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STATE OF RAJASTHAN
v.
GAJENDRA SINGH
(Criminal Appeal No. 1217 of 2008)

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AUGUST 4, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM
SHARMA, JJ.]

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Sentence/Sentencing – Conviction u/s 376 IPC – Trial court imposing sentence of ten years R1 – Sentence reduced to five years (below the minimum prescribed) by High Court – Propriety of – Held: Proviso to s. 376 IPC permitting the court to reduce the sentence below the minimum prescribed only on recording of ‘adequate and special reasons’ – Failure on the part of High Court to record such reasons, does not warrant reducing of the sentence – Criminal law adheres to the principle of proportionality in sentencing – It is duty of the court to award proper sentence in view of the nature and manner of commission of offence – Undue sympathy to impose inadequate sentence would do more harm to justice system – Sentence is modified to seven years i.e. minimum prescribed – Penal Code, 1860 – s. 376 proviso.

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Words and Phrases– ‘Rape’– Meaning of in the context of IPC.

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Respondent was tried u/ss 376, 323 and 341 IPC. Trial court convicted and sentenced to undergo RI for ten years for the offence u/s 376 IPC. Respondent filed appeal praying for reduction of sentence. High Court, though noted that the minimum sentence u/s 376 IPC is seven years, yet reduced the sentence to five years RI in view of proviso to the Section, permitting the court to reduce the sentence below the minimum prescribed. Hence the present appeal.

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Partly allowing the appeal, the Court

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HELD: 1.1 The High Court was not justified in reducing the sentence below the prescribed minimum. The respondent shall serve the minimum of seven years rigorous imprisonment. In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no strait-jacket formula can be indicated. What is applicable to trial Courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court. The requirement in law as to adequate and special reasons is cumulative. The High Court has not recorded any reason, much less any adequate and special reasons for reducing the sentence. Paras 23, 24 and 25] [826 E,F,G, 826 G,H, 827 A]

1.2 Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tampered 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. [Para 12] [822 F,G,H, 823, A,B]

1.3 After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggra-

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A vating and mitigating factors and circumstances in which
a crime has been committed are to be delicately balanced
on the basis of really relevant circumstances in a dispa-
sionate manner by the Court. [Para 16] [824 E,F]

B *Dennis Councle MCGDautha v. State of Callifornia*: 402
US 183: 28 L.D. 2d 711 – referred to.

C 1.4 The criminal law adheres in general to the princi-
ple of proportionality in prescribing liability according
to the culpability of each kind of criminal conduct. It ordi-
narily allows some significant discretion to the Judge in
arriving at a sentence in each case, presumably to permit
sentences that reflect more subtle considerations of cul-
pability that are raised by the special facts of each case.
D Judges in essence affirm that punishment ought always
to fit the crime; yet in practice sentences are determined
largely by other considerations. Sometimes it is the cor-
rectional needs of the perpetrator that are offered to jus-
tify a sentence. Sometimes the desirability of keeping him
out of circulation, and sometimes even the tragic results
E of his crime. Inevitably these considerations cause a de-
parture from *just desert* as the basis of punishment and
create cases of apparent injustice that are serious and
widespread. But in fact, quite apart from those consid-
erations that make punishment unjustifiable when it is out
of proportion to the crime, uniformly disproportionate
F punishment has some very undesirable practical conse-
quences. [Paras 14 and 15] [823 G,H, 824 A,B,C,D,E]

G 1.5 Imposition of sentence without considering its
effect on the social order in many cases may be in reality
a futile exercise. The social impact of the crime, e.g. where
it relates to offences against women, dacoity, kidnapping,
misappropriation of public money, treason and other of-
fences involving moral turpitude or moral delinquency
which have great impact on social order, and public inter-
est, cannot be lost sight of and per se require exemplary
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treatment. 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. [Para 18] [825 C,D,E] A
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1.6 Undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, 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 etc. [Para 13] [823 E,F] C

Mahesh v. State of M.P. 1987 (2) SCR 710; *Sevaka Perumal etc. v. State of Tamil Nadu* AIR 1991 SC 1463; *Dhananjay Chatterjee v. State of W.B.* 1994 (2) SCC 220; *Ravji v. State of Rajasthan*, 1996 (2) SCC 175; *State of M.P. v. Ghanshyam Singh* 2003(8) SCC 13; *State of M.P. v. Babbu Barkare alias Dalap Singh* 2005 (5) SCC 413 – relied on. D
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"Criminal Law" by Stephen 9th Ed. p.262; 'Encyclopedia of Crime and Justice' Volume 4, page 1356; *Halsbury's Statutes of England and Wales (Fourth Edition) Volume 12; 'Law in Changing Society' by Friedman* – referred to. F

Case Law Reference

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|----------------------------|--------------|---------|---|
| 1987 (2) SCR 710 | Relied on. | Para 12 | |
| AIR 1991 SC 1463 | Relied on. | Para 13 | |
| 402 US 183: 28 L.D. 2d 711 | Referred to. | Para 16 | G |
| 1994 (2) SCC 220 | Relied on. | Para 19 | |
| 1996 (2) SCC 175 | Relied on. | Para 20 | |
| 2003(8) SCC 13 | Relied on. | Para 21 | |
| 2005 (5) SCC 413 | Relied on. | Para 21 | H |

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 1217 of 2008

From the final Judgment and Order dated 22.5.2006 of
the High Court of Judicature for Rajasthan at Jaipur Bench,
Jaipur in S.B. Criminal Appeal No. 1105 of 2002

B Madhurima Tatia and Aruneshwar Gupta for the Appellant.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

C 2. Since, the only question involved in this appeal is whether
learned Single Judge was right in reducing the sentence, as
imposed by the trial court on respondent, detailed reference to
the factual aspects is unnecessary.

D 3. Respondent faced trial for alleged commission of of-
fences punishable under Sections 376, 323 and 341 of the In-
dian Penal Code, 1860 (in short 'the IPC'). He was sentenced
to undergo rigorous imprisonment for 10 years, six months and
six months respectively for the aforesaid three offences. Addi-
tionally, fine was imposed in each case with default stipulations.

E 5. Respondent filed an appeal before the High Court ques-
tioning correctness of the judgment passed by the learned Ad-
ditional Sessions Judge, Fast Track Court No.3, Bharatpur, in
Sessions Case No.30 of 2002. By the impugned judgment, the
F High Court directed the sentence to be reduced to a period of
five years rigorous imprisonment for the offence relating to
Section 376 IPC and also reduced the sentence of six month's
simple imprisonment to one month's simple imprisonment in
the case of Section 341 IPC, as according to the High Court,
G the same was the maximum sentence.

H 6. It is to be noted that before the High Court, the respon-
dent did not question the conviction, but only prayed for reduc-
tion of sentence. Though, the High Court noted that under Sub-
Section (1) of Section 376 IPC, the minimum sentence is of
seven years but that is subject to the provision that the court

may for "adequate and special reasons", impose a sentence of imprisonment for a terms of less than seven years. Without indicating any reason, the High Court held that this was a case where the proviso permitting the court to reduce the sentence below the minimum prescribed was applicable.

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7. Learned counsel for the appellants-State submitted that the High Court has not even indicated any reason or basis for directing reduction of sentence.

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8. There is no appearance on behalf of the respondent in spite of service of notice.

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9. The crucial question which needs to be decided is the proper sentence and acceptability of views expressed by learned Single Judge. It is to be noted that the sentences prescribed for offences relating to Section 376 are imprisonment for life or up to a period of 10 years, but should not be less than seven years unless special and adequate reasons are cited by the Court for giving lesser punishment.

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10. The offence of rape occurs in Chapter XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'Sexual offence', which encompasses Sections 375, 376, 376-A, 376-B, 376-C, and 376-D. 'Rape' is defined in Section 375. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i.e. 376-A, 376-B, 376-C and 376-D. The fact that sweeping changes were introduced reflects the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape' or 'Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co. Litt. 123-b); or as expressed more fully, rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will' (Hale PC 628). The es-

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- A sential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape; 1 Hon.6, 1a, 9 Edw. 4, 26 a (Hale PC 628). In the crime of rape, 'carnal knowledge' means the penetration to the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Stephen's "Criminal Law" 9th Ed. p.262). In 'Encyclopedia of Crime and Justice' (Volume 4, page 1356) it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsbury's Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation with violence of the private person of a woman-an-outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order.
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- D 11. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. The offender robs the victim of her most valuable and priceless possession that is dignity.
- E 12. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a corner-stone of the edifice of "order" should meet the challenges confronting the society. 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
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machinery or the 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. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organized crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh v. State of M.P.* [(1987) 2 SCR 710], this Court while refusing to reduce the death sentence observed thus:

“It will be a mockery of justice to permit the accused to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of the country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon.”

13. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, 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 etc. This position was illuminatingly stated by this Court in *Sevaka Perumal etc. v. State of Tamil Nadu* (AIR 1991 SC 1463).

14. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in

- A each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the
- B correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent
- C injustice that are serious and widespread.

15. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Even now for a single grave infraction drastic sentences are imposed.
- D Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment
- E has some very undesirable practical consequences.

16. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle MCGDautha v. State of California*: 402 US 183: 28 L.D. 2d 711 that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various
- G circumstances germane to the consideration of gravity of crime,
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the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished. A

17. The object should be to protect the society and to deter the criminal in achieving the avowed object to law by imposing appropriate sentence. It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. B

18. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. 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. C
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19. In *Dhananjay Chatterjee v. State of W.B.* (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. F
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20. Similar view has also been expressed in *Ravji v. State of Rajasthan*, (1996 (2) SCC 175). It has been held in the said H

A case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. 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".

21. These aspects have been elaborated in *State of M.P. v. Ghanshyam Singh* (2003(8) SCC 13), and *State of M.P. v. Babbu Barkare alias Dalap Singh* (2005 (5) SCC 413).

22. Both in cases of sub-sections (1) and (2) the Court has the discretion to impose a sentence of imprisonment less than the prescribed minimum for 'adequate and special reasons'. If the Court does not mention such reasons in the judgment there is no scope for awarding a sentence lesser than the prescribed minimum.

23. In order to exercise the discretion of reducing the sentence the statutory requirement is that the Court has to record "adequate and special reasons" in the judgment and not fanciful reasons which would permit the Court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no strait-jacket formula can be indicated. What is applicable to trial Courts regarding recording reasons for a departure from minimum sentence is equally applicable to the High Court.

24. The requirement in law as to adequate and special reasons is cumulative. The High Court has not recorded any reason, much less any adequate and special reasons for reducing the sentence. The High Court was, therefore, not justified in reducing the sentence below the prescribed minimum.

25. In the background of what has been stated above, we set aside the judgment of the High Court to the extent that in respect of the offence punishable under Section 376 IPC, the respondent shall serve the minimum of seven years rigorous imprisonment. A

26. The appeal is allowed to the aforesaid extent. B

K.K.T.

Appeal partly allowed.