

**SOHAN LAL VS STATE OF UTTAR PRADESH AIR 1971 SC 2064**

---

**Panya Sethi\*****INTRODUCTION**

The Supreme Court ruled that no unlawful means (such as force or deception) were used in this particular kidnapping. For this reason, it was speculated whether or not the husband had kidnapped his wife. The court ruled that if a husband takes his wife with him, there is no issue of abduction under normal conditions; nevertheless, if she is tricked or force is used, the situation is treated as an abduction. The Allahabad High Court Bench comprised **SM Sikri, Jagmohan Reddy and I.D. Dua**. The main issue in the case is with respect to the sentencing policy and what factors are considered for deciding the quantum of sentencing<sup>1</sup>

**FACTS**

The Additional Sessions Judge in Rampur found Sohan Lal, Jiwan, and Janki guilty of violating Section 302 in conjunction with Section 34 of the Indian Penal Code. They were found guilty and given a life term in jail. They were also found guilty of violating Sections 324 and 323 read with Section 34 of the Indian Penal Code, for which they were given one year and six months of harsh jail, respectively. Both punishments are to be executed at the same time under the directive. Jiwan and Janki's conviction and imprisonment under Sections 324, and 323 read with 34 of the IPC were upheld, however, they were exonerated of the murder charge under Section 302 of the code after an appeal to the High Court. T P. Jagannmohan Reddy made the decision. Sohan Lal had his conviction for an offense under Section 302 of the Indian Penal Code overturned and he was found not guilty. In any case, the conviction and sentence under Sections 323, and 324 read with Section 34 were upheld. In addition, he was found guilty under Section 325 when read along with Section 34 and given a harsh five-year jail term. Appeal granted in part; Appellants 2 and 3's portions denied.<sup>2</sup>

---

\*BBA LLB, FOURTH YEAR, SYMBIOSIS LAW SCHOOL, NOIDA.

<sup>1</sup> LexisNexis, , Sohan Lal and Another vs State of Uttar Pradesh, <https://advance.lexis.com/api/document?collection=cases-in&id=urn%3AcontentItem%3A5V9M-KDHI-JGHR-M491-00000-00&context=1523890> (last visited June 4,, 2023).

<sup>2</sup> SCC Online, Sohan Lal and Another vs State of Uttar Pradesh AIR 1971 SC 2064 <https://www.scconline.com/DocumentLink.aspx?q=JTXT-9000333744> (last visited June 4, 2023)

## LEGAL ISSUE

What is the process for sentencing the accused and what are the relevant factors for deciding the quantum of sentencing?

## RULES

Sections 302 and 34 of IPC

Sections 323 and 324 and 325 of the IPC

Section 362 of IPC

Section 389 of the Criminal Procedure Code, 19

## BACKGROUND

### SENTENCING UNDER CRPC

**“Every saint has a past, every sinner has a future” - J J Krishna Iyer**

In Criminal Procedure Code, a sentence is the court's order imposing a penalty. A criminal defendant may be sentenced to jail time, pay a fine, or face any combination of these and additional sanctions. Inmates convicted of more than one crime will either serve their terms concurrently or consecutively. A consecutive sentence is one in which the total time spent behind bars is equal to the sum of the sentences handed down one after the other “(in which the period of imprisonment equals the length of the longest sentence where the sentences are all served together at the same time)”<sup>3</sup>

The purpose of punishment is to deter criminal activity as a means of safeguarding society. Punishment may serve as a safeguard for society by discouraging would-be criminals, stopping the offender from committing more crimes, and rehabilitating him into a law-abiding member of society.

---

<sup>3</sup> Presentation on Remedies, Reliefs, Sentencing and Punishments District Court, Smt. K Satyakumari, <https://districts.ecourts.gov.in/sites/default/files/8-Remedies%2C%20Reliefs%2C%20Sentencing%20and%20Punishment-by%20K%20Satya%20Kumari.pdf> (last visited June 4,,2023)

The purpose of sentencing policy should be to ensure that criminals face consequences for their actions and that victims and society as a whole feel that justice has been served.<sup>4</sup>

## **WHAT SENTENCES CAN BE PASSED BY THE HIGH COURT AND SESSIONS JUDGE?**

**“Section 28 of the Criminal Procedure Code states what sentences can be passed by the High Court and Sessions Judge.**

(1) A High Court may pass any sentence authorized by law.”

(2) While a Sessions Judge or Additional Judge has the authority to impose any penalty permitted by law, the High Court must affirm any death sentence imposed by such a judge.

(3) Except for the death penalty, life in prison without parole, and terms of imprisonment in excess of 10 years, an Assistant Sessions Judge has the authority to impose any punishment permitted by law.

## **SUSPENSION OF SENTENCING**

“**Suspension**” means to temporarily suspend a sentence. A sentence may be suspended at the discretion of the person allowed to do so; if no restrictions are attached to the suspension, the person authorized to do so may revoke the suspension and order the offender to serve out the remainder of his term. “Support for this view may be found in the Law Commission's 41st Report, specifically on page 281, paragraph 29.1. Other instances, such as *Ashok Kumar 2 v. Union of India* (AIR 1991 SC 1792) and *State of Punjab v. Joginder Singh*, also back up this view (AIR 1990 SC 1396).”

## **“THE CORONER AND JUSTICE ACT, 2009: LEARNING FOR INDIA”**

The Indian sentencing process is codified in the Criminal Procedure Code (CrPC) in many places, including in section 235. By giving the accused a last chance to comment before accepting their sentence, this procedure assures that they will be able to do so. Section 302 of the Indian Penal Code, for example, specifies the penalty for murder, whereas section 300 explains the crime.

---

<sup>4</sup> Principles of Sentencing, SS Upadhyay, Former District and Sessions Judge, [https://lawhelpline.in/PDFs/CRIMINAL\\_LAWS/SENTENCING\\_PRINCIPLES2.pdf](https://lawhelpline.in/PDFs/CRIMINAL_LAWS/SENTENCING_PRINCIPLES2.pdf) (Last visited January 21.,2023)

However, the method is difficult for judges to follow since it is broken down into so many little parts; the Criminal Procedure Code (CrPC) contains 484 sections, 2 schedules, and 56 forms, and the Indian Penal Code (IPC) has more than 550 sections. **The Malimath Commission** suggested a distinct sentence codification as well.

Upon filing a criminal appeal, a convicted individual may be eligible for bail under Section 389 (1) and (2) of the Criminal Procedure Code. If the defendant has been found guilty but wishes to appeal, the trial court may grant him bail under section 389(3). We must consider subsection (3) of Section 389 because we are interested in the trial court's discretion to postpone the sentence.

There are new provisions in this Act that affect the criminal justice system in England and Wales. The goal is to improve the efficiency and effectiveness of the judicial system by instituting a more uniform and open system of sentencing. Section 118 of the Act creates a sentencing council whose main goal is to increase public trust in the justice system. Many commentators have focused primarily on this aspect of their work. Non-judicial council members have been granted equal standing on the new 14-person council. The Malimath report also suggested creating such a group to ensure that the finalized guidelines would be both effective and neutral.

### **POSITION PRIOR TO 1973**

The criminal process law of 1898 did not provide any guidelines for what to do after a conviction and before a sentence. “In **JAGMOHAN SINGH V. STATE OF UTTAR PRADESH (AIR 1973 SC 947 (959))**” There is no established legal process for deciding whether or not the death penalty is warranted in a given case, which raises serious concerns about the death penalty's constitutionality. “It is true that there is no formal mechanism for submitting evidence with relation to the sentence, but the” Supreme Court has already rejected this argument and declared that the penalty follows the conviction. Since the court has previously heard evidence related to the nature and circumstances of the offense, no further evidence is needed.

It is imperative that the court hear the accused on the issue of sentencing, which occurs after the conviction stage. “**Mr. Justice V.R Krishna Iyer, in Ediga Annamma Vs. State of Andhra Pradesh (AIR 1974 SC 799 (803))**” held as follows; “While our current processual system considers both wrongdoing and guiltiness to be relevant in determining the

appropriate sentence, it lacks the careful planning and adequate equipment expected to gather and show the social and individual information of the liable party to the degree anticipated in the choice on sentence. After his conviction under the Criminal Procedure Code of 1973, the judges would hear the accused on the request for condemnation and then impose a punishment on him in accordance with rules that were thoughtfully constructed into the statute. (Segment 235 and Area 248).

### **LAW COMMISSION'S 48<sup>TH</sup> REPORT**

While recommending a structure that would allow the accused to argue against a mandatory punishment after a conviction has been made, the Law Commission observed as follows in its 48<sup>th</sup> Report:- "It is becoming more and more obvious that various flaws in the current system need to be fixed in order to implement a sentencing policy that is both reasonable and consistent. One such shortcoming is incomplete data on the offender's history and personality traits.

### **POSITION UNDER CRPC 1973**

After being indicted in preliminary hearings for warrant cases, judges in Area 248 are privy to information about the defendant prior to imposing a sentence, and they have a firm grasp on the situation as a result. First, the judge will file a motion for dismissal if he determines that the accused is not guilty of the charge laid forth in this section. After hearing the defendant on the sentence inquiry, the court will impose a penalty in accordance with relevant law if it finds the defendant guilty under this section but chooses not to continue under the provisions of Section 325 or Section 360.

"Supreme Court, in **SANTA SINGH Vs. STATE OF PUNJAB CASE** (AIR 1976 (4) SCC 190), dealt with the scope and meaning of the words "hear the accused" and held as follows: *"We are, therefore, of the view that the hearing contemplated by section 235 (2) is not confined merely to hearing oral submissions, but it is also intended to give an opportunity to the prosecution and the accused to place before the court facts and material relating to various factors bearing on the question of sentence and if they are contested by either side, then to produce evidence for the purpose of establishing the same, of course, care would have to be taken by the court to see that this hearing on the question of sentence is not abused and turned in to an instrument for unduly protracting the proceedings. The*

*claim of due and proper hearing would have to be harmonized with the requirement of expeditious disposal of the proceedings”.*

### **WHAT ARE THE RELEVANT CONSIDERATIONS FOR DETERMINING THE QUANTUM OF SENTENCE?**

While deciding on a punishment, judges should take into account the following considerations: There are many factors that go into sentencing decisions, including i) the nature and severity of the offense (ii) “the penalty provided for the offense (iii) the manner in which the offense was committed (iv) the proportionality between crime and punishment (v) the age and sex of the offender (vi) the character of the offender (vii) the offender's (criminal history etc.) Reforms' viability” (viii) consequences of crime on public peace and welfare (x) The offender's age, character, antecedents, and other conditions, as well as the offender's potential for rehabilitation, must unavoidably play the most prominent part in establishing the punishment. When deciding on a punishment, a court must weigh the offender's character against the crime's severity, as well as the victim's and community's responses. “This can be seen in the case of Sushil Murmu Vs. State of Jharkhand, (2004) 2 SCC 338 and Surjit Singh Vs. Nahar Ram, (2004) 6 SCC 513”

### **ANALYSIS**

“The trial court found all three defendants guilty of murder under Sections 302 and 34 of the Indian Penal Code and sentenced them to life in jail without parole. Last Friday, the Supreme Court of India reaffirmed that Section 302 of the Indian Penal Code mandates a mandatory life sentence for murder (IPC)” [*The State of Madhya Pradesh vs Nandu*].<sup>5</sup>

The three accused were also convicted under Sections 323 and 324 of IPC and subjected to rigorous imprisonment for 5 years. **Rigorous imprisonment** as stated in Section 53 of the Indian Penal Code consists of doing hard labor whereas **simple imprisonment** must perform simple tasks. Since dangerous weapons (i.e. the use of lathis) had been used for committing the crime, the trial court had sentenced them to rigorous imprisonment.<sup>6</sup>

---

<sup>5</sup> Minimum punishment for murder under Section 302 IPC is life imprisonment: Supreme Court Bar and Bench - Indian Legal news, <https://www.barandbench.com/news/litigation/minimum-punishment-murder-section-302-ipc-life-imprisonment-supreme-court> (last visited Jan 21, 2023)

<sup>6</sup> How rigorous is rigorous imprisonment? Hindustan Times, <https://www.hindustantimes.com/delhi/how-rigorous-is-rigorous-imprisonment/story-i9IUQGLwcZsoGckulb3IL.html> (last visited Jan 21, 2023)

The High Court reversed the convictions of two of the three defendants under sections 302 and 34 of the IPC but sustained their convictions under sections 325 and 34. It was determined that Sohan Lal had violated Section 302 of the Indian Penal Code. The murder conviction and the life sentence imposed according to Sections 324 and 323 were upheld.

Sohan Lal had been cleared of murder charges under Indian Penal Code Section 302, but the Supreme Court reversed that decision. On the other hand, he was found guilty under Section 325 read with Section 34 and given a harsh five-year sentence for the use of hazardous weapons in the attack on Makhan. The reasoning behind the same was that there was no question of abduction. If there was fraud or deceit on the part of the husband then it would be a different story. In such a case, it would also be open for the appellant to plead that he had a right of private defense.<sup>7</sup> A person would be guilty of an offense of abduction under section 362 of IPC only if forceful means had been used.

## CONCLUSION

India's sentencing policy has to be reformed because of the country's rising crime rate. Since the purpose of the policy is to create a society where everyone, including the rights of victims and offenders, is treated fairly and with due regard, it cannot be too strict in its application. The element of subjectivity needs to be reduced while also ensuring that judges have discretion in deciding the case keeping in mind the principles of natural justice and equity. Law is better formed keeping in mind the needs of society.

---

<sup>7</sup> Sentencing policy of india: A critical analysis and suggestions [part II] The Criminal Law Blog, <https://criminallawstudiesnluj.wordpress.com/2020/05/09/sentencing-policy-of-india-a-critical-analysis-and-suggestions-part-ii/%E2%80%9D> (last visited Jan 21, 2023)