

Kakoo

Vs

The State of Himachal Pradesh

Criminal Appeal No. 375 of 1975

(R.S. Sarkaria, P.N. Shinghal JJ)

27.02.1976

JUDGMENT

SARKARIA, J. -

1. Kakoo, aged 13 years, was convicted for committing rape on a child of two years and was sentenced to four years' rigorous imprisonment. His conviction has been maintained by the High Court of Himachal Pradesh. Kakoo appeals to this Court by special leave granted under Article 136 of the Constitution, limited to the point of sentence.

2. Mr. Kohli, appearing for the appellant submits that if the main object of punishment is to reform the prisoner and to reclaim him to society, the prolonged detention of the minor appellant in the company of hardened criminals would surely be subversive of that object. It is stressed that at the time of commission of the crime the appellant was only 13 years of age and the best way of reforming this child delinquent is to put him back under the supervision of his father subject to the execution of a bond by the latter for his son's good behaviour for a certain period. In the alternative, it is urged, that the sentence be reduced to the imprisonment already undergone, with the imposition, if at all, of a little fine. Reference has also been made to Sections 82 and 83 of the Penal Code to bring out the point that in the matter of crime and punishment, a child offender is not to be treated in the same manner as a mature adult.

3. Learned Counsel for the State however, stoutly opposes any reduction in the sentence. Stress has been laid on the grisly manner in which the crime was committed. It is pointed out that the appellant was so persistent in his shameless nefarious act that he had virtually to be dragged away from the helpless baby victim, he put up a fierce struggle with the mother of the victim when she tried to secure him.

4. While the sordid features of the case, including the sadistic manner in which the crime was committed by their instinctive reaction tend to steel the heart of law for a sterner sentence, we cannot overlook the stark fact that at the time of commission of the offence, the appellant was hardly 13 years of age. An inordinately long prison term is sure to turn him into an obdurate criminal. In the case of child offenders, current penological trends command a more humanitarian approach. Under Penal Code, an infant under seven is conclusively presumed to be incapable of committing crime. At this age he is not endowed with any discretion to distinguish right from wrong (Section 82). Even a child between seven and twelve who may not have attained sufficient maturity of understanding to entertain a criminal intent (*doli incapax*), is presumed to be incapable of committing an offence (Section 83). In several States of India enactments have been passed to treat juvenile offenders or child delinquents differently in the matter of crime and punishment. We are

told that there is no such enactment in force in Himachal Pradesh.

5. Taking into account all the circumstances of the case, we are of opinion that the ends of justice will be served by reducing the sentence of the appellant to one year's rigorous imprisonment and a fine of Rs. 2,000 and in default of payment of fine, to suffer six months' further rigorous imprisonment. The appellant shall be detained separately from adult prisoners. He should preferably be detained in a reformatory school, if any, for the said period. The fine, if realised, shall be paid as compensation to Shrimati Parmeshwari Dive, the mother of the victim baby.

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