

HARI KISHAN & ANR.
v.
SUKHBIR SINGH & ORS.

AUGUST 25, 1988

[G.L. OZA AND K. JAGANNATHA SHETTY, J.]

Criminal Procedure Code, 1973: Section 357—Order to pay compensation—All Courts to exercise this power liberally to meet ends of justice—Reasonable period for payment may be given—If necessary payment by instalments.

Probation of Offenders Act, 1958: Many offenders—Not dangerous criminals—Weak characters who have surrendered to temptation or provocation—Court placing such offenders on probation—Protects them from possible contamination by prison.

Seven persons were convicted under sections 307/149, 325/149, 323/149 and 148 IPC and sentenced to undergo R.I. from one year to three years. The High Court acquitted two of all charges, and five of the offence under s. 307/149 while maintaining their conviction and sentence under s. 325/149, s. 323/149 and s. 148. They were however released on probation of good conduct. Each one of them was ordered to pay compensation of Rs.2,500 to Joginder who was seriously injured and whose power of speech was permanently impaired.

Before this Court the appellant contended that the intention of the five accused was obviously to commit murder of Joginder and their acquittal under s. 307 IPC was perverse.

Disposing of the appeal, it was,

HELD: (1) Under s. 307 IPC 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 that section. The intention or knowledge must be such as is necessary to constitute murder. Without this ingredient being established there can be no offence of "attempt to murder". Under s. 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. In this case, the respondents had no intention to commit murder. They had no motive either. [575F-G]

A (2) Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders on probation the Court encourages their own sense of responsibility for their future and protects them from the stigma and possible contamination of prison. [576C-D]

B (3) In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. The accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to first offenders cannot be said to be inappropriate. [576D-E]

C (4) Section 357 empowers the Court to award compensation to victims while passing judgment of conviction. This power of Courts to award compensation to victims is not ancillary to other sentences but it is in addition thereto. This power is intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is recommended to all Courts to exercise this power liberally so as to meet the ends of justice in a better way. [577F-H]

D (5) The payment by way of compensation must be reasonable. What is reasonable may depend upon the facts and circumstances of each case, e.g. the nature of crime, the justness of claim by the victim and the ability of the accused to pay etc. On these considerations the Court enhanced the compensation to Rs.50,000. [578A-B]

E CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 74 & 75 of 1986.

F From the Judgment and Order dated 13.11.1984 of the Punjab and Haryana High Court in Crl. Appeal No. 128-SP of 1984.

R.L. Kohli, R.C. Kohli and D.D. Sharma for the Appellant in Crl. A. No. 74 of 1984.

G D.S. Tewatia and Mahabir Singh for the Appellant in Crl. A. No. 75 of 1984.

U.R. Lalit, R.S. Yadav and H.M. Singh for the Respondents.

H The Judgment of the Court was delivered by

JAGANNATHA SHETTY, J. These two appeals, by special leave, are directed against a judgment of the High Court of Punjab & Haryana in Criminal Appeal No. 128-SP of 1984. The common respondents in the appeals, were prosecuted for various offences in the court of Additional Sessions Judge, Faridkot. By judgment dated February 28, 1984 learned Judge convicted and sentenced the accused as follows:

“Keeping in view the circumstances of the case and the part played by each of them I, hereby sentence Sukhbir, Sukhpal and Surat Singh accused to undergo R.I. for four years u/s 307/149 IPC. Each of Om Pal, Dhan Pal, Mannu and Siri Chand are ordered to undergo R.I. for three years u/s 307/149 IPC.

Each of the seven accused are further ordered to undergo R.I. for one year u/s 148 IPC, two years R.I. u/s 325/149 IPC and one year R.I. u/s 323/149 IPC.

Keeping in view the circumstances of the case, all the sentences shall run concurrently.”

The accused appealed to the High Court challenging the conviction and sentence. The High Court by the judgment under appeals acquitted Sukhpal Singh and Surat Singh of all charges by giving them the benefit of doubt. The other accused who are respondents herein are also acquitted of the offence under s. 307/149 and s. 148 IPC. Their conviction and sentence under s. 325/149, 323/149 and s. 148 IPC are however, maintained. They are released on probation of good conduct. Each one of them, is ordered to pay compensation of Rs.2,500 to Joginder who was seriously injured in the incident. In default to pay the compensation they are directed to serve their sentence. The operative portion of the judgment runs like this:

“There is no previous history of enmity between the parties. The occurrence is the outcome of a sudden flare up. I think, these five appellants namely Sukhbir Singh, Dhanpal, Mannu, Siri Chand and Om Pal are entitled to benefit under s. 360 Cr.P.C. Consequently, I suspend their sentence under s. 325/149, 323/149 and s. 148 IPC and order that the appellants namely Sukhbir Singh, Dhan Pal, Mannu, Siri Chand and Om Pal be released on probation on their entering into bonds of Rs.3,000 each with one surety in the like amount for a period of one year, to the

A satisfaction of the trial court, undertaking to appear in the court to receive the sentence during the said period whenever called upon to do so and in the meantime to keep peace and be of good behaviour. However, each one of the appellants would pay Rs.2,500 as compensation payable to Joginder injured. Compensation if not paid within two months, the appellants namely Sukhbir Singh, Dhanpal, Mannu, Siri Chand and Om Pal would be called upon to serve their sentence. But for this modification, appeal fails and is hereby dismissed.

C In view of s. 12 of the Probation of Offenders Act, no disqualification would attach to the appellants due to this conviction.

Sd/- K.P.S. Sandhu
Judge"

Dt. November 13, 1984

D In these appeals, there is no serious dispute with regard to acquittal of Sukhpal Singh and Surat Singh. The prosecution case that they were armed with Barchha has not been proved. There was no incised injury on the victim or any of the prosecution witnesses. Their participation in the commission of crime therefore appears to be doubtful. The High Court was justified in acquitting them.

E Counsel for the appellants are, however, very critical of the order of High Court with regard to the remaining accused. It is urged that the High Court was too much charitable to them. The intention of accused was obviously to commit murder of Joginder. Their acquittal under s. 307 IPC is characterised as perverse. At any rate, it is said that they ought not have been put on probation. It is an abuse of the process of Court. They should have been properly sentenced to terms of imprisonment and fine. It is also urged that Joginder has sustained permanent disability due to head injury and no amount of compensation would be adequate for him except severe punishment to the accused as a general deterrence. Counsel for the accused on the other hand, seeks to support the order of the High Court in every respect.

H In the light of the submissions, three questions arise for consideration (i) whether the respondents are not guilty of the offence under s. 307/149 IPC; (ii) whether the High Court was justified in extending the benefit of s. 360 Cr.P.C. and releasing the accused on probation of good conduct; and (iii) whether the compensation awarded to

Joginder could be legally sustained, and if so, what should be the proper compensation?

For a proper consideration of these questions, we may summarise briefly the factual background: The rival parties in this case are collaterals. On September 28, 1982 at about 8/9 a.m. they had an altercation near the tubewell belonging to Hari Kishan. Joginder is the son of Hari Kishan. Virender another injured in this case is nephew of Hari Kishan. Hari Kishan was sitting near his tubewell. Virender and Joginder were sowing Berseem crop. The accused came from the side of the tubewell. They were armed with Ballams and Dangas. One of them raised a Lalkara at which the accused attacked Virender and Joginder. In the brawl that followed some of the accused were also injured. The injured were removed to Civil Hospital, Ballabgarh. The Medical Officer there referred them to Safdarjung Hospital, New Delhi. Finally, they landed themselves at the AIIMS, New Delhi. They were examined by the Doctors. Virender was found to have two injuries caused by blunt weapons. Joginder was found to have head injury. Amongst the accused Siri Chand, Dhan Pal, Om Pal and Sukhbir Singh were injured. They were medically examined in AIIMS or Safdarjung Hospital, New Delhi. Siri Chand had four injuries including a fracture caused by blunt weapon. That has been proved by Dr. Rita Sood (DW 1). Dhan Pal and Om Pal each had four injuries but simple. They were also caused by blunt weapons. Dr. V.K. Dhingra (DW 2) has spoken to that. Sukhbir Singh had one incised wound on his person. Dr. Anurag Saxena (DW 3) has testified it.

On the first question as to acquittal of the accused under s. 307/149 IPC, some significant aspects may be borne in mind. Under s. 307 IPC 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 that section. The intention or knowledge of the accused must be such as is necessary constitute murder. Without this ingredient being established, there can be no offence of "attempt to murder". Under s. 307 the intention precedes the act attributed to accused. Therefore, the intention is to be gathered from all circumstances, and not merely from the consequences that ensue. The nature of the weapon used, manner in which it is used, motive for the crime, severity of the blow, the part of the body where the injury is inflicted are some of the factors that may be taken into consideration to determine the intention. In this case, two parties in the course of a fight inflicted on each other injuries both serious and minor. The accused though armed with ballam never used the sharp edge of it.

- A They used only the blunt side of it despite they being attacked by the other side. They suffered injuries but not provoked or tempted to use the cutting edge of the weapon. It is very very significant. It seems to us that they had no intention to commit murder. They had no motive either. The fight as the High Court has observed, might have been a sudden flare up. Where the fight is accidental owing to a sudden quarrel, the conviction under s. 307 is generally not called for. We, therefore, see no reason to disturb the acquittal of accused under s. 307 IPC.
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- The question next to be considered is whether the accused are entitled to the benefit of probation of good conduct? We gave our anxious consideration to the contentions urged by counsel. We are of opinion that the High Court has not committed any error in this regard also. Many offenders are not dangerous criminals but are weak characters or who have surrendered to temptation or provocation. In placing such type of offenders, on probation, the Court encourages their own sense of responsibility for their future and protect them from the stigma and possible contamination of prison. In this case, the High Court has observed that there was no previous history of enmity between the parties and the occurrence was an outcome of a sudden flare up. These are not shown to be incorrect. We have already said that the accused had no intention to commit murder of any person. Therefore, the extension of benefit of the beneficial legislation applicable to first offenders cannot be said to be inappropriate.
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- This takes us to the third questions which we have formulated earlier in this judgment. The High Court has directed each of the respondents to pay Rs.2,500 as compensation to Joginder. The High Court has not referred to any provision of law in support of the order of compensation. But that can be traced to s. 357 Cr.P.C. Section 357, leaving aside the unnecessary, provides:
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"357. Order to pay compensation:

- G (1) When a court imposes a sentence of fine or a sentence (including a sentence of death) of which fine forms a part, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied—

(a) in defraying the expenses properly incurred in the prosecution;

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(b) in the payment to any person of compensation for any loss or injury caused by the offence, when compensation is, in the opinion of the Court, recoverable by such person in a civil Court;

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(3) When a Court imposes a sentence, of which fine does not form a part, the Court may, when passing judgment, order the accused person to pay, by way of compensation, such amount as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.

(4) An order under this section may also be made by an Appellate Court or by the High Court or Court of Session when exercising its powers of revision.

(5) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the Court shall take into account any sum paid or recovered as compensation under this section.

Sub-section (1) of Section 357 provides power to award compensation to victims of the offence out of the sentence of fine imposed on accused. In this case, we are not concerned with sub-section (1). We are concerned only with sub-section (3). It is an important provision but Courts have seldom invoked it. Perhaps due to ignorance of the object of it. It empowers the Court to award compensation to victims while passing judgment of conviction. In addition to conviction, the Court may order the accused to pay some amount by way of compensation to victim who has suffered by the action of accused. It may be noted that this power of Courts to award compensation is not ancillary to other sentences but it is in addition thereto. This power was intended to do something to re-assure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.

A The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation, if necessary by instalments, may also be given. The Court may enforce the order by imposing sentence in default.

C Joginder in this case is an unfortunate victim. His power of speech has been permanently impaired. Doctor has certified that he is unable to speak and that is why he has not stepped into the witness box for the prosecution. The life long disability of the victim ought not to be by-passed by the Court. He must be made to feel that the Court and accused have taken care of him. Any such measure which would give him succor is far better than a sentence by deterrence.

E The compensation awarded by the High Court, in our opinion, appears to be inadequate having regard to the nature of injury suffered by Joginder. We have ascertained the means of accused and their ability to pay further sum to the victim. We are told that they are not unwilling to bear the additional burden. Mr. Lalit learned counsel said that his clients are willing to pay any amount determined by this Court. It is indeed a good gesture on the part of counsel and his clients.

F With due regard to all the facts and circumstances of the case, we consider that Rs.50,000 compensation to Joginder would meet the ends of justice. We direct the respondents to pay the balance within two months in equal proportions.

The order of the High Court is modified only to the extent of compensation as indicated above and in all other respects it is kept undisturbed. The appeals are accordingly disposed of.

G R.S.S.

Appeals disposed of.