

**Arun Kumar Mishra vs.state**

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**Court :** Delhi

**Decided On :** Sep-26-2017

**Appellant :** Arun Kumar Mishra

**Respondent :** State

**Judgement :**

\$~ \* IN THE HIGH COURT OF DELHI AT NEW DELHI % Judgment reserved on:

02. d August, 2017 Judgment pronounced on:26 September, 2017 + Crl. A. No.1577/2014 ARUN KUMAR MISHRA ..... Appellant Through: Mr.K.K.Tyagi, Adv. STATE versus ..... Respondent Through: Ms.Radhika Kolluru, APP for the State along with SI Neeraj, PS South Rohini, in person. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MR. JUSTICE CHANDER SHEKHAR G.S.SISTANI, J.

1. Present appeal has been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.) against the judgment dated 10.07.2014 and the order on sentence dated 06.08.2014 passed by the learned Trial Court, arising out of FIR No.405/2010, under Sections 307/120B of the Indian Penal Code (hereinafter referred to as IPC) and Sections 25/ of the Arms Act, by virtue of which the appellant stands convicted under Section 307 of IPC and sentenced to undergo life imprisonment and a fine of Rs.20,000/- and in default of payment of fine, he was to further undergo rigorous imprisonment for six months. The appellant also stands convicted under Section 25 of the Arms

Act and has been sentenced to undergo rigorous imprisonment for five years and a fine CrI. A. No.1577/2014 Page 1 of 22 of Rs.5,000/- and in default of payment of fine, further rigorous imprisonment for three months. The appellant also stands convicted under Section 27 of the Arms Act and has been sentenced to undergo rigorous imprisonment for a period of 7 years and a fine of Rs.5,000/- and in default of payment of fine, to further undergo rigorous imprisonment for three months. All the sentences were ordered to run concurrently.

2. The case of the prosecution unfolds as under:-

"1. Briefly stated the present case was registered on the basis of the statement of complainant Shilpa Goyal D/o Sh. Nageshwar Goyal. According to the complainant she used to give aerobics training to the ladies by going to their homes. Two years before the date of the incident she used to work in a company at Gurgaon where a boy by the name of Arun Kumar Mishra used to come. According to the complainant after seeing her, Arun Kumar Mishra started forcing her to have friendship with him, otherwise he would kill her and her family.

2. According to the complainant due to fear she left the job of the said company and started giving aerobics training to the ladies near her house. But from somewhere Arun Kumar Mishra got her address and he again started stalking and threatening her almost daily. According to the complainant finding no way out, she disclosed all these things to her family and one and a half month prior to the date of the incident she lodged a complaint against Arun Kumar Mishra with PS Miya Wali.

3. According to the complainant on 15-12-2010, at about 10:45 a.m. she was going to the house of her maternal uncle (Mama) Neeraj Jain at Sector 3 Rohini on her scooty. When she stopped her scooty at a red light on Ring Road suddenly Arun Kumar Mishra came from behind and forcefully sat behind her on the scooty. He asked the complainant to listen to him and drive the scooty. CrI. A. No.1577/2014 Page 2 of 22 4. According to the complainant after the green light she started driving the scooty and on reaching near Jaipur Golden Hospital, Arun Kumar Mishra started saying to complainant that if she would marry him, he would not disturb her and if she did not agree to this, he would shoot her then and there.

Due to fear complainant stopped her scooty there. She requested Arun Kumar Mishra to stop chasing her and let her go. On this, Arun Kumar Mishra took out a pistol type object and pointed on the back of complainant and said that Tu To Manegi Nahi, Le Me Tera Kam Tamam Hi Kar Deta Hoo and saying this, he fired a gun shot on the lower part of her back. Complainant fell there with the scooty. Many public persons gathered the persons apprehended Arun Kumar Mishra and one or two persons lifted her and started taking her to Jaipur Golden Hospital and remaining persons started beating Arun Kumar Mishra. The complainant was got admitted in Jaipur Golden Hospital. PCR reached at the spot and Arun Kumar Mishra was handed over to the PCR officials alongwith the pistol, who took him to police station.

5. F.I.R. bearing No.405/2010, was registered at P.S. South Rohini and investigation went underway. During the course of investigation the appellant persons were arrested. After completion of investigation final report u/s 173 Cr.P.C. was prepared and was filed in the court of Metropolitan Magistrate who after completing all the formalities committed the case to the court of sessions for trial. there and some of 3. On 27.07.2012, charges under Section 120-B of IPC and under Section 307 of IPC read with Section 120-B of IPC were framed against the appellant. Additionally, a charge under Section 307 of IPC and under Section of the Arms Act were also framed separately against the appellant to which he pleaded not guilty and claimed to be tried. CrI. A. No.1577/2014 Page 3 of 22 4. To bring home the guilt of the appellant, the prosecution examined 46 witnesses in all. The statement of the appellant was recorded under Section 313 of Cr.P.C whereby he admitted that he had an affair with the complainant Shilpa Goel but her parents were against their marriage thus, they have falsely implicated him in the present case. He further stated that he had not fired on Shilpa Goel and all the case property has been planted upon him. No witness was examined by the appellant in his defence.

5. Learned counsel for the appellant submits that the Trial Court has failed to appreciate that the allegations levelled by PW1 and PW2 are false and frivolous. A reading of the testimony of PW2 shows that the presence of the appellant at the spot is doubtful. Mr. Tyagi contends that there are material contradictions in the

testimonies of PW1 and PW2. It is also the case of the appellant that there is no independent witness who would establish that the appellant was apprehended at the spot and the evidence of the witnesses at the spot of arrest is contrary to each other.

6. Learned counsel for the appellant has also submitted that the Trial Court has failed to appreciate that the residue of gun powder was not found at the hands of the appellant whereas it is the story of the prosecution that the appellant fired at the spot from where he was apprehended while he had the pistol in his hand. In view thereof, in the absence of residue of gun powder on his hands, the appellant could not have been convicted. It is also the case of the appellant that in fact, the appellant has been falsely implicated in this case by the family members of PW1 (victim) and she has been pressurized and forced to depose against him, as her family members were against Crl. A. No.1577/2014 Page 4 of 22 their relationship. Counsel submits that the Trial Court has failed to appreciate that no blood stains were found at the spot which makes the place of the incident doubtful. Resultantly, the case of the prosecution is also doubtful.

7. Mr. Tyagi has strongly urged before this Court that PW2 is a planted witness and no reliance can be placed on his testimony. Counsel has also urged that the oral evidence and medical evidence are inconsistent with each other. Mr. Tyagi has also contended that the quantum of sentence is completely disproportionate to the alleged offence having been committed.

8. Per contra, learned APP for the State submits that there is no infirmity in the judgment and order on sentence passed by the Trial Court. Having regard to the evidence on record, the Trial Court has correctly analysed the evidence and convicted the appellant. Counsel submits that PW1 is the victim and she has fully supported the case of the prosecution and given a vivid description as to how she was shot in a mindless manner. It is contended that there are no contradictions in the evidence of the material witnesses and even otherwise, minor contradictions which do not go to the root of the matter cannot affect the case of the prosecution.

9. We have heard the learned counsel for the parties, considered their rival submissions and given our thoughtful consideration to the matter. The case of the

prosecution is mainly based on the testimonies of Shilpa Goel (PW1/victim) and Ajay Agarwal (PW2).

10. Shilpa Goel (PW1) who was the injured witness in the instant case deposed in her examination-in-chief that at the time of the incident she was pursuing her graduation and also used to give aerobic classes. At Crl. A. No.1577/2014 Page 5 of 22 about 2 years prior to the incident, she was working in Gurgaon with Spenco Reliance GSM and the appellant Arun Kumar Mishra, duly identified by her in the Court, used to stalk her. The appellant used to go to her office and to her house and also used to force her to become friends with him. As a result of the harassment by the appellant, she left the job at Gurgaon and started taking aerobic classes. She further deposed that the appellant somehow procured her address and mobile number and started threatening her on telephone. The appellant also used to threaten her that he would kill her father and made her life hell. When things became unbearable, she informed her father. The father of PW1 made two complaints to the police. She further deposed that on 15.12.10, at about 10:45 a.m., she was going on her scooty to the house of her maternal uncle in Rohini where she used to teach aerobics. When she stopped her scooty at a red light, the appellant who had a gun in his hand came from somewhere and sat on her scooty. The appellant threatened to shoot her if she would make noise and instructed her to drive her scooty. The appellant was talking to someone on his mobile and was giving instructions to keep the vehicle near her scooty. PW1 further deposed that the appellant kept on insisting her for friendship and when they reached near Jaipur Golden Hospital, the appellant directed her to stop scooty and started pressurizing her to marry him. PW1 refused his offer and on her refusal, the appellant threatened her and asked her to take the scooty in a lonely place. PW1 begged the appellant to leave her alone but he put gun on her back and started pressurizing her to marry him. After her refusal, the appellant shot in her back as a result of which she fell down and when the appellant again tried to shoot her, his gun misfired. She fell unconscious and was admitted to Jaipur Golden Crl. A. No.1577/2014 Page 6 of 22 Hospital where her statement Ex.PW1/A was recorded. The appellant was apprehended at the spot by the public. PW1 further deposed that in the opinion of the doctor, she would not be able to walk in her entire life. PW1 identified her clothes which she was wearing at

the time of the incident.

11. In her cross examination, PW1 stated that she came to know about the appellant when he started stalking her. She further stated that the appellant was harassing her for about 2 years prior to the incident. PW1 admitted the suggestion given by the counsel for the appellant in the Trial Court that while she was working in Gurgaon she had not lodged any complaint against the appellant to the police. She further admitted that the appellant used to send bouquet to her house but denied the suggestion that she used to accept the same. She also denied the suggestion that there were any talks of marriage between them.

12. To a specific Court question, PW1 answered that she had to resign from her job in Gurgaon because of the appellant Arun. She stated that the red light on which the appellant sat on her scooty was at a distance of about 5-7 minutes from her house and she could not tell the distance travelled by her along with the appellant. She further stated that she had not raised any alarm, though the road on which she was travelling was a busy road. She further stated that she had not seen the gun in the hand of the appellant initially but she saw the gun in the hand of the appellant when she fell down and when the appellant tried to shoot in her head which was misfired. She further stated that she had not raised any alarm because the appellant had threatened her to shoot. She denied the suggestion that she was having an affair with the appellant or that she was deposing falsely.

13. Another relevant witness is PW2 Ajay Aggarwal who deposed in his examination-in-chief that on 15.10.12, he was present at his chemist shop situated at B-6/187, Sector 3 Rohini, Delhi. He further deposed that at about 10:30/11:00 a.m. he saw one young girl sitting on a scooty and one young boy was standing besides that young girl and they both were talking. Suddenly, PW2 heard the shrieks of the girl and saw her falling down. He immediately rushed towards them and saw that the girl had fallen down and the boy was trying to shoot himself with the gun but it misfired. PW2 duly identified the appellant in Court as the boy who was present at the spot with the girl and was caught at the spot by the public. It was further deposed by PW2 that the girl was taken to the Jaipur Golden Hospital

and the same was informed to the police from his land line bearing No.27515300. The site plan was prepared at his instance. In his cross examination, PW2 stated that one boy had shot a girl and also tried to shoot himself. PW2 further stated that he could not tell if the girl was bleeding but she informed him that her lower part of the body was not responding. It was further stated by PW2 that his clothes were not blood stained and could not tell as to whether there were blood stains at the spot or not. PW2 denied the suggestion that on the day of incident, he was not present at his shop.

14. On careful reading of the evidence of PW1 and PW2, there is no contradiction which go to the root of the matter and does not falsify the case of prosecution. In fact, the testimony of PW2, who was an independent witness in the instant case duly corroborates the version CrI. A. No.1577/2014 Page 8 of 22 of the injured witness PW1 with regard to the incident which took place on the fateful day of 15.12.2010 and further shows the presence of the appellant at the spot. Both the witnesses were cross examined by the counsel for the appellant and both the witnesses withstood the test of cross-examination. Medical Evidence:

15. PW18 Dr. Manoj Sharma, Chairman, Department of Orthopaedics and Spine, Jaipur Golden Hospital deposed in his examination-in-chief that on 15.12.10, he examined one patient Shilpa Goel with the alleged history of gunshot injury at her dorsal spine. After examination, he found the patient to be completely paraplegic in lower half of her body with total loss of control over stool and urine. PW18 further deposed that on the same day the bullet which caused spinal cord injury to the patient was removed and was handed over to the authorities. The patient was discharged from the hospital on 30.12.2010 and a discharge summary was prepared by Dr. Sanjay Chawra and was proved by PW18 as Ex.PW18/A. The operation notes dated 15.12.2010 written by Dr. Ishwar Bohra was further proved as Ex.PW18/B. In his cross-examination, the following question was put to him which reads as under: Question : I put it to you that after going through the condition of injured, can you say about the fact that from how much range, the bullet received by the patient was fired?. Ans. From very close range probably from within inches from the body. 16. The MLC of the injured witness Shilpa was examined by Dr. Ravi Shankar on 15.12.2010. As per the MLC, Ex.PW38/A, the

nature of the injury sustained by her was declared as grievous. CrI. A. No.1577/2014 Page 9 of 22 17. PW36 Dr. Gurdeep, Medical Superintendent, Jaipur Golden Hospital deposed that on 21.12.10, he handed over one plastic container containing bullet led which was sealed with the seal of JGH and was taken by the police into possession vide seizure memo Ex. PW36A. The bullets were taken out by Dr. Manoj Sharma after surgery of the injured Shilpa Goel.

18. As to the examination of the clothes of the injured, the testimony of PW11 Dr. Manoj Dhingra assumes importance who had examined one blood stained white neckless T shirt; one blood stained grey neckless thermal upper and one blood stained black jacket. After examining all the clothes, PW11 opined that the defects in the 3 clothes corresponded with each other and the defects were present at the backside of all the three clothes. PW11 further opined that the defects in all the clothes appear to correspond to the injury mentioned in the MLC of the injured Shilpa in terms of location of the injury.

19. Reading of the testimonies of PW18 along with PW11 would show that the defects/marks in the clothes worn by the complainant/injured Shilpa at the time of the incident corresponded with the injury received by her which goes to show that she was wearing all the 3 clothes at the time of the incident. FSL RESULTS:

20. PW28 Puneet Puri, Senior Scientific Officer (Ballistic), FSL, Delhi. His detailed report is Ex. PW28A whereby he opined that on examination he found that the country made pistol marked Ex.F1 was in working order. Test fire was conducted successfully by using the cartridge marked Ex.A1 and Ex.A2. The cartridge Mark Ex.A3 was misfired one. The improvised pistol Mark Ex.F2 was in working CrI. A. No.1577/2014 Page 10 of 22 order. Test fire was conducted successfully by using the cartridges Ex.A4 and Ex.A5, the test fired cartridge cases were marked as TC1, TC2 and two recovered test fired bullets were marked as TB1 and TB2. The cartridge mark Ex.EC1 was fired empty cartridge and no further opinion could be possible due to insufficient data. The bullet mark Ex.EB1 was corresponding to the bullet of 7.65 mm cartridge and had been discharged through the improvised pistol mark Ex.F2 as the individual characteristics of striations present on evidence bullet Ex.EB1 and test fired bullet mark Ex.TB1 and TB2 were found identical when

examined under the comparison microscope.

21. PW28 further opined that on the basis of physical examination, microscopic examination and gunshot residue particle analysis the holes' mark H1 on the left lower portion of jacket Mark Ex.C2, H2 on the left lower portion of back side of T-shirt Mark C3 and H3 on the left lower portion of back side of inner mark Ex.C4 had been caused by a bullet discharged through a firearm. No opinion could be given on swab mark S1 and shirt mark Ex.C1 due to insufficient data. The country made pistol mark Ex.F1 and improvised pistol mark Ex.F2 were firearms and the cartridges mark Ex.A1 to A12, the cartridge case mark Ex.EC1 and the bullet mark Ex.EB1 were ammunition as defined in Arms Act, 1959.

22. Besides the above public witnesses, to decide the appeal in hand, it would be necessary to discuss the testimonies of formal witnesses. PW34 HC Ashwani deposed in his examination-in-chief that on 15.12.10, at about 11:10 a.m, he was going towards Jaipur Golden Hospital on patrolling from the picket side and reached near MTNL office. He heard the noise as well as sound of firing from the side of Crl. A. No.1577/2014 Page 11 of 22 Green Vales Public School. He saw crowd gathered there and the public persons were trying to apprehend one person who was carrying a pistol in his hand. The said person was beaten and apprehended by the public and in the meanwhile PCR van reached there. PW34 further deposed that the said person was handed over to the PCR alongwith the pistol who was taken to P.S. South Rohini. PW34 identified the appellant Arun Kumar Mishra in Court as the same person who was apprehended and beaten by the public on the fateful day. However, in his cross-examination PW34 stated that he had not noticed blood stains at the spot and had remained at the spot for about two and half hours. PW34 denied the suggestion given by the counsel for the appellant that at the spot nothing was recovered from the appellant.

23. PW12 SI Roop Chand was the in-charge, PCR Van, outer zone deposed in his examination-in-chief that on 15.12.10, on the receipt of a call from Police control Room, PHQ at about 11:13 a.m. with regard to shooting of one girl by one boy near Jaipur Golden Hospital in front of Green Vales Public School. PW12 reached the spot alongwith the staff and found that the appellant Arun Mishra was present

there and the public persons were beating him. The appellant was carrying one pistol in his hand and one bag in another hand. PW12 further deposed that to save the appellant from public, he made the appellant sit in the PCR van and took the pistol and bag from the appellant and brought him to PS South Rohini. PW12 further deposed that after some time SI Praveen (PW4) reached the spot and the pistol which was loaded containing one round alongwith magazine containing eight rounds was handed over to PW4. The bag was having one country made pistol and three live rounds and the same was also handed over to SI Praveen along with the appellant. Crl. A. No.1577/2014 Page 12 of 22 24. PW4 SI Praveen deposed in his examination-in-chief that on 15.12.2010, he was posted at PS South Rohini and on receipt of DD No.13A; he along with Const. Naresh reached at the spot i.e. in front of Green Vales Public School, Sector-3, Rohini. On reaching there, he found that the injured was already removed to Jaipur Golden Hospital. The person who had fired on the injured was apprehended at the spot and was beaten by the public. The PCR personnel had taken away that person to the police station. It was further deposed by PW4 that Insp. Vijay Kumar Rastogi alongwith HC Ashwani also reached the spot. He alongwith Insp. Rastogi went to the hospital leaving HC Ashwani at the spot. On reaching there, they collected the MLC of the injured namely Shilpa Goel with the alleged history of gunshot injury wherein the nature of injury was described as grievous. The statement of the injured was recorded. Thereafter, PW4 was sent to the police station for the safe custody of the appellant. It was further deposed by PW4 that he went to the police station where ASI Roop Chand, Incharge PCR van met him and handed over the appellant Arun Kumar Mishra alongwith one loaded pistol and a grey colour bag and also stated that the same weapon has been recovered from the appellant. PW4 further deposed that he handed over the pistol and grey colour bag to Insp. Rastogi and explained all the circumstances to him and produced the appellant before him. Insp. Rastogi inspected the pistol and found that one cartridge was stuck in its Chamber and also eight live cartridges. PW4 further deposed that on checking the grey colour bag, it found to contain one country made pistol and three live rounds. The seizure memo of the pistol and nine live rounds was proved as Ex. PW4/A and the seizure memo of country made pistol and three live rounds alongwith grey bag was proved as Ex. PW4/C. The rukka was prepared Crl. A.

No.1577/2014 Page 13 of 22 by Insp. Rastogi and handed over the same to the duty officer of PS South Rohini. The appellant was arrested vide arrest memo Ex.PW4/E. PW4 admitted his signature on the arrest memo of the appellant. In his cross-examination, PW4 stated that when he reached the spot, he did not find crime team there and also there were no blood stains present at the spot.

25. PW38 Insp. Vijay Kumar, the Investigating Officer, in the present case, deposed the sequence of investigation done by him and preparing of the rukka which was proved as Ex.PW38/A; site plan prepared at the instance of public witness Ajay Aggarwal (PW2) was proved as Ex.PW38/D; seizure memo of the plastic jar containing one bullet led taken out from the body of the injured Shilpa was proved as Ex.PW38/H; seizure memo of the clothes of the injured Shilpa Goel was proved as Ex.PW38/I; seizure memo of the record of previous complaints lodged by Nageshwar Dayal Goel, father of the injured Shilpa against the appellant in PS Miyawali Nagar was proved as Ex.PW38/J.

26. Reading of the testimonies of the aforementioned witnesses would show that there are no material contradictions which go to the root of the matter and their testimonies remain consistent on all material particulars. The testimony of PW38 would show that rukka was prepared by him on the basis of the statement of the victim which was proved as Ex. PW1/A. Also, the testimony of PW12SI Roop Chand has gone unrebutted and unchallenged with regard to the fact that the appellant was present at the spot and was carrying one pistol in his hand and one bag in another hand. The appellant was apprehended and beaten by the public at the spot and to save him from public PW12 CrI. A. No.1577/2014 Page 14 of 22 made the appellant sit in the PCR van and took the pistol and bag from the appellant and took him to PS South Rohini.

27. It is noteworthy to mention that the appellant was apprehended at the spot by the public persons and was taken by the PCR van to the Police Station South Rohini. The arrest memo shows that the appellant was arrested from the Police Station South Rohini on the same day of the incident and PW4 SI Parveen Kumar is a witness to the arrest memo and was proved by him as Ex.PW4/E. In this background, the contention raised by the counsel for the appellant that the

presence of the appellant at the spot was doubtful is without any force and is thus liable to be rejected. Furthermore, reading of the testimony of PW1 is duly corroborated by the testimony of PW2 Ajay Agarwal, who was an independent and an eyewitness to the incident, leaving no room for doubt that it was none other than the appellant, who committed the said offence. The testimony of PW1 strengthens the case of the prosecution in all material particulars and her testimony stands fully corroborated.

28. Mr. Tyagi had also contended that the absence of gun powder residue on the hand of the appellant despite his being apprehended from the spot points towards his innocence. We are unable to subscribe the argument as being both partially factually incorrect and premised on a fallacy. The swab recovered from the left hand of the appellant was handed over by the Doctor and was seized vide Ex.PW7/A. When the swab was sent to the FSL for examination (marked as exhibit 'S1'), the FSL opined as under (Ex.PW28/A): No opinion can be given on the swab marked exhibit 'S1' and the shirt marked exhibit 'C1' due to insufficient data. CrI. A. No.1577/2014 Page 15 of 22 29. It is clear that the FSL Report (Ex.PW28/A) did not rule out the (Emphasis Supplied) presence of gunshot residue as it remained inconclusive. Neither can it come to show the innocence of the appellant nor his guilt. More particularly the evidence of PW1, PW2 and the fact that he was beaten by the public at the spot, apprehended and taken to the police station where he was formally arrested. All it shows is that proper collection of the sample was not done. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in *Manjeet Singh v. State (Govt. of NCT of Delhi)*, reported at 2013 VIII AD (Delhi) 252, had expressed its displeasure at the absence of detection of gunshot residue as the Investigating Officer failed to collect gunshot residue from the hands of the appellant, however at the same time, held that such a defect in investigation will not accrue any benefit to the appellant. Accordingly, it cannot affect the veracity of the eyewitness account.

30. As far as the contention of the appellant with regard to the quantum of sentence awarded to the appellant is concerned, it would be necessary to revisit the law relating to sentencing in a criminal case.

31. The Supreme Court of India in *Shailesh Jasvantbhai v. State of Gujarat*, reported at (2006) 2 SCC359 was dealing with two appeals, one was preferred by the State and the other by the victim of the crime. The offenders therein had been convicted of offences under Sections read with 114 of IPC and sentenced to undergo imprisonment of 10 years and a fine of Rs. 3,000/-. The High Court had reduced the sentence to the imprisonment undergone of about 2 CrI. A. No.1577/2014 Page 16 of 22 years while enhancing the fine to Rs. 60,000/- for two reasons: first, one of the convicts had appeared in exams of Standard X and second, as they had no criminal antecedents. The Apex Court had allowed the appeal and remanded the matter back to the High Court as it had overlooked the factum of numerous pending criminal cases against the convicts and the fact that one of them had previously breached the conditions of bail. Arijit Pasayat, J., giving the opinion for the bench, observed as under: of criminal through instrumentality 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 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 CrI. A. No.1577/2014 Page 17 of 22 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 SCC471 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 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. sentences are determined 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 practical consequences. undesirable some has very 11. After giving due consideration facts and circumstances of each case, for deciding just and appropriate the to CrI. A. No.1577/2014 Page 18 of 22 sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been

committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US183:

28. L Ed 2d 711 (1971)]. that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

12. In Dhananjay Chatterjee v. State of W.B. (1994) 2 SCC220 this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

13. Similar view has also been expressed in Ravji v. State of Rajasthan (1996) 2 SCC175 It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting Crl. A. No.1577/2014 Page 19 of 22 public abhorrence and it should "respond to the

society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. In *State of M.P. v. Ghanshyam Singh* (2003) 8 SCC13 *Surjit Singh v. Nahara Ram* (2004) 6 SCC513 and *State of M.P. v. Munna Choubey* (2005) 2 SCC710 the position was again highlighted. (Emphasis Supplied) 32. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in *Ramjee Lal v. State (Govt. of NCT) Delhi* reported at 241 (2017) DLT290 observed that it is clear that sentencing vests great discretion in the hands of the judge, which is to be exercised in a sound manner while balancing the aggravating and mitigating circumstances of a case. There cannot be any uniform policy which may be resorted to as sentencing involves a comprehensive view of both the crime and the criminal allowing for a myriad situations or questions which may fall for the Court. All the while the doctrine of proportionality must be adhered as both deficient and excessive punishments undermine the criminal justice system.

33. Additionally, we may note the status report dated 25.07.2017 adduced by the counsel for the State stated that the injured Shilpa had died in the month of August, 2014. The status report further revealed that Shilpa had lived a miserable and painful life till she passed away as the incident had rendered her as paralysed for her entire life.

34. Coming to the case at hand, the appellant has been granted a harsh and stern punishment of imprisonment for life under Section 307 of IPC. The following aggravating factors were relied upon by the learned Trial Court which read as under: *Crl. A. No.1577/2014* Page 20 of 22 (i) The appellant had shot the victim in her back because of which she had become crippled for her entire life; (ii) In the opinion of the doctor, the victim had no chances of recovery because of the injury inflicted upon her; (iii) The victim had gone to the vegetative stage and her condition is worse than a dead person and she was dying daily; (iv) The victim had acted ruthlessly and in a pre-planned manner and did not deserve any leniency; (v) The appellant had mercilessly shot an innocent young girl and by the act of the appellant her life had become a hell.

35. We are persuaded with the reasoning adopted by the learned Trial Court while sentencing the appellant for the imprisonment for life under Section 307 of IPC. The weapon of offence used by the appellant i.e. pistol and the location of the injury on the victim; the gun shot which was fired from very close range into the spine of the victim does not warrant any leniency. Furthermore, the complaints dated 14.09.2010 (Ex.PW3/A) and 25.09.2010 (Ex.PW3/D) made by the father of the victim, Nageshwar Dayal against the appellant at PS Miyawali Nagar leaves no room for doubt that the appellant had ruined the life of a young girl by his inhuman conduct. Having regard to the facts of this case, undue sympathy would do immense harm to the justice system and would undermine the public confidence. Cases of stalking are on the rise and in this case the appellant shot the helpless victim at close range in her back making her life and the life of her family miserable. Crl. A. No.1577/2014 Page 21 of 22 36. Every citizen has a right to live in dignity with a feeling of sense of security. The State must ensure that all citizens particularly old women and children do not live in a sense of fear and insecurity. Before parting with this judgment, we deem it appropriate to issue a direction to the Commissioner of Police to sensitize all the Police Stations to treat complaints of stocking seriously. Having regard to the facts of this case, we are of the view that this is a perfect example where in case, the Police had considered the complaint made by the victim of stocking serious, this unfortunate incident could have been averted.

37. We find no infirmity in the judgment and order on sentence passed by the learned Trial Court which would require interference by this Court. Accordingly, we uphold the conviction and sentence awarded by the Trial Court and dismiss the appeal.

38. Trial Court record be returned along with a copy of this judgment.

39. Copy of this judgment also be sent to the concerned Jail Superintendent for updating the jail record. SEPTEMBER26h, 2017 //ka G. S. SISTANI, J.

**CHANDER SHEKHAR, J.**

