
(2013) 07 DEL CK 0182
In the Delhi High Court
Case No : Criminal Appeal 233 of 2010

Umed Singh

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 29-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173, 374(2)
Penal Code, 1860 (IPC) — Section 363, 376, 376(2)(f)

Citation : (2013) 3 JCC 2001 : (2013) 4 RCR(Criminal) 958

Hon'ble Judges : Kailash Gambhir, J; Indermeet Kaur, J

Bench : Division Bench

Advocate : S.B. Dandapani, for the Appellant; Sunil Sharma, Additional Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Kailash Gambhir, J.—In the immortal words of Dag Hammarskjöld: "Forgiveness is the answer to the child's dream of a miracle by which what is broken is made whole again, what is soiled is made clean again."

But there are certain devastating moments in one's life, which cannot be repaired, the loss that cannot be forgotten or forgiven. Each time we hear of a rape case, or any sort of assault against women, it gives a chill in the spine, daunts the faith overshadowing the entire system and shuns away the faith of the society at large, it is one of such crimes that definitely do not deserve to be assuaged.

"Rape", one of the most barbaric and heinous crimes. The cases of rape, gang rape and digital rape are on increase and perpetrators of this inhuman and brutal crime are worse than even the beasts and deserve to be dealt with a heavy hand. They need to be dealt with sternly and severely. Its a gruesome and ghastly act of rape wherein a man acts as a slave of his martinet and lowers himself to a baffling extent for the sole purpose of achieving gratification of his carnal desire. The case at hand very peculiarly exposes the inferior bequests of

nature in the appellant who is a man of about 35 years of age and made an attempt to commit rape on a 2 year old female child.

2. The appellant has preferred the present appeal u/s 374(2) Cr. P.C. to assail the judgment dated 25.5.2009 passed by the learned Additional Sessions Judge thereby convicting the appellant for committing an offence u/s 376(2)(f) of the Indian Penal Code, 1806 for Rigorous Imprisonment for life, along with a fine of Rs. 10,000/- and in default of payment of fine to undergo rigorous imprisonment for a period of three years.

3. At the outset, Mr. Dandapani, counsel representing the appellant candidly conceded to the conviction order but pleaded for showing some leniency on the sentence part and scale it down to the minimum period of sentence of 10 years rigorous imprisonment as provided u/s 376(2)(f) IPC, instead of maintaining maximum sentence of life imprisonment as awarded by the learned Trial Court. Counsel also argued that the appellant was of 35 years of age and at the relevant time was working as a labourer at Shakur basti area in Delhi and due to many deprivations in his life and also due to his economic and social condition, he should be given a chance to reform himself instead of confining him into jail for his entire life. Counsel also submitted that the appellant has no criminal antecedents and his jail record is also satisfactory and he has already spent 10 years including the period of remission earned by him. Therefore, due to these mitigating circumstances, the appellant deserves one opportunity for his reformation than to get punished for rest of his life. In support of his arguments counsel for the appellant placed reliance on the judgment of the Apex Court, which are as under:

1. Tapan Biswas v. State, 2010 Cri. LJ (NOC) 60(DEL.)

2. Bavo @ Manubhai Ambalal Thakore Vs. State of Gujarat,

4. Mr. Sunil Sharma, APP for the State on the other hand argued that the appellant had brutally committed rape of a two year old small baby girl and it is not rape alone but the way the appellant has ravished the small child warrants maximum punishment as envisaged u/s 376(2)(f) of the Indian Penal Code, 1806, as there being no room of any leniency for such a barbaric and beastly person. In support of his arguments, counsel for the respondent placed reliance on the recent judgment of the Apex Court in the case of Shyam Narain Vs. The State of NCT of Delhi,

5. We have heard learned counsel for the parties at considerable length and given our thoughtful consideration to the arguments advanced by them. We have also gone through the record of the case and the judgments cited by counsel for the parties.

6. Before we proceed to take a view on the quantum of sentence, it would be appropriate to give brief narration of the facts of this case. The facts as unfolded by the prosecution are that on 10.10.2006 at about 06:15 p.m. an information

regarding the quarrel at Road No. 53-A, West Punjabi Bagh, Near S.P.M. College was received in P.S. Punjabi Bagh. It was recorded vide DD no. 34 B, the same was handed over to ASI Ramphal Singh for investigation. On receiving the said DD ASI Ramphal alongwith W/H.C. Sukhda and constable Brij Pal rushed at the spot, where it was found that the accused/appellant was trying to abscond with a two year old child in his hands but the public at large caught hold of the accused and gave him several beatings. On enquiry it was brought to the notice of the police that the accused/appellant had tried to have an intercourse with that 2 year old infant as blood was found oozing out from her private parts and also blood stains were noticed on the leg of the female/infant. Thereafter, the female child was taken to Sanjay Gandhi Memorial Hospital for medical examination. Both the victim and the accused were examined vide MC No. 18908/06 and MLC no. 18913 respectively. Shri Krishan Kumar, PW-2 reached the hospital and identified the said female infant as his daughter. Criminal law was set in motion, F.I.R., marked as Ex. PW-5/A on record was registered at P.S. Punjabi Bagh and further investigation was handed over to Urmil Sharma who alongwith constable Brijpal reached the spot. ASI Urmil Sharma prepared the site plan, Ex. PW-11/D, seized the garments of the deceased vide seizure memo, Ex. PW-11/A and at the instance of SI Ramphal Singh, arrested the accused and recorded the disclosure statement, Ex. PW-11/E. After completion of investigation, final report u/s. 173 Cr. P.C. was prepared and was filed in the court of Metropolitan Magistrate who after completing all the formalities committed the case to the court of sessions for trial. On 28.05.2007, case u/s 363/376 IPC was framed against the accused to which he pleaded innocence. The charge was later altered to Section 363/376(2)(f) IPC, as the girl alleged to have been raped was less than 12 years of age.

7. In order to prove his case, the prosecution examined as many as 12 witnesses, namely, Dr. Dipti Goel, PW-1, Sh. Krishan Kumar, PW-2, Shri Bhupinder Singh, PW-3, Dr. Sameer Pandit, PW-4, HC Satpal, PW- 5, Smt. M. Eera, Pw-6, Const. Brijpal, PW-7, Dr. P.C. Prabhakar, PW-8, HC Mohinder Singh, PW-9, Constable Jai Prakash, PW- 10, ASI Ramphal Singh, PW-11, ASI Urmil Sharma, PW-12.

8. As per the MLC proved on record as Exhibit PW 1/A, the said two years old female child was brought to Sanjay Gandhi Memorial Hospital, Mangolpuri on 10.12.2006 at about 7.30 p.m. with alleged history of sexual assault and she was immediately referred to a gynaecologist, Dr. Dipti Goel by the CMO and after her medical examination the gynaecologist found that there was a mild swelling of both labia majora. Hymen was torn not bleeding. A 0.5 cm tear was present on posterior fourchette. (In mid line posterior of perineal), which was bleeding. Bleeding stopped after five minutes of pressure at night. Perineal and vagina swab were taken by the said doctor and the same were handed over to IO for forensic opinion. The said Dr. Dipti Goel was examined as PW- 1 and in her cross-examination she said that sexual assault of the said child cannot be ruled out. She also proved her report from portion A to A on record which is exhibit PW- 1/

A. The said MLC was proved in the evidence of PW-4, Dr. Sameer Pandit, who was on duty as CMO in SGM Hospital at the relevant time. In his examination PW-4 deposed that after local examination he found following injuries on the body of the child:-

1. bruise right forehead 2 cm x 2 cm size.
2. bruise swelling on right cheek 1 x 1 cm.
3. bruise left outer canthus of left eye 1 x 1 cm.
4. Abrasion right chest laterally 1 x .05 cm.
5. bleeding per vaginum with swelling of both labia majora.

9. PW-3, Bhupinder Singh is the star witness of the prosecution. As per his deposition in the Court and his statement recorded u/s 161 of the Code of Criminal Procedure, 1873, he was on duty at SPM college, West Punjabi Bagh on 10.12.2006 when at about 6.00 p.m., he heard cries of a child near the boundary wall of SPM college, in front of Kothi No. 18. When he reached there, he saw that accused was having a female child in his lap and pajama of the child was removed and zip of the pant of the accused was open. Blood was oozing from the vagina of the female child. On seeing all this, he raised an alarm and then accused started running with the female child. He chased the accused and on seeing this, some public persons caught hold of the accused and gave him beatings. Appellant was overpowered and female child was saved. The police came there, when somebody had made a call to the police and the appellant was handed over to the police. The deposition of PW-3 clearly demonstrates the cruel intentions of the accused in the present case.

10. For a second, oscillating from the case at hand, in the midst of triggered national outcry over the treatment of women, there are several females suffering at the hands of certain psychotic males. The Asian Human Rights Commission reported that child rape cases jumped from 2,113 cases in 2001 to 7,112 in 2011 in India. The unflinching reality but also deplorable, that not just one but many female children in their tender age, just bloomed into a flower on mother earth, having no clue of the demeaning crime, are made to face such cruel realities of life. The country where a female child is kept on the same pedestal as goddess "laxmi" or "durga", is the same place where some pervert members of the same society dehumanize the women by attacking her body and ruining her chastity. Rape is an aberrant, atrocious, horrendous and monstrous burial of her dignity in darkness. It is a crime against the entire society. With the advent of Justice Verma Committee, better, stringent procedures have been adopted, still a lack of deterrence is felt. Despite their being a social awakening, there is no decrease rather the cases are increasing manifold and in order to deal with them, one can only be harsh but benignant. The viciousness and brutality of crime in such like cases is immeasurable. A child who in the initial years of her birth, away from the shackles of life, in her sweet symphony and beautiful innocent world cannot even

echo the outrage that a female would go through, the torment, the wrath that would put her life to a standstill, and will not even remember when from an infant would reach the age of an adolescent that such a satanic moment was ever a part of her life when a man, aged like his father misused her physically for his personal desires, although it would leave a scar on her and her family members forever.

11. In the case at hand, the appellant was of 35 years of age and he not only committed the most barbaric act of raping a 2 years old girl child rather also inflicted many injuries on the body of such a delicate child while committing such a ghastly act. Every child is said to be the most precious gift of God. A two years old child, should be seen surrounded with toys and games, with love and affection of her parents and the family members, but not be made to face such encounters with such beastly persons, who only live with a prime object to satisfy their lust and with such aberrant and obnoxious psychology, the accused for the want of sexual pleasure pounced upon such an infant girl child to commit rape upon her in a highly brutal and inhuman manner totally unconcerned with moral, social human values and norms of our society. We wonder such kind of deadly instinct may not be prevailing even in the most dreaded animals. What kind of leniency or mercy such a man can deserve. Can it be said that a person fully grown up at the age of 35 years of age was not conscious of the fact that as to what kind of crime he was committing and upon whom? The Rape has been described to be more heinous than a crime of murder, as in a rape it is not only the body of the person but even her soul gets destroyed. What a traumatic experience such an infant child would undergo for the rest of her life is just indescribable. The Apex Court in a recent judgment in the case of Shyam Narain Vs. The State of NCT of Delhi, was confronted with an identical case where the appellant was facing prosecution for committing a brutal rape of 8 years old child. Repelling the contention of the appellant to reduce his sentence from life imprisonment to minimum 10 years of sentence, the Hon"ble Apex Court in the following paras held as under:-

22. Keeping in view the aforesaid enunciation of law, the obtaining factual matrix, the brutality reflected in the commission of crime, the response expected from the courts by the society and the rampant uninhibited exposure of the bestial nature of pervert minds, we are required to address whether the rigorous punishment for life imposed on the Appellant is excessive or deserves to be modified. The learned Counsel for the Appellant would submit that the Appellant has four children and if the sentence is maintained, not only his life but also the life of his children would be ruined. The other ground that is urged is the background of impecuniosity. In essence, leniency is sought on the base of aforesaid mitigating factors. It is seemly to note that the legislature, while prescribing a minimum sentence for a term which shall not be less than ten years, has also provided that the sentence may be extended upto life. The legislature, in its wisdom, has left it to the discretion of the Court. Almost for the last three decades, this Court has been expressing its agony and distress

pertaining to the increased rate of crimes against women. The eight year old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilized society. The age old wise saying "child is a gift of the providence" enters into the realm of absurdity. The young girl, with efflux of time, would grow with traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able to assert the honour of a woman for no fault of hers. Respect for reputation of women in the society shows the basic civility of a civilised society. No member of society can afford to conceive the idea that he can create a hollow in the honour of a woman. Such thinking is not only lamentable but also deplorable. It would not be an exaggeration to say that the thought of sullyng the physical frame of a woman is the demolition of the accepted civilized norm, i.e., "physical morality". In such a sphere, impetuosity has no room. The youthful excitement has no place. It should be paramount in everyone's mind that, on one hand, the society as a whole cannot preach from the pulpit about social, economic and political equality of the sexes and, on the other, some pervert members of the same society dehumanize the woman by attacking her body and ruining her chastity. It is an assault on the individuality and inherent dignity of a woman with the mindset that she should be elegantly servile to men. Rape is a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a woman and the soul of the society and such a crime is aggravated by the manner in which it has been committed. We have emphasised on the manner because, in the present case, the victim is an eight year old girl who possibly would be deprived of the dreams of "Spring of Life" and might be psychologically compelled to remain in the "Torment of Winter". When she suffers, the collective at large also suffers. Such a singular crime creates an atmosphere of fear which is historically abhorred by the society. It demands just punishment from the court and to such a demand, the courts of law are bound to respond within legal parameters. It is a demand for justice and the award of punishment has to be in consonance with the legislative command and the discretion vested in the court. The mitigating factors put forth by the learned Counsel for the Appellant are meant to invite mercy but we are disposed to think that the factual matrix cannot allow the rainbow of mercy to magistrate. Our judicial discretion impels us to maintain the sentence of rigorous imprisonment for life and, hence, we sustain the judgment of conviction and the order of sentence passed by the High Court.

23. Ex consequenti, the appeal, being sans merit, stands dismissed.

12. The present case is not at variance with the case dealt with above by the Apex Court in the above judgment, but rather more appalling. In the facts of this case the child was only two years of age and the appellant was an unmarried

person with no responsibility to take care of any family of his own or otherwise while the facts before the Hon''ble Supreme Court in the case cited above was that the child was 8 years old and the accused was a married person with a wife and four children, still the Hon''ble Apex court keeping in mind the gravity of the offence, the fact of pain and mental agony that would be borne by the victim throughout her life would be immeasurable, on moral, legal and ethical grounds made the accused to suffer for his life as well.

13. Before parting with the judgment, with deep concern, we may point out that leniency in such like cases would accord a wrong message to the society. Rather by deft modulation, sentencing process should be stern where it is called for, especially in the cases, where one tends to lark with human body and soul. The factors to be considered while adjudging a crime like the one in the present case are its atrocities, the conduct of the criminal and the defenceless and unprotected state of the victim. All sexual assaults on female children are not reported and do not come to light yet there is an alarming and shocking increase of sexual offences committed on children. It is majorly because children of such a tender age are ignorant of the gruesome act and are not able to battle against them. They become an easy prey for the lusty fiends who display an insidious art of luring female children and young girls. Therefore, such offenders who are peril to the urbane society should be mercilessly and relentlessly punished especially wherein a rape of a minor child is involved, it should be done in the severest terms. The country saw an increase of 336% of child rape cases in comparison to the last decade as per the statistic report of National Crimes Record Bureau. It has been noticed that out of the entire female population, 30% of the rape cases involve minor girl child between 1-7 years of age, and these are frequently noticed in the most downtrodden and backward classes/villages, where there exist no whiff or knowledge of any law prevailing in the society but the entire concept is based on male chauvinism. It would be important in this regard that certain steps imparting knowledge of law to all the classes, explaining people about the consequences of any sort of harm being caused to the women can make them suffer drastically should be adopted. The need of the hour is to sensitize the functioning at each front, the State shall also necessitate much quicker resort to the problems of each and every aggrieved female child or her family. For the very purpose, the State with the help of the Bar Council of India, various NGO''s, RWA''s and Bar Associations can arrange such campaigns or education programmes and find a reach to every nook and corner of the society. There has to be deterrence in the mindset of any person having any such obnoxious and dissuading thoughts. A man before even developing that beastly thought, should feel that eke in his nerves, that a moment of pleasure, or a mere fulfilment of a few minutes desire with such horrendous intentions can cost him his entire life. A man has to understand that a female has a sacred place in our society which she can never be deprived of and anyone who even thinks to make such an attempt would never be spared at the hands of justice.

14. In the light of the above discussion and keeping in view the mandate of law

in the aforesaid factual matrix, wherein such a small girl at such a tender age has been made to suffer for no fault of hers, our judicial conscious and discretion compels us to maintain the sentence of rigorous imprisonment for life as awarded by the learned Trial Court. Accordingly, we upheld the judgment of conviction and the order of sentence as passed by the learned Trial Court. There is no merit in the present appeal. The same is hereby dismissed.