

Reserved on: 27.01.2022

Delivered on: 10.02.2022

Court No. - 15

Case :- CRIMINAL APPEAL No. - 465 of 2020

Appellant :- Ramsagar

Respondent :- State of U.P.

Counsel for Appellant :- Surya Prakash

Counsel for Respondent :- Govt. Advocate

Hon'ble Suresh Kumar Gupta, J.

1. Heard Mr. Surya Prakash, learned counsel for appellant, learned A.G.A. for the State and perused the lower court record.

2. This appeal has been preferred on behalf of appellant Ramsagar challenging the impugned judgment and order dated 26.11.2019 passed by learned Additional District & Sessions Judge/FTC Lakhimpur Kheri whereby the appellant was convicted and sentenced as under:-

(i). In Sessions Trial No. 1397 of 2014 arising out of Case Crime No. 475 of 2007, under Section 354 IPC, Police Station Paliya, District Lakhimpur Kheri, the appellant was convicted and sentenced for two years imprisonment and fine of Rs. 10,000/- with default stipulation.

3. Brief facts of the case emerges out as under:-

On 23.07.2007 at 02:00 an FIR was lodged by first informant, namely Raju son of Lal Ji, R/o Village Ethpur, P.S. Palia, District Lakhimpur Kheri with the allegation that in the evening of 22.07.2007, victim, the wife of the complainant, with her two children, a two months old boy and a girl three years old, was laying down in the home (hut). The complainant was also lying on the ground under the bed in the hut, at around 11:00 pm, his neighbor Ramsagar, son Kamala Shankar Mallah came and started molesting complainant's wife. When his wife screamed, he also woke up, made a noise, then Dara Son Lalji and Kalavati wife of Kamalashankar came, with the help of whom Ram Sagar was caught and took him

before the Police Station Palia, District Lakhimpur Kheri and F.I.R. of this case was lodged under Section 376 I.P.C.

4. The investigation of this was entrusted to the Investigating Officer PW-3 Parashuram Goswami. During course of investigation, the Investigating Officer prepared site plan (Ex. Ka-2) and recorded statements of the witnesses. The victim was sent for medical examination at Mahila Hospital, Kheri where she was medically examined on 02.08.2007 by Emergency Medical Officer, Mahila Hospital, Kheri and the medical report is (Ex. Ka-4). Thereafter she was sent for pathological test at District Hospital Kheri on 03.08.2007 and the pathological report is Ex. Ka-6. On 14.09.2007, a supplementary medical report was prepared as Ex. Ka-5.

5. As per medical examination following opinion was given by the doctor:-

Physical examination

(i) Breast fully developed, axillary and pubic hair was present.

(ii) she is complain of pain in both knee.

Thereafter she was referred to E.M.O. District Hospital.

Internal examination:-

No mark of injury present on private parts.

As per vaginal examination extracts admits two fingers, hymen torn old and healed uterus introverted normal size, vaginal smear prepared and sent to pathology for evidence of spermatozoa.

Supplementary report awaited.

As per supplementary affidavit, on the basis of chemical examination and vaginal smear report, no definite opinion regarding sexual assault can be given.

6. After completion of all the formalities of investigation, charge sheet (Ex. Ka-1) was filed before the learned Chief Judicial Magistrate, Lakhimpur Kheri on 17.10.2014 against the appellant under Section 376 IPC. Learned Chief Judicial Magistrate took

cognizance on 17.10.2014 and thereafter the case was committed for trial before the learned Sessions Judge, Lakhimpur Kheri on 18.10.2014 where it is registered as Sessions Trial No.1397 of 2014 and the same was transferred to the court of learned Additional District & Sessions Judge/FTC Lakhimpur Kheri for trial, where during course of trial, the following witnesses were examined on behalf of the prosecution:-

7. PW-1 is the victim, PW-2 is the complainant of this case. Both are the witnesses of fact.

8. PW-3 S.I. Parashuram Goswami (retired) was the Investigating Officer of the case, who proved site plan (Ex. Ka-2) and charge sheet (Ex. Ka-1). PW-4 Dr. Deepa Sharma, who medically examined the victim and proved the medical report (Ex. Ka-5) and supplementary report (Ex. Ka-6) and PW-5 Rajesh Kumar Yadav the pairakar of the police station.

9. The charge was framed against the appellant under Section 354 IPC, to which he pleaded not guilty and claimed to be tried. Subsequent to the closure of the prosecution evidence, statement of appellant under Section 313 Cr.P.C. was recorded by the trial court explaining entire evidence and other incriminating circumstances. In statement recorded under Section 313 Cr.P.C., the accused appellant denied prosecution version and said that he has been falsely implicated by the informant and victim.

10. In defence two witnesses i.e. DW-1 Vijay Bahadur and DW-2 Muhleshwar were examined.

11. After hearing both the parties and appreciating entire oral and documentary evidence available on record, the trial court convicted the accused appellant as aforesaid.

12. Feeling aggrieved and dissatisfied with the judgment of the trial court, the appellant preferred the instant criminal appeal.

13. Learned counsel for appellant has submitted that the trial court without appreciating the evidence available on record, wrongly

convicted the appellant. Further submission is that both the witnesses examined by the prosecution is the interested witnesses. No independent witness was examined on behalf of the prosecution. All the witnesses examined by the prosecution are interested witness and medical evidence on record does not support the case of the prosecution as alleged in the FIR and the prosecution has failed to prove its case beyond shadow of doubt.

14. Lastly learned counsel for appellant has basically submitted that the appellant does not want to argue this appeal on merits, he only wants to advance submission only on the quantum of sentence imposed upon him.

15. Learned A.G.A. for the State has supported the judgment of learned trial court and has submitted that the appeal has no force and is liable to be dismissed. Further submission is that offence committed by the appellant is very heinous in nature and there is no reason to falsely implicate him. The case Under section 354 I.P.C has proved against the appellant. The trial court has rightly convicted and sentenced the appellant and the appellant deserves no leniency.

16. Perusal of the record shows that PW-1, the victim and PW-2 informant of the case, who are the witnesses of facts, have fully supported the prosecution version.

17. Not pressing the criminal appeal after the conviction of the accused by the court below is like the confession of the offence by the accused. The Courts generally take lenient view in the matter of awarding sentence to an accused in criminal trial, where he voluntarily confesses his guilt, unless the facts of the case warrants severe sentence.

18. In the case of *Sevaka Perumal etc. Vs. State of Tamil Nadu AIR 1991 SC 1463*, the Apex Court in the matter of awarding proper sentence to the accused in a criminal trial has cautioned the Courts as under:

"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."

19. In the case of *Dhananjay Chatterjee Vs. State of W. B. [1994] 2 SCC 220*, this Court has observed that shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. 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 criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment. Similar view has also been expressed in *Ravji v. State of Rajasthan, [1996] 2 SCC 175*. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. 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 the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

20. Appropriate sentence is the cry of the society. 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.

21. This position was reiterated by a three-Judge Bench of the Apex Court in *Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat, (2009) 7 SCC 254*, 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 operate 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 but the society at large also 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."

22. In *Jameel vs. State of Uttar Pradesh (2010) 12 SCC 532*, 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 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.

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."

23. In *Guru Basavaraj @ Benne Settapa vs. State of Karnataka, (2012) 8 SCC 734*, 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."

24. In *Gopal Singh vs. State of Uttarakhand JT 2013 (3) SC 444* 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....."

25. Since counsel for appellant pressed the appeal only on the point of quantum of sentence, hence on perusal of statement of victim and other witnesses, I am of the view that the judgment rendered by the trial court is affirmed and the conviction of the appellant is also hereby affirmed. Now the question arise for quantum of sentence. Since the appellant is guilty of the offence punishable under Section 354 IPC, which was existed in the year 2007, the sentence was provided under Section 354 IPC shall be punished with imprisonment of either of either description for a term which may extend to two years or with fine or with both. As no minimum sentence was

prescribed and the trial court sentenced the appellant for maximum period of two years. Perusal of report of Jail Superintendent, District Jail Kheri, indicates that the appellant served out sentence of eight months and fifteen days. Considering the entire possible conspectus of circumstances, in my opinion, sending appellant back to penitentiary, to serve out remaining part of his sentence will not be in the interest of justice. Fear of being sending back to jail looming large for such long period must have tormented him enough for which he must have been penancing.

26. Concludingly, while appellant's conviction is upheld under Section 354 IPC, but his sentence is reduced to the period of imprisonment already undergone by him. However, the appellant shall deposit the fine amount as awarded by the trial court within fifteen days from the date of production of certified copy of this order. It is made clear that if he fails to deposit the said amount, he shall serve out the remaining part of his sentence.

27. In view of the above, this appeal on the point of conviction is hereby dismissed and on the point of sentence is partly allowed. The appellant is on bail. He need not surrender.

28. The record of this case be transmitted to the trial court for necessary compliance.

Order Date :- 10.02.2022

Virendra