Supreme Court of India
State Of Punjab vs Prem Sagar & Ors on 13 May, 2008
Author: S.B. Sinha
Bench: S.B. Sinha, V.S. Sirpurkar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2008
[Arising out of SLP (Crl.) No.4285 of 2007]

State of Punjab ...Appellant

Versus

Prem Sagar & Ors. ...
Respondents

JUDGMENT

S.B. SINHA, J :

1. Leave granted.

2. In our judicial system, we have not been able to develop legal principles as regards sentencing.

The superior courts except making observations with regard to the purport and object for which punishment is imposed upon an offender, had not issued any guidelines. Other developed countries have done so. At some quarters, serious concerns have been expressed in this behalf. Some Committees as for example Madhava Menon Committee and Malimath Committee have advocated introduction of sentencing guidelines.

3. Before, however, we delve into the said question, we may notice the fact of the matter.

Respondents herein were convicted for commission of an offence under Section 61(1) of the Punjab Excise Act for carrying 2000 litres of rectified spirit. They were sentenced to undergo an imprisonment for a period of one year.

4. The High Court, however, by reason of the impugned judgment purported to be upon taking into consideration the fact that the offence was committed in the year 1987 and the appeal was dismissed in the year 1992, thought it fit to give an opportunity to the respondents to reform themselves, observing:

> "...The accused have suffered lot of agony of protracted trial. They having joined the main stream must have expressed repentance over the misdeed done by them about 19 years back. In the aforesaid circumstances and in the absence of any of their bad antecedents, it will not be appropriate to deny them to the benefit of probation under the Probation of Offenders Act, 1958 and to send them to jail at this stage."

5. On the said premise, the respondents were directed to be released on probation on their executing a bond of Rs. 20,000/- with one surety each of the like amount to the satisfaction of the Trial Judge.

No report of the Probation Officer was called for. The social background of the respondent had not been taken into consideration. What was their occupation was not noticed.

6. Whether the court while awarding a sentence would take recourse to the principle of deterrence or reform or invoke the doctrine of proportionality, would no doubt depend upon the facts and circumstance of each case.

While doing so, however, the nature of the offence said to have been committed by the accused plays an important role. The offences which affect public health must be dealt with severely. For the said purpose, the courts must notice the object for enacting Article 47 of the Constitution of India.

7. There are certain offences which touch our social fabric. We must remind ourselves that even while introducing the doctrine of plea bargaining in the Code of Criminal Procedure, certain types of offences had been kept out of the purview thereof. While imposing sentences, the said principles should be borne in mind.

8. A sentence is a judgment on conviction of a crime. It is resorted to after a person is convicted of the offence. It is the ultimate goal of any justice delivery system. The Parliament, however, in providing for a hearing on sentence, as would appear from Sub-section (2) of Section 235, Sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The Superior Courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.

9. In Dhananjoy Chatterjee Alias Dhana v. State of W.B. [(1994) 2 SCC 220], this Court held:

> "15...Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime..."

Gentela Vijayavardhan Rao and Another v. State of A.P. [(1996) 6 SCC 241], following Dhananjoy Chatterjee (supra), states the principles of deterrence and retribution but the same cannot be categorized as right or wrong. So much depends upon the belief of the judges.

10. In a recent decision in Shailesh Jasvantbhai and Another v. State of Gujarat and Others [(2006) 2 SCC 359], this Court opined:

> 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.

Relying upon the decision of this Court in Sevaka Perumal v. State of T.N. [(1991) 3 SCC 471], this Court furthermore held that it was 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.

11. It is interesting to note that this Court in some cases severely criticized the pattern adopted in the matter of passing of sentence on the accused. [See State of M.P. v. Bala @ Balaram, (2005) 8 SCC 1 and State of M.P. v. Govind, (2005) 8 SCC 12].

12. Recently, in State of Karnataka v. Raju [2007 (11) SCALE 114], where the facts of the case were that the Trial Court imposed custodial sentence of seven years after convicting the respondent for rape of minor under Section 376 of the Indian Penal Code; on appeal, the High Court reduced the

sentence of the respondent to three and half years.

This Court held that a normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' rigorous imprisonment, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' rigorous imprisonment can also be awarded. It was, thus, opined that socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. To what extent should the judges have discretion to reduce the sentence so prescribed under the statute has remained a vexed question.

However, in India, the view always has been that the punishment must be proportionate to the crime. Applicability of the said principle in all situations, however, is open to question. Judicial discretion must be exercised objectively having regard to the facts and circumstances of each case.

13. We may also notice that in Dalbir Singh v. State of Haryana [(2000) 5 SCC 82], this Court opined:

> "13. Bearing in mind the galloping trend in road accidents in India and the devastating consequences visiting the victims and their families, criminal courts cannot treat the nature of the offence under Section 304A IPC as attracting the benevolent provisions of Section 4 of the PO Act. While considering the quantum of sentence, to be imposed for the offence of causing death by rash or negligent driving of automobiles, one of the prime considerations should be deterrence. A professional driver pedals the accelerator of the automobile almost throughout his working hours. He must constantly inform himself that he cannot afford to have a single moment of laxity or inattentiveness when his leg is on the pedal of a vehicle in locomotion. He cannot and should not take a chance thinking that a rash driving need not necessarily cause any accident; or even if any accident occurs it need not necessarily result in the death of any human being; or even if such death ensues he might not be convicted of the offence; and lastly that even if he is convicted he would be dealt with leniently by the court. He must always keep in his mind the fear psyche that if he is convicted of the offence for causing death of a human being due to his callous driving of vehicle he cannot escape from jail sentence. This is the role which the courts can play, particularly at the level of trial courts, for lessening the high rate of motor accidents due to callous driving of automobiles."

In Rattan Singh v. State of Punjab [(1979) 4 SCC 719], this Court held:

> "5. Nevertheless, sentencing must have a policy of correction. This driver, if he has -to become a good driver, must have a better training in traffic laws and moral responsibility, with special reference to the potential injury to human life and limb. Punishment in this area must, therefore, be accompanied by these components. The State, we hope, will attach a course for better driving together with a livelier sense of responsibility, when the punishment is for driving offences. Maybe, the State may consider, in cases of men with poor families, occasional parole and reformatory

courses on appropriate application, without the rigour of the old rules which are subject to Government discretion."

14. The Ministry of Law, Government of India, Committee on Reforms of the Criminal Justice System, 2003 was established by the Government of India to recommend changes to the criminal justice system in India.

It had observed that the judges were granted wide discretion in awarding the sentence within the statutory limits. It was also of the opinion that as there was no guidance in selecting the most appropriate sentence in the fact situation thereof, there was no uniformity in awarding sentence as the discretion was exercised according to the judgment of every judge. Thus, the committee emphasized the need for having sentencing guidelines to minimize uncertainty in awarding sentences. It recommended the appointment of a statutory committee to lay down the sentencing guidelines.

15. Don M. Gottfredson in his essay on "Sentencing Guidelines" in "Sentencing: Hyman Gross and Andrew von Hirsch" opines:

> "It is a common claim in the literature of criminal justice- and indeed in the popular press- that there is considerable "disparity" in sentencing.. The word "disparity" has become a prerogative and the concept of "sentencing disparity" now carries with it the connotation of biased or insidious practices on the part of the judges. This is unfortunate in that much otherwise valid criticism has failed to separate justified variation from the unjustified variation referred to as disparity. The phrase "unwarranted disparity" may be preferred; not all sentencing variation should be considered unwarranted or disparate. Much of it properly reflects varying degrees of seriousness in the offense and/or varying characteristics of the offender. Dispositional variation that is based upon permissible, rationally relevant and understandably distinctive characteristics of the offender and of the offense may be wholly justified, beneficial and proper, so long as the variable qualities are carefully monitored or consistency and desirability over time. Moreover, since no two offenses or offenders are identical, the labeling of variation as disparity necessarily involves a value judgment- that is, disparity to one person may be simply justified variation to another. It is only when such variation takes the form of differing sentences for similar offenders committing similar offenses that it can be considered disparate."
>
> [Emphasis supplied] The learned author further opines:
>
> "In many jurisdictions, judicial discretion is nearly unlimited as to whether or not to incarcerate an individual; and bound only by statutory maxima, leaving a broad range of discretion, as to the length of sentence."
>
> 16. Kevin R. Reitz in Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" states:

"All guideline jurisdictions have found it necessary to create rules that identify the factual issues at sentencing that must be resolved under the guidelines, those that are potentially relevant to a sentencing decision, and those viewed as forbidden considerations that may not be taken into account by sentencing courts. One heated controversy, addressed differently across jurisdictions, is whether the guideline sentence should be based exclusively on crimes for which offenders have been convicted ("conviction offenses"), or whether a guideline sentence should also reflect additional alleged criminal conduct for which formal convictions have not been obtained ("nonconviction offenses").

Another difficult issue of fact-finding at sentence for guideline designers has been the degree to which trial judges should be permitted to consider the personal characteristics of offenders as mitigating factors when imposing sentence. For example: Is the defendant a single parent with young children at home? Is the defendant a drug addict but a good candidate for drug treatment? Has the defendant struggled to overcome conditions of economic, social or educational deprivation prior to the offense? Was the defendant's criminal behavior explicable in part by youth, inexperience, or an unformed ability to resist peer pressure? Most guideline states, once again including all jurisdictions with voluntary guidelines, allow trial courts latitude to sentence outside of the guideline ranges based on the judge's assessment of such offender characteristics. Some states, fearing that race or class disparities might be exacerbated by unguided consideration of such factors, have placed limits on the list of eligible concerns. (However, such factors may indirectly affect the sentence, since judges are permitted to base departures on the offenders particular "amenability" to probation (Frase, 1997).)"

17. Andrew von Hirsch and Nils Jareborg have divided the process of determining sentence into stages of determining proportionality while determining a sentence, namely:

1. What interest are violated or threatened by the standard case of the crime- physical integrity, material support and amenity, freedom from humiliation, privacy and autonomy.

2. Effect of violating those interests on the living standards of a typical victim- minimum well-being, adequate well-being, significant enhancement

3. Culpability of the offender

4. Remoteness of the actual harm as seen by a reasonable man.

[See Andrew Ashworth, Sentencing and Criminal Justice, 2005, 4th edition]

> 18. Guidelines in United Kingdom originated from two separate sources in the 1980s. The first was the Magistrates' Association, which took the first steps in producing road traffic offence guidelines for the lower courts. This process has widened and deepened, so that the latest set of sophisticated guidelines, effective from 2004, covers all the main offences likely to be encountered in those courts. The second source of guidelines was the Court of Appeal which, of its own initiative, developed guideline judgments as a means of providing assistance to Crown Court sentencers in the disposal of particular types of offence, mainly the most serious forms of crime which attract long prison sentences. The Crime and Disorder Act 1998 created the Sentencing Advisory Panel (SAP), a body with a diverse membership, to assist and advise the Court of Appeal in the promulgation of sentencing guidelines.

The Panel and the Court of Appeal worked together effectively in this way from 1999 to 2003, at which point the Sentencing Guidelines Council (SGC) was established. One of the most significant innovations introduced by the Criminal Justice Act 2003 was the setting up of the Sentencing Guidelines Council. The Council, composed mainly but not exclusively of sentencers, took over the task of issuing sentencing guidelines, with the Panel performing much the same function as before, but now advising the Council rather than the Court of Appeal. The personnel on the SGC/SAP all work on guidelines in a part-time capacity, but supported by a joint full-time secretariat.

19. The idea of a "commission on sentencing" can be traced to Marvin's Frankel's influential writings of the early 1970's , most notably his 1973 book Criminal Sentences: Law Without Order.

He also advocated:

> "Greater uniformity in punishments imposed upon similarly situated offenders , with a concomitant reduction in inexplicable disparities, including racial disparities in punishment and widely varying sentences based simply on the predilections of individual judges"

[See Encyclopedia of Crime and Justice, Second edition "Sentencing guidelines" Kevin R. Reitz]

20. The Sentencing Reform Act of 1984 created the U.S. Sentencing Commission to promulgate binding sentencing guidelines in response to a regime of indeterminate sentencing characterized by broad judicial discretion over sentencing and the possibility of parole. The Act sought to create a transparent, certain, and proportionate sentencing system, free of "unwarranted disparity" and able to "control crime through deterrence, incapacitation, and the rehabilitation of offenders" by sharing power over sentencing policy and individual sentencing outcomes among Congress, the federal courts, the Justice Department, and probation officers.

21. The heart of the Guidelines is a one-page table: the vertical axis is a forty-three-point scale of offense levels, the horizontal axis lists six categories of criminal history, and the body provides the ranges of months of imprisonment for each combination of offense and criminal history. A sentencing judge is meant to use the guidelines, policy statements, and commentaries contained in

the Guidelines Manual to identify the relevant offense and history levels, and then refer to the table to identify the proper sentencing range. Though in all cases a sentence must be at or below the maximum sentence authorized by statute for the offense, in certain circumstances the Guidelines allow for both upward and downward departures from the sentence that would otherwise be recommended.

22. In `THE FAILURE OF THE FEDERAL SENTENCING GUIDELINES: A STRUCTURAL ANALYSIS' [III 105 Colum.L. Rev. 1315], Frank O. Bowman criticised thee Federal Sentencing Guidelines in the following terms:

> "(1) The severity and frequency of punishment imposed by the federal criminal process during the guidelines era is markedly greater than it had been before.
>
> (2) For most crimes it is difficult, and perhaps impossible, to isolate the effect of federal prosecutorial and sentencing policies from effects of state policies and practices, not to speak of the broader economic, demographic, and social trends that influence crime rates. (3) The federal process of making sentencing rules and imposing sentences on individual defendants has gone astray."

23. In United States v. Booker [125 S. Ct. at 757] Booker found the federal guidelines unconstitutional as previously applied, but upheld them as a system of "effectively advisory" sentencing rules.

24. In the recent United States Supreme Court decision of Gall v. United States [552 U.S. 2007], the court had to determine the correctness of the decision of the Eight Circuit court that reversed the decision of the district court on sentencing Gall to 36 months probation period on the ground that a sentence outside the Federal sentencing Guidelines range must be and was not in this case, supported by extraordinary circumstances.

Reversing the decision of the court, it was opined:

> " While the extent of the difference between a particular sentence and the recommended Guidelines range is relevant, courts of appeals must review all sentences--whether inside, just outside, or significantly outside the Guidelines range--under a deferential abuse-of-discretion standard.
>
> (a)Because the Guidelines are now advisory, appellate review of sentencing decisions is limited to determining whether they are "reasonable," United States v. Booker, 543 U. S. 220 , and an abuse-of-discretion standard applies to appellate review of sentencing decisions. A district judge must consider the extent of any departure from the Guidelines and must explain the appropriateness of an unusually lenient or harsh sentence with sufficient justifications. An appellate court may take the degree of variance into account and consider the extent of a deviation from the Guidelines, but it may not require "extraordinary" circumstances or employ a rigid mathematical

> formula using a departure's percentage as the standard for determining the strength of the justification required for a specific sentence.
>
> (b) A district court should begin by correctly calculating the applicable Guidelines range.
>
> The Guidelines are the starting point and initial benchmark but are not the only consideration. After permitting both parties to argue for a particular sentence, the judge should consider all of 18 U. S. C. '3353(a)'s factors to determine whether they support either party's proposal. He may not presume that the Guidelines range is reasonable but must make an individualized assessment based on the facts presented. If he decides on an outside-the- Guidelines sentence, he must consider the extent of the deviation and ensure that the justification is sufficiently compelling to support the degree of variation."

25. Andrew von Hirsch in "The Sentencing Commission's functions", The Sentencing Commission and its Guidelines (Northeastern University Press, 1987), Ch.1.] more than twenty years ago summarised the central tasks of a sentencing commission by observing that the function was:

> "(1) to decide the future direction of sentencing policy, informed by the study of past sentencing practice;
>
> (2) to structure judicial discretion, rather than to eliminate it, allowing judges to interpret and apply the guidelines and to deviate from them in special circumstances; and (3) to select a predominant rationale for sentencing, and to base guidelines upon it, so as to promote consistency in sentencing and to reduce disparity."
>
> The High Court does not rest its decision on any legal principle.

No sufficient or cogent reason has been arrived.

We have noticed the development of law in this behalf in other countries only to emphasise that the courts while imposing sentence must take into consideration the principles applicable thereto. It requires application of mind. The purpose of imposition of sentence must also be kept in mind.

26. Although ordinarily, we would not interfere the quantum of sentence in exercise of our jurisdiction under Article 136 of the Constitution of India, but in a case of this nature we are of the opinion that the High Court having committed a serious error, interest of justice would be subserved if the decision of the High Court is set aside and the respondent is sentenced to undergo simple imprisonment for a period of six months and a fine of Rs. 5,000/- is imposed, in default to undergo imprisonment for a further period of one month.

27. The Appeal is allowed to the extent mentioned hereinbefore.

.....J.

[S.B. Sinha] .....J.

[V.S. Sirpurkar] New Delhi;

May 13, 2008