

STATE OF MADHYA PRADESH
v.
BABLU
(Criminal Appeal No. 1845 of 2014)

AUGUST 26, 2014.

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Penal Code, 1860:

ss.354 and 323 – Accused outraging the modesty of a woman – Conviction and sentence of six months imprisonment by trial court – High Court maintaining the conviction but reducing the sentence to the period undergone i.e. 21 days – Held: High Court in a very casual manner reduced the sentence merely on the ground that the accused is first offender – If such a view is taken, the accused, who commit such offences, will be emboldened and repeat such crime, which is totally detrimental to the society – Impugned order of High Court reducing the sentence is set aside and, to avoid miscarriage of justice, sentence imposed by trial court is restored – Sentence/sentencing – Crimes against women.

Sentence/sentencing:

Six months imprisonment imposed by trial court for outraging the modesty of a woman – Plea for leniency and to maintain the sentence of period already undergone i.e. 21 days as reduced by High Court – Held: social impact of the crime where it relates to offences against women 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 – Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of

A *appropriate punishment – Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter-productive in the long run and against the interest of the society.*

B The instant appeal was filed against the order of the High Court reducing the sentence to the period already undergone i.e. 21 days from six months imprisonment awarded by the trial court u/ss 323 and 354 IPC to the accused who was found guilty of outraging the modesty of a woman. It was contended for the appellant-State that
C the High Court erred in reducing the sentence merely on the round that the respondent-accused was a first time offender and was facing trial since 2003.

Allowing the appeal, the Court

D HELD: 1.1. It is well settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. One
E should keep in mind the social interest and consciousness of the society while considering the determinative factor of sentence commensurate with the gravity and nature of crime. The punishment should not be so lenient that it shocks the conscience of the society.
F It is, therefore, the solemn duty of the Court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages any criminal and, as a result of the same, society suffers. [para 11] [473-C, D]

G *Sevaka Perumal vs. State of Tamil Nadu*, 1991 (2) SCR711 = (1991) 3 SCC 471; *Dhananjay Chatterjee @ Dhana vs. State of West Bengal* 1994 (1) SCR 37 = (1994) 2 SCC 220; *Mahesh and others vs. State of Madhya Pradesh*, 1987 (2) SCR 710 = (1987) 3 SCC 80, *Hazara Singh versus Raj Kumar* 2013 (5) SCR 979 = (2013) 9 SCC
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516; *Shailesh Jasvantbhai vs. State of Gujarat*, 2006 (1) SCR 477 = (2006) 2 SCC 359; *Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat* 2009 (8) SCR 719 = (2009) 7 SCC 254 – relied on.

1.2. Indisputably, 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 where it relates to offences against women 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. Liberal attitude by imposing meagre sentences or taking sympathetic view merely on account of lapse of time in respect of such offences will be counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence in built in the sentencing system. [para 18] [477-E-F]

1.3. It is reiterated that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is 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. 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. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter-productive in the long run and against the interest of the society. [para 19] [477-G-H; 478-A-C]

- A 1.4. In the instant case, the High Court in a very casual manner reduced the sentence of the accused to the period already undergone merely on the ground that the accused is first offender. If such a view is taken, the accused, who commit such offences, will be emboldened and repeat such crime, which is totally detrimental to the society. [para 20] [478-C, D]

- C 1.5. Therefore, the impugned order of High Court reducing sentence to the period already undergone is set aside and, to avoid miscarriage of justice, the sentence imposed by the trial court is restored. [para 21] [478-E]

Case Law Reference:

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| | 1991 (2) SCR 711 | relied on | para 12 |
| D | 1994 (1) SCR 37 | relied on | para 13 |
| | 1987 (2) SCR 710 | relied on | para 14 |
| | 2013 (5) SCR 979 | relied on | para 15 |
| | 2006 (1) SCR 477 | relied on | para 16 |
| E | 2009 (8) SCR 719 | relied on | para 17 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1845 of 2014.

- F From the Judgment and Order dated 02.11.2012 of the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Appeal No. 664 of 2008.

Sunny Choudhary (For C.D. Singh) for the Appellant.

- G Rajiv Kumar (For Kusum Chaudhary) for the Respondent.

The Judgment of the Court was delivered by

M.Y. EQBAL, J.1. Leave granted.

- H 2. State of Madhya Pradesh has preferred this appeal by

special leave against the judgment and order dated 2.11.2012 passed by learned Single Judge of High Court of Madhya Pradesh, Bench at Gwalior, who allowed the appeal, preferred by the respondent-accused, in part maintaining his conviction but reducing six months sentence awarded by the trial court to the period (21 days) already undergone.

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3. The prosecution case, in brief, is that on 20.1.2003, when the complainant was taking bath in her bathroom at around 10 AM, the accused-respondent entered into her bathroom and caught hold of her hand with a bad intention and asked her to come inside. When the complainant refused, the accused with an intention to rape her, started dragging her out of the bathroom. When she screamed for help, two persons reached there and the accused fled away knocking down her on the ground for which she received injuries on her right elbow. Complainant's husband had gone to village Badoli for some work and upon his coming back, the complainant reached the police station along with him and lodged FIR. Upon her medical examination on the same day, following injury on the person of the complainant was found:

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"Abrasion measuring $\frac{1}{2} \times \frac{1}{4}$ c.m. on the back side of the upper right forearm along with slight blood clots."

4. The accused-respondent was arrested on 29.1.2003 and the case was committed to Special Judge, SC/ST (Prevention of Atrocities) Act, Guna, who after scrutinizing the evidence available on record and after hearing the contentions of both sides, convicted the respondent for the offences punishable under Sections 323 and 354 of the Indian Penal Code (in short, 'IPC') sentencing him to undergo rigorous imprisonment for six months with fine of Rs.500/-.

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5. Being aggrieved, the respondent preferred an appeal before the High Court, where the accused did not challenge his conviction but prayed for reduction of awarded sentence. Maintaining his conviction, the High Court reduced his sentence

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- A to the period already undergone holding that the accused is first offender, fine amount has already been deposited and he has already undergone for 21 days.

B 6. Dissatisfied with the order of the High Court, State of Madhya Pradesh has preferred this appeal raising issue whether the period of sentence for the offence punishable under Section 354 of IPC can be reduced to the period undergone for only 21 days just on the ground that the respondent is first time offender and is facing trial since 2003.

- C 7. We have heard learned counsel for the parties appearing on either side.

D 8. It has been contended on behalf of the State that learned Single Judge of the High Court has failed to correctly analyze the act of the respondent through which he tried to outrage modesty of a woman. High Court has failed to correctly appreciate that the trial court has already taken lenient view by awarding sentence of six months rigorous imprisonment and reduction of sentence to the period of 21 days with respect to the offences which deal with the aspect of outraging the modesty of the woman, would reduce the deterrent effect of the punishment provided under the Code for such offences.

E 9. Per contra, it has been submitted on behalf of the respondent that he was only 19 years old at the time of incident and he has already undergone physical incarceration for 24 days and mental incarceration suffered for last 10 years. The respondent has two children and has no criminal antecedent earlier to the alleged incident or after the incident and he is also entitled to the benefit of Section 360 of the Code of Criminal Procedure. It has been further submitted that no minimum sentence has been prescribed under Section 354, IPC.

H 10. Section 354 of the Indian Penal Code deals with assault or criminal force to woman with intent to outrage her modesty and, as such, is reproduced hereunder:

"354: Assault or criminal force to woman with intent to outrage her modesty—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

11. It is well settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the gravity and nature of the crime and manner in which the offence is committed. One should keep in mind the social interest and consciousness of the society while considering the determinative factor of sentence commensurate with the gravity and nature of crime. The punishment should not be so lenient that it shocks the conscience of the society. It is, therefore, the solemn duty of the Court to strike a proper balance while awarding sentence as awarding a lesser sentence encourages any criminal and as a result of the same society suffers.

12. In the case of *Sevaka Perumal vs. State of Tamil Nadu*, (1991) 3 SCC 471, this Court observed that undue sympathy by means of imposing inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and the society cannot long endure under serious threats. If the courts do not protect the injured, the injured would then resort to private vengeance. Therefore the duty of any court is to award proper sentence having regard to the nature of the offence and the manner in which it was committed.

13. In the case of *Dhananjay Chatterjee @ Dhana vs. State of West Bengal*, (1994) 2 SCC 220, this Court held as under:

"In recent years, the rising crime rate-particularly violent crime against women has made the criminal sentencing

A by the courts a subject of concern. Today there are
admitted disparities. Some criminals get very harsh
sentences while many receive grossly different sentence
for an essentially equivalent crime and a shockingly large
B number even go unpunished, thereby encouraging the
criminal and in the ultimate making justice suffer by
weakening the system's credibility. Of course, it is not
possible to lay down any cut and dry formula relating to
imposition of sentence but the object of sentencing should
C be to see that the crime does not go unpunished and the
victim of crime as also the society has the satisfaction that
justice has been done to it. In imposing sentences, in the
absence of specific legislation, Judges must consider
variety of factors and after considering all those factors and
taking an over-all view of the situation, impose sentence
D which they consider to be an appropriate one. Aggravating
factors cannot be ignored and similarly mitigating
circumstances have also to be taken into consideration.

In our opinion, the measure of punishment in a given case
must depend upon the atrocity of the crime; the conduct
E of the criminal and the defenceless and unprotected state
of the victim. Imposition of appropriate punishment is the
manner in which the courts respond to the society's cry for
justice against the criminals. Justice demands that courts
should impose punishment fitting to the crime so that the
F courts reflect public abhorrence of the crime. The courts
must not only keep in view the rights of the criminal but also
the rights of the victim of crime and the society at large
while considering imposition of appropriate punishment."

G 14. While considering this aspect, the Apex Court in the
case of *Mahesh and others vs. State of Madhya Pradesh*,
(1987) 3 SCC 80, remarked that,

H "...it will be a mockery of justice to permit these appellants
to escape the extreme penalty of law when faced with such
evidence and such cruel acts. To give the lesser

punishment for the appellants would be to render the Justice system of this 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. When we say this, we do not ignore the need for a reformatory approach in the sentencing process.”

15. In the case of *Hazara Singh versus Raj Kumar*, (2013) 9 SCC 516, this Court has observed that it is the duty of the courts to consider all the relevant factors to impose an appropriate sentence. The legislature has bestowed upon the judiciary this enormous discretion in the sentencing policy, which must be exercised with utmost care and caution. The punishment awarded should be directly proportionate to the nature and the magnitude of the offence. The benchmark of proportionate sentencing can assist the Judges in arriving at a fair and impartial verdict.

This Court further observed that the cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.

16. In *Shailesh Jasvantbhai vs. State of Gujarat*, (2006) 2 SCC 359, the Apex Court opined that

“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 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

- A stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone 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 machinery or 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.

8. 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."

- F 17. A three-Judge Bench of this Court in *Ahmed Hussein Vali Mohammed Saiyed v. State of Gujarat*, (2009) 7 SCC 254, observed as follows:

- G "99. ... The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to (sic break the) 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
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it should be. 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 the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. 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 victim of the crime but the society at large while considering the imposition of appropriate punishment. 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 both the criminal and the victim belong."

18. Indisputably, 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 where it relates to offences against women 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. Liberal attitude by imposing meagre sentences or taking sympathetic view merely on account of lapse of time in respect of such offences will be counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence in built in the sentencing system.

19. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was

- A executed or committed. 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. The court must not only keep in view the rights of the victim of the crime but
- B also the society at large while considering the imposition of appropriate punishment. Meagre sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter-productive in the long run and against the interest of the society.

- C 20. In the instant case, as noticed above, the High Court in a very casual manner reduced the sentence of the accused to the period already undergone merely on the ground that the accused is first offender. If such a view is taken, the accused, who commit such offence, will be emboldened and repeat such
- D crime, which is totally detrimental to the society.

- E 21. For the reason aforesaid, we set aside the impugned order reducing sentence to the period already undergone and, to avoid miscarriage of justice, this appeal is allowed restoring the sentence imposed by the trial court. The respondent is directed to surrender within two weeks from today, failing which, the trial Judge is directed to take appropriate steps for sending him to prison to undergo the remaining period of sentence.

Rajendra Prasad

Appeal allowed.