

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CRA-S-2869-SB-2016.

Decided on: August 6,2022.

Sanjay

...Appellant - accused

Versus

State of Haryana

...Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

**PRESENT Mr.Rajat Mor, Advocate,
 for the appellant.**

Mr. Gaurav Bansal, AAG, Haryana.

VINOD S. BHARDWAJ. J. (ORAL)

The present appeal has been preferred against the judgment of conviction dated 08.08.2016 and order of sentence dated 12.08.2016, passed by the learned Additional Sessions Judge, Rohtak, in Sessions Case No. 45 dated 24.09.2014/08.04.2015, arising out of FIR No. 175 dated 16.04.2014, under Sections 307, 324, 148 and 149 of the Indian Penal Code (hereinafter referred to as 'IPC') and under Section 25 of the Arms Act as well as under Section 3 (2) (v) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, registered at Police Station Civil Lines, Rohtak.

2. The prosecution had been launched at the instance of Manish son of Satyawar, who was admitted at Post Graduate Institute of Medical Science, Rohtak and Investigating Officer received his medico-legal information (Exhibit P-36) and recorded his statement (Exhibit P-5) to the effect that on 15.04.2014, at about 7:00 P.M., he went to Tikona Park Power House, Rohtak for evening walk where his friend Ram Dharshan son of Sajjan Singh and Akshay Nandal met him. When they were talking, five boys namely Mohit son of Anand, Virender son of Rajbir, Ankit son of Krishan, Naveen son of Raj Singh and Sanjay (appellant herein) came there and started abusing Ram Darshan. They rebuked Ram Darshan and asked to teach a lesson for making indecent phone call. Sanjay (appellant - accused) was armed with a knife whereas Virender and Ankit were armed with dandas. Mohit and Naveen were empty handed. Sanjay gave a knife blow in the abdomen and head of Ram Darshan with an intention to kill him. When he(Manish) tried to rescue Ram Darshan, Sanjay gave a knife blow on his chest. Virender and Ankit gave danda blow, whereas Mohit and Naveen gave slaps and fist blows to them. On hearing their noise, many persons gathered at the spot and all the assailants fled away from the spot. Meanwhile, their friends Rohit and Mohit came there and brought them to Post Graduate Institute of Medical Science, Rohtak.

3. On the basis of this information, a report was sent to the Police Station, on which formal First Information Report (Exhibit P-1) was lodged and endorsement (Exhibit P-2) was made. The doctor handed over to the Investigating Officer a parcel containing the clothes of Ram Dharshan, which were taken into possession as per seizure

memo (Ex.P-26). On 16.04.2014, the Investigating Officer went to the spot and lifted the blood with the help of cotton swab from the spot and the same was taken into possession as per seizure memo (Ex.P-27).

4. On 16.04.2014, accused Ankit, Virender, Naveen and Mohit were arrested and in police custody they made their disclosure statements (Exhibits P-28, P-29, P-30 and P-31 respectively) and got the place of occurrence demarcated as per memos Exhibits P-32, P-33, P-34 and P-35. The Investigating Officer prepared rough site plan (Exhibit P-46) of place of occurrence. Accused Virender in pursuance of his disclosure statement (Exhibit P-29), led the police party to the disclosed place and got recovered a wooden stick and the same was taken into police possession vide seizure memo (Exhibit P-9). Accused Ankit, in pursuance of disclosure statement (Exhibit P-28) led the police party to the disclosed place and got recovered a danda which was used in the commission of offence and was taken into police possession as per seizure memo (Exhibit P-11).

5. On 06.05.2014, appellant - accused Sanjay was arrested and in police custody he made his disclosure statement (Exhibit P-12) and in pursuance of his disclosure statement, he led the police party to the disclosed place and got recovered a knife that was taken into possession as per seizure memo (Exhibit P-14). He also demarcated the place of occurrence as per memo (Exhibit P-15). The Investigating Officer moved applications to the doctors to know about the nature of injuries and the doctor has declared the injuries sustained by Ram Dharshan and Manish to be dangerous to their life. The Investigating Officer also moved application to the doctor along-with knife and the

doctor observing the knife has opined that the possibility of sustaining injuries on the person of Ram Darshan and Manish by using this knife cannot be ruled out. The Investigating Officer also took into possession Scheduled Caste certificate of Ram Darshan as per seizure memo (Exhibit P-25). After completion of the investigation, final report under Section 173 of the Code of Criminal Procedure (hereinafter to be referred as 'Cr.P.C.') was prepared and submitted to the Court against all the accused.

6. The copies of final report under Section 173 Cr.P.C. along with accompanying documents were supplied to the accused free of costs as envisaged under Section 207 of the Code of Criminal Procedure and the case was committed to the Court of Sessions.

7. As per order dated 06.10.2014 passed by the then learned Additional Sessions Judge, all the accused were charged for the commission of offence punishable under Sections 148, 324/307 read with Section 149 of Indian Penal Code and Section 25 of the Arms Act and Section 3(1)(x) of the Scheduled Caste and Schedules Tribes (Prevention of Atrocities) Act, 1989, to which, they pleaded not guilty and claimed trial.

8. In order to bring home the guilt of the accused, the prosecution examined as many as twenty witnesses. Thereafter, the evidence of the prosecution was closed by the Public Prosecutor.

9. After closure of the prosecution evidence, appellant - accused was examined under Section 313 Cr.P.C. wherein, he denied the allegations of the prosecution and pleaded innocence. However, no evidence was led by the appellant-accused in his defence.

10. Upon consideration of the submissions advanced by the prosecution as well as by the defence counsel, the trial Court convicted the appellant and sentenced him as under:-

<i>Name of convict</i>	<i>Under Section</i>	<i>Sentence</i>
<i>Sanjay</i>	<i>307 IPC</i>	To undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.5,000/- and in default of payment of fine to further undergo simple imprisonment for a period of two months.
	<i>324 IPC</i>	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.2,000/- and in default of payment of fine to further undergo simple imprisonment for a period of one month.
	<i>Section 25 of the Arms Act.</i>	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for a period of 15 days.

11. It was ordered that all the sentences shall run concurrently.

12. Aggrieved of the aforesaid judgment of conviction dated 08.08.2016 and order of sentence dated 12.08.2016, appellant – accused has preferred the present appeal.

ARGUMENTS

13. During the course of hearing on the appeal, learned counsel appearing on behalf of the appellant – accused has contended that he does not wish to press the present appeal on merits and does not

raise a challenge to the judgment of conviction and that he would confine his submissions only on the question of quantum of sentence.

14. The learned counsel appearing on behalf of the appellant – accused contends that the following mitigating circumstances exist in the present case as would necessitate this Court to reduce the sentence:-

(i) That the incident in question is stated to have taken place in the year 2014 and the appellant - accused has already faced agony of protracted criminal trial for a period of more than 8 years

(ii) That the appellant - accused was in his early 20's on the date of commission of offence and was in a volatile and vulnerable age.

(iii) That the appellant – accused has already undergone the actual sentence of 2 years, 4 months and 16 days which is nearly half of the substantive sentence awarded by the trial Court.

(iv) That the appellant - accused has not indulged in the commission of any other offence after the incident in question and that he had already undergone his sentence in the FIR that had been registered against him earlier.

(v) That incident in question was borne out of a sudden scuffle and not premeditated.

(vi) That all other prosecution witnesses were declared hostile except one for one injured witness.

(vii) That all other co-accused of the appellant had been acquitted from the charges leveled by the complainant.

15. Learned counsel appearing on behalf of the State vehemently contends that the prosecution has duly established its case against the appellant – accused and that it is imperative that harsh punishment be imposed upon the criminals so as to send a strict message to the Society. The punitive aspect of the punishment has deterrent effect in the society and effectively checks repetition of the offence by the accused and controls any allurements of other persons from foraging into the adventure.

PARAMETERS AND PRINCIPLES OF SENTENCING:

16. The Hon'ble Supreme Court has laid down certain principles to govern the Courts in the matter of sentencing. Reference in this regard is made to the judgment of the Hon'ble Supreme Court in the matter of **State of Punjab Vs. Prem Sagar & Ors (2008) 7 SCC 550**, the relevant extract of the said judgment is reproduced hereinbelow:-

'Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstance of each case.'

5. *While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.*

6. *There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.*

7. *A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of Section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.*

8. *Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.*

9. *What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as*

regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

10. In Dhananjoy Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

“15...Imposition of appropriate punishment is the manner in which the courts respond to the society’s cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime...”

11. Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjoy Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

12. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

“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.

Relying upon the decision of this Court in Sevak Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was 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 etc.

18. Don M. Gottfredson in his essay on “Sentencing Guidelines” in “Sentencing: Hyman Gross and Andrew von Hirsch” opines:

“It is a common claim in the literature of criminal justice- and indeed in the popular press- that there is considerable “disparity” in sentencing.. The word “disparity” has become a prerogative and the concept of “sentencing disparity” now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much

otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase “unwarranted disparity” may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored or consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate.”

[Emphasis supplied]

The learned author further opines:

“In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence.”

19. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition “Sentencing guidelines” states:

“All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated

controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted (“conviction offenses”), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained (“non conviction offenses”).

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant’s criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the judge’s assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offenders particular “amenability” to probation (Frase, 1997).)”

20. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interest are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement

3. Culpability of the offender

4. Remoteness of the actual harm as seen by a reasonable man.'

17. The said issue was also examined by the Hon'ble Supreme Court in the matter of **Soman Vs. State of Kerala, (2013) 11 SCC 382**, the relevant extract of the said judgment is reproduced hereinbelow:-

'15. Giving punishment to the wrongdoer is at the heart of the criminal justice delivery, but in our country, it is the weakest part of the administration of criminal justice. There are no legislative or judicially laid down guidelines to assist the trial court in meting out the just punishment to the accused facing trial before it after he is held guilty of the charges. In State of Punjab v. Prem Sagar (2008) 7 SCC 550, this Court acknowledged as much and observed as under –

“2. In our judicial system, we have not been able to develop legal principles as regards sentencing. The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, have not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines.”

16. Nonetheless, if one goes through the decisions of this Court carefully, it would appear that this Court takes into account a combination of different factors while exercising discretion in sentencing, that is proportionality, deterrence, rehabilitation etc.

14. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness. The question is whether the consequences of the offence can be taken as the measure for determining its harmfulness? In addition, quite apart from the seriousness of the offence, can the consequences of an offence be a legitimate aggravating (as opposed to mitigating) factor while awarding a sentence. Thus, to understand the relevance of consequences of criminal conduct from a Sentencing standpoint, one must examine: (1) whether such consequences enhanced the harmfulness of the offence; and (2) whether they are an aggravating factor that need to be taken into account by the courts while deciding on the sentence.

26. Punishment should acknowledge the sanctity of human life. We fully agree.

27. From the above, one may conclude that:

27.1. Courts ought to base sentencing decisions on various different rationales – most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor.

CONCLUSION

18. Taking into consideration the protracted criminal trial and the consequent agony faced by the appellant - accused, the actual sentence out of total sentence already undergone by the appellant - accused, the reformatory tendency shown by the appellant – accused by not indulging in any other similar offence, the age of the appellant – accused at the time of the incident as well as the legal principles reproduced above, the present appeal is partly allowed. The judgment of conviction dated 08.08.2016 passed by the Additional Sessions Judge, Rohtak, is affirmed. The order of sentence dated 12.08.2016, is modified and the sentence awarded to the appellant-accused is reduced to the period already undergone by him, however, the fine is enhanced from

Rs.8,000/-to Rs.25,000/- out of which Rs.10,000/- shall be disbursed to the injured Ram Darshan within a period of 30 days.

19. In the event of the enhanced fine having not been paid within a period of one month from the receipt of certified copy of this order, the present appeal would be deemed to have been dismissed and the appellant – accused would have to undergo his substantive sentence as awarded by the learned trial court.

20. The appeal stands partly allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

August 06, 2022
rajarora

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No