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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Judgment: 20th April, 2017

+ CRL.A. 527/2016 & CrI. M.A. No.8855/2016
THE STATE GOVT. OF NCT OF DELHI Appellant
Through Mr.Rajat Katyal, APP for the State along
with Insp. Dhan Singh, ATO &
SI Md.Inam, PS Jama Masjid, in person.

versus

JAVED Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

JUDGMENT (ORAL)

1. This appeal has been filed by the State under Section 377 of the Code of Criminal Procedure. The challenge in the appeal is to the order on sentence dated 26.11.2015, by which the respondent was sentenced to undergo rigorous imprisonment for a period of 1½ years and a fine of Rs.1000/-; in default of payment of fine, to undergo simple imprisonment for a period of one month, under Section 307 of the Indian Penal Code (hereinafter referred to as 'IPC') and further sentenced to undergo rigorous imprisonment for six months and a fine of Rs.1000/-; in default of payment of fine, to undergo simple imprisonment for one month, under Section 25 of Arms Act. Both the sentences were ordered to run concurrently. The respondent has already undergone the sentence.
2. Notice of this appeal was repeatedly issued to the respondent but the

respondent is not being served. On 02.12.2016 the Court was informed by the learned APP for the State that the efforts to trace the respondent were unsuccessful. A report dated 02.12.2016 under the signatures of Insp. Anil Kumar, SHO, PS Jama Masjid was filed. Another status report was filed by Insp. Anil Kumar as noticed in the order dated 01.02.2017. Today also, we are informed by the learned APP for the State that the respondent is unserved and there is little or no possibility to serve the respondent.

3. In a nutshell, the case of the prosecution is that on 17.11.2014 at about 9.30 p.m., near De'Romana, which is near Jama Masjid, the respondent inflicted stab injuries in the abdomen and other parts of body of the victim Zaim Ahmed (PW1). The criminal machinery was set into motion when information was received from LNJP hospital. DD No. 27A was registered at PS Jama Masjid and was assigned to ASI Mohd. Inam (Investigating Officer) who along with Constable Azad reached the hospital. After reaching the hospital, the statement of Mirazuddin (PW2/complainant) was recorded. Based on the statement of the complainant an FIR was registered. On 18.11.2014, at about 5.00 p.m., the respondent was arrested from Urdu Park, Patri Meena Bazar, Jama Masjid and was found to be in possession of one buttondar knife. After completion of the investigation, charge sheet was filed under Section 307 of IPC and Section 25 of Arms Act. Vide order dated 16.02.2015; charges under Section 307 of IPC and Section 25 of Arms Act were framed against the respondent.
4. To bring home the guilt of the respondent the prosecution examined 15

witnesses in all. The statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure to which he pleaded not guilty and denied all the incriminating evidence against him. No witness was produced by the respondent in his defence.

5. Mr. Katyal, learned APP for the State submits that the order on sentence dated 26.11.2015 passed by the trial Court is bad on facts as well as on law. The counsel further submits that the punishment awarded to the respondent is grossly inadequate in the light of the allegations proved against him and hence deserves strict punishment in the interest of justice.
6. Learned APP for the State further submits that the trial Court has erred in awarding a lesser sentence despite the offence being proved beyond reasonable doubt. It is also contended by the counsel for the State that the respondent took law into his own hands and tried to kill a valuable human life and therefore, a lenient view should not be taken in his favour.
7. Learned APP further submits that the trial Court ought to have granted a sentence in accordance with the principles laid down by the Apex Court. Therefore, in the given facts of the case, order on sentence is liable to be modified to the extent that a stricter punishment be given to him. To substantiate his argument, learned counsel has relied upon the judgment of the Hon'ble Supreme Court in Criminal Appeal No. 931 of 2015 ***Ravinder Singh vs. State of Haryana***, the relevant para 9 of which reads as under:

“9. Question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases. Law courts have been consistent in the approach that a reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that sentence disproportionately severe should not be passed that does not clothe the court with an option to award the sentence manifestly inadequate. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.”

8. We have heard the learned counsel for the State and also examined the judgment of the trial Court and the evidence on record.
9. For the disposal of the appeal in hand, it would be relevant to analyse the MLC of the victim Zaim Ahmed (PW1), which is Ex.PW3/A. The MLC shows that the victim has been brought to the hospital on 17.11.2014 at 10.07 p.m. and reads as under:
 - i) One penetrating injury (4 cm in depth) on the left flank region approximate 4 x 4 cm in size. Omentum protruding outside from wound.
 - ii) The second injury was an open cut wound present over left cleft between thumb and index finger of left hand approximate 2 x 2 cm in size.
 - iii) Open cut wound present over right lower leg (back side) approximate 2 x 1 cm in size.
10. It is evident from above that one of the injuries is on the vital part of the body i.e. stomach of the victim. The above mentioned injuries found to

be duly corroborated from the endorsement on the MLC whereby on 17.11.2014, the victim Zaim Ahmed was found to be unfit for the statement and was declared fit only on 20.11.2014. This fact proves that the injuries found on the body of the victim Zaim Ahmed were grievous in nature.

11. In the present case, the prosecution succeeded in proving the offence of Section 307 of IPC and Section 25 of Arms Act beyond reasonable doubt. At this juncture, it would be useful to look at Section 307 of IPC to find out the nature of sentence which could be awarded and reads as under:

“307. Attempt to murder: Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts: When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

12. The term “judicial discretion” was discussed in the case of **Aero Traders (P) Ltd. v. Ravinder Kumar Suri**, reported at (2004) 8 SCC 307, wherein the Hon’ble Supreme Court observed as under:

“6. ... According to Black's Law Dictionary "judicial discretion" means the exercise of judgment by a Judge or court based on what is fair under the circumstances and guided by the rules and principles of law; a court's power to act or not act when a litigant is not entitled to demand the act as a matter of right. The word "discretion" connotes necessarily an act of a

judicial character, and, as used with reference to discretion exercised judicially, it implies the absence of a hard-and-fast rule, and it requires an actual exercise of judgment and a consideration of the facts and circumstances which are necessary to make a sound, fair and just determination, and a knowledge of the facts upon which the discretion may properly operate. (See 27 Corpus Juris Secundum, p. 289.) When it is said that something is to be done within the discretion of the authorities, that something is to be done according to the rules of reason and justice and not according to private opinion; according to law and not humour. It only gives certain latitude or liberty accorded by statute or rules, to a Judge as distinguished from a ministerial or administrative official, in adjudicating on matters brought before him.”

Thus, the Courts have to keep in mind that the use of discretion has to be guided by law, and what is fair under the given circumstances.

13. In the case of ***Jameel v. State of U.P.*** reported at (2010) 12 SCC 532, the Apex Court speaking about the concept of sentencing stated that the punishment must be appropriate and proportional to the gravity of the offence committed. The relevant para 15 and 16 read as under:

“15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the

question of sentence and proceed to impose a sentence commensurate with the gravity of the offence.”

14. In the case of ***Gopal Singh vs. State of Uttarakhand*** reported at **2013 (7) SCC 545**, the Hon’ble Supreme Court discussed the concept of just punishment and principle of proportionality. The relevant para 18 and 19 read as under:

“18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect — propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of

discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just punishment.

19. A court, while imposing sentence, has to keep in view the various complex matters in mind. To structure a methodology relating to sentencing is difficult to conceive of. The legislature in its wisdom has conferred discretion on the Judge who is guided by certain rational parameters, regard been had to the factual scenario of the case. In certain spheres the legislature has not conferred that discretion and in such circumstances, the discretion is conditional. In respect of certain offences, sentence can be reduced by giving adequate special reasons. The special reasons have to rest on real special circumstances. Hence, the duty of the court in such situations becomes a complex one. The same has to be performed with due reverence for the rule of law and the collective conscience on one hand and the doctrine of proportionality, principle of reformation and other concomitant factors on the other. The task may be onerous but the same has to be done with total empirical rationality sans any kind of personal philosophy or individual experience or any a priori notion.”

15. In another case of ***State of Himachal Pradesh v Nirmala Devi***, arising out of Criminal Appeal No. 667 of 2017, decided on 10.04.2007, the Hon’ble Supreme Court discussed the discretion given to the Courts while awarding the sentence and also laid down the principles to determine the quantum of sentence. The relevant para 18 and 20 of the judgment read as under:

“18. The offences for which the Respondent is convicted prescribe maximum imprisonment and there is no provision for minimum imprisonment. Thus, there is a wide discretion given

to the Court to impose any imprisonment which may be from one day (or even till the rising of the court) to ten years/life. However, at the same time, the judicial discretion which has been conferred upon the Court, has to be exercised in a fair manner keeping in view the well established judicial principles which have been laid down from time to time, the prime consideration being reason and fair play...

....

20. Following principles can be deduced from the reading of the aforesaid judgment:

(i) Imprisonment is one of the methods used to handle the convicts in such a way to protect and prevent them to commit further crimes for a specific period of time and also to prevent others from committing crime on them out of vengeance. The concept of punishing the criminals by imprisonment has recently been changed to treatment and rehabilitation with a view to modify the criminal tendency among them.

(ii) There are many philosophies behind such sentencing justifying these penal consequences. The philosophical/jurisprudential justification can be retribution, incapacitation, specific deterrence, general deterrence, rehabilitation, or restoration. Any of the above or a combination thereof can be the goal of sentencing.

(iii) Notwithstanding the above theories of punishment, when it comes to sentencing a person for committing a heinous crime, the deterrence theory as a rationale for punishing the offender becomes more relevant. In such cases, the role of mercy, forgiveness and compassion becomes secondary.

(iv) In such cases where the deterrence theory has to prevail, while determining the quantum of sentence, discretion lies with the Court. While exercising such a discretion, the Court has to govern itself by reason and fair play, and discretion is not to be exercised according to whim and caprice. It is the duty of the Court to impose adequate sentence, for one of the purposes of

imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience.

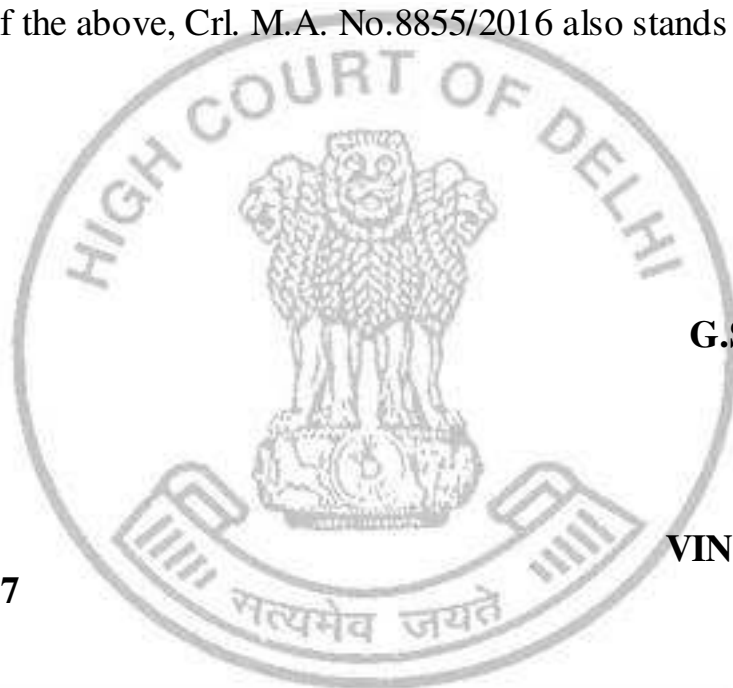
(v) While considering as to what would be the appropriate quantum of imprisonment, the Court is empowered to take into consideration mitigating circumstances, as well as aggravating circumstances.”

16. Undoubtedly, the Indian Penal Code provides discretion to the Judges while awarding the sentence, the Courts while determining the quantum of sentence must consider the extenuating and mitigating circumstances. We may observe that in the present case, two mitigating circumstances which were duly considered by the learned trial Court are *firstly* the incident had occurred on account of his feeling annoyed with the friendship of the victim Zahim Ahmed with Sapna (PW10) who was also friendly to the respondent. *Secondly*, the respondent being a person of prime youth would be an extenuating factor. As can be seen, these circumstances were taken into consideration by the trial Court and on that basis, the trial court took a lenient view by awarding imprisonment for one and half years in respect of the offence punishable under Section 307 of IPC and rigorous imprisonment for a period of six months for the offence punishable under Section 25 of Arms Act, which were to be run concurrently.
17. Thus, in entirety, considering the factual scenario of the case in hand, the evidence on record and in the background of legal principles laid down by the Apex Court in the cases referred to supra, we find that the trial Court was persuaded in releasing the respondent for the period already undergone by him. Therefore, we are of the considered view that there is no infirmity in the view taken by the learned trial Court and do not find

sufficient grounds to interfere in the order on sentence passed by the trial Court.

18. Furthermore, after perusal of the previous orders passed by this Court, it has emerged that the State has made all possible attempts in finding the respondent. In the absence of the respondent, who is stated to be a vagabond, no purpose would be achieved in keeping this appeal pending. In the interest of justice, the appeal is dismissed.

19. In view of the above, Crl. M.A. No.8855/2016 also stands disposed of.



G.S.SISTANI, J.

VINOD GOEL, J.

APRIL 20, 2017
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