2024 INSC 771

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2224 OF 2014

SANDEEP ...APPELLANT

VERSUS

STATE OF UTTARAKHAND ...RESPONDENT

J U D G M E N T

R.MAHADEVAN, J.

This appeal challenges the judgment and order dated 16.12.2011 passed by the High Court of Uttarakhand at Nainital[1], in Criminal Appeal No.65 of 2006[2], whereby, the High Court dismissed the said appeal and confirmed the judgment and order dated 16.05.2006 passed by the Additional Sessions Judge / First Fast Track Court, Roorkee, District Haridwar[3] in Sessions Trial No. 208 of 1998[4].

2. The appellant Sandeep along with two others *viz.*, Veer Singh and Dharamveer, was tried for having caused the murder of one Abdul Hameed on 30.10.1997 at 9.45 p.m., and thereby committed the offence under section 302 r/w 34 of the Indian Penal Code, 1860 (for short, "the IPC") and section 25/27 of

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[1]hereinafter shortly referred to as "the High Court"
[2]Sandeep v. State of Uttarakhand
[3]hereinafter shortly referred to as "the Sessions Court"
[4]State v. Veer Singh and two others

the Arms Act, 1959 (for short, "the Arms Act"). The Sessions Court, in the aforesaid Sessions Trial No.208 of 1998, found the appellant guilty of the offence under section 302 r/w Section 34 IPC, convicted and sentenced him to undergo rigorous imprisonment for life with fine of Rs.1,000/-, in default to undergo rigorous imprisonment for a further period of three months, while acquitting the other two co-accused. The Sessions Court in the connected Sessions Trial No.209 of 1998[5], acquitted the appellant of the offence under section 25/27 of the Arms Act. Feeling aggrieved and being dissatisfied with the judgment of conviction and sentence passed by the Sessions Court in Sessions Trial No.208 of 1998, the appellant went on Criminal Appeal No.65 of 2006, which ended in dismissal by the impugned judgment and order dated 16.12.2011 passed by the High Court.

3. Shorn off unnecessary details, the case of the prosecution is that on 31.10.1997, one Kale Hasan (P.W.1 / complainant) S/o Abdul Hameed, resident of village Dosni, lodged a written report (Ext.A-1) to Police Station Laksar, District Haridwar, alleging that on the midnight of 30.10.1997, while his father Abdul Hameed (deceased) and his mother Mangti were sitting in their courtyard and were talking to each other, at about 09:45 p.m., four persons *viz.,* Veer Singh S/o Jaswant Singh, Mintu S/o Molhar, Dharamveer S/o.Brhampal and Sandeep (appellant herein), all residents of Dosni village, came there and told to his father that they would teach him a lesson for refusing to give them jaggery (GUR) and

[5]State v. Sandeep

shot at his father. On hearing the sound of the gun-shot, the complainant, along with Gufran Ali (P.W.2) and Naseem, reached the courtyard and saw that all the four accused persons, after shooting, were fleeing away from the scene of crime. Thereafter, the injured Abdul Hammed was taken to the Government Hospital, Laksar for treatment, where the doctor declared him dead.

4. On the basis of the written report, Chik report (Ext.A-13) was prepared and a case in Laskar Police Station Crime No.185 of 1997 was registered against all the four accused for the offence under section 302 IPC. The Sub Inspector of Police Satish Verma, during the course of investigation, inspected the scene of crime and prepared inquest report (Ext.A4) on the body of the deceased and site plan (Ext.A9). On 31.10.1997, the Investigating Officer recorded the statements of the witnesses; recovered one country-made pistol 12 bore and one empty cartridge concealed in the field of Dharmdas under a transformer, on pointing out by the appellant; and prepared recovery memo (Ext.A3) and plan for the place of recovery (Ext.A10). That apart, the Investigating Officer collected bloodstained soil and plain soil (Ext.A5) and took possession of the articles *viz.*, a torch with three batteries (Ext.A2), a bloodstain cot (Ext.A6), a quilt-cover, a cotton blanket and a quilt (Ext.A7) and a lantern (Ext.A11). Thereafter, the body of the deceased Abdul Hameed along with inquest report (Ext.A4) was sent for post-mortem. Dr.R.K.Verma, Physician (P.W.7) conducted post-mortem on 31.10.1997 and gave autopsy report; and according to his opinion, the cause of death was due to

shock and hemorrhage as a result of fire arm ante mortem injuries; and that the wound of entry could be caused by one bullet. In the meanwhile, the Investigating Officer sent the samples for chemical analysis and obtained a report from Forensic Science Lab, Agra (Ext.A18).

5. After completion of investigation, the Investigating Officer filed charge sheet (Ext.A8) on 27.12.1997 against all the four accused for the offence under section 302 IPC. Upon getting sanction (Ext.A17) from the District Magistrate, Haridwar, charge sheet (Ext.A15) was filed against the appellant herein, for the offence under section 25/27 of the Arms Act. After committal, the learned Additional District Judge, Roorkee, framed charge against all the accused for the offence under section 302 r/w 34 IPC. The file relating to accused Mintu was sent to Juvenile Court, *vide* order dated 01.01.2003.

6. Before the Sessions Court, in order to prove the guilt of the accused *viz.*, Veer Singh, Dharamveer and the appellant herein, the prosecution examined P.W.1 to P.W.9 witnesses and marked Ext.A1 to A17 documents, besides material objects. However, no oral and documentary evidence were let in, on the side of the accused. During section 313 Cr.P.C questioning, the accused pleaded not guilty and claimed trial.

7. After considering the evidence on record, the Sessions Court as already noticed in paragraph 2 *supra*, found the appellant guilty of the offence under section 302 r/w 34 IPC, convicted him and sentenced him for the same, while

acquitting the other two co-accused, by the judgment dated 16.05.2006 in Sessions Trial No.208 of 1998. However, the appellant was found not guilty of the offence under section 25/27 of the Arms Act and was acquitted of the same by the same judgment dated 16.05.2006, but in Sessions Trial No.209 of 1998. The judgment of conviction and sentence passed by the Sessions Court in Sessions Trial No.208 of 1998 was also affirmed by the High Court. Therefore, the appellant is before us with the present Criminal Appeal.

8. This Court, by order dated 27.01.2020[6] disposed of Interlocutory Application No.60285/2019 in Criminal Appeal No.2224/2014 filed by the appellant by releasing him on bail, on certain terms.

9. We have heard Mrs. Sudha Gupta, learned counsel appointed to espouse the cause of the appellant and Mr. Akshat Kumar, learned counsel for the respondent – State and also perused the materials on record.

10. The learned counsel appearing on behalf of the appellant strenuously argued that as per the prosecution story, four persons were involved in the crime and they were charge sheeted for the same offence; in the FIR, there was no specific role assigned to the appellant and all the accused played identical role; and after joint trial, two co-accused were acquitted of the offence under section

[6]Having heard learned counsel and perusing the records, we order that the appellant be released on bail in Sessions Trial No. 208 of 1998 on the usual conditions to the satisfaction of the concerned trial court.
The interlocutory application for bail stands disposed of.
Hearing of the appeal expedited.

302 r/w 34 IPC. While so, the Sessions Court ought to have extended the benefit of doubt and acquitted the appellant as well. The learned counsel further submitted that the appellant was acquitted of the charge under section 25/27 of the Arms Act arising out of the same crime, and hence, the offence under section 302 r/w 34 IPC is improbable.

10.1. Taking us through the evidence led by the prosecution, the learned counsel argued that the prosecution projected P.W.1 and P.W.2 as eye-witnesses to the occurrence; it is their deposition that they saw that the deceased was shot and got injuries, by which he was bleeding; and they took the deceased to hospital; but they did not get bloodstains on their clothes. That apart, the occurrence happened on 30.10.1997 at 9.45 p.m., however, source of light at the scene of crime was not mentioned in the FIR. Though P.W.1 and P.W.2 stated in their evidence that all the accused were armed with weapons in their hands, the FIR did not disclose as to which accused was in possession of which weapon and as to who shot the bullet. The fact of provoking and the fact of possession of the weapons by the accused persons were not mentioned in the statement recorded under section 161 Cr.P.C., which were also accepted by the Investigating officer in his deposition. Thus, it was submitted that these discrepancies / inconsistencies / contradictions in the case of the prosecution falsify the testimonies of P.W.1 and P.W.2 *qua* involvement of the appellant in the crime.

10.2. It was further argued by the learned counsel that the only eye-witness to the occurrence *viz.,* Mangti - wife of the deceased and the Sub Inspector of Police, who conducted investigation, were not examined, which are fatal to the prosecution case. She further submitted that the motive for murder i.e., the accused demanding jaggery, the deceased denying the same and the accused committing the crime, appears to be very vague. Therefore, the learned counsel submitted that the prosecution has not established the charge framed against the appellant beyond reasonable doubt. Without analysing the evidence in proper perspective, the Sessions Court erroneously convicted the appellant alone and sentenced him for the offence under section 302 r/w 34 IPC, and the same was also affirmed by the High Court. Therefore, the learned counsel prayed that the judgments of conviction and sentence imposed on the appellant should be set aside.

10.3. In the alternative, it was submitted by the learned counsel for the appellant that the appellant has already suffered incarceration for more than 14 years and therefore, a lenient view may be taken, *qua* sentence awarded by the Courts below.

11. *Per contra*, the learned counsel appearing on behalf of the respondent – State contended that it is proved from the evidence of P.W.l and P.W.2 that the appellant shot the deceased and escaped from the scene of occurrence. PW1 specifically stated that he had seen the appellant, while firing bullet shot on his

father; and after causing bullet shot, all the accused persons ran away. P.W.2 - Gufran Ali also clearly stated that it was only the appellant who shot the deceased and not the other co-accused. Adding further, the learned counsel submitted that P.W.2 deposed that the accused Veer Singh having a spear, appellant having a country-made pistol and Dharamveer and Mintu having lathis, came to the house of the deceased and on exhortation given by the co-accused, the appellant fired bullet shot by country-made pistol on the deceased which hit on his right chest and arm. PW4 Akbar stated in his evidence that the country-made pistol was recovered by the police on pointing out by the appellant. It is also proved from the evidence of P.W.2 that at the time of occurrence, there was sufficient source of light for identification of the accused. Hence, the charge framed against the appellant was duly proved by the prosecution.

11.1. With respect to non-examination of some witnesses, it was submitted by the learned counsel that such lapse is insufficient to discard the ocular evidence led by the prosecution.

11.2. Thus, according to the learned counsel, upon proper appreciation of the material evidence, the Sessions Court rightly convicted the appellant of the offence under section 302 r/w 34 IPC as also affirmed by the High Court and hence, there is no requirement to interfere with such concurrent findings rendered by the Courts below.

12. As pointed out earlier, in connection with murder of the father of the complainant on 30.10.1997 at 9.45 p.m., the appellant was subjected to criminal prosecution, along with three accused *viz.,* Veer Singh, Mintu and Dharamveer for the offence under section 302 r/w 34 IPC. By order dated 01.01.2003, the case pertaining to the accused Mintu was remitted to the Juvenile Court. The Sessions Court convicted the appellant for the said offence, while acquitting the other two accused. Be it noted, for the same crime, the appellant was also charge sheeted for the offence under section 25/27 of the Arms Act, but he was acquitted of the same.

13. In order to appreciate the contentions raised on behalf of the respective parties, let us examine the evidence let in before the Sessions Court.

13.1. The prosecution heavily relied on the evidence of P.W.1 and P.W.2, who are said to be eye-witnesses to the occurrence. PW1 Kale Hasan – complainant / son of the deceased, deposed that on 30.10.1997 at about 9.45 p.m., his parents *viz*., Abdul Hameed and Mangti Devi, were sitting in their Baithak Chappar (courtyard) and talking with each other; the four accused persons came there; the appellant had a katta in his hand, Veer Singh had a ballam, and Dharamveer and Mintu had sticks in their hands; they came to the door of Baithak; Dharamveer, Mintu and Veer Singh asked the appellant to shoot his father and teach him a lesson for not giving jaggery; the appellant fired bullet on his father which hit on his chest and left arm; on hearing the sound of bullet shot, P.W.2, Gufran Ali and

Nasim immediately reached the spot; they saw the accused persons fleeing away, after firing; they chased them, but did not catch them; and all the four accused ran away. He further stated in his deposition that he, Gufran Ali and Nasim took the deceased to Laksar Hospital where the doctor declared him dead and asked to take him to Police Station; then, they came to Police Station and narrated the incident to Daroga, who advised them to lodge a report against the accused persons; and he (P.W.1) had written report (Ext.A1) and given it to Police Station.

13.2. P.W.2 Gufran Ali / grandson of the deceased corroborated the evidence of P.W.1. He categorically stated that all the accused were armed with weapons; the appellant shot the deceased by a katta which hit on his chest; and he had a torch in his hand; and he tried to hold the accused, but they fled away.

13.3. P.W.3 Furkan stated about the material objects, such as, lantern, battery having 3 cells, one sole quilt, Dutai and Khes, etc., recovered in the scene of occurrence.

13.4. P.W.4 Akbar deposed that he was one of the members of the police party and in his presence, on pointing out by the appellant, one country made pistol, concealed in the sugarcane field of Dharamdas under a transformer, was recovered.

13.5. P.W.5 Niyamul, a witness of inquest report (Ext.A4) *inter alia* stated in his evidence that body of the deceased was kept in a white cloth, sealed and sent for post-mortem.

13.6. P.W.6 Jagat Kumar Singh – Investigating Officer explained about the conduct of investigation. According to him, on receipt of the report, a case was registered against the accused for the offence under section 302 IPC; inquest report (Ext.A4) was prepared; after inspection, site plan (Ext.A9) was marked; statements of the witnesses were recorded; recovery of the material objects was made; samples of bloodstained soil and plain soil were collected; body of the deceased was sent for post-mortem; after investigation, charge sheet (Ext.A8) was filed against four accused under section 302 IPC; and upon getting necessary sanction, charge sheet (Ext.A15) was filed against the appellant for the offence under section 25/27 of the Arms Act.

13.7. P.W.7- Dr. R.K. Verma, Physician deposed that he conducted post mortem on the body of the deceased Abdul Hameed, aged 70 years, on 31.10.1997 at 2:30 p.m. and prepared autopsy report, with the following ante mortem injuries:-

> (i) Firearm wound of entry 4cm x 2cm muscle deep on medial side of right upper arm 9 cm below the axilla. Blackening and tattooing present around the wound. Margins lacerated and inverted. Two pellets were recovered from the wound.
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> (ii) Firearm wound of entry 3 cm x 2 cm chest cavity deep on lateral side of right chest 11cm below the axilla in mid axillary line. Tattooing and blackening present around the wound in an area of 1 cm. Margins lacerated and inverted. 5th and 5th ribs are fractured.

He further stated in his evidence that the cause of death was due to shock and hemorrhage as a result of firearm ante mortem injuries and the death of the

deceased could have been caused within 24 hours prior to the time of conducting postmortem; and that both wounds of entry could be caused by one bullet.

13.8. P.W.8 Constable Ramdhan Singh deposed that based on the report of the complainant, he prepared Chik report and entered the case in the G.D.

13.9. P.W.9 Constable Balraj Singh was examined to prove the investigation conducted by the Sub Inspector of Police Satish Verma, who did not come forward to let in evidence. In view of non-examination of the said Officer, the Sessions Court doubted about the sanction accorded by the District Magistrate and accordingly, acquitted the appellant of the charge under section 25/27 of the Arms Act.

14. Upon scrutiny of the depositions of the material witnesses as well as the exhibits produced by the prosecution, predominantly, it is evident that on 30.10.1997 at 9.45 p.m., the deceased died due to the injuries sustained by firing of bullet. P.W.1 and P.W.2 clearly demonstrated in their deposition that the accused were having weapons and on exhortation by other accused, the appellant shot the deceased. The source of light in the scene of crime was explained by P.W.2 in his evidence. The evidence of P.W.3 proved that the material objects were recovered from the scene of crime. The fact that there was a torch and a lantern is recorded in Exts.A2 and A11. The statement of P.W.1 and P.W.2 corroborates with the materials recovered from the scene of occurrence. It is clearly stated by P.W.4 in his evidence that a country made pistol 12 bore and

one empty cartridge were recovered on identification by the appellant. It is to be seen that even in the FIR, it was mentioned that the deceased victim was shot. There is no delay in lodging the complaint, registering the FIR and filing the charge sheet.

15. Though the learned counsel for the appellant pointed out certain deficiencies / inconsistencies / contradictions in the evidence let in by the prosecution, they being minor in nature, cannot be considered as remissness in the investigation enabling the appellant's acquittal, particularly, when the appellant was present with a gun in the scene of occurrence, when the gun and empty cartridge were recovered based on the information given by the appellant, when the firing was witnessed by P.W.1 and P.W.2, and when the fact that the victim died due to wounds inflicted by gunshot, stood proved by the evidence of P.W.7, Doctor, who performed the autopsy. The law on minor discrepancies which does not affect the basic case of the prosecution, is well settled. This Court in *C. Muniappan v. State of Tamil Nadu*[7] has stated as under:

> ***"85.*** *It is settled proposition of law that even if there are some omissions, contradictions and discrepancies, the entire evidence cannot be disregarded. After exercising care and caution and sifting through the evidence to separate truth from untruth, exaggeration and improvements, the court comes to a conclusion as to whether the residuary evidence is sufficient to convict the accused. Thus, an undue importance should not be attached to omissions, contradictions and discrepancies which do not go to the heart of the matter and shake the basic version of the prosecution's witness. As the mental abilities of a human being cannot be expected to be attuned to absorb all the details of the incident, minor discrepancies are bound to occur in the statements of witnesses. (Vide Sohrab v. State of M.P.[(1972) 3 SCC 751 : 1972 SCC (Cri) 819 : AIR 1972 SC 2020], State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri)*

[7] *(2010) 9 SCC 567 : (2010) 3 SCC (Cri) 1402 : 2010 SCC OnLine SC 946 at page 596*

105], Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753], State of Rajasthan v. Om Prakash [(2007) 12 SCC 381 : (2008) 1 SCC (Cri) 411], Prithu v. State of H.P. [(2009) 11 SCC 588 : (2009) 3 SCC (Cri) 1502], State of U.P. v. Santosh Kumar[(2009) 9 SCC 626 : (2010) 1 SCC (Cri) 88] and State v. Saravanan [(2008) 17 SCC 587 : (2010) 4 SCC (Cri) 580] .)"

16. That apart, the acquittal of the appellant under section 25/27 of the Arms Act on a technical ground that the order of sanction by the District Magistrate was rejected as there was no date in the order, cannot come to the aid of the appellant as the extent of proof and procedures for prosecution are different. In the instant case, the charge of murder framed against the appellant stood proved, as narrated above. Insofar as the claim that when the other accused have been acquitted for the same offence, the appellant cannot be convicted, we do not agree with the same. It is proved beyond doubt that the victim died due to gunshot. The presence of the other accused with the alleged weapons was not proved and the victim was not inflicted with any other form of injury. Therefore, the benefit of doubt granted to the other accused, who were acquitted, cannot be extended to the appellant. Accordingly, the conviction under section 302 IPC is confirmed.

17. Insofar as the conviction under section 34 IPC, there is a contradiction in the evidence of the Investigating Officer and the other witnesses on instigation. P.W.1 and P.W.2 had deposed in the court that the other accused instigated the appellant to fire the shot, but on the contrary, the Investigating Officer had deposed that during investigation, it was revealed by the complainant and the

other witness that the appellant fired on his own. The Sessions Court did not accept the evidence of P.W.1 and P.W.2 with regard to the charge framed against other accused and acquitted them. Considering the fact that for a person to be convicted under section 34, there must be an involvement of two or more persons with common intention to commit the crime. Mere presence of the accused at the scene of occurrence is not sufficient. In the present case, after the acquittal of the other accused with a finding that there was nothing in the FIR or statement under section 161 to sustain the charge under section 34 IPC, the appellant remains the sole accused and there could be no charge under section 34 against him. Therefore, we are of the opinion that the conviction of the appellant under section 34 IPC by the Sessions Court as confirmed by the High Court is unsustainable.

18. For the reasons stated above, the concurrent finding recorded by the Sessions Court as affirmed by the High Court that the appellant was found guilty of the offence under section 302 IPC is confirmed. However, the appellant is acquitted of the charge under section 34 IPC and the judgments of the Courts below, insofar as convicting him for the same, are set aside.

19. As far as the sentence is concerned, considering the gravity and nature of the offence and all other relevant factors, the Courts can modify the punishment or reduce / enhance the period of sentence imposed on the accused. At this juncture, it will be apposite to refer to some judgments of this Court. The Constitutional Bench of this Court (majority view) in *Union of India v.*

V.Sriharan[8], has held that "*there is a power which can be derived from IPC to impose a fixed term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other court"*. Placing reliance on the said decision of the Constitutional Bench, this Court in *Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka*[9], has observed as follows:

> *"14…We have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the constitutional courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433-A Cr.PC."*

19.1. In a recent decision in *Navas @ Mulanavas v. State of Kerala*[10], a Full Bench of this Court, after referring to the judgments in *Swamy Shraddananda v. State of Karnataka*[11] *and in V.Sriharan (supra)*, has emphasised that "*while the maximum extent of punishment of either death or life imprisonment is provided for under the relevant provisions, it will be for the courts to decide if in its conclusion, the imposition of death may not be warranted, what should be the number of years of imprisonment that would be judiciously and judicially more appropriate to keep the person under incarceration, by taking into account, apart from the crime itself, from the angle of the commission of such crime or crimes,*

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[8] (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695
[9] (2023) 9 SCC 817
[10] 2024 SCC OnLine SC 315
[11] (2008) 13 SCC 767

the interest of the society at large or all other relevant factors which cannot be put in any straitjacket formulae". Upon conducting a detailed survey of 27 cases, it was ultimately stated in Paragraph 59 as follows:

> *"59.A journey through the cases set out hereinabove shows that the fundamental underpinning is the principle of proportionality. The aggravating and mitigating circumstances which the Court considers while deciding commutation of penalty from death to life imprisonment, have a large bearing in deciding the number of years of compulsory imprisonment without remission, too. As a judicially trained mind pores and ponders over the aggravating and mitigating circumstances and in cases where they decide to commute the death penalty, they would by then have a reasonable idea as to what would be the appropriate period of sentence to be imposed under the Swamy Shraddananda (supra) principle too. Matters are not cut and dried and nicely weighed here to formulate a uniform principle. That is where the experience of the judicially trained mind comes in as pointed out in V. Sriharan (supra). Illustratively in the process of arriving at the number of years as the most appropriate for the case at hand, which the convict will have to undergo before which the remission powers could be invoked, some of the relevant factors that the courts bear in mind are : - (a) the number of deceased who are victims of that crime and their age and gender; (b) the nature of injuries including sexual assault if any; (c) the motive for which the offence was committed; (d) whether the offence was committed when the convict was on bail in another case; (e) the premeditated nature of the offence; (f) the relationship between the offender and the victim; (g) the abuse of trust if any; (h) the criminal antecedents; and whether the convict, if released, would be a menace to the society. Some of the positive factors have been, (1) age of the convict; (2) the probability of reformation of convict; (3) the convict not being a professional killer; (4) the socioeconomic condition of the accused; (5) the composition of the family of the accused and (6) conduct expressing remorse. These were some of the relevant factors that were kept in mind in the cases noticed above while weighing the pros and cons of the matter. The Court would be additionally justified in considering the conduct of the convict in jail; and the period already undergone to arrive at the number of years which the Court feels the convict should, serve as part of the sentence of life imprisonment and before which he cannot apply for remission. These are not meant to be exhaustive but illustrative and each case would depend on the facts and circumstances therein."*

19.2. We shall thus, consider the sentence imposed on the appellant, in the light of the aforesaid guiding principles. The facts and circumstances highlighted above would clearly disclose that due to sudden provocation, for not giving jaggery, the accused came to the house of the deceased and on exhortation by

other accused, the appellant shot the deceased and that, there was no premeditation in the commission of crime. As already stated above, the appellant was acquitted of the charge under section 25/27 of the Arms Act, arising out of the same crime; and that, he was convicted only for the offence under section 302 r/w 34 IPC, whereas the co-accused were acquitted of the said charge. Further, the certificate dated 08.12.2019 received from the Jailor, District Jail, Haridwar, reveals that the appellant has undergone the sentence for a period of 13 years 6 months and 20 days without remission and the total sentence of 17 years 1 month and 9 days and that, he has good conduct during this period; and thus, it is evident that the appellant served incarceration for more than 14 years and that, he had no bad antecedent except this. On a perusal of the records also shows that the appellant belonged to poor economic background and had been taking care of his entire family; and that there exists a possibility of reformation. Pertinently, it is to be noted that the object of punishment is not only to deter the accused from committing any further crime, but also to reform and retribute; and the extent of reformation can be derived only by the conduct of the accused exhibited during his days of retribution. Taking note of the above aggravating and mitigating factors, we are of the view that it would meet the ends of justice, if the sentence of imprisonment for life awarded by the Sessions Court as affirmed by the High Court, is modified to the period already undergone by the appellant.

20. Accordingly, we modify the sentence awarded by the Courts below to the period already undergone by the appellant. However, we clarify that the appellant shall pay the fine amount imposed by the Sessions Court, if not paid already. He shall be set at liberty if not required in any other case. The bail bond executed by the appellant stands discharged.

21. Resultantly, this Criminal Appeal stands partly allowed to the extent as indicated above.

.....J.
[Pankaj Mithal]

.....J.
[R. Mahadevan]

NEW DELHI
OCTOBER 14, 2024.