

Arumugum Arundatiyar Vs State Of Maharashtra And Ors

Court: Bombay High Court

Date of Decision: Aug. 5, 2020

Acts Referred: Indian Penal Code, 1860 " Section 307, 341

Hon'ble Judges: S.S.Shinde, J; M.S.Karnik, J

Bench: Division Bench

Advocate: Aniket Vagal, J.P. Yagnik

Final Decision: Disposed Of

Judgement

M.S. Karnik, J

1. The challenge in this Appeal is to the judgment rendered by the Additional Sessions Judge, City Civil and Sessions Court, Greater Mumbai. The

appellant faced trial for alleged commission of the offences punishable under Section 307 along with 341 of the Indian Penal Code, 1860 (in short

IPC). The Additional Sessions Judge found the appellant-accused guilty and sentenced him to suffer imprisonment for life, with fine of

Rs.5000/-, in default of payment of fine, he was to undergo further R.I. for two months. The appellant-accused was also held guilty for the offence

punishable under section 341 of the IPC and sentenced to suffer one month simple imprisonment and to pay fine of Rs.500/-, in default of payment of

fine, he was to undergo further S.I. for 15 days.

2. The prosecution version as unfolded during the trial is as follows :-

The victim was residing with her brothers Prince and Manikandan at the house of her maternal uncle Mr. Ravi Naidu. The victim was working as a

babysitter. Her working hours were between 9.30 am to 8.00 pm. The appellant-accused and the victim were residing in the same area. Two years

prior to the incident, the victim and the appellant-accused got acquainted with each other. In due course, this friendship turned into a love affair. The

victim's uncle came to know about the affair and therefore objected to the same. The victim stopped meeting the appellant-accused and refused to

continue her relations with him. The appellant-accused tried to obstruct her near G.T.B. Railway Station twice. The victim in clear terms indicated

that she does not want to continue her relationship with the appellant-accused and that the appellant-accused should not keep any contact with her.

The appellant-accused issued threats and also beat her on one occasion as he wanted her to marry him.

3. The victim left for her work as usual in the morning on 8th May, 2014. In the evening, on her way back home, the appellant-accused suddenly

entered the rickshaw in which the victim was seated. The victim was pulled out of the rickshaw. The appellant-accused threatened the rickshaw

driver and forced him to leave. The appellant-accused assaulted the victim with his fists and pulled her to the footpath adjoining Āçâ,ÑÖœSatyabhama

HotelĀçâ,Ñâ,œ. He threatened to kill her if she refused to marry him. On her refusal, the appellant-accused took out a knife from the right side pocket of

his pant and inflicted injuries on her neck. The victim started shouting. In her attempt to save herself, she raised her hands as a result of which she

sustained injuries on her hands too. The people who witnessed the incident rushed towards the victim to save her. The appellant-accused threatened

them with dire consequences if they helped the victim. Nobody therefore intervened. At that time, one police vehicle arrived. The appellant-accused

ran away from the spot. The victim was taken to the hospital and on the basis of her statement the offences under Section 307 and 341 of the IPC

came to be registered against the appellant-accused.

4. At the outset, learned counsel for the appellant-accused submitted that the appellant-accused is not challenging the conviction. He would, however,

submit that this is a fit case for reducing the sentence imposed upon the appellant-accused to the one already undergone or in the alternative impose a

lesser sentence than the one imposed by the trial Court.

5. In this light of the matter, we may proceed to consider the submission of the learned counsel appearing on behalf of the appellant-accused. He

contends that the cardinal principle of sentencing policy is that the sentence imposed on the offender should reflect the crime he has committed and it

should be proportionate to the gravity of the offence. It is his submission that admittedly there was a love affair between the appellant-accused and the

victim. The incident in question was a fall out of the refusal on the part of the victim to marry the appellant-accused. At the relevant time when the

offence was committed, the appellant-accused was 25 years of age. The incident in question is of 8th May, 2014 and the appellant-accused is in jail for

more than six years. The appellant-accused is very poor and on the date of the incident he was living in the slum. In his submission, the injuries inflicted

are simple in nature. The appellant-accused left the spot even before arrival of the police van. According to him, considering the nature of offence and

the injuries sustained by the victim, the sentence of imprisonment for life is too harsh and deserves to be reduced to the one already undergone.

6. In support of his submissions, learned counsel for the appellant-accused relied upon the following decisions of the Apex Court. (i) State of

Maharashtra vs. Balram Bama Patil and others¹ ; (ii) Suryakant Baburao alias Ramrao Phad v. The State of Maharashtra² ; (iii) Girija Shankar vs.

State of U.P.³ ; and (iv) Mangaljit Singh alias Raju vs. State of Punjab⁴.

7. Learned APP appearing on behalf of the respondent - State supports the order passed by the trial Court. According to him, the trial Court has

awarded proper sentence having regard to the nature of the offence and the manner in which it was committed. Learned APP would submit that even

prior to the incident the appellant-accused had abused and assaulted the victim. According to him, considering the manner in which the knife injuries

were inflicted on the vital part of the body and that too, having threatened the crowd that had gathered with dire consequences should they try to save

her, this is a fit case where no leniency should be shown to the appellant-accused. The sentence imposed by the trial Court in the facts and

circumstances of this case cannot be said to be unjustified. In support of his submission that the appellant-accused deserves no leniency, learned APP

would rely upon the decision of the Apex Court in the case of State of Madhya Pradesh vs. Kashiram and others⁵.

8. Having heard the learned counsel for the appellant-accused and the learned A.P.P., let us now consider whether in the facts and circumstances of

the present case it would be appropriate to reduce the sentence imposed by the trial Court and as prayed for by the learned counsel for the appellant-

accused.

9. That the incident in question was a fall out of the victim's refusal to marry is not disputed. It further appears from the evidence that there was a

love affair between the appellant-accused and the victim which the victim later refused to continue as her uncle objected. The victim suffered the

following injuries :

(i) Incised wound over right side of neck anterior aspect 4 x 1 x 1 cm.

(ii) Incised wound over right side of neck anterior aspect 3 x 0.5 x 0.5 cm.

(iii) Incised wound over left side of neck anterior aspect 5 x 1 x 1 cm.

(iv) Incised wound over right forearm 3 x 0.5 x 0.5 cm.

P.W. 8 Dr. Ajinath Kondiba Andhale, who examined the victim on her admission to the hospital has deposed that the injuries were caused by a sharp

object like knife, etc. He further deposed that the injuries were simple in nature because the blood vessels were not cut. According to him, a deep

injury may have proved to be fatal.

10. The trial Court considering the age of the appellant "accused, the age of the victim and the conduct of the appellant-accused found that this is

not a fit case to grant either leniency or probation. The trial Court in paragraph 41 observed thus :

41. Considering the age of the accused and the prosecutrix and the conduct of the accused, the case is not found fit for grant of either leniency or

probation. It is repeatedly observed by the Hon'ble Supreme Court that the offence against Woman Atrocity are the offence of the moral turpitude and

no leniency can be shown for such crimes as those are considered as crime against society. Therefore, in the opinion of the Court the accused is not

found entitled to leniency as prayed for. Considering the circumstances the court is of the opinion that the following punishment would meet the ends

of justice.

Accordingly, the trial Court imposed the punishment of imprisonment for life.

11. It can thus be seen from the judgment of the trial Court which after considering the law laid down by the Apex Court in the case of State of

Madhya Pradesh vs. Kashiram and others (supra), found that the accused is not entitled to any leniency in the circumstances of the present case. The

Apex Court has held that the question of awarding sentence is a matter of discretion for the Courts and has to be exercised on consideration of the

facts and circumstances of the case. The nature of the injuries caused in the occurrence and the weapon used which will have bearing on the question

of sentence and the Courts are bound to impose sentence commensurate with the gravity of the offence. It is thus held that though the Court has

discretion in awarding the sentence, it should be commensurate with the gravity of the offence. Further the Court has to record brief reasons to explain

the choice of sentence.

12. In the present context, it would also be profitable to refer to the observations of the Apex Court in the context of duty of the Court to award proper

sentence. In State of Punjab vs. Bawa Singh⁶ Their Lordships in paragraph 16 held as under :-

16. undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the

efficacy of law. It is 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. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and

proceed to impose a sentence commensurate with the gravity of the offence. The court must not only keep in view the rights of the victim of the crime

but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time

without considering the degree of the offence will be counterproductive in the long run and against the interest of the society.

13. In *Ravinder Singh vs. State of Haryana*⁷, the Hon'ble Supreme Court in paragraph 11 held as under :

11 The question of sentence is always a difficult task requiring balancing of various considerations. The question of awarding sentence is a matter of

discretion to be exercised on consideration of circumstances aggravating and mitigating in the individual cases. The law courts have been consistent in

the approach that a reasonable proportion has to be maintained between the seriousness of the crime and the punishment. While it is true that a

sentence disproportionately severe should not be passed that does not clothes the court with an option to award the sentence manifestly inadequate.

Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.

14. We must also bear in mind what is held by the Apex Court in the case of *State of Madhya Pradesh vs. Kashiram and others* (supra). Paragraphs

13 to 17 which are relevant read thus:

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 Nadu (AIR 1991 SC 1463).

14. 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.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 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.

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 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 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.

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".

15. The principle that in an appeal against the conviction, it is open to the High Court to alter or modify or reduce the sentence after confirming the

conviction is well settled. If the High Court is of the opinion that the sentence is required to be modified, the same must be done on well recognised

judicial dicta as stated by the Apex Court in the case of *Sadha Singh and anr. vs State of Punjab*⁸. We are also guided by the decision of the Apex

Court in the case of *Munna alias Vijay Kant vs. State of Rajasthan*⁹ where the Apex Court having regard to the age of the petitioner and looking to

the circumstances in which the offence was committed and the nature of injury and/or harm caused to the victim, was satisfied that a fit case was made

out for modifying the sentence.

16. Having regard to the law laid down by the Apex Court, we have to bear in mind that this Court must not only keep in view the right of the

accused, but must also keep in view the interest of the victim and society at large. Their Lordships have held that the Courts have been consistent in

approach that a reasonable proportion has to be maintained between the gravity of the offence and the punishment. It is also well settled that though

the sentence imposed upon the accused should not be harsh, inadequacy of sentence may lead to suffering of the victim and the community at large.

17. Having considered the legal position illuminatingly stated by the Apex Court, in our opinion, in the present facts and circumstances, the sentence

imposed by the trial Court requires to be reduced. In the facts of the present case, the appellant-accused inflicted knife injuries on the neck of the

victim. This incident was a fall out of victim's refusal to marry the appellant-accused after the victim called of the love affair which was objected by

her uncle. On the date of the incident in question, the appellant-accused was 25 years of age. He caused injuries on the person of the victim with a

knife which endangered her life. The injuries in question are simple in nature. No doubt, the appellant-accused has to be dealt with sternly and with an

iron hand. Merely because the appellant-accused is in custody for the last more than 6 years, is no ground to show any leniency much less accept the

submission of learned counsel for the appellant-accused that the sentence imposed be reduced to the one actually undergone. 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. This act of balancing is indeed a difficult task. In view of the dicta of the Hon'ble Supreme Court, we are

conscious that the social impact of the crime against women cannot be lost sight of and per se require exemplary treatment. We are equally conscious

that 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.

18. Considering the totality of the circumstances, in our opinion, imposition of the sentence of imprisonment for life by the trial Court appears to be

harsh. Considering the sentencing policy illuminatingly stated by the Apex Court, according to us, the sentence awarded by the trial Court needs to be

reduced by maintaining the conviction. Looking to the circumstances in which the offence was committed and the nature of the injuries and the harm

caused to victim, the sentence of 10 years rigorous imprisonment, in our opinion, would meet the ends of justice.

19. We accordingly partly allowed the Appeal limited to the question of sentence. The conviction of the appellant-accused for the offence punishable

under Section 307 of the IPC is maintained. The appellant-accused is sentenced to undergo 10 years rigorous imprisonment. The order of the trial

Court is modified only on the point of the sentence and rest of the order is maintained.

20. The Appeal is allowed to the aforesaid extent and accordingly stands disposed of.

21. This judgment will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally

signed copy of this judgment.