Rafiq

Vs

State of U. P.

Special Leave Petition (Criminal) No. 950 of 1980

(V. R. Krishna Iyer, O. Chinnappa Reddy JJ)

14.08.1980

JUDGMENT

KRISHNA IYER, J. –

1. This special leave petition relates to a conviction and sentence for an offence of rape. The escalation of such crimes has reached proportions to a degree that exposes the pretensions of the nation's spiritual leadership and celluloid censorship, puts to shame our ancient cultural heritage and humane claims and betrays a vulgar masculine outrage on human rights of which woman's personal dignity is a sacred component. We refuse special leave and briefly state a few reasons for doing so.

2. Draupadi, a middle-aged bal sewika in a village welfare organization, was sleeping in a girls' school where she was allegedly raped by Rafiq, the petitioner, and three others. The offence took place around 2.30 a.m. on August 22/23, 1971, and the next morning the victim related the incident to the mukhya sewika of the village. A report was made to the police station on August 23, 1971 at midday. The investigation that followed resulted in a charge-sheet, a trial, and, eventually, in a conviction based substantially on the testimony of the victim. Although some of the witnesses, tell-tale fashion, shifted their loyalties and betrayed the prosecution case, the trial Court entered a finding of guilt against the appellant, giving the benefit of doubt to the other three obscurely. A 7-year sentence of rigorous imprisonment was awarded as justly merited, having regard to the circumstances. The appeal carried to the High Court proved unsuccessful but undaunted, the petitioner has sought leave to appeal to this Court.

3. Concurrent findings of fact ordinarily acquire a deterrent sanctity and tentative finality when challenged in this Court and we rarely invoke the special jurisdiction under Article 136 of the Constitution which is meant mainly to correct manifest injustice or errors of law of great moment. By these substantial canons the present petition for leave has not even a dog's chance.

4. Counsel contended that there was absence of corroboration of the testimony of the prosecutrix, that there was absence of injuries on the person of the woman and so the conviction was unsustainable, tested on the touchstone of case-law. None of these submissions has any substance and we should, in the ordinary course, have desisted from making even a speaking order but counsel cited a decision of this Court in Pratap Misra v. State of Orissa (AIR 1977 SC 1307 : (1977) 3 SCC 41 : 1977 SCC (Cri) 447) and urged that absence of injuries on the person of the victim was fatal to the prosecution and that corroborative evidence was an imperative component of judicial credence in rape cases.

5. We do not agree. For one thing, Pratap Misra case (AIR 1977 SC 1307 : (1977) 3 SCC 41 : 1977

SCC (Cri) 447) laid down no inflexible axiom of law on either point. The facts and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people's life-styles may fluctuate, and so, rules of prudence relevant in one fact-situation may be inept in another. We cannot accept the argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench in one reported decision must mechanically be extended to other cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstance. Indeed, from place to place, from age to age, from varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of presidential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggressed.

6. There are several "sacred cows" of the criminal law in Indo-Anglican jurisprudence which are superstitious survivals and need to be re-examined. When rapists are revelling in their promiscuous pursuits and half of humankind - womankind - is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifice thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. In this case, the testimony has commanded acceptance from two courts. When a woman is ravished what is inflicted is not merely physical injury, but "the deep sense of some deathless shame".

> A rape! a rape! ...
>
> Yes, you have ravish'd justice;
>
> Forced her to do your pleasure.

7. Hardly a sensitized judge who sees the conspectus of circumstances in its totality and rejects the testimony of a rape victim unless there are very strong circumstances militating against its veracity. None we see in this case, and confirmation of the conviction by the courts below must, therefore, be a matter of course. Judicial response to human rights cannot be blunted by legal bigotry.

8. The case before us occurred in 1971 and is drawing to a close in 1980. What a pity ! Now that there is considerable public and parliamentary attention to the violent frequency of rape cases it is time that the court reminds the nation that deterrence comes more effectively from quick investigations, prompt prosecutions and urgent finality, including special rules of evidence and specialised agencies for trial. Mechanical increase of punitive severity, without more, may yield poor dividends for women victims. In Dr. Johnson's time public hanging for pickpocketing was prevalent in England but as Dr. Johnson sardonically noted pickpockets were busy plying their trade among crowds gathered to see some pickpocket being publicity executed. Dr. Johnson's wit is our wisdom. The strategy for a crime-free society is not draconian severity in sentence but institutional sensitivity, processual celerity and prompt publicity among the concerned community. Lawlessness is abetted by a laggard, long-lived, lacunose and legalistic litigative syndrome rather than by less harsh provisions in the penal code. The focus must be on the evil, not its neighbourhood.

9. Counsel submitted that a 7-year sentence was too severe. No, because, as we have stated earlier, rape for a woman is deathless shame and must be dealt with as the gravest crime against human dignity. No interference on the score of culpability or quantum of punishment is called for in the

circumstances.

10. We refuse special leave.

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