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

+ CRL.A. 512/2015

% ***Judgment dated 23rd March, 2016***

STATE (GOVT OF NCT OF DELHI) Appellant
Through : Ms.Aashaa Tiwari, APP for the State.
SI Anand Parkash, P.S. Khyala.

versus

JAI KUMAR & ANR Respondents
Through : Respondent no.1 in person.
Ms.Inderjeet Sidhu and Ms.Divya Chugh,
Adv. for respondent no.2 along with
respondent no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J (ORAL)

1. Respondent no.1, who appears in person, submits that he is unable to engage a Lawyer. Accordingly, Ms.Rakhi Dubey, Advocate, who is present in Court, is appointed as an *Amicus Curiae* on behalf of respondent no.1.
2. Present appeal has been filed by appellant/State under Section 377(1) of the Code of Criminal Procedure against the order on sentence dated 21.11.2014 passed by learned Additional Sessions Judge, Special Judge NDPS (West), Tis Hazari Courts, Delhi, in FIR No.249/2009 registered under Sections 307/34 of the IPC at Police Station Khayala, whereby the respondents have been sentenced to undergo Rigorous Imprisonment for five months for the offence punishable under Sections 307/34 of the IPC and directed to pay fine of Rs.5,000/-, each, and in default of payment of fine, further undergo Simple Imprisonment for two weeks. The State is

primarily aggrieved by the quantum of sentence which has been awarded by the learned trial court.

3. The brief facts of the case as noticed by the trial court are as under:

“2. As per the case of prosecution on 22.12.2009 both the accused Jai Kumar and Ravi came to the house of PW-1 Rajesh and went on the first floor of the house and started smoking cigarette and GANJA. When PW-1 objected to that, they started abusing and manhandled with PW-1. PW-2 Smt. Seeta, mother of PW-1 reached there and intervened. Both the accused were sent back to their home.

3. On 25.12.2009 at about 08:00 PM while PW-1 Rajesh was standing in front of Shiv Mandit at B-Block, Raghubir Nagar, both started abusing and manhandling PW-1. Accused Jai Kumar caught hold of PW-1 Rajesh and accused Ravi took out sharp object like knife from his pocket and stabbed PW-1 on left side of his abdomen and on his left thigh. On hearing noise, PW-2 reached there.

4. On receipt of information vide DD No.29A Ex.PW2/A Head Constable B.R. Meena (PW-12) along with Constable Anil reached at the spot. PW-1 was taken to DDU Hospital where he was examined by Dr.Avdesb (PW-8) vide MLC Ex. PW8/A. PW-12 recorded statements of Rajesh ExPW1/A, prepared rukka Ex.PW12/D and got registered the FIR Ex.PW4/A.”

4. In support of its case, the prosecution has examined sixteen witnesses.
5. Learned counsel for the appellant submits that having regard to the nature of the injuries suffered by the victim and taking into consideration the testimonies of the witnesses, the sentence awarded to the respondents herein by the trial court is grossly inadequate and contrary to the provisions of law. It is further submitted that by awarding a sentence to undergo Rigorous Imprisonment for five months for the offence punishable under Sections 307/34 of the IPC together with fine, interest of justice has not been served. Counsel further submits that the offence

committed by the respondents attracts an imprisonment up to ten years/life imprisonment. It is contended that the principle of proportionality in fixing liability according to culpability has not been adhered to. It is also contended that by imposing a grossly inadequate sentence, the trial court has done an injustice to the victim of the crime and to the society. Counsel, thus, prays that impugned order on sentence dated 21.11.2014 be modified and the period of imprisonment qua the respondents should be enhanced.

6. Learned counsel appearing on behalf of respondent no.2 has strenuously argued before this Court that respondent no.2 and also respondent no.1 were about 21 years of age at the time when the offence was committed. It is also submitted that the trial court has failed to consider the defence of the respondents. Additionally, counsel submits that in case the respondents have to serve further sentence there is every possibility that they may, instead of being reformed, choose the path of a criminal. Counsel further submits that the respondents are first-time offenders and have clean antecedents, besides their conduct in jail was satisfactory.
7. Learned counsel for respondent no.2 has also relied upon ***Karamjit Singh v. State of Punjab***, reported at 2009 (9) SCALE 235 wherein the Supreme Court did not interfere in the judgment rendered by the High Court where the sentence of one year was granted. However, the request for probation was refused having regard to the facts and circumstances of that case.
8. We have heard learned counsel for the parties, also considered their rival submissions and also examined the judgment rendered by the learned trial court.
9. In the case of ***State GNCT of Delhi vs. Mukesh***, 2011(3) CRIMES 111, it has been observed that interference of the appellate Court on the quantum of sentence should be rare and only in exceptional cases. Appellate Court

should exercise and interfere with sentencing discretion of the Trial Court in a given case where the “inadequacy” of sentence is gross or glaring or shocks the Court’s conscience.

10. In *Shyam Narain v. State (NCT of Delhi)*, (2013) 7 SCC 77, it has been ruled that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed keeping in view 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 his life but also a concavity in the social fabric. The purpose of a just punishment is designed so that the individuals in the society do not suffer time and again for such crimes, for it serves as a deterrent. The Court observed, “true it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. It has been further opined that while carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim”.
11. In *Sevaka Perumal and another v. State of Tamil Nadu*, reported at (1991) 3 SCC 471, after referring to the decision in *Mahesh v. State of M.P.*, reported at (1987) 3 SCC 80, the Court observed that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats. The Court further observed that if the courts do not protect the injured, the injured would then resort to private vengeance and, therefore, 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.

12. In ***Ravji alias Ram Chandra v. State of Rajasthan***, (1996) 2 SCC 175, the Court while giving emphasis on relevance of imposition of adequate sentencing in the social context observed as under:-

“10. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society’s cry for justice against the criminal”. In our view, if for such heinous crimes the most deterrent punishment for wanton and brutal murders is not given, the case of deterrent punishment will lose its relevance.”

13. In ***Guru Basavaraj v. State of Karnataka***, (2012) 8 SCC 734, the Court, discussing about the sentencing policy, had to say this: -

“33. There can hardly be any cavil that there has to be a proportion between the crime and the punishment. 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.”

14. In ***Rattiram v. State of M.P.***, AIR 2012 SC 1485, though in a different context, it is stated that: -

“64. ... the criminal jurisprudence, with the passage of time, has laid emphasis on victimology which fundamentally is a perception of a trial from the viewpoint of the criminal as well as the victim. Both are viewed in the social context. The view of the victim is given due regard and respect in certain countries.... it is the duty of the court to see that the victim’s right is protected.”

15. In the present case, PW-1 has testified that on 25.12.2009 while he was standing in front of Shiv Mandir, P-Block, Raghubir Nagar at about 8.00 p.m., both the respondents reached there, abused him and also manhandled him. Respondent no.1 herein, Jai Kumar, caught hold of PW-1 and respondent no.2 herein, Ravi, took sharp object like knife from his pocket and stabbed PW-1 on the left side of his abdomen and on his left thigh. On hearing noise, his mother, PW-2, reached there, caught hold of respondent no.1 Jai Kumar, who pushed her.
16. PW-2, Smt.Sita, mother of PW-1 (injured) has also testified about the incident dated 22.12.2009 as well as 25.12.2009. She has testified that she was informed by some children regarding the incident dated 25.12.2009 and she reached there. By that time her son was unconscious, who was taken to DDU hospital by the Police. He was operated and remained there for about one and a half months.
17. PW-8, Dr.Avdesb, who has also proved the MLC, Exhibit PW-8/A, mentioned the following injuries:
- “1. Approximately 3 x 1 cm incised wound on left hypochondrial region with organ protruding out.*
 - 2. Approximately 1 cm incised wound on left thigh with gaping and deep more than 6 cm.*
 - 3. Nasal bleed present.*
 - 4. Right and left 1st upper incisors injured”.”*
18. Having regard to the testimonies of the material witnesses including the injured and also the testimony of PW-8, Dr.Avdesb, who proved the MLC, Exhibit PW-8/A, would show the nature of injuries suffered by PW-1. As per the testimony of PW-2, mother of the injured, PW-1 had

remained in the hospital as well. Having regard to these facts, we are of the view that there is merit in the submissions made by learned counsel for the State as far as the order on sentence is concerned.

19. Accordingly, the judgment passed by the learned trial court is upheld with respect to the order of conviction. The order on sentence is modified to the extent that the respondents are convicted under Sections 307/34 of the IPC and sentenced to undergo Rigorous Imprisonment for a period of one year. Respondents shall surrender within a period of fifteen days from today to serve the unserved part of sentence, as modified by this Court.

20. Appeal stands disposed of.

CRL.M.A. 525/2016 (Section 7A and Rule 12 of JJ (C & P of Children) Act.

21. Application stands dismissed in view of the order passed in the appeal.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

MARCH 23, 2016

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