

Modi Ram And Lala vs The State Of Madhya Pradesh on 11 August, 1972

Equivalent citations: AIR1972SC2438, 1972CRILJ1521, (1972)2SCC630, 1973(5)UJ326(SC), AIR 1972 SUPREME COURT 2438, 1973 JABLJ 638, 1972 MAH LJ 893, 1972 MPLJ 1019, 1972 SCD 961, 1973 SCC(CRI) 45

Bench: H.R. Khanna, I.D.Dua, J.M. Shelat

JUDGMENT

Dua, J.

1. In this appeal special leave was granted only on the limited question of sentence.
2. Modi Ram, appellant No. 1, was married to one Janibai. About a year and a half after the marriage Janibai is alleged to have been seduced away by one Chunnilal. Chunnilal and Janibai claimed to have got married to each other according to Natra form of marriage. Modi Ram did not like Janibai living with Chunnilal. On May 16, 1969 at about 5 o'clock in the morning when Chunnilal was going to Talai apparently to answer the call of nature about five or six persons caught hold of him and gave him a beating. Apart from causing him other injuries they also cut off his nose and his male organ. The matter was reported to the police station, Ratangarh at about 10 a.m. As a result of the police investigation seven persons were prosecuted but only two out of them were convicted under 326, IPC. They are the appellants Modi Ram and Lala. Modi Ram was convicted for cutting the male organ of Chunnilal and Lala for cutting off his nose. The learned Additional Sessions Judge, Neemuch trying the seven accused came to the conclusion that the five accused, other than Modi Ram and Lala, were not proved to be present at the place of the occurrence and acquitted them. Modi Ram and Lala were, however, found to have caused grievous injuries to Chunnilal. They were both sentenced to rigorous imprisonment for one year. This is what the learned Additional Sessions Judge when dealing with the sentence said :

As regard the question of sentence the antecedents and circumstance will have to be taken into consideration. Chunnilal had taken (after contracting Natra with Modi Ram's wife) her as his mistress and Modi Ram's wife Janibai was not divorced according to caste custom or through court which is a patent fact. Chunnilal is a grown up man of 32 years, Modiram is a young man of 21 or 22 and although he has given his age as 18 or 19 he is certainly not above 21 to 22. The alleged Natra is also secretly performed and Chunnilal has kept Janibai in his house. Hence this act of his was certainly provocative taking these circumstances into consideration the accused Modiram and Lala are sentenced under Section 326, IPC. to one year's R.I.

3. On appeal the High Court considered it proper to enhance the sentence. After upholding their conviction the High Court observed as follows :-

The other question to be considered is about the sentence. The trial court has awarded a lenient sentence because he thinks that there was sufficient provocation in taking away the wife. The normal sentence under Section 326, IPC in particular of nose cutting, should be a number of years. In some cases sentence has been given upto 9 or 10 years. I have yet to find a case of nose cutting in which the sentence awarded is less than five years. It is also pertinent to note that in such cases of nose cutting either infidelity is suspected or there is some provocation. Regarding the sentence, therefore I think that is a fit case for enhancement of sentence.

Then, after considering medical evidence and observing that the nose had been cut from the root and the male organ had also been cut, though according to Chunnilal himself on account of treatment and grafting he was in a position to perform the normal duties of a husband, the High Court considered it proper to enhance the sentence to eight years' rigorous imprisonment. They were both given the same sentence because Section 34, I.P.C. was held to be applicable.

4. The only question with which we are concerned, as observed at the very outset of the judgment, is the question of sentence. The conviction has to be held to be fully justified on the record. Now the question of sentence is always a difficult and complex question. The accused persons found guilty may be hardened or professional criminals having taken to the life of crime since long, or they may have taken to crime only recently or may have committed the crime under the influence of bad company or again commission of a solitary offence may be due to provocative wrongful action seriously injuring the feelings and sentiments of the accused. Human nature being what it is men are at times moved by the impulse of the moment rather than by rational, cool, calculated estimate of the future good and evil. At such moments they are ordinarily inclined to be ready to face any future evil falling short of the inevitable. Keeping in view the broad object of punishment of criminals by courts in all progressive civilised societies true dictates of justice seem to us to demand that all the attending relevant circumstances should be taken into account for determining the proper and just sentence. The sentence should bring home to the guilty party the consciousness that the offence committed by him was against his own interest as also against the interests of the society of which he happens to be a member. In considering the adequacy of the sentence which should neither be too severe nor too lenient the court has, therefore, to keep in mind the motive and magnitude of the offence, the circumstances in which it was committed and the age and character (including his antecedents) and station in life of the offender. In the present case it is obvious that there was provocation for Modi Ram who quite naturally felt extremely hurt by Chunnilal's conduct in seducing the former's wife and thereafter living in the same vicinity. The occurrence is said to have taken place within about 25 or 26 days after the alleged Khatra Marriage between Chunnilal and Janibai. The motive, therefore, does not seem to us to render the offence to be such as to require the very severe sentence of eight years of imprisonment, as has been imposed by the High Court. The magnitude of the offence is undoubtedly a factor which goes against the appellants. But here again, keeping in view, the normal emotions and feelings of an average human being, the nature of Chunnil

Lal's act which caused provocation to Modi ram, and the sense of humiliation it must have brought to the appellant in his social life, we consider that the two injuries, though serious enough to call for a sentence of imprisonment of more than one year's rigorous imprisonment, would not justify as heavy a sentence as has been imposed by the High Court. This important aspect was completely ignored by the High Court. so far as the question of the character and antecedents of the offender is concerned, we do not find anything o hte record which would justify the abnormally harsh sentence imposed on him. the High Court also seems to us not to have been quite right in observing that in no case of nose cutting was ever a sentence of less than five years imposed by any court. This infirmity in the impugned judgment would clearly justify review of the sentence by this Court. As a result of this infirmity and that of ignoring the gravity of the provocation, the sentence imposed by the High Court seems to us to have occasioned failure of justice. In our view, therefore, the ends of justice would be amply met if both the appellants are sentenced to three years; rigorous imprisonment. We accordingly allow the appeal only to the extent of reducing the sentence imposed by the High Court from eight years to three years rigorous imprisonment.