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IN THE HIGH COURT OF DELHI AT NEW DELHI

DATE OF DECISION: 20th DECEMBER, 2013

+ **CRL.A. 1387/2012**

MD. TASKEEN

..... Appellant

Through: Mr. Imran Khan, Advocate.

Versus

THE STATE (GOVT. OF NCT) DELHI

..... Respondent

**Through: Ms. Fizani Hussain, APP for
the State.**

CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. The challenge in this appeal is to the judgement and order of sentence dated 22nd March, 2012 and 23rd March, 2012 in Sessions Case No. 15/2011 arising out of FIR No. 375/2010 under Sections 363/376/506/34 Indian Penal Code, 1860 (for short, 'IPC') registered as Police Station Sarai Rohilla vide which the appellant was convicted for the offence under Section 376 IPC and sentenced to undergo rigorous imprisonment for 4 years and a fine of Rs 5000/-, in default

of payment of fine, to undergo simple imprisonment for 2 months.

2. The prosecution case emanates from the fact that on 11th November, 2010, Complainant Rama Anuj came to the police station Sarai Rohilla and lodged the missing report of his daughter aged about 15 years i.e. the prosecutrix (name withheld to keep her identity confidential) since 8th November, 2010. He further raised his suspicion upon one Sunil who used to live in the same house as the complainant as a tenant and stated that his daughter may have been taken away by the said Sunil by enticing her. On the statement of the complainant, case under Section 363 IPC was registered. During investigation of the case, on 13th November, 2010, accused/appellant Mohd. Taskeen was apprehended from Old Delhi Railway station and prosecutrix was recovered from his custody. Investigating Officer of the case recorded the statement of prosecutrix wherein she stated that accused Md. Taskeen had committed rape upon her by threatening her. Medical examination of both the prosecutrix as well as the accused was conducted. Sections 376/506/34 IPC were added in the chargesheet. During further investigation of the case, Investigating Officer of the case got the statement of the prosecutrix recorded under Section 164 Cr.P.C, prepared site plan, obtained the date of birth

certificate of the prosecutrix, sent the exhibits to FSL. After completion of the investigation, a charge sheet under Sections 363/376/506/34 IPC was filed in the court.

3. Charge for offences under Sections 376/506 IPC was framed against the appellant. Appellant pleaded not guilty to the charge and claimed trial.

4. In order to substantiate its case, prosecution examined 16 witnesses. Prosecution basically relied upon the testimony of PW-1 i.e. the prosecutrix. Prosecutrix was aged 15 years and 7 months at the time of the incident. She has deposed that on 8th November, 2010, she had left with one Sunil and was taken by him to the railway station where they boarded the train for going to Saharanpur. However, they boarded the wrong train which went to Ghaziabad and thereafter they came back to Delhi and then again boarded the train which reached Saharanpur. At Saharanpur Railway Station, they met the appellant who also boarded the train in which the prosecutrix and the said Sunil were travelling. Sunil got down from the train by stating that he was going to exchange the railway ticket whereas the prosecutrix and appellant remained in the train. As the train was about to move, the appellant told the prosecutrix that she was alone and he would take

her to Sunil, after which both of them got down from the train. They searched for Sunil at Saharanpur Railway station but he was not found. According to the prosecutrix thereafter she was taken by the appellant to the house of his friend where he committed rape upon her. Appellant had taken her on his motorcycle and they travelled around the city on his motorcycle but again in the night hours, appellant took her in a lonely jhuggi and there again he committed rape upon her. On the next day morning, appellant took the prosecutrix on his motorcycle to the house of one female whom he addressed as Didi but that woman told the appellant that she would not keep the prosecutrix in her house because the prosecutrix was a minor and so the appellant was forced by that woman to leave the prosecutrix and at her instance, appellant agreed to leave the prosecutrix. Thereafter both of them boarded the train for Delhi and reached the Old Delhi Railway station where her father and the police were present and the appellant was apprehended by the police. The entire facts were narrated by the prosecutrix to her father and to the police and her statement was also recorded under Section 164 Cr.P.C. The statement of prosecutrix to the extent of her leaving from her parental home and having been found at the Delhi railway station

along with the appellant is corroborated by her father and other police witnesses. Medical evidence also corroborates the version of prosecutrix as scratch marks just below the left anteriorilia, abrasion on left thigh as well as abrasions on posterior commissure were found on her body. Prosecutrix was a girl of tender age of 15 years only.

5. All the incriminating evidence appearing against the accused was put to him while recording his statement under Section 313 Cr.P.C. wherein he denied the case of the prosecution and pleaded his innocence and stated that he has been falsely implicated in the present case.

6. After meticulously examining the evidence led by the prosecution, vide impugned judgement, appellant was convicted for offence under Section 376 IPC and sentenced as stated above. However, he was acquitted of the charge under Section 506 IPC.

7. Feeling aggrieved by the same, present appeal has been preferred by the appellant.

8. I have heard Mr. Imran Khan, learned counsel for the appellant and Ms. Fizani Hussain, learned Additional Public Prosecutor for the state and have perused the record.

9. At the outset, learned counsel for the appellant submitted that

he does not challenge the appeal on merits of the case. Appellant was also called from Jail and he reiterated that he does not want to challenge the appeal on merits. However, it was submitted that appellant was sentenced to undergo rigorous imprisonment for a period of four years out of which he has already undergone imprisonment of 3 years and 6 months. As such, it was submitted that he be released on the period already undergone. Learned APP for the State did not oppose the prayer made by learned counsel for the appellant for releasing the appellant on the period already undergone.

10. I have considered the submissions of learned counsel for the parties and have perused the Trial court record.

11. From the testimony of the prosecutrix and other corroborating evidence, prosecution had succeeded in proving the charge under Section 376 IPC. The findings of learned Trial Court in this regard do not suffer from any infirmity which calls for interference. Even the appellant has opted not to challenge the findings of the Trial Court on conviction under Section 376 IPC. As such, the order of conviction passed by the learned Trial Court stands confirmed.

12. Coming to the quantum of sentence, it is submitted by learned counsel for the appellant that the appellant was awarded rigorous

imprisonment of four years and fine. The appellant has already undergone sentence of 3½ years, as such, he be sentenced to the period already undergone.

13. 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 his life 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. True it is, 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. 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.

14. Rape is one of the most heinous crimes committed against a woman. It insults womanhood. It violates the dignity of a woman and erodes her honour. It dwarfs her personality and reduces her confidence level. It violates her right to life guaranteed under Article 21 of the Constitution of India. In this regard, it will be apt to note the observations made by the Apex Court in ***Bodhisatwa Gautam v. Subhra Chakraborty*** 1996 (1) SCC 490 where it was observed that “rape is violative of the victim’s most cherished of the fundamental rights guaranteed under Article 21 of the Constitution of India.

15. Rape is an aberrant, atrocious, horrendous and monstrous burial of her dignity in darkness. It is a crime against the entire society. In ***State of Punjab v. Gurmit Singh and Ors*** AIR 1996 SC 1393, Supreme Court observed the effect of rape on a victim with anguish:

“We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault-it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female.”

16. In ***Jugendra Singh v. State of Uttar Pradesh*** (2012) 6 SCC 297, while dwelling upon the gravity of the crime of rape, Supreme Court had expressed thus:

“Rape or an attempt to rape is a crime not against an individual but a crime which destroys the basic equilibrium of the social atmosphere. The consequential death is more horrendous. It is to be kept in mind that an offence against the body of a woman lowers her dignity and mars her reputation. It is said that one's physical frame is his or her temple. No one has any right of encroachment. An attempt for the momentary pleasure of the accused has caused the death of a child and had a devastating effect on her family and, in the ultimate eventuate, on the collective at large. When a family suffers in such a manner, the society as a whole is compelled to suffer as it creates an incurable dent in the fabric of the social milieu.”

17. Section 376 IPC provides for punishment for rape. Offence of rape is punishable with imprisonment of either description for a term which shall not be less than seven years but which may be extend to ten years. The convict shall also be liable to fine. Proviso to Section 376(1) states that 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. Thus, a minimum of seven years sentence is provided under Section 376(1) of the Indian Penal Code (IPC). Sentence for a term of less than seven years can be imposed by a court only after assigning adequate and special reasons for such reduction. Thus, ordinarily sentence for an offence of rape shall not be less than seven years. When the legislature provides for a

minimum sentence and makes it clear that for any reduction from the minimum sentence of seven years, adequate and special reasons have to be assigned in the judgment, the courts must strictly abide by this legislative command.

18. It is a fundamental rule of construction that a proviso must be considered in relation to the main proviso to which it stands as a proviso, particularly, in such penal provisions. Whether there exists any “special and adequate reason” would depend upon a variety of factors and the peculiar facts and circumstances of each case. No hard and fast rule can be laid down in that behalf for universal application.

19. Section 376(1) read with the proviso thereto reflects the anxiety of the legislature to ensure that a rapist is not lightly let off and unless there are some extenuating circumstances stated in writing, sentence below the minimum i.e. less than seven years cannot be imposed. While imposing sentence on persons convicted of rape, the court must be careful and must not overlook requirement of assigning reasons for imposing sentence below the prescribed minimum sentence.

20. In *State of Karnataka v. Krishnappa* (2000) 4 SCC 75 the High Court had reduced the sentence of ten years rigorous

imprisonment imposed by the trial court on the accused for an offence under Section 376 of the Indian Penal Code (IPC) to four years rigorous imprisonment. Severely commenting on this indiscretion, Apex Court observed as under:

“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. Courts must hear the loud cry for justice by the 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 Respondent 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. The courts are expected to properly operate the sentencing system and to impose such sentence for a proved offence, which may serve as a deterrent for the commission of like offences by others. Sexual violence apart from being a dehumanising act is 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 where the victim is a helpless innocent child, it leaves behind a traumatic experience. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitised Judge, in our opinion, is a better

statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”

21. In ***State of A.P. v. Bodem Sundara Rao*** (1995) 6 SCC 230 the Accused was sentenced by the trial court for an offence under Section 376 of the Indian Penal Code (IPC) for ten years. The High Court maintained the conviction, however, reduced the period of sentence to four years. Supreme Court set aside the High Court's order and enhanced the sentence to seven years which is the minimum prescribed sentence under Section 376 of the Indian Penal Code (IPC). The relevant observations are as under:

“In recent years, we have noticed that crime against women are on the rise. These crimes are an affront to the human dignity of the society. Imposition of grossly inadequate sentence and particularly against the mandate of the Legislature not only is an injustice to the victim of the crime in particular and the society as a whole in general but also at times encourages a criminal. The courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's cry for justice against such criminals. Public abhorrence of the crime needs a reflection through the court's verdict in the measure of punishment. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of the appropriate punishment. The heinous crime of committing rape on a helpless 13/14 year old girl shakes our judicial conscience. The offence was inhumane. There are no extenuating or mitigating

circumstances available on the record which may justify imposition of sentence less than the minimum prescribed by the Legislature under Section 376(1) of the Act.”

22. In ***State of Andhra Pradesh v. Polamala Raju @ Rajarao*** (2000) 7 SCC 75 a three Judge Bench of the Supreme Court set aside the judgment of the High Court for non-application of mind to the question of sentencing. The Supreme Court reprimanded the High Court for having reduced the sentence of the accused convicted under Section 376, IPC from 10 years imprisonment to 5 years without recoding any reasons for the same. The Court said:

“... We are of the considered opinion that it is an obligation of the sentencing Court to consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the gravity of the offence...”

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... To say the least, the order contains no reasons, much less “special or adequate reasons”. The sentence has been reduced in a rather mechanical manner without proper application of mind...”

23. Very recently, in ***Simbhu and Anr. v. State of Haryana*** 2013 (10) SCALE 595 a three Judge Bench took a serious view about taking a liberal view while awarding sentence for such a heinous crime by observing as under:-

“This is yet another opportunity to inform the subordinate Courts and the High Courts that despite stringent provisions for rape Under Section 376 Indian Penal Code, many Courts in the past have taken a softer view while awarding sentence for such a heinous crime. This Court has in the past noticed that few subordinate and High Courts have reduced the sentence of the accused to the period already undergone to suffice as the punishment, by taking aid of the proviso to Section 376(2) Indian Penal Code. The above trend exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases.”

24. The observations made in the above legal pronouncements reflect what should be the approach of the Courts while sentencing the accused convicted of rape. Present case has to be examined in the light of the above discussion.

25. A perusal of the Trial Court order goes to show that it has taken a liberal view by awarding the sentence of rigorous imprisonment for four years, meaning thereby less than the minimum sentence prescribed under the Act probably, under the proviso to Section 376(1) on the ground that the convict had shown good gesture in agreeing to take the prosecutrix back to her parental home when he was apprehended. This cannot be said to be “special or adequate reason” for imposing sentence less than the minimum sentence prescribed under the Act. However, the State has not preferred any

appeal for enhancement of the sentence. Under the circumstances, no case is made out for reducing the sentence further to the period already undergone by the appellant as prayed by learned counsel for the appellant.

26. The result of the aforesaid discussion is that there is no merit in the appeal and the same is accordingly dismissed.

A copy of the order along with the Trial Court record be sent back.

**SUNITA GUPTA
(JUDGE)**

DECEMBER 20, 2013/AK