



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

D.B. Criminal Misc(Pet.) No. 1396/2011

Smt.kali W/o Kanti, R/o Village Siyatalai, Samriya, Police Station  
Sadar, Banswara

-----Petitioner

Versus

State Of Rajasthan

-----Respondent

For Petitioner(s) : Ms. Shobha Prabhakar, Amicus Curiae  
For Respondent(s) : Mr. Rajesh Bhati, PP

**HON'BLE MR. JUSTICE FARJAND ALI  
HON'BLE MR. JUSTICE ANAND SHARMA**

**Order**

**Reportable-**

**ORDER PRONOUNCED ON ::: 09/12/2025**

**ORDER RESERVED ON ::: 01/12/2025**

**BY THE COURT:- (per Hon'ble Mr. Justice Farjand Ali )**

1. The present Misc. Petition has been instituted pursuant to the communication dated 04.08.2011 addressed by the learned Additional Sessions Judge (Fast Track No.1), Banswara, informing about an anomaly in the final judgment dated 18.07.2011 rendered by a Coordinate Division Bench of this Court in Criminal Appeal No.374/2004 was brought to the Court's notice.



2. The matter has remained pending for a considerable period of time. Despite repeated attempts at service, no one appeared on behalf of the petitioner. Upon the Court's request, Ms. Shobha Prabhakar, Advocate, graciously consented to assist this Court.

3. In these circumstances, this Court appointed Ms. Shobha Prabhakar, Advocate, as Amicus Curiae to assist the Court, and granted her adequate time to examine the record.

4. The relevant factual matrix is that one Smt. Kali was convicted by the Trial Court in session case no.90/2003 on 05.02.2004, for the offence punishable under Section 302 IPC and was sentenced to undergo life imprisonment along with fine and the corresponding default clause. Aggrieved thereby, she preferred Criminal Appeal No.374/2004 before this Court, which came to be partly allowed by the Division Bench on 18.07.2011. By the said judgment, her conviction under Section 302 IPC was set aside and she was instead convicted for the lesser offence under Section 304 Part I IPC.

5. It appears that the Division Bench, while deciding the appeal, acted on the assumption that the appellant, a tribal woman had remained continuously in judicial custody from 07.07.2003 onwards till the date of decision i.e. 18.07,2011. This assumption stemmed from a communication dated 24.03.2005 sent by the learned Additional Sessions Judge, Banswara to the Registry of this Court, stating that although the appellant had been granted the benefit of bail by this





Court on 01.04.2004 but she was unable to furnish the requisite bail bonds, and therefore continued to remain incarcerated up to 24.03.2005. Proceeding on the belief that she had never been released thereafter, the Division Bench reduced the sentence awarded under Section 304 Part I IPC to the period of imprisonment already undergone and directed her immediate release.

6. Subsequently, however, the true factual position emerged, revealing that the said assumption was erroneous. Although the application for suspension of sentence was indeed allowed by this Court on 04.11.2004, the order remained inoperative for a substantial duration owing to the appellant's failure to furnish bail bonds. It later transpired that she eventually submitted the requisite bail bonds only on 23.12.2005, upon which she was released from the Central Jail on the same date. Hence, she had not been in uninterrupted custody as was presumed by the Division Bench.
7. This discrepancy occurred due to a communication lapse involving the Registry of this Court, the Trial Court, the governmental authorities, and the office of the Public Prosecutor. On the date of final hearing i.e., 18.07.2011, the accurate custody details of the appellant were regrettably not presented before the Division Bench. The Public Prosecutor, who was duty-bound to place the correct custody record on the judicial file, failed to apprise the Court that the





appellant had been released on bail on 23.12.2005 and was not in continuous detention thereafter.

8. Had this material fact been duly placed before the Bench at the appropriate time, the operative portion of the judgment, particularly paragraph No. 13, might have been framed in an altogether different manner. The present petition thus arises to address and rectify the anomaly occasioned by this inadvertent but consequential lapse.

9. The incongruity that surfaces in the present matter is that, although the appellant was convicted for the offence under Section 304 Part I of the IPC and was presumed by the Coordinate Bench to have remained incarcerated for a period of eight years, on the strength of which she was directed to be released forthwith upon deposit of the fine, the contemporaneous record discloses an altogether different factual scenario. In actuality, her custodial detention, both police and judicial, extended merely from 07.07.2003 to 23.12.2005.

10. We have heard Amicus Curiae and the learned counsel for the respondent , also gone through the relevant material minutely.

11. Having heard and upon a meticulous appraisal of the material available on record, it is manifest that the discrepancy arose either from an inadvertent lapse on the part of the prosecuting agency or from a communication





deficit between the trial court's administrative office, the prosecution, and the concerned Government authorities.

12. The incident pertains to the year 2003. It stands admitted that the appellant and the deceased hailed from an indigent household situated in the remote and hilly terrain of Banswara, an area bereft of uninterrupted road connectivity, with the nearest police station being situated at a distance of approximately 25 kilometres. The appellant, belonging to a socio-economically marginalized stratum, has remained at liberty for nearly two decades. She was 32 years of age at the time of the occurrence and is now approximately 55 years old.

13. These circumstances assume considerable significance while this Court arrives at its final conclusion. Even though the earlier presumption of eight years' custody is demonstrably erroneous, the actual period of incarceration, about two years, when viewed in conjunction with the efflux of twenty long years, renders it wholly inequitable and impracticable to direct her recommitment to prison at this juncture.

14. Learned Public Prosecutor has, with commendable fairness, conceded that the appellant has no prior criminal antecedents and that no subsequent complaint has been registered against her since her release.

15. The prosecution narrative itself indicates that the charge stemmed from the alleged homicidal act committed against her husband. The episode appears to have transpired within





the domestic milieu: the husband (Kanti) had brought chicken and liquor from the market, and his wife (Kali), prepared the chicken meat. During this time, Kanti was consuming liquor in the aangan. In this backdrop, the husband, having arrived late, instructed the appellant to serve food. Upon being served, a verbal altercation seems to have ensued, as the appellant, aggrieved by his delayed arrival, reprimanded him. This provoked a quarrel and a physical scuffle (hathapai) between the two. In the heat of the moment, she seized an axe lying within the household and delivered a solitary blow, causing him to collapse. Significantly, apart from this single injury, no other external mark of violence was discerned on the deceased.

16. At this juncture, it is apposite to reproduce Section 304 of the Indian Penal Code for ready reference, which delineates the punishment for culpable homicide not amounting to murder. The provision reads as under:

*"304. Punishment for culpable homicide not amounting to murder.—*

*Whoever commits culpable homicide not amounting to murder shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death, or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death. "*

17. A plain reading of the statutory text makes it evident that under Section 304 Part I IPC, the Court is vested with a wide sentencing discretion, permitting the imposition of either





imprisonment for life, or imprisonment of either description for a term which may extend to ten years, in addition to fine. The legislative expression "which may extend to ten years" consciously confers upon the Court a flexible sentencing spectrum ranging from one day to ten years, enabling the sentencing judge to tailor the punishment in accordance with the totality of circumstances, including the nature of the act, the degree of intention or knowledge, the socio-economic milieu of the accused, the situational provocation, and the overarching demands of justice.

18. In exercising this discretion, the Court is obligated to calibrate the quantum of punishment strictly in accordance with the factual matrix and mitigating circumstances borne out from the record. The peculiarities of the present case, the domestic setting of the altercation, the spontaneous and heat-of-the-moment nature of the act, the absence of any premeditation, the solitary blow inflicted with no repeated assault, the indigent and marginalized background of the appellant, her gender and vulnerability, as well as her antecedent conduct unmistakably situate the matter within the second limb of Section 304, i.e., within the bracket of punishment "which may extend to ten years." It is within this permissible statutory range that the Court must judiciously exercise its sentencing discretion post-conviction.

19. At this stage, the Court is confronted with a peculiarly perplexing and disquieting situation. The Coordinate Bench,





while proceeding on materially incorrect custody information, had effectively modulated the sentence under Section 304 Part I IPC to eight years, which it believed had already been undergone. The question that now arises is whether, in the altered circumstances revealed after the judgment, this Court may revisit the quantum of sentence and reduce it to the period actually undergone. The justification for such reconsideration is fortified by several compelling factors, which merit articulation in unequivocal terms.

20. The discrepancy that occurred was not attributable to the appellant in any manner; rather, it arose from a systemic lapse involving the Registry of this Court, the Trial Court, the governmental authorities, and the office of the Public Prosecutor. The burden of this administrative miscommunication an error entirely external to the appellant cannot in law or in equity be foisted upon an impoverished tribal woman, who lacked both agency and awareness to correct the record. To hold otherwise would amount to visiting upon her the consequences of institutional omissions, a course wholly antithetical to the guarantees of fairness and justice.

21. Another pertinent question that troubles the judicial conscience is why this petition itself remained undecided for such an inordinate duration nearly fourteen long years. The delay, though regrettable, underscores that the present proceedings do not partake the character of a "review" in the





strict criminal-procedural sense, for it is settled that criminal courts do not exercise review jurisdiction. This is not a case of revisiting a concluded finding; rather, it is one where a vital foundational fact, the appellant's actual custody period was never before the Court at all at the time the earlier judgment was rendered. Had this material been available, the operative directions of the Coordinate Bench would assuredly have been different. Thus, the exercise undertaken herein is not a review, but a necessary judicial correction compelled by the surfacing of facts previously not brought before the court by inadvertence. The judgment dated 18.07.2011 appears to have been rendered on the basis of an incorrect fact furnished by the Public Prosecutor, on account of which the Coordinate Bench may have presumed that the total period of incarceration undergone by the appellant was eight years. However, she had actually undergone only two years of imprisonment. This factual position was subsequently brought to the notice of this Court by the learned Additional Sessions Judge through a formal communication. An anomalous situation has thus arisen, inasmuch as the judgment dated 18.07.2011 is factually incorrect with respect to the period of custody undergone by the appellant. The question, therefore, is whether such an erroneous factual premise should be allowed to stand, or whether it ought to be rectified. It is well settled that courts are expected to ensure that their judgments are factually and legally sound. At the same time,





any modification sought on the basis of a new fact does not ordinarily fall within the limited scope of review jurisdiction.

22. Equally significant are the human and relational dimensions of the case. The appellant, Kali, and the deceased, Kanti, were husband and wife, a marital relationship that had endured for an estimated fifteen years or more, considering the rural and traditional milieu in which they lived. This was not an act directed against a stranger or an adversary; it arose within the intensely personal sphere of matrimonial life. The victim was not an outsider, he was her own husband, and the fatality resulted from a momentary eruption of emotions within the privacy of their home. This circumstance, though tragic, constitutes a recognized mitigating factor in sentencing jurisprudence.

23. The Court cannot turn a blind eye to the context in which the incident unfolded. The material on record indicates that the deceased exhibited a rough and insensitive behavioural pattern: he would return home late without intimation, often in the company of friends, after purchasing chicken and liquor; he would sit in the courtyard drinking while the appellant, as was customary, prepared the food. Preparing a meal particularly in a rural household, is not an instantaneous exercise like boiling packaged noodles; it demands time, labour, and sustained attention. It is entirely conceivable that the delay in serving food, combined with the deceased's uninformed late arrival and intoxicated state, precipitated





irritation and verbal exchange, culminating in the unfortunate altercation. These elements, rooted in the lived reality of the parties, cannot be trivialized or ignored, for they speak to the emotional turbulence, fatigue, and provocation experienced by the appellant at that moment.

24. In sum, these cumulative circumstances- administrative lapses not attributable to the appellant, the absence of the crucial custody fact at the time of the earlier judgment, the peculiar delay in disposal of the present petition, the intimate spousal relationship between the parties, the behavioural pattern of the deceased, and the situational provocation inherent to the domestic environment, reinforce the necessity of modulating the sentence within the legally permissible range and ensuring that justice is tempered with compassion, proportionality, and humane considerations.

25. This Court is reminded of the well-settled jurisprudential position that modern penology accords primacy to rehabilitative and reformatory considerations while determining the appropriate sentence. Crime, in its essential character, is often a pathological deviation rather than an immutable trait, and the offender particularly one emerging from a disadvantaged environment remains amenable to reformation. The response of the State, therefore, must lean more towards rehabilitation than retribution. The sub-culture that precipitates anti-social conduct is to be corrected not





through severity or vengeance but through re-culturization and constructive reintegration.

26. Harsh and savage punishments belong to antiquated eras; contemporary criminal jurisprudence perceives sentencing as a calibrated mechanism to reshape a person who has momentarily deviated into criminality. The collective interest of society lies not in the destruction of such an individual but in his or her reclamation as a responsible citizen. A therapeutic, rather than an in terrorem, outlook ought to guide sentencing courts, for indiscriminate or brutal incarceration frequently scars the mind instead of reforming it. It has been aptly observed that if the objective is retribution, one must injure; but if the objective is reform, one must improve, and human beings are not improved by injuries.

27. The reformatory approach is, therefore, not an act of benevolence but a constitutional and jurisprudential mandate. Criminal law, while upholding societal order, must simultaneously strive to promote the rehabilitation of the offender in a manner consistent with social justice and the moral conscience of the community. Courts are thus enjoined to prefer reformatory measures over disproportionately harsh sentences, particularly where the circumstances demonstrate an absence of entrenched criminality or premeditated violence.





28. While determining the appropriate quantum of sentence, certain well-recognized factors necessarily guide judicial discretion. These include:

- (i) the nature and gravity of the offence;
- (ii) the statutory penalty prescribed;
- (iii) the manner and circumstances of its commission;
- (iv) the proportionality between the crime and the proposed punishment;
- (v) the age and gender of the offender;
- (vi) the character and personal circumstances of the offender;
- (vii) the absence or existence of antecedents;
- (viii) the demonstrable possibility of reform;
- (ix) the impact of the offence on social order and public interest; and
- (x) the overall personality profile of the offender, reflected through age, background, antecedents, and surrounding circumstances.

29. What ultimately constitutes a 'proper sentence' is neither an excessively harsh nor a disproportionately lenient punishment. Judicial discretion in sentencing must never descend into arbitrariness or caprice; rather, it must remain faithful to the principle of proportionality. The punishment must correspond to the factual substratum of the case, the





gravity of the act, the manner in which it unfolded, and the personal circumstances such as age, gender, antecedents, and prospects of reform of the convicted person.

30. In light of the cumulative circumstances the domestic and intensely personal nature of the incident, the fact that the deceased was none other than the appellant's own husband, whose death, though caused in a moment of grave provocation, has undeniably inflicted upon her a deep and irreversible personal loss; for what punishment could be greater than the sting of widowhood and the desolation of a life condemned to solitude, the appellant's impoverished background, the absence of any criminal antecedents, the efflux of nearly two decades, and her having already undergone approximately two years of custodial imprisonment, this Court is of the considered view that the sentence already undergone would amply suffice to meet the ends of justice.

31. Accordingly, and in view of the foregoing discussion, this Court is of the firm view that no further custodial sentence is warranted. The ends of justice stand fully satisfied with the period of incarceration already undergone by the appellant.

32. For the sake of clarity, it is necessary to state that this Court is neither altering nor reviewing its earlier judgment or the final operative directions contained therein. The conviction of the appellant under Part I of Section 304 IPC, as recorded by the Coordinate Bench, remains wholly undisturbed. Likewise,





the conclusion that the appellant is to be released on the basis of the period of custody already undergone also continues to stand. The Court is only correcting an inadvertent factual error that had crept into the earlier judgment, wherein the appellant's period of incarceration was erroneously recorded as eight years due to failure of the other stakeholders, to provide proper information. The correct period of actual custody, as now duly verified, is two years, and the judgment shall stand read accordingly to this limited extent. This factual correction does not, in any manner, amount to a review or alteration of the substantive findings or ultimate directions issued by the Coordinate Bench.

33. At a human level, this Court cannot remain unmindful of the stark reality that directing this impoverished woman to undergo the remaining six years of the sentence, after twenty long years of struggle and having already borne the irreversible personal consequences of the incident, would be an unduly harsh course. In truth, viewed through the prism of equity and conscience, it does not even seem just or humane to send her back to prison for the unserved portion of the term.

34. Consequently, the instant Miscellaneous Petition stands disposed of. As the appellant is already on bail, she shall not be required to surrender before the concerned authorities. Any warrants or notices, if issued pursuant to the earlier order of conviction or sentence, are hereby recalled.





Furthermore, the appellant shall not be required to mark her appearance before the trial court, as was directed at the time of suspension of sentence.

35. This order is passed in furtherance of the communication made by learned trial court judge, therefor shall be taken altogether with judgment dated 18.07.2011 passed in D.B. Criminal Appeal No.374/2004.

36. Ms. Shobha Prabhakar, learned Amicus Curiae, shall be paid remuneration in accordance with the norms of the State Legal Services Authority.

**(ANAND SHARMA),J**

**(FARJAND ALI),J**

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