

HEARING CONDUCTED VIRTUALLY THROUGH CISCO WEBEX APP

CIS SC No. 7340/2016

FIR No. 1417/14

PS: Mehrauli

State Vs. Vishva Bandhu (POCSO)

16.07.2021

ORDER ON SENTENCE

*“ Then there was the pain. A breaking and entering when even the senses are torn apart. The act of rape on an eight-year-old body is a matter of the needle giving because the camel can't. **The child gives, because the body can, and the mind of the violator cannot.**”* (emphasis added)

Maya Angelou in I Know Why the Caged Bird Sings.

1. The above quote succinctly captures the pathos created when the dignity of a defenceless child victim is violated by an adult through his violent act of contempt.
2. Commission of similar abhorrent and reprehensible offences on 2 girls aged about 7 years (Miss 'N') and 9 years (Miss 'D') have been proved, leading to the conviction of the accused for offences punishable u/s 376(2)/506(Part II) of the IPC and Section 6 r/w section 5(1) of the POCSO Act vide judgment dated 26.02.2021. Thereafter, Victim Impact Assessment Reports were summoned through DLSA and have been perused and arguments on behalf of the State and Ld. Defence Counsel have been heard. The parents of the victims have also been heard.

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3. Ld. SPP for the State has argued that the following are the aggravating circumstances in present matter, which justify maximum punishment for the convict:

a). The convict was a priest by profession and has committed rape upon victims within the precincts of the temple showing his depravity.

b). There are two victims and they were both, below 12 years of age, at that time.

c). The medical evidence has corroborated the testimonies of the victims.

d). The defence did not examine any independent witness and also could not prove any of the defence raised.

4. Leniency has been pleaded by the Ld. Defence Counsel stating that the convict is 76 years old and has no previous criminal record.

5. The record has been perused and the Court has given its thoughtful consideration to all the material before it.

6. The implementation of POCSO Act resonates the public sentiment that loathes child sexual abuse in the strongest terms. It has been framed to ensure that perpetrators with such depravity and proclivity, who do not spare the weak, defenceless, trusting and vulnerable children, need to be dealt with sternly because such dark moments of childhood can scar our children for a lifetime. Thus, as the Court embarks upon the discussion of what should be the appropriate punishment herein, it is imperative to recall the object of the Act as stipulated in the Introduction which is as under:

“Such offences against children need to be defined explicitly and countered through adequate penalties as an effective deterrence.”

7. While being mindful of the object of the special Act as reproduced above, this Court is also conscious that :-

*“.....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 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 corner-stone 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 the 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. 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.** This position was illuminatingly stated by this Court in *Sevaka Perumal etc. v. State of Tamil Nadu (1991 (3) SCC 471)*. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are*

serious and widespread. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.” (emphasis added)

8. Reliance is placed upon ***Shailesh Jasvantbhai & Anr vs State Of Gujarat & Ors Appeal (Crl.) 118 of 2006 DOD by Supreme Court, 19 January, 2006.***

9. Further, in ***Purushottam Dashrath Borate & Anr vs State Of Maharashtra (2015) 6 SCC 652***, the Apex Court reiterated as under:

“It is an established position that law regulates social interests and arbitrates conflicting claims and demands. Security of persons is a fundamental function of the State which can be achieved through instrumentality of criminal law. The society today has been infected with a lawlessness that has gravely undermined social order. Protection of society and stamping out criminal proclivity must be the object of law which may be achieved by imposing appropriate sentence. Therefore, in this context, the vital function that this Court is required to discharge is to mould the sentencing system to meet this challenge. 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 and all other attending circumstances are relevant facts which would enter into the area of consideration. Based on the facts of the case, this Court is required to be stern where it should be and tempered with mercy where warranted.” (emphasis added)

10. Reverting to the present case, the argument that clean antecedent of the convict is a mitigating circumstance does not hold any ground in view of the observations of the Apex Court in ***Purushottam Dashrath Borate & Anr vs State Of Maharashtra (Supra)*** wherein it has been held as under:

“... Lack of criminal antecedents also cannot be considered as mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons.”

11. Even though, the offence in the present matter falls short of the gruesomeness as in ***Purushottam Dashrath Borate & Anr vs State Of Maharashtra (Supra)***, nonetheless, the nature of offence proved against the convict is abhorrent. Even a single act of violating the dignity of a child deserves equal condemnation.

12. Even the socio-economic condition of the convict would not come to his rescue in view of ***State of Karnataka Vs. Raju 2007 (11) SCALE 114*** (which pertained to a case of rape of a 12 years old girl), the Apex Court held that: -

“.....8. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. 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. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the respondent. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.

13. The age of the convict as 76 years has been emphasized upon, to urge that it should be a mitigating circumstance. However, in the considered view of this Court, as it has not been proved that the offences had been committed on account

of any mental stress or emotional distress and also considering that extremely vulnerable victims were preyed upon by the convict despite his old age and repeatedly, there seems to be no scope for reformation. Rather, considering that minor children aged about 7 and 9 years had been repeatedly raped by the convict, who was then aged about 69-70 years, irrefragably speaks volumes about the depravity and proclivity in the mindset of the convict which is an aggravating circumstance.

14. The convict was a priest by profession and committed offences upon children within the sacred precincts of a temple. He has betrayed the trust and respect the victims and the public had upon him. No remorse was expressed at any stage of the trial. In the facts and circumstances of this case, if leniency is shown, this Court would be letting down the children who have fought all odds to pursue the matter. These victims have been scarred for future. The Court would also be failing in its duty if such predators are set free and allowed to circulate endangering other children.

15. Section 42 of POCSO Act provides as under;

“.... Where an act or omission constitute an offence punishable under this Act and also under any other law for the time being in force, then, notwithstanding, anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under such law or this Act as provides for punishment which is greater in degree.”

16. After the POCSO (Amendment) Act, 2019 which was promulgated on 05.08.2019, a stricter punishment has been provided u/s 6 of POCSO Act. However, as it does not have a retrospective effect, the stringency of punishment in the present case would be under section 376(2) IPC which pursuant to The

Criminal Law (Amendment) Act, 2013 provided with “*rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall be imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.*” Cumulative charge was framed for commission of offence on both the children. The offences were committed repeatedly on both the victims. This only shows the rapacious and habitual conduct on the part of the convict. As already opined above, such habitual sexual predator cannot be trusted with. He has even not cared for the respect and faith attached to his office as a priest and has also desecrated the temple where the children should have had a carefree and safe time. Therefore, the interest of justice would only suffice if the convict is sentenced to rigorous imprisonment for life and fine of Rs.50,000/-. For offence punishable under Section 506 IPC, the convict is sentenced to five years of rigorous imprisonment and fine of Rs.10,000/-.

17. The fine shall be paid as compensation to the victims.
18. The benefit of Section of 428 of Cr.P.C. shall be afforded.
19. Sentences shall run concurrently.

COMPENSATION TO THE VICTIM

20. The purpose of Criminal Justice System is not only to attain catharsis by handing down proportional punishment to the offender but also to rehabilitate the victims, who are scarred physically and mentally, forever. If we fail to do so, we are also abdicating our duties towards the children victim, whose physical and psychological well being have been dented and may have repercussions throughout life. Section 33 (8) of POCSO Act read with Rule 9 of POCSO Rules, 2020 encapsulate the above aspect of due compensation. The parameters to be

considered are also enumerated in Rule 9 (3) of POCSO Rules, 2020. Pursuant to the directions issued in ***Karan Singh Vs. State (NCT of Delhi): Criminal Appeal No. 352/2020, decided on 27.11.2020***, the Victim Impact Assessment Reports have also been summoned and perused.

21. During the interaction with the parents of the victims, it was informed that victim Miss 'N' had recently also undergone a surgery at AIIMS for recurrent abdominal pain. In this regard, a medical opinion was sought from Medical Superintendent, AIIMS Hospital. Report dated 12.07.2021 has been received where it has been opined that the victim was treated for 'peritoneal inclusion cyst' and the ailment could not be linked to the sexual assault committed upon her.

22. As per the affidavit of assets filed by the convict, his net monthly income was disclosed as Rs.5000-6000/- per month and his assets were valued at nil. However, he disclosed that he had an ancestral property at Khari Kothi Mohalla, Dausa, Rajasthan. It was verified though the title documents were not found. During verification, it was found that the property is an occupation of Sh. Dinesh Chander Sharma, eldest brother of the convict and his family members.

23. As per the Victim Impact Assessment Reports, it is recommended that the victims need to be compensated for their emotional trauma.

24. Pursuant to the directions in W.P. (C) No.565/2012 titled ***Nipun Saxena and Anr. Vs. Union of India and Ors.*** dated 05.09.2018, the Delhi Victims Compensation Scheme, 2015 has been promulgated. Part II of the Scheme caters to compensation for women victims/ survivors of sexual assault/ other crimes. It

also serves as a Guideline to the Special Court for awarding compensation to victims of child sexual abuse under section 33(8) POCSO Act read with its Rules. Reliance is also placed upon *Mother Minor Victim No.1 & 2 Vs. State W.P. (Crl.) 3244/2019 DOD 15.06.2020* and *Master 'X' (through Mother and Natural Guardian) Vs. State & Ors. W.P. (Crl.) 1419/2020*. The Schedule provides that in cases of rape and also unnatural sexual assault, the minimum limit of compensation is Rs.4,00,000/- and upper limit of compensation is Rs.7,00,000/-. Section 9 also provides that where the victim is a minor, the limit of compensation shall be deemed to be 50% higher than the amount mentioned in the Schedule. Hence, the compensation herein would range between Rs.6,00,000/- to Rs.10,50,000/-. It has been informed by the parents that the children are attending regular school. The victims were of extremely tender age when they were repeatedly sexually assaulted. No medical expenditure has been incurred as per reports. The medical condition for which victim Ms. 'N' has been recently treated has not been connected to the sexual assault. However, as per the parents, children have been suffering from recurrent stomach issues. The emotional trauma has also to be allayed. It is apparent from record that the parents of the victims are not monetarily sound enough to cater to the special needs of the victims on account of repeated sexual assault at such tender age. In the considered view of this Court, to give effect to Restorative and Compensatory Justice and to rehabilitate the victims, it would be appropriate to grant compensation of Rs.7,50,000/- to each victim to secure their emotional and mental health and to ensure that they have unhindered education equipping them for a safer future. Since, the convict does not have sufficient means to pay the compensation, the same shall be paid by DLSA, as per rules.

Let a copy of this order be forwarded to the Ld. Secretary, DLSA (South) for compliance with further request to send intimation to this Court regarding disbursal of compensation. Details of the victims be also forwarded to the Ld. Secretary, DLSA (South) in a closed envelop.

Affidavit of expenditure on behalf of the prosecution has also been filed. However, keeping in view that the convict does not have sufficient means, no order is warranted on this aspect.

25. Ordered, accordingly.

26. Copy of the judgment and the copy of the order on sentence be sent to the convict through the concerned Jail Superintendent via E-mail. The Jail Superintendent shall provide a hard copy of the same to convict Vishva Bandhu Sharma after taking printouts, under appropriate receipt and a copy of the acknowledgment alongwith the report of the Jail Superintendent in this respect shall be forwarded to this Court through E-mail. The judgment and order on sentence be also E-mailed to Ld. Counsel for the convict.

27. This order on sentence be treated as warrant of commitment. The convict has already been taken into custody in this case on 26.02.2021. The Jail Superintendent shall carry out the aforesaid sentence into execution as per law.

28. The convict has been informed of his right to prefer an appeal against this judgment. He has been apprised that if he cannot afford to engage an Advocate, he can approach the Legal Aid Cell, Tihar Jail or write to Secretary, Delhi High Court Legal Services Committee.

29. File be consigned to Record Room.

(Vijeta Singh Rawat)
ASJ(FTSC)(POCSO)/South/Saket
New Delhi/16.07.2021