SUPREME COURT OF INDIA

Ajahar Ali

Vs.

State of W.B.

Crl.A.No.1623 of 2013

(Dr.B.S.Chauhan and S.A.Bobde JJ.)

04.10.2013

JUDGMENT

DR. B.S. CHAUHAN, J.

1. Leave granted.

2. This appeal has been preferred against the impugned judgment and order dated 19.9.2012 passed by the High Court of Calcutta in Criminal Revision No. 3240 of 2012 affirming the judgment and order of the learned Sessions Judge dated 22.8.2012 dismissing the appeal of the appellant against the judgment and order of the learned Magistrate dated 9.5.2012, by which and whereunder the learned Magistrate had found the appellant guilty for the offence punishable under Section 354 of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). He had been sentenced to suffer SI for 6 months and further to pay a fine of Rs.1,000/- , and in default of payment of fine, further to undergo SI for two months.

3. Facts and circumstances giving rise to appeal are that:

A. On 6.11.1995, Nasima Begum (PW.1), aged about 16 years filed a complaint alleging that on that day while she was going to attend her tuition alongwith her friend Nilufa Khatun, she met the appellant on the way who suddenly came and forcibly caught hold of her hair and planted a kiss, resultantly, she suffered a cut over her lower lip and started bleeding.

B. A case under Section 354/324 IPC was registered. After conducting the trial, the court of Ist Judicial Magistrate, Ist Court, Malda vide judgment and

order dated 9.5.2012 found the appellant guilty for offence under Section 354 IPC and sentenced him as referred to hereinabove.

C. Aggrieved, the appellant preferred Criminal Appeal No.2/2012 before the learned Sessions Judge, Malda and the said appeal was dismissed vide judgment and order dated 22.8.2012. D. Appellant challenged both the aforesaid orders by filing Criminal Revision before the High Court which has been dismissed by the impugned judgment and order dated 19.9.2012. Hence, this appeal.

4. Shri S.C. Ghosh, learned counsel appearing for the appellant has half-heartedly challenged the findings of fact recorded by the courts below. However, we are not inclined to re-appreciate the evidence and disturb the findings recorded by the three courts, therefore, he argued that since the incident occurred more than 18 years ago and at that time the appellant as well as the complainant were about 16 years of age, the court should not send the appellant to jail at such a belated stage. Considering the fact that the appellant was juvenile in view of the provisions of Juvenile Justice Act, 2000 (hereinafter referred to as the 'JJ Act 2000'), he ought to have been tried before the Juvenile Justice Board and not by the criminal court, as was done. Even otherwise, considering the time gap of 18 years and the fact that the appellant as well as the complainant have settled in life and both of them are married and have children, their lives should not be disturbed. In all circumstances, the court should give the benefit to the appellant under the provisions of Probation of Offenders Act, 1958 (hereinafter referred to as the 'Act 1958'). Therefore, the appeal deserves to be allowed.

5. On the other hand, Shri Anip Sachthey, learned Standing counsel appearing for the State of West Bengal has opposed the appeal contending that considering the nature of offence wherein the modesty of a young girl was outraged, the question of showing any leniency or granting the benefit of the Act 1958 is not warranted. Even if the case of the appellant is considered under the JJ Act 2000, the maximum punishment that can be awarded is of 3 years, while in the instant case, the appellant had been sentenced only for a period of six months. Therefore, it will be a futile exercise to consider the case of the appellant on that anvil. Thus, the appeal is liable to be dismissed.

6. We have considered the rival submissions made by learned counsel for the parties and perused the record.

7. In view of the concurrent findings recorded by the three courts below, we are not inclined to re-appreciate the evidence. The same is also not warranted in view of the fact that the complainant, Nasima Begum who had no enmity against the appellant has been very consistent about the factual matrix not only in her statement under Section 161 of Code of Criminal Procedure, 1973 (hereinafter referred to as `Cr.P.C.') but also before the court and had supported the prosecution case fully. Her version was corroborated by several other witnesses and the courts below have recorded a finding that the appellant was guilty beyond reasonable doubt.

8. Learned counsel for the appellant pleads for leniency on the ground that the trial has gone on for a long time; furthermore, he has no previous criminal history and that he may lose his job. For the purpose of seeking a benefit under the Act 1958 he has placed reliance on the judgment of this Court in Mohamed Aziz Mohamed Nasir v. State of Maharashtra, AIR 1976 SC 730, wherein the benefit of the Act 1958 was given observing further that even if such plea had not been raised before the court below, it can be raised for the first time before this court. That was a case under Section 379 r/w Section 34 IPC and the charge against the said appellant was snatching two sarees from one Govind who was carrying them from the shop of his master to that of a washer and dyer.

9. In Musa Khan & Ors. v. State of Maharashtra, AIR 1976 DV 2566, this Court observed that the purpose of the provisions of the Act 1958 is to reform the juvenile offenders though that was a case of Section 149 IPC and the court held that culpable liability does not arise from mere presence in the assembly and even participation does not necessarily lead to the conclusion that he joined that unlawful assembly willingly.

10. This Court in Karamjit Singh v. State of Punjab, (2009) 7 SCC 178, to which one of us (Dr. B.S. Chauhan, J.) was a member of the Bench, after considering various earlier judgments and particularly Om Prakash & Ors. v. State of Haryana, (2001) 10 SCC 477 and Manjappa v. State of Karnataka, (2007) 6 SCC 231; held that a relief under the Act 1958 should be granted in the offences which were not of a very grave nature or where the mens rea is absent.

11. In State of Himachal Pradesh v. Dharam Pal, (2004) 9 SCC 681, this Court considered the appeal of the State of Himachal Pradesh wherein the benefit of the Act 1958 had been given to the accused who was held guilty for offence under Section 376/511 IPC for attempt to commit rape. This Court in the peculiar facts and circumstances of that case did not interfere with the judgment and order of the

High Court, but at the same time did not approve of the reasoning given by the High Court. The court held as under:

> "According to us, the offence of an attempt to commit rape is a serious offence, as ultimately if translated into the act leads to an assault on the most valuable possession of a woman i.e. character, reputation, dignity and honour. In a traditional and conservative country like India, any attempt to misbehave or sexually assault a woman is one of the most depraved acts. The Act is intended to reform the persons who can be reformed and would cease to be a nuisance in the society. But the discretion to exercise the jurisdiction under Section 4 is hedged with a condition about the nature of offence and the character of the offender. Section 6 of the Act makes the provisions applicable in cases where offenders are under 21 years of age, as restrictions on imprisonment of offenders have been indicated in the said provision. In a case involving similar facts, this Court in State of Haryana v. Prem Chand, (1997) 7 SCC 756 upheld the judgment of the High Court which extended the benefit of provisions under Section 4 of the Act. Considering the peculiar circumstances of the case and taking into account the fact that on the date of occurrence the accused was less than 21 years old, we feel this is a case where no interference is called for with the judgment of the High Court, though some of the conclusions arrived at by the High Court do not have our approval."

12. In the instant case, as the appellant has committed a heinous crime and with the social condition prevailing in the society, the modesty of a woman has to be strongly guarded and as the appellant behaved like a road side Romeo, we do not think it is a fit case where the benefit of the Act 1958 should be given to the appellant.

13. This brings us to the next question regarding the applicability of JJ Act 2000. This issue has been raised for the first time in this court and the appellant can do so in view of the larger Bench judgment of this Court in Abuzar Hossain @ Gulam Hossain v. State of West Bengal, (2012) 10 SCC 489, wherein it was held that the plea of juvenility can be raised at any stage irrespective of delay in raising the same. But the question that would arise is if the matter came before the Juvenile Justice Board, the maximum sentence that can be awarded in such a case is of 3 years. In the instant case, the punishment awarded is only six months so the cause of the appellant is not prejudiced.

14. The provisions of Section 354 IPC has been enacted to safeguard public morality and decent behaviour. Therefore, if any person uses criminal force upon any woman with the intention or knowledge that the woman's modesty will be outraged, he is to be punished.

15. In State of Punjab v. Major Singh, AIR 1967 SC 63, this Court observed that modesty is the quality of being modest which means as regards women, decent in manner and conduct, scrupulously chaste, though the word 'modesty' has not been defined in the Code. The ultimate test for determining whether modesty has been outraged is whether the action of the offender as such can be perceived as one which is capable of lowering the sense of decency of a woman. (See also: Aman Kumar v. State of Haryana, AIR 2004 SC 1497; Raju Pandurang Mahale v. State of Maharashtra, AIR 2004 SC 1677; and Turkeshwar Sahu v. State of Bihar, (2006) 8 SCC 560).

16. In Mrs. Rupan Deol Bajaj & Anr. v. Kanwar Pal Singh Gill & Anr., AIR 1996 SC 309, slapping a woman on her posterior amounted to outraging of her modesty within the meaning of Sections 354 and 509 IPC.

17. In Vishaka & Ors. v. State of Rajasthan & Ors., AIR 1997 SC 3011 and Apparel Export Promotion Council v. A.K. Chopra, AIR 1999 SC 625, this court held that the offence relating to modesty of woman cannot be treated as trivial and a lenient view by giving six months imprisonment on the ground of juvenility does not require consideration.

18. In Chinnadurai v. State of Tamil Nadu, AIR 1996 SC 546, this Court rejected the plea for reduction of sentence in view of considerable delay and other circumstances observing that sentence has to be awarded taking into consideration the gravity of the injuries.

19. In State of U.P. v. Shri Kishan, AIR 2005 SC 1250, this Court has emphasised that just and proper sentence should be imposed. The Court held:

> "…… Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive 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.

> 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'."
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> (Emphasis added)

20. In Sadhupati Nageswara Rao v. State of Andhra Pradesh, AIR 2012 SC 3242, this Court observed that the courts cannot take lenient view in awarding sentence on the ground of sympathy or delay as the same cannot be any ground for reduction of sentence.

21. In view of the above, we are of considered opinion that as the appellant had been awarded only six months imprisonment, considering the matter under the JJ Act, 2000 would not serve any purpose at such a belated stage. The High Court had been of the opinion that appellant had been dealt with very leniently and it was a fit case where the High Court wanted to enhance the sentence but considering the fact that the incident occurred long back, the High Court refrained to do so.

22. Thus, the appeal fails and is accordingly dismissed. The appellant is directed to surrender within a period of four weeks to serve out the sentence, failing which the Chief Judicial Magistrate, Malda, is directed to take him into custody to serve out the sentence. A copy of the order be sent to Chief Judicial Magistrate, Malda for information and action.