

An attempt to judge a Judgement

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In view of the recommendations made by the Law Commission of India in its 84th report, the Parliament amended the provisions relating to 'offence of rape' under the Indian Penal Code. Two far reaching effects of amendments relate to the protection of women from custodial rapes and minimum mandatory punishment. This article intends to throw light on the significance of minimum mandatory punishment through a critical analysis of the court's decision in *Kapura V. State*¹.

The facts of the case as reported in the Judgement are:

"In this case the Prosecutrix, Kum. Sita, went to purchase sugar at about 7 or 7.30 PM to the shop of one Pukhraj Mahajan on 3rd Nov. 1985 in village Bhavarani. After purchasing the sugar and tobacco, when she was returning

to her home and came on the way near 'Panchoda Kisen' she met Kapura and Hadmana who induced her to accompany them and when they reached near the house of Kapura, she was forced inside the house of Kapura and was asked to marry Kapura. Ms. Sita refused to marry Kapura and raised hue and cry whereupon these two accused along with one lady gave beating to her and Hadmana told Kapura that she will not agree willingly and so he must rape her. On hearing her cries, one Mangal Singh Rajput who was going on the way, went inside the house of Kapura and told him not to marry the girl forcibly against her will. When Mangal Singh asked Kapura not to marry her, he threatened Mangal Singh with knife injuries whereupon Mangal Singh came out. When Ms. Sita did not return home in reasonable time,

(1) (1988) 2 Cr. J. R. Raj, 426

her father Sona and her aunt Smt. Bhanwari went in search of her. Mangal Singh met them and informed about this incident. In the meanwhile, it is alleged that Kapura raped Ms. Sita and when these persons went to the house of Kapura along with other persons of the village, Ms. Sita was turned out of the house at about 8.30 PM. The matter was reported to the police on the next day at about 8 PM. The written report of the incident was lodged which has been marked Ex.P2. Ms. Sita was got examined for her age and evidence of rape. The doctor has opined that she was 15 years old at the time of the incident and she has been raped forcibly. After usual investigation, the case against the accused was challenged in the court of learned Chief Judicial Magistrate, Jalore, from where it was committed for trial to the court of learned Sessions Judge, Jalore who after holding the trial, convicted and sentenced the accused appellant for seven years rigorous imprisonment together with a fine of Rs. 100/- and in default to undergo 1 month rigorous imprisonment for the offence under Section 376 I.P.C. Along with him accused Hadmana was also held guilty

of offence under Section 342² I.P.C. but he has preferred no appeal.”

While considering the appeal, Hon'ble Justice K. R. Chopra observed:

“Ordinarily a person like Kapura does not deserve any sympathy or indulgence from the Court but looking at the fact that Ms. Sita has now been married, I deem it proper to reduce the sentence of the accused appellant recorded under Section 376 I.P.C. from 7 years rigorous imprisonment to 4 years rigorous imprisonment with a fine of Rs. 100/-.

At this juncture, it is pertinent to refer to the provisions relating to the new mandatory punishments under the offence of rape.

According to Section 376(1) “the minimum punishment for rape is 7 years imprisonment and the maximum is life imprisonment and also fine. If the woman raped is his own wife and is not under 12 years of age, he shall be punished with 2 years imprisonment and fine. The judge may impose a sentence of less than 7 years for reasons to be mentioned in the judgment”.

In this connection, it is appropriate to cite the observation made by Supreme

2) Sec. 342 deals with the punishment for wrongful confinement.

Court in *Sadha Singh V. State of Panjab*³ concerning the exercise of discretion by the Court in such situations. The court observed that “when a discretion is vested in the trial court as to what ought to be the proper sentence in a given case, such ‘discretion’ has to be exercised on sound judicial principles; and that “various relevant circumstances which have a bearing on the question of sentence have to be kept in view……”

In a catena of cases⁴ the Judiciary has taken into account the age of the accused as a relevant factor. But where the court could not see any reason to reduce the sentence imposed on the accused, they did not hesitate to confirm the sentence of the lower court, as has happened in *Gajanand V. State of Gujarat*⁵.

In this case, the accused was in the position of a ‘defacto guardian’ of the girl and he had misused the position and confidence reposed in him by the parents of the girl. The court observed that ‘the accused’

deserved no sympathy as “the root cause of the offence does not seem to be human weakness, but it appears to be wickedness”.

In some cases the court even felt the necessity for enhancing the sentence given by the trial court. For instance, in *Imratlal V. State of M.P.*⁶ the court was of the view to enhance the lenient sentence imposed by the trial court. Time and time again it has been observed that when an offence of rape is proved, that too on child girls of very tender age and innocent in behaviour, the sentence of imprisonment should be imposed with severity. Sentencing the appellant only for three years just amounts to sending him to a picnic. The learned trial judge has failed in his duty in not imposing* a deterrent punishment on the appellant for this lusty and dastardly perverted sexual act.

As observed by the court,⁷ the measure of punishment must depend upon the greater or less atrocity of the crime, the conduct of the criminal and the defenceless

(3) AIR (1985) S. C. 1130

(4) (i) *B, Anki Reddy Vs. State of A.P.*(1988) CrI. L. J. 1461 (1461)

(ii) *Mangat Ram Vs. The State* (1987) CrI. L. J. 224

(iii) *Vinod Kumar & another Vs. The State of M.P.* (1987) CrI. L. J. 1541. (1541)

(5) (1988) CrI. L. J. 374

(6) (1987) CrI. L. J. 557

(7) *Radha Shyam Vs. State of J & K* (1988) CrI. L. J. 447

and unprotected state of victim. Crimes of violence upon women who are not in a position to defend themselves must be put down with a strong hand and it would be a very sad state of affairs if the criminals were to carry an impression that to criminally assault a woman or to rape her was not a serious matter and they could always satisfy their lust if only they were prepared to undergo the comparatively short term of imprisonment.

If Kapura's case⁸ is examined in the light of above views, one might tend to disagree with the reason expressed by Hon'ble Justice K. R. Chopra in reducing the sentence imposed by the trial court. The judge while emphasising that "Kapura does not deserve any sympathy or indulgence from the court" reduced the sentence on the ground that Ms. Sita was married. This reasoning does not appear to be relevant or reasonable.

With due respect it is submitted that the imposition of sentence which is less than the minimum mandatory punishment may be awarded by looking at the state of the accused and not at the condition

of the victim. For instance, good conduct, or familial, social, educational background of the accused may be relevant factors but definitely not the marriage of the victim. Undoubtedly, the object of giving discretion to the judge to reduce the punishment is not to lessen the deterrent effect but to give a chance to the accused to reform himself.

In conclusion it is worth quoting Justice Cardozo⁹ :

"The judge, even when he is free, is still not wholly free. He is not to innovate at pleasure. He is not a knighterrant roaming at will in pursuit of his own ideal of beauty or of goodness. He is to draw his inspiration from consecrated principles. He is not to yield to spasmodic sentiment, to vague and unregulated benevolence. He is to exercise a discretion informed by tradition, methodized by analogy, disciplined by system, and subordinated to the primordial necessity of order in the social life. Wide enough in all conscience is the field of discretion that remains".

(8) Supra Note 1

(9) *'The Nature of the Judicial Process'* — Benjamin Cardozo, Yale University Press, 1921