

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). 215/2020

BAIJU

APPELLANT(S)

VERSUS

THE STATE OF KERALA

RESPONDENT(S)

J U D G M E N T

By judgment and sentence dated 06.03.2006 in Sessions Case No.494 of 2003, the Additional District and Sessions Judge (Adhoc) Court-I, Pathanamthitta, awarded the following sentence on conviction of the appellant/accused. For ease of reference, the details of the sentence and fine imposed on the appellant herein by the Sessions Court, read as under:

"In the result, the accused is sentenced to undergo rigorous imprisonment for 3 years and fine of Rs.10,000/- in default to rigorous imprisonment for one year for the offence punishable u/s 307 r/w 34 IPC and rigorous imprisonment for 5 years with fine of Rs.20,000/- in default to rigorous imprisonment for 2 years for the offence punishable u/s 393 r/w 34 IPC. Out of fine if realized sum of Rs.20,000/- shall be paid to PW1 the victim as compensation. Over and above that amount of compensation the accused is also directed to pay PW1 the total amount of Rs.1800/- already ordered on previous occasions and covered under order in CrI.M.P.1407 (A)/05 dated 26.10.2005, the relevant portion of which is extracted above, which order is not complied with is directed to be enforced in terms of Section 421 Cr.P.C. The substantive sentences of imprisonment shall run concurrently. The accused is entitled to the benefit of set off of the period undergone by him in remand and detention."

2. Being aggrieved by the conviction as well as the sentence imposed, the appellant preferred Criminal Appeal No.546 of 2006 before the High Court of Kerala at Ernakulam. The learned Single Judge of the High Court by his Judgment dated 08.03.2018 affirmed the conviction, however, modified the sentence keeping in view of the fact that the appellant was aged nineteen years at the time of the incident. The relevant portion of the judgment of the High Court reads as under:

"10. Thus, considering the age of the appellant at the time of the incident, the sentence under Section 393 r/w 34 IPC is hereby modified and reduced as rigorous imprisonment for three years and to pay a fine of Rs.20,000/- (Rupees Twenty Thousand only), with default simple imprisonment for six months. Similarly, even though the substantial sentence and the fine imposed under Section 307 is maintained, the default imprisonment of fine is modified and reduced as simple imprisonment for three months. The direction to pay compensation is also maintained. If the fine amount is realized, the compensation shall be paid as directed by the court below.

With the above modification on the sentence side, the appeal partly allowed."

3. Being aggrieved by the Judgment of the High Court, the appellant, is before this Court.

4. Sri Raghenth Basant, learned senior counsel appearing for the appellant submitted that by order dated 03.02.2020, this Court suspended the sentence of three years imposed by the High court inasmuch as the appellant had already undergone almost one year of sentence and therefore, the substantive sentence was suspended on such terms and

conditions as the Trial Court deemed fit and proper. Learned senior counsel further submitted that the appellant is on bail owing to the order dated 03.02.2020. However, the appellant is a disabled person, which is evident from the Disability Certificate (Annexure A1) appended to the application seeking permission to file additional documents. More seriously, the appellant is suffering from Carcinoma and is undergoing treatment at Cancer Centre, Thiruvananthapuram. In this regard, documents have been appended to the application. The appellant is aged about 40 years and the appellant is suffering from a rare form of blood cancer. The medical records appended to the application would speak for themselves.

5. In the circumstances, learned senior counsel submitted that he is ready to make submission on the merits of the matter or, in the alternative, this Court may consider restricting the sentence imposed by the High Court to the period already undergone. In this regard our attention was drawn to the fact that under Section 307 of the Indian Penal Code, 1860 (for brevity, "IPC"), there is no minimum sentence prescribed, but the maximum sentence may extend to ten years and under Section 393 IPC, which deals with attempt to commit robbery, the maximum sentence is seven years, but there is no minimum sentence prescribed.

6. In the above circumstances, it was submitted that having regard to the fact that the appellant is not only

having a physical disability, but also ailing from Carcinoma, this Court may modify the sentence imposed by the High Court and accordingly reduce it to the period already undergone.

7. *Per contra*, learned counsel for the respondent-State, at the outset, submitted that there is no merit in this appeal. It may be that this Court has granted the suspension of sentence by order dated 03.02.2020. However, both the Sessions Court as well as the High Court have concurrently held against the appellant herein. The High Court has, in fact, granted the relief by reducing the sentence imposed on the appellant to only three years. Hence, appeal may be dismissed.

8. As far as the alternative submission of learned senior counsel for the appellant is concerned, it was the submission of the respondent-State that no doubt the appellant has a disability, which is evident from the disability certificate that he has appended to the application, and as far as the serious ailment that the appellant is suffering from, appropriate orders may be made.

9. We have taken note of the submissions advanced at the Bar.

10. We have perused the application seeking permission to file additional documents. The disability certificate states that the appellant is suffering from 60% disability, which document is not objected to by the learned counsel

for the respondent-State.

11. The appellant has been convicted of the offences under Section 307 and 393 IPC. The said provisions are extracted as under for immediate reference:

"307. Attempt to murder

Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is here in before mentioned.

...

393. Attempt to commit robbery

Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

12. On perusal of the said provisions, it is clear that insofar as the offence under Section 307 IPC is concerned, the maximum sentence is ten years with no minimum sentence prescribed. Similarly, insofar as the offence under Section 393 IPC is concerned, once again there is no minimum sentence prescribed and the maximum sentence is seven years.

13. We are not inclined to consider the appeal on merits regarding the correctness of the conviction. However, we have taken note of the disability as well as the serious ailment that the appellant is suffering from. Consequently, we find that the interest of justice would be met in the

instant case if we reduce the sentence imposed by the High Court to the period already undergone.

14. In the circumstances, while affirming the conviction of the appellant, we reduce the sentence imposed on the appellant to the period that he has already undergone.

15. The appeal is allowed in part in the aforesaid terms. The bail bonds shall stand discharged.

Pending application(s), if any, shall stand disposed of.

....., J
(B.V. NAGARATHNA)

....., J
(PRASANNA B. VARALE)

NEW DELHI
JANUARY 30, 2025

ITEM NO.107

COURT NO.8

SECTION II-B

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 30-01-2025 This appeal was called on for hearing today.

CORAM : HON'BLE MRS. JUSTICE B.V. NAGARATHNA
HON'BLE MR. JUSTICE PRASANNA B. VARALE

For Appellant(s) : Mr. Raghenth Basant, Sr. Adv.
Ms. Kaushitaki Sharma, Adv.
Mr. Abdulla Naseeh V.t., AOR

For Respondent(s): Mr. Nishe Rajen Shonker, AOR
Ms. Anu K Joy, Adv.
Mr. Alim Anvar, Adv.
Mr. Santhosh K, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is allowed in part in terms of the signed
Judgment, which is placed on file.

Pending application(s), if any, shall stand disposed
of.

(B. LAKSHMI MANIKYA VALLI)
COURT MASTER (SH)

(DIVYA BABBAR)
COURT MASTER (NSH)