Supreme Court of India
State Of Madhya Pradesh vs Balu on 5 November, 2004
Author: S Hegde
Bench: N. Santosh Hegde, S.B. Sinha

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           CASE NO.:
Appeal (crl.)  1273 of 2004

PETITIONER:
State of Madhya Pradesh

RESPONDENT:
Balu

DATE OF JUDGMENT: 05/11/2004

BENCH:
N. Santosh Hegde & S.B. Sinha

JUDGMENT:
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J U D G M E N T (Arising out of S.L.P. (Crl) No. 2151 of 2004) SANTOSH HEGDE, J.

Heard learned counsel for the parties.

Leave granted.

The State of Madhya Pradesh has preferred this appeal for enhancement of sentence awarded by the High Court of Judicature at Madhya Pradesh in Criminal No. 952 of 1990 dated 7th of August, 2003.

The learned Sessions Judge who tried the sessions case No. 36 of 1989 in which the respondent herein was accused of having committed rape of one Kusumbai, having found the accused guilty and after hearing the accused on the question of sentence convicted the respondent for an offence punishable under Section 376 of IPC and awarded a sentence of 7 years rigorous imprisonment and fine of Rs. 1,000/- and in default to undergo further sentence of rigorous imprisonment for a period of one year.

In an appeal filed against the said conviction and sentence the High Court by the impugned order while confirming the conviction reduced the sentence of imprisonment to a period already undergone which on the date of the judgment was about 10 months.

It is the prosecution case that, on 15th of June, 1988 at about 8.00 o'clock in the morning in the village of Dhadhari the respondent herein committed rape on Kusumbai who according to the prosecution was a minor. A complaint in regard to this incident was lodged with the Police Station, Civil Lines, Chhatarpur, on the very same day, which was registered as Crime No. 63/88 under Section 376 of the IPC. The victim - PW 2 was examined by PW 6-Dr. Indira Gupta, who opined that the victim was subjected to sexual intercourse within a period of 24 hours before her examination. PW 6 also recorded reasons for said conclusion. PW 2-the victim in her statement before the court

stated that on the date of incident when she was going to work, near a deserted field the appellant dragged her and committed rape on her consequent to which her cloth as well as the respondent's underwear were blood stained. She stated that while committing rape the accused had put a towel in her mouth so that she could not shout.

PW 1-Dr. K.L. Wadi who examined the victim-PW2, with reference to her age, after perusing her X-ray opined that for reasons given by him in his evidence the victim appeared 13 years of age but he also stated, in reply to a question in cross examination, that it was possible that the said age may vary upto 3 years.

PW 4 father of the victim and PW 3-mother of the victim have stated in their evidence that immediately after the incident the victim had complained to them, therefore, they proceeded to the Police Station with the victim and lodged a complaint with PW 5-the Investigating Officer who after recording the complaint took the blood stained cloths of the victim and sent the same for chemical examination and sent her also for medical examination. PW 5 also stated that he arrested the respondent-accused on the very next day and recovered his stained underwear which was also sent for chemical examination and which confirmed that it contained blood stains.

Though the defence challenged the age of the victim, the learned Sessions Judge after considering the material on record and other evidence held that the victim was less than 16 years of age at the time of incident. He also negatived the contention that there was consent on the part of the victim and, hence, found the respondent guilty of the offence punishable under Section 376 and awarded the sentence as stated above.

In the appeal filed as against the said conviction and sentence, it is seen from the impugned judgment that the learned counsel appearing for the respondent did not challenge findings of conviction and addressed arguments only in regard to the sentence awarded on the ground that the same was excessive because the respondent at the time of incident was aged only 17 years and further being an illiterate villager coming from a rural area ought to be dealt with leniently. Accepting the said submission advanced on behalf of the respondent the High Court considered it to be a fit case for reducing the sentence to a period already undergone which as noticed above was about 10 months.

Shri R.P. Gupta, learned senior counsel appearing for the appellant- State contended that the High Court was wholly wrong and did not even take into consideration the mandatory requirement of law while reducing the sentence to a period of 10 months for an offence of rape that too committed on a minor girl. He submitted that the judgment in question suffers from lack of application of mind and the sentence awarded is wholly disproportionate not only to the mandate of Statute but also to the nature and gravity of the offence committed by the respondent.

Shri B.K. Pal, learned counsel appearing for the respondent strongly supported the judgment of the High Court by contending that the respondent-accused was aged only 17 years at the time of the incident and was an illiterate villager, hence a severe sentence as contemplated under Section 376 would be counter productive. He also submitted that the respondent-accused as well as the victim

are since married and have their respective families, therefore, a compassionate view should be taken, more so in the background of the fact that the incident in question had occurred nearly sixteen years back. He alternatively submitted that the Trial Court has erred in coming to the conclusion that the prosecution has established the alleged offence beyond a reasonable doubt against the respondent-accused and that the High Court erred in not going into that question even though he did not dispute that his counter-part, did not challenge the finding on the conviction. He pointed out that from the material on record, it is seen that the victim was above 16 years of age and the fact that there was no injury on her body would indicate that the sexual intercourse if any was with the consent of the victim, hence the respondent could not have been convicted for an offence under Section 376 of IPC. He also submitted that the Trial Court did not consider the explanation given by the accused in his statement recorded under Section 313 of Cr. PC wherein he had stated that there was an animosity between the family of the victim and the accused. He also submitted that the respondent was not subjected to any medical examination, therefore, it cannot be said that the respondent was responsible for having committed an offence punishable under Section 376 of the IPC.

From the impugned judgment of the High Court it is noticed that the learned counsel representing the respondent had not challenged conviction of the respondent before the High Court and had addressed arguments only in regard to quantum of sentence. Be that as it may, and without expressing any opinion on the applicability of Section 377 (3) of the Code of Criminal Procedure to proceedings under Article 136 of the Constitution but with a view to satisfy ourselves as to the correctness of the conviction recorded by the Trial Court against the respondent, we have perused the records in the light of the arguments addressed by the learned counsel for the respondent. From the evidence produced by the prosecution, it is clear that the incident in question occurred on 15th of June, 1988 and a complaint in this regard was lodged promptly with the Police Station, Civil Lines, Chhatarpur on the very same day and the victim PW2 was sent for medical examination on the same day. PW 6- the Doctor who examined the victim opined that victim was subjected to sexual intercourse within a period of 24 hours before her examination. The said Doctor has also recorded reasons for such conclusion. PW 1- Dr. K.L. Wadi who examined the victim with reference to her age after perusing her X-rays opined that the victim PW 2 appeared to be 13 years of age but he in the cross examination did say that his opinion might vary upto 3 years. Taking advantage of this possible variation an argument was addressed on behalf of the respondent that the victim was above 13 years of age. The Trial Court, in our opinion, rightly rejected this contention of the respondent herein. The prosecution during the course of investigation had seized the clothes worn by the victim as well as the underwear worn by the respondent which also on examination by the Serologist was found to contain blood which also supported the prosecution case that the respondent had sexual intercourse with the victim. PW 2 who knew the respondent prior to the incident had no difficulty in identifying the respondent as the person who committed rape on her, also stated that the respondent had covered her mouth with a towel to prevent her from shouting for help. Having perused the evidence like the trial court, we also find no reasons to disbelieve her evidence. Hence, the so called consent alternatively pleaded by the counsel for the respondent cannot be accepted. The argument of non-consideration of the statement of the accused recorded under Section 313 Cr.P.C. to the effect that there was animosity between the family of the victim and the accused is liable to be rejected because one of the defences of the accused is that there was consent on the part

of the victim to have sex with him. These two stands being self-contradictory, cannot be accepted.

Thus, having considered the material on record and having heard the arguments addressed on behalf of the parties, we find no merit in the argument of the learned counsel for the respondent that the Trial Court erroneously convicted the respondent.

Having satisfied ourselves as to the correctness of the conviction of the appellant by the trial court, we will now consider the question of sentence. Section 376 IPC imposes an obligation on the court convicting the accused of that offence to impose a minimum sentence of 7 years. However, an exception is made for adequate and special reasons to be recorded in the judgment. Thus the Court can impose a sentence of less than 7 years but for good reasons.

By the impugned judgment the High Court assigned the following reasons for reducing the sentence imposed by the Sessions Court from 7 years to 10 months :

"Then, at the time of commission of offence the appellant is stated to be aged 19 years whereas in the estimation of the Trial Court, he was 17 years of age. The appellant is illiterate villager coming from rural area, therefore, it appears a fit case to reduce the sentence of imprisonment to the period already undergone".

None of the reasons mentioned therein can be construed as either adequate or special reasons to reduce the minimum mandatory period of sentence for an offence punishable under Section 376 IPC. The High Court does not seem to have applied its mind to the gravity of the offence. Having found that the appellant has committed rape of a minor, to reduce the sentence on the ground that the accused was either 17 years or 19 years of age or that the accused is an illiterate villager coming from a rural area is neither adequate nor special reason contemplated under Section 376 IPC. We think the sentence of 10 months imprisonment for an offence punishable under Section 376 is ridiculously low and does not commensurate with the gravity of the crime. The sympathy shown by the High Court is wholly misplaced and is likely to send wrong signals. In these circumstances, we think the High Court has grossly erred from reducing the sentence imposed by the Sessions Court to a period of 10 months which the respondent had already undergone.

A 3-Judge Bench of this Court in the case of State of Karnataka v. Krishnappa (2000 4 SCC 75) while considering the question of reduction of sentence in a rape case observed thus :

"The approach of the High Court in this case, to say the least, was most casual and inappropriate. There are no good reasons given by the High Court to reduce the sentence, let alone "special or adequate reasons". The High Court exhibited lack of sensitivity towards the victim of rape and the society by reducing the substantive sentence in the established facts and circumstances of the case. 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."

(emphasis supplied).

Herein, we may also usefully refer to the observations of this Court in the case of T.K. Gopal alias Gopi v. State of Karnataka (2000 6 SCC 168) wherein it was held :

"The question of sentence in such cases was considered by Krishna Iyer, J. in Phul Singh v.

State of Haryana (1979 4 SCC 413) in which he observed that sentencing efficacy in cases of lust-loaded criminality cannot be simplistically assumed by award of long incarceration, for, often that remedy aggravates the malady. He further observed that a hypersexed homo sapien cannot be rehabilitated by humiliating or harsh treatment. In that case it was found that the appellant was a young man of 22 years with no criminal antecedents save the offence of rape committed by him. The learned Judge thought that given correctional courses through meditational therapy and other measures, his erotic aberrations may wither away, particularly as the appellant had a reasonable prospect of shaping into a balanced person. But, this theory was not followed in later decisions as it was found that in spite of devices having been employed and adopted within the jail premises so as to reform the offenders, there was negligible improvement in the commission of crime. Crime, instead of declining, had increased and, today, it has assumed dangerous proportions. While one person is reformed and moves out of jail, another offender is born. Consequently, in two recent decisions, relating to the offence of rape, one rendered by the present Chief Justice of India and the other by brother Lahoti, the sentence was enhanced in State of Karnataka v. Krishnappa (2000 4 SCC 75) while in the other case, namely, State of Rajasthan v. N.K. (2000 5 SCC 30) the order of acquittal passed by the High Court was set aside and substituted by an order of conviction."

In view of the above, we think it appropriate to set aside the impugned order of the High Court, allow this appeal and restore the sentence awarded by the trial court and direct the respondent to surrender to the authorities and serve out the sentence awarded to him by the trial court.

The appeal is allowed.