A

STATE OF HARYANA

v.

PREM CHAND AND ORS.

DECEMBER 14, 1989

B [B.C. RAY AND S. RATNAVEL PANDIAN, JJ.]

Constitution of India, 1950: Articles 137 and 145—Review of judgment—Power exercisable subject to the rules framed.

Supreme Court Rules, 1966: Order XL, Rule 1—Review of judgment in criminal proceeding—Only on ground of error apparent on the face of the record.

C

Indian Penal Code, 1860: Section 376—Character or reputation of victim—Not relevant in awarding sentence—Not a mitigation or extenuating circumstance under proviso to so. S.376(2).

D

This Court rendered a judgment in this case on 31.1.1989 confirming the conviction of both the respondents and reducing the sentence of imprisonment from 10 years to 5 years by invoking the proviso to Section 376(2) I.P.C.

E **The petitioner State has sought review of the said judgment.**

Dismissing the review petitions, this Court,

HELD: 1. As per order XL Rule 1 of Supreme Court Rules, 1966, review in criminal proceedings is limited to errors apparent on the face

F **of record. In the instant case, there is no error apparent on the face of the record necessitating review of the judgment.** [498F]

P.N. Eswara Iyer and Ors. **v.** *Registrar, Supreme Court of India,* **[1980] 4 SCC 680;** *Sow Chandra Kanta and Anr.* **v.** *Sheikh Habib,* **[1975] 3 SCR 933;** *Sheonandan Paswan* **v.** *State of Bihar and Ors.,*

G **[1983] 4 SCC 104, relied on.**

2. The very confirmation of the conviction accepting the sole testimony of the victim, rejecting the arguments of the defence counsel, is itself a clear indication that this court was of the view that the character or reputation of the victim has no bearing or relevance either in the

H **matter of adjudging the guilt of the accused or imposing punishment**

under Section 376 I.P.C. Such factors are wholly alien to the very scope and object of Section 376 and can never serve either as mitigating or extenuating circumstances for imposing the sub-minimum sentence with the aid of the proviso to Section 376(2) of the I.P.C. [499G-H]

3. This Court neither characterised the victim, as a woman of questionable character and easy virtue nor made any reference to her character or reputation in any part of the judgment but used the expression "conduct" in the lexigraphical meaning for the limited purpose of showing as to how she had behaved or conducted herself in not telling any one for about 5 days about the sexual assault perpetrated on her till she was examined on 28.3.1984 by the sub-Inspector of Police. The word "conduct" was not used with reference to the character or reputation of the victim. [500B-C]

4. This Court is second to none in upholding the decency and dignity of womanhood and this Court has not expressed any view in the judgment that character, reputation or status of a raped victim is a relevant factor for consideration by the Court while awarding the sentence to a rapist. [500D]

CRIMINAL APPELLATE JURISDICTION: Review Petition (Criminal) Nos. 241-242 of 1989.

IN

Criminal Appeal Nos. 544-545 of 1986.

Mahabir Singh for the Petitioner.

A.N. Mulla, S.B. Upadhyay for the Respondents.

The Order of the Court was delivered by

RAY, J. It is very unfortunate that a controversy has arisen following the judgment sought to be reviewed in Criminal Appeal Nos. 544-45 of 1986 rendered by this Bench on 31st January 1989 whereby this Court while confirming the conviction of both the respondents/accused reduced the sentence of imprisonment in respect of each of the respondents from 10 years to 5 years by invoking the proviso to Section 376(2) of the Indian Penal Code observing "the peculiar facts and

A circumstances of this case coupled with the conduct of the victim girl, in our view, do not call for the minimum sentence as prescribed under Section 376(2)." The State of Haryana has filed the above petitions seeking review of the judgment and to "pass such other or further order(s) as may be necessary in the circumstances of the case."

B At the outset, we may examine the scope of review of a judgment in a criminal case already pronounced by this Court. Article 137 of the Constitution of India gives the power to the Supreme Court to review its judgment but such special power is exercisable in accordance with, and subject to, the rules of this Court made under Article 145 of the Constitution of India.

C Order XL, Rule 1 of the Supreme Court Rules provides:

> "The Court may review its judgment or order but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, Rule 1 of
> D the Code and in a criminal proceeding except on the ground of an error on the face of the record."

This Court in a series of decisions has examined the scope of review in criminal cases after the judgment pronounced or order made. Though we are not citing all those decisions, we may refer to a
E few.

In the case of *P.N. Eswara Iyer and Ors* v. *Registrar, Supreme Court of India,* [1980] 4 SCC 680 the Constitution Bench of this Court while considering the rule observed thus:

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> "The rule (Order XL, Rule 1), on its face affords a wider set of grounds for review for orders in civil proceedings, but limits the ground vis-a-vis criminal proceedings to 'errors apparent on the face of the record.'."

See also *Sow Chandra Kanta & Anr.* v. *Sheik Habib,* [1975] 3
G SCR 933 and *Sheonandan Paswan* v. *State of Bihar and Orders,* [1983] 4 SCC 104.

In our considered view, when the present matter is exanined in the light of the decisions referred to above, we find no error apparent on the face of the record necessitating review of the judgment and as
H such these review petitions are liable to be dismissed.

We have heard the arguments of the learned senior counsel, Mr. Rajinder Sachar who though initially started his arguments on behalf of the People's Union for Civil Liberties ultimately advanced his arguments on behalf of the State in these review petitions on the representation made by Mr. Mahabir Singh, the learned counsel for the State. Mr. R.K.P. Shankar Dass who advanced his arguments on behalf of Mahila Sanyukt Morcha stated that his arguments may also be treated as supplemental to the arguments of Mr. Rajinder Sachar. Mr. Mulla, the learned senior counsel appeared on behalf of the respondents.

Although we have found that the Review Petitions are liable to be dismissed on the ground that there is no error apparent on the face of the record, we, however, in view of the elaborate submissions made by the various learned counsel appearing before us, would like to make the following observations.

The facts of the case are briefly stated in the Criminal Appeals and, therefore, it is not necessary to restate the same. Suffice to say that during the course of the hearing on the appeals on behalf of the respondents/accused, it has been urged by the learned defence counsel that the victim Suman Rani was a woman of questionable character and easy virtue with lewd and lascivious behaviour and as such her version is not worthy of acceptance. After considerable debate on the merits of the case, the argument was confined only with regard to the quantum of sentence. after meticulously examining the entire matter, this Court came to the conclusion that the proviso to Section 376(2) I.P.C. could be invoked having regard to the peculiar facts and circumstances of the case coupled with the conduct of the victim and the mandatory sentence provided under the penal provision is not called for.

At this juncture, we would like to point out that the very confirmation of the conviction accepting the sole testimony of the victim Suman Rani rejecting the arguments of the defence counsel is itself a clear indication that this Court was of the view that the character or reputation of the victim has no bearing or relevance either in the matter of adjudging the guilt of the accused or imposing punishment under Section 376 I.P.C. We would like to state with all emphasis that such factors are wholly alien to the very scope and object of Section 376 and can never serve either as mitigating or extenuating circumstances for imposing the sub-minimum sentence with the aid of the proviso to Section 376(2) of the I.P.C. In fact, we have expressed our

A views in the judgment itself stating "No doubt an offence of this nature has to be viewed very seriously and has to be dealt with condign punishment."

We have neither characterised the victim, Suman Rani as a woman of questionable character and easy virtue nor made any reB ference to her character or reputation in any part of our judgment but used the expression "conduct" in the lexigraphical meaning for the limited purpose of showing as to how Suman Rani had behaved or conducted herself in not telling any one for about 5 days about the sexual assault perpetrated on her till she was examined on 28.3.1984 by the Sub-Inspector of Police (PW-20) in connection with the compC laint given by Ram Lal (PW-14) on 22.3.1984 against Ravi Shanker. In this connection, we make it further clear that we have not used the word 'conduct' with reference to the character or reputation of the victim—Suman Rani.

Before parting with this matter, we would like to express that D this Court is second to none in upholding the decency and dignity of woman-hood and we have not expressed any view in our judgment that character, reputation or status of a raped victim is a relevant factor for consideration by the Court while awarding the sentence to a rapist.

With the above observations, we dismiss the Review Petitions.

E

G.N. Petitions dismissed.