

THONGAM TARUN SINGH

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v.

THE STATE OF MANIPUR

(Criminal Appeal No. 805 of 2019)

APRIL 30, 2019

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[R. BANUMATHI AND S. ABDUL NAZEER, JJ.]

Sentence/Sentencing: Gang rape of girl aged 16 years – Prosecution case was that accused no.1 picked up the victim in a car along with his friend accused no.2 and took her to a restaurant where he forcibly gave her a soft drink mixed with intoxicant – After taking the said drink, the victim fell unconscious – Thereafter, the accused-appellants committed rape on her – Appellant convicted and sentenced to undergo rigorous imprisonment for fifteen years with fine of Rs.25,000 for offence under s.376(2)(g) and rigorous imprisonment for 10 years for offence under s.120-B and both the sentence were to run concurrently – In the instant appeal, the conviction was upheld – Challenge limited to quantum of sentence – Held: Prior to the amendment (Amendment Act 13 of 2013), for the punishment under s.376(2)(g) IPC, it provided for rigorous imprisonment for a term not less than ten years but which may be for life and shall also be liable to fine – Prior to the amendment (Amendment Act 13 of 2013) by the proviso to s.376(2) IPC, the Court was vested with the discretion that for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years – At the time of occurrence, appellant no. 1 was working as a police driver and appellant no. 2 was a singer having good reputation, performing as a singer on the stage and both the appellants were aged about 24-25 years – Both the appellants had no criminal antecedents and they hailed from backward area – The certificate issued from the Jail Authorities showed their good and satisfactory conduct and participation in the sports/garden activities and other programmes of the Jail – Therefore, in the facts and circumstances of the case, the sentence of imprisonment of fifteen years (for the conviction under s. 376(2)(g) IPC) and sentence of imprisonment of ten years (for the conviction under s.120B IPC)

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- A *are reduced to eight years and both the sentences are to run concurrently – Penal Code, 1860 – s.376(2)(g) and s.120-B – Crime against women.*

Partly allowing the appeal, the Court

- HELD:** 1. The evidence of PW-5 and the owner of the Hotel (PW-3) and the materials adduced by the prosecution clearly showed that the victim was subjected to rape both by accused no. 1 as well as accused no. 2. When the evidence adduced by the prosecution was very clear that she was subjected to sexual intercourse by more than one person, the act clearly fell within Explanation 1 to Section 376 (prior to the Amendment Act 2013). In view of the evidence of PW-5 and other evidences, even though no charge was framed under Section 376(2)(g)IPC, the conviction of the appellants under Section 376(2)(g) IPC cannot be faulted. The evidence adduced by the prosecution in particular evidence of the victim (PW-5), clearly showed that no serious prejudice was caused to the appellants by conviction under Section 376(2)(g) IPC. [Para 9] [147-D-F; G; 148-A]

2. As far as quantum of sentence is concerned, Section 376 IPC- punishment for rape has been amended by Act 13 of 2013 (with retrospective effect from 03.02.2013). As per the amended section, the minimum sentence of seven years is provided for the offence of rape which may extend to imprisonment for life. After the amendment, no discretion was vested with the Court to reduce the sentence. Prior to the amendment (Amendment Act 13 of 2013) for the punishment under Section 376(2)(g) IPC, it provided for rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. Prior to the amendment (Amendment Act 13 of 2013) by the proviso to Section 376(2) IPC, the Court has been vested with the discretion that for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than ten years. What is ‘adequate and special reasons’ would depend upon several factors and no strait-jacket formula can be imposed. No catalogue can be prescribed for adequacy of reasons nor instances can be cited

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regarding special reasons. They differ from case to case. A
[Paras 10, 11] [148-B-E]

3. At the time of occurrence, appellant no. 1 was working as a police driver and appellant no. 2 was a singer having good reputation, performing as a singer on the stage and both the appellants were aged about 24-25 years. In the facts and circumstances of the case and that the appellants have no criminal antecedents and also the conduct of the appellants in the Jail (post conviction), the sentence of imprisonment of fifteen years (for the conviction under Section 376(2)(g) IPC) and sentence of imprisonment of ten years (for the conviction under Section 120B IPC) are reduced to eight years. [Paras 12] [148-F-H; 149-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 805 of 2019.

From the Judgment and Order dated 30.04.2018 of the High Court of Manipur at Imphal in Criminal Jail Appeal No. 2 of 2014.

With

Criminal Appeal No. 806 of 2019.

R. Basant, Sr. Adv., David A., Akshay Sahay, Akshay Girish Ringe, Maibam Nabaghanashyam Singh, Advs. for the Appellant.

Leishangthem Roshmani Kh, Ms. Anupama Ngangom, Ms. Maibam Babina, Advs. for the Respondent.

The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. These appeals arise out of the judgment dated 30.04.2018 passed by the High Court of Manipur at Imphal in Criminal Jail Appeal No. 2 of 2014 and Criminal (Jail) Appeal No. 3 of 2014 in and by which the High Court has affirmed the conviction of the appellants under Section 376(2)(g) IPC for committing the gang rape upon the victim and, accordingly, they were sentenced to undergo rigorous imprisonment for a period of fifteen years with a fine of Rs.25,000/- The appellants were also convicted for the offence under Section 120-B IPC and they were

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- A sentenced to undergo rigorous imprisonment for a period of ten years both the sentences were to run concurrently.
3. Briefly stated the case of prosecution: Two appellants were close friends. On 20.10.2012 accused no. 1 said to have picked up the victim (PW-5) aged about sixteen years and took her in a Maruti Car and taken to a restaurant along with his friend – accused no.2. Further, case of prosecution is that the appellants have forcibly given a soft drink mixed with intoxicant to the victim and after taking the said drink, she fell unconscious. Thereafter the appellants are said to have committed rape on her. The allegation is that when the victim regained her senses, she found that she was raped by accused no. 1 and also by accused no. 2 and, thereafter, she was dropped off. Complaint was lodged by the mother of the victim on the next day on 21.10.2012, based on which FIR was registered under Sections 376 IPC and 120-B IPC. On completion of the investigation, charge-sheet was filed and the appellants were charged for the offences under Section 376 and Section 120-B IPC.
- D 4. Upon consideration of the oral evidence of PW-5 (Victim) and the medical evidence and other evidence, the Trial Court convicted the appellant no. 1 and also appellant no. 2 under Section 120B IPC and Section 376(2)(g) IPC. For the conviction under Section 120B IPC, the appellants were sentenced to undergo rigorous imprisonment for a period of ten years with a fine of Rs.10,000/- each with default clause. For the conviction under Section 376 (2)(g) IPC, the appellants were sentenced to undergo rigorous imprisonment for a period of 15 years with a fine of Rs.25,000/- each with default clause. Both the sentences were ordered to be run concurrently. The conviction of the appellants and the sentence of imprisonment imposed on each of them were affirmed by the High Court as aforesaid in para (1). Being aggrieved, the appellants have preferred these appeals.
5. By the orders dated 27th August, 2018 and 17th September, 2018 this Court held that this Court is not inclined to interfere with the conviction of the appellants under Section 376(2)(g) IPC and Section 120-B IPC. Notice was issued only limited to the quantum of sentence.
- G 6. We have heard Mr. R. Basant, learned senior counsel and Mr. Maibam Nabaghanashyam Singh, learned counsel appearing on behalf of the appellants as well as Mr. Leishangthem Roshmani, learned counsel appearing on behalf of the respondent-State of Manipur.
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7. The main contention of the learned senior counsel appearing on behalf of the appellant(s) is that charges were not framed against the appellants for the gang rape under Section 376(2)(g)IPC and while so the Trial Court as well as the High court erred in convicting the appellants under Section 376(2)(g) IPC. Learned senior counsel further submitted that without framing the charges for grievous offence, namely, Section 376(2)(g) IPC, the Court ought not to have convicted under Section 376(2)(g) IPC and urged us to keep this aspect in considering the quantum of sentence.

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8. By perusal of the charges framed against the accused, it clearly shows that charges were framed against the accused under Section 376 IPC read with Section 120B IPC. In this regard, learned counsel appearing on behalf of the respondent - State of Manipur has drawn our attention to Section 464 Cr.P.C. and submitted that no finding, sentence or order by a Court of Competent Jurisdiction shall be deemed invalid merely on the ground that no charge was framed unless failure of justice has in fact been occasioned thereby.

9. From the evidence of PW-5 and the materials adduced by the prosecution, it is clearly brought in evidence that the victim was subjected to rape both by accused no. 1 as well as accused no. 2. Referring to the evidences of PW-5 and the owner of the Hotel (PW-3), the High Court has clearly recorded clear concurrent findings of fact that the victim was subjected to rape by both the appellants. When the evidence adduced by the prosecution is very clear that she was subjected to sexual intercourse by more than one person, in our view, the act clearly falls within Explanation 1 to Section 376 (prior to the Amendment Act 2013) which reads as under:

Explanation 1 to Section 376

“Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section”.

Considering the evidence of PW-5 and other evidences, in our considered view, even though no charge was framed under Section 376(2)(g)IPC, the conviction of the appellants under Section 376(2)(g) IPC cannot be faulted. Considering the evidence adduced by the

A prosecution in particular evidence of the victim (PW-5), We are of the view that no serious prejudice has been caused to the appellants by conviction under Section 376(2)(g) IPC.

10. So far as quantum of sentence is concerned, Section 376 IPC-punishment for rape has been amended by Act 13 of 2013 (with

- B retrospective effect from 03.02.2013). As per the amended section, the minimum sentence of seven years is provided for the offence of rape which may extend to imprisonment for life. After the amendment, no discretion is vested with the Court to reduce the sentence. Prior to the amendment (Amendment Act 13 of 2013) for the punishment under Section 376(2)(g) IPC, it provided for rigorous imprisonment for a term which shall not be less than ten years but which may be for life and shall also be liable to fine. Prior to the amendment (Amendment Act 13 of 2013) by the proviso to Section 376(2) IPC, the Court has been vested with the discretion that for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description C for a term of less than ten years.

11. The question falling for consideration is whether there are adequate and special reasons warranting exercise of discretion to reduce the sentence of imprisonment. What is '*adequate and special reasons*' would depend upon several factors and no strait-jacket formula can be

- E imposed. No catalogue can be prescribed for adequacy of reasons nor instances can be cited regarding special reasons. They differ from case to case.

12. It is stated that at the time of occurrence, appellant no. 1 was working as a police driver and appellant no. 2 was a singer having good

- F reputation, performing as a singer on the stage and both the appellants were aged about 24-25 years, at the time of the occurrence. It is also stated that both the appellants have no criminal antecedents and they hail from backward area. Learned counsel for the appellants have also produced certificate issued from the Jail Authorities to show that the conduct of the appellants (post conviction) are very good and satisfactory G and they have been participating in the sports/garden activities and other programmes of the Jail. Considering the facts and circumstances of the case and that the appellants have no criminal antecedents and also the conduct of the appellants in the Jail (post conviction), the sentence of imprisonment of fifteen years (for the conviction under Section 376(2)(g)

IPC) and sentence of imprisonment of ten years (for the conviction under Section 120B IPC) are reduced to eight years. A

13. The sentence of imprisonment imposed upon each of the appellants is reduced to eight years. As directed by the Trial Court and the High Court both the sentences are to run concurrently.

14. The appeals are partly allowed in above terms. B

Devika Gujral

Appeals partly allowed.