

A STATE OF KARNATAKA BY NONAVINAKERE POLICE
v.
SHIVANNA @ TARKARI SHIVANNA
(Special Leave Petition (Crl.) No. 5073 of 2011)

APRIL 25, 2014

B [GYAN SUDHA MISRA AND V. GOPALA GOWDA, JJ.]

Penal Code, 1860 – s.376 – Rape – Consistent recurrence of rape and gang rape all over the country including the metropolitan cities – Reform in Code of Criminal Procedure – Requirement of – Fast track procedure for dealing with cases of rape and gang rape – Medical Examination of the victim – Power exercised by Supreme Court u/Art.142 of the Constitution – Interim directions issued in the form of mandamus to all the police stations in charge in the entire country – Upon receipt of information relating to commission of offence of rape, the Investigating Officer to take immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for recording her statement u/s.164 CrPC – A copy of the statement u/s.164 CrPC to be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement u/s.164 CrPC be not disclosed to any person till charge sheet/report u/s.173 CrPC is filed – The Investigating Officer, as far as possible, to take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate – The Investigating Officer to record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate – If any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer to record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate – s.164 A CrPC inserted by Act 25 of 2005 in Cr.P.C. imposes obligation on the part of

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Investigating Officer to get the victim of the rape immediately medically examined – A copy of the report of such medical examination to be immediately handed over to the Magistrate who records the statement of the victim u/s.164 CrPC – Code of Criminal Procedure, 1973 – ss.164, 164A and 173 – Constitution of India, 1950 – Art. 142.

CRIMINAL APPELLATE JURISDICTON : Special Leave Petition (Crl.) No. 5073 of 2011.

From the Judgment & Order dated 19.01.2010 of the High Court of Karnataka at Bangalore in Criminal Appeal No. 1215 of 2006.

V.N. Raghupathy for the Appellant.

Pragati Neekra, Ardhendumauli Kumar Prasad, Ranjan Mukherjee, Kamal Mohan Gupta, B. Krishna Prasad, Arputham, Aruna & Co., D. Mahesh Babu, V.N. Raghupathy, Liz Mathew, A.K. Kaul, R. Nedumaran, P.K. Tuli, B.V. Balaram Das, Anip Sachthey, K.N. Madhusoodhanan, T.G. Narayanan Nair, Aniruddha P. Mayee for the Respondent.

The following Order of the Court was delivered

O R D E R

1. Vide order dated 30.08.2013, we had proposed to consider this matter on merit after service of notice to the accused-respondent as we felt acutely concerned as to why the Union of India should not take initiative and steps to evolve a procedure for fast track justice to be adopted by the Investigating Agencies and the Fast Tract Courts by proposing amendments into the Cr.P.C. for speedy justice to the victim.

2. We had noted that the Fast Tract Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but we are perturbed and anguished to notice that although there are Fast Tract Courts

A for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

B 3. We had further observed that there is a pressing need to introduce drastic amendments into the Cr.P.C. in the nature of fast track procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Cr.P.C., 1973 involving trial for the charge of 'Rape' by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the Police under Section 161 Cr.P.C. to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination. We are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the police under Section 161 Cr.P.C. which is any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 Cr.P.C. The accused then can be committed to the appropriate Court for trial whereby the trial court can straightway allow cross examination of the witnesses whose evidence were recorded earlier before the Judicial Magistrate.

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4. What we wished to emphasize is that the recording of evidence of the victim and other witnesses multiple times ought to be put to an end which is the primary reason for delay of the trial. We are of the view that if the evidence is recorded for the first time itself before the Judicial Magistrate under Section 164 Cr. P.C. and the same be kept in sealed cover to be produced and treated as deposition of the witnesses and hence admissible at the stage of trial with liberty to the defence to cross-examine them with further liberty to the accused to lead his defence witness and other evidence with a right to cross-examination by the prosecution, it can surely cut short and curtail the protracted trial if it is introduced at least for trial of rape cases which is bound to reduce the duration of trial and thus offer a speedy remedy by way of a fast track procedure to the Fast Track Court to resort to.

5. Considering the consistent recurrence of the heinous crime of rape and gang rape all over the country including the metropolitan cities, we are of the view that it is high time such measures of reform in the Cr. P.C. be introduced after deliberation and debate by the legal fraternity as also all concerned.

6. We had therefore issued notice to the Union of India as also the Law Commission of India and all the State Law Commissions and the Law Secretaries of the States for eliciting their views on the subject. The Law Commission of India filed its response to the same, and although in principle agree that the proposed changes in the Cr.P.C. are justified, it is of the opinion that the same might prejudice the investigation of the case by the police. Thereafter, we thought appropriate to invite the views of the legal fraternity and hence a general notice was issued to the Members of the Bar to assist the Court considering the importance of the issue raised.

7. We, thereafter appointed the learned senior counsel Mr. Shekhar Naphade and Mr. U.U. Lalit, who appeared and addressed this Court. Learned senior advocate Mr. Shekhar Naphade agreed with the suggestions given by this Court that

A the statement of the victim of rape and gang rape may be and
 should be recorded under Section 164 of the Cr.P.C. which
 should be placed on record treated as evidence of the victim
 and may later be relied upon as evidence and then the accused
 B version and the evidence recorded at the instance of the victim.

8. Learned senior counsel Mr. Shekhar Naphade was
 good enough to give us a brief note in this regard. The learned
 Addl. Solicitor General Mr. Siddharth Luthra also ably assisted
 C us and drew the attention of this Court regarding the
 implications on the trial in case the statement of victim is
 recorded under Section 164 Cr.P.C. and is made admissible
 for the purpose of trial.

9. On considering the same, we have accepted the
 D suggestion offered by the learned counsel who appeared before
 us and hence exercising powers under Article 142 of the
 Constitution, we are pleased to issue interim directions in the
 form of mandamus to all the police station in charge in the
 entire country to follow the direction of this Court which are as
 E follows:

(i) Upon receipt of information relating to the
 commission of offence of rape, the Investigating
 Officer shall make immediate steps to take the
 victim to any Metropolitan/preferably Judicial
 F Magistrate for the purpose of recording her
 statement under Section 164 Cr.P.C. A copy of the
 statement under Section 164 Cr.P.C. should be
 handed over to the Investigating Officer immediately
 with a specific direction that the contents of such
 G statement under Section 164 Cr.P.C. should not be
 disclosed to any person till charge sheet/report
 under Section 173 Cr.P.C. is filed.

(ii) The Investigating Officer shall as far as possible
 H take the victim to the nearest Lady Metropolitan/
 preferably Lady Judicial Magistrate.

- (iii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/ preferably Lady Judicial Magistrate as aforesaid. A
- (iv) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate. B
- (v) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C. C
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10. A copy of this order thus be circulated to all the Director Generals of Police of all the States/Commissioner of Police in Metropolitan cities / Commissioner of Police of Union Territories who are then directed to send a copy of this order to all the police stations in charge in their States/Union Territories for its compliance in cases which are registered on or after the receipt of a copy of these directions. Necessary instructions by the DGPs/ Commissioners of Police be also issued to all the police station incharge by the DGPs/ Commissioner of Police incorporating the directions issued by us and recorded hereinbefore. E
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11. The matter be posted again after four weeks to ensure compliance of this order by the DGS & Commissioners of Police in the country before the appropriate Bench and also for such other further order or orders which may be considered necessary. G