a soft view was taken for awarding sentence on the ground that incident taken place sixteen years ago and that there is nothing to indicate that the Appellants have any adverse criminal history. It was felt that uprooting the accused from the main stream of life after a period of sixteen years, would serve no useful purpose.

30. In case of **State of Maharashtra Vs. Mahipal Singh Satyanarayan Singh (supra)**, although this Court was of the opinion that sentence awarded to the accused under Section 392 read with Section 34 of IPC was manifestly inadequate, the Court took into consideration the fact that incident had taken place eleven years ago and it would be too harsh to send the accused to jail because he had already served out the period of three months and seventeen days sentence. The Court was pleased to maintain the sentence which was already undergone by the accused and imposed additional fine upon them.

In other decisions referred to hereinabove also, in the facts of the said cases, a lenient view was taken by the Courts taking into consideration similar circumstances.

31. We have given our anxious consideration to the fact that the Trial Court had awarded a sentence of simple imprisonment of two months upon accused no.1 and simple imprisonment of eight months each upon accused nos.2 and 3. The accused did not prefer an appeal against the said sentence which was undergone by them. The incident in the present case had occurred on 21 July 1996. The judgment of the Trial Court was delivered on 30 September 1997. Accused nos.2 and 3 were young boys at the time of incident. Accused no.1 has expired during pendency of this appeal and it is not necessary to consider whether the sentence which was imposed upon him was adequate or otherwise, as the appeal against him stands abated. It would not be appropriate to send accused nos.2 and 3/ Respondent nos.2 and 3 to jail after a period of about 19 years from the date of incident and about 18 years from the date of judgment delivered by the Trial Court. The accused have settled in life. No criminal history is reported against them other than this crime either prior to the commission of the subject offence or post conviction. The reasons given by the Trial Court are not happily worded but we have taken into consideration the fact that even after the Trial Court judgment is delivered, eighteen years have passed and it would be inappropriate to disturb the living of the Respondents-accused. The Apex Court in the case of **Ashok Kumar Vs. State (Delhi Administration)**² has held that a long protracted litigation is some

² (1980)2-SCC-282

deterrent for a young man in his twenties. The youthful age of the accused is a factor which deserves consideration. The offender having served a term of nearly six months must well have realised that the game of crime does not pay. A long period of incarceration in the present condition of prisons may brutalise the boy and blunt his finer sensibilities. Not that all prison terms are not deterrent but some cases prove to be counter productive especially when the delinquent is young. It was also observed by the Apex Court that sentencing the cutting edge of the judicial process is the crucial strategy of the criminal law in achieving social defence and delinquent rehabilitation. The accused in the said case was about 19 years of age. The Apex Court further took into consideration the fact that he was married and has three children. This factor was considered as a measure of assurance that he will not behave recklessly with his freedom : family life is ordinarily an assurance against a career of crime.

32. Learned APP appearing for the Appellant-State had vehemently assailed the Trial Court judgment and submitted that lenient view adopted by the Trial Court is not commensurate with the crime committed by the accused. No doubt, we have to take into consideration the deterrent theory of punishment while awarding the sentence. However, one cannot forget that incident had occurred about nineteen years ago and pendency of the appeal itself amounts to hanging sword upon the accused. It is pertinent to note that the accused have submitted to the sentence imposed upon them and did not chose to prefer an appeal challenging the conviction. We have taken into consideration the peculiar facts and circumstances which

are narrated hereinabove and do not find it necessary to interfere in the verdict of the Trial Court. On thoughtful consideration of the submissions made by learned counsel for the accused, we find some justification in the submission. The accused were young boys at the time of incident. The deceased was the husband of their sister and they had rallied to commit the alleged crime along with their father. We are conscious of the fact that for the offence under Section 304, Part-II of IPC, the sentence of imprisonment undergone by the accused-Respondents is inadequate and in the ordinary course, we could have interfered with it, but for the peculiar facts and circumstances of present case, as mentioned hereinabove, we do not deem it fit and proper to set aside the same. However, ends of justice would meet by enhancing the fine. We propose to direct the Respondent nos.2 and 3 to pay additional fine amount.

33. In view of the above discussion, we pass following order :

- (i) The appeal as against Respondent no.1 (Accused No.1) stands abated;
- (ii) Appeal No.325 of 1998 is partly allowed;
- (iii) The appeal challenging the acquittal under Section 302 of IPC and also challenging enhancement of sentence to the extent of imprisonment awarded by the Trial Court, stands dismissed;
- (iv) The judgment and order of conviction under Section 304 of IPC stands confirmed;

(v) The sentence of fine is enhanced and Respondent nos.2 and 3 are directed to pay a sum of Rs.15,000/- each towards sentence of fine for conviction under Section 304, Part-II of IPC (over and above whatever has been paid already by them). In default, they shall undergo rigorous imprisonment for three months. The payment shall be made within three months from today;

(vi) Fine, if recovered, may be paid to the children of the deceased and, if there be none, to the wife of the deceased.

(PRAKASH D. NAIK, J.)

(NARESH H. PATIL, J.)

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