REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2022

(Arising out of Special Leave Petition (Criminal) No. of 2022
Arising out of Diary No. 21596/2020)

State of Rajasthan …Appellant

Versus

Banwari Lal and another …Respondents

J U D G M E N T

M.R. SHAH, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.05.2015 passed by the High Court of Judicature for Rajasthan at Jaipur in S.B. Criminal Appeal No. 36/1993, by which the High Court has partly allowed the said appeal and while maintaining the conviction of respondent no.1 herein for the offence under Section 307 IPC, has reduced the sentence from three years rigorous imprisonment to the period already undergone by him in confinement (44 days), and so

far as the accused – Mohan Lal is concerned, the High Court has not interfered with the order of the trial Court convicting him under Section 324 IPC, and releasing him on probation under Section 360 Cr.P.C., the State has preferred the present appeal.

3. That the respondents herein and others were tried by the learned trial Court for the offences under Sections 147, 148, 149, 447 & 323 IPC and also under Section 307 IPC (so far as accused Banwari Lal – respondent no.1 herein is concerned). Respondent No.1 herein – Banwari Lal was tried for the offence under Section 307 IPC for having caused grievous injuries on the skull/middle of the head of the injured person – Phool Chand. That the injured Phool Chand sustained one lacerated wound of size 10 x 1 cms bone deep extending up to brain membrane in the centre of the skull and the bone was emerging out. He also sustained other injuries.

3.1 On appreciation of evidence, the learned trial Court held that the prosecution has proved beyond reasonable doubt that the injuries suffered by the injured Phool Chand which were caused by the accused – Banwari Lal were sufficient for causing death, in the ordinary course of nature. By observing so, the learned trial Court convicted the respondent – Banwari Lal for the offence under Section 307 IPC and sentenced him to undergo three years rigorous imprisonment. However,

so far as the accused Mohan Lal is concerned, the learned trial Court, though convicted him, but granted the benefit of probation.

3.2 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court, the respondents – accused Banwari Lal and Mohan Lal, both, preferred an appeal before the High Court. Before the High Court, the main submissions were made on behalf of the accused – Banwari Lal, in which the respondents did not challenge their conviction but prayed to reduce the sentence so far as the accused Banwari Lal is concerned, on the grounds that occurrence took place on 31.03.1989, i.e., about 26 years ago; that they were facing trial since last 26 years; and when the occurrence took place, they were young and now they are old/aged persons. It was also submitted on behalf of the accused Banwari Lal that as the benefit of probation has been given to the accused Mohan Lal, he may also be given the benefit of probation. Thereafter, without assigning any further reasons whatsoever and without considering the nature or gravity of offence and the serious injuries caused by the accused Banwari Lal on the injured Phool Chand, the High Court has partly allowed the said appeal and while maintaining the conviction, has reduced the sentence to the period already undergone by him (44 days). The High Court has dismissed the appeal in respect of the accused Mohan Lal.

3.3 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, interfering with the sentence imposed by the learned trial Court and reducing it to the period already undergone (44 days) from three years rigorous imprisonment imposed by the learned trial Court insofar as accused Banwari Lal is concerned, as also, confirming the order of probation insofar as accused Mohan Lal is concerned, the State has preferred the present appeal.

3.4 There is a huge delay of 1880 days in preferring the appeal and therefore a separate criminal miscellaneous application is filed by the State, praying to condone the delay.

4. Shri Vishal Meghwal, learned Advocate appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the impugned judgment and order passed by the High Court reducing the sentence to the period already undergone (44 days) from three years' rigorous imprisonment imposed by the learned trial Court is unsustainable.

4.1 It is vehemently submitted that as such there are no specific reasons assigned by the High Court while reducing the sentence imposed by the trial Court.

4.2 It is contended that while reducing the sentence the High Court has not at all dealt with and/or considered the mitigating and aggravating

circumstances, which are relevant for the purpose of imposing an appropriate punishment/sentence.

4.3 It is submitted that the High Court has not at all considered the gravity of the offence and the serious injuries sustained by the victim/injured Phool Chand.

4.4 It is further submitted that when the judicial discretion was exercised by the learned trial Court sentencing the accused to undergo three years' rigorous imprisonment (Banwari Lal) for the offence under Section 307 IPC, the same ought not to have been interfered with by the High Court, more particularly, when the appeal challenging the conviction was not pressed.

4.5 Making the above submissions and relying upon the decisions of this Court in the cases of *State of Rajasthan v. Mohan Lal, reported in (2018) 18 SCC 535; State of Madhya Pradesh v. Udham, reported in (2019) 10 SCC 300; and Satish Kumar Jayanti Lal Dabgar v. State of Gujarat, reported in (2015) 7 SCC 359,* it is prayed to allow the present appeal, quash and set aside the impugned judgment and order passed by the High Court and restore the judgment of the learned trial Court.

5. The present appeal is vehemently opposed by Shri Abhishek Gupta, learned Advocate appearing on behalf of the respondents.

5.1 Shri Abhishek Gupta, learned counsel appearing on behalf of the accused has vehemently submitted that there is a huge delay of 1880

days in preferring the appeal against the impugned judgment and order passed by the High Court. That the accused have resettled in their lives and their conduct has since been satisfactory and after the impugned judgment is passed, they have not indulged in any criminal activity and the occurrence is of the year 1989, to revive the proceedings would be extremely harsh and unjustified. Therefore, it is prayed not to condone the huge delay of 1880 days in preferring the appeal.

5.2 On merits, learned counsel appearing on behalf of the accused has vehemently submitted that while reducing the sentence the High Court has considered the submissions on behalf of the accused Banwari Lal that the occurrence took place about 26 years ago and that the accused were facing trial since last 26 years and that when the occurrence took place in the year 1989, the accused were young and now they are aged persons. It is submitted that the aforesaid can be said to be relevant considerations while reducing the sentence to the period already undergone (44 days).

5.3 Learned counsel appearing on behalf of the accused has further submitted that insofar as granting the benefit of probation to the accused Mohan Lal is concerned, the same was granted by the learned trial Court against which the State did not prefer any appeal before the High Court. It is therefore submitted that when the High Court by the impugned judgment and order has dismissed the appeal preferred by the accused

Mohan Lal, it is not open for the State to now challenge the order granting benefit of probation to the accused Mohan Lal, when the same was not challenged by the State before the High Court.

5.4 Making the above submissions, it is prayed to reject the application for condonation of delay as well as the appeal even on merits.

6. We have heard learned counsel for the respective parties at length.

At the outset, it is required to be noted that the accused Banwari Lal was convicted by the learned trial Court for the offence under Section 307 IPC for having caused serious injuries on the vital part of the body of the victim/injured Phool Chand. That the injured Phool Chand sustained one lacerated wound of size 10 x 1 cms bone deep extending up to brain membrane in the centre of the skull and the bone was protruding. Thereafter, having found the accused Banwari Lal guilty, the learned trial Court sentenced him to undergo three years' rigorous imprisonment. In an appeal before the High Court, the accused did not challenge the conviction, but only prayed the Court to reduce the sentence to the period already undergone by him by submitting that occurrence took place on 31.03.1989, i.e., about 26 years ago; that they were facing trial since last 26 years; and when the occurrence took place, they were young and now they are aged persons. The High Court, without any detailed analysis of the facts of the case, nature of injuries caused,

weapon used, has simply reduced the sentence to the period already undergone (44 days). Relevant part of the impugned judgment reads as under:

> "I have heard learned counsel for the parties and carefully perused the relevant material on record.
>
> Looking to the facts and circumstances of the case, I do not think it just and proper to interfere in the impugned judgment and order passed by the trial court qua appeal filed by appellant Mohan Lal is concerned.
>
> So far as the appeal filed by accused appellant Banwari Lal is concerned, keeping in mind the arguments of learned counsel for the appellants that accused appellant Banwari Lal is facing the trial for the last 26 years; he has remained in custody for 44 days during trial; he is not the previously convicted person, in my view, ends of justice would be met if the sentence awarded to the appellant Banwari is reduced to the period already undergone by him in confinement, as indicated herein-above. Hence, this appeal is disposed of with the following directions:
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> i) The appeal filed by the appellant Banwari is partly allowed;
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> ii) His conviction is maintained. His sentence is reduced and he is released for the period already undergone by him in confinement, as indicated above.
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> iii) The sentence of the accused appellant Banwari Lal was suspended and he is on bail. He need not to surrender and his bail bonds stand cancelled.
>
> iv) So far as appeal filed by accused Mohan Lal is concerned, since he has already been given the benefit of probation, I do not find any force in his appeal and consequently, the appeal, qua accused Mohan Lal, is dismissed after confirming the judgment and order passed by the trial court.
>
> Impugned judgment stands modified, as indicated hereinabove."

6.1 The manner in which the High Court has dealt with the appeal and has reduced the sentence, without adverting to the relevant facts and without considering the gravity and nature of offence, is unsustainable. The High Court has dealt with the appeal in a most casual and cavalier

manner. The judgment and order passed by the High Court reducing the sentence is nothing but an instance of travesty of justice and against all the principles of law laid down by this Court in a catena of decisions on imposing appropriate punishment/suitable punishment.

7. At this stage, few decisions of this Court on principles for sentencing and tests for awarding an appropriate sentence in a given case are required to be referred to and considered.

i) In the case of *Mohan Lal (supra)*, the High Court modified the judgment and order passed by the learned trial Court and sentenced the accused to the period already undergone by him, which was only six days and absolutely no reasons, much less valid reasons, were assigned by the High Court. While setting aside the order passed by the High Court, this Court has observed in paragraphs 9 to 13 as under:

> **"9.** The High Court simply brushed aside the aforementioned material facts and sentenced the accused to the period already undergone by him, which is only 6 days in this case. In our view, the trial court and the High Court have taken a lenient view by convicting the accused for offences under Sections 325 and 323 IPC. Absolutely no reasons, much less valid reasons, are assigned by the High Court to impose the meagre sentence of 6 days. Such imposition of sentence by the High Court shocks the judicial conscience of this Court.
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> **10.** Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the

statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. 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.

11. This Court in *Soman* v. *State of Kerala* [*Soman* v. *State of Kerala*, (2013) 11 SCC 382 : (2012) 4 SCC (Cri) 1] observed thus: (SCC p. 393, para 27)

> "*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."

12. The same is the verdict of this Court in *Alister Anthony Pareira* v. *State of Maharashtra* [*Alister Anthony Pareira* v. *State of Maharashtra*, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] wherein it is observed thus: (SCC p. 674, para 84)

> "*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."

13. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance."

ii) In the case of Udham (supra), in paragraphs 11 to 13, it is observed and held as under:

> **"11.** We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong sentencing undertaken by

the courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.

12. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (*i*) bodily integrity of the victim; (*ii*) loss of material support or amenity; (*iii*) extent of humiliation; and (*iv*) privacy breach."

In the said decision, this Court again cautioned against the cavalier manner in which sentencing is dealt with in certain cases.

iii) In the case of *Satish Kumar Jayanti Lal Dabgar (supra)*, this Court has observed and held that the purpose and justification behind sentencing is not only retribution, incapacitation, rehabilitation but deterrence as well.

8. Applying the law laid down by this Court on principles for sentencing, to the facts of the case on hand, we are of the opinion that the approach of the High Court is most cavalier. Therefore, the order of the High Court merits interference by this Court. Merely on the technical ground of delay and merely on the ground that after the impugned judgment and order, which is unsustainable, the accused have resettled in their lives and their conduct has since been satisfactory and they have not indulged in any criminal activity, is no ground not to condone the delay and not to consider the appeal on merits. Hence, the delay of 1880 days in preferring the appeal is condoned.

9. In the matter on hand, it is proved that the victim Phool Chand has sustained a grievous injury on vital portion of body, i.e, head and there was a fracture on the skull. Doctor has also opined that the injury was life-threatening and the injury suffered by the injured Phool Chand was, in the ordinary course of nature, sufficient to cause death. As per Section 307 IPC, whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life or

to such punishment as mentioned in Section 307 IPC. Thus, in the present case, the accused could have been sentenced to undergo life imprisonment and/or at least up to ten years. The learned trial Court sentenced the accused Banwari Lal to undergo three years rigorous imprisonment. Therefore, as such, the learned trial Court had already taken a very lenient view while imposing the sentence of only three years' rigorous imprisonment. Therefore, the High Court ought not to have interfered with the same. Though the High Court has not stated anything, from the impugned judgment and order passed by the High Court, it appears that what weighed with the High Court is the submission on behalf of the accused that the occurrence of the incident took place on 31.03.1989, i.e., about 26 years ago; that they were facing trial since last 26 years; and when the occurrence took place, they were young and now they are aged persons. The aforesaid cannot be the sole consideration while awarding an appropriate and/or adequate sentence. Even with regard to the submission on behalf of the accused that there is no minimum sentence under Section 307 IPC and that the sentence would be up to ten years, the same is answered by holding that discretion has to be exercised judiciously and the sentence has to be imposed proportionately and looking to the nature and gravity of the offence committed and by considering the principles for imposing sentence, referred to hereinabove.

10. Merely because a long period has lapsed by the time the appeal is decided cannot be a ground to award the punishment which is disproportionate and inadequate. The High Court has not at all adverted to the relevant factors which were required to be while imposing appropriate/suitable punishment/sentence. As observed hereinabove, the High Court has dealt with and disposed of the appeal in a most cavalier manner. The High Court has disposed of the appeal by adopting shortcuts. The manner in which the High Court has dealt with and disposed of the appeal is highly deprecated. We have come across a number of judgments of different High Courts and it is found that in many cases the criminal appeals are disposed of in a cursory manner and by adopting truncated methods. In some cases, the convictions under Section 302 IPC are converted to Section 304 Part I or Section 304 Part II IPC without assigning any adequate reasons and solely recording submissions on behalf of the accused that their conviction may be altered to Section 304 Part I or 304 Part II IPC. In cases, like the present one, the accused did not press any challenge to the conviction and prayed for reduction in sentence and the same is considered and an inadequate and inappropriate sentence has been imposed without assigning any further reasons and without adverting to the relevant factors which are required to be considered while imposing appropriate punishment/sentence. We deprecate such practice of

disposing of criminal appeals by adopting shortcuts. Therefore, the impugned judgment and order passed by the High Court reducing the sentence to the period already undergone (44 days) from three years rigorous imprisonment imposed by the learned trial Court in respect of accused Banwari Lal is absolutely unsustainable and the same deserves to be quashed and set aside.

11. Now so far as the appeal preferred by the State against the accused Mohan Lal is concerned, it is required to be noted that even the learned trial Court granted the benefit of probation to the said accused, against which the State did not prefer any appeal before the High Court and it was the accused who preferred appeal, which came to be dismissed. Therefore, the State ought not to have preferred the present appeal against the accused Mohan Lal, when his appeal before the High Court came to be dismissed and the conviction came to be confirmed. If the State was aggrieved against granting the benefit of probation, in that case, in the first instance, the State ought to have preferred an appeal before the High Court.

12. In view of the aforesaid discussion and for the reasons stated above, the present appeal is allowed insofar as the accused Banwari Lal is concerned. The impugned judgment and order passed by the High Court interfering with the order of sentence imposed by the learned trial Court and sentencing the accused Banwari Lal to undergo

the sentence to the period already undergone by him (44 days) from three years' rigorous imprisonment imposed by the learned trial Court under Section 307 IPC is hereby quashed and set aside. The judgment and order passed by the learned trial Court sentencing the accused Banwari Lal to undergo three years' rigorous imprisonment under Section 307 IPC is hereby restored. The accused Banwari Lal is directed to surrender before the appropriate jail authority/concerned Court, within a period of four weeks from today, to undergo the remaining sentence.

Insofar as the appeal preferred by the State against the accused Mohan Lal is concerned, the same is hereby dismissed.

…….J.
[M.R. SHAH]

NEW DELHI;
APRIL 08, 2022.

…….J.
[B.V. NAGARATHNA]