

SUPREME COURT OF INDIA

Shyam Narain

Vs.

State of NCT of Delhi

CrI.A.No.1860 of 2010

(B.S.Chauhan and Dipak Misra,JJ.)

15.05.2013

JUDGMENT

Dipak Misra, J.

1. The wanton lust, vicious appetite, depravity of senses, mortgage of mind to the inferior endowments of nature, the servility to the loathsome beast of passion and absolutely unchained carnal desire have driven the appellant to commit a crime which can bring in a 'tsunami' of shock in the mind of the collective, send a chill in the spine of the society, destroy the civilized stems of the milieu and comatose the marrows of sensitive polity. It is brutal rape of an eight year old girl. The sensitive learned trial Judge, after recording conviction under Section 376(2) (f) of the Indian Penal Code (for short " I PC"), had taken note of the brutality meted out to the child and sentenced him to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- failing which to undergo rigorous imprisonment for six months. The Division Bench of the Delhi High Court has equally reflected its anguish over the crime by describing it as "pervaded with brutality" and "trauma which the young child would face all her life" and has concurred with the sentence of imprisonment and the fine.

2 .This Court, at the time of issuance of notice, had restricted it to the quantum of sentence. However, we shall dwell upon the merits of the case in brief.

3. The horrid episode as unfurled by prosecution is that on 29.10.2003, about 6.30 p.m., an eight year old child, daughter of one Binda Saha, was taken by the appellant to Lal Bahadur Shastri Hospital and from there, being referred, she was admitted in GTB Hospital, Shahdara, at 1.30 a.m. on 30.10.2003. The young girl, as recorded in MLC Ext.PW-10/D, had stated that she had fallen down in the toilet about 2.00 p.m. on 29.10.2003 as a consequence of which she had sustained the injuries. The treating doctor, Dr. Anju Yadav, was not convinced with what was being narrated to her. As the factual narration would reflect, the duty constable informed the local police station, i.e., P.S. Kalyanpuri, about the admission of the young girl (hereinafter whom we shall refer to as 'M') and her condition, as recorded in the MLC. The child remained in the hospital for six days and thereafter she was discharged. The anxious mother, unable to digest the story that was told to her by the daughter, asked her to muster courage and tell the truth to her. The young 'M' gained confidence and, eventually, on 10.11.2003, broke down before her mother and told her how the appellant had brutally raped her and threatened her that if she disclosed the said fact to anyone, her life as well as the lives of her parents would be in danger. The disturbed father proceeded to the police station and informed what was told by his daughter and, accordingly, an FIR was registered. After the criminal law was set in motion, the investigating agency arrested the accused and, eventually, the accused-appellant was sent up for trial. The accused pleaded innocence and

claimed to be tried.\

4. The prosecution, in order to establish the charge leveled against the accused, examined 11 witnesses including the child 'M', her parents, the doctors and other formal witnesses. The accused in his statement under Section 313 of the Code of Criminal Procedure stated that on 28.10.2003, the parents of 'M' had gone to see her maternal uncle and, therefore, he had taken the prosecutrix 'M' to the hospital for medical aid, but as Lal Bahadur Shastri Hospital refused on the ground that the prosecutrix should be taken to some big hospital, he took her to GTB Hospital for medical treatment. It was his further explanation that he took the girl to the hospital for saving her life and he was not aware that she had been raped. The allegation of threat was disputed by the accused. It is also his stand that initially the child had not named him being asked by the doctor and had stated that she had sustained the injuries by fall, and after the discharge of the child, he went to attend his work on 4.11.2003. Be it noted, the defence chose not to adduce any evidence.

5. The learned trial Judge, considering the entire evidence on record and the contentions raised on behalf of the accused, came to hold that the version of the prosecutrix could be relied upon in entirety and by no stretch of imagination it could be said that she was a tutored witness; that the delay in lodging the FIR was not at all fatal to the case of the prosecution as the child was in a tremendous state of panicky; that the factum of rape has been clearly proven from the medical evidence and the testimony of the doctors which have remained unimpeachable despite roving cross-examination; that no plea of any hostility or previous animosity had been suggested to the child or to her parents; that the presence of the accused in the house had remained unexplained; and that no suggestion had been given to any of the doctors who were cited by the prosecution that the injuries could be caused by fall. Considering the entire evidence in detail, the learned trial Judge found the accused guilty of the offence under Section 376(2)(f) IPC and sentenced him as has been stated hereinbefore.

6. In appeal, the High Court took note of number of factors, narrating the condition of the child, the revelation of the tragic treatment by the accused, the circumstances under which the FIR was lodged, the testimony of the prosecutrix as to how she had been raped in a cruel manner by the accused, the absence of any reason of his going to the house of young 'M' and the circumstances under which he could see the injured child, the credibility and unimpeachability of the evidence of the child 'M', the courage that was gradually gathered by the child after getting out of the state of fear and trauma, the evidence of the doctors which showed the physical condition of the victim and the conduct of the accused in the hospital and, on the said basis, concurred with the view expressed by the learned trial Judge.

7. We have heard learned counsel for the appellant, and Mr. Paras Kuhad, learned Additional Solicitor General, and Mr. B.V. Balram Dass, learned counsel appearing for the NCT of Delhi.

8. To consider the defensibility of the judgment of conviction rendered by the learned trial Judge and affirmed by the Division Bench, it is necessary to appreciate the nature of injuries suffered by the victim. True it is, the young child had told the doctors that she had suffered a fall but the same was not given credence to by the treating doctors. The MLC where the condition of the young child was recorded is as follows: -

"O/E-Apprehensive look, G.C. fair, pallor mild, P- 96/m, BP 110/80, heart NAD. No bruises seen on the body. Breasts and secondary sexual characters not developed. P/A Soft, liver spleen not palpable. No shifting dullness, no area of tenderness. L/E - On separation of labia, a tear of 1.5 approx. to 2 cm. seen from posterior fourchette towards

anus just 1 cm. short of anal opening and same tear extending upto hymen. Clot was seen in her vagina, anal opening was intact, no area of bruise seen on perineum. Bleeding per vagina was present. Decision for examination under anesthesia and repair of vaginal perennial tear taken. Patient was admitted in septic labour room and shifted to gynae emergency operation theatre. On examination under anesthesia, showed same findings as above but in addition a tear of 3 cm approximately was seen in left vaginal wall from hymen into the vagina. Bleeding was positive. Apex of tear seen, tear stitched in layers, cervix seen healthy, no bleeding through OS. In view of EUA, findings under anesthesia high index of suspicion of sexual assault was made although the child and her uncle were denying of any such episode."

9. Dr. Sapna Verma, PW-4, who examined the victim, found that the hymen of the child 'M' was torn. The victim has deposed that about 1.00 p.m. in the afternoon, on the date of the incident, the accused- appellant came to the house and gave her an intoxicating drink and took her into a room. He raped her and also gave threat that if she would tell her parents or any other person, he would inflict knife blows upon her and her family members. He had further told her that she should tell her parents that she received the injuries when she slipped in the toilet. It has also come in her evidence that the accused took her to the hospital while she was bleeding from her private parts. She has truthfully spoken that initially she told her parents that she had sustained injuries as a result of a fall in the toilet because she was terribly scared and thereafter she spoke out how she sustained the injuries. In her cross-examination, she has stood embedded in her version. The time gap between the occurrence and the accused taking the child to the hospital has its own significance. The child was bleeding from her private parts. Had the child been left to herself, she would have bled to death. The accused took her to the hospital to avoid a situation when somebody might have come hearing her cry and saved her life and she might have ultimately spoken the truth. The totality of the circumstances would show that he was with the child. It is interesting to note that the accused had not disclosed why he had gone to the house of the child 'M' and under what circumstances he took the child to the hospital. The unimpeachable evidence of the child 'M', the testimony of the treating physicians, the medical evidence and the conduct of the accused go a long way to show that the accused had raped the child 'M' in a cruel and brutal manner and the conviction recorded on that score by the learned trial Judge which has been given stamp of approval by the High Court cannot be faulted.

10. Presently, we shall proceed to deal with the justification of the sentence. Learned counsel for the appellant, would submit that though Section 376(2) provides that sentence can be rigorous imprisonment for life, yet as a minimum of sentence of ten years is stipulated, this Court should reduce the punishment to ten years of rigorous imprisonment. It is urged by him that the appellant is a father of four children and their lives would be ruined if the sentence of imprisonment for life is affirmed. Mr. Paras Kuhad, and Mr. B.V. Balram Dass, counsel for the State submitted that the crime being heinous, the sentence imposed on the accused is absolutely justified and does not warrant interference. It is also canvassed by them that reduction of sentence in such a case would be an anathema to the concept of just punishment.

11. Primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realize that the crime committed by him has not only created a dent in his life but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the

collective do not suffer time and again for such crimes. It serves as a deterrent. True it is, on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. While carrying out this complex exercise, it is obligatory on the part of the Court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

12. In this context, we may refer with profit to the pronouncement in *Jameel v. State of Uttar Pradesh*, wherein this Court, speaking about the concept of sentence, has laid down that it is 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. 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."

13. In *Shailesh Jasvantbhai and another v. State of Gujarat and others*, the Court has observed thus:

"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 deterrence based on factual matrix. By deft modulation, sentencing process 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".

14. In *State of M.P. v. Babulal*, two learned Judges, while delineating about the adequacy of sentence, have expressed thus : -

"19. Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for commission of an offence and found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The law does not envisage a person being convicted for an offence without a sentence being imposed therefore.

20. The object of punishment has been succinctly stated in *Halsbury's Laws of England*, (4th Edition: Vol.II: para 482) thus:

"The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be

accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided".

(emphasis supplied)"

15. In ***Gopal Singh v. State of Uttarakhand***, while dealing with the philosophy of just punishment which is the collective cry of the society, a two-Judge Bench has stated that just punishment would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors.

16. The aforesaid authorities deal with sentencing in general. As is seen, various concepts, namely, gravity of the offence, manner of its execution, impact on the society, repercussions on the victim and proportionality of punishment have been emphasized upon. In the case at hand, we are concerned with the justification of life imprisonment in a case of rape committed on an eight year old girl, helpless and vulnerable and, in a way, hapless. The victim was both physically and psychologically vulnerable. It is worthy to note that any kind of sexual assault has always been viewed with seriousness and sensitivity by this Court.

17. In ***Madan Gopal Kakkad v. Naval Dubey and another***, it has been observed as follows:

"... though all sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. This is due to the reasons that children are ignorant of the act of rape and are not able to offer resistance and become easy prey for lusty brutes who display the unscrupulous, deceitful and insidious art of luring female children and young girls. Therefore, such offenders who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms."

18. In State of Andhra Pradesh v. Bodem Sundra Rao, this Court noticed that crimes against women are on the rise and such crimes are affront to the human dignity of the society and, therefore, imposition of inadequate sentence is injustice to the victim of the crime in particular and the society in general. After so observing, the learned Judges had to say this: -

"The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's crime 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."

19. In *State of Punjab v. Gurmit Singh and others*, this Court stated with anguish that crime against women in general and rape in particular is on the increase. The learned Judges proceeded further to state that it is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection of the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. Thereafter, the Court observed the effect of rape on a victim with anguish: -

"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."

20. In *State of Karnataka v. Krishnappa*, a three- Judge Bench opined that the courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the court. It was further observed that to show mercy in the case of such a heinous crime would be travesty of justice and the plea for leniency is wholly misplaced.

21. In *Jugendra Singh v. State of Uttar Pradesh*, while dwelling upon the gravity of the crime of rape, this Court had expressed thus: -

"Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu."

22. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the appellant is excessive or deserves to be modified. The learned counsel for the appellant would submit that the appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended upto life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into

the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand; the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned counsel for the appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court.

23. Ex consequenti, the appeal, being sans merit, stands dismissed.