MANGAL SINGH & ANR. A

v.

KISHAN SINGH & ORS.

[Criminal Appeal No.1858 of 2008]

NOVEMBER 21, 2008 B

[TARUN CHATTERJEE AND AFTAB ALAM, JJ.]

Penal Code, 1860:

ss.307 and 326 – High Court converting conviction from C
s.307 to s.326 and substituting custodial sentence with fines – Held: It will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to victim of crime and that, as a rule, all offences falling u/s 326 would be less serious than those falling u/s 307 and would consequently D
attract lighter sentence – In the instant case, from the injuries suffered by victim, it is evident that though the accused did not intend to kill him, they surely wanted to leave him crippled for the rest of his life – Therefore, alteration of conviction by High Court cannot be said to be unjustified – But, the High E
Court erred in waiving off the custodial sentence – Both the accused must serve rigorous imprisonment for two years in addition to a fine of Rs.3500/- each – Sentencing – Balancing the factors of delay in trial and injuries caused to victim.

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The complainant and the injured victim filed the instant appeal challenging the judgment and order of the High Court acquitting one of the three accused convicted by the trial court of the charge u/s 307 IPC, converting the conviction of the remaining two accused from s.307 to G
326 IPC and reducing their sentence from five years rigorous imprisonment, as awarded by the trial court, to the period already undergone which was 4 months and

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A 3 months respectively, and in lieu of imprisonment imposing a fine of Rs.3500/- on each of the two accused. The question for consideration before the Court was as to whether the High Court was justified in altering the conviction of respondents 1 and 3 from s.307 to s.326 B IPC and reducing their sentence to fines only. In so far as the acquittal of respondent no.2 was concerned, the Court observed that the judgment of the High Court called for no interference.

C Partly allowing the appeal, the Court

HELD: 1. The injury report shows that all the injuries inflicted on the victim were either on his legs or arms. Indeed a number of injuries were quite grievous but the D accused, while assaulting their victim ruthlessly, were careful not to give any blow on any vital part of the body apparently to make sure that it would not lead to his death. The Doctor in his statement before the court did not say that the injuries were sufficient in the ordinary course of E nature to cause death. Having regard to the evidence on record, the alteration of the respondents' conviction by the High Court from s.307 to s.326 cannot be said to be wrong and unjustified. [Paras 10 and 11] [511-B-D]

F 2.1. As regards the sentence, the High Court has erred in balancing the relevant factors. Any inordinate delay in conclusion of a criminal trial undoubtedly has highly deleterious effect on the society generally and particularly on the two sides to the case. But it will be a G grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. There is, therefore no reason to give all the benefits on account of the delay in trial to the accused and to completely deny justice to the victim of the offence. In the H instant case, there is nothing to indicate that the

appellants or the prosecution were responsible for the delay in trial. Similarly, it is a mistake to think that, as a rule, all offences falling u/s 326 IPC would be less serious than the offences falling u/s 307 IPC and would consequently attract lighter sentence. From the injuries suffered by the victim, it is evident that though the respondents did not intend to kill him altogether, they surely wanted to leave him crippled for a lifetime. [Paras 13, 12 and 14] [512-B-D-E-F-G-H]

2.2. In view of the nature of injuries suffered by the victim, the sentence of rigorous imprisonment is restored and it is directed that respondents 1 and 3 must serve rigorous imprisonment for two years in addition to the fine of Rs.3,500/- imposed by High Court. On realisation of the amounts of fine, Rs.6000/- would be paid to the victim. [Para 12 and 14] [511-E; 513-A-B]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1858 of 2008.

From the final Judgment and final Order dated 18.8.2005 of the High Court of Madhya Pradesh Bench at Gwalior in Crl. Appeal No. 283 of 1998.

Savitri Pandey and P.P. Singh for the Appellants.

S.K. Dubey Rajesh, Naveen Sharma and B.S. Banthia for the Respondents.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Heard counsel for the parties

2. Leave granted

3. Appellant no.1 is the informant of the case and appellant

A no.2 is his father, the injured victim of the offence. They filed this appeal against the judgment and order dated 18 August 2005 passed by the Gwalior bench of the Madhya Pradesh High Court in criminal appeal no.283 of 1998. Before the High Court there were three appellants (respondents before this B Court) who were convicted by the trial court under section 307 of Penal Code and sentenced to rigorous imprisonment for five years and fine of rupees 1000=00 each; in case of default in payment of fine they were directed to undergo simple imprisonment for three months. The High Court, by the judgment C coming under appeal, acquitted Daulat Singh (Appellant no.2 before the High Court) and altered the conviction of Kishan Singh and Devilal (appellants 1 and 3 before the High Court and respondent 1&3 before this Court) from section 307 to section 326 of the Penal Code and reduced their custodial D sentence to the respective periods that they had already undergone. In lieu of imprisonment, the High Court punished them with fine of rupees 3500=00 each with the direction that in default of payment of fine they would undergo simple imprisonment for six months. The High Court further directed E that on realisation of the amounts of fine, Rs.5000=00 should be paid to the injured victim Omkar Lal. At the time of the High Court judgment Kishan Singh (respondent no.1) had served about four months in jail and Devi Lal (respondent no. 3) about three months.

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4. On hearing counsel for the parties we are satisfied that in so far as the acquittal of Daulat singh (respondent no.2) is concerned the judgment of the High Court calls for no interference. The limited question for consideration is whether G the High Court was justified in altering the conviction of the other two respondents from section 307 to section 326 of the Penal code and reducing their sentence to fines only.

5. We propose to state here only such facts that are

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germane to the limited issue. A

6. According to the prosecution case, as made out in the first information report lodged by appellant no.1, on 14 July 1996 at about quarter past ten in the morning while the informant and his father were going through the jungle they were B ambushed by the accused persons, including the three respondents in this appeal. Among the accused the three respondents were armed with Pharsas and the other four were carrying lathis. All the seven accused assaulted the informant's father Omkar Lal with Pharsas and lathis on his legs and hands. C While beating him the accused also declared their intent not to leave him alive.

7. All the seven accused were put on trial on charges under Sections 307, 341, 147, 148 read with Section 149 of the Penal D Code. The Trial court by judgment and order dated 27 September 1998 passed in Sessions Trial no. 327/1996 acquitted the four accused who were alleged to be armed with lathis but convicted the three respondents under section 307 of the Penal Code and passed sentence on them as stated E above. In appeal the High Court modified the conviction and sentence as noted above.

8. Learned counsel for the appellants submitted that having regard to the medical evidence and the nature of injuries F the Trial Court had rightly convicted the respondents under section 307 and the High Court erred in altering the conviction under section 326 of the Code. Learned counsel placed strong reliance on the evidence of PW 3, Dr. S. O. Bhola who had found five incised injuries on the hands and legs of Omkar lal G and PW 7 Dr. Sitaram Singh Raghuvanshi who on the basis of X-ray examination of the different injuries of Omkar lal deposed before the Trial Court that there were fractures of left radius, right ulna, right fibula and left fibula bones. Counsel further submitted that Dr. Bhola PW 3 stated before the Trial Court that H

A in case no medical care was provided the injured person could have died. Counsel submitted that the injuries sustained by appellant no. 2 and the evidences of the two doctors clearly indicated that the accused intended to kill him and he could survive only due to timely medical help.

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9. The injuries found on the person of appellant no. 2 are enumerated in the judgment of the trial court; those were as follows:

C "[1] one incised wound 3 x 1 x bone deep on the right forearm and swelling on the back side and depth was upwards;

[2] Contusion 4 x 1 cm. on the right forearm on the upper portion and possibility of fracture on the back side;

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[3] Incised wound 10 x 2 x bone deep below the right leg and depth downwards and possibility of fracture;

[4] Incised wound 3 x 1 x bone deep below the right leg and 1/3rd portion (sic) deep inside;

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[5] Contusion 3 x 1 cm. on the right leg on front portion;

[6] Incised wound 5 x 5 x bone deep below the right side left and on 1/3rd portion in front;

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[7] Incised wound 4 x 5 x bone deep below the left leg on front side;

[8] Lacerated wound 5 x 5 x bone deep above ankle joints on 1/3rd portion and chances of fracture;

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[9] Incised would 3 x 1 x bone deep below the left leg on 1/3rd portion on outer side and depth inside and upwards;

[10] Incised wound 4 x 1 x bone deep behind the left forearm and depth inside and upwards; and

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[11] Contusion 5 x 1 x bone deep behind the left forearm and the general condition of the patient was bad." A

10. The injury report shows that all the injuries inflicted on appellant no. 2 were either on his legs or arms. Indeed a number of injuries were quite grievous but it seems the accused were careful not to give any blow on any vital part of the body. Had the intention been to kill him one or two blows on the head or neck would have served the purpose. It seems while assaulting him ruthlessly the accused aimed all the blows on his legs and arms apparently to make sure that that would not lead to his death. The Doctor stated before the court that the injured might have died if medical care was not given to him but he didn't say the injuries were sufficient in the course of nature to cause death. B C

11. Having regard to the evidence on records we are satisfied that the alteration of the respondents' conviction by the High Court from Sec. 307 to 326 cannot be said to be wrong and unjustified. D

12. But the same view cannot be taken on the question of sentence. In view of the nature of injuries suffered by appellant no.2 only a fine of rupees 3500=00 appears wholly inadequate. In certain circumstances the court may not feel inclined to send the convict to jail and the offence being an old one may be a relevant consideration. But in such cases the custodial sentence should be substituted by heavy fine; something that should pinch the offender and make him feel and recall the offence committed by him. At the same time that should appear to the victim of the offence as at least some punishment to the offender. Further, in a given case there may be considerations that may outweigh the argument in favour of not sending the offender to jail simply because the offence was committed long ago. In this case we feel the High Court has erred in balancing the relevant factors. The High Court seems to have waived off E F G H

A the custodial sentence and let off the respondents with a modest fine mainly on two considerations. One, that the offence was committed in the year 1996 and it would serve no useful purpose to send the respondents to jail after ten years of the occurrence. And two, the respondents being convicted of the B offence of causing grievous hurt in place attempted murder. We are unable to agree with the High Court on both the counts. Any inordinate delay in conclusion of a criminal trial undoubtedly has highly deleterious effect on the society generally and particularly on the two sides to the case. But it will be a grave mistake to C assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases the victim may suffer even more than the accused. There is, therefore no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of D the offence. In this case there is nothing to indicate that the appellants or the prosecution were responsible for the delay in trial. We are, therefore of the view that the High Court was not right in substituting the custodial sentence of the respondents to only fines of rupees 3500=00.

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13. Coming to the second reason weighing with the High Court, it is a mistake to think that as a rule all offences falling under section 326 would be less serious than the offences falling under section 307 of the Penal Code and would F consequently attract lighter sentence. An offence under section 326 may be actually more serious than another falling under section 307 of the Code. For instance, acid thrown on the face of a young, unmarried girl would come under section 326 but it would be far more serious than a firearm shot missing the G victim that would fall under section 307 of the Code.

14. From the injuries suffered by appellant no.2 it is evident that though the respondents did not intend to kill him altogether they surely wanted to leave him crippled for a lifetime. In our H opinion therefore the High Court was not right in letting them

off on completing sentence of imprisonment of merely four months and three months respectively. We accordingly restore the sentence of rigorous imprisonment given to the respondents 1&3 and direct that they must serve rigorous imprisonment for two years in addition to the fine of Rs.3,500 imposed by High Court; in case of default in payment of fine the respondents would suffer simple imprisonment for six months. On realisation of the amounts of fine Rs.6000=00 would be paid to appellant no.2

15. In the result the appeal is partly allowed as indicated above.

R.P. Appeal partly allowed.