SUPREME COURT OF INDIA

State of Karnataka

Vs.

Krishnappa

Crl.A.No.946 of 1996

(Dr. A. S. Anand, C.J.I., R. C. Lahoti and S. N. Variava, JJ.)

30.03.2000

JUDGEMENT

Dr. A. S. ANAND, C.J.I.:-

1. Was the High Court justified, in the facts and circumstances of the case, to reduce the sentence of 10 years rigorous imprisonment imposed by the trial Court on the respondent for an offence under S. 376, I.P.C. to 4 years R.I., while maintaining his conviction and sentence for offences punishable under Ss. 254, 323, 341, 363, 448 and 506 of Indian Penal Code, is the only question involved in his appeal by special leave? A brief reference to the facts of the case is necessary to answer the question.

2. The victim of rape is a little gir, who was about 8 years of age at the relevant time. She appeared as P.W. 1 at the trial. She was living with her parents, Honnaiah, P.W. 4 (father) and Parvathi, P.W. 5 (mother) in village Kenjige. Both the accused and the prosecutrix belong to Scheduled Caste. On 5th of May, 1991, between 8.00 and 9.00 p.m. while the prosecutrix and her brother, Ramesh were playing in the Chavani of their house, the respondent went there and called out for Honnaiah, P.W.

4, father of the prosecutrix. Parvathi, P.W. 5 were at that time preparing chapatees in the kitchen. She answered back to say that her husband was not in the house. On hearing this, the respondent went inside the house and asked Parvathi, P.W. 5 to sleep with him, since her husband was not present in the house. She protested. The respondent made obscene gestures and pulled her breasts and on her further protest, the respondent beat her up. Parvathi, P.W. 5 managed to somehow escape and ran out of the house and went towards the house of her mother-in-law, Ramajji. Both the prosecutrix and her brother, after observing the incident also made an attempt to run away. The respondent, however, caught hold of the prosecutrix by her right hand and draged her to room No. 3 of houses in coolie line. The respondent closed the door and forcibly made prosecutrix to lie on the floor. The protest of the prosecutrix and her effort to free herself from the hold of the respondent led to the respondent bitting her on her upper lip which started bleeding. The prosecutrix fell on the ground. The respondent had forcible sexual intercourse with her. She sustained bleeding injuries on her private parts also and was exhausted. The respondent then left the room and locked it from outside. P.W. 4, father of the prosecutrix, had in the meanwhile returned alone. He learnt that the respondent had taken the prosecutrix towards the coolie line. He went to the house of P.W. 12, but was assaulted and threatened with dire consequences in case he disclosed about the occurrence to anyone. In the early hours of the morning, P.Ws. 4 and 5 went to room No. 3 in the coolie line and rescued the prosecutrix. The matter was thereafter reported to the police. The prosecutrix was sent for medical examination to the hospital where she was treated. After completion of investigation, challan was filed and the respondent prosecuted for various offences.

3. The learned Sessions Judge after a critical examination of evidence on the record found that the respondent himself, a married man with children, at the relevant time aged about 49 years, had in the first place mishebaved with the mother of the prosecutrix in the manner deposed to by her and had also committed rape on the prosecutrix, a little child of 7/8 years of age. The trial Court also observed on the basis of evidence on the record, that the respondent used to misbehave and create galata, under the influence of liquor, quite often in the village. The trial Court found that the prosecution had successfully established that respondent had committed various offences alleged against him and convicted him accordingly. On the question of sentence for the offence under S. 376, I.P.C. (with which alone we are concerned in this appeal), the trial Court observed :

"It may also be noted that as discussed above in the main part of the judgment, first he has tried to get his lascivious feeling satisfied by going to Parvathi after knowing that her husband was not in the house, and when she escaped, he had also attacked her husband and then when he saw the daughter of said Parvathi, he dragged her and then commited rape on that young girl aged about 7 or 8 years. All these facts to go clearly say and established that this accused had gone to get his sex satisfied with whomsoever available. That is how it fits in with-

'written in regional language'

and it is also in evidence that he has suffered injuries on his private part as wellas on his right knee. The injuries suffered by the girl speak eloquently about the cruel nature of his act. So, for all these reasons, I find no just, proper and reasonable grounds to show him any leniency."

(Emphasis supplied)

4. The trial Court, accordingly, imposed a sentence of 10 years R.I. and a fine of Rs. 3,000/- and in default of payment of fine to further undergo 6 months R.I. for the offence under S. 376, I.P.C. It was directed that in the event of recovery of fine, the entire amount shall be paid to the victim, prosecutrix, P.W. 1.

5. The appellant filed an appeal against his conviction and sentence. The Division Bench of the High Court accepted all the findings recorded by the trial Court with regard to the guilt of the respondent and the manner in which he had made obscene gestures to the mother of the prosecutrix, inviting her to satisfy his sexual lust, pulled her breasts and beat her and after she had escaped to have caught hold of the prosecutrix and taking her to room No. 3 in the coolie line committed rape on her when she was just about 8 years of age. While confirmingthe conviction of the respondent for the off-ence under S. 376, I.P.C., the High Court opined :

"To conclude the various items of circumstances pressed into service by the prosecution to take the offences to the doors of the accused have stood proved by cogent and satisfactory evidence. The offences alleged against the accused stand established by clinching evidence and telling circumstances. After hearing the learned amicus curiae and the learned Additional State Public Prosecutor, giving our anxious consideration to the contentions urged and canvassed by the learned amicus curiae, we find the convictions sound and well founded. There are absolutely no reasons to interfere with the well reasoned convictions."

6. The Division Bench of the High Court, however, interfered with the sentence imposed by the trial Court. The Division Bench while commenting upon the imposition of sentence by the trial Court observed :

". . . . . .reading that apart of the judgment in which the learned trial Judge has examined the question as to what would be the proper sentence we find that the learned trial Judge, while considering the proper sent-ences to be imposed on the accused for the offence of rape was swayed and moved by the fact that rape was committed on the young girl and aged about 7 or 8 years and the conduct attributed and proved against the accused, both before, during and after the commission of the offences."

For reducing the sentence, the High Court observed :

"Of course, the question of sentence is a matter within the sound discretion of the trial Judge. But when the discretion is not properly exercised or is exercised without taking into consideration the relevant factors or when the discretion is shown to have been exercised to express sense of disapprobation intensively, there will be a case for interference when the facts brought on record require alteration in the sentence by reduction. In this case, we find facts warranting interference."

... ...

... ...

"In our considered view having regard to the age of the accused, his social status, personal circumstances and financial condition the fact alleged by the prosecution itself that the accused was a chronic addict to drinking. . . . . there is a case for a substantial reduction in the extent of the sentence of imprisonment. . . . . ."

7. The Division Bench found that it was a case 'for showing leniency' to the accused in the matter of punishment because the accused was "49 years of age" and "at the time of occurrence, he had an old mother, wife and children to look after. The Division Bench took note of the fact that when questioned by the learned trial Judge on the question of sentence, he had stated that he was deaf by one ear, that all the members of his family were depending on him for their livelihood and that if he was sent to jail, his family would be ruined" and observed :

"Here is a case of an unsophisticated and illiterate citizen belonging to a weaker section of the society, having committed various offences while in a state of intoxication. It is common knowledge that when a man goes in a state of intoxication whether voluntarily or involuntarily, his reason would be unseated. He would indulge in acts knowing not the consequences of his acts which he forgets soon after he returns to a normal state."

8. The sentence for the offence underS. 376, I.P.C. was reduced from 10 years R.I. to 4 years R.I. The sentence of fine together with the default clause was, however, maintained.

9. The respondent has not challenged his conviction. We have ourselves perused the evidence on the record including the medical evidence with the assistance of learned counsel for the parties. In our opinion, the prosecution has established case against the respondent beyond a reasonable doubt and his conviction for various offences including for the offence under S. 376, I.P.C. is well merited and we accordingly confirm the same.

10. Should the High Court have interfered with the discretion exercised by the trial Court by reducing the sentence for the offences under S. 376, I.P.C. from 10 years R.I. to 4 years R.I.?

Section 376(2), I.P.C. reads, thus :

"376. Punishment for rape.-

(2) Whoever,-

... ...

(f) commits rape on a woman when she is under twelve years of age;

shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine :

Provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years."

11. A perusal of the above provision shows that the legislative mandate is to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but, it may extend to life and also to fine. The proviso to S. 376(2), I.P.C., of course, lays down that the Court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years R.I. though in exceptional cases "for special and adequate reasons" sentence of less than 10 years R.I. can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The Courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application.

12. The approach of the High Court in this case, to say the least, was most casual and inappropriate. There are no good reasons given by the High Court to reduce the sentence, let alone "special or adequate reasons." The High Court exhibited lack of sensitivity towards the victim of rape and the society by reducing the substantive sentence in the established facts and circumstances of the case. The Courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others.

13. In State of A.P. v. Bodem Sundara Rao, (1995) 6 SCC 230 : (1995 AIR SCW 4435 : AIR 1996 SC 530), while dealing with a case of reduction of sentence from 10 years R.I. to 4 years R.I. by the High Court in the case of rape of a girl aged between 13 and 14 years, it was observed (para 9 of AIR) :

"In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the Court's verdict in the measure of punishment. The Courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 years old girl shakes our judicial conscience. The offence was inhumane."

(Emphasis supplied)

The sentence as accordingly enhanced to 7 years R.I. in the said case.

14. Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends herself-esteem and dignity - it degrades and humilitates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience. The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. Dealing with the offence of rape and its traumatic effect on a rape victim, this Court in State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : (1996 AIR SCW 998 : AIR 1996 SC 1393 : 1996 cri LJ 1728) observed (para 20 of AIR) :

"Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating woman's rights in all spheres, we show little or no concern for her honour.

It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a greater responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity."

(Emphasis supplied)

15. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

16. In the instant case, the trial Court gave sufficient and cogent reasons for imposing the sentence of 10 years R.I. for the offence under S. 376, I.P.C. on the respondent. Those reasons have impressed us. The trial Court was rightly influenced by the fact that the respondent was a married man of 49 years of age having his own children and the victim of his sexual lust was an innocent helpless girl of 7/8 years of age. The medical evidence provided by P.W. 6, Dr. Shalini Devi exhibits the cruel nature of the act and the extent of pain and suffering which the victim might have undergone on her genitalia as a result of forcible coitus. The trial Court had, therefore, opined that because of the cruel nature of the act, the accused was not entitled to any leniency.

17. The High Court, however, differed with the reasoning of the trial Court in the matter of sentence and, as already noticed, the reasons given by the High Court are wholly unsatisfactory and even irrelevant. We are at a loss to understand how the High Court considered that the "discretion had not been properly exercised by the trial Court." There is no warrant for such an observation. The High Court justified the reduction of sentence on the ground that the accused-respondent was "unsophisticated and illiterate citizen belonging to a weaker section of the society," that he was "a chronic addict to drinking" and had committed rape on the girl while in a state of "intoxication" and that his family comprising of "an old mother, wife and children" were dependent upon him. These factors, in our opinion, did not justify recourse to the proviso to S. 376(2), I.P.C. to impose a sentence less than the prescribed minimum. These reasons are neither special nor adequate. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. Socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of heinous crime of rape on

innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum to the respondent. To show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency is wholly misplaced. The High Court, in the facts and circumstances of the case, was not justified in interfering with the discretion exercised by the trial Court and our answer to the question posed in the earlier part of the judgment is an emphatic - No.

18. We, therefore, accept this appeal and consider it our plain duty to enhance the sentence in this case. While maintaining the conviction of the respondent for an offence under S. 376, I.P.C. besides all other offences, we enhance the sentence of 4 years R.I., as imposed by the High Court, to 10 years R.I. for the said offence. We maintain the sentence of fine together with the default clause as imposed by the Courts below also. Necessary warrant shall be issued to take the respondent into custody to undergo the remaining period of his sentence.

Appeal allowed.