Ravada Sasikala vs State Of Andhra Pradesh And Anr on 27 February, 2017

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Author: Dipak Misra

Bench: Dipak Misra, R. Banumathi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.406-407 OF 2017
(@ S.L.P. (Criminal) Nos. 9389-90 of 2016)

Ravada Sasikala …Appellant

Versus

State of Andhra Pradesh & Anr. …Respondents

J U D G M E N T

Dipak Misra, J.

In Chetan Dass v. Kamla Devi[1], this Court had observed:-

> "Matrimonial matters are matters of delicate human and emotional relationship. It demands mutual trust, regard, respect, love and affection with sufficient play for reasonable adjustments with the spouse. The relationship has to conform to the social norms as well. ..."

2. Though the aforesaid observations were made in the context of a matrimonial dispute arising out of a proceeding under Section 13 of the Hindu Marriage Act, 1955 praying for dissolution of marriage by granting a decree of divorce, yet we have commenced our judgment with the same as the facts of the present case painfully project what a relation in close proximity can do to a young girl when his proposal for his marriage is not accepted and he, forgetting the fundamental facet of human dignity and totally becoming oblivious of the fact that marriage, as a social institution, is an affirmance of civilized society order, allows his unrequited love to be converted to complete venom that leads him on the path of vengeance, and the ultimate shape of such retaliation is house trespass by the accused carrying an acid bottle and pouring it over the head of the girl, the appellant herein.

3. The necessary facts. On the basis of the statement of the injured, an FIR under Sections 448 and 307 of the Indian Penal Code (IPC) was registered at police station Vallampudi. The injuries sustained by the victim-informant required long treatment and eventually after recording the statements of the witnesses, collecting various materials from the spot and taking other aspects into consideration of the crime, the investigating agency filed the charge sheet for the offences that were originally registered under the FIR before the competent court which, in turn, committed the matter to the Court of Session, Vizianagaram. The accused abjured his guilt and expressed his desire to face the trial.

4. The prosecution, in order to establish the charges against the accused, examined 12 witnesses and got marked Ex. P1 to P14 besides bringing 11 material objects on record. The defence chose not to examine any witness. It may be noted that on behalf of the defence, one document Ex. D-1, was marked.

5. The learned Assistant Sessions Judge, Vizianagaram did not find the accused guilty under Section 307 IPC but held him guilty under Section 326 and 448 IPC. At the time of hearing of the sentence under Section 235(2) of the Code of Criminal Procedure (CrPC), the convict pleaded for mercy on the foundation of his support to the old parents, the economic status, social strata to which he belongs and certain other factors. The learned trial judge, upon hearing him, sentenced him to suffer rigorous imprisonment for one year and directed to pay a fine of Rs. 5,000/- with a default clause under Section 326 IPC and sentenced him to pay a fine of Rs. 1000/- for the offence under Section 448 IPC with a default clause.

6. The State preferred Criminal Appeal No. 1731 of 2007 under Section 377(1) CrPC before the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh for enhancement of sentence. Being grieved by the judgment of conviction and order of sentence, the accused-respondent had preferred Criminal Appeal No. 15 of 2006 before the Sessions Judge, Vizianagaram which was later on transferred to the High Court and registered as Transferred Criminal Appeal No. 1052 of 2013.

7. Both the appeals were heard together by the learned Single Judge who concurred with the view taken by the learned trial judge as regards the conviction. While dealing with the quantum of sentence, the learned Judge opined thus:-

> "However, the sentence of imprisonment imposed by the trial Court for the offence under Section 326 I.P.C. is modified to the period which the accused has already undergone, while maintaining the sentence of fine for both the offences."

8. At the outset, we must note that the State has not assailed the said judgment. The appellant, after obtaining permission of this Court, filed the special leave petition which we entertained for the simon pure reason it has been asserted that the period of custody suffered by the accused is 30 days. It is apt to note here that the accused-respondent has not challenged the conviction and, therefore, it has to be assumed that apart from accepting the judgment of conviction, he must have celebrated the delight and jubilation of liberty inasmuch as despite the sustenance of the judgment of conviction, he was not required to suffer any further imprisonment.

9. The centripodal question, indubitably a disquieting one, whether the High Court has kept itself alive to the precedents pertaining to sentencing or has been guided by some kind of unfathomable and incomprehensible sense of individual mercy absolutely ignoring the plight and the pain of the victim; a young girl who had sustained an acid attack, a horrendous assault on the physical autonomy of an individual that gets more accentuated when the victim is a young woman. Not for nothing, it has been stated stains of acid has roots forever.

10. As the factual matrix gets unfolded from the judgment of the learned trial Judge, the appellant after completion of her intermediate course had accompanied her brother to Amalapuram of East Godavari District where he was working as an Assistant Professor in B.V.C. Engineering College, Vodalacheruvu and stayed with him about a week prior to the occurrence. Thereafter, she along with her brother went to his native place Sompuram. At that time, the elder brother of the accused proposed a marriage alliance between the accused and the appellant for which her family expressed unwillingness. The reason for expressing the unwillingness is not borne out on record but the said aspect, needless to say, is absolutely irrelevant. What matters to be stated is that the proposal for marriage was not accepted. It is evincible from the material brought on record that the morning of 24.05.2003 became the darkest and blackest one in her life as the appellant having a head bath had put a towel on her head to dry, the accused trespassed into her house and poured a bottle of acid over her head. It has been established beyond a trace of doubt by the ocular testimony and the medical evidence that some part of her body was disfigured and the disfiguration is due to the acid attack.

11. In this backdrop, the heart of the matter is whether the imposition of sentence by the learned Single Judge is proportionate to the crime in question.

12. In this context, Ms. Aparna Bhat, learned counsel appearing for the appellant submits that by no stretch of imagination, the period undergone, that is, 30 days, can be regarded as appropriate for the offence under Section 326 IPC and definitely not when there is acid attack. She would further urge that in such a situation, the concept of justice feels embarrassed and a dent is created in the criminal justice system. Learned counsel would further submit that mercy "whose quality is not unstrained", may be considered as a virtue in the realm of justice but misplaced sympathy and exhibition of unwarranted mercy is likely to pave the path of complete injustice. She has commended us to certain

authorities which we shall, in due course, refer to.

13. Per contra, contends Mr. Y. Raja Gopala Rao, learned counsel for the respondent that the occurrence had taken place long back and with efflux of time, the appellant as well as the respondent have been leading their individual separate married lives and, therefore, it would not be appropriate to interfere with the sentence reduced by the High Court. It is canvassed by him that the respondent has not challenged the conviction before the High Court but he has been leading a reformed life and after a long lapse of time, to send him to custody would tantamount to injustice itself.

14. We have noted earlier that the conviction under Section 326 IPC stands established. The singular issue is the appropriateness of the quantum of sentence. Almost 27 years back in Sham Sunder v. Puran and another[2], the accused-appellant therein was convicted under Section 304 Part I IPC and while imposing the sentence, the appellate court reduced the sentence to the term of imprisonment already undergone, i.e., six months. However, it enhanced the fine. This Court ruled that sentence awarded was inadequate. Proceeding further, it opined that:-

> "No particular reason has been given by the High Court for awarding such sentence. The court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the High Court appears to be so grossly and entirely inadequate as to involve a failure of justice. We are of opinion that to meet the ends of justice, the sentence has to be enhanced." After so stating the Court enhanced the sentence to one of rigorous imprisonment for a period of five years.

15. In Shyam Narain v. State (NCT of Delhi)[3], it has been ruled that primarily it is to be borne in mind that sentencing for any offence has a social goal. Sentence is to be imposed regard being had to the nature of the offence and the manner in which the offence has been committed. The fundamental purpose of imposition of sentence is based on the principle that the accused must realise that the crime committed by him has not only created a dent in the life of the victim but also a concavity in the social fabric. The purpose of just punishment is designed so that the individuals in the society which ultimately constitute the collective do not suffer time and again for such crimes. It serves as a deterrent. The Court further observed that on certain occasions, opportunities may be granted to the convict for reforming himself but it is equally true that the principle of proportionality between an offence committed and the penalty imposed are to be kept in view. It has to be borne in mind that while carrying out this complex exercise, it is obligatory on the part of the court to see the impact of the offence on the society as a whole and its ramifications on the immediate collective as well as its repercussions on the victim.

16. In State of Madhya Pradesh v. Najab Khan and others[4], the High Court of Madhya Pradesh, while maintaining the conviction under Section 326 IPC read with Section 34 IPC, had reduced the sentence to the period already undergone, i.e., 14 days. The two-Judge Bench referred to the authorities in Shailesh Jasvantbhai v. State of Gujarat[5], Ahmed Hussain Vali Mohammed Saiyed v.

State of Gujarat[6], Jameel v. State of Uttar Pradesh[7] and Guru Basavaraj v. State of Karnataka[8] and held thus:-

> "In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice dispensation system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The courts must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment." In the said case, the Court ultimately set aside the sentence imposed by the High Court and restored that of the trial Judge, whereby he had convicted the accused to suffer rigorous imprisonment for three years.

17. In Sumer Singh v. Surajbhan Singh & others[9], while elaborating on the duty of the Court while imposing sentence for an offence, it has been ruled that it is the duty of the court to impose adequate sentence, for one of the purposes of imposition of requisite sentence is protection of the society and a legitimate response to the collective conscience. The paramount principle that should be the guiding laser beam is that the punishment should be proportionate. It is the answer of law to the social conscience. In a way, it is an obligation to the society which has reposed faith in the court of law to curtail the evil. While imposing the sentence it is the court's accountability to remind itself about its role and the reverence for the rule of law. It must evince the rationalised judicial discretion and not an individual perception or a moral propensity. The Court further held that if in the ultimate eventuate the proper sentence is not awarded, the fundamental grammar of sentencing is guillotined and law does not tolerate it; society does not withstand it; and sanctity of conscience abhors it. It was observed that the old saying "the law can hunt one's past" cannot be allowed to be buried in an indecent manner and the rainbow of mercy, for no fathomable reason, should be allowed to rule. The conception of mercy has its own space but it cannot occupy the whole accommodation. While dealing with grant of further compensation in lieu of sentence, the Court ruled:-

> "We do not think that increase in fine amount or grant of compensation under the Code would be a justified answer in law. Money cannot be the oasis. It cannot assume the centre stage for all redemption. Interference in manifestly inadequate and unduly lenient sentence is the justifiable warrant, for the Court cannot close its eyes to the agony and anguish of the victim and, eventually, to the cry of the society."

18. In State of Punjab v. Bawa Singh[10], this Court, after referring to the decisions in State of Madhya Pradesh v. Bablu[11] and State of Madhya Pradesh v. Surendra Singh[12], reiterated the

settled proposition of law that one of the prime objectives of criminal law is the imposition of adequate, just, proportionate punishment which is commensurate with the nature of crime regard being had to the manner in which the offence is committed. It has been further held that one should keep in mind the social interest and conscience of the society while considering the determinative factor of sentence with gravity of crime. The punishment should not be so lenient that it would shock the conscience of the society. Emphasis was laid on the solemn duty of the court to strike a proper balance while awarding the sentence as imposition of lesser sentence encourages a criminal and resultantly the society suffers.

19. Recently, in Raj Bala v. State of Haryana and others[13], on reduction of sentence by the High Court to the period already undergone, the Court ruled thus:-

> "Despite authorities existing and governing the field, it has come to the notice of this Court that sometimes the court of first instance as well as the appellate court which includes the High Court, either on individual notion or misplaced sympathy or personal perception seems to have been carried away by passion of mercy, being totally oblivious of lawful obligation to the collective as mandated by law and forgetting the oft quoted saying of Justice Benjamin N. Cardozo, "Justice, though due to the accused, is due to the accuser too" and follow an extremely liberal sentencing policy which has neither legal permissibility nor social acceptability." And again:-
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> "A Judge has to keep in mind the paramount concept of rule of law and the conscience of the collective and balance it with the principle of proportionality but when the discretion is exercised in a capricious manner, it tantamounts to relinquishment of duty and reckless abandonment of responsibility. One cannot remain a total alien to the demand of the socio-cultural milieu regard being had to the command of law and also brush aside the agony of the victim or the survivors of the victim. Society waits with patience to see that justice is done. There is a hope on the part of the society and when the criminal culpability is established and the discretion is irrationally exercised by the court, the said hope is shattered and the patience is wrecked."

20. Though we have referred to the decisions covering a period of almost three decades, it does not necessarily convey that there had been no deliberation much prior to that. There had been. In B.G. Goswami v. Delhi Administration[14], the Court while delving into the issue of punishment had observed that 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 reclaim 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 the question of awarding appropriate sentence.

21. The purpose of referring to the aforesaid precedents is that they are to be kept in mind and adequately weighed while exercising the discretion pertaining to awarding of sentence. Protection of society on the one hand and the reformation of an individual are the facets to be kept in view. In

Shanti Lal Meena v. State (NCT of Delhi)[15], the Court has held that as far as punishment for offence under the Prevention of Corruption Act, 1988 is concerned, there is no serious scope for reforming the convicted public servant. Therefore, it shall depend upon the nature of crime, the manner in which it is committed, the propensity shown and the brutality reflected. The case at hand is an example of uncivilized and heartless crime committed by the respondent No. 2. It is completely unacceptable that concept of leniency can be conceived of in such a crime. A crime of this nature does not deserve any kind of clemency. It is individually as well as collectively intolerable. The respondent No. 2 might have felt that his ego had been hurt by such a denial to the proposal or he might have suffered a sense of hollowness to his exaggerated sense of honour or might have been guided by the idea that revenge is the sweetest thing that one can be wedded to when there is no response to the unrequited love but, whatever may be the situation, the criminal act, by no stretch of imagination, deserves any leniency or mercy. The respondent No. 2 might not have suffered emotional distress by the denial, yet the said feeling could not to be converted into vengeance to have the licence to act in a manner like he has done.

22. In view of what we have stated, the approach of the High Court shocks us and we have no hesitation in saying so. When there is medical evidence that there was an acid attack on the young girl and the circumstances having brought home by cogent evidence and the conviction is given the stamp of approval, there was no justification to reduce the sentence to the period already undergone. We are at a loss to understand whether the learned Judge has been guided by some unknown notion of mercy or remaining oblivious of the precedents relating to sentence or for that matter, not careful about the expectation of the collective from the court, for the society at large eagerly waits for justice to be done in accordance with law, has reduced the sentence. When a substantive sentence of thirty days is imposed, in the crime of present nature, that is, acid attack on a young girl, the sense of justice, if we allow ourselves to say so, is not only ostracized, but also is unceremoniously sent to “Vanaprastha”. It is wholly impermissible.

23. In view of our analysis, we are compelled to set aside the sentence imposed by the High Court and restore that of the trial court. In addition to the aforesaid, we are disposed to address on victim compensation. We are of the considered opinion that the appellant is entitled to compensation that is awardable to a victim under the CrPC. In Ankush Shivaji Gaikwad v. State of Maharashtra[16], the two-Judge Bench referred to the amended provision, 154th Law Commission Report that has devoted entire chapter to victimology, wherein the growing emphasis was on the victim.

24. In Laxmi v. Union of India and others[17], this Court observed thus:-

> “12. Section 357-A came to be inserted in the Code of Criminal Procedure, 1973 by Act 5 of 2009 w.e.f. 31-12-2009. Inter alia, this section provides for preparation of a scheme for providing funds for the purpose of compensation to the victim or his dependants who have suffered loss or injury as a result of the crime and who require rehabilitation.
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> 13. We are informed that pursuant to this provision, 17 States and 7 Union Territories have prepared “Victim Compensation Scheme” (for short “the Scheme”). As regards

> the victims of acid attacks, the compensation mentioned in the Scheme framed by these States and Union Territories is un-

uniform. While the State of Bihar has provided for compensation of Rs 25,000 in such Scheme, the State of Rajasthan has provided for Rs 2 lakhs of compensation. In our view, the compensation provided in the Scheme by most of the States/Union Territories is inadequate. It cannot be overlooked that acid attack victims need to undergo a series of plastic surgeries and other corrective treatments. Having regard to this problem, the learned Solicitor General suggested to us that the compensation by the States/Union Territories for acid attack victims must be enhanced to at least Rs 3 lakhs as the aftercare and rehabilitation cost. The suggestion of the learned Solicitor General is very fair."

25. The Court further directed that the acid attack victims shall be paid compensation of at least Rs 3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh was directed to be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs.2 lakhs was directed to be paid as expeditiously as possible and positively within two months thereafter and compliance thereof was directed to be ensured by the Chief Secretaries of the States and the Administrators of the Union Territories.

26. In State of M.P. v. Mehtaab[18], the Court directed compensation of Rs.2 lakhs to be fixed regard being had to the limited final resources of the accused despite the fact that the occurrence took place in 1997. It observed that the said compensation was not adequate and accordingly, in addition to the said compensation to be paid by the accused, held that the State was required to pay compensation under Section 357-A CrPC. For the said purpose, reliance was placed on the decision in Suresh v. State of Haryana[19].

27. In State of Himachal Pradesh v. Ram Pal[20], the Court opined that compensation of Rs. 40,000/- was inadequate regard being had to the fact that life of a young girl aged 20 years was lost. Bestowing anxious consideration the Court, placing reliance on Suresh (supra), Manohar Singh v. State of Rajasthan and Ors.[21] and Mehtaab (supra), directed that ends of justice shall be best subserved if the accused is required to pay a total sum of Rs.1 lakh and the State to pay a sum of Rs.3 lakhs as compensation.

28. Regard being had to the aforesaid decisions, we direct the accused- respondent No. 2 to pay a compensation of Rs.50,000/- and the State to pay a compensation of Rs.3 lakhs. If the accused does not pay the compensation amount within six months, he shall suffer further rigorous imprisonment of six months, in addition to what has been imposed by the trial court. The State shall deposit the amount before the trial court within three months and the learned trial Judge on proper identification of the victim, shall disburse it in her favour.

29. The criminal appeals are allowed to the extent indicated above.

.....J. (Dipak Misra) .....J. (R. Banumathi) New Delhi;

February 27, 2017

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[1] (2001) 4 SCC 250
[2] (1990) 4 SCC 731
[3] (2013) 7 SCC 77
[4] (2013) 9 SCC 509
[5] (2006) 2 SCC 359
[6] (2009) 7 SCC 254
[7] (2010) 12 SCC 532
[8] (2012) 8 SCC 734
[9] (2014) 7 SCC 323
[10] (2015) 3 SCC 441
[11] (2014) 9 SCC 281
[12] (2015) 1 SCC 222
[13] (2016) 1 SCC 463
[14] (1974) 3 SCC 85
[15] (2015) 6 SCC 185
[16] (2013) 6 SCC 770
[17] (2014) 4 SCC 427
[18] (2015) 5 SCC 197
[19] (2015) 2 SCC 227
[20] (2015) 11 SCC 584
[21] (2015) 3 SCC 449