

Shiv Govind

Vs

The State of Madhya Pradesh

Criminal Appeal No. 3 Of 1972

A. N. Grover, K. S. Hegde JJ)

14.03.1972

JUDGMENT

BEG, J. -

1. Shiv Govind, the appellant, has obtained special leave to appeal against only that part of the Judgment and Order of the High Court of Madhya Pradesh by which his sentence of one year's rigorous imprisonment, passed by the Additional Sessions' Judge, Indore, upon a conviction under Section 366, Indian Penal Code, was enhanced to seven years' rigorous imprisonment and a fine of Rs. 100/-, and, in default of payment of fine, to three months' further rigorous imprisonment. The appellant, aged about 20 years at the time of the alleged offence of 9th of August, 1969, was the youngest of the three persons who were jointly charged and tried for offences punishable under Sections 366 and 354, I.P.C.

2. The prosecution case was : Kumari Seema, a girl below 18 years of age, was offered a lift on his bicycle by the accused, Kamal Singh, aged 30 years, while she was returning to her home from her school on August 9, 1969. The girl hesitated. But, as she reposed confidence in Kamal Singh, whom she looked upon as her uncle, she accepted the offer. Kamal Singh took Kumari Seema on his bicycle to the Regal Cinema where she part-took of some refreshment ordered by Kamal Singh. Meanwhile, the appellant Shiv Govind and the accused Punam, aged 26, arrived in a car. Kamal Singh asked Kumari Seema to go with the two younger men in their car. Seema refused. Then, Kamal Singh asked her to go on his bicycle to Yashwant Talkies. She complied with this request. At this Cinema, Kamal Singh deposited his cycle at the cycle stand. The appellant Shiv Govind and his companion Punam had followed in their car. The three men succeeded in persuading Seema, despite her initial refusal, to sit in the car and to go for a short pleasure trip in it on the definite assurance that she will soon be reached home. After the girl had sat in the car she was driven to a place called Mandow, a number of miles away from Indore, and was made to alight at a tourist's bungalow. There two rooms were engaged by the accused. Kamal Singh occupied one of the two rooms and the girl was closeted in the other room with the appellant and his companion Punam, who were both drunk. One of the two young men caught hold of the hands of the girl while the other tried to undress her with the object of raping her. Kumari Seema, at this point, feigned sudden indisposition so that the two young men had to bring her out into the gallery for fresh air. She managed to escape while the accused went inside to fetch some water for her. She rushed into the house of one Babulal Kamdar and complained to him about the incident. This led to a communication of information of the offences to the police which went to the tourist's bungalow and arrested the three accused who were brought to Police Station Nalcha where a First Information Report was lodged.

3. The Trial Court had examined the evidence given in support of the case stated above. This

included medical evidence on the question of the age of the girl, because, while the prosecution alleged that she was below 16 years of age, the accused pleaded that she was above 18 years of age. Evidently, the case of the accused was that Kumari Seema was a consenting party to whatever took place. Although the girl was attending a school, the entry of her age in the School Register was not disclosed. Despite some discrepancies in the evidence relating to the age of the girl, the Trial Court came to the conclusion that it was between 16 to 19 years. It relied mainly on expert evidence of doctors who had used ossification test.

4. The Trial Court had also noticed the discrepancies between the prosecution version, as set out above by Kumari Seema in her evidence in Court, and the story given out by her in the First Information Report where she had stated that she had joined the party of the accused at the crossing of Bijasan Road. The earlier version suggested that the girl had herself gone to meet the party of the accused by appointment.

5. The consent of the girl was, however, immaterial in view of the finding of the Trial Court about the age of the girl. The fact that she was taken to Mandow, where something happened at the tourist's bungalow which she disapproved of, was corroborated by the evidence of Babulal Kamdar, and Kailash Sharma, in addition to the two police constables of Mandow out-post. The Trial Court which had the advantage of watching the demeanour of the girl, had come to the conclusion that, although the girl may have tried to improve her version and pretend that she was unwilling to accompany Kamal Singh, who had come in a car for her according to the first version, yet, the charge under Section 366, I.P.C., was established against each of the three accused and the charge under Section 354 I.P.C., was established against Shiv Govind, appellant, and his companion Punam. The three accused were, therefore, convicted under Section 366, and each was sentenced to one year's rigorous imprisonment. The two accused Shiv Govind and Punam were also convicted under Section 354, I.P.C., and sentenced to four months rigorous imprisonment, but the two sentences were ordered to run concurrently.

6. When the case came up in appeal to the High Court, a notice of enhancement of the sentence under Section 366, I.P.C., was issued to each of the three appellants, and their sentences were enhanced, as indicated above, after the appellants had been heard.

7. It is only Shiv Govind who has appealed to this Court, Shiv Govind had also applied under Section 561-A, Criminal Procedure Code to the High Court, after the dismissal of this appeal and enhancement of the sentence by the High Court, claiming the benefit of Sections 6 and 11 of the Probation of Offender's Act. But, this application was rejected by the learned Judge who had enhanced the sentence passed upon the appellant, although he found that the report of the Probation Officer about the conduct of the accused while undergoing the sentence, which was sent for, was favourable to the appellant. It appears from the two judgments given by the learned Judge who enhanced the sentence of the appellant and who subsequently dismissed the application under Section 561-A, Criminal Procedure Code also, that the view taken by him was that, having regard to the facts and circumstances and of the case the offence committed by the appellant, the enhanced sentence was deserved by him.

8. We have, therefore, examined the Judgment of the High Court under appeal before us in order to discover the special reasons which induced the learned High Court Judge to differ from the opinion of the Trial Court about the appropriate sentence to be imposed upon the appellant. The only reason given by the learned Judge for enhancing the sentence was that Kumari Seema had reposed confidence in Kamal Singh, whom she regarded as an uncle, so that could not expect foul play from

him. The learned Judge thought the girl's trust and confidence in Kamal Singh explained why she did not protest when she was taken in the car and then made to get down at the tourist's bungalow. It seems, however, from the account of the occurrence given in the Judgment under appeal, that the learned Judge was shocked by the plight of Kumari Seema, due to the perfidy of Kamal Singh, and by a contemplation of the possible consequences to her if she had not behaved in a particularly brave and intelligent manner so as to escape from her predicament. The learned Judge mentioned that the girl had risked her life to escape. We, however, find that there was no suggestion in the evidence anywhere that any threat to the life of Kumari Seema was held out. There was no evidence that the girl has seriously struggled to escape or had raised shouts for help which would have brought people around to her aid. Nor was there any evidence that the accused tried to obstruct her or to chase her when she escaped from the tourist's bungalow allegedly by resorting to a ruse. The High Court was so impressed by the girl's uncorroborated version of her own heroism, which did not tally with her first version in the First Information Report, that it overlooked the infirmities in the girl's evidence discussed by the Trial Court. We find the Trial Court's view of the whole case to be quite balanced and objective. We do not think that the severer view of the High Court could be reasonably justified.

9. It seems clear to us that the High Court had overlooked the principles, laid down by this Court repeatedly, which should govern the exercise of powers of the High Court to enhance sentences imposed by Trial Court. In *Bed Raj v. The State of Uttar Pradesh*, ((1955) 2 SCR 583 : AIR 1955 SC 778 : 1955 Cr LJ 1642) this Court observed at pages 588-589 :

"A question of a sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, and appellate court should not interfere to the detriment of an accused person except for very strong reasons which must be disclosed on the face of the judgment; See for example the observations in *Dalip Singh v. State of Punjab*, 1954 SCR 146, 156 and *Nar Singh v. State of Uttar Pradesh*, (1955) 1 SCR 238, 241). In a matter of enhancement there should not be interference when the sentence passed imposes substantial punishment. Interference is only called for when it is manifestly inadequate. In our opinion these principles have not been observed. It is impossible to hold in the circumstances described that the Sessions Judge did not impose a substantial sentence, and no adequate reason has been assigned by the learned High Court Judges for considering the sentence manifestly inadequate. In the circumstances, bearing all the consideration of this case in mind, we are of opinion that the appeal (which is limited to the question of sentence) should be allowed and that the sentence imposed by the High Court should be aside and that of the Sessions Court resorted to."

10. We think that what was laid down by this Court in *Bed Raj's* case (supra) is fully applicable to the case before us. We may also mention the similar views expressed by this Court in *Alamgir and Another v. The State of Bihar*. (1959 Supp 1 SCR 464 : AIR 1959 SC 436 : 1959 Cr LJ 527).

11. We may observe that decision of this Court in *Nabi Bux and Others v. The State of Madhya Pradesh*, (AIR 1972 SC 495 : (1972) 1 SCC 7 : 1972 Cr LJ 300) is distinguishable from the case before us. In that case the High Court had enhanced a sentence having regard to all the facts and circumstances justifying the enhancement. In the case before us we find that the High Court had not noticed a number of facts duly considered by the Trial Court so that the exercise of power of enhancement of the sentence under Section 366, I.P.C., could not be reasonably justified here.

12. Consequently, we allow this appeal by setting aside the order of enhancement of sentence by the High Court of Madhya Pradesh and restore the sentence of one year's rigorous imprisonment passed upon the appellant by the learned Sessions Judge for the offence under Section 366, I.P.C., of which the appellant was convicted. The concurrent sentence of four months rigorous imprisonment under Section 354, I.P.C., which was not interfered with by the High Court, is maintained. We understand that the appellant has already undergone more than one year's imprisonment awarded to him and that he is in jail as his application for bail was rejected. If this is so, the appellant will be released forthwith unless wanted in some other case.

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