

Ramroop Das Vs. State

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Court : Orissa

Decided On : Sep-16-1992

Reported in : 1993CriLJ1000; 1993(I)OLR141

Judge : A. Pasayat and ;D.M. Patnaik, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 116 of 1988

Appellant : Ramroop Das

Respondent : State

Advocate for Def. : G.K. Mohanty, Addl. Standing Counsel

Advocate for Pet/Ap. : S. Mohapatra, Adv.

Judgement :

A. Pasayat, J.

1. The factual matrix of this appeal is a sordid and obnoxious incident, where the accused, a Headmaster had allegedly gratified his animated passions and sexual pleasure by sexually assaulting and molesting in utter disregard of universal moral code, human dignity a young, frail student aged about 10 years and has thereby besmirched the most respected relationship of a teacher with his pupil. As

observed by the Supreme Court in Madan Gopal Kakkad v. Naral Dubey and Anr.. 1992 (2) Crimes 168 such offenders are menace to the civilised society.

2. We do not propose to mention the name of the victim. Section 228-A of the Indian Penal Code, 1860 (in short, the IPC) makes disclosure of identity of victim of certain offence punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence Under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimisation or ostracism of the victim of a sexual offence for which Section 228A has been enacted, it would be appropriate that in the judgments. be High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'victim' in the judgment. What is there in a name after all? The accused bears the name of 'Lord Rama' but has committed an act which shall put to shame a devil.

3. Filtering out unnecessary details of the shameless intrigue as unfolded by prosecution during trial is as follows :

On 11-4-1987 at about 2-30 p.m. the victim was in the quarters of her father (PW 1), with her mother (PW 3). A small boy student (PW 4) of her school, of which the accused was the Headmaster came to her house and asked her to go to the accused Headmaster as she had been called by him. When the victim told her mother that the Headmaster had sent for her, she was permitted to go. She went to the quarters of the Headmaster. thinking that she was called for in connection with her studies. The Headmaster had however, other ideas. As soon as the victim reached the quarters, immediately she was taken inside by the accused to a room. He closed the room by shutting its door and gagged her mouth, laid her flat on the bed with her face upwards and undressed her and sexually ravished her. There was profuse bleeding and her pant was drenched with blood. Thereafter, accused opened the door and asked her to go out. With much difficulty the victim put on the blood drenched pant and proceeded to her house. She was almost in senseless condition with profuse bleeding, and tears were rolling down from her eyes, and

she described the entire occurrence to the mother. At that time her father was present. They were thoroughly perplexed at such unusual beastly conduct of the accused. They were panic stricken being faced with the traumatic situation. The father informed the neighbours about the act. At that time, accused appeared, begged mercy and requested the persons present not to precipitate any action. The alarming condition of girl compelled her parents to carry her to Koida Government Hospital for her treatment. The matter was reported at the Koida P. S. and investigation was undertaken. The accused was examined on the next day. Possibility of recent Intercourse was not excluded. On completion of investigation, charge-sheet was submitted Under Section 376 IPC. The accused pleaded not guilty though he did not give any specific plea as to how he was falsely implicated for such heinous crime.

4. The following factors were considered by learned trial Judge who found the accused guilty,

(i) Evidence of the victim.

(ii) Circumstantial evidence of PW 4 who on the direction of the accused had called the victim to the Quarters of the accused.

(iii) Evidence of parents of the victim and PW 5, a neighbour before whom the victim had narrated the occurrence immediately after coming back.

(iv) Extrajudicial confession made by the accused before these witnesses and his begging apology for having done such; heinous act.

(v) The age of the girl as found from the school admission register and medical evidence.

(vi) The victim while deposing in Court stated about her traumatic experience, and gave a graphic manner describing as to how offence was perpetrated on her, and the presence of injuries as described by the Doctor (PW 8).

The learned trial Judge found the accused guilty of an offence punishable Under Section 376, IPC and sentenced him to imprisonment for life.

5. The offence of rape occurs in Chapter XVI of the IPC. It is an offence affecting the human body. In that Chapter, there is a separate heading for 'Sexual offences', which encompass Sections 375, 376, 376-A, 376-B, 376-C and 376-D. 'Rape' is defined in Section 375. Sections 375 and 376 have been substantially changed by Criminal Law (Amendment) Act, 1983, and several new sections were introduced by the new Act, i. e. 376-A, 376-B, 376-C and 376-D. The fast sweeping changes introduced reflect the legislative interest to curb with iron hand, the offence of rape which affects the dignity of a woman. The offence of rape in its simplest term is 'the ravishment of a woman, without her consent, by force, fear or fraud', or as 'the carnal knowledge of a woman by force against her will'. 'Rape or Raptus' is when a man hath carnal knowledge of a woman by force and against her will (Co. Liu. 123-b); or as expressed more fully rape is the carnal knowledge of any woman, above the age of particular years, against her will ; or of a woman child, under that age, with or against her will. The essential words in an indictment for rape are rapuit and carnaliter cognovit ; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape ; 1 Hon. 6, 1 a, 9 Edw. 4, 2:6 a (Hale PC 628). In the crime of rape, 'carnal knowledge' means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation (Steph. Cr. 9th ed., p. 262). In 'Encyclopaedia of Crime and Justice' (Volume 4, page 1356) it is stated '.....even slight penetration is sufficient and omission is unnecessary'. In Halsburys Statutes of England and Wales (Fourth Edition) Volume 12, it is stated that even, the slightest degree of penetration is sufficient to prove sexual intercourse. The view was endorsed in R. V. Mugbes (1841) 9C and page 752, R. V. Lines (1844) 1 Car. and Kir. 393, R. V. Nicholls (1847) 9 L. T. O. S 1.79 and Madan Gopal's case (supra). It is violation, with violence, of the private person of a woman-an outrage by all means. By the very nature of the offence it is an obnoxious act of the high order. Where the offender is a teacher it is unusual. 'A teacher affects eternity ; he can never tell where his influence stops', said by Henry Adams in 'The Education of Henry Adams'. A teacher is put on the same pedestal as the parents. He moulds the mind of an innocent child. He guides and etches the most impressionable impressions in the formative years of a child's mind. We are concerned in this appeal with accusations that a teacher has raped a ten-year old

girl, thin and frail as the learned Sessions Judge has found her.

6. The defence of the accused was usual one of innocence and false implication. A legal red-hearing of lack of corroboration was also pressed into service. Both the submissions are without any foundation. In rape cases the human psychology and behavioural probability when assessing the testimonial potency of the victim's version has to be borne in mind. The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. A similar view was expressed by the apex Court in *Krishan Lal v. State of Haryana* : AIR 1980 SC 1252. In the case at hand, a young girl of immature years and tender age had been raped, and she made a disclosure of it at the earliest possible opportunity to her mother and others. No woman of honour even a girl of tender age will accuse another of rape since she sacrifices thereby what is dearest to her. The physical scar may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by the apex Court in *Rafiq v. State of U. P.*, AIR 1981 SC 96, with some anguish. The same was echoed again in *Bharwada Bhoginbhai and Hirjibhai v. State of Gujarat*, AIR 1983 SC 753 : 1983 Cr LJ 1096. It was observed by the apex Court in the said case, that in the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive, society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracised by the society and when in the face of these factors the crime is brought to light, there is built-in assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex offence is entitled to

great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in *Rameshwar v. The State of Rajasthan*, AIR 1952 SC 54 were. 'The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge...'. Similar view was expressed by the apex Court in *Bharwada's case* (supra), and *Gagan Bihari Samal and Anr. v. State of Orissa*, 1991 (2) Crimes 842 and by me in *Rabinarayan Das v. State*, 1992 (1) Crimes 462. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. (See *State of Maharashtra v. Chandraprakash Kewalchand Jail*, AIR 1990 SC 658). Why should be the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion As observed by the learned trial Judge with tears in her eyes and with the trauma still haunting her, the girl unfolded the ignomy that had been heaped on her by the obnoxious act of the accused.

7. The guilt pointing circumstances highlighted by the learned trial Judge clearly establish the guilt of the accused. After carefully and closely scrutinising the galaxy of proven facts there is not even a shadow of doubt in that regard. The evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence. Additionally, the extrajudicial confession is plenary in character, and voluntary in nature. That is a gravely incriminating fact. Law does not require that evidence of an extrajudicial confession should in all cases be corroborated. (See *Madan Gopal's case* (supra) and *Piara Singh v. State of Punjab*, AIR 1977 SC 2274). The conviction made in the case at hand is irreversible.

8. A plea for reducing the sentence was made, urging that the appellant has lost his job : he and his family members have been subjected to disrepute and social humiliation. Punishment Under Section 376, IPC has undergone changes keeping in view large number of such crimes and barbarity of offence itself. Sub-section (2) of Section 376 prescribes in Clause(f) that when rape is committed on a woman under 12 years of age, the minimum punishment shall be ten years and may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is own wife of the accused and is not under twelve years of age, in which case, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both ; provided 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 ten years. Law has postulated severe sentence when the victim is less than twelve years. The evidence on record clearly shows that the victim here, was less than twelve years. The question that remains is whether any adequate and special reasons exist for varying minimum sentence prescribed.

Rape for a woman is a deathless shame and must be dealt with as the gravest crime against human dignity. In *Ghanashyam Misra v. State*, AIR 1957 Ori. 78, rape was committed by a school teacher, an adult of thirty-nine years, on his student, a girl of ten years. Taking into consideration the fact that the atrocious act of the accused could be a complete ruin of the girl's future and there was no extenuating circumstance, a sentence of three years' rigorous imprisonment was considered very lenient and it was enhanced to seven years rigorous imprisonment. It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and morality in public and social life can be protected only if Courts deal strictly with those who violate, the social norms. Two alternative custodial punishments are provided; one is imprisonment for life or with imprisonment of either description for a term which may extend to ten years. The latter is the minimum, subject of course to the proviso which authorises lesser sentence for adequate and special reasons. The maximum sentence should be awarded in the extreme and rarest of rare cases. In a case of gang rape, which also attracts maximum sentence of imprisonment for life, this Court in *Bijoy Kumar Mohapatra and Ors. etc. v. The*

State, 1982 Cr LJ 2162 awarded the alternative sentence of ten years. Though the act of the accused is nauseating and utterly detectable, we do not consider it appropriate to award the maximum sentence and modify it to the alternative of ten years rigorous imprisonment. While weighing the desirability of maximum sentence, we have considered the sentences awarded in Madan Gopal (supra), Chandraprakash (supra) and Bijoy Kumar (supra).

9. In conclusion, the conviction is maintained, but the sentence is modified to ten years' rigorous imprisonment.

Criminal Appeal is disposed of accordingly.

D.M. Patnaik, J.

10. I agree.

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