Supreme Court of India
Parminder @ Ladka Pola vs State Of Delhi on 16 January, 1947
Author: A K Patnaik
Bench: A.K. Patnaik, Gyan Sudha Misra

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL No. 133 of 2006

Parminder alias Ladka Pola .… Appellant

Versus

State of Delhi ….. Respondent

J U D G M E N T

A. K. PATNAIK, J.

This is an appeal by way of special leave under Article 136 of the Constitution against the judgment dated 06.03.2003 of the Delhi High Court in Criminal Appeal No. 696 of 2002 by which the conviction of the appellant under Sections 376 and 506 of the Indian Penal Code, 1860 (for short 'IPC') and the sentences imposed by the trial court on the appellant have been maintained.

Facts:

> 2. The facts very briefly are that on 30.01.2001 at about 8.00 p.m., a young girl of about fourteen years accompanied by her parents, lodged the First Information Report (for short 'the FIR') in Police Station, Khajoori Khas, Delhi, in which she stated as follows: She was a student of Higher Secondary School and residing with her parents at House No.131, Gali No.12, Khajoori Khas, Delhi. Opposite to their house was the house of Sardar Jagir Singh. Babbo, daughter of Sardar Jagir Singh, was her friend and she used to visit the house of Sardar Jagir Singh to meet Babbo. On 28.01.2001 at about 8.30 p.m., the lights in the area went off and as the generator at the house of Sardar Jagir Singh was on, the prosecutrix went to meet Babbo. She enquired from the appellant, the son of Sardar Jagir Singh, as to whether Babbo was in the house and the appellant told her that Babbo was inside the room. When she entered inside the room, the appellant followed her into the room, bolted the room from inside and forcibly put her on the cot. When she raised an alarm, the appellant slapped her. He then took out her salwar and underwear and raped her. He also threatened her with death if she narrated the incident to anybody. Out of fear and shame, she did not narrate the incident to anybody, but in the evening of 30.01.2001 she narrated the incident to her mother.

3. On this statement of the girl (hereinafter referred to as 'the prosecutrix'), a case under Sections 376 and 506, IPC, was registered on 30.01.2001. The prosecutrix was medically examined on the same night. On examination of the X-rays report of the prosecutrix, the doctor opined that her age was above fourteen years but below sixteen years. Her clothes and vaginal swab were sent to the Central Forensic Science Laboratory (for short 'CFSL') for analysis and as per the report from CFSL, human semen and blood was detected on the underwear of the prosecutrix, but no semen was detected in the vaginal swab. After investigation, a charge-sheet was filed against the appellant under Sections 342/354/376/506, IPC. Charges, however, were framed only under Sections 376 and 506, IPC, and as the appellant pleaded not guilty, the trial was conducted. At the trial, as many as fifteen witnesses were examined on behalf of the prosecution including the prosecutrix. After considering the evidence on record, the trial court convicted the appellant under Sections 376 and 506, IPC. For the offence under Section 376, IPC, the trial court imposed the minimum sentence of seven years rigorous imprisonment and a fine of Rs.5,000/-, in default, rigorous imprisonment for one year and for the offence under Section 506, IPC, the trial court imposed a sentence of two years imprisonment and a fine of Rs.5,000/- and in default, a rigorous imprisonment of six months. The trial court further directed that the sentences were to run concurrently. Aggrieved, the appellant filed Criminal Appeal No.696 of 2002 in the High Court, but by the impugned judgment the High Court has dismissed the appeal.

Contentions of the parties:

4. At the hearing of this appeal, Mr. Jana Kalyan Das, learned counsel for the appellant, submitted that at most this is a case of attempt to rape and not rape and hence the appellant should be held guilty under Sections 376/511, IPC, and not under Section 376, IPC. He referred to the evidence of the prosecutrix (PW-1) as well as the medical evidence to support his submission that no offence of rape as such has been committed of the prosecutrix. He cited the decision of this Court in Narender Kumar v. State (NCT of Delhi) [(2012 (7) SCC 171] for the proposition that even in a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts and it is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. He submitted that in the event this Court finds that the appellant is guilty of the attempt to rape and not rape, he will be liable for half the sentence provided for rape as will be clear from Section 511, IPC.

5. Mr. Das next submitted that the appellant while in jail custody studied and passed Class 10 examination and has also appeared in Class 12 examination as a candidate from Central Jail, Tihar, Delhi, and has been released on bail after undergoing three years and nine months of sentence and has thereafter got married on 16.08.2007. He further submitted that on 28.06.2008, a daughter has been born to him who is studying in lower K.G. Class and on 13.06.2012, a second daughter has been born to

him, who is on the lap of her mother. The appellant has filed on 12.02.2013 an affidavit stating all these facts. He submitted that as the appellant is the sole bread earner of the family and has been doing odd jobs in Delhi to earn a living for the family, his family will suffer immensely if he is to undergo imprisonment for the remaining period out of the seven years imprisonment imposed on him by the court. He submitted that under the proviso to Section 376(1), IPC, the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. He submitted that on the facts and circumstances stated above, this Court should reduce the sentence in this case imposed on the appellant to the period already undergone so that his family does not suffer. In support of this submission, he cited the decisions of this Court in State of Rajasthan vs. N.K. The Accused [(2000) 5 SCC 30], Sukhwinder Singh vs. State of Punjab [(2000) 9 SCC 204] and Baldev Singh and Others vs. State of Punjab [(2011) 13 SCC 705]

6. In reply, learned counsel for the State, Mr. Rakesh Khanna submitted that the prosecution has discharged its onus in establishing beyond reasonable doubt that the appellant has committed rape on the prosecutrix. He relied on the evidence of PW- 1 as well as the report of the CFSL to show that it was not a case of only attempt to commit rape by the appellant. He submitted that the High Court was, therefore, right in coming to the conclusion that the appellant had committed rape on the prosecutrix.

7. On the question of sentence, Mr. Khanna submitted that this is a case where an offence has been committed on a minor girl and it is evident from the statement of prosecutrix (PW-1) that on account of the rape, her parents stopped her from going to school and she had to study 8th Class privately. He submitted that considering the serious nature of the sexual offence committed by the appellant on a minor girl, this is not a fit case in which this Court should invoke the proviso to Section 376(1), IPC and reduce the minimum sentence of seven years for the offence of rape as provided in Section 376(1), IPC, to the period already undergone by the appellant. He cited the decisions of this Court in State of Madhya Pradesh vs. Bablu Natt [(2009) 2 SCC 272] and State of Rajasthan vs. Vinod Kumar [(2012) 6 SCC 770] in which this Court, after considering the language used in the proviso to Section 376(1), IPC, has set aside the orders of the High Court imposing sentences less than the minimum sentence of seven years in cases of rape under Section 376, IPC.

Findings of the Court:

8. The first question that we have to decide is whether the High Court is right in coming to the conclusion that the appellant was guilty under Section 376, IPC, for the offence of rape or whether the evidence on record in this case only made out an offence of attempt to rape under Section 376, IPC, read with Section 511, IPC. We find that the High Court while coming to the conclusion that the appellant was guilty of

the offence of rape under Section 376, IPC, has considered the evidence of the prosecutrix (PW-1), the medical evidence and the report of CFSL. The prosecutrix has stated that the appellant pushed her on the cot, put off her underwear and salwar and forcibly raped her. The salwar and underwear of the prosecutrix, which she was wearing at the time of incident, were sent to CFSL for analysis and after examination the CFSL had found in its report dated 30.04.2001 that there was human semen and blood on the underwear of the prosecutrix referred to in the report as Exhibit 4(B). Hence, there is corroboration of the testimony of the prosecutrix that rape was committed on her.

9. PW-15, the doctor who conducted the medical examination of the prosecutrix on 31.01.2001, however, has stated that there was no sign of injury on the prosecutrix and the hymen was found intact. The High Court has considered this evidence and has held that the non-rupture of hymen is not sufficient to dislodge the theory of rape and has relied on the following passage from Modi in Medical Jurisprudence and Toxicology (Twenty First Edition):

"Thus, to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genital or leaving any seminal stains." Section 375, IPC, defines the offence of 'rape' and the Explanation to Section 375, IPC, states that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. This Court has accordingly held in Wahid Khan v. State of Madhya Pradesh [(2010) 2 SCC 9] that even the slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. In the aforesaid case, this Court has relied on the very same passage from Modi in Medical Jurisprudence and Toxicology (Twenty Second Edition) quoted above. In the present case, even though the hymen of the prosecutrix was not ruptured the High Court has held that there was penetration which has caused bleeding in the private parts of the prosecutrix as would be evident from the fact that the underwear of the prosecutrix was stained by blood. In our considered opinion, the High Court was right in holding the appellant guilty of the offence of rape and there is no merit in the contention of the learned counsel for the appellant that there was only an attempt to rape and not rape by the appellant.

10. The next question that we have to consider is whether the Court should invoke the proviso to Section 376(1), IPC, and impose a sentence of imprisonment for a term of less than seven years in this case. The proviso to Section 376(1), IPC, as it stood prior to its amendment in the year 2013 expressly states that the Court may impose a sentence of imprisonment for a term of less than seven years in an offence under Section 376(1), IPC, "for adequate and special reasons to be mentioned in the judgment". We may now consider the cases cited by the learned counsel for the parties in which this Court has considered whether or not the proviso should be invoked to reduce the sentence to less than the minimum sentence in cases of rape.

11. In State of Rajasthan vs. N.K. The Accused (supra), cited by the learned counsel for the appellant, this Court found that the accused had committed rape on the prosecutrix who was a married woman. This Court found that that the incident was of the year 1993 and the accused was taken into custody by the police on 03.11.1993 and he was not allowed bail and during trial and during hearing of the appeal, he remained in jail and it was only on 11.10.1995 when the High Court acquitted him of the charge that he was released from jail. This Court held that though the accused had remained in jail for a little less than two years and taking into consideration the period of remission for which he would have been entitled as well as the time which has elapsed from the date of commission of the offence, the accused should not be sent back to jail and reduced the sentence to the period already undergone by him.

12. In Sukhwinder Singh vs. State of Punjab (supra), cited by the learned counsel for the appellant, this Court found that the prosecutrix was a consenting party to the act of sexual intercourse and that she had willingly left her parents' house to be with the appellant but she was found to be "not more than sixteen years of age" and on that account, the High Court had upheld the conviction of the appellant. This Court held that as the prosecutrix had since got married and she did not want the matter to be carried any further and wanted to lead a happy and healthy married life with her husband and had filed a compromise petition to that effect, there were adequate and special reasons to reduce the sentence to the period already undergone by the accused.

13. In Baldev Singh and Others vs. State of Punjab (supra), cited by the learned counsel for the appellant, the accused was found guilty of gang rape under Section 376(2)(g), IPC, for which the minimum sentence was ten years rigorous imprisonment. The proviso to Section 376(2), IPC, however, stated that the Court may, 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. This Court held on the facts of the case that as the incident happened in the year 1997 and as the parties have themselves entered into a compromise, the sentence be reduced to the period already undergone in view of the proviso to Section 376(2)(g), IPC.

14. In State of Madhya Pradesh vs. Bablu Natt (supra), cited by the learned counsel for the State, this Court, on the other hand, did not find good and adequate reasons to reduce the sentence to less than the minimum sentence of seven years under Section 376(1), IPC, because of the fact that the prosecutrix was a minor and had been subjected to rape and was compelled to live for several days with the accused at Chhatarpur and set aside the judgment of the High Court insofar as it imposed a sentence of less than seven years.

15. In State of Rajasthan vs. Vinod Kumar (supra), cited on behalf of the State, the accused-Vinod Kumar had been convicted by the trial court under Section 376, IPC, and sentenced to seven years imprisonment. The High Court, however, reduced the sentence to five years imprisonment without recording adequate and special reasons for doing so. This Court held that the High Court failed to ensure compliance with the mandatory requirement of the proviso to Section 376(1), IPC, to record adequate and special reasons. This Court, after considering the earlier decisions of this Court, held:

"23. 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.

24. 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 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 straitjacket formula can be laid down."

16. It is, therefore, clear that what is adequate and special would depend upon several factors and on the facts of each case and no straitjacket formula has been laid down by this Court. The legislature, however, requires the Court to record the adequate and special reasons in any given case where the punishment less than the minimum sentence of seven years is to be imposed. The conduct of the accused at the time of commission of the offence of rape, age of the prosecutrix and the consequences of rape on the prosecutrix are some of the relevant factors which the Court should consider while considering the question of reducing the sentence to less than the minimum sentence. In the facts of the present case, we find that the prosecutrix was a student of eighth class and was about 14 years on 28.01.2001 and she was of a tender age. She had gone to the house of the appellant looking for her friend Babbo, the sister of the appellant. When she asked the appellant as to where the sister of the accused was, he told her that she was in the room and when she went inside the room, he followed her into the room, bolted the room from inside and forcibly put her on the cot. The appellant then took out the salwar and the underwear of the prosecutrix and raped her. As a result of this incident, her parents stopped her from going to the school and asked her to study eighth class privately. Considering the age of the prosecutrix, the conduct of the appellant and the consequences of the rape on the prosecutrix, we do not think that there are adequate and special reasons in this case to reduce the sentence to less than the minimum sentence under Section 376(1), IPC.

17. In the result, we do not find any merit in this appeal and we accordingly dismiss the same.

.....J.

(A. K. Patnaik) .....J.

(Gyan Sudha Misra) New Delhi, January 16, 2014.