STATE OF M.P. A

v.

BALA @ BALARAM

OCTOBER 3, 2005

[R.C. LAHOTI, CJ., G.P. MATHUR AND P.K. BALASUBRAMANYAN, JJ.] B

Penal Code, 1860—Sections 376(1) and (2) proviso, 376(2)(g)—Commission of Rape—Award of sentence of 10 years RI and fine—Reduction of, to the period already undergone about 9 months, by High Court—Correctness of—Held: High Court reduced the sentence inadequately without assigning adequate and special reasons—Hence, order illegal and set aside—Matter remitted back to High Court for fresh consideration—Sentencing. C

The question which arose for consideration in this appeal was with regard to the legality of the order passed by the High Court in reducing the sentence of 10 years R. I. awarded passed by the trial court for commission of offence under section 376(2)(g) IPC, to the period already undergone about 9 months. D

Allowing the appeal and remitting the matter to the High Court, the Court E

HELD: *Per G.P. Mathur J. (For himself and CJI):*

1.1. Sub-section (1) of Section 376 I.P.C. provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine. In the category of cases covered under sub-section (2) of Section 376, the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. The proviso appended to sub-section (1) lays down 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 7 years. There is a similar proviso to sub-section (2) which empowers the Court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment. [862-A-B] F G

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A 1.2. The High Court in the impugned order has awarded a sentence which is not only grossly inadequate but is also contrary to express provision of law. It did not assign any satisfactory reason much less adequate and special reasons for reducing the sentence to a term which is far below the prescribed minimum and passed a very short and cryptic judgment. It disposed of the appeal in a most unsatisfactory manner without considering the evidence B adduced by the parties, exhibiting complete non-application of mind. Therefore, the sentence awarded by the High Court is clearly illegal and as such the order of High Court is set aside and matter is remitted back to the High Court for a fresh consideration. [862-B-C-D]

C *Amar Singh* v. *Balwinder Singh,* [2003] 2 SCC 518, referred to.

Per P.K. Balasubramanyan (Supplementing):

1.1. To view an offence of rape once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the D circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Section 376(1) and 376(2) I.P.C. give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the E exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason. [864-B-C-D]

F 1.2. It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, Courts cannot forget their duty to society and to the victim. The Court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal G life for the victim. The Court cannot afford to forget these aspects while imposing a punishment on the aggressor. The Court has to do justice to the society and to the victim on the one hand and to the offender on the other. The proper balance must be taken to have been stuck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by the Court and the permitted departure therefrom made only for compelling and

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convincing reasons. [865-H; 866-A-B] A

Earabhadrappa **v.** *State of Karnataka,* **[1983] 2 S.C.C. 330;** *Rajendra Prasad* **v.** *State of Uttar Pradesh,* **[1979] 3 S.C.C. 646 and** *State of M.P.* **v.** *Munna Choubey and Anr.,* **[2005] 2 S.C.C. 710, referred to.**

Kautilyan Jurisprudence by V.K. Gupta, **referred to.** B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1277 of 2005.

From the Judgment and Order dated 7.8.2003 of the Madhya Pradesh High Court in Crl. A. No. 415 of 2001. C

R.P. Gupta, C.D. Singh, Sanjay Kumar Singh, Gunratan Pandey and Ms. Kiran Suvarna for the Appellant.

The Judgment of the Court was delivered by

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G. P. MATHUR, J. 1. Delay in filing the special leave petition is condoned.

2. Leave granted.

3. This appeal has been preferred by the State of M.P. against the judgment and order dated 7.8.2003 of Justice N.S. Azad of M.P. High Court E in Crl. Appeal No. 415 of 2001.

4. The trial Court convicted the accused under Sections 363, 366 and 376 (2)(g) I.P.C. and sentenced him to various terms of imprisonment and fine. He was awarded a sentence of 10 years R.I. and a fine of Rs. 3,000 and in default to undergo R.I. for a further period of six months under Section F 376(2)(g) I.P.C. The High Court partly allowed the appeal and while upholding the conviction of the accused on various counts reduced the sentence to the period already undergone which is nearly 9-1/2 months.

5. Learned counsel for the appellant has submitted that the sentence imposed by the High Court is wholly inadequate looking to the nature of the G offence and is contrary to the minimum prescribed by law.

6. Sub-section (1) of Section 376 I.P.C. provides that whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than H

A 7 years but which may be for life or for a term which may extend to 10 years and shall also be liable to fine. In the category of cases covered under sub-section (2) of Section 376, the sentence cannot be less than 10 years but which may be for life and shall also be liable to fine. The proviso appended to sub-section (1) lays down that the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment B for a term of less than 7 years. There is a similar proviso to sub-section (2) which empowers the Court to award a sentence of less than 10 years for adequate and special reasons to be mentioned in the judgment. The High Court in the impugned order has awarded a sentence which is not only grossly inadequate but is also contrary to express provision of law. The High C Court has not assigned any satisfactory reason much less adequate and special reasons for reducing the sentence to a term which is far below the prescribed minimum. Therefore, the sentence awarded by the High Court is clearly illegal.

7. That apart, the High Court has written a very short and cryptic D judgment. To say the least, the appeal has been disposed of in a most unsatisfactory manner exhibiting complete non-application of mind. There is absolutely no consideration of the evidence adduced by the parties.

8. Chapter XXIX of Code of Criminal Procedure deals with APPEALS. Section 384 Cr.P.C. empowers the appellate Court to dismiss an appeal E summarily if it considers that there is no sufficient ground for interference. Section 385 Cr.P.C. gives the procedure for hearing appeals not dismissed summarily and Section 386 Cr.P.C. gives the powers of the appellate Court. In *Amar Singh* v. *Balwinder Singh,* [2003] 2 SCC 518, the duty of the appellate Court while hearing a criminal appeal in the light of the aforesaid provisions F was explained and para 7 of the report reads as under :

> "7. The learned Sessions Judge after placing reliance on the testimony of the eye-witnesses and the medical evidence on record was of the opinion that the case of the prosecution was fully established. Surprisingly, the High Court did not at all consider the testimony of G the eye witnesses and completely ignored the same. Section 384 Cr.P.C. empowers the Appellate Court to dismiss the appeal summarily if it considers that there is no sufficient ground for interference. Section 385 Cr.P.C. lays down the procedure for hearing appeal not dismissed summarily and sub-section (2) thereof casts an obligation to send for the records of the case and to hear the parties. Section H

386 Cr.P.C. lays down that after perusing such record and hearing the appellant or his pleader and the Public Prosecutor, the Appellate Court may, in an appeal from conviction, reverse the finding and sentence and acquit or discharge the accused or order him to be re-tried by a Court of competent jurisdiction. It is, therefore, mandatory for the Appellate Court to peruse the record which will necessarily mean the statement of the witnesses. In a case based upon direct eye-witness account, the testimony of the eye-witnesses is of paramount importance and if the Appellate Court reverses the finding recorded by the Trial Court and acquits the accused without considering or examining the testimony of the eye-witnesses, it will be a clear infraction of Section 386 Cr.P.C. In *Biswanath Ghosh* v. *State of West Bengal and Ors.*, AIR (1987) SC 1155 it was held that where the High Court acquitted the accused in appeal against conviction without waiting for arrival of records from the Sessions Court and without perusing evidence adduced by prosecution, there was a flagrant mis-carriage of justice and the order of acquittal was liable to be set aside. It was further held that the fact that the Public Prosecutor conceded that there was no evidence, was not enough and the High Court had to satisfy itself upon perusal of the records that there was no reliable and credible evidence to warrant the conviction of the accused. In *State of UP* v. *Sahai and Ors.*, AIR (1981) SC 1442 it was observed that where the High Court has not cared to examine the details of the intrinsic merits of the evidence of the eye-witnesses and has rejected their evidence on the general grounds, the order of acquittal passed by the High Court resulted in a gross and substantial mis-carriage of justice so as to invoke extra-ordinary jurisdiction of Supreme Court under Article 136 of the Constitution."

9. Since the judgment of the High Court is not in accordance with law, we have no option but to set aside the same and to remit the matter back to the High Court for a fresh consideration of the appeal. The appeal preferred by the State of M.P. is accordingly allowed, the judgment and order of the High Court is set aside and the appeal is remanded back to the High Court for a fresh hearing after issuing notice to the accused respondent. It is made clear that we have not gone into the merits of the case and the High Court shall reappraise and examine the evidence on record and decide the appeal in accordance with law.

P.K. BALASUBRAMANYAN, J. I respectfully agree. My excuse for

A adding these few words is the perception that the awarding of inadequate punishments by courts is becoming disturbingly frequent.

2. The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment B for an offence under Section 376 I.P.C. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Sections 376(1) and 376(2) I.P.C. give the power to the court to award a sentence lesser than C the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of D the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason.

3. The punishments prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the concerned offence, its impact on the society and what the legislature considers as a punishment E suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it.

4. The rationale for advocating the award of a punishment commensurate with the gravity of the offence and its impact on society, is to ensure that F a civilized society does not revert to the days of 'an eye for an eye and a tooth for a tooth'. Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted.

5. Even in the time of Kautilya, the need for awarding just punishment G was recognized. According to Kautilya, "whoever imposes severe punishment becomes repulsive to people, while he who awards mild punishment becomes contemptible. The ruler just with the rod is honoured. When deserved punishment is given, it endows the subjects with spiritual good, material well being and pleasures of the senses." (See Kautilyan Jurisprudence by V.K. Gupta under the head 'Nature and Scope of Punishment'). This philosophy H

is woven into our statute and our jurisprudence and it is the duty of those who administer the law to bear this in mind. A

6. This Court has on a number of occasions indicated that the punishment must fit the crime and that it is the duty of the court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment. In *Earabhadrappa* v. *State of Karnataka,* [1983] 2 S.C.C. 330 this Court observed, "A sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders." In *Rajendra Prasad* v. *State of Uttar Pradesh,* [1979] 3 S.C.C. 646 Justice Sen stated, "Judges are entitled to hold their own views, but it is the bounden duty of the Court to impose a proper punishment, depending upon the degree of criminality and the desirability to impose such punishment as a measure of social necessity, as a means of deterring other potential offenders." B C D

7. It is not necessary to multiply authorities. In a recent decision in *State of M.P.* v. *Munna Choubey and Anr.*, [2005] 2 S.C.C. 710, this question has again been dealt with. This Court observed:

> "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 meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive 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." E F G

8. It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, courts cannot forget their duty to society and to the victim. The Court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to H

A the grave and which in most cases, practically ruins all prospects of a normal life for the victim. Could a Court afford to forget these aspects while imposing a punishment on the aggressor? I think not. The Court has to do justice to the society and to the victim on the one hand and to the offender on the other. The proper balance must be taken to have been stuck by the legislature. Hence, the legislative wisdom reflected by the statute has to be respected by
B the Court and the permitted departure therefrom made only for compelling and convincing reasons.

N.J. Appeal Allowed.