State Of Rajasthan vs Vinod Kumar on 18 May, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2301, 2012 (6) SCC 770, 2012 AIR SCW 3237, AIR 2012 SC (CRIMINAL) 1052, (2012) 2 DMC 352, (2012) 3 CRILR(RAJ) 583, (2012) 4 KCCR 232, (2012) 115 ALLINDCAS 114 (SC), 2012 (5) SCALE 634, 2012 (115) ALLINDCAS 114, 2012 (3) SCC(CRI) 299, (2012) 2 CURCRIR 379, (2012) 3 ALLCRIR 2562, 2012 CRILR(SC MAH GUJ) 583, (2012) 4 MAD LJ(CRI) 270, (2012) 52 OCR 619, (2012) 5 SCALE 634, (2012) 2 UC 1359, (2012) 3 CGLJ 36, (2012) 4 MPHT 448, (2012) 2 DLT(CRL) 670, (2012) 78 ALLCRIC 167, (2012) 3 ALLCRILR 299, 2012 (2) ALD(CRL) 370, 2012 (2) CRIMES 294 SN

Bench: Dipak Misra, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1887 OF 2008

State of Rajasthan ... Appellant

Versus

Vinod Kumar ... Respondent

WITH

CRIMINAL APPEAL NO.1888 OF 2008

State of Rajasthan ... Appellant

Versus

Heera Lal ... Respondent

O R D E R

1. These appeals have been preferred by the State against the judgment and order dated 5.4.2007 passed by the High Court of Judicature for Rajasthan (Jaipur Bench) in S.B. Criminal Appeal No.103 of 2005 and S.B. Criminal Appeal No.82 of 2005, by which, the conviction of the respondents Vinod Kumar under Section 376 of the Indian Penal Code, 1860 (hereinafter called IPC) and Heera Lal under Section 376 read with Section 120B IPC made by the Special Judge, Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act (hereinafter called SC/ST Act) Jaipur dated 22.1.2005 passed in Sessions Case No.123 of 2002 has been maintained but the sentence of respondent Vinod Kumar has been reduced from 7 years to 5 years and that of accused Heera Lal from 7 years to 11 months and 25 days.

2. Facts and circumstances giving rise to these appeals are that on 29.8.2002, Guddi, complainant, appeared before the Officer Incharge of the police station alongwith her brother-in-law Babu Lal and submitted a report that one day earlier, i.e. on 28.8.2002 she attended a memorial function in respect of death of her relative. She left the place alongwith Babu Lal, her brother-in-law and stayed in the Jai Hotel. Two persons came there and one of them introduced himself to be the Station House Officer and wanted to check the room. Another person asked her relationship with other occupant Babu Lal. She informed about her relationship but he raised the question as to why such a relationship has not been disclosed in the Hotel Register and thus, under this pretext, they entered into the room for holding enquiry. They took Babu Lal, brother-in-law of the complainant outside. Thereafter, one of them came alone into the room, bolted the door from inside, and pushed her on the cot forcibly and committed rape upon her. She raised alarm but in vain. After commission of rape he fled away by opening the door of the room. She also gave the description of the said person.

3. On the basis of the aforesaid report, Case No.168 of 2002 under Sections 376, 120B IPC was registered and investigation commenced. During the course of investigation, the accused were arrested and identification parade took place. The prosecutrix was medically examined. After completion of the investigation, chargesheet under Sections 376, 120B IPC and Section 3(2) (5) of SC/ST Act was filed against Vinod Kumar and Heera Lal. The prosecution in support of its case examined Guddi, Babu Lal and a large number of other witnesses including the doctors who had examined the prosecutrix. The respondents were examined under Section 313 of Code of Criminal Procedure, 1973 (hereinafter called Cr.P.C.). They simply denied their involvement, however, they did not adduce any evidence in defence. After appreciating the evidence on record, the trial Court convicted the said respondents under Section 376 IPC and Section 376/120B IPC respectively and awarded punishment for 7 years Rigorous Imprisonment and a fine of 5,000/- to each and in default, the accused were ordered to undergo simple imprisonment for 3 months.

4. Aggrieved, both of them preferred appeals before the High Court which have been disposed of by the impugned judgment. The High Court maintained their convictions as awarded by the trial Court. However, their sentences have been reduced as aforementioned. Hence, these appeals.

5. Learned counsel for the State has submitted that in a case of rape, the minimum punishment is 7 years and mandatory requirement under Section 376 IPC is to impose the punishment of imprisonment of either description for a term which shall not be less than 7 years but which may be life or for a term which may extend to 10 years, provided that the court may for adequate and special reasons to be mentioned in the judgment, impose the punishment for a term less than 7 years. In the instant case, the High Court did not record any special and adequate reasons and reduced the punishment substantially. Therefore, in case the High Court maintained their convictions for the aforesaid offences, there was no justification for reducing their sentences. Thus, the appeals deserve to be allowed.

6. On the contrary, Shri Naresh Kumar, learned Amicus Curiae has submitted that the incident occurred more than a decade ago. The said respondents had already served the sentences awarded by the High Court. Undoubtedly, the High Court has not given any adequate and special reasons for reduction of their sentences, however, it could be the age, their social status, family circumstances which could have swayed the High Court in reducing the sentences. Therefore, the impugned judgment and order does not warrant interference. The appeals are liable to be dismissed.

7. We have considered the rival submissions made by learned counsel for the parties and perused the records.

In the instant case as the respondents have not challenged their order of conviction under Section 376 IPC and Section 376 read with Section 120B IPC respectively, it attained finality. Therefore, the only question remains for consideration is as to whether there could be any justification for the High Court in reduction of sentences and that too without recording any reason.

8. The statutory requirement for awarding the punishment less than seven years is to record adequate and special reasons in writing. Dictionary meanings of the word “adequate” are commensurate in fitness, sufficient, suitable, equal in magnitude and extent, and fully. “Special reasons” means exceptional; particular; peculiar; different from others; designed for a particular purpose, occasion, or person; limited in range; confined to a definite field of action.

Thus, in a case like the instant one, in order to impose the punishment lesser than prescribed in the statute, there must be exceptional reasons relating to the crime as well as to the criminal.

9. In Meet Singh v. The State of Punjab, AIR 1980 SC 1141, this Court while dealing with expression “special reasons” held that it means special to the accused concerned. The court has to weigh reasons advanced in respect of each individual accused whose case is taken up for awarding sentence. The word 'special' has to be understood in contradistinction to word 'general' or 'ordinary’. Thus, anything which is common to a large class governed by the same statute, cannot be said to be special to each of them. Therefore, in the context of sentencing process, special reasons must be

'special' to the accused in the facts and circumstances of the case in which the sentence is being awarded.

10. In Madhukar Bhaskarrao Joshi v. State of Maharashtra, AIR 2001 SC 147, this Court examined a similar provision under the Prevention of Corruption Act, 1988 which also contained a provision that accused shall be imposed the punishment which "shall not be less than one year" , however, a lesser punishment may be awarded recording the special reasons. The Court held:

> "…. The proviso is in the form of a rare exception by giving power to the Court for reducing the imprisonment period below one year only when there are "special reasons" and the law required that those special reasons must be recorded in writing by the Court…… …..Parliament measured the parameters for such condign punishment and in that process wanted to fix a minimum sentence of imprisonment for giving deterrent impact on other public servants who are prone to corrupt deals……..Such a legislative insistence is reflection of Parliament's resolve to meet corruption cases with very strong hand and to give signals of deterrence as the most pivotal feature of sentencing of corrupt public servants…….
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> In the present case, how could the mere fact that this case was pending for such a long time be considered as a "special reason"? That is a general feature in almost all convictions under the PC Act and it is not a speciality of this particular case. It is the defect of the system that longevity of the cases tried under the PC Act is too lengthy. If that is to be regarded as sufficient for reducing the minimum sentence mandated by the Parliament the legislative exercise would stand defeated." (Emphasis added)

11. In State of Jammu & Kashmir v. Vinay Nanda, AIR 2001 SC 611, while dealing with a similar issue, this Court held as under:

> "…….Where the mandate of law is clear and unambiguous, the Court has no option but to pass the sentence upon conviction as provided under the statute……..
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> The mitigating circumstances in a case, if established, would authorise the Court to pass such sentence of imprisonment or fine which may be deemed to be reasonable but not less than the minimum prescribed under an enactment…… ……..For imposing the minimum sentence the Court has to record special reasons. 'Special reasons' have to be distinguished from 'good' or 'other reasons'. The fact that the convict had reached his superannuation is not a special reason. Similarly pendency of criminal case for over a period of time can also not be treated as a special reason……." (Emphasis added)

12. In State of Karnataka v. Raju, AIR 2007 SC 3225, this Court dealt with a case of rape of a minor girl below 12 years of age, wherein the High Court reduced the sentence of the accused from seven years to three and a half years. This Court held that the normal sentence in a case where rape is committed on a child below 12 years of age, is not less than 10 years' rigorous imprisonment, though

in exceptional cases "for special and adequate reasons" sentence of less than 10 years' rigorous imprisonment can also be awarded. The Court observed that socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. 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 relevant circumstances in a dispassionate manner by the Court.

A similar view has been taken by this Court in State of Madhya Pradesh v. Babbu Barkare @ Dalap Singh, AIR 2005 SC 2846; Dinesh @ Buddha v. State of Rajasthan, AIR 2006 SC 1267; Shailesh Jasvantbhai & Anr. v. State of Gujarat & Ors., (2006) 2 SCC 359; and State of Madhya Pradesh v. Basodi AIR 2009 SC 3081)

13. In State of Karnataka v. Krishnappa, AIR 2000 SC 1470, this Court while dealing with the issue held:

> "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." (Emphasis supplied)

14. Similarly in State of Punjab v. Prem Sagar and Ors., (2008) 7 SCC 550, this Court observed as under:

> "To what extent should the Judges have discretion to reduce the sentence so prescribed under the statute has remained a vexed question. However, in India, the view always has been that the punishment must be proportionate to the crime. Applicability of the said principle in all situations, however, is open to question. Judicial discretion must be exercised objectively having regard to the facts and circumstances of each case". (Emphasis supplied)

15. In State of Madhya Pradesh v. Santosh Kumar, AIR 2006 SC 2648, this Court held that in order to exercise the discretion of reducing the sentence, the statutory requirement is that the court has to record adequate and special reasons in the judgment and not fanciful reasons which would permit the court to impose a sentence less than the prescribed minimum. The reason has not only to be adequate but also special. What is adequate and special would depend upon several factors and no straitjacket formula can be indicated. (See also: Harbans Singh v. State of Punjab, AIR 1984 SC 1594; State of Andhra Pradesh v. Vasudeva Rao, AIR 2004 SC 960; State of M.P. v. Babulal, AIR 2008 SC 582; and State of Rajasthan v. Gajendra Singh, (2008) 12 SCC 720)

16. In Kamal Kishore etc. v. State of Himachal Pradesh, AIR 2000 SC 1920, this Court held that the expression "adequate and special reasons" indicates that it is not enough to have special reasons, nor adequate reasons disjunctively. There should be a conjunction of both for enabling the court to invoke the discretion. Reasons which are general or common in many cases cannot be regarded as special reasons. (See also: Bhupinder Sharma v. State of Himachal Pradesh, AIR 2003 SC 4684; and State of Andhra Pradesh v. Polamala Raju @ Rajarao, AIR 2000 SC 2854)

17. In State of M.P. v. Bala @ Balaram, AIR 2005 SC 3567, this Court while dealing with the issue observed:

> "The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 IPC. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Sections 376(1) and 376(2) IPC give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason. It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, the courts cannot forget their duty to society and to the victim. The court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim." (Emphasis supplied)

18. In Ravji @ Ram Chandra v. State of Rajasthan, AIR 1996 SC 787, this Court held 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.

19. Awarding punishment lesser than the minimum prescribed under Section 376 IPC, is an exception to the general rule. Exception clause is to be invoked only in exceptional circumstances where the conditions incorporated in the exception clause itself exist. It is a settled legal proposition

that exception clause is always required to be strictly interpreted even if there is a hardship to any individual. Exception is provided with the object of taking it out of the scope of the basic law and what is included in it and what legislature desired to be excluded. The natural presumption in law is that but for the proviso, the enacting part of the Section would have included the subject matter of the proviso, the enacting part should be generally given such a construction which would make the exceptions carved out by the proviso necessary and a construction which would make the exceptions unnecessary and redundant should be avoided. Proviso is used to remove special cases from the general enactment and provide for them separately. Proviso may change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable. (Vide: S. Sundaram Pillai, etc. v. V.R. Pattabiraman, AIR 1985 SC 582; Union of India & Ors. v. M/s. Wood Papers Ltd. & Anr., AIR 1991 SC 2049; Grasim Industries Ltd. & Anr. v. State of Madhya Pradesh & Anr., AIR 2000 SC 66; Laxminarayan R. Bhattad & Ors. v. State of Maharashtra & Anr., AIR 2003 SC 3502; Project Officer, ITDP & Ors. v. P.D. Chacko, AIR 2010 SC 2626; and Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal & Ors., (2011) 1 SCC 236).

20. Thus, the law on the issue can be summarised to the effect that punishment should always be proportionate/commensurate to the gravity of offence. Religion, race, caste, economic or social status of the accused or victim are not the relevant factors for determining the quantum of punishment. The court has to decide the punishment after considering all aggravating and mitigating factors and the circumstances in which the crime has been committed. Conduct and state of mind of the accused and age of the sexually assaulted victim and the gravity of the criminal act are the factors of paramount importance. The court must exercise its discretion in imposing the punishment objectively considering the facts and circumstances of the case. The power under the proviso is not to be used indiscriminately in a routine, casual and cavalier manner for the reason that an exception clause requires strict interpretation. The legislature introduced the imposition of minimum sentence by amendment in the IPC w.e.f. 25.12.1983, therefore, the courts are bound to bear in mind the effect thereof.

The court while exercising the discretion in the exception clause has to record “exceptional reasons” for resorting to the proviso. Recording of such reasons is sine qua non for granting the extraordinary relief. What is adequate and special would depend upon several factors and no straight jacket formula can be laid down.

21. In the instant case, the High Court recorded the submissions advanced on behalf of the parties to the extent that none of the convicts wanted to press his appeal on merits as it was not possible to succeed in view of the statement of the prosecutrix Guddi (PW.1), recorded by the trial court and her statement recorded by the Magistrate under Section 164 Cr.P.C. on 5th September, 2002. Thus, they pleaded only for reduction of punishment.

The Public Prosecutor vehemently opposed the prayer for reduction of punishment.

In spite of the fact that the learned counsel for the appellants before the High Court did not press their appeal on merits, the High Court affirmed the findings insofar as the rape is concerned,

recorded by the trial Court. The High Court held:

> "So far as commission of offence of rape with her is concerned, I find that the same is fully proved from her statement and other prosecution evidence, and I am of the view that the learned trial Court has considered the prosecution evidence in detail and has rightly convicted the accused persons and both the learned counsel are right in not pressing their appeal on merits." After affirming the conviction for rape for both the accused, the High Court observed that Heera Lal accused did not commit rape himself but had only accompanied Vinod Kumar. The High Court further observed as under:
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> "I do not want to discuss the evidence, in detail, but I certainly find his case to be a fit one to reduce the sentence of imprisonment to a period of 11 months and 25 days, already undergone by him. So far as accused Vinod Kumar is concerned, I find his case to be a fit one to reduce the sentence of imprisonment looking to the whole statement of the prosecutrix." (Emphasis added) Thus, it is evident from the aforesaid discussion that the learned counsel for the appellants before the High Court did not argue the case on merit but the High Court affirmed the findings on commission of rape making reference to the evidence, however, further made observation that the court did not want to discuss the evidence in detail. We fail to understand as how the findings on commission of rape have been affirmed without discussing the evidence on record. It was not necessary at all as the counsel for those parties did not argue the appeals on merit.

22. The Court further took note that awarding punishment lesser than the minimum sentence of 7 years was permissible only for adequate and special reasons. However, no such reasons have been recorded by the court for doing so, and thus, the court failed to ensure compliance of such mandatory requirement but awarded the punishment lesser than the minimum prescribed under the IPC. Such an order is violative of the mandatory requirement of law and has defeated the legislative mandate. Deciding the case in such a casual manner reduces the criminal justice delivery system to mockery.

23. Thus, in the facts and circumstances of the case, the appeals are allowed. Sentences awarded by the High Court are set aside and seven years R.I. awarded by the trial court is restored.

Respondents are directed to surrender before the concerned court within a period of four weeks from today and shall undergo their remaining part of sentences. In case the respondents fail to surrender within the said period, the Chief Judicial Magistrate, Jaipur (City) is directed to take them into custody and send them to jail. A copy of the order be sent to learned Chief Judicial Magistrate, Jaipur (City), Rajasthan.

.....J. (Dr. B.S. CHAUHAN) .....J. (DIPAK MISRA) New Delhi, May 18, 2012
