

IN THE HIGH COURT AT CALCUTTA

(Criminal Appellate Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRA 630 of 2014

Sk. Motiar Rahaman

Vs

The State of West Bengal & Ors.

For the Appellant : Mr. Jayanta Narayan Chatterjee,
Mr. Sirsendu Sinha Ray,
Ms. Moumita Pandit,
Mr. Supreem Naskar,
Ms. Pritha Sinha,
Ms. Dipannita Das,
Mr. Bhaskar Mondal.

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.,
Mr. Joydeep Roy,
Ms. Sujata Das.

For the Accused Person : Mr. Sourav Mondal.

Heard on : 25.04.2023

Judgment on : 18.05.2023

Shampa Dutt (Paul), J.:

1. The appeal has been preferred against the Judgment of Conviction and Order of Sentence dated 10/07/2014 passed by the Learned Additional District & Sessions Judge, Chandannagore, Hooghly in Sessions Trial No. 36 of 2012 (Sessions Case No. 143 of 2012) (arising out of Singur Police Station Case No. 52/2010 dated 27.04.2010, corresponding to G.R. Case No.279/2010) convicting thereby the respondents no. 2 and 3 for commission of offence punishable under Section 323/34 of the Indian Penal Code and sentencing them to suffer simple imprisonment for one month and to pay a fine of Rs. 1,000/- (One Thousand) each in default to suffer simple imprisonment for a further period of 1(one) month for commission of offence under Section 323/34 of the Indian Penal Code.
2. The case of the appellant/defacto complainant is that on 27.04.2010 at about 11 am over the issue of construction of a “sunshade” in the respondents house, there was a verbal altercation between the respondents and the father of the defacto complainant. During that altercation the respondents pelted bricks which hit the father of the defacto complainant namely Sk Abdul Wahab and the brother of the defacto complainant namely Mojibar Rahaman. Due to such assault both of them sustained severe injuries and in course of shifting the injured persons to the hospital, the father of the defacto complainant namely Sk.

Abdul Wahab succumbed to his injury and the other injured person was treated in a nursing home.

3. On the basis of the aforesaid complaint Singur Police Station Case No. 52 of 2010 dated 27/04/2010 under Sections 325/304/34 of the Indian Penal Code was registered against the respondent no. 2 and 3 for investigation.
4. After completion of investigation, the investigating officer submitted Charge Sheet under Sections 325/304/34 of the Indian Penal Code against the respondent no. 2 and 3.
5. Charge for commission of offence punishable under Sections 325/304/34 of the Indian Penal Code was framed against them which were read over and explained to the respondents, to which they pleaded not guilty and claimed to be tried.
6. The prosecution examined as many as 10 (ten) witnesses along with the documentary evidence while the defense adduced none and the specific case of the defence is one of innocence and denial of the allegation.
7. The Learned Trial Judge after perusing the evidence on record and also after examining the respondents under Section 313 of the Code of Criminal Procedure and after hearing the arguments advanced on behalf of both the parties, was pleased by its judgment dated 10.07.2014 to convict the respondents for commission of offence punishable under Sections 323/34 of the Indian Penal Code.

8. That the Learned Trial Judge was pleased to observe that the prosecution has failed to prove the guilt of the accused persons for committing the offence under Sections 304/325 of the Indian Penal Code.
9. **Mr. Jayanta Narayan Chatterjee, learned counsel for the appellant** has submitted that P.W. 10, Dr. Banadana Chakraborty stated during post mortem that she found an injury in the left frontal region 1" X 1 and ½" and few abrasions detected all over the body and immediate cause of death was shock, neurogenic and cardiogenic which are antemortem.
10. **It is further submitted that the ocular evidences showing** that there was an altercation and due to that altercation, the accused persons started throwing brick bats from their roof, where they were extending their sun shed.
11. It is submitted that the Post mortem report shows that the injury was on the left frontal region on the forehead and death was due to shock, neurogenic and cardiogenic and had there been no injury on the head, he might not have died out of shock, hence the instant offence aptly comes within the definition of culpable homicide, as the assault was done with an intention of causing death or having knowledge that by such act, death might be caused.
12. Though the injury was not grievous but that was enough to cause death because due to that attack the deceased suffered severe heart attack.
13. It is stated that in the post mortem report also, it was shown that there was an injury on the left frontal region of the head of the deceased.

14. It is further stated that there was previous animosity between the two families, which caused the altercation and throwing of brick bats by the accused persons and their intention was not good. It was known to the accused persons that assault with brick bats could be fatal and the attack was on the vital part of the body.
15. It is submitted that the impugned judgment and order of conviction and sentence is a product of non-application of judicial mind on the part of the Learned Judge and as such the same is liable to be set aside.
16. That the evidence on record do not justify the conviction of the respondents under Section 323/34 of the Indian Penal Code and as such the impugned order of conviction and **sentence is liable to be enhanced**, considering the overwhelming materials on record.
17. That the Learned Judge failed to properly appreciate the evidence on record and instead, has from the inception taken a view in favour the respondents, which was not justified, considering the evidence on record and as such by convicting the respondents only under Section 323 of the Indian Penal Code, has committed grave error in law, and prejudice to the appellant for which the impugned judgment and order of conviction and sentence is liable to be enhanced.
18. That the Learned Judge failed to properly assess the evidence or record.
19. That the impugned judgment and order of conviction and sentence is otherwise bad in law and hence the same is liable to be set aside.
20. **Mr. Chatterjee** has relied upon the following Judgments:-

- 1) ***(2023) 1 S.C.R. 241 Prasad Pradhan and Anr. Vs. The State of Chhattisgarh:*** What is important that is nature of injury and whether it is sufficient in the ordinary course to lead to death. In this case death was due to cardiac respiratory failure as a result of injury inflicted upon the deceased. **Thus, the injury and the death were closely and directly linked. (Relevant paragraph 26).**
 - 2) ***2004 (12) SCC 546 State of Rajasthan Vs. Dhol Singh:*** in this case victim died due to heart failure, but the Hon'ble Apex Court restored the order of the trial court. **(Relevant paragraphs no. 9, 10,13,14,16,18)**
 - 3) ***C.R.A. (D.B.) 4 of 2022 Anupam Banerjee Vs The State of West Bengal.***
21. **Mr. S.G. Mukherjee, learned public prosecutor has appeared for the State.**
 22. **Mr. Sourav Mondal, learned counsel for the opposite parties no. 2 and 3** has submitted that the injury which the deceased sustained measuring about 1½", is simple in nature, and the **doctor has categorically deposed that the injury is not the immediate cause of death.** It said that death was due to **Shock, Neurogenic and Cardiogenic** which is anti-mortem in nature. As such it can be inferred, that the **injury (Superficial)** has no role to play in the death of the deceased.

23. It is further submitted that the entire prosecution story as it transpires from the records shows that there are serious contradictions and infirmities, there are serious doubts about the testimony of ocular witnesses. The case suggests that the deceased died a natural death and due to rivalry the same has been painted in a different color with very serious allegations and thus the prosecution failed to prove the instant case beyond reasonable doubt and accused persons in their statement also denied and responded adequately in respect of all the incriminating materials.
24. What transpires from the records is that PW1 to PW5 are not reliable witnesses. There are serious infirmities and contradictions in the evidence of the prosecution witnesses. There is total absence of corroboration in all material particulars. It has also not been proved that the recovered articles (full size brick) have been used in commission of the crime. Thus there is no proof of any intention, in this case and no question of preparation comes since it was alleged that the deceased himself went to the house of the accuseds and raised objections. Doctor who conducted Post mortem opined that the injury which the deceased sustained measuring about 1½", in **simple in nature and superficial**. The doctor has categorically deposed that the **injury is not the cause of death**, the immediate cause of death was **Shock due to Neurogenic and Cardiogenic** which is **ante-mortem** in nature. As such it can be inferred that the injury has no role to play with the death of the deceased. As

such the prosecution has failed prove the case against the accused persons beyond reasonable doubt. Thus the instant appeal for enhancement of sentence is liable to be dismissed with cost.

25. **Mr. Mondal** has relied upon the following judgments:-

(a) Kunju Muhammed Alias Khumani & Anr. Vs State of Kerala, (2004) 9 SCC 193, on August 11, 2003.

“19. Thus, we find most of the reasons given by the High Court for rejecting the conclusions of the learned Sessions Judge unacceptable. At this juncture, we would like to bear in mind the law laid down by this Court in regard to reappraisal of evidence by the High Court in appeal against acquittals. This Court in Dhanna v. State of M.P. [(1996) 10 SCC 79 : 1996 SCC (Cri) 1192] had laid down that though the High Court has full power to review the evidence and to arrive at its own independent conclusion whether the appeal is against conviction or acquittal. While doing so it ought to bear in mind: first that there is a general presumption in favour of the innocence of the person accused in criminal cases and that presumption is only strengthened by the acquittal. Secondly, it should bear in mind that every accused is entitled to the benefit of reasonable doubt regarding his guilt and when the trial court acquitted him, he would retain that benefit in the appellate court also. Thus, the appellate court in appeals against acquittals has to proceed more cautiously and only if there is absolute assurance of the guilt of the accused, upon the evidence on record, that the order of acquittal is liable to be interfered with or disturbed.

20. *In Shailendra Pratap v. State of U.P. [(2003) 1 SCC 761 : 2003 SCC (Cri) 432] this Court held: (SCC p. 766, para 8)*

“It is well settled that the appellate court would not be justified in interfering with the order of acquittal unless the same is found to be perverse. In the present case, the High Court has committed an error in interfering with the order of acquittal of the appellants recorded by the trial court as the same did not suffer from the vice of perversity.”

The above principles have been consistently followed by this Court in a large number of cases. If we apply the said principle to the facts of this case, we notice that the High Court in the instant case has not come to the conclusion that the finding of the Sessions Court was in any manner perverse or one that cannot be arrived at by a reasonable person. Therefore, in our opinion, assuming another view was possible to be taken on the material on record, the High Court ought not to have substituted its view in place of that of the Sessions Court, and reversed an order of acquittal on such substituted view of its own. At any rate, on the facts of this case, we have come to the conclusion that the view taken by the learned Sessions Judge was the only possible view, hence, the High Court ought not to have interfered with the same. From the material on record, the defence has been able to establish that the prosecution case in regard to the time and place of incident is highly doubtful; even the evidence of the eyewitnesses apart from being interested was full of contradictions and improbabilities based on which no conviction could have been recorded against the appellants. For the reasons stated above, this appeal succeeds and the judgment and conviction awarded to the appellants by the High Court is set aside. The appellants, if in custody, shall be released forthwith, if not required in any other case.”

(b) Ram Ashrit Ram & Ors. Vs. State of Bihar (1981) 2 SCC 60, on

January 13, 1981, where the Hon’ble Supreme Court held:-

“18. There are many other infirmities and contradictions in the evidence of the prosecution witnesses. It is not necessary to burden this judgment

by dealing with all of them. Suffice it to say that in the absence of corroboration to a material extent in all material particulars, it was extremely hazardous to convict the appellants on the basis of the testimony of these highly interested, inimical and partisan witnesses, particularly when it bristles with improbable versions and material infirmities”

26. From the materials on record, the following facts and evidence are before this Court:-

- 1) The parties stay in separate houses sharing a common courtyard.
- 2) A quarrel which lasted about 3-4 minutes took place as the accuseds were extending their roof and the complainant side raised objection.
- 3) The accuseds allegedly threw bricks on the victims, when one of them Abdul Wahab suffered head injury and died due to Shock, Neurogenic and Cardiogenic.
- 4) Only the witnesses for the prosecution other than the formal ones have deposed that Abdul died of head injury and not heart attack.
- 5) **P.W. 10 is the most vital witness in this case.** The medical officer who conducted the post mortem on the body of Abdul Wahab (Ext 8) He found the following **external injuries:-**
 - i. Left frontal region 1'x1 ½', no fracture detected.
 - ii. Few abrasion detected all over the body.

On **internal examination** the doctor found:-

- i. Small clot inside left ventricle, old infarcts in inferior wall, clot seen in left coronary artery.
- ii. Lung was pale.

27. On being cross examined this witness stated that ***“No injury was found on the scalp or on the skull was found. No internal injury of brain nor clot in vein nor any internal hemorrhage was seen”.***

28. **The injury found was superficial and not grave. The doctor opined that the said injury did not cause the death. And further opined that the was suffering from ischemic heart.** The column of **Heart findings** & WT is as follows:-

“Small clot inside Lt ventricle. Old infarcts in inferior wall. Clot seen in Lt coronary artery. Thus it is prima facie clear that the death was due to heart attack and shock. There being clots in his heart.”

29. Immediate Cause of death was shock, and death was neurogenic and cardiogenic.

30. The seizure list (Ext 3) shows that two full bricks were seized. But no fracture on the skull was seen by P.W.10. If a full brick hits a person on the head thrown from the first floor, the injury would have been more grave. **The doctor has clearly stated that the injury on the forehead is superficial.**

31. The view of the Supreme Court in **Jaswinder Singh (Dead) Through Legal Representative Vs Navjot Singh Sidhu & Ors., 2022 LiveLaw (SC) 498, on May 19, 2022** is very similar to the present case. The Court held:-

*“13. In **Richpal Singh Meena** case, a proposition was advanced that cases where a homicide had occurred, but the conviction is only for causing grievous hurt, may even fall even within Section 300 (thirdly) of the IPC and, therefore, would require reconsideration. Several judgments were relied upon on this aspect. After referring to these judgments, the jurisprudential aspect was discussed. In this behalf, it was submitted that there were cases where in spite of death of a person and a finding in some of them of an act of voluntarily causing grievous hurt, this Court has not considered the provisions of Section 299 read with Section 304 of the IPC. It was for the Court to determine on evidence, whether if it is a culpable homicide, it amounts to murder as explained under Section 300 of the IPC or not as explained under Section 304 of the IPC. If culpable homicide cannot be proved, then it will fall in the category of “not culpable homicide”. In cases relating to hurt (from Section 319 of the IPC onwards), they do not postulate death as the end result. Apart from this the issue of sentencing was also addressed. It was opined that the Court should not ignore or overlook the question whether the homicide is culpable or not but merely treat the case as one of voluntarily causing grievous hurt punishable under Section 325 or Section 326 of the IPC.*

*14. The earlier judgment in **Virsa Singh** case looked into the aspect of intention to inflict the injury that is sufficient to cause death in the ordinary course of nature. In such an eventuality, Section 300 thirdly of the IPC would be unnecessary because the act would fall under the first part of the Section. However, it was also stated that it has to be found that the bodily injury was caused, the nature of injury must be established and whether any vital organs were cut or so forth. Thereafter the focus should shift to the*

intention to inflict the bodily injury that is found to be present.

17. On analysis of the aforesaid aspect, we are disinclined to enlarge the notice to something more than the aspect of sentencing. The evidence has been analysed in detail to come to a conclusion as to what is the nature of injury. It has been taken into account that only one blow with bare hands as inflicted by respondent No.1 had landed on the head of the deceased. The finding is that apparently in the fist fight, other blows may have been attempted but did not fall on the material part of the body. Aspects such as lack of post enmity, lack of any weapon used except bare hands and the result of a spontaneous fight over a right of way were also taken into account.

19. Next we turn to the aspect of review, which persuaded us to issue the notice, i.e., qua the sentence imposed – a fine of Rs.1,000/-. No doubt the conviction is under Section 323 of the IPC relating to causing hurt, which reads as under:

“323. Punishment for voluntarily causing hurt.—Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.”

20. The punishment under Section 323 of the IPC has been prescribed as a sentence of a term which may extend to one year or a fine which may extend to Rs.1,000/- or both. In the present case, only the fine has been imposed. The question, thus, to be analysed is whether in the given factual scenario, grave error can be said to have been committed on the issue of sentence by not punishing with imprisonment of any term whatsoever.

21. Learned senior counsel for the complainant urged that the sentence imposed under Section 323 of the IPC was not in line with the principles of sentencing principles and that the observations on sentencing in **Sunil Dutt Sharma v. State**, albeit in the case of a death sentence, would equally apply for lesser offences. It was held that the aggravating and mitigating factors both were required to be considered before deciding the question of sentence, more so

when the judgment of the High Court is sought to be upset, on the provisions under which it is based. The sentence imposed, it was urged, should be proportionate to the offence and should take into account the deterrence aspect. There cannot be leniency in sentencing when the hurt/injury has resulted in death, nor can the delay in trial be taken into account which was not attributable to the complainants. Respondent No.1 at the relevant time was a young man of 25 years, who was playing international cricket and was athletically physically fit. He is expected to know the effect of any blow to be inflicted by him, more so, when on the opposite side the man is aged about 65 years (more than his father's age and elder to him by 40 years). Thus, it was urged that simply because it was a spontaneous incident where no weapon was used, the same cannot be a ground to inflict minimal and innocuous punishment of fine of Rs.1,000/-.

22. On the other hand, learned senior counsel for respondent No.1 urged that a review petition on the quantum of sentence was not maintainable. He sought to place reliance on the judgment of this Court in **Parvinder Kansal v. State of NCT and Mallikarjun Kodagali v. State of Karnataka & Ors.** His submission was that the victim's right to appeal ought to be restricted to only three eventualities, i.e., acquittal of the accused, conviction for lesser offence, or for imposing inadequate compensation, but there was no provision of appeal for the victim to question the quantum of sentence as inadequate. Such a right was available under Section 377 Cr.P.C. for the State.

23. Learned senior counsel also relied upon the judgment of this Court in **Manohar Singh v. State of Rajasthan** to contend that even a fine is fully adequate without any incarceration when there is a prolonged time since the date of occurrence.

Our View:

24. We have given our thought to the matter. In our view, some material aspects which were required to be taken note of appear to have been somehow missed out at the stage of sentencing, such as the

physical fitness of respondent No.1 as he was an international cricketer, who was tall and well built and aware of the force of a blow that even his hand would carry. The blow was not inflicted on a person identically physically placed but a 65 year old person, more than double his age. Respondent No.1 cannot say that he did not know the effect of the blow or plead ignorance on this aspect. It is not as if someone has to remind him of the extent of the injury which could be caused by a blow inflicted by him. In the given circumstances, tempers may have been lost but then the consequences of the loss of temper must be borne. In fact, this Court to some extent had been indulgent in ultimately holding respondent No.1 guilty of an offence of simple hurt under Section 323 of the IPC. The question is whether even on sentence, mere passage of time can result in a fine of Rs.1,000/- being an adequate sentence where a person has lost his life by reason of the severity of blow inflicted by respondent No.1 with his hands. The hand can also be a weapon by itself where say a boxer, a wrestler or a cricketer or an extremely physically fit person inflicts the same. This may be understood where a blow may be given either by a physically fit person or to a more aged person. Insofar as the injury caused is concerned, this Court has accepted the plea of a single blow by hand being given on the head of the deceased. In our view, it is this significance which is an error apparent on the face of the record needing some remedial action.

25. *We would like to deliberate a little more in detail on the necessity of maintaining a reasonable proportion between the seriousness of the crime and the punishment. While a disproportionately severe sentence ought not to be passed, simultaneously it also does not clothe the law courts to award a sentence which would be manifestly inadequate, having due regard to the nature of the offence, since an inadequate sentence would fail to produce a deterrent effect on the society at large. Punishments are awarded not because of the fact that it has to be an eye for an eye or a tooth for a tooth, rather having its due impact on the society; while undue harshness is not required but inadequate punishment may lead to sufferance of the community at large.*

26. An important aspect to be kept in mind is that any undue sympathy to impose inadequate sentence would do more harm to justice system and undermine the public confidence in the efficacy of law. The society can not long endure under serious threats and 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.¹⁰ It has, thus, been observed that 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.

27. A three Judges Bench of this Court in **State of Karnataka v. Krishnappa** while discussing the purpose of imposition of adequate sentence opined in para 18 that “.....Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence.”

28. The sentencing philosophy for an offence has a social goal that the sentence has to be based on the principle that the accused must realise that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric.¹³ While opportunity to reform has to be kept in mind, the principle of proportionality also has to be equally kept in mind.

29. 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 and, thus, victim's rights have to be equally protected¹⁴. It would be useful to rely on the observations of this Court in **Gopal Singh v. State of Uttarakhand** that just punishment is the collective cry of the society and while collective cry has to be kept uppermost in mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. Thus, the principle of just punishment is the bedrock of sentencing in respect of a criminal offence. No doubt there cannot be a straitjacket

formula nor a solvable theory in mathematical exactitude. An offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. Similarly, in **Alister Anthony Pareira v. State of Maharashtra**, the twin objective of the sentencing policy to be kept in mind was emphasised as deterrence and correction and, thus, principle of proportionality in sentencing a convict were held to be well entrenched in the criminal jurisprudence.

30. We may also take note of the recent judgment of this Court decided by a three Judges bench on 18.04.2022 in **Jagjeet Singh & Ors. v. Ashish Mishra @ Monu & Anr.** albeit, on the issue of bail. It emphasised the victim's right to be heard. What is relevant for us to note is that the victim being the de facto sufferer of a crime had no participation in the adjudicatory process. The current ethos of criminal justice dispensation to prevent and punish crime had surreptitiously turned its back on the victim. No doubt in the present case at every stage the victim has been heard and the present application is also by the victim. The near and dear ones whether as guardians or legal heirs are required to be treated as victims. It was, thus, observed in para 23 as under:

"23. It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim's right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of 'State' in the proceedings, therefore, does not tantamount to according a hearing to a 'victim' of the crime."

31. In the similar vein in Criminal Appeal No.579/2022 titled **State of Rajasthan v. Banwari Lal & Anr.**, this Court has again frowned upon the tendency of courts to reduce the sentence to the period already undergone. An earlier judgment of this Court in **Soman v. State of Kerala** was referred to, more specifically para 27, which reads as under:

“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.”

32. *We find the observations in para 27.5 as quoted above of some significance in the context of the facts of the present case. Thus, when a 25 year old man, who was an international cricketer, assaults a man more than twice his age and inflicts, even with his bare hands, a severe blow on his (victim’s) head, the unintended consequence of harm would still be properly attributable to him as it was reasonably foreseeable. That it would cause the death of a person is another matter since the conviction is only under Section 323 of the IPC. In that context it has been observed that even though any harm might not be directly intended, some aggravated culpability must be attached if the person suffers a grievous hurt or dies as a result thereof. Another similarity in terms of the facts of the case at hand and that of Soman²⁰ is that the Court was not greatly influenced by the fact that 26 years had passed since the incident and observed that because a long period had lapsed by the time the appeal was decided cannot be a ground to award the punishment which was disproportionate and inadequate.*

33. Among the factors to be taken note of are the “defenceless and unprotected state of victim” appropriate in the facts of the present case.

34. The US Supreme Court has also moved in the same direction in **Payne v. Tennessee** while examining the aspect of the “victim impact statement” in a case of capital offence at the time of sentencing. The court considered the aspect from the dissenting judgment in the case of **Booth v. Maryland** which emphasized on “reminding the sentencer that just as the murderer should be considered as an individual, so too the victim is an individual whose death represents a unique loss to society and in particular to his family.” The words of Justice Benjamin Cardozo in **Snyder v. Massachusetts** bring out that “justice, though due to the accused, is due to the accuser also. The concept of fairness must not be strained till it is narrowed to a filament. We are to keep the balance true.”

35. Thus, a disproportionately light punishment humiliates and frustrates a victim of crime when the offender goes unpunished or is let off with a relatively minor punishment as the system pays no attention to the injured’s feelings. Indifference to the rights of the victim of crime is fast eroding the faith of the society in general and the victim of crime in particular in the criminal justice system.

36. We noticed the aforesaid judgments to repel the contention of learned senior counsel for the respondent that the victim should have no say in the matter of enhancement of sentence.

37. In a nutshell, the aspects of sentencing and victimology are reflected in the following ancient wisdom:

It means: The person dispensing justice as per Dharmashastra should prescribe a penance appropriate to the age, the time and strength of the sinner, the penance being such that he may not lose his life and yet he may be purified. A penance causing distress should not be prescribed.”

32. **In the present case** a 65 years old man died during a quarrel between members of the same family, when allegedly bricks (size is not proved)

were thrown from the first floor. Injury, through **superficial** was suffered by the victim, who had **a heart precondition, died of shock and death as per opinion of the doctor (PM) was neurogenic and cardiogenic.**

33. The conviction in this case was under Section 323 of the Indian Penal Code and the convicts have been sentenced to suffer imprisonment for one month and pay a fine of Rs. 1,000/- (One Thousand) i.d. S.I. for one month.
34. As already discussed at length the Trial Judge has considered the evidence on record in detail and the evidence on record in detail and the same has also been analysed by this court.
35. The Trial Judge right came to the findings as to the nature of injury and also sentenced the accused accordingly.
36. In the present case, the deceased in spite of being 65 years old participated in the quarrel between the parties who are all related to each other.
37. **Conclusions:-**

The conduct of the convicts is not pardonable, but the **injury inflicted being Superficial, the death of the Abdul Wahah was due his pre condition of heart ailment with several clots/blocks.**

38. The nature of the incident gives no indication that such death was caused by an act with the intention/knowledge of causing death or

with the intention/knowledge of causing such bodily injury as is likely to cause death.

39. **CRA 630 of 2014 is dismissed.**

40. No order as to costs.

41. Let a copy of the judgment along with the lower Court records be sent to the Trial Court at once.

42. Urgent Photostat Certified copy of this judgment, if applied for, be supplied expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)