

**Bhan Singh Vs. State of Rajasthan**

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**Court :** Rajasthan

**Decided On :** Mar-21-1983

**Reported in :** 1984CriLJ788

**Judge :** Guman Mal Lodha and; N.M. Kasliwal, JJ.

**Appellant :** Bhan Singh

**Respondent :** State of Rajasthan

**Judgement :**

ORDER

**Guman Mal Lodha, J.**

1. A poor Harijan girl, rather a child of seven years raped by a youth of 19 years in daylight at 3, p. m, in the agricultural field and yet, the accused, Bhansingh, had dared to appeal against the sentence of 5 years rigorous imprisonment after conviction under Section 376, IPC.

2. The girl was found unconscious on the spot on account, of the barbarous heinous crime committed by the accused. This ghastly tragedy resulted in a pool of blood on the spot and on the private parts of the helpless child, girl.

3. Sri R. S. Purohit, the learned Counsel for the accused Bhansingh, to start with, argued for the reduction of the sentence but when the learned public Prosecutor

Shri. K.K. Sharma, pointed out that this Court has issued a notice of the enhancement of sentences at the time of the admission of the appeal, a half hearted effort was made by the learned Counsel for the accused Bhansingh to challenge the conviction, itself, also.

4. We have given a thoughtful consideration to the submissions of the learned Counsel for the parties and have gone through the relevant record of the case also, We find that the judgment of the trial courts well reasoned and based on a thorough discussion of the entire evidence and correct appreciation of the facts. Sushri Bhanwari (P. W. 10) a girl of 7-8 years of age has given a graphic description of commission of the offence. She has stated that Jiwani and she went to the agricultural field and in the field of Jiwani's father, accused Bhansingh came from behind and after throwing her on the ground, opened her underwear and forcibly, committed sexual intercourse. She also stated that when she tried to cry, the accused put his hand on her mouth. She further averred that, she suffered terrible pain On account of the forcible sexual intercourse with her and became unconscious thereafter, and she happened to be conscious only in the hospital. The statement of Sushri Bhanwari is corroborated by Jeewani (P. W. 9), Mohanlal (P. W. 3) and Mohanram (P. W. 4); both of whom went to the spot immediately after the information was received from Jeewani and, saw accused Bhansingh running and Bhanwari lying fainted with bleedings from her private parts.

5. It was Mohanlal who lodged the first information report, Bhinwaram (P. W. 5) also corroborated the prosecution case. P. W. 6 Dr. B.P. Jangid is the medical witness and Dr. V.K. Soni (P. W. 8) is also doctor who conducted X-ray of accused for ascertaining the age of the accused, Kurdrum (P. W. 11) and Bhinwaram (P. W. 5) saw the girl Bhanwari when she was brought in the village. Dr. Ramswaroop Jaju (P. W. 14) is the medical Witness who examined the victim, Bhanwari on 22nd January, 1980.

6. It has been established on record that Bhanwari, the prosecutrix was 7/8 years of age at the time of the commission of offence and accused, Bhansingh, was of 18 years. It has also been established by the eye witnesses, as well as medical evidence that the prosecutrix, Bhanwari, was made victim of forcible sexual

intercourse by accused Bhansingh. It was in these circumstances that, on account of overwhelming evidence and clinching proof beyond all reasonable doubts of rape having been committed by the accused Bhansingh, on the pro-securitrix-Bhanwari, the learned Counsel for the accused, in substance, prayed only for reduction of the sentence.

7. We are convinced that the finding of the trial court that accused Bhan-singh, is guilty of. an offence under Section 376, I. P. C. for committing sexual intercourse with a minor girl of 7/8 years, is fully justified on facts, and admits of no doubt.

8. P. W. 14 Dr. Ram Swaroop Jaju, the Medical Jurist unfolds the severity of the rape committed on this small girl of hardly 8 years of age. The underwear of the girl was full of blood, blood stains were found on the 'Firok' and Odhani also. The lower front portion of the firok was full of blood. The upper thighs were also having clotted black blood. She was feeling terrible pain when her thighs were separated for medical examination, The private parts of the girl were swollen and red and there was a tear in the hymen vagina. The Chemical Examiner's report Ex. P15 and Serologist's Report Ex. P16 confirmed that forcible sexual intercourse was committed with this small girl. The girl was weeping when she was brought to the doctor. According to the Medical Jurist, the girl was terribly frightened. The Odhani was having blood spots at many places.

9. The above medical examination and the statement of the medical jurist supported by the report of the Chemical Examiner and the Serologist goes to show that the present one was a case of most heinous type of barbaric rape on a helpless girl of 7-8 years of age by a fully developed youth of 19 years. The fact that the girl became unconscious at the time of rape only shows how inhuman, barbaric and ruthless crime was committed by the accused, who was mad with orgy and lust of sex.

10. As already mentioned above, in the appeal, the learned Counsel for the appellant has mostly concentrated on the question of sentence and appeals to the court to release, the accused on the sentence already undergone.

11. Learned Public Prosecutor, on the contrary, has submitted that it is one of the most ghastly, barbaric, species of rape where helpless Harijan girl of about 7-8 years has been made a victim and such anti-social offence should be dealt with seriously and the maximum sentence should be awarded.

12. According to the law, under Section 376 IPC, the maximum sentence is Life Imprisonment and the Court is free to award any sentence up to 10 years rigorous imprisonment also depending upon the facts and circumstances of the case.

13. In Ram Khilar v. State 1977 Cri LR 684 the sentence of 7 years rigorous imprisonment was awarded when the rape was committed on Mst. Premi, a girl of 7 years. The plea that the accused was an old man of 60 years was found to be insufficient to reduce the sentence and the court was of the opinion that the sentence was not excessive.

14. In Rafiq v. State of U.P. : 1980 CriLJ1344 their Lordships the Supreme Court of India have held as under:-

Draupadi, a middle aged bal sewika in a village welfare organization was sleeping in a girls school where she was allegedly raped by Rafiq the petitioner, and three others. The offence took place around 2,30 a. m. on August 22/23, 1971 and the next morning the victim related the incident to the Mukhya sewika of the village. A report was made to the Police Station on August 23, 1971 at midday. The investigation followed resulted in a charge sheet, a trial and, eventually, in a conviction based substantially on the testimony of the victim. Although some of the witnesses, tell-tale fashion, shifted their loyalties and betrayed the prosecution case, the trial court entered a finding of guilt against the appellant, giving the benefit of doubt to the other three obscurely. A 7 years sentence of rigorous imprisonment was awarded as justly merited, having regard to the circumstances. The appeal was carried to the High Court proved unsuccessful but, undaunted, the petitioner sought leave to appeal to this Court....

Counsel submitted that a 7 year sentence was too severe. No, because, as we have stated earlier rape for a woman is deathless shame and must be dealt with as the gravest crime against human dignity. No interference on the score of

culpability or quantum of punishment is called for in the circumstances.

15. Krishna Iyer, J. who otherwise is known for his plea of reformatory jurisprudence in criminal cases and has pleaded for abolition of capital sentence, could not resist the severe condemnation of the offence of rape and observed as under:

The escalation of such crimes has reached proportions to a degree that exposes the pretensions of the nation's spiritual leadership and celluloid censorship, puts to shame our ancient cultural heritage and human claims and betrays a vulgar masculine outrage on human rights of which women's personal dignity is a sacred component.

16. Krishna Iyer, J., categorised it as one of the most barbaric crime and observed as under : -

The case before us occurred in 1971 and is drawing to a close in 1980. What a pity? Now, there is considerable public and parliamentary attention to the violent frequency of rape cases, It is time that the Court reminds the nation that deterrence comes more effectively from quick investigations, prompt prosecutions and urgent finality, including special rules of evidence and specialised agencies for trial.

17. It would be thus seen that the apex Court of this country has treated the offence of rape as the gravest crime against human dignity. If it has been termed as a deathless shame for a woman, how much shameful it is when the offence is committed on a tiny girl of 7-8 years of age, which may in some cases, result in her death also. According to the present case, the girl became unconscious and the rapist was so mad in his sex-lust, that even pool of blood coming out of vagina the private parts, could not persuade him to leave the girl.

18. Mr. Purohit invited our attention to Shivji Ram v. State of Rajasthan 1981 Raj LW 327 : 1981 Cri LJ 1131 where a child rapist of 15 years was sentenced to 2 years rigorous imprisonment. In Shivji Ram's case (supra) in. parns Nos. 8, 9 and 10, this Court has discussed how the Courts have taken a lenient view for

sentence even in a rape case where the rapist is a child.

19. However, it would be seen that in *Idan Singh v. State of Rajasthan* 1977 Cri LJ 556 at p. 560 this Court made the following observation :

The offence in this case has been committed in a high handed manner and the false plea raised by the accused that Mst. Jadev (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 weapon to the Government servant on duty or an armed robbery of the bank or 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.

20. It should be noted that in *Shivji Ram's case* the whole discussion is about the application of Children act, as the accused was near about 15 years of age. In view of the special circumstances of the case that the accused was a child, the sentence was reduced. However, it was made clear that this should not be taken as a general precedent for leniency in rape cases. In para 21 of *Shivji Ram's case* 1981 Cri LJ 1131 it was observed as under :-

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

21. The crucial and important question before this Court is whether the sentence of 5 years awarded by the Court should be enhanced or reduced or maintained.

22. In Rafiq's case 1980 Cri L.J. 1313(supra) the girl was middle aged and working as Balsevika, Field Welfare Organisation and yet the sentence of 7 years was not reduced nor treated as too severe. In the instant case, there is additional aggravating circumstances against the accused. The girl is of 7-8 years only and further she belongs to Harijan segment of the society, which is treated as weaker section of the society. Should the Court allow girls and women of weaker section of society as chattel or second class citizens who can be easily made victims of satisfying sexual lust of the affluent and traditionally privileged section of the society. In our opinion the barbaric offence of rape on a tiny aged girl of 7-8 years and that too belonging to weaker section being a harijan, assumes much more seriousness and is extremely heinous. The non-acceptance by community of Harijans as untouchable and treating them as undignified weaker section, available for mass rapes or rapes of tiny kids is hair raising, and alarming and the increase in such antisocial and inhuman crimes deserves exemplary deterrent punishments. So shocked in the humanity, can be judged from the fact that former Chief Justice of India Shri Hidayatullah, Vice President of India pleaded for public whipping and flogging for such criminals who are shame and stigma on the society. Another former Chief Justice Hon'ble K.N. Wanchoo awarded sentence of 10 stripes in a Balmukand v. State 1952 Raj LW 95 : 1952 Cri LJ 1136 for rapist of women in Rajasthan case when Whipping Act was in force. Abolition of Whipping Act, has encouraged such crimes and there is need for rethinking for it.

23. We are firmly of the opinion that these circumstances aggravate the offence and warrant maximum punishment so that society knows it that such criminals cannot play with the life, dignity, chastity of weaker sex and that too from weaker section of the society which makes it an offence of triple severity.

24. We are therefore, convinced that the present one is a case here where severe sentence of imprisonment should have been awarded, making it exemplary and deterrent,

25. Mr. Purohit pleaded for leniency on the ground that the accused was of 19 years of age. In our opinion age of 19 years cannot be treated as an age where a youth is ignorant of the implication of his crime and the serious consequences of heinous crime, which is committing not only against the poor Harijan tiny girl but against the entire society.

26. We are, therefore, not inclined to take a liberal view in the matter of sentence as was done in Shivji Ram's case where the boy was of 13 to 15 years, only. Even then we feel that maximum sentence of life imprisonment need not be awarded as the accused is of 19 years of age. If the accused would have been between the age group of 25 to 50 years we would not have hesitated in giving maximum sentence.

27. In *Baldeo v. State of Rajasthan* 1977 Cri LR 131 a girl of tender age was victim of rape and the sentence of 10 years was reduced to 7 years rigorous imprisonment. Learned Judge did realise that offence of this nature is very severe and it was undoubtedly, true that the sentences must be severe, because crimes of violence upon the girls of very tender age should be severely dealt with. However, in the peculiar facts and circumstances of that case, it was held that the sentence will be reduced to 7 years rigorous imprisonment and it would meet the ends of justice.

28. A notice to show cause why the sentences should not be enhanced was given to the accused at the time of admission of this appeal. We have discussed above that the facts and circumstances of the case warrants that severe sentence should be imposed. Normally, we would have enhanced the sentences. But, we find that the offence was committed in January, 1980 and at the time of the commission of the offence, the accused too was of 18 years of age. We are, therefore of the view that as the sentence of 5 years has already been imposed by the trial Court it would not be in the interest of justice to enhance it now at this stage, as it cannot be termed as grossly inadequate.

29. The notice of enhancement is, therefore, discharged and the sentence already imposed by the trial Court is confirmed. The appeal filed by Bhan Singh consequently fails and is, hereby dismissed. So also the appeal for enhancement

of sentence is dismissed.

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