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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Judgment: 4th May, 2017

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Crl. A. 599/2013

RAMJEE LAL

..... Appellant

Through : Mr.Azhar Qayum, Adv.

versus

STATE (GOVT OF NCT) DELHI

..... Respondent

Through : Ms.Radhika Kolluru, APP for the
State along with SI Rajpal, PS Uttam
Nagar, in person.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE VINOD GOEL

G.S.SISTANI, J. (ORAL)

1. This is an appeal under Section 374(2) of the Code of Criminal Procedure against the impugned judgment and order on sentence dated 24.01.2013 by which the appellant has been held guilty and convicted for the offences under Sections 376/342/506/323 of the Indian Penal Code, 1860 (in short '*IPC*'). By an order of the same date, the appellant stands sentenced to undergo rigorous imprisonment for life and a fine of Rs.50,000/- in default of payment of which, the appellant was directed to further undergo rigorous imprisonment for one year under Section 376 IPC; rigorous imprisonment for a period of one year and a fine of Rs.1,000/- in default of payment of which, to further undergo rigorous imprisonment for one month under Section 342 IPC; rigorous imprisonment for a period of two years and a fine of

Rs.10,000/- in default of payment of which, to further undergo rigorous imprisonment for three months under Section 506 IPC; and rigorous imprisonment for a period of six months and a fine of Rs.1,000/- in default of payment of which, to further undergo rigorous imprisonment for one month under Section 323 IPC. All the sentences were ordered to run concurrently.

2. The case which was established by the prosecution before the Trial Court was that on 03.03.2012 between 10 AM to 10:30 AM and again between 2 to 3 PM, the accused/appellant herein had committed rape upon the prosecutrix (PW-3) at her house by wrongly confining her in her room and on both occasions, intimidated the prosecutrix (PW-3) that he would kill her and her husband (PW-4) if the prosecutrix (PW-3) revealed the incident.
3. Mr.Qayum, learned counsel for the appellant, submits that the Trial Court has erred in passing the impugned judgment inasmuch as the same has been passed upon wrong appreciation of facts. The judgment is contrary to the law. Counsel contends that the Trial Court has erred in convicting the appellant without considering that there is not enough material which could justify his conviction.
4. It is also the case of the appellant that the testimony of the victim/prosecutrix (PW-3) is highly unreliable and is not trust-worthy and thus, in the absence of any corroboration, the same cannot be a ground to convict the appellant. Similar grounds have been raised with regard to the testimony of Sh.Sanjay/husband of the prosecutrix (PW-4). It is contended that his evidence is contradictory and unbelievable. It is also submitted by the learned counsel for the

appellant that the Trial Court has failed to consider that the appellant has been falsely implicated in the matter on account of a monetary dispute as a sum of Rs.50,000/- was borrowed by PW-4 from the appellant who was in a distant relation to the PW-4 (*Mama*/Maternal Uncle).

5. It has been strongly urged before us that, admittedly, the place of incident is a crowded place; the time of the incident is 10:00 A.M. in the morning and 2:00 P.M. in the afternoon in the month of March, 2012. Learned counsel submits that at 10.00 A.M. and between 2 - 3 P.M., the place would be buzzing with people and it is unbelievable that nobody heard the cries of the prosecutrix (PW-3) or that there was no public witness who had seen the appellant visiting the house of the prosecutrix (PW-3) on two occasions.
6. Learned counsel submits that the Trial Court has erred in relying upon the medical evidence as the same does not support the case of the prosecution. No DNA examination was carried out despite the fact that the blood sample of the appellant was taken. It is further submitted that merely because semen was detected on some of the clothes of the prosecutrix (PW-3), that cannot connect the appellant to the crime as it would not be unusual to find semen on the clothes of a married woman. He further submits that there is nothing on record to show that the semen found on the clothes was that of the appellant and in absence thereof, it would be highly unsafe to convict the appellant.
7. Mr.Qayum submitted that the testimony of the prosecutrix (PW-3) is unreliable for the reason that in case at 10:00 A.M. in the morning, she had been raped by the appellant, she would have been more careful

and cautious and would have kept the door of the room bolted; while to the contrary, this witness has testified that post taking a bath she was in a towel and was changing her clothes while the door was open, which was highly unusual even in an ordinary course, as in the present case after the alleged morning incident, no wise and prudent or normal person would do such a thing, thus, making her testimony unreliable and unbelievable.

8. After some hearing in the matter, the learned counsel for the appellant, on instructions, submits that the appellant has already been incarceration for a period more than 6½ years including remission earned by him and his conduct in the Jail has been satisfactory and thus, it would be a fit case to grant the minimum punishment prescribed under Section 376 IPC. He further submits that as an alternate argument, having regard to the fact that in this case there was no violence of any kind; the appellant did not take any advantage of the prosecutrix (PW-3); there were no injuries on her body except abrasions on her hand which are not related to the act in question and also having regard to the antecedents of the appellant, the period of sentence should be modified.
9. The present appeal is opposed by the Ms.Kolluru, learned APP for the State, who contends that the prosecution has been able to prove its case beyond any shadow of doubt. Learned counsel contends that it is no longer *res integra* that on the sole testimony of the prosecutrix (PW-3), an order of conviction can be sustained. Counsel submits that merely because there was no resistance that by itself cannot be a ground to show that no rape was committed. The prosecutrix (PW-3)

has testified that she was under fear, as the appellant had threatened to kill her and in view thereof, she had succumbed to his threats. Counsel further submits that the prosecutrix (PW-3) has identified the appellant, named the appellant at the first opportunity available and thus, there are no grounds to entertain the present appeal.

10. We have heard the learned counsels for the parties, considered their rival submissions, examined the Trial Court record and analysed the testimonies of the witnesses.
11. Upon perusal of the judgment of the Trial Court, it is clear that the appellant stands convicted on the sole testimony of the prosecutrix (PW-3). The prosecutrix (PW-3) has testified as under:-

Statement recorded on 05.09.2012:

“ On 03.03.2012 I along with my husband was living in a rented accommodation at Uttam Nagar. I do not remember the exact address. My husband was labourer doing the work of whitewashing and painting under the contractor. On 03.03.2012 my husband left for his work at about 9.00 A.M. and I was alone in the house at that time. At about 10.00 A.M. accused Ramji Lal came to my house.

At this stage, the screen placed between the witness and the accused is removed in order to show the accused to the witness and witness has correctly identified accused Ramjee Lal (present today in the Court today). Accused Ramjee Lal opened the main gate of our house and took the name of my husband saying as Sanjay-Sanjay and entered the room where I was present. He bolted the door of that room from inside and pressed my mouth with his hand (smothered). Thereafter he forcibly made me lie on the bedsheet already spread on the floor of the room. I raised alarm saying that I would tell the same to my husband, on which he threatened to kill me. I got scared and kept mum. Accused raped me and thereafter left my house. Because of

the fear of the accused, I did not narrate the incident to anyone as he had threatened to kill me.

On the same day, he again visited my house at about 2.00 pm. At that time I was also alone in my house. I had taken bath and was changing my clothes in the room. Accused bolted the door of the room from inside. On seeing the accused, I told him that I would narrate everything to my husband, on which accused slapped me. Thereafter accused again forcibly made my lie on the same bedsheet already spread on the floor of the room and committed rape upon me. At about 3.00 pm, accused left my room and because of the threatening given by the accused, I again did not tell the incident to any neighbour.

When my husband came back home from his work at about 9.00 pm I told everything to my husband regarding the incident. Thereafter, I along with my husband first went to the house of accused Ramjee Lal who was living in the same locality, but accused gave beatings to me as well as to my husband. Accused Ramjee Lal is the maternal uncle (MAMA) of my husband in a distant relationship. He is not real mama of my husband. From the house of accused Ramjee Lal we went to PS Uttam Nagar and lodged a report against accused. My statement was recorded by the police and same is Ex.PW3/A bearing my thumb impression at point A. From police station Uttam Nagar, I was taken to the hospital for my medical examination.

At present I am having seven months pregnancy and eighth month is running. At the time of incident I was having one month pregnancy.

Police had visited my house and prepared site plan Ex.PW3/B bearing my thumb impression at point A.

In the hospital, I had carried my clothes which I was wearing at the time of incident including the towel and the bedsheet which was spread on the floor of the room as per the instructions of the police. I had handed over the same to the doctor which were taken into possession by the police. My clothes included one saree, blouse and paticoat (underskirt) which I was wearing at the time of incident

which happened with me at about 10.00 am and one salwar which I was wearing at the time of incident which happened with me between 2.00 pm and 3.00 pm. The towel which was handed over by me was the same which I was using after taking bath prior to the incident between 2.00 pm and 3.00 pm. The bedsheet which was seized was the same which was spread on the floor of the room at the time of commission of rape both times. After my medical examination certain samples were taken by the doctor and same were handed over to the police along with my abovesaid clothes. Seizure memo prepared in this regard is Ex.PW3/C bearing my thumb impression at point A.

Accused was arrested by the police and his arrest memo is Ex.PW3/D bearing my thumb impression at point A.

I can identify the above said clothes if shown to me.”

Further Examination on 10.01.2013:

“ (At this stage, the MHCM has produced the case property which is contained in one sealed pulanda sealed with the seal of FSL.

The pulanda is opened and it contains one multi coloured bed sheet, one salwar kameez suit of mustard colour, one maroon coloured saari, peticot and blouse and one multi coloured towel on black background. The witness had identified the entire case property. Same are exhibited as Ex.P1 to P6 respectively.

At this stage one sealed envelope [sic] with the seal of FSL having parcel no.9 is also opened and same is found containing one sky colour under wear. The witness after seeing the same stated that same does not belong to her.”

Cross-examination by amicus for accused:

“ Police recorded my statement in PS Uttam Nagar. I do not recollect whether statement of anyone else was recorded by the police in my presence. It is correct that I had stated to the police in my statement that accused came

inside my house while asking my husband namely Mr.Sanjay. (Confronted with the statement Ex.PW3/A where the name of Sanjay has not been mentioned).

There are other rooms adjoining to my room occupied by other persons. I could not raised any alarm after leaving of accused as he had threatened me. I did not informed about the incident to my husband as I was not having any mobile phone. I was not talking to my neighbours as we had shifted in the room some days ago that is why I had not informed about the incident to my neighbours. I do not know accused prior to incident. Accused was residing near Shani Bazar. Accused is living with his sister and her two sons. My husband returned from his job at about 9.30 pm and my husband immediately took me to the PS. I am not aware whether my husband had borrowed Rs.50,000/- from the accused. My brother Mr.Kanhiya had brought me to Delhi from Bengal and in Delhi, I was married with Mr. Sanjay. I lived in the house of my brother in Shakur pur.

My clothes were not torn when accused rape me. I had received injuries that the scratches on my hand when the accused raping me. It is wrong to suggest that I did not receive any injuries as no such rape was ever committed by accused.

It is wrong to suggest that I was to get married with accused Ramjee Lal. It is further wrong to suggest that I lived at the house of accused Ramjee Lal along with my husband after my marriage.

I do not recollect the date of my marriage however, my marriage took place about 2 years ago. 2-3 police official visited my house after lodging my report. I do not know whether police recorded the statement of my neighbours.

Police seized the clothes from our house on the day of incident. It is wrong to suggest that no police officials came to our house nor they seized any clothes from us.

It is wrong to suggest that accused Ramjee Lal has falsely implicated at the instance of my husband as my

husband do not want to return the borrowed amount of Rs.50,000/- from accused. It is wrongly to suggest that the accused did not commit rape upon me. It is wrong to suggest that I am deposing falsely.”

12. It is a settled proposition of law that an order of conviction for an offence of rape can be sustained on the sole testimony of the prosecutrix, provided the same is of sterling quality leaving no shadow of doubt over her veracity. A coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in **Rohit Bansal v. State, 2015 VI AD (Delhi) 566** had observed as under:

“18. It is a settled principle of law that conviction can be based on the sole testimony of the victim of sexual assault without corroboration from any other evidence. The statement of the prosecutrix is more reliable than any other witness. Where the testimony of victim of sexual assault instills [sic: instils] the confidence in court, the same can be relied for conviction of the accused. It is also a well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance to prudence under the given circumstances.”

13. One may not refer to numerous judicial pronouncements on the proposition; to avoid prolixity, we may only mention **Vijay @ Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191** (paragraphs 9-15); **Mohd. Iqbal v. State of Jharkhand, (2013) 14 SCC 481** (paragraphs 17-19); and **Mukesh v. State of Chhattisgarh, (2014) 10 SCC 327** (paragraphs 15 and 16).
14. Hence, *ex facie* the testimony of the prosecutrix (PW-3) seems reliable and inspires confidence to sustain an order of conviction, but we may

not dwell upon it in great detail. As noted above, the learned counsel for the appellant, upon instructions, has stated that the appellant does not contest the appeal on the point of conviction; he only contests the matter on the point of quantum of sentence.

15. Prior to dealing with the present case, we deem it appropriate to revisit the law relating to sentencing in a criminal case.
16. The Supreme Court of India in ***Shailesh Jasvantbhai v. State of Gujarat, (2006) 2 SCC 359*** was dealing with two appeals, one by the state and the other by the victim of the crime. The offenders therein had been convicted of offences under Sections 307/324 read with 114 IPC and sentenced to undergo imprisonment of 10 years and fine of Rs.3,000/-. The High Court had reduced the sentence to the imprisonment undergone of about 2 years while enhancing the fine to Rs.60,000/- for two reasons: first, one of the convicts had appeared in exams of Standard X and second, as they had no criminal antecedents. The Apex Court had allowed the appeal and remanded the matter back to the High Court as it had overlooked the factum of numerous pending criminal cases against the convicts and the fact that one of them had previously breached the conditions of bail. Arijit Pasayat, J., giving the opinion for the bench, observed as under:

“7. 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.

8. 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 v. State of T.N.* (1991) 3 SCC 471.

9. *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.

10. 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 all serious crimes with equal severity is now unknown in civilised 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 then 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.

11. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the Court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California [402 US 183 : 28 L Ed 2d 711 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of the crime, the discretionary judgment in the

facts of each case, is the only way in which such judgment may be equitably distinguished.

12. In *Dhananjay Chatterjee v. State of W.B.* (1994) 2 SCC 220 this Court has observed that a shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminal and in the ultimate, making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the court responds to the society's cry for justice against the criminal. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

13. Similar view has also been expressed in *Ravji v. State of Rajasthan* (1996) 2 SCC 175. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance. In *State of M.P. v. Ghanshyam Singh* (2003) 8 SCC 13, *Surjit Singh v. Nahara Ram* (2004) 6 SCC 513 and *State of M.P. v. Munna Choubey* (2005) 2 SCC 710 the position was again highlighted."

(Emphasis Supplied)

17. The Apex Court in ***Dinesh v. State of Rajasthan, (2006) 3 SCC 771***, while granting minimum statutory sentence to the appellant under Section 376(2)(f) IPC of ten years as neither the Trial Court and the High Court had stated any reason, 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 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.”

(Emphasis Supplied)

18. It is worthwhile to notice the observations of a coordinate bench of this Court in ***Khem Chand & Ors. v. State of Delhi, ILR (2008) Supp***

(5) **Delhi 92**, which while dealing with cases of statutory rape of minors under Section 376 had summarized the principles and factors which may be taken into account while assessing the appropriate sentence. The relevant portion is as under:

“7. Before proceeding with the evaluation of the 12 appeals on merits, the principles and factors emerging from Judicial pronouncements, which are relevant in the matter of choice of sentence or reprieve in the sentence awarded are enumerated below for facility of reference. These are the factors which are, or may be taken into account by the Court while assessing as to what could be an appropriate sentence in a given case.

- i. Criminal and the crime are both important for the purposes of sentence. Bachan Singh Vs. State of Punjab (1980) 2 SCC 684.*
- ii. Manner of commission of the crime being with meticulous planning or one on the spur of the moment;*
- iii. Violence, If any, accompanying the crime whether injuries suffered were serious and required extensive treatment or have caused any permanent damage to the child bearing capacity or otherwise*
- iv. Whether the offender or accused was in a position of fiduciary trust or exploited a social or family relationship;*
- v. State of the victim, impact of the crime on the victim,*
- vi. The antecedents of the accused, his age, whether a first time offender or repeat offender, possibility of recidivism.*
- vii. Social backwardness or offender being a poor, illiterate labourer not found to be adequate reason by Courts. (State of M.P Vs. Munna Choubey & anr. 2005(2) SCC 710 and State of M.P Vs. Babbu Barkare @ Dalap Singh (2005) 5 SCC 413.*

viii. *Passage of time since offence committed by itself considered inadequate reasons for reprieve. (Urmila (minor) Vs. Raju & Anr., (2005) 12 scc 366.*

ix. *Rape victim's marriage or rehabilitation may be considered as a mitigating factor.*

x. *The Supreme Court in a number of decisions Dinesh @ Buddha Vs. State of Rajasthan (2006) 3 SCC 771, State of Karnataka Vs. Krishnappa (2000) 4 SCC 75, Bantu @ Naresh Giri Vs. State of M.P (2001) 9 SCC 615 and State of M.P Vs. Santosh Kumar (2006) 6 SCC 1 where the victims were below the age of 12 years and rape had also been committed with some injuries, has chosen to uphold the award of minimum sentence.”*

19. This Court in ***Mohd. Rafiq v. State of NCT of Delhi***, 162 (2009) DLT 551, was faced with a situation wherein the appellant had been convicted of offences under Sections 376/506 IPC for the rape of a minor girl and awarded sentence of rigorous imprisonment of 12 years coupled with fine of Rs.10,000/- for offence under Section 376 without assigning any reasons for the same. By a detailed judgment passed by one of us (G.S. Sistani, J.), while sitting single, finding that the Trial Court had failed to assign reasons for a harsh punishment, had reduced the punishment to the statutory minimum of rigorous imprisonment of 10 years.
20. In ***Nandan v. State***, MANU/DE/2154/2015, a coordinate bench of this Court, of which one of us (G.S. Sistani, J.) was a member, in was dealing with an appeal, where the appellant had been convicted for the rape of a six year old was punished with Rigorous Imprisonment for actual life with fine of Rs.25,000/- (with no remission). This Court considering the mitigating factors that the appellant had two children

and was taking care of his old parents and wife in addition of belonging to a background of impecuniosity, reduced the sentence to that of rigorous imprisonment of 14 years. While doing so, the bench rejected the proposition that retribution plays a role in sentencing in a civilized society and observed as under:

“12. Sentence is to be imposed keeping in mind the nature of the offence and the manner in which the offence has been committed. Primarily it is to be borne in mind that sentencing for any offence has a social goal. 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.

...

21. Furthermore we believe that being a civilised society -- a tooth for a tooth and an eye for an eye ought not to be the criterion and as such the question of there being acting under any haste in regard to the life imprisonment would not arise; Rather our jurisprudence speaks of the factum of the law courts being slow in that direction and it is in that perspective a reasonable proportion has to be maintained between the heinousness of the crime and the punishment. While it is true, punishment disproportionately severe ought not to be passed but that does not even clothe the law courts, however, with an opinion to award the sentence

which would be manifestly inadequate having due regard to the nature of offence since an inadequate sentence would not subserve the cause of justice to the society. The Courts would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. In other words, the doctrine of proportionality has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.”

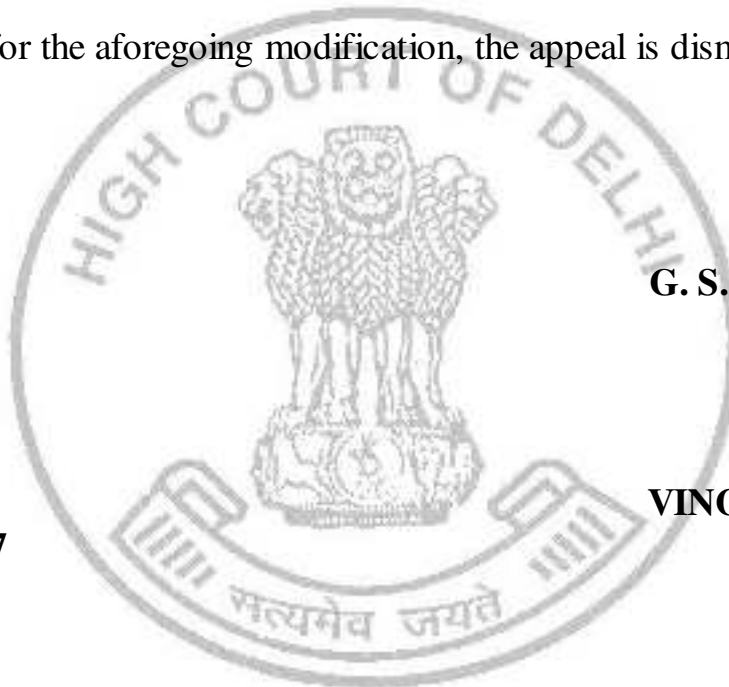
(Emphasis Supplied)

21. From the foregoing conspectus of judicial pronouncements, it is clear that sentencing vests great discretion in the hands of the judge, which is to be exercised in a sound manner while balancing the aggravating and mitigating circumstances of a case. There cannot be any uniform policy which may be resorted to as sentencing involves a comprehensive view of both the crime and the criminal allowing for a myriad situations or questions which may fall for the Court. All the while the doctrine of proportionality must be adhered as both deficient and excessive punishments undermine the criminal justice system.
22. Coming to the case at hand, the appellant has been granted a harsh and stern punishment of rigorous imprisonment for life under Section 376 by the Trial Court as it found two aggravating factors involved: first, the victim/prosecutrix (PW-3) was one month pregnant on the day of

the incident and second, the appellant/convict was in a fiduciary relationship with the victim.

23. In our view, the punishment is disproportionate to the culpability of the appellant in the present case. The Trial Court has erred in holding that the appellant exploited his fiduciary relationship with the prosecutrix (PW-3). No doubt, the appellant was a distant *mama*/maternal uncle of the husband of the prosecutrix (PW-3), but the prosecutrix (PW-3) in her testimony had deposed that she did not know the appellant prior to the incident, thus, it cannot be said that the appellant had exploited the relationship. The Trial Court failed to take into consideration that there were no signs of violence as even as per the medical examination there were no injuries on any part of the body of the prosecutrix (PW-3), except abrasions on her hand which having regard to the testimony of PW-3 to show that she was put on the floor, could not be related to this act, PW-3 has not testified with regard to the same. Further in her cross-examination, she has categorically stated that her clothes were not torn, barring trauma of rape.
24. To conclude the aggravating factors are:
- (i) the one month pregnancy of the prosecutrix on the date of the incident; and
 - (ii) the trauma of rape suffered by the prosecutrix.
25. Additionally, we must also take into consideration the following mitigating circumstances:
- (i) there were no signs of violence;
 - (ii) the appellant did not act in any unusual or cruel manner;

- (iii) the background of impecuniosity as hailing from a poor family;
and
- (iv) the appellant is a first time offender.
26. Keeping all the foregoing factors in mind, we find that it is a fit case to reduce the sentence of the appellant from rigorous imprisonment for life imprisonment to rigorous imprisonment for seven years for the offence under Section 376 IPC. Other parts of sentence remaining same.
27. Except for the foregoing modification, the appeal is dismissed.



G. S. SISTANI, J.

VINOD GOEL, J.

MAY 04, 2017
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