REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.319 OF 2019
(Arising out of SLP(Crl.) No. 1837 of 2015)

The State of Madhya Pradesh **Appellant(s)**

VS.

Suresh **Respondent(s)**

JUDGMENT

Dinesh Maheshwari., J

Leave granted.

2. In this appeal, the appellant-State of Madhya Pradesh has called in question the judgment and order dated 27.11.2012 in Criminal Appeal No. 260 of 1998 whereby, the High Court of Madhya Pradesh, even while upholding the conviction of accused (respondent herein) for the offence punishable under Section 304 Part II of the Indian Penal Code ('IPC'), has modified the sentence of 3 years' rigours imprisonment as awarded by the Trial Court to that of the period already undergone i.e., 3 months and 21 days.

3. The only question calling for determination in this appeal is: As to whether, in the given set of facts and circumstances, the High Court was justified in interfering with the punishment awarded by the Trial Court by reducing the same to the period of imprisonment already undergone?

4. The background aspects of the case, so far relevant for the question at hand could be noticed as follows: The prosecution case had been that on 13.05.1996, at about 4:30 p.m., the respondent assaulted his father Tulsiram with a blunt object causing fracture on the parietal region of skull; and the same night, victim succumbed to the injury at Betual Hospital. On the basis of the information received from the hospital that the deceased Tulsiram was brought to the hospital by the respondent Suresh in unconscious condition, Marg Information No. 0/30/96 was registered under section 174 Cr.P.C. However, when it was noticed from the statements of PW-3 Sawalbai, PW-6 Basanti Bai and PW-10 Sarpach Sukhlal that the respondent was seen hitting his father, he was arrested on 20.05.1996 and FIR in Crime No. 120/1996 (Ex. P-19) came to be registered at police station, Amla. After due investigation, the respondent was charge-sheeted for the offences under Sections 201 and 302 IPC.

5. In trial, the prosecution, *inter alia*, relied on the testimony of PW-3 Smt. Sawalbai who stated that while working in a field near the place of incident, she had seen the respondent assaulting his father with a lathi (wooden log). PW-2 Babulal stated that upon hearing the cries of PW-3, he saw the accused assaulting someone; he reached the spot and found

that the injured person was the father of accused; and he prevented the accused from further assaulting his father. PW-4 Dinesh alias Mathu corroborated the testimonies of PW-2 and PW-3. On the other hand, the accused-respondent attempted to suggest that his father sustained injury when he fell from the roof while putting up *khapra*.

6. On appreciation of evidence, the Trial Court rejected the defence version and found it proved beyond reasonable doubt that the respondent did cause the fatal injury in question. However, the Trial Court proceeded to hold that the act of the accused-respondent had been of culpable homicide not amounting to murder and he was guilty of the offence punishable under Section 304 Part II IPC. The Trial Court was of the view that while causing injury to the head of the deceased, the accused-respondent knew that his act was likely to cause death but he had no such criminal intention as defined in Section 300 IPC and hence, he was not guilty of the offence of murder under Section 302 IPC. The Trial Court further found that the accused furnished a wrong information about accidental injury to the victim so as to save himself from legal punishment and hence, he was also guilty of the offence under Section 201 IPC. However, for the reason that the accused stood convicted for the main offence, the Trial Court chose not to convict him for the offence under Section 201 IPC with reference to the decision of this Court in ***Kalawati v. State of Himachal Pradesh*: AIR 1953 SC 131.**

7. Having thus convicted the accused-respondent for the offence under Section 304 Part II IPC, the Trial Court found it just and proper to award him the punishment of 3 years' rigorous imprisonment while also observing that the period of detention already undergone (from 20.05.1996 to 09.09.1996) would be set off against the term of imprisonment imposed on him.

8. In appeal by the accused, the High Court of Madhya Pradesh, in its impugned judgment and order dated 27.11.2012, found no reason to consider interference in the findings recorded by the Trial Court as regards conviction for the offence under Section 304 Part II IPC but, on the question of punishment, proceeded to reduce the sentence of rigorous imprisonment from the period of 3 years to that of the period already undergone i.e., 3 months and 21 days. The relevant part of the order passed by the High Court, carrying the reasons for reduction of sentence, reads as under:

> *"5. The incident had taken place on 13.5.1996. From the perusal of the statement of eye-witnesses Babulal (PW-2), Sawla Bai (PW-3), Dinesh (PW-4) it seems that the incident had taken place at the spur of the moment. The appellant at the time of the incident was a young man aged 26 years. The appellant himself took his father namely Tulsiram to the hospital. The appellant has remained in jail for a period of three months and twenty one days i.e. from 20.05.1996. In the facts and circumstances of the case and taking into account the period which has elapsed, no useful purpose would be served in sending appellant back to jail, I therefore set aside the jail sentence awarded to the appellant under Section 304 Part II of the Indian Penal Code and instead award the sentence to the appellant for a period of imprisonment already undergone by him."*

9. Assailing the order aforesaid, learned counsel for the appellant-State has strenuously argued that the High Court has modified and reduced the sentence awarded by the Trial Court without any cogent reason and without any justification. The learned counsel would submit that the High Court has failed to appreciate the nature and gravity of the offence committed by the respondent that resulted in the death of his father and has argued for restoration of the order of the Trial Court, while relying on the decision in ***Alister Anthony Pareira v. State of Maharashtra: (2012) 2 SCC 648*** wherein, this Court has re-emphasised on the principle of proportionality in the determination of sentence for an offence. *Per contra,* the learned counsel appearing for the respondent-accused has supported the impugned order with the submissions that the same meets the ends of justice, particularly when the respondent was only 26 years of age at the time of the incident in question that occurred at the spur of moment and without any intention on the part of the respondent to cause the death of his father. Learned counsel would submit that the High Court exercising its appellate powers has reduced the sentence to the period already undergone after due consideration of all the relevant factors; and while relying on the decision of this Court in ***Jinnat Mia v. State of Assam: (1998) 9 SCC 319,*** has urged that the present matter does not call for interference by this Court.

10**.** Having heard the respective learned counsel and having examined the record with reference to the law applicable, we are clearly of the view

that in this case, the High Court has interfered with and reduced the sentence awarded by the Trial Court on rather irrelevant considerations, while ignoring the relevant factors and the governing principles for the award of punishment and hence, the order impugned cannot be sustained.

11. The respondent was tried for offence under Sections 302 and 201 IPC. With the evidence on record, it was clearly established that the respondent was author of the fatal injury in question. The Trial Court, with reference to the nature of the act of respondent and the attending circumstances, convicted him for culpable homicide not amounting to murder under Section 304 Part II IPC and let him off for the offence under Section 201 IPC because he had been convicted for the main offence. This part of the order of the Trial Court having attained finality and having not been questioned even in this appeal, we would leave the matter as regards conviction at that only. However, the question remains as to whether all the facts and circumstances of case taken together justify such indulgence that the punishment of rigorous imprisonment for a period of 3 years, as awarded by the Trial Court, be reduced to that of 3 months and 21 days? In our view, the answer to this question could only be in the negative.

12. In the case of ***State of M.P. v. Ganshyam*** **: (2003) 8 SCC 13,** relating to the offence punishable under Section 304 Part I IPC , this Court found sentencing for a period of 2 years to be to inadequate and

even on the liberal approach, found the custodial sentence of 6 years serving the ends of justice. This Court underscored the principle of proportionality in prescribing liability according to the culpability; and while also indicating the societal angle of sentencing, cautioned that undue sympathy leading to inadequate sentencing would do more harm to the justice system and undermine public confidence in the efficacy of law. This Court observed, *inter alia*, as under:

> ***"12.*** *Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, 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. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of Tamil Nadu: (1991) 3 SCC 471.*
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> ***13.*** *Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.*
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> ***14.*** *Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of*

sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

15. *After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle MCGautha v. State of California: 402 US 183: 28 L Ed 2d 711 (1071) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished.*

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17. *Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of*

> *such offences will be result-wise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.*
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> ***19.*** *Similar view has also been expressed in Ravji v. State of Rajasthan: (1996) 2 SCC 175. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. 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, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". ……"*
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> *(underlining supplied for emphasis)*

13. In the Case of *Alister Anthony Pareira* (supra), the allegations against the appellant had been that while driving a car in drunken condition, he ran over the pavement, killing 7 persons and causing injuries to 8. He was charged for the offences under Sections 304 Part II and 338 IPC; was ultimately convicted by the High Court under Sections 304 Part II, 338 and 337 IPC; and was sentenced to 3 years' rigorous imprisonment with a fine of Rs. 5 lakhs for the offence under Section 304 Part II IPC and to rigorous imprisonment for 1 year and for 6 months respectively for the offences under Section 338 and 337 IPC . Apart from other contentions, one of the pleas before this Court was that in view of fine and compensation already paid and willingness to make further payment as also his age and family circumstances, the appellant may be

released on probation or his sentence may be reduced to that already undergone. As regards this plea for modification of sentence, this Court traversed through the principles of penology, as enunciated in several of the past decisions[1] and, while observing that the facts and circumstances of the case show *'a despicable aggravated offence warranting punishment proportionate to the crime',* this Court found no justification for extending the benefit of probation or for reduction of sentence. On the question of sentencing, this Court re-emphasised as follows:-

> *"**84**. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances.*
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> *85. The principle of proportionality in sentencing a crime-doer is well entrenched in criminal jurisprudence. As a matter of law, proportion between crime and punishment bears most relevant influence in determination of sentencing the crime-doer. The court has to take into consideration all aspects including social interest and consciousness of the society for award of appropriate sentence.*
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> *(underlining supplied for emphasis)*

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1 This Court referred, amongst others, to the decisions in **State of Karnataka v. Krishnappa: (2004) 4 SCC 75; Dalbir Singh v. State of Haryana: (2000) 5 SCC 82; State of M.P. v. Saleem (2005) 5 SCC 554; Ravji v. State of Rajasthan (1996) 2 SCC 175; and State of *M. P.* v. Ghanshyam Singh (supra).**

14. Therefore, awarding of just and adequate punishment to the wrong doer in case of proven crime remains a part of duty of the Court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrong doer as also of the victim of the crime and the society at large. No strait jacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

15. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of.

16. Keeping in view the principles aforesaid, when the present matter is examined, we find that the respondent is convicted of the offence under Section 304 Part II IPC. Section 304 IPC reads as under:-

> *"**Punishment for culpable homicide not amounting to murder**.—Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*
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> *or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death."*

17. Therefore, when an accused is convicted for the offence under Part II of Section 304 *ibid.,* he could be sentenced to imprisonment for a term which may extend to a period of 10 years, or with fine, or both. In this case, the Trial Court chose to award the punishment of 3 years' rigorous imprisonment to the respondent. The punishment so awarded by the Trial Court had itself been leaning towards leniency, essentially in view of the fact that the respondent was 26 years of age at the time of the incident in question. However, the High Court further proceeded to reduce the punishment to the period already undergone (i.e., 3 months and 21 days) on consideration of the factors: (i) that the incident had taken place at spur of the moment; (ii) that the respondent was 26 years of age at the

time of incident; and (iii) that the respondent himself took his father to hospital. On these considerations and after finding that the respondent had spent 3 months and 21 days in custody, the High Court concluded that "*no useful purpose would be served in sending appellant back to jail*". We are clearly of the view that, further indulgence by the High Court, over and above the leniency already shown by the Trial Court, was totally uncalled for.

18. So far the mitigating factors, as taken into consideration by the High Court are concerned, noticeable it is that the same had already gone into consideration when the Trial Court awarded a comparatively lesser punishment of 3 years' imprisonment for the offence punishable with imprisonment for a term that may extend to 10 years, or with fine, or with both. In fact, the factor that the incident had happened at the 'spur of moment' had been the basic reason for the respondent having been convicted for the offence of culpable homicide not amounting to murder under Section 304 Part II IPC though he was charged for the offence of murder under Section 302 IPC. This factor could not have resulted in awarding just a symbolic punishment. Then, the factor that the respondent was 26 years of age had been the basic reason for awarding comparatively lower punishment of 3 years' imprisonment. This factor has no further impelling characteristics which would justify yet further reduction of the punishment than that awarded by the Trial Court. Moreover, the third factor, of the respondent himself taking his father to

hospital, carries with it the elements of pretence as also deception on the part of the respondent, particularly when he falsely stated that the victim sustained injury due to the fall. Therefore, all the aforementioned factors could not have resulted in further reduction of the sentence as awarded by the Trial Court.

19. The High Court also appears to have omitted to consider the requirement of balancing the mitigating and aggravating factors while dealing with the question of awarding just and adequate punishment. The facts and the surrounding factors of this case make it clear that, the offending act in question had been of respondent assaulting his father with a blunt object which resulted in the fracture of skull of the victim at parietal region. Then, the respondent attempted to cover up the crime by taking his father to hospital and suggesting as if the victim sustained injury because of fall from the roof. Thus, the acts and deeds of the respondent had been of killing his own father and then, of furnishing false information. The homicidal act of the respondent had, in fact, been of patricide; killing of one's own father. In such a case, there was no further scope for leniency on the question of punishment than what had already been shown by the Trial Court; and the High Court was not justified in reducing the sentence to an abysmally inadequate period of less than 4 months. The observations of the High Court that no useful purpose would be served by detention of the accused cannot be approved in this case

for the reason that the objects of deterrence as also protection of society are not lost with mere passage of time.

20. In the given set of facts and circumstances, the observations in *Jinnat Mia* (supra) on the powers of the High Court to review the entire matter in appeal and to come to its own conclusion or that the practice of this Court not to interfere on questions of facts except in exceptional cases shall have no application to the present case, particularly when we find that the High Court has erred in law and has not been justified in reducing the sentence to a grossly inadequate level while ignoring the relevant considerations.

21. To sum up, after taking into account all the circumstances of this case, we are of the considered view that the High Court had been in error in extending undue sympathy and in awarding the punishment of the rigorous imprisonment for the period already undergone i.e., 3 months and 21 days for the offence under Section 304 Part II IPC. In our view, there was absolutely no reason for the High Court to interfere with the punishment awarded by the Trial Court, being that of rigorous imprisonment for 3 years.

22. For what has been discussed hereinabove, this appeal succeeds and is allowed; the impugned judgment and order of the High Court dated 27.11.2012 is set aside and that of the Trial Court dated 06.01.1998 is restored. The respondent shall surrender before the Court concerned within a period of 4 weeks from today and shall undergo the remaining

part of the sentence. In case he fails to surrender within the period aforesaid, the Trial Court will take necessary steps to ensure that he serves out the remaining part of sentence, of course, after due adjustment of the period already undergone.

.....J.
(ABHAY MANOHAR SAPRE)

.....J.
(DINESH MAHESHWARI)

New Delhi
Dated: 20th February, 2019.