A STATE OF M.P.

v.

KASHIRAM & ORS.

(Criminal Appeal No. 191 of 2009)

FEBRUARY 2, 2009

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[DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.]

Penal Code, 1860 – s.307 – Applicability of – Discussed C *– Held: An accused charged under s.307 cannot be acquitted merely because injuries inflicted on the victim were in the nature of a simple hurt – Determinative question is intention or knowledge, as the case may be, and not nature of the injury.*

D *Sentence/Sentencing – Just and appropriate sentence – Duty of Court – Held: Courts required to award proper sentence having regard to nature of the offence and the manner in which it was executed or committed – Undue sympathy to impose inadequate sentence would harm the* E *justice system and undermine public confidence in the efficacy of law*

According to the prosecution, on account of an earlier enmity, the respondents tied the hands and legs of PW5, pressed his mouth with the help of clothes and F **thereafter chopped off the lower part of his left leg. The respondents were allegedly armed with rifle, sticks and axe. The trial court held the respondents guilty under s.307 r/w ss.149 and 148 IPC and sentenced each of them to undergo rigorous imprisonment for five years for the** G **main offence and 6 months rigorous imprisonment for the ancillary offences. On appeal, the High Court held that chopping of the leg from the body could not be treated sufficient to cause death and appropriate conviction would thus be under s.326 r/w s.149 IPC and thereafter**

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reduced the custodial sentence to the period already undergone. A

In appeal to this Court, it was contended that the High Court had completely overlooked the gruesome nature of the offence and the evidence of PW1, the Doctor that the injury could have caused death. B

Allowing the appeal, the Court

HELD: 1.1. To justify a conviction under s.307 IPC, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled with some overt act in execution thereof. [Para 9] [814-E-H] C D E F G

1.2. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in s.307. Therefore, an accused charged under s.307 IPC cannot be acquitted H

A merely because the injuries inflicted on the victim were in the nature of a simple hurt. [Para 10] [815-A-C]

1.3. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances B that the injury inflicted by the accused was simple or minor will not by itself rule out application of s.307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury. [Para 12] [815-E]

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State of Maharashtra v. Balram Bama Patil and Ors. (1983) 2 SCC 28; *Girija Shanker v. State of Uttar Pradesh* (2004) 3 SCC 793; *R. Parkash v. State of Karnataka* JT (2004) 2 SC 348 and *State of Madhya Pradesh v. Saleem* D @ *Chamaru & Anr.* (2005) (5) SCC 554, relied on.

2.1. 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, E 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. [Para 13] [815-F-G]

F 2.2. 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 G balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. No formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate H 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. [Para 14] [815-H; 816-A-D]

2.3. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. [Para 15] [816-E]

2.4. 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 meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. [Para 16] [816-F-H]

2.5. 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

A 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". [Para 17] [817-A-B]

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Sevaka Perumal etc. v. State of Tamil Naidu AIR (1991) SC 1463, relied on.

Dennis Councle MCGDautha v. State of Callifornia 402 US 183: 28 L.D. 2d 711, referred to.

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3.1. In the present case, the High Court completely overlooked the evidence on record and the impugned judgment passed by it shows total non-application of mind. PW1 had noted that 1/3 of the leg was chopped off D below the knee. He had categorically stated that the injury could have caused death. The Radiologist (PW14) clearly stated that the aforesaid chopping of the leg was grievous in nature. With some strange logic the High Court observed that merely on the testimony of PW1 it E cannot be assumed that the injury was sufficient to cause death in ordinary course of nature. The evidence of PW5 clearly shows the gruesome nature of the attack and the intention of the accused persons. The trial court noticed that the leg was chopped out between the knee and the F ankle. [Paras 6 and 7] [813-D-H; 814-A]

3.2. It is baffling as to how the High Court uniformly directed reduction of sentence to the period already undergone. There was no similarity in the period of sentence already suffered by the accused persons when G the High Court passed the impugned judgment. [Paras 18 and 19] [817-C-F]

3.3. Looked at from any angle, the judgment of the High Court is clearly unsustainable. The judgment of the H trial court stands restored so far as conviction as well as

the sentences are concerned. [Para 20] [817-G] A

Case Law Reference

(1983) 2 SCC 28	**relied on**	**Para 11**
(2004) 3 SCC 793	**relied on**	**Para 11**
JT (2004) 2 SC 348	**relied on**	**Para 11**
(2005) (5) SCC 554	**relied on**	**Para 11**
AIR (1991) SC 1463	**relied on**	**Para 13**
402 US 183: 28 L.D. 2d 711	**referred to**	**Para 14**

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.191 of 2009.

From the Judgment and Order dated 2.5.2006 of the High Court of Madhya Pradesh at Jabalpur in Crl. Appeal No. 851 of 1990. D

Vibha Datta Makhija for the Appellant.

Shiv Sagar Tiwari for the Respondents.

The Judgment of the Court was delivered by E

DR. ARIJIT PASAYAT, J.1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Madhya Pradesh High Court. The respondents faced trial for alleged commission of offences punishable under Section 307 read with Sections 149 and 148 of the Indian Penal Code, 1860 (in short the`IPC'). Learned Additional Sessions Judge, Shihore, found the accused respondents guilty and sentenced each to undergo rigorous imprisonment for five years with fine and 6 months rigorous imprisonment for the other two offences. By the impugned judgment the High Court held that the appropriate conviction would be under Section 326 read with Section 149 IPC. Custodial sentence was reduced to the period already undergone, while the fine amount of Rs.500/- was enhanced to F G H

A Rs.20,000/-.

3. Prosecution version as unfolded during trial is as follows:

On 21.7.1987 at about 4 O'clock in the evening the B complainant- victim Jai Singh (PW5) was at the grass field for the purpose of grazing the cattle. The wife of respondent Lila Kishan and wife of Bapulal came there to collect some leaves in the field. Thereafter on account of some earlier enmity the respondents armed with rifle, sticks and axe came there and C the accused Lilakishan, Bapu and Kashiram caught hold of the said victim while other accused Jagannath and Amar Singh tied his hands and legs by turban and accused Laakhan with the help of clothes pressed his mouth. Thereafter, his legs were caught by the respondents Bapu and Lila Kishan, while D Kashiram chopped off the lower part of the left leg. Gangaram stood there with rifle. The victim sustained injuries on his back, right eye and left leg. After the incident the accused persons ran away from the spot. However, the victim reached the field of Chain Singh and mentioned the incident to him. Umrao Singh E and Roop Singh took him to his home. They called the watchman and mentioned him the incident. Due to heavy rain, Jai Singh lodged the report to Police, Ahmadpur on 22.7.1988 at 6.40. On registering the offence, the victim was referred to hospital. The M.L.C. Report was prepared. He was admitted F in the hospital and remained under treatment. On completion of the investigation, the accused persons were charge sheeted under Sections 147, 148, 149 and 326 and 307 IPC.

The Trial court believed the evidence of the victim PW 5 and also the other evidences brought on record and recorded G conviction and imposed sentences as aforestated. The accused persons preferred an appeal before the High Court where the basic stand was that offence under Section 307 IPC is not made out. The High Court held that there was no material on record to show that the injury was sufficient to cause death H in the ordinary course of nature. It was observed that chopping

of the leg from the body cannot be treated sufficient to cause death. As noted above with the aforesaid observation the conviction and the sentence were altered. A

4. In support of the appeal learned counsel for the appellant-State submitted that the High Court has completely overlooked the gruesome nature of the offence. It has also overlooked the evidence of PW1, the Doctor that the injury could have caused death. B

5. Learned counsel for the respondent on the other hand supported the judgment of the High Court. C

6. With dismay we observe that the High Court has completely overlooked the evidence on record and the impugned judgment shows total non-application of mind. The High Court observed that the doctor has not stated that the injury was sufficient to cause death in the ordinary course of nature. D PW 1 had noted that 1/3 of the leg was chopped off below the knee. He had categorically stated that the injury could have caused death. The Doctor (PW14) i.e. the Radiologist clearly stated that the aforesaid chopping of the leg was grievous in nature. With some strange logic the High Court observed that E merely on the testimony of PW1 it cannot be assumed that the injury was sufficient to cause death in ordinary course of nature.

7. The evidence of PW5 the victim clearly shows the gruesome nature of the attack and the intention of the accused persons. According to him, accused Ram Singh and Bapulal F caught hold of him. He was laid down on the ground and the accused Krishan Lal chopped out the left foot and Ram Singh caught hold of his left leg and Bapulal caught hold of his right leg, Arjun caught hold of his leg and Krishan Lal kept his legs on his left hand and put clothes in his mouth and caught hold G of his head. Leela Krishan said that his foot jaw has been chopped off and the heels should also be chopped out. Accused Suraj Singh kept his leg on a log of wood and Leela Krishan chopped out his feet by axe from above the ankle. The trial court noticed that the leg was chopped out between the H

A knee and the ankle. Krishan Lal asked Ram Singh to keep the chopped pieces of the leg in the bag and Ram Singh picked up the pieces of legs and kept them in the bag. Though accused Arjun Singh asked that both his eyes should be taken out, accused Ganga Ram told him that chopping of his one leg
B was sufficient to cause his death.

8. Section 307 relates to attempt to murder. It reads as follows:

> "Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that
C 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
D to such punishment as is hereinbefore mentioned."

9. To justify a conviction under this Section, it is not essential that bodily injury capable of causing death should have been inflicted. Although the nature of injury actually caused may often give considerable assistance in coming to a finding as
E to the intention of the accused, such intention may also be deduced from other circumstances, and may even, in some cases, be ascertained without any reference at all to actual wounds. The Section makes a distinction between an act of the accused and its result, if any. Such an act may not be attended
F by any result so far as the person assaulted is concerned, but still there may be cases in which the culprit would be liable under this Section. It is not necessary that the injury actually caused to the victim of the assault should be sufficient under ordinary circumstances to cause the death of the person
G assaulted. What the Court has to see is whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. An attempt in order to be criminal need not be the penultimate act. It is sufficient in law, if there is present an intent coupled
H with some overt act in execution thereof.

10. It is sufficient to justify a conviction under Section 307 if there is present an intent coupled with some overt act in execution thereof. It is not essential that bodily injury capable of causing death should have been inflicted. The Section makes a distinction between the act of the accused and its result, if any. The Court has to see whether the act, irrespective of its result, was done with the intention or knowledge and under circumstances mentioned in the Section. Therefore, an accused charged under Section 307 IPC cannot be acquitted merely because the injuries inflicted on the victim were in the nature of a simple hurt.

11. This position was highlighted in *State of Maharashtra v. Balram Bama Patil and Ors.* (1983 (2) SCC 28), *Girija Shanker v. State of Uttar Pradesh* (2004 (3) SCC 793), *R. Parkash v. State of Karnataka* (JT 2004 (2) SC 348) and *State of Madhya Pradesh v. Saleem @ Chamaru & Anr.* [2005 (5) SCC 554].

12. Whether there was intention to kill or knowledge that death will be caused is a question of fact and would depend on the facts of a given case. The circumstances that the injury inflicted by the accused was simple or minor will not by itself rule out application of Section 307 IPC. The determinative question is intention or knowledge, as the case may be, and not nature of the injury.

13. 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 etc. v. State of Tamil Naidu* (AIR 1991 SC 1463).

14. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate

A 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 B aptly indicated in *Dennis Councle MCGDautha v. State of Callifornia:* 402 US 183: 28 L.D. 2d 711 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 C 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 D distinguished.

15. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence E which reflects the conscience of the society and the sentencing process has to be stern where it should be.

16. 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 F 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 G attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the H sentencing system.

17. 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".

18. It also baffles us as to how the High Court uniformly directed reduction of sentence to the period already undergone. The various periods of custody suffered by the respondents during trial are as follows:

Kashi Ram	2 years 21 days
Lela Krishan	2 years 12 days
Kesh lal	17 days
Ram Singh	4 months and 20 days
Arjun Singh	4 months and 15 days
Suraj Singh	4 months and 20 days
Bapu Lal	2 years and 12 days

19. Thereafter the High Court directed suspension of sentence. By then they had suffered custody for about 3 months 15 days more. There was no similarity in the period of sentence already suffered by the accused persons when the High Court passed the impugned judgment.

20. Looked at from any angle the judgment of the High Court is clearly unsustainable, deserves to be set aside which we direct. The judgment of the trial court stands restored so far as conviction as well as the sentences are concerned.

21. The appeal is allowed.

B.B.B. Appeal allowed.