HIGH COURT OF CHHATTISGARH, BILASPUR **AFR**

CRR No. 544 of 2005

Prakash Kashyap

---- Applicant

Versus

State Of Chhattisgarh & Ors.

--Respondents

For applicant - Shri M.K. Bhaduri, Advocate.
For State- Shri S.R.J. Jaiswal, PL.
For Respondents No.2 to 5- Shri Santosh Bharat, Advocate.

Hon'ble Shri Justice Goutam Bhaduri

Order

29/08/2017

1. Challenge in this revision is to the order dated 3/12/2005 passed by the Additional Sessions Judge (F.T.C.) Kabirdham (Kawardha) in Criminal Appeal No.12/2005 wherein quantum of sentence was interfered by the appellate court. Present revision is by the complainant.

2. Perusal of the order of the JMFC dated 27/08/2005 would show that Sukhlal (A-1) accused was convicted under Section 148 IPC and was sentenced to 6 months RI and further under Section 326 IPC sentenced to 3 years RI and fine of Rs.5000/- and under section 25 of the Arms Act he was sentenced to 1 year SI and fine of Rs.500/- was imposed whereas in respect of Ajit (A-2), Vijay (A-3) and Tularam (A-5) they were convicted under section 147 IPC and were sentenced to 6-6 months SI and under section 326 read with 149 of IPC they were sentenced to 3-3 years RI and fine of Rs.1000 – 1000. It was further observed that in case fine of Rs.5000/- is not paid by Sukhlal further he shall suffer sentence of 3 months SI and in lieu of default of payment of Rs.500/-, 1 month SI was ordered whereas for rest of the accused it was observed that in absence

of payment of fine of Rs.1000 – 1000 each under section 326 and 149 IPC, to undergo additional imprisonment for 2-2 months each.

3. Case of the prosecution is that on 19/08/2003 complainant Prakash Kashyap the applicant, injured victim herein, at village Pendri Kurd when went to have his bath to pond and to answer call of nature while he was on his way Sukhlal (R-2) alongwith Ajit (R-3), Vijay (R-4) and Tularam (R-5) came there. Thereafter Sukhlal stated that he was having bad eye on his (Sukhlal's) wife. In order to teach a lesson to victim Sukhlal firstly tried to make a assault by a knife. At the moment, the complainant tried to avoid the blow and in such process he initially sustained injury on his ear. Subsequently, Ajit (R-3), Vijay (R-4) and Tularam (R-5) caught hold of the complainant and Sukhlal chopped of penis of the complainant and thereafter fled away. In respect of the incident an FIR was lodged on 19/08/2003 at 7.30 at Police Station as Ex.P-1. After investigation of the incident a charge sheet was filed in the court of JMFC Kawardha. The court of JMFC in a Criminal Case No.18/2005 by an order dated 27/08/2005 sentenced the respondents/accused as aforesaid. Against such conviction and sentence an appeal was preferred by the accused Sukhlal and others. Appellate court of Additional Sessions Judge (FTC) Kabirdham (Kawardha) by its order dated 3/12/2005 in Criminal Appeal No.12/2005 acquitted Sukhlal under Section 148 IPC whereas upheld the conviction of Sukhlal under Section 326 read with 149, 147 IPC and 25 of the Arms Act whereas the other appellants/accused were convicted under section 326 read with 149, 147 of IPC. In respect of the jail sentence of the accused appellate court observed that the appellants were in jail from 20th August 2003 to 19/10/2004 meaning thereby 13 months and 29 days they had already spent in jail and it was held to be adequate. The reasoning were justified by the ground that in spur of moment of

excitement the incident happened and one of the appellants were shown to be of 65 years for these reason the time spent in jail was held to be sufficient. Such judgement dated 3/12/2005 by the appellate court was subject of revision before this court.

4. Learned counsel for the applicant would submit that challenge is only confined to the reduction of jail sentence which has been held as undergone. It is stated that as per medical report which is not in dispute that entire private part i.e. penis of the applicant was chopped of, therefore the appellate court while interfering in the sentence should have given due deliberation of affect of crime. It is contended that the facts would suggest the jail sentence which was already suffered by the respondents/accused till the appeal were not adequate and submitted that jail sentence as was awarded by the judicial magistrate may be upheld. He referred to **2010 (II) MPJR (SC) 308** in between **State of M.P. Vs. Kashi Ram & Ors.** and would submit that undue sympathy to impose inadequate sentence would do more harm to the society and also submit that appropriate sentence should have been awarded to the accused.

5. Learned counsel for the respondents No.2 to 5 would submit that in the facts of this case offence under section 326 IPC is not made out. It is further submitted that after the incident, applicant also begotten three children and virtually no damage was done in person to the applicant, therefore order of the court below is well merited which do not require any interference.

6. Learned State counsel submits that reduction of the jail sentence as undergone has been correctly done which do not require any interference.

7. Heard learned counsel for the parties.

8. Argument advanced by learned counsel for the respondents No.2 to 5 that offence under section 326 of IPC has not been committed cannot

be appreciated at this stage by this court since the respondents/appellants have not challenged the order of conviction and finding of court below u/s 326, 147 & 149 of IPC read with 25 of Arms Act. Therefore finding arrived at by both the court below cannot be put to test qua conviction of the accused without any challenge to the finding at the end of litigation during final reply argument by the respondents. Consequently, the finding of facts by both the court below that offence under Section 326, 147, 149 IPC and 25 of the Arms Act has been committed by Sukhlal and in respect of others respondents/accused they have committed an offence under Section 326, 147 and 149 of IPC cannot be subject of any scrutiny at this stage.

9. Now turning to the submission made by the applicant, record of the lower court were perused. The document Ex.P-9 is the medical report which would show that penis was amputated from its root and severe bleeding occurred. The statement of complainant PW-1 also corroborates the same alongwith the dying declaration Ex.P-10A. Therefore, it would suggest the degree of offence. Further more, there is no challenge to such finding by any of the accused. In a result the finding of conviction cannot be re visited by this court.

10. Cutting of the private part from its root will definitely have its implication on the victim. It would not be out of place to mention that the victim would be reminded each and every time of his physical disability caused to him by the accused till he breathes his last. The nature of act committed by the accused cannot be diluted by the laudible notions by correcting the previous wrong of the accused. Trial court of JMFC has primarily sentenced the accused for 3 years under section 326 of IPC. The conviction can always be held to be justified corresponding to the bodily injury which has been caused to the victim. The intention and knowledge

of accused to the degree of physical damage done will have definite bearing to the quantum of sentence. 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. Said proposition has been laid down in case of **2010 (II) MPJR (SC) 308**.

11. Further more, if the injury caused to the victim is visualized by sitting in the arm chair of victim it would show that irreparable injury was caused to the victim though he was allowed to survive for life. With no thought spared for future self respect the sufferer victim would be only to be his best helper to face the humiliation in the society. Therefore, adequate, just and proportionate punishment must commensurate with the gravity and nature of crime and the manner in which it was committed keeping in the social interest and consciousness of the society. Statement of the victim would show that few of the accused caught hold of him and the other accused chopped of his penis would lead to show that the accused were determined to cause such injury. As has been held in case of **(2014) 15 SCC 558** in between **Sagar Vs. State of Haryana** object of criminal law is imposition of adequate, just, proportionate punishment which is to commensurate with the gravity and nature of crime and manner in which the offence is committed. The most relevant determinative factor of sentencing is proportionality between crime and punishment keeping in mind the social interest and consciousness of the society. It would be mockery of the criminal justice system to take a lenient view showing misplaced sympathy to the accused on any consideration whatsoever including the delay in conclusion of criminal proceedings. The

punishment should not be so lenient that it shocks the conscience of society being abhorrent to the basic principles of sentencing. Therefore, it is the solemn duty of the court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages a criminal and as a result of the same society suffers. In view of the principles so laid down considering the nature of injury inflicted, I am inclined to interfere in the order of the appellate court with respect to the reduction of jail sentence to respond to the cause.

12. In a result, order of the appellate court is set aside and sentence passed by the judicial magistrate in it's order dated 27/08/2005 passed in Criminal Case No.18/2005 is restored in respect of R-1 Sukhlal, R-2 Ajit, R-3 Vijay and R-4 Jai. With respect to accused R-5 Tularam taking into fact that he was shown to be of 65 years in the year 2003 when the incident happened and as of now more than 13-14 years have passed and facts suggest he would have attained near age of 78-79 years, no purpose would be served if he is again sent to jail. In the circumstances it is ordered that the jail sentence to Tularam shall be held to be undergone in the eventuality the fine of Rs.1000/- which is enhanced to Rs.15000/- is paid and in absence of payment of fine he has to undergo the jail sentence awarded by the JMFC. On payment of necessary fine the amount shall be paid to the victim. With the above finding the revision is partly allowed.

Sd/-

(Goutam Bhaduri)

Judge

gouri