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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CRLA. 248/2017 & CrI.M. (Bail) 7/2018

HARI SINGH RAWAT

..... Appellant

Through: Mr. S.K. Sethi with Ms. Dolly Sharma,
Advocates.

versus

STATE

..... Respondent

Through: Mr. Kewal Singh Ahuja, APP

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE I.S.MEHTA

J U D G M E N T

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08.03.2018

Dr. S. Muralidhar, J.:

Foreword

1. There are cases that shock the judicial conscience. This is one. In our country studies have shown that a large number of instances of rape are by close family members. The victim silently suffers the ordeal for years on end. This is one such case of incestuous rape. The Appellant here has been held guilty by the trial Court of repeatedly raping his step-daughter over a period of eight years. The victim picked up courage to break her silence and go to the police on 23rd June 2015. By then she had given birth to two children, aged 6 and 3 years at the time. DNA tests have confirmed that the Appellant is their biological father.

2. By this judgment this Court affirms the judgment of the trial Court. This Court draws attention to the urgent need for a comprehensive scheme, preferably legislative, to address the needs of the victims of crime, which in this case includes not only the prosecutrix, but her children and the wife and children of the Appellant. Complete justice requires redressing the victim's suffering even while punishing the criminal.

This appeal

3. The challenge in this appeal is to the impugned judgement dated 10th August 2016 of the learned Additional Sessions Judge (ASJ)/Special Fast Track Court, Patiala House Courts, New Delhi was passed in Session Case No. 9243 of 2015 arising out of FIR No. 916 of 2015 registered at Police Station (PS) Vasant Vihar. The Appellant has been convicted of the offences under Section 376 (2) (f) IPC (rape committed by a close relative) and Section 376 (2) (n) IPC (repeated commission of rape) and Section 506 IPC (criminal intimidation). This appeal also challenges the order on sentence dated 17th August 2016 whereby he was sentenced to undergo life imprisonment with a fine of Rs. 10,000, and in default of payment of fine to undergo rigorous imprisonment ('RI') for six months for each of the offences under Sections 376 (2) (n) and 376 (2) (f) IPC; and for the offence under Section 506 IPC to undergo RI for one year with a fine of Rs. 5,000, and in default of payment of fine, to undergo RI for three months. All the sentences were directed to run concurrently. 50% of the fine amount was directed to be paid to the prosecutrix as compensation.

Background

4. The background facts are that Kamala (PW-2), the mother of the prosecutrix (PW-1), was earlier married to one Babu Lal and was living in Dehradun. From that marriage PW-1 and her brother Deepak (PW-3) were born. However, after the birth of PW-3, Babu Lal left home and did not return. After waiting for some time, PW-2 moved out and started living with her two children in another tenanted portion in Dehradun where she met the Appellant. According to PW-2, she and the Appellant then got married. Thereafter, she and the two children, PWs 1 and 3, started residing with the Appellant at his village Guni in District Tehri Gadhwali in Uttarakhand.

5. The Appellant, PW-2 and the two children shifted to Delhi and first lived in a rented portion in Rangpuri. PW-1 (the prosecutrix) was around 12 to 13 years old at this time. After a while they shifted to Shanker Vihar, Delhi again in another rented house. There PW-2 started working in the 'kothis' (bungalows) which kept her away from home mostly throughout the day, from 5 am in the morning till even past midnight or 1 am on the following day.

6. Five more children, three daughters and two sons, were born to PW-2 and the Appellant. All of them i.e., their five children and the two children from the earlier marriage of PW-2 with Babu Lal were initially living together. The Appellant admittedly turned Deepak (PW-3) out of the house when he was only around 13 years old. Since then PW-3 had been residing separately in Delhi.

The incidents in question

7. It appears that from about 8 years prior to the date of the complaint made by her on 23rd June 2015, the Appellant began raping PW-1. During this time PW-1 did not know that the Appellant was not her biological father. The Appellant, who worked on and off as a driver, would constantly get drunk, beat up PW-1, subject her to rape and threaten to kill her if she disclosed that fact to anyone, including her mother. As already mentioned, PW-1 gave birth to two children one of whom was born about 7 years prior to 23rd June 2015 and the other about 3 years prior thereto. Till the date of her complaint the Appellant repeatedly subjected PW-1 prosecutrix to rape and criminal intimidation.

8. PW-2 protested to the Appellant but he criminally intimidated her as well. Neither PW-1 nor PW-2 had the courage to complain to anyone. The further case of PW-1 is that the Appellant never let her leave the house or interact with anyone.

9. Around 4 or 5 days prior to 23rd June 2015 the Appellant became drunk as he often did and in that state beat PW-1 and the other children. Thereafter the Appellant threw PW-1 out of the house. Whilst PW-1 was waiting near gate No.2 of the colony, her brother, Deepak (PW-3) happened to pass by in a car with which he was employed as a driver. PW-3 then took PW-1 to his house in Vasant Vihar. PW-1 narrated to PW-3 what had happened with her. PW-3 took PW-1 to the PS in Vasant Vihar on 23rd June 2015 and the complaint of PW-1 was recorded (Ex.PW-1/A). On the same day she was taken before the learned Metropolitan Magistrate (MM) and her statement

was recorded under Section 164 Cr PC (Ex.PW-1/A).

10. Thereafter, during the course of investigation, the blood samples of PW-1, her children and the Appellant were obtained for the DNA Test. As already noticed, DNA profile of the children of PW-1 matched those of PW-1 and the Appellant thereby confirming that the Appellant is the biological father of the children born to PW-1. In fact the Appellant himself did not specifically controvert this in his statement under Section 313 Cr PC.

11. Both PW-1 and PW-2 were subjected to extensive cross-examination by learned counsel for the Appellant in the trial Court. The line of defence was that PW-1 knew throughout that the Appellant was not her biological father and had a sexual relationship with him of her own free will. The Appellant contended that he and PW-2 was never actually married and therefore, it could not be said that he was the step father of PW-1. Both PW-1 and PW-2 denied the said suggestions. Apart from corroborating each other on the material particulars, both PWs 1 and 2 consistently maintained the version given by PW-1 to the police in the first place and later in her statement before the learned MM under Section 164 Cr PC.

12. As rightly held by the trial Court, the evidence of PW-1 in the present case is clear, cogent and consistent and has been unable to be shaken in cross-examination by learned counsel for the defence. Apart from PW-2, she has been corroborated to some extent by PW-3 as well. The scientific evidence in the form of DNA report prepared by the FSL, Chandigarh confirms that the Appellant is the biological father of two of the children

born to PW-1.

13. Mr. Sumer Sethi, learned counsel for the Appellant pointed out that PW-1 was 30 years old at the time of filing her complaint on 23rd June 2015. She was by her version around 22 years when she first had sexual relations with the Appellant. According to him, it was unbelievable that despite being subject to rape continuously during this period, and giving birth to two children, she would not complain to anyone. He urged that there was an inordinate delay of over 8 years in filing the complaint which resulted in the registration of the FIR. PW-1 could, according to Mr. Sethi, not be said to be a reliable or truthful witness.

Delay explained

14. The Court is unable to agree with the above submission. In a case where a woman has been continuously subjected to forcible rape over an extended period of time and by a person in a position of trust as a father, the fear that he must have instilled in her can well be understood. The following statements in her examination in chief, which could not be controverted by the Appellant are revealing:

“I know accused Hari Singh Rawat as my father, (who is present in Court and correctly identified by the witness) but after the registration of the case, I came to know that he is not my real father. I am illiterate.”

15. She must have been shocked and highly traumatized at having endured the mental and physical torture for many years with no support whatsoever. Her further statement in her examination-in-chief was:

“As a result of the physical relationship i.e. rape committed by the accused, I was pregnant twice and gave birth to two children namely X and Y (names withheld). At present, X is about 6 years old and Y is about 3 years old. I do not know the name of the hospital where I gave birth to them as accused took me to the hospital for the purpose of delivery. I even do not have any document regarding certificate of birth of my children. I did not disclose to anybody about the rape committed by the accused as the accused had threatened to kill me if I disclose to anybody.”

“The accused never allowed me to go out of the house and I could not disclose the fact of the accused to any of my relative. At the time of taking me to the hospital for delivery, accused did not take any other person with me in the hospital and he took me alone to the hospital. The accused since never allowed me to go out from the house and in the locality of Shankar Vihar, nobody even knew that the accused was having elder daughter i.e. me. I do not know as to where is my real father.”

16. And in her cross-examination, PW-1 maintained that:

“It never happened when I and my mother were at house when accused went outside the house, therefore I never told my mother about the wrong acts of the accused though as and when I tried to tell my mother about the incident, accused used to start beating my mother as well.”

17. The plight of PW-2 was also understandable since apart from the prosecutrix and PW-3, she had five other children with the Appellant whom she could not possibly abandon.

Social realities

18. It requires a great deal of courage for a woman in the situation as PW-1 was in, to make a complaint against who she considered her own father. More than 25 years ago in *State of Maharashtra v. Chandraprakash*

Kewalchand Jain AIR 1990 SC 658 the Supreme Court observed:

“It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.”

19. Again in ***Om Prakash v. State of U.P. AIR 2006 SC 2214*** it was observed:

“11. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian woman has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case.”

20. It must have taken a lot for the prosecutrix to walk into the police station and submit a complaint of the above nature. Strangely, this might not have been possible if the Appellant had not thrown her out of the house after beating her. That her brother Deepak was able to provide her with shelter

and support and this in turn led to the prosecutrix invoking the process of law is also a significant feature of the case. The delay in filing the FIR in the present case has been satisfactorily explained.

Offences made out

21. As far as the plea that the Appellant was not her biological father, and this fact was known to PW-1 is concerned, the evidence of PWs 1 and 2 have proved otherwise. Apart from a bare denial of his marriage with PW-2, the Appellant has not led any evidence to dislodge the trustworthy and reliable evidence of PW-2 who speaks clearly of her marriage to him.. Moreover, the Appellant does not deny that he is the biological father of the five children born to him and PW-2. All of them resided as one family. Throughout the time she was with him, PW-1 grew up believing that the Appellant was indeed her father. In his statement under Section 313 Cr PC the Appellant has not denied that he is the biological father of the children born to the prosecutrix. In the circumstances, the guilt of the Appellant for the offence of rape by a close relative as defined in Section 376 (2) (f) IPC is clearly established. That the Appellant continued to rape her over a number of years and continuously till she left the home a few days before she went to the police has also been proved by the cogent evidence of PW-1, fully corroborated by PW-2. Therefore the guilt of the Appellant for the offence under Section 376 (2) (n) IPC is also proved by the prosecution

22. Learned counsel for the Appellant pointed out that 8 *pullandas* have been prepared in the hospital where MLC of the Appellant was undertaken and these 8 *pullandas* sealed have been sent to the FSL as is spoken to by

PW-13. However, the Scientist from the CFSL mentioned four parcels. The Court does not find any major discrepancy. The four parcels seized which were found by PW-11 were those which contained the blood samples of the Appellant, the prosecutrix and her two children and this is what was examined and generated the report that incriminated the Appellant.

23. There is no reason for the Court to doubt the testimonies of PWs 1 and 2. The Court is unable to find any error in the impugned judgment of the trial Court convicting the Appellant for the aforementioned offences and the consequent order of sentence. The appeal is accordingly dismissed. The pending application also stands dismissed.

Afterword

24. In the present case, as the Appellant has himself pointed out in his bail application, as a result of his facing trial and then being convicted and sentenced, the Appellant's wife (PW-2) and his children have been pushed into poverty. The children have had to abandon their studies. Justice cannot be said to be done in the present case without the needs of the victims of crime being addressed. In this scenario, the victims of the crime include not only PW-1 but her children, PW-2 and her children as well. The law at present fails to properly address the multiple ways in which the families of a convicted criminal suffer.

25. Recently in a judgment dated 20th November 2017 in CrI A No. 173 of 2015 (***Babloo Chauhan v. State***) this Court observed:

“15. As far as compensating the victims of crime is concerned,

Sections 357 and 357 A to C of the Cr PC provide for compensation to the victim of crime. The effective implementation of these provisions hinges upon the concerted efforts of legal services authorities and governments. As far as compensating 'persons groundlessly arrested', Section 358 Cr PC offers some token relief. This provision however fails to acknowledge the multiple ways in which not only the prisoner, who may ultimately be declared to be innocent, but the family of the prisoner faces deprivation and hardship. Particularly poignant is the plight of the spouse, children and aged parents of the prisoner who are unable to find legal redress for their losses. The Delhi High Court has on more than one occasion stepped in to order provision of shelter, educational and health needs of the children whose parents, either or both, are in jail serving sentence.

16. There is an urgent need, therefore, for a legal (preferably legislative) framework for providing relief and rehabilitation to victims of wrongful prosecution and incarceration. Whether this should be an omnibus legislation or scheme that caters to both the needs of the victim of the crime, as well those wrongfully incarcerated, including the family and dependants of the prisoner, or these have to be dealt with in separate legislations or schemes is a matter for discussion, deliberation and consultation with a cross-section of interest groups. Specific to the question of compensating those wrongfully incarcerated, the questions as regards the situations and conditions upon which such relief would be available, in what form and at what stage are also matters requiring deliberation. This is a task best left in the first instance to the body tasked with advising the government on the legislative measures needed to fill the obvious gap.”

26. In the present case, the above observations bear reiteration. In view of the dire situation in which PWs 1 and 2 and their respective children are placed, the Court considers it necessary to issue the following directions:

- (i) The Delhi Commission for Protection of Child Rights (DCPCR) will

in co-ordination with the Delhi Commission for Women (DCW) ensure that:

- (a) PW-1 has received compensation as a victim of rape under the extant Government schemes.
- (b) The children of PW-1 and PW-2, if they have not yet completed 18, are receiving all the benefits they are entitled to under the schemes of the Central and State government;
- (c) That the children are receiving the education they are entitled to at government schools. If not, all assistance shall be provided to them for that purpose.

(ii) The concerned SHO will forthwith provide to the Chairpersons of the DCPCR and DCW the addresses and other contact details of PWs 1 and 2, so that the above directions are implemented without delay.

27. Certified copies of this order be delivered forthwith to the Chairperson or Secretary of the DCPCR and DCW through a Special Messenger. The learned Standing counsel for the State will collect a copy of this order *dasti* and immediately provide it to the SHO concerned for compliance with the above directions.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 08, 2018

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