

**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

228

**CRR-1823-2011 (O&M)
Date of Decision: 25.04.2022**

KALA & OTHERS

... Petitioners

Versus

STATE OF HARYANA

... Respondent

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

Present: Mr. Raj Kapoor Malik, Advocate
for the petitioners.

Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana.

VINOD S. BHARDWAJ, J. (ORAL)

The present Revision Petition raises challenge to the judgment of conviction dated 15.03.2010 and order of sentence dated 18.03.2010 passed by the Additional Chief Judicial Magistrate, Kaithal convicting and sentencing the petitioners for the commission of offences punishable under Sections 148, 323, 324, 326 read with Section 149 of the Indian Penal Code, 1860, and the sentences awarded to the petitioners are as under:

148 IPC: Simple imprisonment for six months.

323 IPC: Simple imprisonment for four months.

324 IPC: Rigorous imprisonment for nine months.

326 IPC: Rigorous imprisonment for two years and to pay a fine of Rs.1000/- each (Rupees One Thousand only). In default of payment of fine, each convict would undergo simple imprisonment for a period of fifteen days.

2. Further challenge has also been raised to the judgment dated 04.08.2011 passed by the Addl. Sessions Judge, Kaithal, whereby the appeal preferred by the petitioners against the judgment of the Addl. Chief Judicial Magistrate, Kaithal had been dismissed and the sentence awarded to the petitioners had been confirmed.

3. Learned counsel appearing for the petitioners has submitted, at the very outset, that he does not wish to press the instant Revision Petition on merits and restricts his prayer to the extent of quantum of sentence only. It is submitted that the total sentence awarded by the Additional Chief Judicial Magistrate, Kaithal was rigorous imprisonment for two years with respect to an offence committed by the petitioners in the year 2003. It is further contended that the petitioners have faced the incarceration of criminal trial for a period of more than 18 years. It is further submitted that the petitioners do not suffer from any criminal antecedents. It is further pointed out that the petitioners are also not involved in other criminal case after the registration of the FIR in question and during the pendency of the instant Revision Petition. He further submits that the petitioners, namely, Kala and Sandeep sons of Bachna and Ishma son of Rupa were in their twenties at the time of filing of the Revision Petition and were at the threshold of their career, while the petitioner namely Bachna son of Rupa was 60 years of age as on the date of filing of the Revision Petition and at present, he is more than 70 years of age. Learned counsel further contends that the petitioners, namely, Raja and Jaswant sons of Rupa are also in their early fifties and late fifties respectively. Counsel further urges that the occurrence in question was not premeditated and it took place at the spur of

moment. The point of discord amongst the parties was pertaining to taking possession of a plot and that petitioners have nowhere reflected criminality in their action. Learned counsel further contends that the incident occurring at the spur of the moment and without premeditation, coupled with the fact that neither the petitioners are suffering from any criminal antecedents nor have they been involved in any other criminal case, post the incident in question, clearly shows that the petitioners are law abiding citizens and have displayed reformatory behaviour. Learned counsel further submits that object of sentencing is to balance the proportions and to also take into consideration the reformatory bent of a convict. It is pointed out that even though the injury attracting Section 326 of the IPC had resulted in the said occurrence, however, the said injury was on the second and third metacarpal of the left hand and not on any vital part of the body. There was, thus, no attempt or intent to cause any serious injury and the attempt was only to protect their possession over the property. Learned counsel for the petitioners further relied upon the custody certificates to contend that the petitioners have already undergone an actual custody of five months and eleven days before their sentence was suspended by this Court.

4. Mr. Kanwar Sanjiv Kumar, Asstt. A.G., Haryana has opposed the petition while pointing out that the petitioners had opened an attack causing injury attracting Section 326 of the IPC arising from fracture caused to the victim. He further submits that the period of custody undergone by the petitioners is on the lower side. Learned State counsel further submits that the petitioners, namely, Ishma, Jaswant and Raja were involved in another case bearing FIR No.46 dated 27.03.2006 for the commission of

offences punishable under Sections 323 and 325 of IPC and were sentenced therein for two years. Thus, the learned State counsel submits that the petitioners do not deserve any kind of leniency.

5. I have heard the learned counsel for the respective parties and have gone through the material available on record.

6. The custody certificates, produced in the Court today, do not indicate any involvement of the petitioners in any other case, except for the petitioners namely Ishma, Jaswant and Raja. However, it is also apparent on record that even the said petitioners have not indulged in any other criminal case for the last 16 years and have opted to live in main stream of the society and to not resort to any incident that brings them in conflict with law. It is thus *ex-facie* a valid submission advanced by the learned counsel that the petitioners have displayed reformatory conduct and have shown due regard to the rule of law by not indulging in any other criminal activity for the last 16 years. It is also noticed that even though the petitioners as well as the respondents-complainant(s) happen to live in a close neighbourhood, however, there has been no recurrence of any such incident amongst the parties despite conviction in the present case. The manner, in which the incident in question had taken place, does not reflect premeditation or point out any criminality in action and in the mind of the petitioners. Besides, the Court also has to be cognizant of the fact that the petitioners were young at the time of incident i.e. year 2003 and were at the prime of their youth, when rationality may be compromised by strong patriarchy or brotherhood and the average of youth gets agitated and enraged quickly. It is also not in dispute that the offence in question had taken place in the month of July,

2003 and the petitioners have already suffered criminal incarceration for a period of 18 years.

Parameters and Principles of Sentencing:

7. 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 herein below:-

“6. 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.

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.

7. 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.

8. 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.

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.

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.

9. *In Dhananjay 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...”

Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjay 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.

10. *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. Fried man 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 Sevaka 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.

15. 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.”

16. 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 (“nonconviction offences”)

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).)"

17. 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."

8. It is well settled that object of sentencing is to balance reformatory as well as deterrent behaviour amongst the parties. While exercising such a jurisdiction, Court should be seen as standing with an accused or to reflect undue leniency towards accused. However, it must also balance taking into consideration the possibility of reformatory behaviour and where such conduct is apparent and evident from the circumstances available on file, there is no reason why a deterrent punishment ought to be imposed.

9. In view of the above discussion and taking into consideration the age of the petitioners at the time of the alleged occurrence, the period during which the instant proceedings remained pending as also their antecedents, conduct, as well as the conduct subsequent to the registration of the instant FIR and during the period they remained on bail, I deem it appropriate to accept the prayer of the petitioners for reducing the sentence.

However, in order to balance the equities, the punishment of fine imposed

by the Court is enhanced to Rs.10,000/- to be paid by the petitioners to the victim as compensation for the injuries sustained by him. The present petition is thus partly allowed. While maintaining the judgment of conviction, the order of sentence is modified and the sentence awarded to the petitioners is reduced to the period already undergone. The enhanced amount of fine shall be deposited in the Court of Chief Judicial Magistrate, Kaithal within a period of one month from the date of receipt of certified copy of this order. Subject to the aforesaid modification, the instant Revision Petition is partly allowed in the terms as aforesaid.

Petition is disposed of accordingly.

(VINOD S. BHARDWAJ)
JUDGE

25.04.2022
rajender

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No