A SUSHIL ANSAL

v.

STATE THROUGH CBI

(Criminal Appeal No.597 of 2010)

B SEPTEMBER 22, 2015

[ANIL R.DAVE, KURIAN JOSEPH AND ADARSH KUMAR GOEL, JJ.]

C *Sentence/Sentencing – Conviction of the appellants-accused u/ss.304-A/337/338 r/w. s.36 IPC and u/s.14 of Cinematograph Act, 1952 – Accused sentenced to one year imprisonment – Division Bench of Supreme Court confirmed their conviction – But there was difference of opinion on the* D *question of sentence – Matter referred to larger Bench to determine the question of sentence – Held: Maximum sentence for such offence is imprisonment of two years – In the facts and circumstances of the case, the sentence needs* E *to be enhanced to its maximum – But the ends of justice would be met if in lieu of the enhanced period of sentence of one year, substantial amount of fine is imposed, which can be used for setting up/upgrading a Trauma Centre in Delhi – Hence, accused Nos.1 and 2 are directed to pay a fine of* F *Rs.30 crores each, within a period of 3 months from the date of judgment – If the fine is paid, their sentence would be reduced to the period already undergone – On default to pay fine, have to undergo 2 years RI – In the peculiar facts and circumstances of the case, sentence of accused No.15 is* G *reduced to the period already undergone on payment of fine of Rs.10 lakhs – On default, to undergo sentence of one year – Penal Code, 1860 – ss.304-A, 337, 338 r/w. s.36 – Cinematograph Act, 1952 – s.14.*

H

Disposing of the appeals, the Court. A

HELD: 1. An appropriate sentence has to be awarded by taking into consideration the gravity of offence, the manner of commission, the age of the accused and other mitigating and aggravating circumstances. The sentence B should neither be excessively harsh nor ridiculously low. [Para 16] [562-D]

2. Matter of such magnitude as in the present case, may call for a higher sentence, but the Court has to limit C itself to the choice available under the law prescribing sentence. The maximum sentence prescribed under the law is period of two years and the High Court had chosen, in the facts and circumstances of the case, to award sentence of one year. [Para 17] [562-E-F] D

3. The sentence awarded by the High Court needs to be enhanced to the maximum period of two years under Section 304-A but in lieu of additional period of sentence of one year, the substantial amount of fine E needs to be imposed. In case the said amount of fine is paid, the sentence should be reduced to the period already undergone in the case of A1. On the principle of parity, the case of A2 will stand on the same footing as that of A1. Thus, ends of justice would meet, if the F appellants are directed to pay fine so that the amount of fine can be used either for the purpose of setting up a Trauma Centre in NCT of Delhi or for upgrading Trauma Centres of Hospitals managed in NCT of Delhi by the Government of Delhi. [Para 18] [563-A-D] G

4. Therefore, it is directed that a fine of Rs.30 crore on each appellant should be imposed and if the said fine is paid within a period of three months, the sentence of the appellants be reduced to the sentence already H

A **undergone. If the aforestated amount is not paid within three months from the date of order dated 19th August, 2015, the appellants shall undergo two years' rigorous imprisonment, including the sentence already undergone. [Para 19] [563-E-F]**

B

5. As regards the conviction of Appellant whose conviction u/s. 304-A/337/338 r/w s. 36 IPC was confirmed, on the ground of parity, shall stand sentenced to undergo rigorous imprisonment for one

C **year. However, having regard to advanced age and diseases like alzheimer's disease suffered by the accused and other peculiar facts and circumstances, if he pays Rs.10 lakh by way of fine, the sentence will stand reduced to the period already undergone. If he fails to**

D **pay the aforestated amount within three months from the order dated 19th August, 2015, he shall undergo the sentence of one year, including the term which he has already undergone. [Paras 20 and 21] [563-H; 564-A-C]**

E **6. The fine imposed upon A-1, A-2 and A-15 shall be given by way of a demand draft to the Chief Secretary of Delhi Government for setting up a new trauma centre or for upgrading the existing trauma centres of hospitals managed by the Government of NCT of Delhi. [Para 22]**

F **[564-E-F]**

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 597 of 2010.

From the Judgment and Order dated 19.12.2008 of the

G High Court of Delhi at New Delhi in Criminal Appeal No. 794 of 2007.

WITH

Criminal Appeal Nos. 598/2010, 599/2010, 600-602/

H 2010, 605/2010, 606/2010 & 613/2010.

Ram Jethmalani, Gopal Jain, Salman Khurshid, Vikas Agarwal, Madhukar, Vinay Arora, Sudarshan Singh Rawat, Sanjay Jain, Lata Krishnamurthy, Anirudh Anand, Somnath Gaur, Ajay Awasthi, Chirag Madan, P. R. Mala, Mohit D. Ram, Monisha Handa, Sanjay Narayan, Shabeena Anjuna, Aseem Mehrotra, Abhijat P. Medh for the Appellant. A B

K.T.S. Tulsi, Harish N. Salve, Jayant K. Mehta, A. Faraz Khan, Ambika Mehta, Priyanka Aggarwal, Mandarini Singh, Aparajita, T.A. Khan (For B. Krishna Prasad) for the Respondent. C

The Judgment of the Court was delivered by

ANIL R. DAVE, J.

CRIMINAL APPEAL NOS.597 AND 598 OF 2010 D

1. The aforestated appeals had been initially heard by two Hon'ble Judges of this Court. Though the order of conviction had been upheld by the learned Judges, on the subject of sentence the learned Judges differed. Justice T.S. Thakur E passed the following order on the sentence:

> "(i) Criminal Appeal Nos.597 of 2010 and 598 of 2010 filed by Sushil Ansal (A-1) and Gopal Ansal (A-2) respectively are hereby dismissed upholding the F conviction and sentences awarded to them."

Whereas Justice Gyan Sudha Mishra passed the following order:

> "44. Therefore, for the reasons recorded hereinbefore, I G am of the view that in lieu of the enhanced sentence of a period of one year which I allow in the appeals preferred by AVUT and CBI, the same be substituted with a fine of Rs 100 crores (one hundred crores) to be shared and paid H by A-1 Sushil Ansal and A-2 Gopal Ansal in equal measure

A i.e. Rs 50 crores each and Rs 100 crores in all, and shall be paid by way of a demand draft issued in the name of the Secretary General of the Supreme Court of India which shall be kept in a fixed deposit in any nationalised bank and shall be spent on the construction of a trauma centre
B to be built in the memory of Uphaar Victims at any suitable place at Dwarka in New Delhi as we are informed that Dwarka is an accident-prone area but does not have any governmental infrastructure or public health care centre to treat accident victims. For this purpose, the State of
C Delhi, as DVB which is/was an instrumentality of the State, shall allot at least five acres of land or more at any suitable location at Dwarka within a period of four months of this judgment and order on which a trauma centre for accident
D victims along with a Super speciality department/ward for burn injuries shall be constructed to be known as the "Victims of Uphaar Memorial Trauma Centre" or any other name that may be suggested by AVUT/Uphaar Victims' Association. This trauma centre shall be treated as an
E extension centre of the Safdarjung Hospital, New Delhi which is close to Uphaar Theatre and was the accident site which is hard-pressed for space and desperately needs expansion considering the enormous number of patients who go there for treatment. The trauma centre to
F be built at Dwarka shall be treated as an extension centre of the Safdarjung Hospital to be constructed by the respondent-accused Sushil Ansal and respondent-accused Gopal Ansal under the supervision of the Building Committee to be constituted which shall include Secretary
G General of the Supreme Court, Registrar Administration of the Supreme Court along with a representative of AVUT nominated by the Association and the Hospital Superintendent, Safdarjung Hospital, New Delhi within a period of two years from the date of allotment of the plot
H of land by the State of Delhi which shall be run and

administered by the authorities of the Safdarjung Hospital Administration as its extension centre for accident victims." A

2. In view of the difference of opinion between the two learned judges regarding quantum of sentence, the matter has been placed before us in pursuance of the following order dated 5.03.2014 :- B

"4. Criminal Appeals No. 597, 598 and 599 of 2010 filed by the appellants in those appeals and Criminal Appeals No. 605, 606 and 613 of 2010 filed by the State and Criminal Appeals No. 600-602 of 2010 filed by the Association of Victims of Uphaar Tragedy to the extent the said appeals involve the question of quantum of sentence to be awarded to the convicted appellants in the appeals mentioned above shall stand referred to a three-Judge Bench". C D

3. We have heard the learned counsel appearing for the parties and have also carefully gone through that portion of the judgment, whereby the sentence has been imposed upon the Appellants. E

4. Upon hearing the learned counsel and on perusal of the record pertaining to the case, we find that the root cause of the fire was 1000 KVA transformer installed and maintained by the Delhi Vidyut Board (DVB), which was in the premises of Uphaar Cinema. The said 1000 KVA transformer, even though located within the Uphaar cinema premises, did not belong to the appellants. F G

5. The said transformer caught fire on 13.6.1997 around 6.55 a.m. damaging the area surrounding the transformer. The fire was brought under control by 7.25 a.m. and it was repaired by two employees of the DVB along with Senior Fitter, Bir Singh, who were possibly not highly qualified in the field of H

A Electrical Engineering. The repairs were carried out without use of any special equipment. The said transformer was recharged for resumption of electric supply by 11.30 a.m. on the same day.

B 6. As the factual matrix would further unfurl, on the fateful day, around 3:00pm, the matinee show of film 'Border' started. Between 3:55 and 4:55 p.m., there was a general power shut down; however the Cinema show continued. Immediately, on resumption of electricity at 4:55 pm, there was intense and C heavy sparking in the DVB transformer, which led to B phase cable detaching, sliding down of the B phase cable, forming an arc and ultimately resulting in rupture of the Transformer fin. Through this slit, the transformer oil spilled out, caught fire and consequently set ablaze several vehicles parked nearby in the D stilt floor. This fire generated hot thick black smoke, which travelled upwards, accelerated by a Chimney effect.

7. The smoke entered the hall from the staircases, air conditioning ducts as well as the area beneath the screen and E the audience sitting in the ground floor of the auditorium escaped immediately. The audience sitting in the balcony found it hard to escape as there were no lights due to lack of power supply, nor were there any emergency lights or lights to give indication about the exit. Moreover, there were no F warnings through public address system for immediate evacuation in an orderly manner. The closure of the right side exit, elimination of one exit and the narrowing of another exit as well as introduction of certain seats near the left side exit, together with bolting of certain doors in the balcony caused G panic and resulted in delayed escape of most of the spectators occupying balcony seats. Most of the spectators were subsequently rescued by the fire fighters, but they were severely affected by the smoke. The fire was soon declared a major one and rescue operations continued till about 7:30pm. H

The entire mishap claimed lives of 59 persons besides injuries to nearly 100 others. A

8. It is pertinent to note here that initially there were two exits in the balcony portion of the cinema theatre. One portion was open as an exit, whereas another had been closed down on account of certain additional seats placed near the exit. The additional seats were arranged with permission of all authorities concerned and even the second exit had also been closed with permission of all authorities concerned. The representatives of the departments concerned like Home Department, Police Department, Fire Department, etc. had visited the theatre before giving necessary permission for increase in the number of seats, approval of the changed layout of seats and for closure of the second exit. B C D

9. Under these circumstances, when another exit had been closed on account of arrangement of additional seats, which had been done with proper permission of the concerned authorities, the spectators of the balcony had to rush only towards one exit which was leading to the staircase, already occupied with toxic gases including carbon monoxide. E

10. Due to inhalation of toxic gases including carbon monoxide, most of the spectators, who had occupied balcony seats, collapsed in the balcony or on the staircase and ultimately the unfortunate mishap, which is the subject matter of this case, took place. F

11. In view of the aforestated undisputed facts, the issue with regard to imposition of sentence upon the appellants is to be decided by us. We are concerned with imposition of sentence in a criminal case and not with awarding damages in a civil case. Principles for deciding both are different. G

12. In the instant case, we are only concerned with imposition of appropriate sentence for the reason that the H

A appellants have already been convicted of the offences under Sections 304-A/337/338 read with Section 36 of the Indian Penal Code (IPC) and Section 14 of the Cinematograph Act, 1952 and the conviction has been affirmed by this Court.

B 13. One can say that if the second exit leading to another staircase had not been closed, possibly the damage and deaths could have been less. The reason for which the second exit was closed was arrangement of additional seats and change of layout of seats in the balcony. The appellants, the C owners of the cinema premises, were aware of the fact that one exit had been closed due to addition of seats and change in the layout of the seats and the said fact could have exposed the spectators to the risk they actually faced, which ultimately resulted into the abovesaid mishap. Be that as it may, the fact D remains that the appellants have been found guilty and they have been convicted.

14. On the issue of sentence, one of our brother Judges, T.S. Thakur, J. has upheld rigorous imprisonment of one year E which has been imposed by the High Court. So far as Gyan Sudha Misra, J. is concerned, she was of the view that the sentence imposed was insufficient and therefore, it should be enhanced and possibly because the heirs of the victims were not interested in getting compensation, she was of the view F that appropriate fine should be imposed upon the appellants, which should be used for a public purpose so that in future, in the event of any such mishap, the injured persons can be given prompt and effective treatment. The learned Judge had, therefore, perhaps rightly thought about imposing rigorous G imprisonment of one additional year and looking at the fact that the victims had already lost their lives and the amount of fine which could be recovered from the appellants can be used for a better public purpose, the learned Judge imposed fine of Rs.50 crore on each of the appellants in lieu of the additional H sentence which had been proposed by observing:-

"40. Hence, I am of the view that interest of justice to some extent would be served by imposing on the Accused Appellants a substantial fine and not merely a jail sentence. Thus, while the sentence of one year imposed by the High Court is upheld, the additional sentence of one year further while allowing the appeal of AVUT, is fit to be substituted by a substantial sum of fine to be shared equally by the Appellants Sushil Ansal and Gopal Ansal along with DVB which also can not absolve itself from compensating the victims of Uphaar tragedy represented by the AVUT".

"42. But while allowing the appeal of AVUT and CBI, I take note of the fact that since Sushil Ansal is now more than 74 years old and was running the theatre business essentially along with his brother Appellant No. 2 Gopal Ansal, I consider that the period of enhanced sentence in these appeals imposed on the Appellants Sushil Ansal and Gopal Ansal may be substituted with substantial amount of fine to be specified hereinafter and paid in the appeal bearing Nos. 600-602 of 2010 preferred by AVUT and Criminal Appeal Nos. 605-616 of 2010 preferred by the CBI which shall be shared by the Appellant Sushil Ansal and Appellant Gopal Ansal in equal measure along with the Delhi Vidyut Board as I have upheld the sentence imposed on their employees too. My view stands fortified by the order passed in the case of Bhopal Gas Leak Tragedy where the punishment for criminal negligence was allowed to be substituted by substantial compensation which were paid to the victims or their legal representatives".

15. Shri Ram Jethmalani, learned senior counsel, submitted that in the facts and circumstances of the present case, the amount of fine of Rs.100 crore may be reduced and the view expressed by Misra, J. to reduce the sentence of

A appellant - Sushil Ansal **(A-1)** to the period already undergone considering his advanced age, be also made applicable to Gopal Ansal **(A-2)** on the principle of parity. He submitted that both the appellants had already undergone substantial part of the sentence out of sentence of one year awarded to them
B and were willing to pay substantial amount towards fine in lieu of the undergoing remaining period of sentence. He also pointed out that out of one year sentence, they had already undergone substantive sentence of 5-6 months and with remissions, sentence undergone worked out to about nine
C months.

16. We have duly considered the matter. It hardly needs to be mentioned that an appropriate sentence has to be awarded by taking into consideration the gravity of offence,
D the manner of commission, the age of the accused and other mitigating and aggravating circumstances. The sentence should neither be excessively harsh nor ridiculously low.

17. We are conscious of the fact that matter of this
E magnitude may call for a higher sentence, but the Court has to limit itself to the choice available under the law prescribing sentence. The fact that remains is that the maximum sentence prescribed under the law is period of two years and the High Court had chosen, in the facts and circumstances of the case,
F to award sentence of one year which has been approved by Thakur, J. In the dissenting opinion by Misra, J. the modification is that the sentence be enhanced but giving an option to pay substantial amount in lieu of the enhanced sentence with further direction to reduce the jail sentence to the period already
G undergone, if the amount of fine in lieu of enhanced sentence is paid.

18. After having considered the facts of the case, the views expressed by both the learned Judges and the arguments
H advanced by the learned counsel appearing for both sides,

we are in agreement with the view expressed by Misra, J. that sentence awarded by the High Court needs to be enhanced to the maximum period of two years under Section 304-A but in lieu of additional period of sentence of one year, the substantial amount of fine needs to be imposed. We are further of the view that in case the said amount of fine is paid, the sentence should be reduced to the period already undergone, as indicated by Misra, J. in the case of Sushil Ansal (A1). On the principle of parity, the case of Gopal Ansal (A2) will stand on the same footing as that of Sushil Ansal (A1). Thus, we are of the considered opinion that ends of justice would meet if the appellants are directed to pay fine so that the amount of fine can be used either for the purpose of setting up a Trauma Centre in NCT of Delhi or for upgrading Trauma Centres of Hospitals managed in NCT of Delhi by the Government of Delhi.

19. We, therefore, direct that a fine of Rs.30 crore on each appellant should be imposed and if the said fine is paid within a period of three months, the sentence of the appellants be reduced to the sentence already undergone. We have noted the fact that as appellant no.1 is fairly aged, it may not be fruitful to ask him to undergo rigorous imprisonment. On the ground of parity and on the peculiar facts of this case, so far as appellant no.2 may also not be constrained to undergo the sentence, if he also pays the same amount of fine. If the aforestated amount is not paid within three months from the date of order dated 19th August, 2015, the appellants shall undergo two years' rigorous imprisonment, including the sentence already undergone.

CRIMINAL APPEAL NO. 599/2010:-

20. As regards the conviction of Appellant H.S. Panwar **(A-15)** assailed in Criminal Appeal No. 599/2010, the Ld. Judges dismissed the afore-said appeal and affirmed the

A conviction u/s. 304-A/337/338 read with S. 36 IPC. On the question of quantum of sentence qua Appellant H.S. Panwar **(A-15),** the matter was placed before us as stated above.

21. In view of the facts discussed above and on the ground
B of parity, we direct that Appellant Harsarup Panwar **(A-15)** shall stand sentenced to undergo rigorous imprisonment for one year. However, having regard to advanced age and diseases like alzheimer's disease suffered by the accused and other peculiar facts and circumstances, if he pays Rs.10 lakh by way
C of fine, the sentence will stand reduced to the period already undergone. If he fails to pay the aforestated amount within three months from the order dated 19th August, 2015, he shall undergo the sentence of one year, including the term which he has already undergone. Now, we have been informed that
D Appellant Harsarup Panwar **(A-15)** has already paid Rs.10 lakh as per operative order pronounced on 19th August, 2015.

22. The aforestated fine imposed upon the appellants in Criminal Appeals No. 597, 598 and 599 of 2010 filed by Sushil
E Ansal **(A-1)**, Gopal Ansal **(A-2)** and Harsarup Panwar **(A-15)** shall be given by way of a demand draft to the Chief Secretary of Delhi Government for setting up a new trauma centre or for upgrading the existing trauma centres of hospitals managed by the Government of NCT of Delhi.

F

CRIMINAL APPEAL NOs.600-602, 605, 606 and 613 of 2010

23. Consequently, Criminal Appeal No. 605, 606 and 613
G of 2010 filed by the State and Criminal Appeal No. 600-602 of 2010 filed by the Association of Victims of Uphaar Tragedy are disposed of.

24. In view of the above order, the impugned judgment
H stands modified so far as the question of imposition of sentence is concerned and the appeals are disposed of as

partly allowed. A

25. We had passed the operative part of the order on 19th August, 2015, but since the Court time was almost over, we have now given the reasons for the said order.

Kalpana K. Tripathy Appeals disposed of. B