

Ayub and ors. Vs. the State

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Court : Allahabad

Decided On : Mar-17-1961

Reported in : AIR1962All141

Judge : D.P. Uniyal and ;T. Ramabhadran, JJ.

Acts : Uttar Pradesh Prevention of Cow Slaughter Act, 1955 1956 - Sections 8;
Code of Criminal Procedure (CrPC) - Sections 144

Appeal No. : Criminal Revn. No. 1390 of 1960

Appellant : Ayub and ors.

Respondent : The State

Advocate for Def. : Asstt. Govt. Adv.

Advocate for Pet/Ap. : M.H. Beg, Adv.

Judgement :

Uniyal, J.

1. The matter referred to us relates to the quantum of sentence that should ordinarily be awarded in respect of offences committed under the U. P. Prevention of Cow Slaughter Act, 1955. The question referred for our decision is as follows:

'Should the object of the enactment alone be kept in mind while awarding sentence, or extraneous circumstances, e.g., the likely consequences of an unlawful act, be also taken into consideration? Further, where the unlawful act is likely to cause the breach of peace, should the Courts of law adopt a strict attitude by awarding a severe sentence, of course commensurate with the maximum penalty provided under the law?'

2. There has been a divergence of opinion among the Judges of this Court on the question of the measure of punishment that should be awarded in cases of cow slaughter. It is to resolve this difference of opinion that the above reference has been made. The Legislature has set forth the objects which prompted it to make the legislation on the subject of cow slaughter. The notification issued by the State Government explaining the aims and objects of the Act says that under Article 48 of the Constitution of India, the State Government has been enjoined to organise agricultural and animal husbandry on modern & scientific lines, and in particular to take steps for preserving and improving the breeds and prohibiting the slaughter of cow and its progeny. It goes on to say that in order to save the cow and its progeny, with a view to provide milk, bullock power, as well as manure, it is of imperative necessity to impose a complete ban on cow slaughter. It Was to implement the above objects that the U. P. Legislature enacted the Prevention of Cow Slaughter Act, 1955 (hereinafter referred to as the Act).

3. While considering the question of the quantum of sentence to be imposed in cases of cow slaughter Mr. Justice Broome held in Ghani v. State, Criminal Revn. No. 1742 of 1959, D7- 30-8-1960 (All) that

'the heinousness of the crime must depend primarily on the economic value of the animal that has been destroyed and the punishment should be graded accordingly. If, for example, a pedigreed cow Ss slaughtered the accused undoubtedly deserves a severe sentence, for he has deprived the country not only of an existing economic asset but also of the potential improvement in the stock that would accrue from the progeny of such an animal. But if, at the other extreme, a useless, undersized or decrepit beast is killed the damage caused to the economic interests of the country is obviously negligible and only a nominal

penalty is called for'.

4. A similar view was expressed by Mr. Justice James in *Dulla v. State* : AIR1958 All198 . It was observed that the fact that the cow is held in veneration by a large section of the community is not a relevant consideration in determining the question of the measurement of punishment. The matter should be viewed exclusively as an 'economic proposition' which is a weighty consideration in an agricultural economy. The Act aims solely at economic progress by improving the breeds of the cow and preserving it for milk, bullock power and manure. The learned Judge held :

'A perusal of the various, provisions of the Act shows that it only bans the slaughter of the cow and its progeny and the sale and transport of beef: it does not penalise the possession or eating of beef. Indeed Section 5 allows beef or beef products to be served to a bona fide passenger in an aircraft Or railway train where no prohibition is placed on beef in imported sealed containers'.

5. A contrary view has been taken by Mr. Justice V. D. Bhargava and Mr. Justice Mathur on this matter. They are of opinion that a higher sentence in cow-slaughter cases should be passed as such offences are likely to lead to the breach of the peace.

6. It is, we think, important to keep in view certain basic principles in fixing the quantum of punishment. In Halsbury's Laws of England (3rd Simond's Edition) Volume X, page 487, the learned author has enumerated the following circumstances which should be taken into consideration in determining the measure of punishment :

'The court in fixing the punishment in any particular crime will take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, the antecedents of the prisoner up to the time of the sentence, his age and character..... ..!'

7. The object of punishment is the prevention of crime. Every punishment has a dual purpose, namely, to prevent the person, who has committed the crime from

repeating the act or omission and to prevent the other members of the community from committing similar crimes. In awarding punishment the courts have to bear in mind the dual purpose of the punishment. In awarding sentence the question of moral indignation is not at all relevant. All that is necessary to consider is what sentence is likely to prevent the offender from committing the offence again and how persons similarly disposed can be prevented from committing the offence.

7A. It is now well recognised that deterrent punishment is an exception rather than the rule. It was observed in *Adamji Umar Dayal v. State of Bombay* : 1953 CriLJ542 that:

'The determination of the right measurement of punishment is often a point of great difficulty and no hard and fast rule can be laid down. It being a matter of discretion, it is to be guided by a variety of considerations. But the court has always to bear in mind the necessity of proportion between the offence and the penalty. In imposing a fine it is necessary to have as much regard to the pecuniary circumstances of the accused person as to the character and magnitude of the offence'.

It was pointed out by their Lordships that the zeal to crush the evil (that was a case of black-marketing) should not be allowed to influence the judicial mind in the determination of the measurement of punishment.

8. In another case, *Kashmira Singh v. State of Madhya Pradesh* : 1952 CriLJ839 , their Lordships again emphasised the point that the revolting nature of the crime should not prevent the court from making a dispassionate scrutiny of the facts and law.

Again in *Vadivalu Thevar v. State of Madras*,(S) AIR 1057 SC 614 their Lordships of the Supreme Court observed that :

'The question of sentence has to be determined not with reference to the volume or character of the evidence adduced in support of the prosecution case, but with reference to the fact whether there are any extenuating circumstances which can be said to mitigate the enormity of the crime'.

They went on to add that the nature of the proof has nothing to do with the character of the punishment. The nature of the proof can only bear upon the question of conviction. 'The question as to what punishment should be imposed is for the court to decide in all the circumstances of the case with particular reference to any extenuating circumstances.'

9. It is also equally clear that deterrent punishment should be awarded only in exceptional circumstances, as for example, when waves of imitative crime like garrotting, dacoity and forgery of counterfeit coins or notes commence to sweep over a State. In such cases judicious and increasing severity may properly be utilised to check and deter such an inundation. It has also been held that

'in times of tumult when there is a danger of a wide breach of the public peace or security, or where a highly organised or semi-professional association of persons engineers a series of offences such as swindling or burglary, deterrent punishment may be with caution advantageously inflicted' (vide *Gosain Missir v. Emperor*, AIR 1922 Pat 267).

10. The main object of punishment is to make it appropriate and to balance it so that it justly fits the gravity of the offence. At the same time the punishment inflicted should not be such as to shock the public conscience and thus warp and dull the public social sense and appreciation of crime as evil'.

11. It would thus appear that the elements which are to be taken into account for the purpose of assessing the quantum of sentence differ from case to case, depending on the facts and circumstances of the particular case. The measure of punishment is largely a matter of judicial discretion, but that discretion has to be exercised with great caution, after giving due weight and consideration to all the circumstances of the case, that is, the purpose which is sought to be achieved by the Legislature in preventing the commission of the offence, the mischief which is sought to be perpetrated by the commission of the offending act, the degree of deliberation shown by the offender in committing the crime and the age and character of the offender.

12. The U. P. Prevention of Cow Slaughter Act has been primarily enacted to prevent the slaughter of the cow and its progeny with a view to provide milk, bullock power, as well as manure. Ordinarily, the slaughter of an old or decrepit cow will not adversely affect the economic interest of the community, nor defeat the object which the enactment seeks to achieve. The question of the religious sentiment of the Hindu community would not be a relevant consideration in such a case. The position would, however, be different where, for example, the offender parades a decrepit animal through the streets of the village or town in order to inflame communal passions, or where he slaughters the animal in the view of the public. In the latter case the punishment would have to be deterrent because the offence has been committed after due deliberation and planning and also because the offence committed can be considered to be related to public order and peace as cause and effect.

Similarly a situation may arise where imitative crimes in the shape of slaughter of, let us say, old and decrepit animals is repeatedly carried out by a particular community in defiance of the provisions of the law with the result that it creates a law and order problem for the authorities, then, in that event it would be eminently just and proper for the courts to fit the punishment to the crime and to award a severe penalty.

13. It must, however, be remembered that the slaughter of a cow in contravention of the provisions of the Act would not, per se, be punishable with heavy penalty merely because it is likely to lead to the breach of the peace. The connection between the offence and the breach of peace must be direct and proximate and not indirect or remote. Indeed, majority of crimes have a tendency to cause a breach of the public order, but it has never been considered to be one of the elements which have to be taken into consideration in determining the measure of punishment. Where an animal is slaughtered in privacy or within closed doors by a person who is a butcher by profession, the offence committed cannot be said to have a tendency to cause the breach of the peace.

14. The conclusion deduced from the above discussion may be briefly summarised as follows :

(1) In awarding punishment under the U. P. Prevention of Cow Slaughter Act the courts must primarily bear in mind the aims and objects of the enactment and to fit the punishment with the crime committed, that is, whether the animal slaughtered was a young and pedigreed cow or bull or an old and useless animal. The burden of proving that the animal slaughtered was a useless one lies on the accused. In majority of cases it would be impossible for the prosecution to prove that the accused had slaughtered a young and useful animal. It is a matter which is within the exclusive knowledge of the accused and, therefore, it is for him to prove that fact.

(2) The courts will also take into account the antecedent age and character of the offender. If 1 the person committing the offence is a first offender and there are no aggravating circumstances in the case, then a nominal sentence of fine would meet the ends of justice. If, on the other hand, it is proved they he find committed similar offences previously, then a heavy penalty would be the proper punishment.

(3) If the offence has been committed with deliberation or in circumstances which would go to show that he intended to commit the crime with the intention of injuring the feelings of a particular community or in defiance of a prohibitory order passed under Section 144, Cri. P. C., then that would be a case in which a deterrent sentence by way of imprisonment would be the proper punishment.

(4) The prevalence of crimes falling under the Act in a particular area or during a particular period would also be a relevant consideration in determining the gravity of the offence. In such cases, the court must bear in mind the necessity of proportion between the offence and the penalty. The maximum penalty provided for the offence should' be awarded only in cases of the gravest character.

(5) The sentence awarded should not be based on considerations of sentiment or religious feeling. There should be a dispassionate judicial scrutiny of facts and law in determining the proper sentence to be awarded in each case.

15. These in our opinion are the considerations which should go into the scales of justice in weighing the measure of punishment.

16. Our answer to the questions referred to us by as indicated above.

FINAL ORDER

Mathur, J.

(23-3-1961)

17. The revision was admitted on the question of sentence. As there was conflict in the decision of this Court the matter was referred to a Bench who have expressed the law in the order dated 17-3-1961. The revision has now been listed before me for final orders. .

18. For the first offence, if there is no aggravating circumstance, a nominal sentence of fine is to be imposed. The circumstances which can be considered to be aggravating or which can be taken into consideration have been detailed in Clauses 1 and 3 to 5 of the order dated 17-3-61 of the Bench to which the question was referred for consideration. In view of the fact that parties did not know what the law is, no one produced evidence on these circumstances nor did the accused indicate the age of the cow which had been slaughtered. This Court is, therefore, faced with, the difficulty that there is insufficient material on record. To remand the case for recording additional evidence will not be desirable. The ends of justice would be met if the sentence is reduced to that already undergone and a fine of Rs. 50/- each.

19. The revision is hereby dismissed except that the sentence of each of the eight applicants is reduced to the sentence undergone and a fine of Rs. 50/- each. The fine should be paid within two months. In case of default, each of the applicants shall be liable to undergo two months' rigorous imprisonment.

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