**SUPREME COURT OF INDIA**

Pushpanjali Sahu

Vs.

State of Orissa

Crl.A.No.1439 of 2012

(H.L.Dattu and Chandramauli Kr.Prasad,JJ.)

18.09.2012

**ORDER**

**H.L.Dattu,J.**

1. Leave granted.

2. This appeal is directed against the judgment and order passed by the High Court of Judicature of Orissa at Cuttack in Criminal Revision No.676 of 1999, dated 28.09.2010. By the impugned judgment and order, the High Court, while confirming the order passed by the learned Sessions Judge, Keonjhar, Orissa in Criminal Appeal No.59 of 1995, has modified the sentence awarded to the accused to the period already undergone by him. It is this portion of the order which is taken exception to by the complainant in this appeal. The only issue that arises for our consideration and decision in this appeal is: whether the High Court was justified in altering/modifying the quantum of sentence awarded by the learned Trial Judge and confirmed by the Sessions Court.

3. The complainant was employed as a Matron in a Government Women's College Hostel. The accused was a chowkidar/night watchman in that hostel. The offence that was alleged against the appellant was that he committed an offence of rape under Section 376 of the Indian Penal Code on the complainant. The prosecution had led its evidence. The Trial Court, after analysing the evidence on record, concluded that the prosecution has proved its case and accordingly, convicted the accused and awarded the sentence directing the accused to undergo imprisonment for a period of 7 years.

4. Being aggrieved by the aforesaid order passed by the Trial Court, the accused had filed an appeal before the learned Sessions Judge, Keonjhar, Orissa. Theappellate court, after considering the entire evidence on record has confirmed the order passed by the Trial Court.

5. The accused, being aggrieved by the aforesaid two orders, had filed a Revision Petition before the High Court. The High Court once again has considered the entire issue in detail and thereafter has come to the conclusion that the Trial Court was justified in coming to the conclusion that the accused has committed the offence of rape against the matron of the hostel. However, taking a lenient view of the matter, has reduced the sentence awarded by the Trial Court from 7 years to the period already undergone by the accused i.e. about a year.

6. We had issued notice against the accused confining to the issue regarding the sentence. The accused could not be served through the regular process. Therefore, we had issued non-bailable warrants against the accused to secure his presence. The police authorities have secured the presence of the accused and he is present before us today.

7. We have heard learned counsel for the appellant, the State and also for the accused person and have also looked into the provisions of Section 376 of the Indian Penal Code, 1860. The said provision reads as under:

> "376. Punishment for rape.—
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> (1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both: Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.
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> (2) Whoever: -
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> (a)Being a police officer commits rape-
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> (i)Within the limits of the police station to which he is appointed; or
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> (ii) In the premises of any station house whether or not situated in the police station to which he is appointed; or
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> (iii) On a woman is his custody or in the custody of a police officer subordinate to him; or

(b) Being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate to him; or

(c) Being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or

(d) Being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) Commits rape on a woman knowing her to be pregnant; or

(f) Commits rape when she is under twelve years of age; or

(g) Commits gang rape,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. Explanation 1

Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section.

Explanation 2

Women's or children's institution means an institution, whether called an orphanage or home for neglected women or children or a widows' home or by any other name, which is established and maintained for the reception and care of women or children.

Explanation: 3

Hospital means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation].”

8. A reading of the above provisions would clearly indicate that if a person is convicted under Section 376 of the I.P.C., the Court can award imprisonment for not less than 7 years which

may also extend for life. The provision also makes it abundantly clear that, if for any reason, the sentence has to be reduced, the Court ought to give appropriate reasons.

9. In the instant case, we have gone through the judgment of the High Court reducing the sentence from 7 years to the period already undergone. We are not convinced with the reasons assigned by the High Court.

10. This Court in *State of Madhya Pradesh v. Pappu*[1]considered the similar question of validity and justifiability of reduction of sentence, awarded by the Trial Court to the accused convicted under Section 376(1) read with Section 511 of the Indian Penal Code, 1860 (in short "IPC") and Sections 324 and 452 IPC, by the High Court. This Court relying upon its earlier observations in *State of M.P. v. Ghanshyam Singh*[2]and *State of M.P. v. Babbu Barkare*[3]observed that undue sympathy towards the accused by imposition of inadequate sentence would do more harm to the justice system by undermining the confidence of society in the efficacy of law and society could not long endure under such serious threats. The Courts therefore are duty bound to award proper sentence having regard to the nature and manner of execution or commission of the offence. This Court, highlighted the dangers of imposition of sentence without due regard to its effects on the social order and opined as follows:

> "9. "17. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'. If for the extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.""

11. This Court in *State of Madhya Pradesh v. Sheikh Shahid*[4] relying upon its earlier judgment in *State of M.P. v. Munna Choubey*[5]has recorded its observations on the yardstick of determining sentence as the nature and gravity of the offence and has cautioned against placing reliance upon reasons such as accused being from a rural background or length of time. 8. "6. "8. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but a deep sense of some deathless shame. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of 'order' should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: 'State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.' Therefore, in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation the sentencing process should be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In Mahesh v. State of M.P. this Court while refusing to reduce the death sentence observed thus: (SCC p. 82, para 6) '6. ... it will be a mockery of justice to permit these appellant-accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellant-accused would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal v. State of T.N. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of

criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime.

Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

12. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. ... Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

13. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in McGautha v. California that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

14. In Jashubha Bharatsinh Gohil v. State of Gujarat it has been held by this Court that in the matter of death sentence, the courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal from achieving the avowed object of law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of

death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue.

15. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

16. In Dhananjoy Chatterjee v. State of W.B. this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly encouraging the criminals and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court 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 the imposition of appropriate punishment.

17. Similar view has also been expressed in Ravji v. State of Rajasthan. It has been held in the said case that it is the nature and gravity of the crime and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should ‘respond to the society's cry for justice against the criminal’. If for an extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, the most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.Learned counsel for the accused has taken us through the reasons assigned bythe High Court. The case on hand, in our considered opinion, does not fall within the category of exceptional cases and as we have already observed, we are not convinced with the reasons assigned by the High Court for reducing the sentence. In this view of the matter, while allowing this appeal, we set aside that portion of the order passed by the High Court reducing the period of sentence from 7 years to the period already undergone by the accused. We now

direct that the accused be convicted and sentenced for a period of 7 years. It is needless to mention that the period already undergone by the accused shall be set off. Before parting, we wish to reflect upon the dehumanizing act of physical violence on women escalating in the society. Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience— offending her self-esteem and dignity. This Court in State of *H.P. v. Shree Kant Shekari*[6] has viewed rape as not only a crime against the person of a woman, but a crime against the entire society. It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. It destroys, as noted by this Court in *Bodhisattwa Gautam v. Subhra Chakraborty*[7]the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. 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.

18. In the light of the above discussion, we allow this appeal. The impugned order is set aside. We restore the order passed by the Trial Court.

19. Ordered accordingly.

*Judgment Referred*

[1]*(2008) 16 SCC 0758*
[2]*(2003) 8 SCC 0013*
[3]*(2005) 5 SCC 0413*
[4]*(2009) 12 SCC 0715*
[5]*(2005) 2 SCC 0710*
[6]*(2004) 8 SCC 0153*
[7]*(1996) 1 SCC 0490*