



2025 INSC 1250

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. _____ OF 2025
[ARISING OUT OF SLP (CRIMINAL) NO. 16833 OF 2024]

KOTRESH @ KOTRAPPA

... APPELLANT

VS.

STATE OF KARNATAKA AND ANR.

... RESPONDENTS

J U D G M E N T

DIPANKAR DATTA, J.

- 1.** Leave granted.
- 2.** The appellant was tried for the murder of one 'S'. The relevant Sessions Court, for reasons assigned in the judgment dated 18th January, 2020 convicted the appellant for culpable homicide not amounting to murder under Section 304 Part-II, Indian Penal Code,

1860¹ and by an order dated 21st January, 2020 sentenced him to 10 (ten) years rigorous imprisonment.

- 3.** Such conviction and sentence were carried by the appellant in an appeal under Section 374 (2), Code of Criminal Procedure, 1973² before the High Court of Karnataka, Dharwad Bench. By its judgment and order dated 8th February, 2024, the High Court maintained the conviction of the appellant, however, reduced the sentence to 8 (eight) years rigorous imprisonment.
- 4.** Despite being partially successful before the High Court, the appellant remained dissatisfied and has laid a challenge to the judgment and order dated 8th February, 2024.
- 5.** A limited notice, confined to the sentence, was issued on 4th March, 2025 by a coordinate Bench of this Court. Upon service of notice, respondent no. 1-State entered appearance through its counsel. Respondent no. 2 – the complainant, however, informed this Court of his inability to engage a counsel and sought legal aid.
- 6.** Having considered the prayer of the respondent no. 2 – the complainant, this Court by an order dated 9th September, 2025 appointed Mr. Ashok Gaur, learned senior counsel and Ms. Shakshi Singh, learned counsel as *amici curiae*.

¹ IPC

² CrPC

- 7.** The prosecution case in a nutshell is this. The first cousin of the appellant³ had allegedly been raped by S's elder brother⁴. C had given birth to a child too. While V was in custody and facing trial for the offence under Section 376, IPC, the family members of the appellant including the father of C insisted that marriage between C and V be solemnised. The parties tried to find out a solution a day prior to the incident of crime which, however, proved abortive.
- 8.** On the following day, the family members of C including the appellant again stormed the residence of V. An altercation led to a scuffle. S, a completely innocent person, intervened to bring about peace. It was, at this stage, that the appellant rushed to a nearby house, picked up an axe and struck a blow on the neck of S. Unfortunately, S succumbed to the injury inflicted on him by the appellant.
- 9.** Circumstances leading to the death of S were duly proved before the sessions court. The outcome of the trial as well as the appeal have been noted above and hence are not repeated.
- 10.** Appearing in support of the appeal, Mr. Rahul Kaushik, learned senior counsel submits that the appellant, who was barely 20 years old on the date of the incident of crime, could not control his senses because the family members of V were not agreeable to his marriage with C and without any premeditation struck the fatal blow on S leading to his unfortunate death. He further submits that the appellant, behind

³ hereafter 'C'

⁴ hereafter 'V'

bars for two and a half years, has suffered enough for the involuntary act and may be let off with a reduced sentence. According to him, this is a peculiar case where the sentence of 8 (eight) years rigorous imprisonment imposed by the High Court deserves to be altered to the period of sentence already served.

- 11.** Referring to a coordinate Bench decision of this Court in ***Deo Nath Rai v. State of Bihar***⁵, Mr. Kaushik submits that for a similar offence punishable under Section 304 Part-II, IPC, 5 (five) years rigorous imprisonment was imposed by this Court. He urges that even if this Court were not inclined to let off the appellant with the period of sentence already undergone, suitable reduction may be ordered having regard to the facts and circumstances where the appellant lost control of his senses.
- 12.** Mr. Kaushik, accordingly, prayed that the appeal be allowed by ordering suitable reduction in the term of sentence.
- 13.** Prayer of the appellant has, however, been vehemently opposed by Mr. Gaur. According to him, it is not entirely correct to contend that the incident of altercation and scuffle was a one-off incident. Referring to the evidence on record, he submits that even a day prior to the incident of crime the family members of C including her father (the complainant – respondent no. 2) had been attacked.

⁵ (2018) 13 SCC 87

- 14.** Mr. Gaur next submits that although Mr. Kaushik has stressed on the age of the appellant, this Court may not overlook that S was also in the prime of his life when he was struck the fatal blow by the appellant. S was all of 23 years old and the appellant took away S's life by brutally killing him. He sought to emphasise that the sessions court ought to have convicted the appellant for murder under Section 302, IPC, and not under Section 304 Part-II thereof, having regard to the overwhelming evidence on record that the appellant had both intention and knowledge.
- 15.** On the question of intention, referring to the decision of another coordinate Bench of this Court in ***Pulicherla Nagaraju v. State of A.P.***⁶, Mr. Gaur invites our attention to paragraph 29 thereof reading as follows:

"**29.** Therefore, the court should proceed to decide the pivotal question of intention, with care and caution, as that will decide whether the case falls under Section 302 or 304 Part I or 304 Part II. Many petty or insignificant matters — plucking of a fruit, straying of cattle, quarrel of children, utterance of a rude word or even an objectionable glance, may lead to altercations and group clashes culminating in deaths. Usual motives like revenge, greed, jealousy or suspicion may be totally absent in such cases. There may be no intention. There may be no premeditation. In fact, there may not even be criminality. At the other end of the spectrum, there may be cases of murder where the accused attempts to avoid the penalty for murder by attempting to put forth a case that there was no intention to cause death. It is for the courts to ensure that the cases of murder punishable under Section 302, are not converted into offences punishable under Section 304 Part I/II, or cases of culpable homicide not amounting to murder, are treated as murder punishable under Section 302. The intention to cause death can be gathered generally from a combination of a few or several of the following, among other, circumstances: (i) nature of the weapon used; (ii) whether the weapon was carried by the accused or was picked up from the spot; (iii) whether the blow is aimed at a vital part of the body; (iv) the

⁶ (2006) 11 SCC 444

amount of force employed in causing injury; (v) whether the act was in the course of sudden quarrel or sudden fight or free for all fight; (vi) whether the incident occurs by chance or whether there was any premeditation; (vii) whether there was any prior enmity or whether the deceased was a stranger; (viii) whether there was any grave and sudden provocation, and if so, the cause for such provocation; (ix) whether it was in the heat of passion; (x) whether the person inflicting the injury has taken undue advantage or has acted in a cruel and unusual manner; (xi) whether the accused dealt a single blow or several blows. The above list of circumstances is, of course, not exhaustive and there may be several other special circumstances with reference to individual cases which may throw light on the question of intention. Be that as it may."

- 16.** It is the contention of Mr. Gaur that it was a premeditated act of the appellant. Referring to the evidence of PW-4, an injured eye-witness, he pointed out that the appellant and the co-accused were beating others when S sought to intervene. Having queried as to why PW-4 was being beaten, it was said that they were waiting for S; thereafter the appellant went to the house of one Tamanna, brought the axe and hacked S to death. Unless it was pre-planned, Mr. Gaur submits, the appellant would not have known where the axe (being the weapon of offence) was kept. Next, he points out from the evidence of PW-4 (the uncle of V) that the accused had agreed to keep C and her child with them, provided a share of the property were given to them. From the evidence of PW-8 (PW-4' son), it is pointed out that there were demands from the side of some of the accused (A-8 and A-9) that C should be given a share of the property, if she were not accepted in the family. These circumstances, seen together, would give a clear idea that it is far from the truth that the appellant in the heat of the moment inflicted the fatal blow. He also submits that although one

single blow was inflicted by the appellant on the neck of S, it was sufficient to cause death and did cause the death of the appellant. S, according to him, tried to intervene to ensure that there was no loss of life or limb of anyone engaged in the altercation and scuffle but unfortunately ended giving up his life without in any manner being responsible for what had happened in the past.

17. It is further contended by Mr. Gaur that nothing precludes the appellant from seeking premature release under the remission policy of the State. As and when the appellant acquires eligibility, he submits, the appellant may apply and if he is entitled in law for a premature release, the respondent no.2 – the complainant can have no grievance in this behalf.
18. While winding up his arguments, Mr. Gaur cited the decision of one other coordinate Bench of this Court in ***Raj Bala v. State of Haryana***⁷. This decision was placed for driving home the point that no court should reduce the term of sentence based on fancy or notion and that a balance, bearing in mind proportionality, must be struck in the interest of the victim too by ordering such term sentence which would meet the demands of the case. According to him, the High Court upon proper application of mind has reduced the term sentence to 8 (eight) years and, therefore, no further interference is warranted.

⁷ (2016) 1 SCC 463

- 19.** Mr. Gaur, thus, prayed for dismissal of the appeal.
- 20.** Learned counsel appearing for the respondent no. 1-State adopts the submissions of Mr. Gaur. He further drew our attention to the evidence of a couple of witnesses to demonstrate that the family members of the appellant were all armed with axes while they confronted the family of V.
- 21.** We have heard the parties and considered the evidence on record with the care and attention the same deserves.
- 22.** No doubt, the appellant had a reason to bear a grudge against V because he had allegedly raped C which finally resulted in C delivering a baby. The appellant, being a close relative of C and faced with the situation in which C was placed, may not have been unjustified in nurturing a grievance and securing justice for her, with the father of C. Suffice to note, C was also very young and having given birth to a child, the appellant might have felt as a dutiful brother to take care of her interest. Having said that, we cannot keep aside the role of S in the entire incident. An open fight had followed the scuffle during which the two opposing factions were giving blows and hits to each other. S happened to be the younger brother of V. There is no allegation levelled by any witness that S was part of the altercation and the subsequence scuffle leading to fight; in fact, there is evidence on record that S had intervened in course of the fight and was attempting to bring about peace between the two factions. An innocent person was done to death by the appellant without there

being any provocation. The sessions court did not convict the appellant for murder since, according to it, Exception 1 to Section 300, IPC was attracted. In our considered opinion, the appellant might have been deprived of the power of self-control by reason of the alleged act of rape committed by V on C. But there was no such sudden provocation at the place of occurrence which necessitated him to act in the manner he did and cause the death of S. Indeed, as observed above, neither S was instrumental in provoking the appellant nor was the blow struck on S's neck by the appellant by mistake or accident. Once we have concluded that there was no provocation, Exception 1 was certainly not applicable. Be that as it may, neither the respondent no. 1-State nor the respondent no. 2 – the complainant appealed against the judgment of conviction recorded by the sessions court. We, therefore, do not see reason to dilate on this aspect any further but would bear this in mind while considering the prayer of Mr. Kaushik for reduction in the term sentence imposed by the High Court.

- 23.** Mr. Gaur's submission that S was an intervenor who attempted to bring about peace and was himself a young man of 23 years cannot be brushed aside. If other family members had not agreed to the proposal to have the marriage of C solemnised with V, no fault could at least be attributed to an innocent person like S who had to suffer homicidal death caused by the appellant. Viewed through the prism of Section 304 Part-II, IPC, the appellant did have the knowledge that

his act of striking S with the axe on his neck is likely to cause such bodily injury as is likely to cause death. While the sessions court was justified in ordering imprisonment of the appellant for 10 (ten) years, the High Court has been indulgent towards the appellant and granted relief to him by reducing the term sentence by 8 (eight) years.

24. In ***Raj Bala*** (supra), this Court upon a survey of precedents on the point of sentence, had the occasion to observe as follows:

“**16.** A court, while imposing sentence, has a duty to respond to the collective cry of the society. The legislature in its wisdom has conferred discretion on the court but the duty of the court in such a situation becomes more difficult and complex. It has to exercise the discretion on reasonable and rational parameters. The discretion cannot be allowed to yield to fancy or notion. A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked. It is the duty of the court not to exercise the discretion in such a manner as a consequence of which the expectation inherent in patience, which is the ‘finest part of fortitude’ is destroyed. A Judge should never feel that the individuals who constitute the society as a whole is imperceptible to the exercise of discretion. He should always bear in mind that erroneous and fallacious exercise of discretion is perceived by a visible collective.”

25. One of the precedents, as reaffirmed in ***Raj Bala*** (supra), is ***Shailesh Jasvantbhai v. State of Gujarat***⁸, where Arijit Pasayat, J., speaking

⁸ (2006) 2 SCC 359

for a two-judge Bench, articulated the parameters governing the determination of an appropriate sentence in the following words:

"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, 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 v. State of T.N.* [(1991) 3 SCC 471 : 1991 SCC (Cri) 724]

9. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

10. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction, drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.”

(emphasis ours)

- 26.** The decision in ***Deo Nath Rai*** (supra) has also been perused. In that case, on facts and circumstances, this Court held that though the high court was justified in altering conviction of the accused to Section 304 Part-II, IPC, it was not justified in imposing lesser sentence particularly on the accused P who gave a sword blow on the right shoulder of deceased M. The decision turns on its own facts and no law is discernible which would impel us to take a view different from that we propose to take hereinbelow.
- 27.** We have taken into account that the appellant was about 20 years of age at the time of the incident and that there may have been some exasperation in his mind. Nevertheless, the courts are obligated to adopt a balanced and principled approach in matters of sentencing. Undue leniency can cause public confidence in the justice system to plummet, while excessive severity may lead to injustice.
- 28.** Guided by the aforesaid decisions and after having considered the factual matrix, we are of the considered opinion that the sentence

imposed by the High Court does not call for any interference and that the appellant is not entitled to any relief.

- 29.** The appeal is liable to be and is, accordingly, dismissed.
- 30.** Needless to observe, the appellant shall be entitled to seek premature release in terms of the remission policy of the State of Karnataka, provided he acquires eligibility thereunder.
- 31.** We record our sincere appreciation for the able assistance rendered to us by the *amici curiae*.

.....J.
(DIPANKAR DATTA)

.....J.
(AUGUSTINE GEORGE MASIH)

**NEW DELHI;
OCTOBER 17, 2025.**