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Court No. - 66

Case :- CRIMINAL APPEAL No. - 2097 of 1982

Appellant :- Om Prakash
Respondent :- State of U.P.
Counsel for Appellant :- Puran Chandra Joshi,D.N. Wali,K.K.Misra,Pt. Pwan Chandra,R.K.Dhama,Sudhir Dixit
Counsel for Respondent :- A.G.A.

Hon'ble Samit Gopal,J.

1. The present appeal under Section 374 Cr.P.C. has been filed by the appellant Om Prakash against the judgement and order dated 02.07.1982 passed by III Additional District and Sessions Judge, Meerut in Session Trial No. 4 of 1981 (State of U.P. Vs. Om Prakash) by which he has been convicted and sentenced under Section 376 IPC to undergo six years rigorous imprisonment.

2. The name of the prosecutrix is not being disclosed and mentioned in the present judgment in the light of directions of the Apex Court in various judgments and as per Section 228-A of the Indian Penal Code. She is thus referred to as ‘X’ in the judgment.

3. The prosecution case as per an application dated 04.10.1979 given by Bakreeda to the police of which Dharmapal is the scribe is that on that day at about 12:00 noon his daughter victim 'X' aged about 10 years was mowing grass in the field of Kaliram in the jungle of village Jivana. Om Prakash son of Sukhvirey Kumhar forcibly caught hold of his daughter and took her to the jwar field and committed rape on her on which she started shouting, hearing which Dharmapal Singh son of Ram Swarup Jaat, his son Ayyub and Hashim son of Kutubuddin Darji of his village who were working in the field went to the place of occurrence and saw the accused doing the act. They

reached near on which Om Prakash ran away. He was chased but could not be apprehended. He has brought his daughter victim 'X' for lodging of the report. She is bleeding from her private part. His report be lodged and legal action be taken. The said application is Exb: Ka-1 to the records.

4. On the basis of the said application, a First Information Report was lodged on 04.10.1979 at 17:10 hrs as Case Crime No. 215 of 1979, under Section 376 IPC, Police Station Binoli, District Meerut against the accused-appellant Om Prakash son of Sukhvirey. The Chik FIR is Exb: Ka-5 to the records.

5. The Investigating Officer took into possession the clothes of victim 'X' which were blood stained and sealed it. A recovery memo for the same was prepared on 04.10.1979. Yoqoob Ali and Bakreeda are the witnesses of the same. The same is Exb: Ka-7 to the records.

6. Victim 'X' was medically examined on 04.10.1979 at 08:00 pm at Womens Hospital, Meerut by Dr. Rajni Gupta, Medical Officer. She was brought by the police constable. The doctor on physical examination noted as follows:-

> *"Height 129, weight 52 LBS, teeth 14/14, hairs - pubic, auxiliary - absent, breast - not developed."*

On internal examination, the doctor noted as follows:-

> *"Hymen freshly torn, erosion present, admitting two fingers with great difficulty, vagina is full of bleeding and clots, vagina also heavily eroded."*

Vaginal smear was sent for pathological examination and x-ray of wrist elbow and knee was advised. The doctor opined that no report can be given about the age at present. The patient was noted to be admitted in general ward. The said medical examination report is Exb: Ka-2 to the records.

A supplementary medical report was prepared on 29.10.1979 by Dr. Rajni Gupta, the Medical Officer, Womens Hospital, Meerut in which it

was stated that there was no sperm seen in the vaginal smear. Further, the supplementary report was as follows:-

> *"age of the girl is round about 10 years. Probably a case of rape according to the examination."* The said supplementary report is Exb: Ka-3 to the records.

7. The Investigating Officer prepared site plan of the occurrence on 04.10.1979. The same is Exb: Ka-6 to the records.

8. The investigation concluded and a Charge Sheet No. 112 of 1979 dated 04.12.1979 under Section 376 IPC against the accused-appellant was submitted. The same is Exb: Ka-4 to the records.

9. Vide order dated 16.09.1981 passed by III Additional Sessions Judge, Meerut charge under Section 376 IPC was framed against the accused-appellant. He pleaded not guilty and claimed to be tried.

10. The prosecution in order to prove its case produced victim 'X' as PW-1, Bakreeda the first informant and the father of the victim 'X' as PW-2 and Ayyub the brother of the victim 'X' and son of Bakreeda as PW-3. The accused did not lead any defence evidence.

11. The genuineness of certain documents were admitted by the defence and hence formal proof of the same was dispensed with. The documents are as follows:-

(i) Chik FIR Exb: Ka-5

(ii) Recovery memo of blood stained clothes Exb: Ka-7

(iii) Medical examination of victim 'X' Exb: Ka-2

(iv) supplementary medical examination report Exb: Ka-3

(v) Site plan Exb: Ka-6 and

(vi) Charge sheet Exb: Ka-4.

12. Heard Sri Sudhir Dixit, learned counsel for the appellant, Sri Sanjay Kumar Singh, learned Additional Government Advocate for the State and perused the records.

13. Learned counsel for the appellant argued that the doctor conducting the medical examination of victim 'X' and also preparing the supplementary medical examination report and the Investigating Officer of the case have not been examined. The same is a big dent to the prosecution by not examining them. It is next argued that the injuries as received by victim 'X' noted by the doctor in the medical examination report was due to an accident. It is further argued that Dharampal and Hashim the alleged eye witnesses of the incident as per the First Information Report, have not been produced in the trial and as such there is no independent witness to support the prosecution case.

14. It is further argued that the accused was opined to be looking about 28 years old at that time as observed and mentioned by the trial court in his statement under Section 313 Cr.P.C. which was recorded on 25.06.1982 and even looking to the same he is now about 68 years of age as the said statement was recorded about 40 years back. It is argued that the incident in the present case is of the year 1979 and 43 years have passed since then and as such sending the appellant to jail now, would be too harsh as he is about 68 years as of now.

15. Per contra, learned counsel for the State opposed the arguments of learned counsel for the appellant and argued that the prosecution has proved its case beyond reasonable doubt. The First Information Report was lodged on the same day. The medical examination report of the victim 'X' shows fresh bleeding injury present in her vagina and supplementary medical examination report opines that it is a case of rape. Victim 'X' was aged about 10 years and was a child. The appellant is named in the First Information Report, statement of victim 'X' and the other witnesses and the role is consistent throughout. The prosecution has been successful in

proving that rape has been committed upon victim 'X' and the evidence as produced without any doubt shows the involvement of the appellant. The present appeal deserves to be dismissed.

16. Victim 'X' PW-1 when she was produced before the trial court, was about 12 years of age. The trial court had put certain questions to her to ascertain whether she understands the sanctity of oath and then being satisfied that she understands it oath was administered to her. She identifies the accused person who is present in court and states that he is a resident of her village. She states that the incident is of about 2½ years ago at about 12:00 in the afternoon. She was scrapping grass in the field of Kaliram, the accused Om Prakash came there and took her to the field of brinjal. He forcibly took her to the jwar field and then committed rape on her. She shouted, on her shout, Hashim, Dharampal and Ayyub came there. When the witnesses came, the accused got up and ran away. They chased him but could not catch him. She was bleeding and her clothes got blood stained. After the arrival of the witnesses, her father also came to the place of occurrence. She told him about the incident. Her medical examination was conducted.

In her cross examination, she states that Ayyub is her real brother. Hashim is the son of her tau. Accused Om Prakash is son of Sukhvirey. She denies that her father had purchased some land from Dharampal. She denies the fact that her father had taken Rs. 1,000/- from father of the accused to purchase land and as he did not return it there was some fight between them. She states that there is no field near the place of occurrence. There is a nali running parallel to the jwar field of Kaliram which is about one yard in breadth and is only one side of field after the nali there is field of Kaliram. Kaliram is the father of Ompal. The field of Jai Chand is besides the field of Kaliram. The field of Halku is besides the field of Kaliram. She has seen the tubewell of Jai Chand which is in his field. It is at some distance from the jwar field of Kaliram, it is about two lathi away

from the jwar field. Lathi is about the height of the waist of a person. At that time there was no one at the tubewell. She did not see anyone in the nearby fields. There were some persons in the orchard but she did not see them. Orchard is about 4-5 yards away from the jwar field. Her brother Ayyub and Hashim had come from the same orchard. When accused came and caught her hand she had scrapped one bundle grass with a khurpi. She had not seen accused Om Prakash previously. In the field of Kaliram, half of the jwar was cut and was lying, half of jwar was standing. The accused caught hold of her hand after going there on which she shouted and continue to shout. The accused took her from the said field to the field of jwar which was about two lathi inside where jwar was standing where she was scrapping the grass. The jwar crop was near it. It was upto half of the field and half of it was vacant. The place of occurrence where the accused threw her on the ground was not having any jwar plants. The place was empty as the jwar plants were cut. The blood which had come out had also stained the ground and her clothes. Hashim, Ayyub and Dharampal came there and asked her as to who committed rape. When the witnesses came there, the accused ran away. Her brother Ayyub left her at the field and went to the village and called her father Bakreeda. Then Bakreeda took her to the police station. She was first taken to the house and a report was written and then went to the police from where she was taken to Meerut Hospital by a constable. She denies the suggestion that the Investigating Officer came to the village and then the First Information Report was written. She further denies that the accused did not commit rape on her but her father has lodged a false report.

17. Bakreeda PW-2 who is the first informant and father of victim 'X' states that victim 'X' is aged about 12 years as of now. The incident is of about 2½ years ago. She had gone to the field of Kaliram in village Jivana where she was raped in the afternoon. His son Ayyub came to the house and told him about the incident then he reached there. He found his

daughter crying at the place of occurrence and blood was coming out from her vagina. Her clothes were blood stained. He brought her to the house where he got a report transcribed from Dharampal. The report was written on his dictation which was read to him and then he affixed his thumb impression on it. He proves the same which was marked as Exb: Ka-1 to the records. He then brought his daughter with blood stained clothes to the police station and lodged his report. The clothes were taken by the Investigating Officer and a recovery memo was prepared. He identifies the clothes which were marked as material Exb: 1 and 2. He states that his daughter told him about the incident at the place of occurrence.

In his cross examination, he states that he had purchased land of Dharampal. He denies the suggestion that he had taken Rs. 1,000/- from Sukhhvirey and father of accused for purchasing land. He further denies that on not returning the money he falsely implicated him in the present case. He states that the place of occurrence is about 500 yards away from his house. When he reached the place of occurrence his daughter was wearing of her clothes. The crops were standing. He states that he had got written in the application that victim 'X' told him about the incident at the place of occurrence. He states that he does not know as to why the same is not mentioned in it. He further states that Dharampal had gone with victim 'X' to the police station. From the police station he, Dharampal, his son Ayyub and the Investigating Officer went to the place of occurrence. When they reached the place of occurrence, there was one darati, some cut grass and one chadar therein. The Investigating Officer had taken the items in his possession. He denies the suggestion that due to enmity on the saying of police he has lodged a false report.

18. Kayyum PW-3 is the brother of victim 'X' and the son of the first informant. He states that his father had one brother named Ibrahim who is dead. Ibrahim has two sons namely Yusuf and Rais. Hashim is not son of his tau. Election of village pradhan is going on in his village. Witness

Dharmapal is a candidate in the same. Dharamapal has colluded with accused Om Prakash. Witness Hashim has also colluded with Om Prakash. About 2½ years back at about 12:00 noon he was mowing grass in the orchard, he heard a cry coming from the jwar field of Kaliram. On hearing it, he and Hashim ran towards the place. He saw accused Om Prakash committing rape on his sister victim 'X'. When they reached near him, he got up and ran away. He was chased but could not be caught.

In his cross examination he states that the orchard in which he was working was of Dhoom Singh. He was working since the last four hours prior to the occurrence. There is no one who guards the orchard. There is no other orchard except for the same nearby. He denies the suggestion that he was digging grass at some other field in the village. He states that the Investigating Officer interrogated him on the same day and he told him that he and Hashim were digging grass at some distance from the place of occurrence in a field of the village. He denies the suggestion that he has said of being in the orchard after knowing the statement of victim 'X'. He showed the orchard to the Investigating Officer. His sister was shouting loudly. She was shouted that Om Prakash has taken her and she may be saved. He did not shout but ran to the place silently. When he was about 10-12 yards away from the place of occurrence then accused Om Prakash got up and ran away. He reached the place through the field of Halku Pandit. They did not raise any shout prior to the accused getting up and running away. The accused ran towards the tubewell.

The Investigating Officer was shown the way from where he ran. There is nali at the south and east of the jwar field of Kaliram. His sister was about two lathis inside from east side of the field. The jwar field is about 9½ bighas. Half of the field had jwar on it but half had no crop. The place where his sister was lying was not having any jwar plants. There was no khurpi or darati at the place of occurrence but there was a chadar near the nali which was taken by the Investigating Officer. The Investigating

Officer came to the village at about 05:00 pm. From police station, he along with Investigating Officer, his father and Yakoob came back to the village. Munsi was the grandfather of Hashim. He does not know how many brothers Munsi has. Kubool is the father of Ibrahim. He denies that Munsi is the brother of Kubool. He further denies that he was not present at the place of occurrence and did not see the incident.

19. The accused in his statement recorded under Section 313 Cr.P.C. denies the prosecution case. He states that there was a loan of Rs. 1,000/- on the first informant of his father which was being asked to him due to which he has been falsely implicated. He was opined to be about 28 years of age by the trial court on the day of recording of his statement under Section 313 Cr.P.C.

20. The trial court then convicted and sentenced the accused appellant as stated above.

21. After having heard learned counsel for the parties and perusing the records, it is evident that the appellant is named in the First Information Report. The victim 'X' is stated to be about 10 years of age in the First Information Report and also stated to be of the same age in the supplementary medical examination report by the doctor. The medical examination of the victim 'X' shows injuries on her vagina. The doctor did not give any opinion about rape when she had medically examined the victim ‘X’ but in the supplementary medical examination report gave an opinion that it is a probable case of rape according to the examination. The factum of rape thus does not remain uncorroborative, it finds support from the medical evidence also. The age of the victim 'X' as stated by her father in the FIR also, in his statement and further from the opinion as arrived upon through radiological examination, she was aged about 10 years and was a child. The argument of learned counsel for the appellant that the doctor conducting the medical examination of the victim 'X', preparing the supplementary medical examination report and also the Investigating

Officer of the case have not been examined which would dent the prosecution case is fallacious. The Chik FIR, the recovery memo of blood stained clothes of victim 'X', her medical examination report, the supplementary medical examination report, the site plan of the place of occurrence and the charge sheet of the present matter which are on record go to show that the genuineness of all the said documents have been admitted by the defence and as such now stating that the doctor and the Investigating Officer were not being examined by the prosecution, would render the prosecution story and the entire trial doubtful does not hold good.

22. On one hand, the defence has admitted the genuineness of the said documents during trial and on the other hand in the appeal, the argument of maker of the documents, not being examined and thus calling upon to draw an adverse inference is not at all impressive to the Court. In so far as Dharampal and Hashim are concerned, the reason for there non production before the trial court has been stated in the examination-in-chief by Kayyum PW-3 that they have colluded with the accused Om Prakash as there was election of village Pradhan. On the said point there has been no cross examination from the side of the accused-appellant. The same thus remains unrebutted.

23. Further, the argument of learned counsel for the appellant that the accused-appellant as of now is aged about 68 years as per observation of the trial court in his statement recorded under Section 313 Cr.P.C., it is stated that the age of the appellant will have no effect on the question of sentence and also on the conviction of the appellant. If the case has been proved beyond reasonable doubt, adequate sentence has to be awarded to him. It is trite law that inadequacy of sentence is not in the interest of justice and if a person has been convicted and there is evidence beyond reasonable doubt about the same adequate sentence has to be awarded to him.

24. In so far as the argument relating to the PW-3 Kayyum is concerned, it is true that he is the brother of the victim 'X' and son of the first informant but it is trite law that a related witness may not be lebelled as interested witness. Interested witnesses are those who want to derive some benefit from the result of litigation or implicating the accused. Once it is established that witnesses were present at the scene, to witness the occurrence, they cannot be discarded merely on the ground of being closely related to the victim. The Apex Court in **State of Uttar Pradesh Vs. Kishanpal and others : (2008) 16 SCC 73** held as under:-

> *"18. The plea of defence that it would not be safe to accept the evidence of the eye witnesses who are the close relatives of the deceased, has not been accepted by this Court. There is no such universal rule as to warrant rejection of the evidence of a witness merely because he/she was related to or interested in the parties to either side. In such cases, if the presence of such a witness at the time of occurrence is proved or considered to be natural and the evidence tendered by such witness is found in the light of the surrounding circumstances and probabilities of the case to be true, it can provide a good and sound basis for conviction of the accused. Where it is shown that there is enmity and the witnesses are near relatives too, the Court has a duty to scrutinize their evidence with great care, caution and circumspection and be very careful too in weighing such evidence. The testimony of related witnesses, if after deep scrutiny, found to be credible cannot be discarded.*
>
> *19. It is now well settled that the evidence of witness cannot be discarded merely on the ground that he is a related witness, if otherwise the same is found credible. The witness could be a relative but that does not mean his statement should be rejected. In such a case, it is the duty of the Court to be more careful in the matter of scrutiny of evidence of the interested witness, and if, on such scrutiny it is found that the evidence on record of such interested witness is worth credence, the same would not be discarded merely on the ground that the witness is an interested witness. Caution is to be applied by the court while scrutinizing the evidence of the interested witness.*
>
> *20. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement. The ground that the witness being a close relative and consequently being a partisan witness, should not be relied upon, has no substance. Relationship is not a factor to affect credibility of a witness. It is more often than not that a relation would not conceal actual culprit and make allegations against an innocent*

person. Foundation has to be laid if plea of false implication is made. In such cases, the Court has to adopt a careful approach and analyse the evidence to find out whether it is cogent and credible."

25. Relationship is not sufficient to discredit a witness unless there is motive to give false evidence to spare the real culprit and falsely implicate an innocent person.

26. The testimony of a victim of rape is similar to the evidence of an injured complainant or witness. If it is found to be reliable, by itself, it may be sufficient to convict the accused and no corroboration of her testimony is required. The same has been held by the Apex Court in the case of **State of Maharashtra Vs. Chandraprakash Kewalchand Jain : (1990) 1 SCC 550** in para 16 which is extracted herein:

> ***"16.*** *A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required*

> *must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:*
> *"It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."*
>
> *With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation."*
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> *(emphasis supplied)*

27. The evidence of prosecutrix alone may sustain a conviction, the same has been held by the Apex Court in the case of **State of Uttar Pradesh Vs. Chhotey Lal : (2011) 2 SCC 550** in para 26. The same is extracted hereinbelow:-

> "**26**. The important thing that the court has to bear in mind is that what is lost by a rape victim is face. The victim loses value as a person. Ours is a conservative society and, therefore, a woman and more so a young unmarried woman will not put her reputation in peril by alleging falsely about forcible sexual assault. In examining the evidence of the prosecutrix the courts must be alive to the conditions prevalent in the Indian society and must not be swayed by beliefs in other countries. The courts must be sensitive and responsive to the plight of the female victim of sexual assault. Society's belief and value systems need to be kept uppermost in mind as rape is the worst form of woman's oppression. A forcible sexual assault brings in humiliation, feeling of disgust, tremendous embarrassment, sense of shame, trauma and lifelong emotional scar to a victim and it is, therefore, most unlikely of a woman, and more so by a young woman, roping in somebody falsely in the crime of rape. The stigma that attaches to the victim of rape in Indian society ordinarily rules out the levelling of false accusations. An Indian woman traditionally will not concoct an untruthful story and bring charges of rape for the purpose of blackmail, hatred, spite or revenge."

28. Learned counsel for the appellant had placed an argument that the appellant is now aged about 68 years, the incident is of the year 1979 and 43 years have passed since then and as such sending the appellant to jail would be too harsh. The policy of sentencing of an accused has been dealt

with by the Apex Court in the case of **Hazara Singh Vs. Raj Kumar and others : (2013) 9 SCC 516**, in para 11 to 17 and then in para 27 also. The same are extracted hereinbelow:-

> "**11**. The cardinal principle of sentencing policy is that the sentence imposed on an offender should reflect the crime he has committed and it should be proportionate to the gravity of the offence. This Court has repeatedly stressed the central role of proportionality in sentencing of offenders in numerous cases.
>
> **12**. The factual matrix of this case is similar to the facts and circumstances of the case in *Shailesh Jasvantbhai and Another vs. State of Gujarat* wherein the accused was convicted under Section 307/114 IPC and for the same the trial Court sentenced the accused for 10 years. However, the High Court, in its appellate jurisdiction, reduced the sentence to the period already undergone. In that case, this Court held that the sentence imposed is not proportionate to the offence committed, hence not sustainable in the eye of the law. This Court, observed thus:
>
> *"7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be 8 Page 9 achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law, which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: "State of criminal law continues to be - as it should be -a decisive reflection of social consciousness of society." Therefore, in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.*
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> *8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to*

award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc."

13. This position was reiterated by a three-Judge Bench of this Court in Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat wherein it was observed as follows:-

"99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would 9 Page 10operate the sentencing system so as to impose such sentence, which reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The court must not only keep in view the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

In that case, the court further goes to state that meager sentence imposed solely on account of lapse of time without considering the degree of the offence will be counter productive in the long run and against the interest of the society.

14. In *Jameel vs. State of Uttar Pradesh*, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus: -

"15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it 1 Page 11 warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it

was executed or committed. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

15. In *Guru Basavaraj @ Benne Settapa vs. State of Karnataka,* while discussing the concept of appropriate sentence, this Court expressed that:

"It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

16. Recently, this Court in *Gopal Singh vs. State of Uttarakhand* held as under:-

"18. Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence....."

17. We reiterate that in operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration. We also reiterate that undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law. It is the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed. The Court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

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27. While rejecting the similar reasons as stated by the High Court in the present case, the following conclusion arrived at by this Court are relevant: (Sadha Singh Case)….

"7. .... The learned Judge then took notice of the fact that three co-accused of the appellants were given benefit of doubt by the trial court and acquitted them although they were also attributed causing of some injuries. If acquittal of some co-accused casts a cloud of doubt over the entire prosecution case, the whole case may be rejected. But we fail to understand how acquittal of some of the

accused can have any relevance to the question of sentence awarded to those who are convicted. In this case the prosecution submitted that these two appellants alone were armed with guns. Then the learned Judge observes that no useful purpose, will be served by sending the appellants to prison again to undergo the unexpired period of their sentence. We repeatedly asked why this indulgence and waited for answer in vain. If someone is enlarged on bail during the pendency of appeal and when the appeal is dismissed sending him back to jail is going to raise qualms of conscience in the Judge, granting of bail pending appeal would be counter-productive. One can pre- empt or forestall the decision by obtaining an order of bail.

8. If the learned Judge had in mind the provisions of Section 360 of CrPC so as to extend the benefit of treatment reserved for first offenders, these appellants hardly deserve the same. Admittedly, both the appellants were above the age of 21 years on the date of committing the offence. They have wielded dangerous weapons like firearms. Four shots were fired. The only fortunate part of the occurrence is that the victim escaped death. The offence committed by the appellants is proved to be one under Section 307 of IPC punishable with imprisonment for life. We were told that the appellants had hardly suffered imprisonment for three months. If the offence is under Section 307 IPC i.e. attempt to commit murder which is punishable with imprisonment for life and the sentence to be awarded is imprisonment for three months, it is better not to award substantive sentence as it makes mockery of justice. Mr Jain said that the High Court has enhanced the fine and compensated the injured and, therefore, we should not enhance the sentence. Accepting such a submission would mean that if your pockets can afford, commit serious crime, offer to pay heavy fine and escape tentacles of law. Power of wealth need not extend to overawe court processes. Thus it appears that the High Court wrongly interfered with the order of sentence on wholly untenable and irrelevant grounds some of them not borne out by the record. In order, therefore, to avoid miscarriage of justice we must interfere and set aside the sentence imposed by the High Court and restore the sentence imposed by the learned Sessions Judge which we hereby order. Both the appellants shall be taken into custody forthwith to suffer their sentence."

29. Further, in the case of **Sahebrao Arjun Hon Vs. Raosaheb s/o Kashinath Hon & others : Criminal Appeal No. 1499 of 2022 (decided on 06.09.2022),** in para 12 the Apex Court has held that for sentencing the judicial discretion is always guided by various considerations and it has been ruled that undue sympathy in reducing the sentence to the minimum may adversely affect the faith of people in efficacy of law. The same has

been enumerated in the said paragraph. Para 12 of the same is extracted hereinbelow:-

> "12. As far as the sentencing is concerned, the judicial discretion is always guided by various considerations such as seriousness of the crime, the circumstances in which crime was committed and the antecedents of the accused. The Court is required to go by the principle of proportionality. If undue sympathy is shown by reducing the sentence to the minimum, it may adversely affect the faith of people in efficacy of law. It is the gravity of crime which is the prime consideration for deciding what should be the appropriate punishment."

30. Further, in the case of **Karan Singh Vs. The State of Uttar Pradesh and others : Criminal Appeal No. 327 of 2022 (decided on 02.03.2022)** the Apex Court has considered the question of a ground being taken that a long time has elapsed and as such the accused may not be convicted. While ruling on the said argument it was held that the same cannot be a ground for acquittal of the appellant. Para 47 of the said judgment is quoted hereinbelow:-

> "47. We find no grounds to interfere with the concurrent findings of the Trial Court and the High Court. The fact that the trial/appeal should have taken years and that other accused should have died during the appeal cannot be a ground for acquittal of the Appellant. The appeal is thus dismissed."

31. Further, the Apex Court in the case of **State of Rajasthan Vs. Banwari Lal and another : Diary No. 21596 of 2020 (decided on 08.04.2022)** has referred to the principles of sentencing which are to be considered in para 7 and 8 of the said judgment and it has been held as under:-

> "**7**. At this stage, few decisions of this Court on principles for sentencing and tests for awarding an appropriate sentence in a given case are required to be referred to and considered.
>
> *i) In the case of Mohan Lal (supra), the High Court modified the judgment and order passed by the learned trial Court and sentenced the accused to the period already undergone by him, which was only six days and absolutely no reasons, much less valid reasons, were assigned by the High Court. While setting*

aside the order passed by the High Court, this Court has observed in paragraphs 9 to 13 as under:

"9. The High Court simply brushed aside the aforementioned material facts and sentenced the accused to the period already undergone by him, which is only 6 days in this case. In our view, the trial court and the High Court have taken a lenient view by convicting the accused for offences under Sections 325 and 323 IPC. Absolutely no reasons, much less valid reasons, are assigned by the High Court to impose the meagre sentence of 6 days. Such imposition of sentence by the High Court shocks the judicial conscience of this Court.

10. Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

11. This Court in Soman v. State of Kerala [Soman v. State of Kerala, (2013) 11 SCC 382 : (2012) 4 SCC (Cri) 1] observed thus: (SCC p. 393, para 27)

> *"27.1. Courts ought to base sentencing decisions on various different rationales -- most prominent amongst which would be proportionality and deterrence.*
>
> *27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint.*
>
> *27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.*
>
> *27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.*
>
> *27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably*

foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor."

12. The same is the verdict of this Court in Alister Anthony Pareira v. State of Maharashtra [Alister Anthony Pareira v. State of Maharashtra, (2012) 2 SCC 648 : (2012) 1 SCC (Civ) 848 : (2012) 1 SCC (Cri) 953] wherein it is observed thus: (SCC p. 674, para 84)

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

13. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance."

ii) In the case of Udham (supra), in paragraphs 11 to 13, it is observed and held as under:

"11. We are of the opinion that a large number of cases are being filed before this Court, due to insufficient or wrong

sentencing undertaken by the courts below. We have time and again cautioned against the cavalier manner in which sentencing is dealt in certain cases. There is no gainsaying that the aspect of sentencing should not be taken for granted, as this part of Criminal Justice System has determinative impact on the society. In light of the same, we are of the opinion that we need to provide further clarity on the same.

12. Sentencing for crimes has to be analysed on the touchstone of three tests viz. crime test, criminal test and comparative proportionality test. Crime test involves factors like extent of planning, choice of weapon, modus of crime, disposal modus (if any), role of the accused, anti-social or abhorrent character of the crime, state of victim. Criminal test involves assessment of factors such as age of the criminal, gender of the criminal, economic conditions or social background of the criminal, motivation for crime, availability of defence, state of mind, instigation by the deceased or any one from the deceased group, adequately represented in the trial, disagreement by a Judge in the appeal process, repentance, possibility of reformation, prior criminal record (not to take pending cases) and any other relevant factor (not an exhaustive list).

13. Additionally, we may note that under the crime test, seriousness needs to be ascertained. The seriousness of the crime may be ascertained by (i) bodily integrity of the victim; (ii) loss of material support or amenity; (iii) extent of humiliation; and (iv) privacy breach."

In the said decision, this Court again cautioned against the cavalier manner in which sentencing is dealt with in certain cases.

iii) In the case of Satish Kumar Jayanti Lal Dabgar (supra), this Court has observed and held that the purpose and justification behind sentencing is not only retribution, incapacitation, rehabilitation but deterrence as well.

***8**. Applying the law laid down by this Court on principles for sentencing, to the facts of the case on hand, we are of the opinion that the approach of the High Court is most cavalier. Therefore, the order of the High Court merits interference by this Court. Merely on the technical ground of delay and merely on the ground that after the impugned judgment and order, which is unsustainable, the accused have resettled in their lives and their conduct has since been satisfactory and they have not indulged in any criminal activity, is no ground not to condone the delay and not to consider the appeal on merits. Hence, the delay of 1880 days in preferring the appeal is condoned."*

32. Thus applying the principles of law with regards to the sentencing of the appellant, it is clear that lacks of sufficient time and the age of the accused cannot be a ground to extend any benefit to him in the crime committed by him.

33. From the discussions as stated above it is evident that the prosecution has succeeded in proving the case beyond reasonable doubt against the accused-appellant. The version of the first informant and the victim 'X' regarding rape being committed on her by the accused-appellant does not get dented throughout the case. The medical evidence corroborates with the prosecution version. The opinion of the doctor also states of rape being committed on her. The victim 'X' was aged about 10 years at that time. The same has also not been a matter of challenge by the accused-appellant. Hence, the present appeal is ***dismissed***.

34. The judgment and order of conviction of the trial court is upheld. The appellant is on bail. He shall be taken into custody to serve out the sentences awarded to him by the trial court.

35. Office is directed to transmit the lower court records along with a copy of this judgment to the trial court forthwith for its compliance and necessary action.

Order Date :- 15.11.2022
M. ARIF

(Samit Gopal,J.)