State of Andhra Pradesh

Vs

Polamala Raju @ Rajarao

Criminal Appeal No. 629 of 1996

(Mr. R.C. Lahoti and Mr. K.G. Balakrishnan, JJ.)

09.08.2000

JUDGMENT

A little girl of five years of age was ravished by the respondent on 4th January, 1985 at about 2.00 P.M., taking advantage of her helpless state.

The respondent, a neighbour of the prosecutrix living almost opposite her house was tried for an offence under Section 376 IPC on an FIR lodged by the father of the prosecutrix. The version of the prosecutrix regarding the commission of offence by the respondent, as narrated in court through her mother, PW-1 received ample corroboration from medical evidence and other evidence led in the case. We are not repeating the prosecution version of the case or gist of the evidence led in case for the simple reason that the learned Assistant Sessions Judge, West Godavari, after recording evidence and hearing parties, both on the question of conviction and sentence, vide order dated 9th September, 1985, convicted the respondent for an offence under Section 376 IPC. After taking into account report of District Probation Officer, relating to the character, conduct and antecedents of the respodnent, the trial court awarded a sentence of 10 years RI and a fine of Rs. 10/-, and in default, simple imprisonment for one week for the said offence. The convict filed an appeal, challenging his conviction and sentence, which came to be heard by a learned Single Judge of the High Court of Andhra Pradesh. The learned Single Judge, vide judgment, dated 15th September, 1987, ‘entirely’ agreed with the conclusions arrived at by the trial court and confirmed the conviction of the respondent for an offence under Section 376 IPC. However, the sentence was reduced to a period of five years R.I., while maintaining the sentence of fine and imprisonment in default of payment of fine.

The respondent has not filed any appeal challenging his conviction and sentence.

The State is in appeal against reduction of sentence of the respondent by the High Court.

We have, with the assistance of learned counsel for the parties, examined the record. In our opinion, both the trial court and the High Court were justified in convicting the respondent for an offence under Section 376 IPC as the prosecution has established its case against the respondent beyond a reasonable doubt through cogent and reliable evidence. We, accordingly, also confirm the conviction of the respondent for the offence under Section 376 IPC.

Was the High Court justified in interfering with the discretion exercised by the Trial Court by reducing the sentence from 10 years R.I. to 5 years R.I. for an offence under Section 376 IPC is the only question requiring our consideration?

Section 376 (2) IPC reads thus:

"376. Punishment for rape - (1) * *

(2) Whoever -

(a) - (e) * * * *

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

(g) * * * *

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 terms of less than ten years".

The age of the prosecutrix in the instant case was admittedly five years at the relevant time. Normal sentence under Section 376(2) IPC in a case where rape is committed on a child below 12 years of age, is 'note less than 10 years R.I.' an expression which is pre-emptory in nature. The courts are obliged to respect this legislative mandate when the case falls under the proviso. The proviso to Section 376(2) IPC, however lays down that in exceptional cases, "for special and adequate reasons", sentence of less than 10 years R.I. may also be awarded in a given case. The proviso, in our opinion, would come into play only when there are "adequate and special reasons" available in a case. Those reasons need to be disclosed in the order/judgment itself so that the appellate forum is in a position to know as to what weighed with the court in awarding a sentence less than the minimum prescribed under the Act.

We are of the considered opinion that it is an obligation of the sentencing court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence. The sentencing Court must hear the loud cry for justice by the society and more particularly, in cases of heinous crime of rape of innocent helpless children, as in this case, of the victim of crime and respondent by imposing a proper sentence.

In the present case, the reasons given by the High Court in the instant case for reducing the sentence from the minimum 10 years is contained in the last paragraph of the judgment which reads:

"I entirely agree with the conclusions arrived at by the learned Assistant Sessions Judge. I accordingly confirm the conviction imposed by the Court below. <u>But, having regard to the circusmtances of the case, the sentence of ten years R.I. imposed by the Court below is reduced to a period of five years R.I. and the sentence of fine of Rs.10/- shall stand".</u>

(Emphasis ours)

To say that least, the order contains no reasons, much less "special or adequate reasons". The sentence has been reduced in a rather mechanical manner without proper application of mind. It appears that the provisions of Section 376(2) IPC were not at all present to the mind of the court. This Court has time and again drawn attention of the subordinate courts to the sensitivity which is required of the court to deal with all cases and more particularly in case involving crime against

women. In State of A.P. vs. Bedem Sundara Rao (1995 (6) SCC 230), this Court said:

"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 respondent 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 the crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conscience. The offence was inhumane."

(Emphasis ours)

Again, in the case of State of Karnataka vs. Krishnappa (200 (4) SCC 75), this Court pointed out that rape is not merely a physical assault, it is an offence which is destructive of the whole personality of the victim of crime and Courts shoulder a great responsibility while trying an accused on charges of rape and must deal with such cases with utmost sensitivity. Referring to imposition of punishment in such cases, it was opined:

"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 severaly dealt with. The 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."

(Emphasis supplied)

In the instant case. We have perused the record. We have noticed the "reasons" for reduction of sentence. We are unhappy with the manner in which the sentence has been reduced from the statutory minimum of 10 years R.I. to 5 years R.I.

We have given due consideration to the plea raised by learned Amicus on behalf of the respondent that it being an old case the order of the High Court need not be interered with. We are unable to persuade ourselves to agree with the submission. We do not find any extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the prescribed minimum on the respondent. To show mercy in a case like this, would be travesty of justice. There are no reasons, much less sufficient and adequate reasons available on the record to impose a lesser sentence than the prescribed minimum.

The High Court, in the facts and circumstances of the case, was not at all justified in interfering with the proper exercise of discretion by the trial court. We, therefore, set aside the order of the High Court insofar as the reduction of sentence is concerned and restore the sentence of 10 years R.I., as

imposed by the Trial Court. The respondent shall be taken into custody to undergo the remaining sentence.

The learned Amicus lastly submitted that because of long time which has elapsed subsequent to the date of offence and the possibility that the prosecutrix, as also the respondent, may have got married and settled in life during the pendency of these proceedings, fine instead of sentence be imposed. We cannot agree. These factors may be relevant for consideration by the Executive or Constitutional authorities, if they chose to remit the sentence on being so approaching, as opined in Kamal Kishore vs. State of H.P. [(2000) 4 SCC 502, Pr. 25] case (supra), but insofar as our judicial conscience is concerned, we find no reason to go against the legislative mandate and award any lesser sentence.

The appeal succeeds and is allowed in the above terms.