
(2002) 08 SC CK 0011
In the Supreme Court Of India
Case No : Criminal Appeal 378 of 1996

State of A.P.

APPELLANT

Vs

T. Prasanna Kumar

RESPONDENT

Date of Decision : 28-08-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 366
Penal Code, 1860 (IPC) — Section 302, 304, 376

Citation : (2003) 1 ACR 627 : (2002) 7 JT 635

Hon'ble Judges : U. C. Banerjee, J; Shivaraj V. Patil, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. It is said that human lust knows no bounds if there is any truth in it, the instant matter is a glaring instance of such lust. A young girl of 16 years of age has fallen a victim to the lust of another young person though, however, eventually with an unfortunate incident of death being followed thereby caused by the young boy by suffocation. The nature of injuries amply describe such a situation and it will be convenient at this stage to note the same;

"1. A contusion of 3.5 cms. x 2cms is present on right side of neck 2 1/2 cms. below right angle of mandible 4 cms. away from midline oblique in nature. Bluish black in colour.

2. Two contusions of 3 cms. x 2 cms., and 2.5 x 1.5 cms. are present on left side of the neck with a gap of 1 cm. obliquely placed up and down 2 cms. below left angle of mandible. 5.5. cms. away from midline, bluish black.

3. Two crescent marks are present on left side of the neck at posterior aspect of contusions mentioned in injury no.2, concavity anterior. Reddish brown.

On dissection of the above injuries from 1 to 3, showed extravasation of blood in the surrounding tissues. Reddish brown in colour.

4. Four scratched abrasions ranging from 2.5 cm. in length, parallel and obliquely placed over upper and lateral quadrant of right breast Reddish brown in colour.
5. Two scratched abrasions of 3 and 4 cms. parallel obliquely placed over back of right part of chest over mid scapular region. 6.5 cms. away from midline.
- p>6. Two scratched abrasions of 4 cm. x 6 cms. in length. Obliquely and parallel placed from below upwards over upper and inner aspects of right thigh. Reddish brown.
7. Three scratched abrasions ranging from 3 to 7.5 cms. in length, obliquely and parallel placed from below upwards over upper and inner aspects of left thigh. Reddish brown in colour.
8. A scratched abrasion of 6.5 cms. from above downwards over inner and medial aspect of left thigh reddish brown in colour.
9. A crescent mark is present on right labium major at its middle, concavity towards outside, reddish brown in colour.
10. A crescent mark is present over left labium major at its inner aspect, concavity to-wards outside. Reddish brown.
11. Two fresh tears of hymen are present at 3 o' clock and 7 o' clock positions, the edges are irregular, contused reddish brown in colour.
12. Multiple abrasions over an area of 6 x 4.5 cm. maximum of which 1.5 x 1.2 cm. are present on medial and lower aspect of left leg and foot reddish brown in colour.
13. Multiple abrasions over an area of 10 x 8.1 cms., the maximum of which is 2 x 0.5 cms; are present on medial aspects of right ankle and foot.

These injuries are ante mortem in nature."

2. The learned sessions judge while dealing with the matter thought it prudent to convict the respondent herein u/s 302 of the Indian Penal Code with death penalty . The same, however, came for confirmation before the High Court. The High Court in turn converted the same into one u/s 304 part II of the Indian Penal Code though maintained the conviction u/s 376 of the Indian Penal Code and did pass an order of sentence of ten years rigorous imprisonment. While dealing with the matter, the High Court has the following to record as its own reasoning. .

"It is difficult, however, to see how, under the Indian Penal Code, in the circumstances narrated, any charge which would fall under the definition of section 300 IPC, thereof could be sustained. What it would appear clear was that at the time of sexual assault by A-1 on the deceased and during the course of intercourse A-1 with all his strength must have put both of his hands on the neck of the deceased, who was suffering from motions and vomitings, and by which act the deceased suffered suffocation, resulting in her death It, therefore, seems

to our mind that there is no doubt that A-1 had no intention for causing the death of the deceased after intercourse had been effected on the deceased girl. There seems also no reason to think for one moment for nor is there any evidence to show that A-1 who had sexual intercourse with the deceased did anything which any reasonable person would contemplate as being likely to cause injuries which would result in the death of the deceased girl."

3. Incidentally, this appeal by the state is against the leniency shown by the High Court and for enhancement of the sentence. Before proceeding further, it would be convenient to note that, in a more or less similar situation, this Court in the case of State of Orissa Vs. Dibakar Naik and Others, , had the following to state:

"Whoever causes death by doing an act with the intention of causing death or with the intention of causing such bodily injury as is likely to cause death or with the knowledge that he is likely, by such act, to cause death, is responsible for the commission of the offence of culpable homicide. Culpable homicide is murder if the act by which the death is caused is done with the intention of causing death and is not covered by any of the exceptions of section 300 of the Indian Penal Code. As already noticed, in this case there is no evidence to show that the aforesaid accused persons proved to have been involved in the occurrence, had intended to cause the offence of murder within the meaning of section 300 as punishable u/s 302 of the Indian Penal Code . However, on proof of the commission of offence of gang rape found to have been committed in a violent manner, they are assumed to be having the knowledge that by their action it was likely that the deceased would have died. The aforesaid accused are. therefore , guilty of the offence, punishable under Part II of section 304 of the Indian Penal Code. While acquitting the other respondents we hold Birabar Mania (A-5), Babaji Mania (A-6), Bhira Behra @ Baba Tanti (A-7) and Madha Tanti @ Madhabananda Parmanik (A-11) guilty for the commission of offences punishable u/s 304 part-II read with section 34 of the Indian Penal Code besides the commission of offence punishable u/s 376 read with section 34 of the Indian Penal Code. The conviction and sentence awarded by the trial court to Birabar Mania (A-5), Babaji Mania (A-6), Bhira Behra @ Baba Tanti (A-7) and Madha Tanti @ Madhabananda Parmanik (A-11) u/s 376 of the Indian Penal Code is upheld. On proof of the offence punishable u/s 304 part II read with section 34 IPC, the aforesaid accused persons are sentenced to undergo rigorous imprisonment for 10 years. Both the sentences shall run concurrently."

4. Mr. G. Prabhakar, learned counsel appearing in support of the appeal, however, contended that while strict letters of law, may be to some extent, relieve the respondent herein but society would be better off without these elements. Rape is a crime against the society and the resultant violence causing the death there after can be as cruel as a deliberate act which should attract the provisions of section 302 of the Indian Penal Code. It is in this context, the observations of a 3- judge bench of this Court in Jai Kumar Vs. State of M.P., , may be of some relevance. This Court in observed as under :-

"12. Section 302 of the Indian Penal Code authorises the court to punish the offender of murder with death or imprisonment for life -the statute therefore has provided a discretion to the court to sentence the offender either with death or with imprisonment for life : obviously, a serious decision and a heavy burden imposed on the court. This discretion conferred, however, shall have to be thus exercised in a manner and in consonance with the concept of law so as to subserve the ends of justice and it is on this aspect of the matter that in a long catena of cases this Court in no uncertain terms laid down that the award of death sentence though within the ambit of jurisdiction of the courts, but that does not clothe the courts to exercise the same in a manner indiscriminate. This Court has been candid enough to record on more occasions than one that it is only in the rarest of the rare cases that this discretion as regards capital punishment ought to be exercised. Ours is a civilised society- a tooth for a tooth and an eye for an eye ought not to be the criterion; civilisation and the due process of law coupled with social order ought not to permit us to be hasty in regard to the award of capital punishment and as a matter of fact the courts ought to be rather slow in that direction.

13. Justice is supreme and justice ought to be beneficial for the society so that the society is placed in a better -off situation. Law courts exist for the society and ought to rise up to the occasion to do the needful in the matter, and as such ought to act in a manner so as to subserve the basic requirement of the society. It is a requirement of the society and the law must respond to its need. The greatest virtue of law is its flexibility and its adaptability, it must change from time to time so that it answers the cry of the people, the need of the hour and the order of the day. In the present-day society, crime is now considered a social problem and by reason therefore a tremendous change even conceptually is being seen in the legal horizon so far as the punishment is concerned.

14. One school of thought on this score propagates that the function of the law court is that of a social reformer and as such in its endeavour to act as such, the question of a deterring punishment would not arise since the society would otherwise be further prone to such violent acts or activities by reason of the fact that with the advancement of the age the mental frame of boys of tender age also go on changing and in the event of any arrogance being developed or a sense of revenge creeping into the society, the society would perish to the detriment of its people. The other school, however, expressly recorded and rather emphatically that unless the severest of the sever punishments are inflicted on an offender (obviously depending upon the nature of the crime) the society would perish.

15. The other school professes that since one has taken the life of another that does not mean that his life shall have to be taken but during the trial if it transpires the method and manner, or the nature of the activities which have resulted in the elimination of a human being from this world , there should not be any laxity on the part of the law courts, otherwise people will and in turn the

society will be engulfed in a false sense of security of life in the event of there being the most heinous crime of the earth.

5. Be it noted that law courts have been rather consistent in their approach that a reasonable proportion has to be maintained between the seriousness of a crime and the punishment and the decision in Dibakar Naik (supra) lends credence to such state of affairs. In our view, Dibakar Naik's case (supra) covers the matter in issue and we respectfully record our concurrence therewith.

6. On the wake of the aforesaid, we do find that no exception can be taken to the conclusion reached by the High Court and as such the order under appeal does not warrant any interference. The appeal, therefore, fails and is dismissed accordingly.