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Nandan Vs. State

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SooperKanoon Citation : sooperkanoon.com/61094

Court : Delhi

Decided On : Jul-27-2015

Judge : G. S. Sistani

Appellant : Nandan

Respondent : State

Advocate for Pet/Ap. : Mr. Ajay Verma

Judgement :

$~ * + IN THE HIGH COURT OF DELHI AT NEW DELHI CRL.A. 1248/2012 Judgment reserved on19.03.2015 Judgment pronounced on 27.07.2015 NANDAN Through : ..... Appellant Mr.Ajay Verma, Advocate versus STATE Through : ..... Respondent Mr.Feroz Khan Ghazi, APP for the State. CORAM: HON'BLE MR. JUSTICE G.S.SISTANI HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL SANGITA DHINGRA SEHGAL, J1 Present appeal has been filed by the appellant under Section 374(2) of the Code of Criminal Procedure against the judgment dated 24.1.2012 and order on sentence dated 17.2.2012 passed by learned Additional Sessions Judge-II (North-West), Rohini Courts, Delhi, whereby the appellant was held guilty and sentenced to undergo Rigorous Imprisonment for a period of seven years with fine of Rs.5,000/- for the offence punishable under Section 363 read with Section 366 of the Indian Penal Code and in default of payment of fine Simple Imprisonment for a period of fifteen days; for the offence punishable under Section 376(2)(f) of the Indian Penal Code, the appellant was

sentenced to undergo Rigorous Imprisonment for actual life with fine of Rs.25,000/- (with no remission) and in default of payment of fine Simple Imprisonment for a period of three months; for the offence punishable under Section 377 of the Indian Penal Code, the appellant was sentenced to undergo Rigorous Imprisonment for life with fine of Rs.10,000/- and in default of payment of fine Simple Imprisonment for one month; and for the offence punishable under Section 506 of the Indian Penal Code the appellant was sentenced to undergo Rigorous Imprisonment for a period of two years. The horrid episode as unfurled by the prosecution is that on 23.04.2011 on receiving the receipt of DD No.58B SI Balwan reached at Balaji Nursing Home, Mukundpur where the victim / prosecutrix 'S' and her parents met him. Thereafter, on 24.04.2011, SI Sushila Rana on the receipt of DD No.58B reached at BJRM hospital and recorded the statement of Smt. Roop Rekha, mother of the prosecutrix who has stated in her statement that on 23.04.2011 after completing her household works at about 7 to 7:30 PM she left her son Aditya aged 7 years and 'S' (name changed) aged 6 years at the house of her sister-in-law / nanad namely Kaushalya and went to the market for purchasing vegetables and at about 8:30 PM when she returned back, she found her son Aditya at home whereas her daughter 'S' was not there. She inquired from Kaushalya about the whereabouts of 'S' who told her that 'S' is at the house of Chitra Lekha (sister of Roop Rekha). Roop Rekha thereafter went to the house of Chitra Lekha where Bandhu (son of Chitra Lekha) informed her that Nandan had taken away 'S' for ice cream. Thereafter, Roop Rekha along with Chitra Lekha went to the house of Nandan and knocked the door but he did not open the same. Roop Rekha thereafter called Dinbandhu and asked him to climb the roof of the neighbouring house and enter into the room of the appellant. Thereafter, Dinbandhu went inside the room after climbing the roof of the neighbouring house and opened the door after which Roop Rekha also went inside the room and found her daughter 'S' lying on the bed and crying. Blood was oozing out from her private part and the accused Nandan was also lying on the bed in drunken condition. Roop Rekha brought the child home and found her clothes smeared with blood. She asked the child what had happened on which the child told her that Nandan took her away on the pretext of ice cream and took her to his room where he removed her clothes and tied her hands and legs with a rope and put his hand on

her mouth and threatened her not to raise alarm or else he would kill her and thereafter he committed rape upon her. Roop Rekha thereafter informed her husband about the incident on telephone while she took the child to the doctor after which the police was called. During investigations the accused Nandan was arrested and after completing the investigations, the charge sheet was filed in the court.

2. In support of its case, the prosecution has examined 18 witnesses. Statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure wherein the appellant claimed to be innocent and alleged to be falsely implicated by the complainant due to some family dispute. The appellant further stated that the complainant also demanded money from the appellant for construction of their house to which the appellant had refused resulting in false implication of the appellant in the present case.

3. Mr. Ajay Verma, Learned counsel for the appellant while assailing the impugned judgment urged that the Trial Court failed to appreciate the evidence in its true and proper perspective. Counsel for the appellant has further challenged the order on sentence as per which the appellant was sentenced to rigorous imprisonment for life with a direction that he would not be entitled to any remission appears to be ultra vires and deserves to be set aside. Counsel further submits that the learned trial court has conveniently ignored the defence pleaded by the appellant and misread Section 376(2)(f) of the Indian Penal Code. It is further submitted that the learned trial court has further erred in citing the Apex Courts judgments, which are distinguishable and not even remotely relevant to the instant case.

4. It is contended by the learned counsel for the appellant that it is a case of complete miscarriage of justice as the entire trial was a sham and biased considering the manner in which the learned trial court allowed the trial to proceed and the manner in which the evidence had been adduced by disregarding the law enshrined under the Code of Criminal Procedure. It is further contended that the learned trial court, for the reasons best known to it, thrusted upon the appellant, an amicus curiae, despite appellant having his private counsel. Counsel further contends that no opportunity was ever given to the appellant to get the prosecution

witness including material witnesses such as prosecutrix, complainant, etc. to be cross examined through his private counsel. It is further submitted that the learned trial court did not allow appellant to participate in proceedings through his engaged counsel who merely acted as a silent spectator.

5. Mr.Ghazi, learned counsel for the State, has vehemently opposed the present appeal. Mr.Ghazi submits that the State has been able to prove its case beyond any shadow of doubt.

6. Before dealing with the arguments of the parties it would be useful to examine the testimonies of the material witnesses examined by the prosecution. The material witnesses are PW5 Smt. Rooprekha (mother of the prosecutrix), PW11Kumari Sanjana (prosecutrix).

7. PW5Smt. Rooprekha (mother of the prosecutrix) in her testimony deposed that on 23.04.2011 at 7.30 PM she went to purchase vegetables leaving both her children with her Nanad / sister-in-law. When PW5returned home at 8.30 PM she found that her daughter was missing though her son was at home. PW5deposed that when she enquired from her sister-in- law, she replied that the prosecutrix was at her sisters home. PW5next deposed that when she reached her sisters home, her son Deenbandhu aged about 11 years told her that the appellant had taken her daughter for getting her an ice-cream. Thereafter PW5along with her sister went to the house of the appellant and found the door of the house to be locked, however; PW5heard that T.V. has at high volume. PW5further deposed that despite repeated knocking on the door the appellant did not open the door. PW5told PW16Bandhu (nephew of PW5 to climb on the roof. PW16entered the house by climbing on the roof from the neighbouring house and opened the door. PW5further deposed that when she entered the house along with her sister she found her daughter lying on the bed in naked condition and she was crying. PW5deposed that the appellant was lying down in drunk condition and found her daughter crying and her private parts were bleeding.

8. Lastly, counsel for the appellant urged that even if allegations against the appellant are believed to be true and conviction upheld the case calls for interference and modification in sentence of appellant. Learned counsel further

submits that under Section 376(2)(f) the maximum sentence prescribed is rigorous imprisonment for life and minimum sentence is rigorous punishment for 10 years. It is urged that keeping in view the mitigating factors the order on sentence be modified and the minimum punishment of 10 year be awarded to the appellant.

9. We have carefully examined the judgment of the learned Trial Court, entire evidence and documents placed on record and found no grounds to take a different view, by which the appellant has been convicted. The learned counsel for the appellant has conceded that the conviction of the appellant be held and has sought for mercy of this court by adducing the mitigating factors prompting us to exercise our judicial discretion, consequently we are restricting ourself to the quantum of sentence awarded to the appellant.

10. Learned Counsel for the Appellant submits that though Section 376(2) provides that sentence can be rigorous imprisonment for life, yet as a minimum of sentence of ten years is stipulated, this Court may reduce the punishment to ten years of rigorous imprisonment.

11. It is urged by him that the Appellant is a 30 year old person who is father of two children. Furthermore, the appellant is taking care of his old parents and his wife and their lives would be ruined if the sentence of imprisonment for life is affirmed. Mr. Ghazi, counsel for the State, submitted that the crime being heinous, the sentence imposed on the accused is absolutely justified and does not warrant interference. It is also canvassed by them that reduction of sentence in such a case would be an anathema to the concept of just punishment.

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.

13. In State of Andhra Pradesh v. Bodem Sundra Rao AIR 1996 SC530 the Honble Supreme Court noticed that crimes against women are on the rise and such crimes are affront to the human dignity of the society and, therefore, imposition of inadequate sentence is injustice to the victim of the crime in particular and the society in general. After so observing, the learned Judges had to say this:

The Courts have an obligation while awarding punishment to impose appropriate punishment so as to respond to the society's crime 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.

14. The Apex court in State of M.P. v. Babulal AIR 2008 SC582 two learned Judges, while delineating about the adequacy of sentence, have expressed thus:

19. Punishment is the sanction imposed on the offender for the infringement of law committed by him. Once a person is tried for commission of an offence and found guilty by a competent court, it is the duty of the court to impose on him such sentence as is prescribed by law. The award of sentence is consequential on and incidental to conviction. The law does not envisage a person being convicted for an offence without a sentence being imposed therefore.

20. The object of punishment has been succinctly stated in Halsbury's Laws of England, (4th Edition: Vol. II: para

482) thus: The aims of punishment are now considered to be retribution, justice, deterrence, reformation and protection and modern sentencing policy reflects a

combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided.

(Emphasis supplied) 15. In this context, we may refer with profit to the pronouncement in Jameel v. State of Uttar Pradesh (2010) 12 SCC532 wherein the Apex Court, speaking about the concept of sentence, has laid down that it is 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. 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.

16. The apex court in Gopal Singh v. State of Uttarakhand 2013 (2) SCALE533 while dealing with the philosophy of just punishment which is the collective cry of the society, a twoJudge Bench has stated that just punishment would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor selfadhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a Court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors.

17. Returning to the case in hand, the appellant in his statement under 313 of Code of Criminal Procedure stated that he has been implicated in this case because he had a family dispute with the appellant and the complainant had demanded money for the construction of their house to which he had refused. Thereafter, the complainant, her sister and other relatives had come to his house and gave beating due to which the appellant had sustained injuries and became unconscious and when the appellant regained his conscious the appellant found himself at the Police Station. Presuming that such an incident had taken place, even though there is no credible evidence to prove the same, there is not a single complaint lodged by the appellant in this regard which can support this statement. It is inconceivable that a mother would implicate the person with whom she had a minor dispute for want of money, in a case of this nature and that too at the cost of staking the future and welfare of her own daughter. If the mother of the prosecutrix was to implicate the appellant in a false case of rape, she would have alleged rape with her and not with her daughter, who was an unmarried girl of 6 years at that time. Furthermore, presence of appellant on the spot in intoxicated stage, supported with the testimony of the prosecutrix, medical evidences supporting the case of the prosecution are collectively pointing towards guilt of the appellant. The appellant is merely fabricating a story to prevent himself from the clutches of law.

18. Keeping in view the aforesaid enunciation of law, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the Appellant is excessive or deserves to be modified. The learned Counsel for the Appellant has submitted that the appellant has two children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended up to life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The six year old

girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullying the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an six year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court.

19. Sentencing is a significant task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. In Sham Sunder Vs. Puran and Anr. reported in (1990) 4 SCC731 the Honble Supreme Court laid down that the court in fixing the punishment for any particular crime should take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender. The measure of punishment should be proportionate to the gravity of the offence. The sentence imposed by the Trial Court appears to be so grossly and entirely inadequate as to involve a failure of justice. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process shall be stern where it should be, and tempered with mercy where it needs to be warrants.

20. The Apex Court laid down the following principles in Dulla and Ors. v. State reported in AIR1958 All 198 and the subordinate Courts should also take the aid of these principles in deciding the quantum of punishment for all persons found guilty by them:

The twin objects of punishment are to prevent a person who has committed a crime from repeating it and to prevent others from committing similar crimes. The sentence passed on the offender must be the least that will achieve both these objects. In deciding the measure of punishment the Court ought to take into consideration the nature of the offence, the circumstances in which it was committed, the degree of deliberation shown by the offender, and his age, character and antecedents. The prevalence of a particular crime in a particular area or during a particular period should also be taken into account. One's political, sentimental or religious preconceptions should be strictly disregarded. The Court must bear in mind the necessity of proportion between an offence and the penalty. The maximum penalty provided for any offence is meant for only the worst cases. An excessive sentence defeats its own object and tends to further undermine the respect for law. The jails should be reserved for the reception of those who perform criminal acts of not merely a technical but of a criminal

character. If the law permits a sentence of fine as an alternative, there is no need of the sentence of imprisonment, unless of course the gravity of the offence or the antecedents of the offender demand it. First and/or youthful offenders should invariably be treated leniently, and in applying provisions of law like the First Offenders' Probation Act or Section 562, Cr. P. C., it would be better for the Court to err on the side of liberality. On the other hand, a person who has taken to a life of crime or who has refused to take a lesson from his previous convictions should be meted out severe punishment. A deterrent sentence is wholly justifiable when the offence is the result of deliberation and preplanning, is committed for the sake of personal gain at the expense of the innocent, is a menace to the safety, health or moral well-being of the community, or is difficult to detect or trace. Unlike those acts which are universally acknowledged to be of a criminal nature, an act which has only recently been made an offence or which is not unlawful in other parts of the country or State or which is not essentially criminal in character, deserves leniency, except in the case of persistent offenders.

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.

22. In the contextual facts, on considering the aforesaid principles and having regard to the nature of the offence and the methodology adopted, we are convinced that the punishment awarded to the appellants herein is in excess of the requirement of the situation and as such the mitigating factors put forth by the learned Counsel for the Appellant are meant to invite mercy on the appellant. Our judicial discretion impels us to reduce the sentence of rigorous imprisonment for life. We are of the opinion that to meet the ends of justice, the sentence has to be modified; hence, we modify the order on sentence to rigorous imprisonment for a term of 14 years.

23. We accordingly reduce the sentence of life imprisonment under Section 376(2)(f) and Section 377 of Indian Penal Code to 14 years Rigorous Imprisonment, however, there shall be no change in the fine imposed by the learned trial court. The sentence of Rigorous Imprisonment for a period of seven years and fine of Rs.5,000/- and in default, Simple Imprisonment for fifteen days for the offence punishable under Section 363 read with Section 366 of the Indian Penal Code is maintained. The sentence of Rigorous imprisonment for a period of two yr has already been undergone by the appellant under Section 506 of the Indian Penal Code. The sentences to run concurrently with benefit of Section 428 Code of Criminal Procedure.

24. The conviction of the appellant is maintained with the sentence as modified above.

25. The appeal stands disposed of in the above terms.

26. The Trial Court record be sent back along with a copy of this order. SANGITA DHINGRA SEHGAL, J.

G. S. SISTANI, J.

th 27 July, 2015

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