

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

**CRR-2324-2019 (O&M).
Decided on: August 3, 2022.**

Sewak Ram
...Petitioner

Versus

State of Punjab
...Respondent

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

PRESENT **Mr.Munish Raj Chaudhary, Advocate,
for the petitioner.**

Mr. Karanbir Singh, AAG, Punjab.

VINOD S. BHARDWAJ. J. (ORAL)

The present revision petition has been preferred against the judgment of conviction and order of sentence dated 20.02.2017, passed by the Additional Chief Judicial Magistrate, Bathinda as well as the judgment dated 12.07.2019 passed by the Addl. Sessions Judge, Bathinda, arising out of FIR No. 142 dated 11.08.2013 under Sections 379 and 411 of the Indian Penal Code (hereinafter referred to as 'IPC'), registered at Police Station Canal Colony, Bathinda, whereby the petitioner has been sentenced as under:-

<i>Name of convict</i>	<i>Under Section</i>	<i>Sentence</i>
<i>Sewak Ram</i>	<i>411 IPC</i>	To undergo rigorous imprisonment for a period of one year along with fine of Rs.1,000/- and in default of payment of fine to further undergo simple imprisonment for a period of two months.

2 Feeling aggrieved of the judgment of conviction and order of sentence dated 20.02.2017, an appeal was preferred before the Court of Sessions, Bathinda. The said appeal was dismissed by the Additional Sessions Judge, Bathinda, vide judgment dated 12.07.2019 and the judgment of conviction and order of sentence dated 20.02.2017, passed by the learned Additional Chief Judicial Magistrate, Bathinda, was upheld. The petitioner has also challenged the said judgment passed by the Additional Sessions Judge, Bathinda, dated 12.07.2019.

3 Brief facts of the prosecution case are that on 11.8.2013 ASI Varinder Kumar alongwith other police officials in private vehicles were present at Paras Ram Nagar, Bathinda in connection with patrolling and checking of suspected persons, where HC Kashmir Singh received secret information, who disclosed about the same to ASI Varinder Kumar, that Harbans Singh @ Baggi son of Teja Singh, Sewak Ram son of Amrik Singh, residents of Ghurelli and Babbu resident of Tapa are part of a gang and they steal motorcycles from Punjab and Haryana and sell the same at Bathinda. Even today the accused are planning to sell stolen motorcycles at Bathinda. If apprehended, many stolen motorcycles can be recovered from their possession. IO sent ruqa through PHG Rajinder Kumar for the registration of the case and on the basis of which formal FIR was registered against the accused. Then the police party conducted barricading at Dabwali Badal road kanchian Bathinda, accused Sewak Ram (petitioner herein) and Harbans Singh @ Baggi were apprehended and they got recovered one motorcycle Splendor without registration number. During personal search Rs.50/- were recovered from accused Sewak Singh and Rs.100/- were recovered from accused Harbans Singh.

Motorcycle was taken into police possession. Accused were arrested in this case. Statements of witnesses under Section 161 of the Code of Criminal Procedure (hereinafter to be referred as 'Cr.P.C') were recorded. On 13.8.2013, on the disclosure statement of co-accused Harbans Singh, one motorcycle Splendor bearing no.PB-03P-3076 got recovered. On the disclosure statement of petitioner - accused Sewak Ram, one motorcycle Platina was recovered from the possession of accused Sewak Ram. Motorcycle was taken into police possession. ASI Varinder Kumar tried to trace co-accused Babbu, but no person of this name was traced. After completion of the entire investigation, the challan against the accused persons was presented in the court.

4 On presentation of challan, the requisite copies of documents relied upon by the prosecution and challan were supplied to the accused free of costs as required under Section 207 of Code of Criminal Procedure.

5 On finding prima facie case, charge under section 379 and 411 of Indian Penal Code was framed against the accused, to which accused pleaded not guilty and claimed trial and thereafter prosecution evidence commenced.

6 In support of its case, prosecution examined HC Kashmir Singh as PW1, ASI Varinder Kumar as PW2, Surinder Kumar as PW3, Retd. ASI Gurjant Singh as PW4, Reetinder Singh Clerk as PW5 and thereafter learned APP for the State closed the prosecution evidence.

7 The statements of accused under section 313 of Code of Criminal Procedure was recorded separately wherein all the incriminating evidence produced against the accused was put to them in

question-answer form to which they denied and claimed false implication. However, accused did not choose to lead any defence evidence.

8 After hearing the arguments of the learned counsel for the parties and having gone through the record of the case, the trial court convicted and sentenced the petitioner in the terms mentioned in para no.1 of this judgment, vide the impugned judgment/order dated 20.2.2017 against which appeal was preferred before the Court of Sessions and the same was dismissed vide judgment dated 12.07.2019. Hence, the present petition.

ARGUMENTS

9 During the course of hearing on the present revision petition, learned counsel appearing on behalf of the petitioner – accused has contended that he does not wish to press the instant revision petition 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.

10 The learned counsel appearing on behalf of the petitioner has submitted that the following mitigating circumstances exist in the present case:-

- (i) That the offence in question was committed in the year 2013 and the petitioner has already faced agony of protracted criminal trial for a period of more than 9 years

(ii) That the petitioner was aged about 20 years as on the date of commission of offence and was thus in a vulnerable stage.

(iii) That against the awarded total sentence of rigorous imprisonment of one year, the petitioner has already undergone an actual sentence of 6 months and 22 days which is nearly more than half of the substantive sentence awarded by the learned trial Court.

(iv) That the petitioner has not been involved in any other case after the aforesaid incident.

(v) That the petitioner has shown substantive improvement in his conduct and has reflected reformatory behavior.

11 Learned counsel appearing on behalf of the State vehemently contends that the prosecution has duly established its case against the petitioner – 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:

12 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. PremSagar&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. *GentelaVijayavardhan 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 ShaileshJasvantbhai 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 SevakaPerumal 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 ("nonconviction 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.'

13 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. PremSagar (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. (See: Ramashraya Chakravarti v. State of Madhya Pradesh (1976) 1 SCC 281, Dhananjay Chatterjee alias Dhana v. State of W.B. (1994) 2 SCC 220, State of Madhya Pradesh v. Ghanshyam Singh (2003) 8 SCC 13, State of Karnataka v. Puttaraja (2004) 1 SCC 475, Union of India v. Kuldeep Singh (2004) 2 SCC 590, Shailesh Jasvantbhai and another v. State of Gujarat and others (2006) 2 SCC 359, Siddarama and others v. State of Karnataka (2006) 10 SCC 673, State of Madhya Pradesh v. Babulal (2008) 1 SCC 234, Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498)

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

14 Taking into consideration the protracted criminal trial and the consequent agony faced by the petitioner, the actual sentence out of total sentence already undergone by the petitioner, the reformatory tendency shown by the petitioner by not indulging in any other offence, the age of the petitioner at the time of the incident as well as the legal

principles reproduced above, the present petition is partly allowed. The judgment of conviction passed by the Additional Chief Judicial Magistrate, Bathinda, convicting the petitioner under Section 411 IPC as well as the judgment passed by the Additional Sessions Judge, Bathinda, dismissing the appeal preferred by the petitioner are affirmed. However, the order of sentence dated 20.02.2017, is modified and the sentence awarded to the petitioner is reduced to the period already undergone by him.

15 The present revision petition stands partly allowed accordingly.

(VINOD S. BHARDWAJ)
JUDGE

August 03, 2022
raj arora

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