

Puran Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-19-1985

Reported in : 1987WLN(UC)751

Judge : Guman Mal Lodha, J.

Appeal No. : S.B. Criminal Appeal No. 507 of 1976

Appellant : Puran

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Soral

Disposition : Appeal dismissed

Judgement :

Guman Mal Lodha, J.

1. A tiny village girl of 8 years was literally in a pool of blood on account of the forcible sexual intercourse by accused Puran. Yet the prayer by the learned Counsel for the appellant is for releasing him on probation or giving benefit of the Children Act.

2. Fairly enough Mr. Soral, learned Counsel for the appellant, has not entered into the controversy about the facts of rape. His anxiety is that Puran must as treated

be a child and then released on probation. Mr. Soral, learned Counsel for the appellant placed reliance on the provisions of Rajasthan Children Act, and the decision of the Hon'ble Supreme Court in *Satto v. The State of U.P.* : 1979 CriLJ943).

3. A child has been defined under the Rajasthan Children Act, 1970 here in after called as the Act, 1970 to mean a boy who has not attained the age of 16 years. Section 21 provides that when a child commits an offence then either he may be sent to special school or may be allowed to go home after advice or admonition or released on probation.

4. Section 22 provides a prohibition for sending a child to jail, the proviso also provides for detention by the State Government, of child who has attained the age of 14 years and committed a serious offence.

5. The first question to be considered in the present case is the nature of offence. PW 7 Dr. Kanhaiya Lal, was Medical Jurist, in General Hospital, Bharatpur, on the relevant date has examined the girl Kamlesh after the rape was committed. According to him the sexual organ of the girl was not fully developed. Hymen was torn, lacerated having blood clots. The torn hymen bled on probing. The torn hymen suggested rape. The blood has travelled from the vagina to thighs and covering the entire legs reached the foot. The age was between 8 to 10 years. The boy thrust his penis in the vaginal parts of the girl upto 3 to 4' (inch).

6. So far as the boy is concerned, according to Dr. PW 3 Zal Singh he did not enquire about the age of the boy.

7. Nowhere in the statement of any witnesses the age of the accused Puran has been mentioned on medical examination but according to the view of the trial court he was 17 to 18 years of age and so far as his examination under Section 313 Cr. PC the boy mentioned that his age is 14 years but the Presiding Officer, who recorded the statement on his own estimate recorded the age of accused 17 to 18 years in the statement.

8. Mr. Soral, learned Counsel for the accused appellant pointed out that according to medical report of a accused the boy was reported to be above 15-1/2 years and below 17 years. The X-ray report shows the epiphysis lower end of radius and ulna not united. Mr. Soral, submits that according to Modi, the fusion to capitulum of epicondylar takes place in Bengal upto 15 years, in Punjab upto 15 years and in England upto 16 years.

9. Mr. Soral, submitted that since the appellant happens to be a child he should be given benefit of probation or be given benefit of the Children Act, 1970.

10. Mr. Purohit, learned Counsel for the State of Rajasthan, pointed out that the boy is 17 to 18 years and although the case remained pending in the trial court for sufficient time no application was moved that accused Puran is a child and the case should be sent and tried by the Children Court. Even in the appeal which was filed in the year 1976 it was never claimed that the accused Puran should have been tried by the Children Court and given the benefit of provisions of Section 21 of the Rajasthan Children Act, 1970. It is not even known whether at the relevant time the provisions of the Children Act, were made applicable to Bharatpur and necessary court was created for trying such offences.

11. I, am, therefore, hearing a case where the appellant never objected to a regular trial and never asserted that he must be tried by the Children Court and, he was treated by the court as of age of 17 to 18 years.

12. The medical report mentions that he is not below 15-1/2 years and not above 17 years. The opinion of Mr. Modi so far as X-rays examination of joints of fusion of bones is concerned, can only be of an approximate nature and never be conclusive.

13. I am, therefore, of the opinion that the provisions of the Children Act, have got no application to the present case and the age of the boy at the time of the offence was about 17 years and rightly assessed by the trial court, between 17 to 18 years.

14. Mr. Soral, learned Counsel for the appellant placed reliance on the case of Hon'ble Supreme Court in Satto v. State of U.P. (supra) and in Kakoo v. The State of Himachal Pradesh : 1976 CriLJ1545 . In Kakoo v. The State of U P. (supra) the age of the boy was hardly 13 years.

15. Mr. Soral, learned Counsel for the appellant, submitted that the probation must be granted as the reformatory theory of penology requires lenient and liberal view in sentence Mr. Purohit, learned Counsel for the State submitted that the sentence must be enhanced because of the legislative trend shows that by amendment now the minimum sentence is 7 years and the maximum sentence is upto life imprisonment.

16. There is no doubt, that in spite of the above two decisions of the Hon'ble Supreme Court the Parliament of this country by criminal law Amendment Act 43 of 1983 has prescribed minimum sentence of 7 years maximum of which may be even life imprisonment.

17. This court in Balmukund v. State (1952 RLW 95) considered the seriousness of the offence of rape and enhanced the sentence from two years to 4 years with ten strips under the Whipping Act. Hon'ble the then Chief Justice Wanchoo and Hon'ble the then Justice Bafna, took a serious view of rape on a girl and observed that sentence of imprisonment was not enough and ten strips under the Whipping Act, should be given. Even while setting-aside the conviction under Section 376 of Sanwaria and convicting him under Section 376, IPC read with Section 109, IPC, this court enhanced the sentence from two years to 4 years and ten strips under the Whipping Act. For Surje also sentence of whipping was inflicted in addition to 4 years and for all the 3 accused the above mentioned sentence was given.

18. Mr. Soral, learned Counsel for the appellant submits that the Whipping Act, has been abolished and the present tendency is to give minimum sentence.

19. I find that the amendment of Section 376 in 1983 shows that the legislature of this country, has not accepted the so called reformatory theory because by amendment minimum sentence of 7 years have been prescribed and the maximum is life imprisonment, for some other kind of criminal cases for some

specific kind of rape cases the minimum sentence is 10 years.

20. It is, therefore, obvious that in the matter of rape the sentence should be adequate and deterrent enough.

21. In a well advanced country like U.S.A. in many States 'rape' is treated as a very heinous offence and the sentence extends upto death sentence. According to the Encyclopedia of Crime and Justice (Vol. I) Macmillan, a black rapist was hanged in Kentucky in 1936 in public. From 1930 to 1980, 455 convicts were given death sentence for rape in U.S.A. as per the statistics provided by U.S.A. Department of Justice.

22. According to Justice M. Ramjois in ancient India, death sentence was provided even for adultery. In his treatise Legal and Constitution History of India (Vol. I) corporal punishment in ancient India, was prescribed, though 'Shukra' opposed it, continued.

The highest penalty of death sentence was prescribed for certain offences, namely, (1) acts of subverting the State; (2) Rabapetakas (Killing a Brahmins, drinking the liquor called 'Sura' by a twice born (dwija) adultery with Guru's wife & abatement of these offences (Manu IX 235 and XI 54) Incendiarism murder, robbery, poisoning, adultery, abatement of theft by giving subsistence, instruments for house breaking or asylum, causing break of embankment attempt to murder, causing abortion vide Kaul P. 259 Harita VIII 190-202, 220-221 Yaj. II 273, Manu IX 271, 279, 371, and Gaut. XXIII 14 Kar. 806 prescribed death penalty for a Brahmana if he committed theft of gold, caused abortion or killed a woman (Striharya). There were several modes of inflicting death sentence referred to in ancient law texts, such as by administering poison, by getting the person trampled under the feet of an elephant, by an implement, by burning or by getting him killed through wild animals.

23. This shows that the principles of reformatory jurisprudence in criminal justice in matters of punishment have not been accepted by the Parliament, inspite of the views expressed in Satto's and Kakoo's case (supra) and the Parliament to make explicit that rape cases should be punished by adequate sentence has amended

the law in 1983, and provided minimum punishment in various contingency. The intention of the Legislature is patent that a rapist not be let off leniently but punished with adequate sentence, after people's massive protest against Supreme Court's acquittal of police officials in Mathura's rape in police prison.

24. I am of the view that normally in a case of the present nature where a tiny small kid of 8 to 10 years of age who was engaged in using herself was forcibly Laid-down by the accused and virtually was thrown in a pool of blood by a cruel act, of satisfaction of his sexual lust and orge, the sentence should not be less than 7 to 10 years, which is now minimum according to law also, though it was not so at the time the offence was committed.

25. However, in view of the fact that no appeal has been filed by the State of Rajasthan and the age of the boy was near about 17 years, I do not like to invoke the powers of suo-moto revision. The sentence of two years with a fine of Rs. 300/- is, therefore, confirmed. The appeal is dismissed.

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