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Court : Rajasthan

Decided On : Sep-06-1988

Reported in : 1988WLN(UC)515

Judge : G.K. Sharma, J.

Appeal No. : S.B. Cr. Appeal No. 472 of 1987

Appellant : Shiv Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Shri. Tibrewal

Judgement :

G.K. Sharma, J.

1. This appeal is directed against the judgment dt. 21-11-1987 passed by the Addl. Sessions Judge, Gangapur City where by, convicting the accused-appellant 376 IPC and sentenced him for 10 years R.I. and a fine of Rs. 1000/- in default of payment of fine, to further undergo 6 month's RI.

2. On the Parcha Bayan of Mst. Kaveri recorded by the Police dated 15-11-1986 a rate 376 IPC was registered. In this statement she has stated that on 15-11-1986 at 330 p.m. she took her bull for drinking water and when she was returning the bull got freed and ran away. She chased and the bull entered into the field of Ram

Prasad Meena. In that field Shiv Ram s/o Ram Prasad Meena was standing and he forcibly dragged her and committed rape on her.

3. After completing the usual investigation the Police submitted challan against the accused 376 IPC. After concluding trial the learned Sessions Judge found him guilty of this offence and sentenced him as mentioned above. The case has not been argued on the merit but the argument was limited to the quantum of sentence to be awarded to the accused.

4. Shri Tibrewal, learned Counsel for the appellant argued that at the time of the commission of the offence the accused-appellant was of the age of 19 years. According to the statement recorded 313 Cr. PC the accused was of 20 years of age and the incident had taken place about 10 months before the statement was recorded So it is clear that the accused was about 19 years of age when this offence was committed. According to the doctor's statement the age of the prosecutrix Mst. Kaveri was between 12 to 16 years. In all aspects she was below 16 years of age. It was also argued that both the accused and prosecutrix belong to same caste and it is not the case that the accused had gone to her house or her field and forcibly committed the rape. But, according to the story, she while following the bull entered into the field of Ram Prasad where his son accused Shiv Ram was present and there he committed this offence. It was also argued that the accused is not a habitual offender, so looking to all these factors it is a fit case where some lenient view can be taken. The accused appellant has been awarded 10 years RI and if he is kept in jail for such a long period along with other hardened criminal there would be adverse effect on his future.

5. The learned Public Prosecutor argued that the rape has been committed with a minor girl of the age of 15 years and by this act the life of the girl has been spoiled and as such no lenient view is needed in such cases. According to him the minimum punishment awarded after the amendment in Section 376(1) IPC is seven years. Even, in some cases the sentence can be awarded upto life imprisonment. So the learned Public Prosecutor argued that no lenient view should be taken in this case.

6. Considered both the arguments. No doubt, after the amendment in Section 376 the minimum punishment is 7 years, but a proviso has been added in this amendment which says that the court may for adequate and special reasons to be mentioned in the judgment, sentence accused to imprisonment for a term of less than 7 years. Thus, some discretion has been given to the Court while awarding the punishment less than 7 years but the Court has to give reasons for taking the lenient view. In the present case no doubt the age of the girl is about 15 years but on the other side the age of the accused at the time of commission of this offence was about 19 years, so the accused too is of a tender age. No doubt, he has committed an offence which is a menace to the society. Such offences are not to be dealt with lightly. But there is nothing on the record to show that the accused has committed similar offence prior to this offence. It is not on the record that he is a habitual offender. So these factors are to be kept in mind. If the sentence of 10 years is maintained which would mean that he would be in jail for such a long period where there are all chances or possibilities of his coming in contact with hardened criminals and there is possibility of his becoming a hardened criminal. So the future of the accused is also to be kept in mind. He is of tender age and if he is kept for such a long period in the company of hardened criminals then certainly on account of incapability of understanding the serious offences would spoil his future.

7. The offence of rape and that too with a minor girl is certainly a very serious offence. But, simply by punishing the accused persons with severity will not improve the society. It does not mean that there should not be any punishment to the persons who had committed such offences. As argued by Shri Tibrewal that balance has to be kept between the society and the accused. The accused being of tender age which does not mean that he be set at liberty but side by side he should not be dealt so severely. In order to teach lesson to other persons of the society it is necessary that such persons should be awarded some punishment and that punishment should keep the balance in the society and it should be to that extent which may teach a lesson to other persons of the society not to rape the minor girls. Mr. Tibrewal cited 1987 Cr.LJ 1541 Vinodkumar and Anr. v. State of Madhya Pradesh. This case was also 376 IPC. The accused persons were awarded 5 years imprisonment by the trial court, but in appeal the High Court

reduced it to three years. This case came into the light after the amendment of Section 376 IPC. Shri Tibrewal has also cited the case : 1980 CriLJ8 which was also 376 IPC and where the accused was in his twenties and the High Court awarded four years R.I. but the Hon'ble Supreme Court reduced it to three years' R.I. Some cases of our own High Court were also cited by Shri Tibrewal which are 1976 RCC 56 and 1979 RCC 234. In these cases also the lenient view was taken while awarding the sentence to the accused.

8. In view of my observations and the discussion made above, I feel that looking to the tender age of the accused which was 19 years at the time of the commission of the offence it is a fit case where the punishment should be awarded less than 7 years. Thus, looking to the circumstances and the facts of the case, I reduce sentence awarded by the trial court.

9. As a result, the appeal is partly accepted. The accused is found guilty of the offence 376, IPC. The sentence awarded by the trial court is 10 years which is reduced to 5 years R.I. and a fine of Rs. 1,000/- is maintained. In default of payment of fine the accused to undergo 6 months