JUSTICE ACCORDING TO LAW: CONFLICTING DECISIONS OF SUPREME COURT OF INDIA

ACCORDING TO article 141 of the Constitution of India, the law declared by the Supreme Court shall be binding on all courts within the territory of India. All courts in India are, therefore, bound to follow the decisions of the Supreme Court although the Supreme Court itself is not bound by its own decisions. In case of conflict between decisions of the Supreme Court, it is the latest pronouncement which will be binding upon the other courts. Not only the law declared by, but also the obiter dicta of the Supreme Court, have been held to be binding.

It is in the context of such a constitutional provision that the decision of the Supreme Court[1] in the criminal appeal decided on 16 January 1981 assumes such fundamental and vital significance as to invite a critical analysis and discussion. The bench, giving the decision, consisted of Justices A.C. Gupta and D.A. Desai.

It appears that the sole point pleaded and allowed to be argued before the Supreme Court in this criminal appeal related to the reduction of sentence[2] inasmuch as there were concurrent findings of fact recorded by both the courts below and the law involved also stood settled by the Supreme Court as far back as 1975,[3] which was followed in one of its later decisions.[4] The Supreme Court had considered in its 1975 decision the majority view regarding the legal point (meaning of the phrase "uses deadly weapon") of the full bench of the Punjab & Haryana High Court[5] and had held that the restricted meaning given to the word 'uses' by the Punjab & Haryana High Court was not correct.

The facts of the case, as can be culled out from the judgment of the sessions court,[6] were that on 14 October 1977 at about 3 p.m. Madhu Joshi, telephone operator, was walking behind Shivaji College; three persons including the accused-appellant Kishanlal, alias Bada, came over there, the latter with an open knife in his hand. *He showed the said open knife to Miss Madhu Joshi* (emphasis added); one companion of the accused-appellant snatched the purse from the victim's hand and removed Rs 25 therefrom

---

1. *Krishan Lal alias Bada* v. *State (Delhi Administration)*, (1982) 2 S.C.C. 175.
2. The number of the criminal appeal (39 of 1981) and the date of decision (16 January 1981) are pointers to this conclusion.
3. *Phool Kumar* v. *Delhi Administration*, A.I.R. 1975 S.C. 905.
4. *Gedda Raminaidu* v. *State of Andhra Pradesh*, A.I.R. 1980 S.C. 2127.
5. *State* v. *Chand Singh Mit Singh*, A.I.R. 1970 P. & H. 532.
6. The judgment (conviction order dated 6 October 1978 and sentence order dated 7 October 1978) was delivered by H.C. Goel, additional sessions judge, Delhi.

while the other companion removed the wrist watch from the right hand of the victim. The accused-appellant alongwith the knife was apprehended red handed on the spot and handed over to the police The police was not able to trace the two culprit-companions of the accused-appellant and therefore the accused-appellant alone was challaned in two separate cases, one under section 397 read with section 34 of the Indian Penal Code 1860 (IPC) and the other under section 27 of the Arms Act 1959.

The sessions court, in separate trials, framed charges under section 392 read with section 397 IPC[7] and under section 27 of the Arms Act. The accused was convicted under both charges and sentenced to seven years rigorous imprisonment and a fine of Rs 200 (in default of payment of fine, to further rigorous imprisonment for one month) on the former count, and rigorous imprisonment for one and a half years on the latter count.

The High Court of Delhi[8] dismissed both the appeals preferred by the accused-appellant. Regarding his appeal against conviction and sentence for the offence under section 27 of the Arms Act, it was held that he had been rightly convicted. No interference was made in the quantum of sentence (one and a half years rigorous imprisonment) observing that "the sentence awarded to him under that count . does not seem excessive. He is a previous convict and does not deserve even the benefit of probation." (The previous conviction is not borne out by the records of the trial court). As regards the other appeal[8a] against conviction and sentence for the offence under section 392 read with section 397 IPC, the High Court, while dismissing the appeal, made the following observations:

> She was robbed by the three culprits. Her story is corroborated by other witnesses. I have little hesitation in supporting the findings of the court below that she was accosted by the persons who acted in concert and while the appellant displayed the deadly knife, the other two of his associates robbed her of her wallet and watch. Once the testimony of the girl is believed, the appellant can be held guilty of an offence under section 392 read with section 34 IPC. There will be no difficulty in applying section 397

---

7. On the allegations, charges against the accused-appellant ought to have been framed under section 392 read with sections 397 and 34 I.P.C. as was rightly concluded by the High Court, and not merely under section 392 read with section 397 I.P.C. as was followed by the sessions court. The mention of section 34 I.P.C. in the charge against the accused was absolutely essential in view of the fact that except for the common intention to commit robbery in concert with his two companions, there was no allegation or evidence of robbery committed by the accused.

8. Criminal appeal nos. 233 & 234 of 1978 filed in Delhi High Court were decided by M.L. Jain J. by a common judgment dated 17 April 1979.

8a. Cr. Appeal no. 233/78 (1978).

to his case because he is the offender who is said to have used the knife.

As against such concurrent findings of fact, law, conviction and sentence, the Supreme Court, in its two paragraph judgment (the first paragraph contained a brief narration of conviction and sentence of the appellant) altered the offence punishable under section 397 IPC into one under section 392 IPC, and reduced the sentence to rigorous imprisonment for three years, observing as follows:

> Having considered the facts and circumstances of the case, we think that the second offence really falls under Section 392 of the Indian Penal Code.[8b]

Considering the facts of this case, the question that arises is whether there has been proper appreciation of the evidence and the law by the Supreme Court. There is no doubt that in appropriate cases the Supreme Court can reappraise the evidence and reverse the concurrent findings of facts reached by the courts below if it comes to the conclusion that there has been a misappreciation of evidence, resulting in prejudice or miscarriage of justice to the appellant. If it does so, it normally gives its analysis and appreciation of facts and law involved in its judgment for the benefit of all concerned and particularly of courts below whose concurrent findings have been reversed. This decision of the Supreme Court is exceptional in the sense that it provides no analysis of the factors which weighed with the court for converting the offence under section 397 IPC to one under section 392 IPC. The narration of reasons was necessary because the conviction for the offence under section 397 IPC carries a minimum sentence of seven years rigorous imprisonment and fine while no such minimum sentencing is prescribed for the offence punishable under section 392 IPC.

Let us once again revert to the facts of this case. The accused-appellant, as per the testimony of Madhu Joshi, not only had an open knife in his hand but had also shown it to her and it was thus that the two companions of the appellant were able to rob her of her money and watch. There can be little doubt on the facts of this case and the decided law of the Supreme Court[9] that the accused-appellant used the knife, a deadly weapon, within the definition, meaning and ambit of section 397 IPC. It is true that no injury with the knife was caused by the accused-appellant. However, an actual use is not necessary for constituting "uses" under section 397 IPC. According to the Supreme Court,[10] carrying a knife in

---

8b. *Supra* note 1, *ibid.*

9. See *supra* notes 3 and 4.

hand, which is open to the view of the victims and sufficient to frighten or terrorize them, is "uses" within the meaning of section 397 IPC, and any other overt act, such as brandishing the knife, or causing grievous hurt with it is not necessary to bring the offender within the ambit of section 397. Far back in 1955, the division bench of the Bombay High Court[11] held that an actual use of the knife is not necessary, and further, that if it is used for the purpose of producing such an impression upon the mind of a person that he will be compelled to part with his property, that will amount to using the weapon within the meaning of section 397. In the present case, displaying or brandishing a knife at the victim was sufficient to reasonably cause an apprehension in her mind that she would be subjected to its actual operation if she did not submit to the demand of the offenders.

On such factual and legal premises, it is not easy to comprehand as to how it could be held that the accused-appellant did not use the knife while committing robbery in concert with his two companions. It was not in any sense a case of robbery simpliciter punishable under section 392 IPC.

There is another dimension of the problem. The accused-appellant had also been convicted and sentenced under section 27 of the Arms Act, which reads as follows:

> Whoever has in his possession any arms or ammunition with intent to use the same for any unlawful purpose or to enable any other person to use the same for any unlawful purpose shall, whether such unlawful purpose has been carried into effect or not, be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

The Supreme Court did not disturb either the conviction or the sentence awarded to the accused-appellant by the courts below for the offence punishable under section 27 of the Arms Act. Under this section acquisition or possession or carrying simpliciter of any arms is made punishable with imprisonment up to three years. Section 27 provides a harsher punishment—imprisonment up to seven years—for carrying any arms or ammunition with an intent to use the same for any unlawful purpose or to enable any other person to use the same for any unlawful purpose. Carrying a knife for committing robbery is defini-

---

10. See *supra* note 3. In *Phool Kumar* the accused-appellant had a knife in his hand, and no actual use of the knife was made by him while committing robbery with his companions. The Supreme Court held him to have been rightly convicted and sentenced to seven years rigorous imprisonment under section 397 IPC by the courts below.

11. *Govind Dipaji More* v. *State*, A.I.R. 1956 Bom. 353.

tely an unlawful purpose. When the accused-appellant was thus convicted for the offence of carrying a prohibited weapon with an intent to use it for an unlawful purpose, how could he escape conviction and sentence under section 397 IPC?

It is clear that if the accused-appellant was to be convicted under section 397 IPC, he could not be sentenced to less than seven years rigorous imprisonment as provided in that section. It was for this reason that the additional sessions judge while referring in his judgment[12] to the minimum sentence prescribed under section 397 IPC sentenced the accused to seven years rigorous imprisonment and fine.

In deserving cases, the imposition of the prescribed minimum period of imprisonment for offences under sections 397 and 398 has caused hardship. Far back in 1948 V.G. Oak, ICS (later the Chief Justice of Allahabad High Court) wrote[13] about the practical difficulties and undue severity of the imposed sentence on account of minimum sentence prescribed under sections 397 and 398 and accordingly recommended repeal of those sections.

In 1955, the division bench of the Bombay High Court,[14] while dealing with the criminal appeal against conviction and sentence under section 392 read with section 397 maintained the sentence of seven years rigorous imprisonment as awarded by the additional sessions judge. In the last paragraph it however made the following observations and recommendations:

> However, looking to the fact that in this case the knife was not actually used by the appellant upon the person either of Mangilal or of Umedlal and looking to the further fact that the amount taken away from the shop by appellant was only a currency note of the value of Rs 5/-, we are of the opinion that this is a case in which we should recommend a reduction in the sentence.
>
> Therefore, while dismissing the appeal of the appellant and while confirming his conviction under S. 392 read with S. 397 of the Penal Code, we recommend that the Government may reduce the sentence imposed upon the appellant from a sentence of seven years' rigorous imprisonment to one of three years' rigorous imprisonment. With this modification, the appeal is dismissed.[14a]

As long as the statute is not amended and continues to provide minimum punishment, it has to be followed by the courts. However, where the minimum punishment is considered unduly severe, unjust and harsh in any given case, the courts, while imposing and maintaining the

12. See *supra* note 6
13. "Sections 397 and 398, Penal Code in Practice," 49 *Cr. L.J.* 38 (1948)
14. See *supra* note 11.
14a *Id.* at 354.

minimum sentence, may make appropriate recommendation to the government for reduction in sentence, as was done in the Bombay case.[15]

As an alternative, the courts may, in appropriate and deserving cases, resort to applying probation provisions to such offenders, notwithstanding the prescription of law for the imposition of minimum sentence.[16]

The practical results of the present judgment of the Supreme Court have been unhealthy and discriminatory. This judgment coupled with the judgments of the sessions court and the High Court are quoted in similar fact-situation in subordinate courts, and heinous offences punishable with minimum sentence of seven years imprisonment under section 397 IPC are got converted for lenient sentencing treatment under section 392 IPC.[17]

It is submitted that in order that the subordinate courts may not be misled, the Supreme Court may consider it proper and expedient to review the judgment in question, for reasons of achieving certainty and coherence and for the pre-eminent reason of predictability.

*P.R. Thakur**

---

15. *Ibid.*

16. *Isher Das* v. *State of Punjab*, A.I.R. 1972 S.C. 1295. (The provisions of Probation of Offenders Act 1958 were applied to the case under the Prevention of Food Adulteration Act 1954 where a minimum sentence of imprisonment and fine was prescribed). See also *Mahinder Singh* v. *State*, 1980 Cr. L.J. N.O.C. 127 (H.P.) 53. (It was held that sections 360 and 361 CrPC were applicable even to those offences where law prescribes a minimum sentence. In that case, it was observed that release on probation could be considered in respect of offenders convicted under section 397 IPC.)

17. The author is aware of at least one sessions case no. 93/81 under section 397 IPC and section 27 Arms Act, decided by the additional sessions judge, Delhi (J.D. Kapoor) vide judgment dated 30 November 1982. In paragraph 21 of the judgment, he observed "To constitute an offence under Section 397 IPC, actual use of the knife is not necessary. The use of the knife in order to put a person in fear of instant danger of life or injury without actually using it comes within the meaning of deadly weapon."

In this case, the allegations and the evidence against the accused were that he brandished a button-operated knife and by so threatening snatched the wrist watch from the victim. The additional sessions judge, holding implicitly that offence under section 397 IPC was made out, nonetheless convicted the accused under section 392 on the basis of the present judgment of the Supreme Court.

*Judge, Motor Accidents Claims Tribunal, Delhi.