

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 792-793 OF 2013

(Arising out of Special Leave Petition(Crl.)Nos. 9544-9545/2011)

State of Haryana

...Appellant

Versus

Janak Singh & etc.

...Respondents

O R D E R

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.

2. In these appeals by special leave the State of Haryana has challenged the judgment and order dated 2/8/2010 passed by the High Court of Punjab & Haryana maintaining the conviction of respondent Joginder Singh (original accused

1) under Sections 376 and 506 of the Indian Penal Code (for short, '**the IPC**') and conviction of respondent Janak Singh (original accused 2) under Sections 376 read with Section 511 and Section 506 of the IPC and reducing their sentence for the said offences to the sentence already undergone by them.

3. According to the prosecution the prosecutrix lodged an FIR on 31/10/1998 at Police Post Jalmana stating that she was residing in the dera of Shekhupura along with her brother Gurpreet Singh and mother Joginder Kaur. On 27/10/1998 she, her mother Joginder Kaur and brother Gurpreet Singh were sleeping in the dera. At about 11.00 p.m. she got up for easing herself. After unbolting the room she went to the courtyard. She found that two men i.e. respondent Joginder Singh and respondent Janak Singh were standing near the boundary of the courtyard. One of them was having a khes and another was having a piece of cloth on his head. They lifted her and threatened to kill her in case she raised cries. They took her to a field of maize where

respondent Joginder Singh raped her. Respondent Janak Singh also tried to catch hold of her to rape her, but, since she cried for help her mother Joginder Kaur came there and on seeing her both the accused fled away towards the fields. On the basis of this FIR, offences under Sections 376/506/511 of the IPC were registered against both the respondents. Investigation commenced. On completion of investigation, respondent Joginder Singh was charged under Sections 376 and 506 of the IPC while respondent Janak Singh was charged under Sections 376, 511 and 506 of the IPC.

4. Both the respondents pleaded not guilty to the charge and claimed to be tried. According to respondent Joginder Singh he had a love affair with the prosecutrix. However, he was married by his parents to a woman from their community and hence the prosecutrix and her mother were nursing a grudge against him. Therefore, he has been falsely implicated in this case. He also contended that he had advanced money to the mother of the prosecutrix. When he

asked her to return the amount the prosecutrix and her mother were annoyed. This was also the reason why he was falsely implicated in this case. In support of his case he produced certain photographs showing the prosecutrix standing near him. Respondent Janak Singh stated that he had been falsely implicated in this case. The respondents examined DW-1 Kashmiri Lal and placed reliance on photographs Ex. DA and Ex. DB and negatives thereof being Ex. DC and Ex. DD. The prosecution, in support of its case, examined nine witnesses. The prosecution heavily relied on the evidence of PW-2 the prosecutrix. After considering the evidence on record learned Sessions Judge convicted respondent Joginder Singh for offence punishable under Section 376 of the IPC and sentenced him to undergo rigorous imprisonment for eight years and fine of Rs. 2,000/-, in default of payment of fine, to further undergo rigorous imprisonment for two months. He was also convicted under Section 506 of the IPC and sentenced to undergo rigorous imprisonment for one year. Respondent Janak Singh was convicted under Section 376 read with

Section 511 of the IPC and sentenced to undergo rigorous imprisonment for four years and fine of Rs. 1,000/-, in default of payment of fine, to further undergo rigorous imprisonment for one month. He was also convicted under Section 506 of the IPC and sentenced to undergo rigorous imprisonment of one year. The substantive sentences were ordered to run concurrently.

5. Both respondents filed appeals in the High Court. We are rather surprised at the manner in which the High Court disposed of the appeals. After narrating the gist of the prosecution story the High Court noted the submission of learned counsel for the respondents that respondent Joginder Singh had undergone more than two years of actual sentence and respondent Janak Singh had undergone one year, ten months and seven days of actual sentence; that the respondents are the only bread earners of their family and are facing criminal proceedings since the years 1998 and that in the facts and circumstances of the case and considering the medical evidence the possibility of the

prosecutrix going with respondent Joginder Singh out of her own free will cannot be ruled out. The counsel appears to have made it clear that the respondents had not challenged their conviction but they wanted their sentence to be reduced to the sentence already undergone. The State counsel made a feeble attempt to oppose this submission by stating that the sentence is not liable to be reduced. There is no indication in the impugned judgment that the State counsel vehemently opposed the submission of the counsel for the respondents. The High Court after referring to the submissions of the counsel observed as under:

“After hearing learned counsel for the parties and going through the record of the case, it would be just and expedient to reduce the sentence qua imprisonment of the appellants to already undergone by them. Fine is stated to have already been deposited by the appellants.

Accordingly, the conviction of appellant Joginder Singh under Sections 376, 506 IPC and the conviction of appellant Janak Singh under Sections 376/511 and 506 IPC, as ordered by the trial court, is maintained. However, sentence qua imprisonment of the appellants is reduced to already undergone by them.

The present appeals stand disposed of accordingly.”

The High Court gave no reasons for reducing the sentence to sentence already undergone.

6. Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed under Article 21 of the Constitution of India. We may remind ourselves of the observations made by this Court in **Bodhisattwa Gautam v. Subhra Chakraborty**,¹ that rape is violative of the victim's most cherished of the fundamental rights guaranteed under Article 21 of the Constitution of India. In a series of judgments this Court has reiterated these observations. Rape cases have to be dealt with keeping these observations in mind.

7. Section 376 of the IPC provides for punishment for rape. Offence of rape is punishable with imprisonment of

¹ (1996) 1 SCC 490

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. The convict shall also be liable to fine. Proviso to Section 376(1) states 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. Thus, a minimum of seven years sentence is provided under Section 376(1) of the IPC. Sentence for a term of less than seven years can be imposed by a court only after assigning adequate and special reasons for such reduction. Thus, ordinarily sentence for an offence of rape shall not be less than seven years. When the legislature provides for a minimum sentence and makes it clear that for any reduction from the minimum sentence of seven years, adequate and special reasons have to be assigned in the judgment, the courts must strictly abide by this legislative command. Section 376(1) read with the proviso thereto reflects the anxiety of the legislature to ensure that a rapist is not lightly let off and unless there are some extenuating circumstances stated in writing, sentence

below the minimum i.e. less than seven years cannot be imposed. While imposing sentence on persons convicted of rape, the court must be careful and must not overlook requirement of assigning reasons for imposing sentence below the prescribed minimum sentence. The High Court appears to have not noticed this requirement.

8. In this connection we may usefully refer to **State of Karnataka v. Krishnappa**². In that case the High Court had reduced the sentence of ten years rigorous imprisonment imposed by the trial court on the accused for an offence under Section 376 of the IPC to four years rigorous imprisonment. Severely commenting on this indiscretion, this Court observed as under:-

“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 the heinous crime of rape on innocent helpless girls of tender years, as

² (2000)4 SCC 75

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 on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced. 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. 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 her self-esteem and dignity — it degrades and humiliates 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. A socially sensitised 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.”

9. In **State of A.P. v. Bodem Sundara Rao**³, the accused was sentenced by the trial court for an offence under Section 376 of the IPC for ten years. The High Court maintained the conviction, however, reduced the period of

³ (1995)6 SCC230

sentence to four years. This Court set aside the High Court's order and enhanced the sentence to seven years which is the minimum prescribed sentence under Section 376 of the IPC. The relevant observations of this Court are as under:

"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 year old girl shakes our judicial conscience. The offence was inhumane. There are no extenuating or mitigating circumstances available on the record which may justify imposition of sentence less than the minimum prescribed by the Legislature under Section 376(1) of the Act."

The above observations of this Court made in **Krishnappa** and in **Bodem Sundara Rao** state what

should be the approach of the courts while sentencing accused convicted of rape. We shall examine the present case in light of the above discussion.

10. We notice that before the High Court learned counsel for the respondents did not challenge the conviction. At the same time, he stated that the circumstances of the case and medical evidence indicated that this could be a case where the prosecutrix had gone with respondent Joginder Singh of her own will. Therefore, it is not clear whether the respondents had really instructed their counsel not to press the appeal on merits or whether the counsel on his own thought that getting the respondents released on sentence already undergone by them was an easy way out and, therefore, he preferred that option. We feel that the appeals were heard in a slipshod manner. It was open for the respondents to press the appeals on merits and pray for acquittal. Had the case been argued on merits, the High Court could have acquitted the respondents if it felt that the

prosecution had not proved its case beyond reasonable doubt. Assuming the respondents did not press the appeals, the High Court had to still consider whether the concession made by the counsel was proper because it is the duty of the court to see whether conviction is legal. But, once the respondents stated that they did not want to press the appeals and the High Court was convinced that conviction must follow, then, ordinarily it could not have reduced the sentence to the sentence already undergone by the respondents which is below the minimum prescribed by law. The High Court could have done so only if it felt that there were extenuating circumstances by giving reasons therefor.

While reducing the sentence, the High Court has merely stated that it was "*just and expedient*" to do so. These are not the reasons contemplated by the proviso to Section 376(1) of the IPC. Reasons must contain extenuating circumstances which prompted the High Court to reduce the sentence below the prescribed minimum. Sentence bargaining is impermissible in a serious offence like rape. Besides, at the cost of repetition, it must be stated that such

a course would be against the mandate of Section 376(1) of the IPC.

11. In view of the above discussion, we hold that the impugned judgment is legally unsustainable and is liable to be set aside and the matter deserves to be remanded to the High Court for fresh disposal of the appeals filed by the respondents.

12. In the result, the appeals are partly allowed, the impugned judgment is set aside and the matter is remanded to the High Court with the request to dispose of the appeals filed by the respondents expeditiously after giving opportunity of hearing to all the parties. In the peculiar facts of the case, we direct that the respondents shall continue to remain on bail till the disposal of the appeals.

13. It is made clear that nothing said in this order should be treated as expression of our opinion on the merits of the case.

.....J.
(G.S. Singhvi]

.....J.
(Ranjana Prakash Desai)

New Delhi
May 10, 2013



JUDGMENT