State Of Karnataka vs Puttaraja on 27 November, 2003

Equivalent citations: AIR 2004 SUPREME COURT 433, 2004 (1) SCC 475, 2003 AIR SCW 6429, 2004 AIR - KANT. H. C. R. 15, (2004) 13 ALLINDCAS 767 (SC), 2004 CRILR(SC MAH GUJ) 12, 2004 (1) UJ (SC) 222, 2004 (13) ALLINDCAS 767, 2004 SCC(CRI) 300, (2004) 1 JCJR 152 (SC), 2004 CRILR(SC&MP) 12, 2004 (1) JCJR 152, 2004 ALL MR(CRI) 820, 2004 CALCRILR 143, 2003 (10) SCALE 325, 2003 (7) SLT 329, (2003) 9 JT 603 (SC), 2004 UJ(SC) 1 222, 2004 (1) SRJ 111, (2003) 8 SUPREME 364, (2004) 1 ALLCRIR 831, (2004) SC CR R 867, 2004 CHANDLR(CIV&CRI) 285, (2003) 3 CHANDCRIC 302, (2004) 1 RECCRIR 113, (2003) 4 CURCRIR 461, (2003) 10 SCALE 325, (2004) 13 INDLD 1041, (2004) 48 ALLCRIC 234, (2004) 3 ANDH LT 6, (2004) 1 ALLCRILR 308, (2003) 4 CRIMES 548

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (crl.)  506 of 1997

PETITIONER:
State of Karnataka

RESPONDENT:
Puttaraja

DATE OF JUDGMENT: 27/11/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT,J A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, chastity, honour and reputation. The depravation of such animals in human form reach the rock bottom of morality when they sexually assault children, minors and like the case at hand, a woman in the advance stage of pregnancy.

We do not propose to mention name of the victim. Section 228-A of the Indian Penal Code, 1860 (in short the 'IPC') makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been

committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'victim' in the judgment. 21st August, 1985 is a day on which the victim suffered unfathomable physical agony and traumatic ignominy that one can conceive of at the hands of the accused-respondent. The libidinousness and the lustful design of the accused crossed all borders of indecency and he raped the victim in the presence of her husband, unmindful of the shattering mental trauma the latter (PW-1) suffered. Law was set into motion and the accused was charged for commission of offence punishable under Section 376 of the IPC. He was found guilty by the trial Court which imposed sentence of 5 years imprisonment, (though the minimum sentence prescribed is 7 years) and fine of Rs.2000/-. What seems to have weighed with the trial Court for inflicting a lesser sentence was age of accused's parents his dependent sisters, wife and two young children. Accused questioned correctness of the conviction and sentence before the Karnataka High Court. While the conviction was maintained, the sentence was reduced by a learned Single Judge to period of custody already undergone i.e. 46 days.

The State of Karnataka questions the propriety of the sentence imposed. According to learned counsel for the appellant, if such minuscule sentence is awarded for such a grave offence, it would be giving premium to one most obnoxious acts punishable under the IPC. It is submitted that the sentence should be commensurate with the nature of the offence. In this case the High Court has not even indicated any reason for reducing the sentence below the prescribed minimum which under the proviso to Section 376(1) IPC can be done for "adequate and special reasons to be mentioned in the judgment".

Learned counsel appearing for the respondents submitted that the evidence on record does not establish commission of the offence of rape and at the most the offence for which accused could be convicted is under Section 354 IPC, dealing with the assault or criminal force to a woman with intent to outrage her modesty. Additionally, it is submitted that the High Court has given adequate reasons as to why it considered the custodial sentence undergone to be adequate.

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. 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 the deterrence ideology 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 the indelible impact on the victim and his family and all other attending circumstances are relevant facts which would enter into the area of consideration.

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. This position was illuminatingly stated by this Court in Sevaka Perumal etc. v. State of Tamil Naidu (AIR 1991 SC 1463).

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 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 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.

Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times on account of misplaced sympathies to the perpetrator of crime leaving the victim or his family into oblivion. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the gravity of the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

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 Callifornia: 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.

The object should be to protect the society and to deter the criminal in achieving the avowed object of 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 it should be.

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 like the case at hand, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact and serious repercussions 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 or considerations personal to the accused only in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by the required string of deterrence inbuilt in the sentencing system.

In Dhananjoy Chatterjee v. State of W.B. (1994 (2) SCC 220), this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. 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 criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

Similar view has also been expressed in Ravji v. State of Rajasthan, (1996 (2) SCC 175). It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. 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 the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". These aspects have been highlighted in State of M.P. v. Ghanshyam Singh (2003 (8) SCC 13). Rape is violation with violence of the private person of the victim, an abominable outrage by all canons.

In the background what has been stated in Ghanshyam Singh's case (supra) the inevitable conclusion is that the High Court was not justified in restricting the sentence to the period already undergone, which is 46 days. Leniency in matters involving sexual offences is not only undesirable but also against public interest. Such types of offences are to be dealt with severity and with iron hands. Showing leniency in such matters would be really a case of misplaced sympathy. The acts

which led to the conviction of the accused are not only shocking but outrageous in their contours. The only reason indicated by the High Court for awarding sentence lesser then prescribed minimum is quoted below:

> "I have heard at length the submission of Mr. Bhagavan, learned counsel for the accused, on the question of sentence. He submitted that the accused is a cooli and agriculturists, young man aged 22 years old and requires sympathy. It is also relevant to point out that the occurrence took place in the year 1985 and a long time has lapsed. The trial and the appeal have kept the appellant busy in court. Taking all these factors into account I feel that the appellant need not be sentenced to imprisonment since he was already in custody for a period of 46 days."

If the above can be described as "adequate and special reasons"

> then it would be insulting to ratiocination. According to us this is a case where there was no scope for awarding sentence lesser than prescribed minimum and it should have been highest prescribed. But the trial Court awarded sentence of 5 years for reasons, which may not be strictly meeting the requirements of law. Since the State had not questioned the sufficiency of sentence before the High Court, we restore the sentence awarded by the trial Court along with the fine imposed.
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> The appeal is allowed.