A BIKRAM DORJEE

v.

STATE OF WEST BENGAL

(Criminal Appeal No. 827 of 2009)

APRIL 24, 2009

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

Sentence/Sentencing:

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Life sentence for conviction u/s 304 (Part I) IPC – Propriety of – Held : Life sentence in appropriate case can be imposed in a case relatable to s. 304 (Part I) IPC – However, on facts, 10 years custodial sentence would meet D *the ends of justice – Penal Code, 1860 – s. 304 (Part I).*

Imposition of sentence – Determinative factors for – Proportionality in imposition of – Discussed.

E **The question involved for consideration in the present appeal was whether sentence of life imprisonment could be awarded to the accused convicted u/s 304 (Part I) IPC.**

Partly allowing the appeal, the Court

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HELD: 1. Though life sentence in appropriate cases can be imposed in a case relatable to Section 304 (Part I) IPC, on the peculiar facts of the case 10 years custodial sentence would meet the ends of justice. [Para 12] [890-

G **B]**

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

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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. [Para 6] [890-A-C]

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 balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. [Para 8] [888-F-G]

2.3. 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 8] [888-H; 889-A-B]

2.4. 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 9] [889-C]

2.5. 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

A **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**
B **against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system. [Para 10] [889-D-F]**

2.6. Court will be failing in its duty if appropriate
C **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**
D **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 11] [889-G-H; 890-A]**

E *Sevaka Perumal Etc. v. State of Tamil Nadu,* **AIR 1991 SC 1463 and** *State of M.P. v. Ghanashyam Singh,* **2003 (8) SCC 13, relied on.**

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

Case Law Reference:

AIR 1991 SC 1463	**Relied on**	**Para 6**
G **2003 (8) SCC 13**	**Referred to**	**Para 7**
402 US 183: 28 I.D. 2d 711	**Referred to**	**Para 8**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
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No. 827 of 2009. A

From the Judgment & Order dated 11.04.2008 of the High Court of Calcutta in CRLA No. 459 of 2004.

Sree Narain Jha (A.C.) for the Appellants. B

Tara Chandra and Neelam Sharma for the Respondents.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the judgment of a Division Bench of the Calcutta High Court holding the appellant guilty of offence punishable under Section 304 Part I of the Indian Penal Code, 1860 (in short the 'IPC'). He was sentenced to D undergo imprisonment for life by learned Additional Sessions Judge, Fast Track Court, Alipurduar. Sentence was confirmed in the appeal.

3. Background facts in a nutshell are as under: E

On 14.6.2002 at about 4.30 p.m. Santosh Dorjee along with his cousin brother Sankar Dorjee went to an eatery situated in front of Bhawani Video Hall of Birpara for taking food. They placed order and were waiting there. All of a sudden one Bikram Dorjee came there and assaulted Santosh Dorjee by F a knife in his belly. Seeing the same assault Sankar panicked and rushed away from the place of occurrence thinking that Bikram Dorjee might assault him. He informed the matter to the parents of Santosh who was by then taken to Birpara hospital. Sankar accompanied father of Santosh from Birpara to G Jalpaiguri Hospital. Santosh was later on transferred to Silliguri medical college where he died the next day. Prosecution case the Birpara P.S. case no. 44/2002 dated 15.6.2002 was started against the accused Bikram Dorjee under Section 304 IPC.

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A After investigation charge sheet was filed. Since the accused pleaded innocence trial was held.

The trial Court found the appellant guilty and convicted him in terms of Section 304 Part I IPC. The appeal filed by the B appellant was dismissed by the High Court.

4. The only point in support of the appeal is relating to quantum of sentence.

5. Learned counsel for the respondent-State supported the C judgment.

6. 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 D 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 E 1991 SC 1463).

7. The logic behind the sentence in a criminal trial has been highlighted by this Court in *State of M.P. v. Ghanashyam Singh* (2003 (8) SCC 13).

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8. 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 G 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 Callifornia*: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable H

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.

9. 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.

10. 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.

11. 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

A 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".

B 12. Though life sentence in appropriate cases can be imposed in a case relatable to Section 304 Part I IPC, on the peculiar facts of the case, we are of the view that 10 years custodial sentence would meet the ends of justice. The appeal is allowed to the aforesaid extent. The appellant be set at liberty C if he has served the sentence imposed.

K.K.T. Appeal partly allowed.