

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1282 OF 2017
(Arising out of SLP (Criminal) No. 4133 of 2017)

SHIVARAM & ANR. ... Appellants

VERSUS

STATE OF KARNATAKA ... Respondent

O R D E R

Leave granted.

The matter is heard finally at this stage.

The appellants herein were chargesheeted for offences punishable under Sections 307, 326, 504 read with Section 34 of the Indian Penal Code (IPC). After the trial, the appellants were acquitted by the Trial Court insofar as the offences under Section 307/504/34 IPC are concerned but were convicted under Section 326 IPC. The Trial Court while passing order on sentence took into consideration the following mitigating circumstances:

- "i) Injury found on the body of the accused No. 1.
- ii) Age of the first accused.
- iii) Fact of C.W. 13 high handedly entered premises of the first accused."

It was found that there were injuries on the body of appellant No. 1 (Accused No. 1) as well. The Trial Court

also recorded that appellant No. 1 was 74 years of age at that time. It was also mentioned that (C.W. 13) had forcibly entered into the premises of the appellants. Going by these considerations, the Trial Court imposed the sentence of 10 days which appellant No. 1 had already undergone. The Trial Court while observing that the second accused (Appellant No. 2) herein was not present at the inception of the incident and that the assault made by him was not premeditated but has occurred at the spur of moment, ordered him to undergo Simple Imprisonment for a day till the rising of the Court and also imposed a fine of Rs.4,000/-.

The appellants' appeal against that order was dismissed and, therefore, conviction was sustained. State had also filed appeal challenging the sentence awarded by the Trial Court. It was submitted that the sentence should have been higher than what was awarded by the Trial Court. The High Court enhanced the sentence to six months' imprisonment and imposed a fine of Rs.50,000/- each on both the appellants.

After going through the record, we are of the opinion that the mitigating circumstances which were taken into consideration by the Trial Court have not been correctly and rightly appreciated by the High Court and the High Court has unnecessarily enhanced the sentence. We, thus, allow this appeal partly and set aside the sentence as enhanced by the High Court to six months. However, the fine, as enhanced by

the High Court, is maintained.

The appeal is disposed of accordingly.

....., J.
[A.K. SIKRI]

....., J.
[ASHOK BHUSHAN]

New Delhi;
July 28, 2017.

ITEM NO.40

COURT NO.7

SECTION II-C

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 4133/2017

(Arising out of impugned final judgment and order dated 10-01-2017 in CRLA No. 2533/2013 passed by the High Court of Karnataka Circuit Bench at Dharwad)

SHIVARAM & ANR.

Petitioner(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(With IA 44749/2017 - FOR EXEMPTION FROM FILING O.T.)

Date : 28-07-2017 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Petitioner(s)

Mr. Shekhar G. Devasa, Adv.

Mr. Manish Tiwari, Adv.

M/s. Devasa & Co., AOR

For Respondent(s)

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

Leave granted.

The appeal is disposed of in terms of the signed order.

(NIDHI AHUJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

[Signed order is placed on the file.]