Dinesh @ Buddha vs State Of Rajasthan on 28 February, 2006

Author: Arijit Pasayat

Bench: Arijit Pasayat, S.H. Kapadia

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           CASE NO.:
Appeal (crl.)  263 of 2006

PETITIONER:
Dinesh @ Buddha

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 28/02/2006

BENCH:
ARIJIT PASAYAT & S.H. KAPADIA

JUDGMENT:
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J U D G M E N T (Arising Out of S.L.P (Crl.) No. 5753 of 2005) ARIJIT PASAYAT, J.

Leave granted.

An eight years old girl was sexually ravished by the appellant is what was alleged and for that the appellant faced trial. The victim suffered ignominy on 5.2.1998. The appellant has been found guilty of offence punishable under Section 376(2) of the Indian Penal Code, 1860 (in short the 'IPC') read with Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short the 'Atrocities Act'). The appellant was directed to undergo imprisonment for life and to pay a fine of Rs. 1,000/- and the State was directed to pay a compensation of Rs.50,000/- to the victim.

Background facts are essentially as follows:

> On 5.2.1998 the victim had gone to witness a marriage procession in the night. When she was coming back to her house in the night at about 12 O' clock the accused sexually assaulted her. She was threatened that if she disclosed about the incident to anybody, she would be killed. Suffering from the acute pain the victim told her sister, mother and grandmother about the incident. The matter was reported to the police. The accused person was arrested; medical tests were conducted both in respect of the accused and the victim, and after completion of investigation charge sheet was filed. The Trial Court found the accused guilty of the offences charged under Section 376(2) IPC and Section 3(2)(v) of the Atrocities Act and sentenced him. The appeal before the Rajasthan High Court, Jaipur Bench, did not bring any relief to the accused.

In support of the appeal, learned counsel for the appellant submitted that the evidence is not credible and cogent. There are many inconsistencies in the evidence, more particularly, of the victim (PW-8). This is not a case where life imprisonment could have been awarded. In any event there is no material to bring in application of Section 3(2)(v) of the Atrocities Act. It is further submitted that the appellant belongs to the lowest economic strata of society who could not even afford to engage a lawyer at any stage. Even during trial and before the High Court, lawyers were engaged at State's cost. The young age of the accused should also be taken into consideration.

In response, learned counsel for the State submitted that though Section 3(2)(v) of the Atrocities Act may not be applicable, but imposition of life sentence is also permissible in a case covered under Section 376(2)(f) IPC. It is also submitted that the compensation of Rs.50,000/- directed to be paid by the State, should be set aside.

Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. 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, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty (AIR 1996 SC 922), the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution') The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

We do not propose to mention name of the victim. Section 228-A of 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. (See State of Karnataka v. Puttaraja (2003 (8) Supreme 364).

The offence of rape occurs in Chapter XVI of IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for "Sexual offences", which encompass Sections 375, 376, 376A, 376B, 376C and 376D I.P.C. "Rape" is defined in Section 375 I.P.C. Sections 375 and 376 I.P.C. have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i.e. 376A, 376B, 376C and 376D. The fast sweeping changes introduced reflect the legislative intent to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape or Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co.Litt. 123 b); or, as expressed more fully, 'rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will'. (Hale P.C. 628) The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape:

(1 Hen. 6, 1a, 9 Edw. 4, 26 a (Hale P.C.628). In the crime of rape, 'carnal knowledge' means the penetration to any the slightest degree of the male organ of generation (Stephens Criminal Law, 9th Ed., p.262). In "Encyclopedia of Crime and Justice" (Volume 4, page 1356), it is stated ".....even slight penetration is sufficient and emission is unnecessary". In Halsburys' Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even the slightest degree of penetration is sufficient to prove sexual intercourse. It is violation, with violence, of the private person of a woman, an outrage by all means. By the very nature of the offence it is an obnoxious act of the highest order.

The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery.

It is to be noted that in sub-section(2) of Section 376 I.P.C. more stringent punishment can be awarded taking into account the special features indicated in the said sub-section. The present case is covered by Section 376(2)(f) IPC i.e. when rape is committed on a woman when she is under 12 years of age. Admittedly, in the case at hand the victim was 8 years of age at the time of commission of offence.

In the Indian Setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever

occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in Rameshwar v. The State of Rajasthan (AIR 1952 SC 54) were:

"The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...".

The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. 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. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.

The legislative mandate to impose a sentence, for the offence of rape on a girl under 12 years of age, for a term which shall not be less than 10 years, but which may extend to life and also to fine reflects the intent of stringency in sentence. The proviso to Section 376(2) IPC, of course, lays down that the court may, for adequate and special reasons to be mentioned in the judgment, impose sentence of imprisonment of either description for a term of less than 10 years. Thus, the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' RI, though in exceptional cases "for special and adequate reasons" sentence of less than 10 years' RI can also be awarded. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso particularly in such like penal provisions. The courts are obliged to respect

the legislative mandate in the matter of awarding of sentence in all such cases. Recourse to the proviso can be had only for "special and adequate reasons" and not in a casual manner. Whether there exist any "special and adequate reasons" would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf of universal application.

At this juncture it is necessary to take note of Section 3 of the Atrocities Act. As the Preamble to the Act provides 'the Act has been enacted to prevent the commission of offences of atrocities against the members of the Scheduled Castes and Scheduled Tribes. The expression 'atrocities' is defined in Section 2 of the Atrocities Act to mean an offence punishable under Section 3. The said provision so far relevant reads as follows:

"3(2)(v): Punishments for offences of atrocities (2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe, -

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(v) commits any offence under the Indian Penal Code punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member, shall be punishable with imprisonment for life and with fine;

xxx xxx xxx"

Sine qua non for application of Section 3(2)(v) is that an offence must have been committed against a person on the ground that such person is a member of Scheduled Castes and Scheduled Tribes. In the instant case no evidence has been led to establish this requirement. It is not case of the prosecution that the rape was committed on the victim since she was a member of Scheduled Caste. In the absence of evidence to that effect, Section 3(2)(v) has no application. Had Section 3(2)(v) of the Atrocities Act been applicable then by operation of law, the sentence would have been imprisonment for life and fine.

In view of the finding that Section 3(2)(v) of the Atrocities Act is not applicable, the sentence provided in Section 376(2)(f) IPC does not per se become life sentence. Though learned counsel for the State submitted that even in a case covered under Section 376(2)(f) IPC, imprisonment for life can be awarded, it is to be noted that minimum sentence of 10 years has been statutorily provided and considering the attendant circumstances the imprisonment for life in a given case is permissible. Neither the Trial Court nor the High Court has indicated any such factor. Only by applying Section 3(2)(v) of the Atrocities Act the life sentence was awarded. Therefore, the sentence is reduced to 10 years with a fine of Rs.2000/- in default to

further suffer simple imprisonment for one year. The other question is legality of the compensation awarded. Since the State has not challenged the award of compensation, it is not open to it to question the legality of the award in the present appeal filed by the accused. Therefore, State's challenge to the legality and/or quantum of compensation awarded is without merit. The amount shall be paid to the victim if not already paid within a period of eight weeks.

With the modification of sentence as abovementioned, the appeal is dismissed.