

* **HIGH COURT OF DELHI AT NEW DELHI**

+ **Crl. Appeal No.345/2008**

% Date of Order : January 19, 2009

OMBIR Appellant
Through : Mr. O.P.Sharma, Advocate

VERSUS

STATE Respondent
Through : Mr. Pawan Sharma, Advocate

CORAM :-
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

PRADEEP NANDRAJOG, J.(Oral)

1. The appellant has been convicted for offences punishable under Section 376 (2) IPC; 324 IPC, 325 IPC and 342 IPC. He has been sentenced to undergo imprisonment of life for the offence punishable under Section 376 (2) IPC and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for six months. For the offence punishable under Section 324 IPC he has been sentenced to undergo

rigorous imprisonment for 1½ years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for two months. For the offence punishable under Section 325 IPC he has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for two months. For the offence punishable under Section 342 IPC he has been sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for a period of 15 days. All sentences have been directed to run concurrently.

2. Briefly stated, case of the prosecution was that on the intervening night of 7th and 8th October 2003, Anshu wife of the appellant informed the police that the appellant was married to her about 1½ years ago and her father being very poor had left her sister 'L' aged 10 years and her sister Sushila aged 3 years with them and that the appellant used to drink liquor and beat her. She informed that on 7.10.2003 her sister L told her that the appellant had raped her on 6.10.2003 and even on previous occasions had raped her. She informed that when she confronted the appellant with the said fact he inflicted injuries on her left arm, legs and the

back with a kitchen knife and gave leg and fist blows on her sister L and slapped her mercilessly. She informed that she and her sisters were kept as virtual prisoners. She informed that the appellant had injured her private parts with a handle of a hand pump. She stated that on 7.10.2003 the accused had gone to answer the call of nature and forgot to lock the door from outside and using this opportunity she ran out of the house and met a man on the road named Chander Bhan to whom she narrated her plight and Chander Bhan brought her to the police station.

3. A FIR was registered on the statement of Anshu. Police personnel were sent to the house who recovered her sisters L and Sushila. The appellant was arrested.

4. PW-3 Dr.Vishal Sehgal examined Anshu on 8.10.2003 and recorded the MLC Ex.PW-3/A noting therein the injuries on Sushila being:-

“A. Multiple clean incised wound over left forearm (2-3 days old).

B. Infected clean lacerated wound over first web space of right hand.

C. Multiple bruises over back and both thighs and buttocks.”

5. He referred Sushila to a Gynecologist for gynecological examination.

6. On the MLC Ex.PW-3/A, the Gynecologist has recorded as under:-

“Supra urethral laceration bleeding on touch.

Vagina wall bleeding on touch.”

7. Unfortunately, at the trial the Gynecologist has not been examined and the learned public prosecutor has not bothered to formally prove the recording of medical examination by the Gynecologist on Ex.PW-3/A.

8. Kumari L was examined on 8.10.2003 by Dr.Swati Shitoley working at DDU Hospital who noted on the MLC Ex.PW-6/A that the hymen appeared to be torn. Blue 1 cm discolouration present over posteriosly. Since Dr.Swati Shitoley had left DDU Hospital, PW-6 Dr.Swati Diwakar who was familiar with the writing of Dr.Swati Shitoley proved the MLC Ex.PW-6/A. Dr.Pooja Bhasin, PW-7 also examined Kumari L at DDU Hospital on 8.10.2003 and on the MLC recorded, vide Ex.PW-7/A the following injuries on Kumari L:-

“A. Swelling and multiple old abrasions present over face.

B. Swelling and tenderness present over right elbow.

C. Swelling and tenderness present over left hand.

D. Abrasions present over bilateral elbows dorsum of bilateral hands, bilateral knees and legs.”

9. Since the injuries were opined to be caused by a blunt object, Dr.Pooja Bhasin suspected a fracture and referred Kumari L to the department of Radiology where Dr.Sanjeev, PW-11 working in the Orthopedic department of the hospital examined Kumari L with reference to X-ray of the hands and the arms of Kumari L and vide Ex.PW-11/A recorded on the MLC that the right elbow had a fracture and that even the left hand had a fracture. He opined that the injuries were fresh and the duration thereof was within last 24 hours.

10. Armed with the MLCs aforementioned and the statements of Anshu and Kumari L, the charge sheet was filed and charges were framed against the appellant in respect whereof he has been convicted as aforementioned.

11. At the trial Anshu was examined as PW-1. She reiterated the contents of her statement recorded by the police as have been noted hereinabove.

12. She was cross examined. Nothing of substance has been brought out in her cross examination. Learned counsel for the appellant has pointed out no infirmity in her statement or anything to discredit her with respect to her cross examination.

13. Chander Bhan, the person whom Anshu met when she ran out of the house was examined as PW-5. He corroborated the statement of Anshu that on 7.10.2003, at around 11:00 P.M. Anshu had met him. He stated that she was very scared and had injuries on her body and that he took her to the police station.

14. Kumari L aged about 11 years when examined as PW-4 has deposed that her father had left her and her younger sister Sushila with Anshu who was their elder sister. She stated that the accused had been raping her. She stated that when she told this fact to her sister and upon the accused learning about the same he not only assaulted her but also assaulted her sister with the handle of a hand pump. She stated that the accused used to lock them up.

15. In spite of a very lengthy cross examination, nothing of substance has been brought out by the appellant to discredit PW-4.

16. The doctors above noted proved the MLCs of Anshu and Kumari L. The police officers associated with the investigation deposed about the registration of the FIR and further investigation carried out. We are not noting said evidence as learned counsel for the appellant has made no

submissions pertaining thereto.

17. A half-hearted plea has been urged by learned counsel for the appellant to the effect that the circumstance of Anshu meeting Chander Bhan at 11:00 in the night is unnatural and hence the very origin of the case is doubtful. The second contention urged is with reference to the testimony of PW-11 who had examined Kumari L qua the fractures suffered by Kumari L; he had deposed that according to his opinion the injuries were fresh in nature and the duration was within last 24 hours. Counsel urged that PW-11 had examined Kumari L on 8.10.2003 and that as per the prosecution Kumari L was recovered by the police in the intervening night of 6th and 7th October 2003 and thus the injuries on Kumari L could not have been inflicted by the appellant.

18. With reference to the first plea urged today, suffice would it be to state that there is nothing unnatural in Anshu coming across Chander Bhan on the road at 11:00 in the night and Chander Bhan, as a good citizen, on seeing her plight and hearing her story, accompanied her to the police station.

19. Pertaining to the second plea, no doubt PW-11 has deposed that the fracture injuries suffered by Kumari L were

fresh in nature and the duration was within last 24 hours. But, that does not discredit the version of Anshu or Kumari L. Indeed, the same very MLC three doctors who have examined Kumari L have penned their opinion with reference to the injuries on person of Kumari L, contents whereof have been noted by us in para 4 and 6 above. PW-6, the Gynecologist who had examined Kumari L categorically deposed that as per her opinion the sexual assault on Kumari L was about 2 days ago as evidenced by the medical condition of Kumari L. PW-3 who had examined Anshu categorically deposed that the injuries on Anshu were 2-3 days old. This corroborates the testimony of Kumari L and Anshu of being assaulted by the appellant on 6.10.2003.

20. The MLCs of Anshu and Kumari L speak the sordid state of affairs and tell their own tale.

21. We are satisfied with the view taken by the learned Trial Judge that all charges framed against the appellant stand fully established; noting that the charge under Section 342 IPC stands established from the testimony of Anshu and Kumari L wherein both have categorically stated that the appellant used to lock them inside the house. In fact, Anshu has deposed that whenever she or her sister were beaten

mercilessly and on her raising an objection, the appellant used to tell them that he had purchased her and her sister and he can do whatever he likes with them.

22. Learned counsel for the appellant lastly urged that the sentence imposed is excessive. This submission was restricted to the sentence of imprisonment for life imposed upon the appellant under Section 376 (2) (f) of the Penal Code.

23. It is not in dispute that Kumari L was aged 11 years when she was ravished by the appellant. Thus, the legislative mandate of the sentence being not less than 10 years imprisonment has to be kept in mind unless due to adequate and special reasons the sentence of a lesser term can be inflicted. The upper limit of the sentence may be imprisonment for life.

24. It is not a case of a one time rape. Kumari L was raped at least three times. Not only that. She was brutalized by the appellant. The innocent child was hit over the face, the hands, the dorsum of bilateral hands and legs. She had suffered two fractures. The conduct of the appellant qua his wife and acts of brutality qua her have also to be taken note of. Anshu was assaulted on her private parts with a handle of

a hand pump. The MLC of Anshu records bleeding on the vagina wall on touch and laceration bleeding in the supra urethral area. Anshu had multiple bruise marks over her back, both thighs and the buttocks. She had incised and lacerated wounds on the hands and the forearms.

25. The beast in the appellant is evidenced by the injuries he inflicted on his wife Anshu and his minor sister-in-law Kumari L.

26. In the decision reported as (2008) 2 SCC (Crl.) 550 State of Rajasthan Vs. Madan Singh it was observed as under:-

“12. 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. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The courts must hear the loud cry for justice by society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs

reflection through imposition of appropriate sentence by the court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the appellant. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.”

27. In the decision reported as 2008 (2) SCC (Crl.) 541 Ramesh Kumar Vs. State of Haryana it was observed as under:-

“12. We cannot ignore the fact that the lady was a married person and was tricked to accompany the accused who obviously had an evil design. It cannot be forgotten that the husband of the lady was lured on the evening of the day of occurrence itself taking advantage of his addiction to alcohol and it was then that the lady was lured to come out of the house for taking back her husband who was lying in a drunken state. Here was a defenceless married person who was tricked out of her house taking the advantage of the drunkenness of her husband and then was ravished in a most dastardly manner by as many as three persons, one of whom was the appellant before us. Under such circumstances we do not think that any leniency can be shown in the matter of sentence. It cannot be forgotten that out of three accused persons only one of the accused person has come up by way of an appeal. He cannot be treated differently from others who are serving their life sentence.”

28. In the decision reported as 2005 SCC (Crl.) 559 State of M.P. Vs. Munna Choubey & Anr. it was observed as under:-

“9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of “order” should meet the challenges confronting the society. Friedman in his *Law in Changing Society* stated that: “State of criminal law continues to be – as it should be – a decisive reflection of social consciousness of society.” Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. 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. For instance a murder committed due to deep-seated mutual and personal rivalry may not call for penalty of death. But an organized crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh Vs. State of M.P.* this Court while refusing to reduce the death sentence observed thus: (SCC P. 82, para 6)

“It will be a mockery of justice to permit these appellants (the accused) to escape the extreme penalty of law when faced with

such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the courts. In such cases, he understands and appreciates the language of deterrence more than the reformatory jargon."

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, 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, etc. This position was illuminatingly stated by this Court in Sevaka Perumal Vs. State of T.N.

11. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

12. Proportion between crime and punishment is a goal respected in principle and in spite of errant notions, it remains a strong influence in the determination of sentences. The

practice of punishing of serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought than to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."

29. Noting the brutality with which the appellant had been satisfying his carnal desires and specially noting the sadistic pleasure derived by him by causing injury with the hand pump handle on the private parts of his wife and satisfying his lust by ravishing his minor sister-in-law and thereafter brutally assaulting both, we see no reason to differ with the sentence imposed by the learned Trial Judge.

30. The appeal is dismissed.

**(PRADEEP NANDRAJOG)
JUDGE**

**(ARUNA SURESH)
JUDGE**

**January 19, 2009
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