State Of Madhya Pradesh vs Babulal on 3 December, 2007

Equivalent citations: AIR 2008 SUPREME COURT 582, 2008 (1) SCC 234, 2007 AIR SCW 7601, 2008 (1) SRJ 188, 2008 (1) SCC(CRI) 188, 2008 (2) CRI RJ 605, 2008 ALL MR(CRI) 329, 2007 (13) SCALE 621, (2008) 2 MH LJ (CRI) 274, (2008) 1 JCC 130 (SC), (2007) 8 SUPREME 294, (2007) 13 SCALE 621, (2008) 1 CHANDCRIC 88, (2007) 4 CURCRIR 413, (2008) 1 RAJ CRI C 27, (2008) 3 JAB LJ 53, (2008) 1 KER LJ 551, (2008) 1 MADLW(CRI) 633, (2008) 2 MAD LJ(CRI) 178, (2008) 1 ORISSA LR 483, (2008) 39 OCR 251, (2008) 1 RECCRIR 213, (2008) 3 CGLJ 217, (2008) 2 MPHT 350, (2008) 62 ALLCRIC 109, (2008) 1 CRILR(RAJ) 48, (2007) 4 CRIMES 752, 2008 (2) ANDHLT(CRI) 126 SC, (2008) 2 ANDHLT(CRI) 126

Author: C.K. Thakker

Bench: C.K. Thakker, Altamas Kabir

```
           CASE NO.:
Appeal (crl.)  1658 of 2007

PETITIONER:
STATE OF MADHYA PRADESH

RESPONDENT:
BABULAL

DATE OF JUDGMENT: 03/12/2007

BENCH:
C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:
```

J U D G M E N T CRIMINAL APPEAL NO. 1658 OF 2007 ARISING OUT OF SPECIAL LEAVE PETITION (CRL.) NO. 5974 OF 2005 C.K. THAKKER, J.

1. Leave granted.

2. The present appeal reminds us observations of Hon'ble Mr. Justice S. Ratnavel Pandian in Madan Gopal Kakkad v. Naval Dubey & Anr., (1992) 3 SCC 204 that "offenders of sexual assault who are menace to the civilized society should be mercilessly and inexorably punished in the severest terms". Dealing with a case of sexual assault, His Lordship emphasized on Courts of Law their duty to handle offenders of such crimes with a heavy hand. His Lordship concluded:

> "We feel that Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if the gravity of the offences so demand".

3. The case on hand, in our considered view, exhibits not only casual, indifferent and perfunctory approach but insensitive attitude adopted by the High Court in awarding sentence on an offender who perpetrated a heinous crime of committing rape on a married woman in broad daylight. The case of the prosecution was that respondent Babulal was residing at village Daulatpur, Tehsil Ikchavaar, District Sehore in Madhya Pradesh. On July 23, 2002, at about 12.00 noon in his own tapri, he criminally intimidated the prosecutrix-PW5, aged about 22 years, a married lady (hereinafter referred to as 'PW5-X')and committed rape on her. According to the prosecution, PW5-X was living with her husband in the house of the accused. On the day of the incident, she was washing a drum on tapri when the accused caught her from behind and threw her on the ground. The prosecutrix- PW5 shouted and resisted, but the accused threatened her with knife and committed rape on her. Even thereafter, he threatened to kill her if she reported the incident to anyone else. In the evening, PW5-X told about sexual assault to her husband and her mother-in-law Dallubai, a blind lady. PW8-Ramcharan, who was the employer of PW7-Shiv Narayan-husband of PW5 was also informed who assured that he would talk to the accused and PW5 should not leave the place due to fear. On the next day, i.e. July 24, 2002, when the elder brother of Shiv Narayan arrived, the prosecutrix (PW5-X) and her husband (PW7) went to the police station, Ikchavaar and lodged a complaint. PW5-X was then sent for medical examination, site plan was prepared and statements of witnesses were recorded. PW5 was medically examined. The accused was also sent for medical examination. It was found that he was absolutely competent to commit sexual intercourse. After completion of usual investigation, charge-sheet was submitted for offences punishable under Section 376 read with Section 506, Part II, Indian Penal Code (IPC). The accused denied the charge. In his statement under Section 313 of the Code of Criminal Procedure, 1973, he contended that in order to avoid repayment of loan taken from Ramcharan- PW8, the prosecutrix (PW5-X) had falsely implicated him in the case.

4. The trial Court considered the evidence adduced by the prosecution and particularly sworn testimony of PW5- prosecutrix, PW7-Shiv Narayan-husband of prosecutrix and PW9-Dr. Madhu Sharma, immediate Assistant Surgeon, Public Health Centre, Ikchavaar and held that it was proved beyond reasonable doubt that the accused had committed the offence of rape. So far as PW8-Ramcharan is concerned, he did not support the prosecution and was declared 'hostile'. The trial Court, however, acquitted the accused of the charge under Section 506, II IPC.

5. On sentence, the trial Court heard the accused who prayed for grant of probation which, in our opinion, was rightly refused by the Court. In the light of mandate in sub- section (1) of Section 376, IPC, the trial Court imposed minimum sentence of seven years' rigorous imprisonment and to pay fine of Rs.2,500/- (two thousand five hundred). In default of payment of fine, the accused was ordered to undergo rigorous imprisonment for six months more. The amount of fine was ordered to be paid to the prosecutrix X.

6. The aggrieved accused preferred an appeal before the High Court of Madhya Pradesh. The learned counsel for the accused did not challenge the finding of conviction but prayed for mercy and leniency in sentence. The learned Judge of the High Court upheld the argument of the learned counsel for the appellant and observed that the accused was initially in custody from September 11, 2002 to October 10, 2002 and again after the pronouncement of the judgment, he was sent to jail on January 23, 2003 till he was enlarged on bail on February 26, 2003. The learned Judge also observed that the accused was an 'illiterate agriculturist from rural area' and fine of Rs.2,500/- was also imposed on him. According to the learned Judge, on the facts of the case, the imprisonment for two months and three days which had already undergone by the accused could be said to be 'just and proper' and accordingly the appeal was partly allowed.

7. Aggrieved by the said order passed by the High Court, the State has approached this Court.

8. On November 21, 2005, notice as also bailable warrant was issued against the respondent which was duly served upon him. The respondent also appeared through an advocate. On March 19, 2007 when the matter was called out, the advocate appearing for the respondent- accused stated that he had no papers. The Court, therefore, ordered that papers be given to the learned counsel appearing for the respondent by the counsel for the State. The matter was then called out for final hearing.

9. We have heard learned counsel appearing for the parties.

10. The learned counsel for the State contended that the High Court had committed a serious error of law in reducing the sentence imposed by the trial Court. He submitted that sub-section (1) of Section 376, IPC provides minimum sentence of rigorous imprisonment for seven years which was imposed by the trial Court and there was no reason for the High Court to interfere with the said order. Maximum imprisonment imposable on the offender under the said provision is ten years. The High Court was, therefore, not right in reducing the sentence and that too when the accused had undergone only for two months and three days. It was also submitted that no 'adequate and special reasons' were recorded by the High Court for reducing the sentence and even on that ground also the order is vulnerable. The counsel submitted that the High Court ought to have appreciated the fact that the offence was committed in broad daylight. He, therefore, submitted that the order passed by the High Court deserves to be set aside by restoring the order of the trial Court.

11. The learned counsel for the respondent-accused submitted that the discretion exercised by the High Court considering the position of the accused, cannot be said to be illegal and deserves no interference.

12. Having heard the learned counsel for the parties, in our opinion, the High Court had manifestly erred in allowing the appeal and in reducing the sentence imposed on the offender to the period 'already undergone'.

13. So far as conviction of the respondent is concerned, we find no infirmity in the reasons recorded and the conclusion arrived at by the trial Court. The trial Court rightly held that on the fateful day, at 12.00 noon, the accused committed the crime. In her testimony on oath, prosecutrix narrated the

incident and stated that when she was washing the kothi on tapri, the accused came from the behind, caught her, pulled her down on the earth and committed rape on her. The trial Court rightly observed that the prosecutrix informed her husband about the incident, who in turn contacted PW8-Ramcharan-employer, but Ramcharan-PW8 did nothing. The matter was also reported by prosecutrix to her mother-in-law Dallubai who was blind. PW7-Shiv Narayan- husband of the prosecutrix intimated his elder brother about the incident when he came next day and thereafter First Information Report (FIR) was lodged. The trial Court rightly held that there was no unexplained delay in filing the complaint. The 'straightforward' evidence of prosecutrix-PW5 was believed by the Court and accordingly the accused was convicted. We are fully satisfied that in recording a finding of guilt against the respondent, the trial Court had not committed any error, either of fact or of law.

14. As held by this Court in several cases, if a Court of Law finds evidence of prosecutrix truthful, trustworthy and reliable, conviction can be recorded solely on the basis of her testimony and no further corroboration is necessary. In this connection, we may refer to only two leading decisions of this Court in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217 and State of Rajasthan v. Narayan, (1992) 3 SCC 615.

15. In the first case, this Court, speaking through M.P. Thakkar, J. stated:

> "9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross- examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the western society that a female may level false accusation as regards sexual molestation against a male for several reasons such as :
>
> (1) The female may be a 'good digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure. (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and

chased by males.

(3) She may want to wreak vengeance on the male for real or imaginary wrongs.

She may have a grudge against a particular male, or males in general, and may have the design to square the account.

(4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta. (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of self-

importance in the context of her inferiority complex.

(6) She may do so on account of jealousy.

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed".

16. In the second case, which was also of rape, there was delay of three days in lodging FIR. This Court held that it was not a factor causing doubt on the story of the prosecution in view of the generally known fact that the rape victim or her husband would hesitate to approach the police. It was also held that unless the evidence discloses that she and her husband had strong reasons to falsely implicate the accused, ordinarily the court should have no hesitation in accepting her version regarding the incident.

17. In the case on hand, the defence put forward by the respondent-accused was that the husband of the prosecutrix had taken advance money from PW8-Ramcharan-employer towards labour charges and since he had no intention to return the said amount, the prosecutrix falsely implicated the accused in the case. In our considered opinion, the trial Court rightly rejected the defence. Hence, in our opinion, the order of conviction recorded by the trial Court and confirmed by the High Court cannot be said to be faulty and conviction of the respondent-accused cannot be said to be illegal.

18. The next question relates to adequacy of sentence. Let us consider it on principle as well as in practice, in the light of statutory provisions.

19. Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for commission of an offence and found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The law does not envisage a person being convicted for an offence without a sentence being imposed therefor.

20. The object of punishment has been succinctly stated in Halsbury's Laws of England, (4th Edition; Vol.II; para 482) thus;

> "The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided".

(emphasis supplied)

21. In justice-delivery system, sentencing is indeed a difficult and complex question. Every Court must be conscious and mindful of proportion between an offence committed and penalty imposed as also its impact on society in general and the victim of the crime in particular.

22. In B.G. Goswami v. Delhi Administration, (1974) 3 SCC 85, this Court stated:

> "Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancing of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case. The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence; it is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the other may frustrate thereby making the offender a hardened criminal". (emphasis supplied) [see also Salmond on Jurisprudence, (2004); p.94]

23. Penal laws, by and large, adhere to the doctrine of proportionality in prescribing sentences according to culpability of criminal conduct. Judges in principle agree that sentence ought always to commensurate with the crime. In practice, however, sentences are determined on other relevant and germane considerations. Sometimes it is the correctional need that justifies lesser sentence. Sometimes the circumstances under which the offence is committed play an important role. Sometimes it is the degree of deliberation shown by the offender in committing a crime which is material. Sentencing is thus a delicate task which requires skill, talent and consideration of several factors, such as, the nature of offence, circumstances extenuating or aggravating- in which it was committed, prior criminal record of the offender, if any, age and background of the criminal with reference to education, home life, social adjustment, emotional and mental condition, prospects of his reformation and rehabilitation, etc. All these and similar other considerations can, hopefully and legitimately, tilt the scale on the propriety of sentence.

24. Moreover, social impact of the crime, particularly where it relates to offences against women, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude of imposition of meager sentence or too sympathetic view may be counter productive in the long run and against social interest which needs to be cared for, protected and strengthened by string of deterrence inbuilt in the sentencing system.

25. Sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to 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 leaves behind a traumatic experience. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and complicated provisos.

26. Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court [Dinesh v. State of Rajasthan, (2006) 3 SCC 771].

27. Now, let us consider the legal position in the light of statutory provisions and amendments made. The Law Commission took note of various decisions rendered by this Court from time to time wherein it was observed that considering the rise in crime and the growing menace to sexual abuse, necessary change should be made. The Law Commission, therefore, in its 84th Report stated:

> "It is often stated that a woman who is raped undergoes two crises-the rape and the subsequent trial. While the first seriously wounds her dignity, curbs her individual,

destroys her sense of security and may often ruin her physically, the second is no less potent of mischief, inasmuch as it not only forces her to relive through the traumatic experience, but also does so in the glare of publicity in a totally alien atmosphere, with the whole apparatus and paraphernalia of the criminal justice system focused upon her.

In particular, it is now well established that sexual activities with young girls of immature age have a traumatic effect which often persists through life, leading subsequently to disorders, unless there are counter-balancing factors in family life and in social attitudes which could act as a cushion against such traumatic effects.

Rape is the 'ultimate violation of the self'. It is a humiliating event in a woman's life which reads to fear for existence and a sense of powerlessness. The victim needs empathy and safety and a sense of re- assurance. In the absence of public sensitivity to these needs, the experience of figuring in a report of the offence may itself become another assault.

Forcible rape is unique among crimes, in the manner in which its victims are dealt with by the criminal justice system. Raped women have to undergo certain tribulations. These begin with their treatment by the police and continue through a male-dominated criminal justice system. Acquittal of many de facto guilty rapists adds to the sense of injustice.

In effect, the focus of the law upon corroboration, consent and character of the prosecutrix and a standard of proof of guilt going beyond reasonable doubt have resulted in an increasing alienation of the general public from the legal system, who find the law and legal language difficult to understand and who think that the courts are not run so well as one would expect.

28. Pursuant to the Law Commission's Report, Parliament amended Sections 375 and 376, IPC by the Criminal Law (Amendment) Act, 1983. (ACT 43 of 1983). Sub-section (1) of Section 376 now prescribes minimum sentence of rigorous imprisonment of seven years on the person convicted under Section 376(1) unless the case is covered by proviso. Sub-section (1) read with proviso is material which reads thus:

376. Punishment for rape (1) Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the women raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgement, impose a sentence of imprisonment for a term of less than seven years.

(emphasis supplied)

29. The proviso to sub-section (1) of Section 376, IPC thus enjoins the Court if it imposes less than the minimum sentence of seven years rigorous imprisonment on an offender of rape to record 'adequate and special reasons' in the judgment. Recording of reasons is, therefore, sine qua non or condition precedent for imposing sentence less than the minimum required by law. Moreover, such reasons must be both (i) 'adequate' and (ii) 'special'. What is 'adequate' and 'special' would depend upon several factors and no strait-jacket formula can be laid down as a rule of law of universal application.

30. In the instant case, 'special' and 'adequate' reasons according to the learned Judge of the High Court were; (i) the respondent was an 'illiterate agriculturist from rural area' and (ii) an amount of fine of Rs.2,500/- was imposed on him. No other reason whatsoever has been mentioned in the judgment, nor is found from the record of the case. With respect to the learned Judge, in our considered opinion, the so called reasons can neither be said to be 'special' nor 'adequate'. On the contrary, in the Special Leave Petition seeking leave to appeal, the applicant-State has averred that the learned Judge was in the habit of passing such orders by reducing sentence to the period 'already undergone' in serious offences punishable under Sections 304, 307, 376, etc. A list is also given of some of the matters decided by him. Our attention was also invited by the learned Government Advocate that in several cases, this Court has set aside the decisions rendered by the same learned Judge.

31. In our judgment, by passing the order impugned in the present appeal and by reducing the sentence imposed on the respondent by the trial Court to the 'period already undergone' which was only two months and three days, the learned Judge of the High Court has committed grave illegality which had resulted in 'miscarriage of justice'. There were no reasons much less 'adequate' and 'special' reasons to reduce the sentence less than the minimum required to be imposed under sub-section (1) of Section 376, IPC. The order is, therefore, liable to be set aside. On the facts and in the circumstances of the case, in our opinion, the trial Court was wholly right and fully justified in awarding rigorous imprisonment for seven years as envisaged by sub-section (1) of Section 376, IPC and there was no earthly reason to interfere with the said order by the High Court. The appeal, therefore, deserves to be allowed.

32. For the foregoing reasons, the appeal filed by the State is allowed. The order of conviction recorded by the trial Court and confirmed by the High Court is upheld. The High Court was, however, wrong in reducing the sentence and the trial Court rightly imposed rigorous imprisonment of seven years on the respondent-accused. We, therefore, restore that part of the order of the trial Court directing the respondent to suffer rigorous imprisonment for seven years. It goes without saying that the period of sentence already undergone by the respondent-accused will be given set off.

33. Ordered accordingly.