

RAMASHRAYA CHAKRAVARTI

v.

STATE OF MADHYA PRADESH

November 13, 1975

[P. K. GOSWAMI AND N. L. UNTWALIA, JJ.]

Sentence—Factors to be considered in determining sentence—I.P.C. Section 409 and 467.

The appellant was a Circle Organizer in the Tribal Welfare Department. He was entrusted with the distribution of stipends to adivasi students of the Tribal Welfare Department School. He misappropriated a sum of Rs. 500/- meant for 4 students and also forged certain entries in the bills. He was convicted under section 409 and section 467 of I.P.C. by the Sessions Judge and sentenced to 4 years rigorous imprisonment and a fine of Rs. 500/-. The High Court on appeal maintained the conviction but reduced the sentence to 2 years rigorous imprisonment and a fine of Rs. 500/-.

On an appeal by Special leave limited only to the question of sentence.

HELD : 1. To adjust the duration of imprisonment to the gravity of a particular offence is not always an easy task. It is always a matter of judicial discretion subject to any mandatory minimum prescribed by law. In judging the adequacy of a sentence, the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to Society, effect of the punishment on the offender, eye to correction or reformation of the offender, are some amongst many other factors which would be ordinarily taken into consideration by courts. [713GH, 714-FG]

2. Trial Courts in this country already over-burdened with work have hardly any time to set apart for sentencing reflection. In a good system of administration of criminal justice pre-sentence investigation may be of great sociological value. Throughout the world humanitarianism is permeating into penology and the courts are expected to discharge their appropriate roles. [714 GH]

3. Without minimising the seriousness of the offence, having regard to the circumstances of the case, the sentence was reduced from 2 years to one year. [715-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 154 of 1975.

Appeal by Special Leave from the Judgment and Order dated the 18th February 1975 of the Madhya Pradesh High Court at Jabalpur in Criminal Appeal No. 789 of 1972.

Sarju Prasad and S. N. Prasad for the Appellant.

Ram Panjwani, Dy. Advocate General, M.P., *H. S. Parihar* and *I. N. Shroff* for the Respondent.

The Judgment of the Court was delivered by

GOSWAMI, J.—To adjust the duration of imprisonment to the gravity of a particular offence is not always an easy task. Sentencing involves an element of guessing but often settles down to practice obtaining in a particular court with inevitable differences arising in the context of the times and events in the light of social imperatives. It is always a

A

matter of judicial discretion subject to any mandatory minimum prescribed by law.

Hegel in his 'Philosophy of Right' pithily put the difficulty as follows :—

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"Reason cannot determine, nor can the concept provide any principle whose application could decide whether justice requires for an offence (i) a corporal punishment of forty lashes or thirty-nine, or (ii) a fine of five dollars or four dollars ninety-three, four, etc., cents, or (iii) imprisonment of a year or three hundred and sixty-four, three, etc., days, or a year and one, two, or three days. And yet injustice is done at once if there is one lash too many, or one dollar or one cent, one week in prison or one day, too many or too few".

C

The present appeal by special leave being limited to sentence we are to consider about the appropriate deserts for the appellant in this case.

D

The appellant was a Circle Organiser in the Tribal Welfare Department at Lohandiguda in the State of Madhya Pradesh. He was entrusted with the distribution of stipends to Adivasi students of the Tribal Welfare Department School. He misappropriated a sum of Rs. 500/- meant for four students and also forged certain entries in the bills. He was convicted under section 409 and section 467 IPC by the Sessions Judge and sentenced for each head of charge to concurrent four years' rigorous imprisonment and also to a fine of Rs. 500/-, in default to rigorous imprisonment for six months. The High Court on appeal maintained the conviction but reduced the sentence to two years' rigorous imprisonment maintaining the fine.

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From a perusal of the judgment of the High Court which is the only document in the paper book in addition to the special leave petition, it is not very clear about the offence of forgery committed by the accused. We would, however, say nothing more than that.

G

In judging the adequacy of a sentence the nature of the offence, the circumstances of its commission, the age and character of the offender, injury to individuals or to society, effect of the punishment on the offender, eye to correction and reformation of the offender, are some amongst many other factors which would be ordinarily taken into consideration by courts. Trial courts in this country already over-burdened with work have hardly any time to set apart for sentencing reflection. This aspect is missed or deliberately ignored by accused lest a possible plea for reduction of sentence may be considered as weakening his defence. In a good system of administration of criminal justice pre-sentence investigation may be of great sociological value. Throughout the world humanitarianism is permeating into penology and the courts are expected to discharge their appropriate roles.

H

The appellant is a youngman of about 30 years. He is an educated person who was employed in Government service. But for the forgery he could have been tried in the court of a first class Magistrate for the offence under section 409 IPC and in that case the maximum sentence of imprisonment would have been two years' rigorous imprisonment. On the face of the High Court's judgment, as noticed above, the part played by the appellant in the forgery is rather a little obscure. The appellant is sure to lose his employment under the Government. There is already indignity heaped upon him on account of conviction. He has no opportunity to commit such offence as a Government servant in the future. Any sentence of imprisonment imposed upon him will be a deterrent to others similarly disposed in such unlawful pursuits. The appellant was refused bail in this Court and he is said to have served about nine months in prison.

While we do not minimise the seriousness of the offences, having regard to the circumstances mentioned above, we are of opinion that it will meet the ends of justice in this case if we order, which we do, that the appellant's sentence be reduced to one year's rigorous imprisonment only and in addition to a fine of Rs. 500 only, in default rigorous imprisonment for six months. The appeal is partly allowed with modification of the sentence as ordered.

P.H.P.

Appeal partly allowed.