

Sheoji Ram Vs. the State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/754396

Court : Rajasthan

Decided On : Mar-26-1981

Reported in : 1981CriLJ1131

Judge : Guman Mal Lodha, J.

Appellant : Sheoji Ram

Respondent : The State of Rajasthan

Judgement :

Guman Mal Lodha, J.

1. A long drawn debate about the applicability of the Rajasthan Children Act, 1970, the present trends of reformatory jurisprudence, the futility of deterrent punishment and liberal attitude, regarding the quantum of punishment to children highlighted the arguments of this case. The object of heinous offence of rape is a girl of five years of age. The rapist is of 13 to 16 years. But the police in its zeal to show him more than his age, altered the arrest memo by overwriting 18 on 17 years. Doctor estimated him to be of 15 years and the Court estimate ranged between 15 to 16 years.

2. The conviction has been recorded under Section 376 I.P.C. -and the sentence is five years simple imprisonment with a fine of Rs. 50/-. In default of payment of fine to further undergo two months' simple imprisonment. Fairly enough, the

conviction has not been challenged and that avoids traditional mention of the facts of the case and evidence recorded in support of it, the detailed discussion of the case in order to reach a finding whether conviction can be sustained. Even then, I have gone through the reasons of the case and I am in agreement with the well recorded finding of lower Court that accused is guilty of offence under Section 376, I.P.C.

3. That takes the case to question of sentence. Mr. Tibrewal has referred to a good number of decisions to persuade this Court to reduce the sentence to that already undergone,

4. The first case in which either due to printer's devil or due to Editor's blunder of A.I.R., accused guilty of offence under Section 302, I.P.C. has been shown to have been left to sentence undergone for five months, requires attention at the very threshold. To start with it was relied upon as an, authority, that even under Section 302 I.P.C. in case of Children of young age the Supreme Court has reduced sentence to five months undergone. This was a startling proposition against the express mandate of Section 302 I.P.C.

5. A close scrutiny of the judgment and particularly paragraph No. 5 revealed that the Editorial staff has committed a blunder, which might have resulted in miscarriage of justice in several cases of High' Court or Lower Courts, inasmuch as offence of Section 325 I, P. C. read with Section 149 I.P.C. in which accused were ultimately convicted has been put in the head note 'Section '302' I.P.C. - Murder Case.'

6. The exact misleading Head Note of : 1980 CriLJ10 (Ram Prasad Sahu v. State of Bihar) reads as under:

Penal Code (1860), Sections' 302, 53 Murder Case - Sentence - One convict only 16 years of age - No overtact attributed to him. Already undergone 5 months sentence - Supreme Court in Special appeal directed him to be discharged from prison at once - Absence of Children Act in the State of Bihar; Joint trial of child accused with adults and detaining children in regular person deprecated.

It is not only unfortunate but a matter of serious concern that a reputed Journal should commit such blunders. To say the least the misleading is outrageous and must have resulted in miscarriage of justice in several cases. The A. I. R. should mend it by publishing 'Corrigendum soon in the next issue.

7. Earlier also, in *S. M. S. Investment Corpn. v. State of Rajasthan*, decided on 11-5-1979 C.W. No. 877 of 1973 this Court pointed out another lapse in the following terms;

However on a close scrutiny of the appeal numbers mentioned with the names of counsel in the report of : [1970]75ITR603(SC) (In Asstt. Commr's case), I am convinced that the judgment reported in : AIR1971 Mad61 (FB) (in *V. Pattabhiraman v. Asst. Commr. of Urban Land Tax, North Madras*) stood reversed by the Hon'ble Supreme Court in : [1970]75ITR603(SC) and it is surprising that in spite of that, it was published after about two years of its-reversal. It is expected of the law journal reporters like All India Reporter which is frequently cited in our judgments that special care is taken by the editors at least not to publish reversed and overruled judgments after the same are reversed and overruled.

8. Even at the commencement of dictation, I treated as an Apex judgment in the field that even for offence under Section 302 I.P.C. Supreme Court has reduced the sentence to five months and due to Article 141 of the Constitution, it has become the law of land. But soon I realised, there must have been some mistake somewhere and a thorough reading of the judgment exposed the editorial blunder. In this case in lower court the accused were sentenced only for 6 years rigorous imprisonment, That being so the reduction of sentence either to five months or two years for offence under Section 325/149 is not of any significance and would not provide guidance for offence which are punishable with life imprisonment. Mr. Firewall ultimately conceded his mistake in relying upon such misleading head note resulting in misleading the Court and hastened to make amends during dictation of judgments.

9. My attention was invited to the judgment of *Dharam Chand v. The State of Rajasthan* reported in 1977 Rajasthan Criminal Cases 157. In that case, rape was committed with a small girl of 12 years of age. It was pointed out that the boy and

girl were living near as neighbours and the girl was of five and half inch height. Taking into account all these circumstances the Court reduced the sentence to one year rigorous imprisonment with a fine of Rs, 1,000/-.

10. In the above case, the judgment of the Hon'ble Supreme Court in *Kakoo v. State of Himachan Pradesh* : 1976 CriLJ1545 was relied upon for the purpose of quantum of sentence. In that case, the appellant was 13 years of age and the Court was of the view that according to current penological trends, a more humanitarian approach is needed in the case of child offenders.

11. The above two judgments of this Court as well as the Supreme Court would show that in the case of child offenders the Courts are inclined to take more humanitarian view and emphasis is that sentence should not be too harsh.

12. this Court in *Idan Singh v. State of Rajasthan* 1976 WLN 665 : 1977 Cri LJ 556 while dealing with the case of rape observed as under:

The offence in this case has been committed in a high handed manner and the false plea raised by the accused that Mat. Jaday (prosecutrix) was his married wife, has aggravated it further. Where a prisoner is convicted of an outrageous rape, or a brutal and unprovoked assault involving grave injuries by lethal weapons to the Govt. servant on duty or an armed robbery of the bank of grave extensive loss to public property or an economic offence such as adulteration of food, medicine, or smuggling of gold, in such cases law abiding citizens look to the Courts to retaliate on behalf of the community. They expect that criminals who prey on the community or violate its fundamental values or, by their aggressive and rapacious conduct, imperil the average citizen's sense of security and confidence in law and order, should be made themselves to suffer in requital for the harm they have done to others.

13. In *Mustaq v. State* : AIR1954 All580 . While convicting an accused under Section 376 I.P.C. the Court held that in case of rape under Section 376 the sentence of 8 months rigorous imprisonment was wholly inadequate and that a sentence of two years' rigorous imprisonment should have been awarded. In this case age of boy was 15 years when he committed offence or rape. The sentence

was enhanced from 8 months to two years rigorous imprisonment and the sentence of strips was also confirmed.

14. Before, I decide the question of sentence it would be useful to first consider the submissions about the Rajasthan Children Act, 1970. It is not in dispute that Rajasthan Children Act, 1970 have not been applied to the District of Sikar so far. The submission of Mr Tibrewal was that the State Government should have notified the date for coming into force of this Act in Sikar, district also by now at least when 10 years have passed since this Act was passed. He relied upon the observation of this Court in 1980 Raj Cri C 290 : 1981 Cri LJ NOC 45 (Raj) (Moti v. State of Rajasthan). this Court observed as under :-

It is a matter of great regret that the State Govt. has not yet found it reasonable to extend the provisions of this Act to the remaining districts in the State. This state of affairs bring into light a serious anomaly which is prevalent. A child belonging to the districts of Jaipur, Ajmer, Kota and Jodhpur has to be tried differently from a child residing in the other parts of the State. As a matter of fact, to deprive the children residing in the remaining part of the State, except these four districts would mean serious inequality in persons similarly placed. The rule of law in a well fare State has to be operational, and if the State after a make-believe legislative exercise, is too insouciant even to bring it into force by a simple notification or renew it after its one year brevity, it amounts to breach of faith with humanism of our supreme lex, an abandonment of the material and moral well being promised to the children of the country to Article 39(f) and a subtle discrimination between child and child depending on the district where it is tried.

15. Undoubtedly the grievance of Mr. Tibrewal that the State should have applied the provisions of Children Act to all parts of the State when 10 years have passed after the enactment of this Act, is well founded. The observation of this Court extracted above deserves more emphasis. But even then this legislation cannot be struck down on the ground of being discriminatory under Article 14 of the Constitution, The legislature in its wisdom enacted Sub-clause (3) of Section 1 and expressly gave a direction to the State Government to notify and appoint different dates for different areas. This was primarily intended for permitting the

Government to ensure that the reformatory schools, observations home etc., as contemplated by Act are established in the different districts of the State. So also the Children Courts are established in a phased manner in the State, The fact that the Rajasthan State has taken abnormal time in doing so certainly is a matter of concern but on that account alone neither the Act can be struck down as violative of Article 14 nor a mandatory direction can be given in this Criminal Case to establish the Children Courts to try the children under the Children Act.

16. Under the Children Act also, Section 22 provides under the proviso that the children who has attained the age of fourteen years and has committed an offence, the children's Court is satisfied that the offence committed is of so serious a nature, order the delinquent child to be kept in the safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government. Sub-clause (2) of Section 22 provides for detention.

17. Section 22 reads as under :-

22. Orders that may not be passed against delinquent children:- (1) notwithstanding anything to the contrary contained in any other law for the time being in force, no delinquent child shall be sentenced to death or imprisonment, or committed to prison in default of payment of fine or in default of furnishing security;

Provided that where a child who has attained the age of fourteen years has committed an offence and the children's court is satisfied that the offence committed is of so serious a nature or that his conduct and behaviour have been such that it would not be in his interest or in the interest of other children in a special school to send him to such special school and that none of the other measures provided under this Act is suitable or sufficient, the children's Court may order the delinquent child to be kept in safe custody in such place and manner as it thinks fit and shall report the case for the orders of the State Government.(2) On receipt of a report from a children's Court under Sub-section (1), the State Govt. may make such arrangement in respect of the child as it deems proper and may order such delinquent child to be detained at such place, on such conditions and for such period as it thinks fit:

Provided that the period of detention so ordered shall not exceed the maximum period of imprisonment to which the child could have been sentenced for the offence committed.(3) Save as provided in this Act, the words 'conviction' and 'sentence' shall cease to be used in relation to children dealt under this Act and any reference in any enactment to a person convicted, a conviction or a sentence shall, in the case of a child, be construed as including reference to a person found guilty of an offence, a finding of guilt or an order made upon such a finding, as the case may be.

18. It is not necessary to deal with the provisions of the Rajasthan Children Act, 1970 in detail because obviously it is admitted that it is not applicable in the district where the instant case has been tried and where the offence has been committed.

19. The only question which remains for consideration is whether the sentences awarded to the accused of five years and fine of Rs. 50/- is excessive and deserves to be reduced. As discussed above the age of the accused has been variously described from 15 to 18 but in spite of different description by different authorities the basic fact remains that Court itself observed it to be of 15 to 16 years of age and the medical examination also revealed that he was 15 years of age. It would, therefore, be fair to reject the police record wherein the age of the accused has been described as 18, and I must proceed on the basis of the finding of the lower court about the age being 15 as I have got no reason to differ, so far as the age is concerned.

20. The age of the girl is five or six years. The offence of rape is of serious nature deserves serious consideration. At the same time recent judicial trends, as would be obvious from the above judgments, is that even though the maximum sentence of life imprisonment has been provided for offences of rape, yet in a given case of child and special circumstances sentence has been reduced up to one year or so.

21. Taking all the facts and circumstances of the case without repeating them again as the same have been mentioned in the earlier part of the judgment, I am of the opinion that the ends of justice would be met, in the peculiar facts and circumstances of the case if sentence is reduced from five years to two years and the fine of Rs. 50/- is sustained. The reduction is primarily due to peculiar features

of this case and should not be taken as general precedent for leniency in rape cases. I have always taken the view that except exceptional cases, punishment in rape cases should be severe and but for the tender age sentence of 5 years cannot be termed excessive.

22. It is further directed that in view of the age of the accused he would be kept in reformatory school or such places, which are specifically meant for Children, so that he is saved from the company of hardened criminals.

23. Mr. Tibrewal further submitted that in spite of the observation of this Court mentioned above in 1980 Raj Cri C 290 (Moti v. State of Rajasthan) the Govt. has not yet provided Children Court in all the Districts of Rajasthan, and has not yet notified the dates for application of the Children Act to some District of Rajasthan including the District of Sikar. The strong observations made by this Court in Moti Singh v. State of Rajasthan (Supra) should have been enough for the State to expedite the application of Rajasthan Children Act to other Districts also where it has not been applied so far. Unfortunately it has not attracted the attention so far and that being so a mandatory direction can be issued by this Court, while dealing with this criminal case. It is expected that in consonance with the intention of the legislature and the present trends or reformatory jurisprudence, the State of Rajasthan would take immediate steps to extend the application of this Act, to those Districts where it has not been applied so far, and since 10 years have already passed, the State Government would expedite the notifying process, which should be normally done by the end of 1982. Copy of this judgment should be sent to the Chief Secretary of the State Government.

24. The result is that this appeal fails so far as question of conviction is concerned. The conviction of the appellant under Section 376 I.P.C. is maintained. However, the appeal is partially accepted and the sentence is reduced from five years simple imprisonment to two years simple imprisonment and the fine of Rs. 50/- imposed by the lower Court is upheld.