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SIRIYA @ SHRI LAL

v.

STATE OF MADHYA PRADESH
(Criminal Appeal No. 870 of 2008)

B

MAY 13, 2008

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

C

Penal Code, 1860 – s. 376 – Rape – By father of his daughter – Three eye-witnesses to the incident – Conviction and sentence of life imprisonment by courts below – On appeal held: In view of the evidence conviction and sentence justified.

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Sentencing – Sentencing system – Principles to be followed – Held: Principle of proportionality is a general rule – But in practice this rule is often deviated – Adoption of corrective or deterrent machinery in sentencing should be based on factual matrix, by delicately balancing the mitigating and aggravating circumstances – Courts are required to mould the sentencing system to meet the new challenges.

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Appellant-accused was charged for having raped his daughter. Three persons were eye-witnesses to the incident. Prosecutrix lodged FIR against the accused. Trial court convicted him u/s 376 IPC and sentence him to undergo imprisonment for life. High Court confirmed the conviction and sentence. Hence the present appeal.

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Dismissing the appeal, the Court

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HELD: 1. The evidence on records clinchingly nails the appellant as the offender. The father is supposed to protect the dignity and honour of his daughter. This is a fundamental facet of human life. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. The sanctity of father and daughter relationship gets polluted. It becomes an unpardonable act. It is not

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only a loathsome sin, but also abhorrent. The case at hand is a sad reflection on the present day society where a most platonic relationship has been soiled by the pervert and degrading act of the father. [Para 5] [427-D-F] A

2.1 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. [Para 7] [427-G, 428-A,B] B C D

2.2 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 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. [Para 7] [428-C,D] E F

2.3 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 G H

A manner in which it was executed or committed etc. [Para 8] [428-E,F]

Sevaka Perumal etc. v. State of Tamil Nadu 1991 (3) SCC 471 – relied on.

B 2.4 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 each case, presumably to permit
C 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
D 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 injustice that are serious and
E widespread. [Para 9] [428-F-H, 429-A,B]

2.5 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
F a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. [Para 10] [429-B,C]

G *Shailesh Jasvantbhai and Anr. v. State of Gujarat and Ors.* 2006 (2) SCC 359; *State of Karnataka vs. Raju* AIR 2007 SC 3225 – relied on.

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

H 2.6 In the present case, the accused's lustful acts have

indelible scar not only physically but also emotionally on the victim. No sympathy or leniency is called for. [Para 12] [429-F] A

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal
No. 870 of 2008

From the Judgment and final Order dated 18.1.2007 of the High Court of Madhya Pradesh, Jabalpur, Bench at Gwalior in CrI. Appeal NO. 441/2005 B

Kanhaiya Priyadarshi (SCLSC) for the Appellant.

C.D. Singh, Merusagar Samantray and Sunny Choudhary for the Respondent. C

The Judgment of the Court was delivered by

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

There can never be more shocking, depraved and heinous crime than when the father is charged of having raped his own daughter. He not only delicts the law but, it is a betrayal of trust. The father is the fortress and refuge of his daughter in whom the daughter reposes trust to protect her. Charged of raping his own daughter under his refuge and fortress is worse than the gamekeeper becoming a poacher and treasury guard becoming a robber. D E

2. The appellant questioned his conviction for offence punishable under Section 376 of the Indian Penal Code, 1860 (in short the 'IPC') as recorded by the learned Sessions Judge, Guna and sentence of imprisonment for life and fine of Rs.1,000/- with default stipulation before the Madhya Pradesh High Court. F

3. The High Court affirmed the conviction and the sentence.

4 Sans unnecessary details the background facts are as follows: G

The prosecutrix is the daughter of the appellant. The mother of the prosecutrix had died about 3 years back prior to the date of incident i.e. 5.2.2004. At the time of incident, the prosecutrix was residing with her father alongwith her three brothers. On H

- A 5.2.2004 the appellant took the prosecutrix (PW-4) aged around 13 years on his cycle to Raghogarh to purchase clothes for her. At around 3 p.m., the prosecutrix was coming back with him on his cycle when on the way, the appellant stopped his cycle near "Bawdi Kheda Ashram". Appellant then took the prosecutrix to a dilapidated house situated there and removed the clothes of the prosecutrix. When the prosecutrix cried, the appellant slapped her and forcibly committed rape on her. At that time, three persons-witnesses Kamarjeet, Promod and Suresh who were passing by, heard the shrieks of the prosecutrix, went inside the room and separated the appellant from the prosecutrix. Then, these witnesses took the prosecutrix and the appellant to the police station Vijaypur where the prosecutrix (PW-4) lodged the first information report (Ex. P-4) against the appellant. The prosecutrix (PW-4) was sent for medical examination. Dr. Chhaya Shrama (PW-2) examined the prosecutrix and found that her sexual character had started developing, pubic hairs were scanty and on internal examination, found old hymen ruptured at 11 o'clock position including the redness over it's posterior side. On the basis of this examination, the doctor opined that possibility of rape could not be denied. The vaginal swab of the prosecutrix was prepared and the panty of the prosecutrix was taken by the doctor and the same was sealed and handed over to the police for chemical examination. For confirmation of the age of the prosecutrix, her x-ray was taken and as per the x-ray report (Ex.P-1) the age of the prosecutrix was found above 17 years and below 19 years. The appellant was arrested and he was also sent for medical examination. According to his medical report (Ex.P-3), the appellant was found competent to perform sexual intercourse. Thus, according to the prosecution, the appellant committed rape on the prosecutrix (PW-4), who is his own daughter. After investigation, charge-sheet was filed. After committal of the case, charge under Section 376(1) of I.P.C. was framed against the appellant.

The accused took the plea of false implication which was not accepted by the trial Court. He was convicted and sentenced as aforestated. He preferred an appeal before the High Court.

Before the High Court it was the stand of the appellant that his brother wanted to grab land and property and, therefore, the prosecutrix was under his influence and on being tutored had deposed falsely against the appellant. It was also stated that three other witnesses had deposed under the influence of the villagers. It was stated that it is unnatural that the father would sexually assault his daughter. It is also stated that the High Court without analyzing the evidence dismissed the appeal.

In support of the appeal, the stands taken before the trial Court and the High Court were re-iterated. It was submitted that the age of the prosecutrix was about 12 years at the time of incidence. The mother of the prosecutrix had died and, therefore, to look after her well being reduction in sentence should be given.

Learned counsel for the State supported the judgment and submitted that nothing more degrading could have been done by a father and, therefore, no leniency is called for.

5. The case at hand shows to what bottomless pit speed of depravation and lust a person can go down. As indicated at the threshold, the custodian of the trust has betrayed the same. The father is supposed to protect the dignity and honour of his daughter. This is a fundamental facet of human life. If the protector becomes the violator, the offence assumes a greater degree of vulnerability. The sanctity of father and daughter relationship gets polluted. It becomes an unpardonable act. It is not only a loathsome sin, but also abhorrent. The case at hand is a sad reflection on the present day society where a most platonic relationship has been soiled by the pervert and degrading act of the father. The evidence on records clinchingly nails the appellant as the offender.

6. The next question is whether any lenience in sentence is called for.

7. 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

A through instrumentality of criminal law. Undoubtedly, there is a cross
B cultural conflict where living law must find answer to the new chal-
C lenges and the courts are required to mould the sentencing sys-
D tem 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 chal-
lenges 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 soci-
ety". Therefore, 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 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.

E 8. Therefore, undue sympathy to impose inadequate sen-
F tence 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* (1991 (3) SCC 471).

G 9. The criminal law adheres in general to the principle of
H proportionality in prescribing liability according to the culpabil-
ity of each kind of criminal conduct. It ordinarily 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 culpability that are raised by the spe-
cial facts of each case. Judges in essence affirm that punish-
ment ought always to fit the crime; yet in practice sentences are

determined largely by other considerations. Sometimes it is the 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 injustice that are serious and widespread.

10. 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 circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

11. These aspects were highlighted in *Shailesh Jasvantbhai and Anr. v. State of Gujarat and Ors.* [2006 (2) SCC 359] and *State of Karnataka vs. Raju* (AIR 2007 SC 3225).

12. In this case, the accused's lustful acts have indelible scar not only physically but also emotionally on the victim. No sympathy or leniency is called for.

13. Looked at from any angle the appeal is without merit and deserves to be dismissed which we direct.

K.K.T.

Appeal dismissed.