

STATE OF RAJASTHAN

v.

MADAN SINGH

(Criminal Appeal No. 234 of 2008)

FEBRUARY 1, 2008

[DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.]

Penal Code, 1860 – s. 376 (2)(f) – Rape of a minor girl – High Court altered the sentence from 10 years to 7 years for offence u/s 376(2)(f) – Propriety of – Held: Sentence less than minimum provided can be awarded when there are adequate and special reasons – On facts, there were no extenuating or mitigating circumstances justifying imposition of any sentence less than the prescribed minimum – Thus, order of High Court not sustainable and set aside – Sentence/Sentencing.

Sentence/Sentencing – Rape case – Award of sentence – General guidelines – Explained.

The respondent allegedly committed rape on a minor girl aged 10 years. The trial court convicted the respondent-accused under section 376 (2)(f) and imposed 10 years imprisonment. However, the High Court on considering the facts that the accused suffered custodial sentence of about 6 years and he being the only bread earner of the family with two kids and being young, reduced the sentence from 10 years to 7 years. Hence the present appeal.

Allowing the appeal, the court

HELD: 1.1 The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The

A socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. 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

B 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

C of the heinous crime of rape on innocent helpless girls of tender years, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. [Para 8] [279-B, C, D, E]

D 1.2 The legislative mandate to impose a sentence for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC

E lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. It is a fundamental rule of construction that a proviso must be considered with

F relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and

G adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule of universal application can be laid down in that behalf. [Para 9] [279-G, H; 280-A, B, C]

H

2. 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. In view of the aforementioned position in law the judgment of the High Court reducing the sentence to 7 years is clearly unsustainable and is set aside. [Paras 8 and 10] [279-E, F; 280-D]

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 234 of 2008.

From the final Judgment dated 28.10.2005 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. CrI. J.A. No. 581/2001.

Milind Kumar and Aruneshwar Gupta for the Appellant.

The Judgment of the Court was delivered by

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

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Rajasthan High Court at Jodhpur. A learned Single Judge by the impugned judgment while upholding the conviction for offence punishable under Section 376 (2)(f) of the Indian Penal Code, 1860 (in short the 'IPC'), reduced the sentence from 10 years to 7 years.

3. The respondent allegedly committed rape on a minor girl aged about 10 years on 29.8.1999. There is no need to refer to the factual position in detail as the High Court has upheld the conviction. It only needs to be noted that on the basis of the evidence adduced, the trial Court found that the victim was aged about 10 years. The only point which was urged before the High Court in addition to the question of sentence was that the offence at best was one under Section 376 read with Section 511 IPC. It was submitted that the accused had suffered custody of about

A 6 years and, therefore, he being only bread earner of the family and being of young age, the sentence should be reduced to the period already undergone. The plea was opposed by the State stating that in view of the statutory minimum sentence provided, no leniency was called for. The High Court found that the trial
B Court was justified in holding the appellant guilty of offence punishable under Section 376 (2)(f) of IPC. As the victim was aged about 10 years, it held that considering the factual position after assigning reason the minimum sentence can be reduced. Having so observed, the High Court reduced the sentence to seven years and a fine of Rs.5,000/- with default stipulation with
C the following conclusions was imposed:

“After having considered the entire matter and also taking into consideration the submission of learned counsel that the accused is a young person who is the only bread
D earner of his family and his kids who have now grown up need his supervision, I deem it proper to reduce his sentence under Section 376(2)(f) to a term of 7 years with fine of Rs.5,000/- in default, to further suffer one year’s simple imprisonment and modify the order of learned trial
E Court to that extent.”

4. Learned counsel for the appellant submitted that when minimum sentence is prescribed, only for adequate and special reasons the sentence less than minimum provided for can be imposed. In the instant case the reasons indicated did not meet
F the requirement of law.

5. The respondent has not entered appearance in spite of service of notice.

6. Both in cases of sub-sections (1) and (2) of Section 376 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.
G

H 7. It is to be noted that in sub-section(2) of Section 376

I.P.C. more stringent punishment can be awarded taking into account the special features indicated in the said sub-section. The present case is covered by Section 376(2)(f) IPC i.e. when rape is committed on a woman when she is under 12 years of age. Admittedly, in the case at hand the victim was 10 years of age at the time of commission of offence.

8. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. 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 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.

9. The legislative mandate to impose a sentence for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either

A description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age is not less than 10 years' RI, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule of universal application can be laid down in that behalf.

D 10. In view of the position in law indicated above, the judgment of the High Court reducing the sentence to 7 years is clearly unsustainable and is set aside. The sentence of 10 years as imposed by the trial Court is restored.

E 11. The appeal is allowed.

N.J.

Appeal allowed.