

**2023 LiveLaw (SC) 875**

**IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
ABHAY S. OKA; J., PANKAJ MITHAL; J.**

October 11, 2023

CRIMINAL APPEAL NO. 3168 OF 2023 (Arising out of Special Leave Petition (Crl.) No.11331 of 2019)

**State of Rajasthan versus Gautam s/o Mohanlal**

**Protection of Children from Sexual Offences Act, 2012 - Whenever a child is subjected to sexual assault, the State or the Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child psychologist. It will help the victim children to come out of the trauma, which will enable them to lead a better life in future. (Para 16)**

**Protection of Children from Sexual Offences Act, 2012 - The State needs to ensure that the children who are the victims of the offence continue with their education. (Para 16)**

**Protection of Children from Sexual Offences Act, 2012 - The social environment around the victim child may not always be conducive to the victim's rehabilitation. Only the monetary compensation is not enough. Only the payment of compensation will not amount to rehabilitation in a true sense. Perhaps the rehabilitation of the girl victims in life should be part of the "Beti Bachao Beti Padhao" campaign of the Central Government. As a welfare State, it will be the duty of the Government to do so. (Para 16)**

**Practice and Procedure – Caste of the Accused - An accused has no caste or religion when the Court deals with their case. The caste or religion of a litigant should never be mentioned in the cause title of the judgment. Such practice should never be followed. (Para 15)**

(Arising out of impugned final judgment and order dated 12-04-2019 in DBCRJA No. 429/2017 passed by the High Court of Judicature for Rajasthan at Jaipur)

*For Petitioner(s) Dr. Manish Singhvi, Sr. Adv. Ms. Shubhangi Agarwal, Adv. Mr. Apurv S., Adv. Mr. Milind Kumar, AOR*

*For Respondent(s) Mr. Rakesh Garg, Adv. Mr. Ashish Gopal Garg, Adv. Ms. Shweta Garg, AOR*

**J U D G M E N T**

**ABHAY S. OKA, J.**

1. Leave granted.

**FACTUAL ASPECTS**

2. This is a case which shocks the conscience of the Court. The only issue in this case is regarding the enhancement of the sentence imposed on the respondent–accused.

3. As the issue is confined to the quantum of sentence, it is not necessary for us to go into the correctness of the finding of guilt recorded by the Trial Court and the High Court of Judicature for Rajasthan. As far as the factual details are concerned, we are reproducing the facts set out in the impugned judgment, which read thus:

“ . . . . .

The material facts briefly leading to filing of the appeal are required to be noted. Complainant Rakesh (PW-3) submitted a written report (Ex.P-4) before SHO, Police Station Udyog Nagar, Kota on 8.5.2014 stating therein that he and his wife Smt.Kajod were residing at Suryanagar in the

house of Chittar Lal as tenant. Gautam Harizan was also residing in the same house as tenant. They both used to attend to their respective jobs. They were having a daughter and a son. The elder was daughter aged 5 years and younger was son aged about two and half years. He further stated that on 8.5.2014, as usual, he left the house for his job at 6.00 A.M. and his wife left the house at about 9-10 A.M. after leaving children with their aunt Lad Bai, who was living in neighbourhood. While returning at 3.00 PM, wife of complainant found her daughter in a pool of blood. Blood was oozing from her private parts. On asking, she told to her mother that during day hours, Gautam Harijan uncle brought her from her Mausi's (sister of mother) house to his room. There he removed her clothes and undergarments. He did something to her private parts due to which there was bleeding. Accused had caused bite also. She was suffering from pain. His wife called him and they noticed that Gautam Harijan committed rape with their daughter on account of which, there was bleeding from her private parts and her garments were also stained with blood.

.....”

4. The Trial Court convicted the respondent–accused for the offences punishable under Sections 363, 342, clauses (i) and (m) of sub-section (2) of Section 376 of the Indian Penal Code, 1860 (for short, ‘IPC’) read with Sections 3 and 4 of the Protection of Children from Sexual Offences Act, 2012 (for short, ‘POCSO’). The respondent–accused was also convicted for the offences punishable under Section 8 (punishment for sexual assault) and Section 10 (punishment for aggravated sexual assault) of POCSO. For the offences punishable under clauses (i) and (m) of sub-section (2) of Section 376 of IPC, the Trial Court sentenced the respondent–accused to undergo imprisonment for life (for the remainder of natural life). For the offence punishable under Section 377 of IPC, the Trial Court awarded the sentence of ten years of simple imprisonment with a fine of Rs.10,000/-. For the offence punishable under Section 8 of POCSO, the Trial Court convicted the respondent–accused to undergo simple imprisonment for three years and to pay a fine of Rs.5,000/-. For the offence punishable under Section 10 of POCSO, the respondent–accused was directed to undergo simple imprisonment for five years with a fine of Rs.5,000/-. For the offence punishable under Section 342 of IPC, he was sentenced to undergo simple imprisonment for six months. For the offence punishable under Section 363 of IPC, he was penalised to undergo rigorous imprisonment for three years with a fine of Rs.10,000/-.

5. In the appeal preferred by the respondent–accused, while confirming the conviction, the High Court showed leniency by reducing the sentence for the offence under clauses (i) and (m) of sub-section (2) of Section 376 of IPC to rigorous imprisonment for twelve years.

### **SUBMISSIONS**

6. The submission of the learned counsel appearing for the appellant–State of Rajasthan is that the High Court has shown undue and undeserving leniency to the respondent. The submission of the learned counsel is that the High Court has completely lost sight of the fact that the age of the victimgirl was only five to six years. He submitted that the High Court also ignored the evidence of Dr Vinod Garg (PW-6), who and a gynaecologist had examined the victim. His submission is that showing leniency only based on the young age of the accused will send wrong signals.

7. We have also heard Ms Shweta Garg, the learned counsel appointed as amicus curiae, to espouse the cause of the respondent–accused. She submitted that the minimum punishment for the offences punishable under clauses (i) and (m) of sub-section (2) of Section 376 of IPC is ten years. Therefore, the sentence imposed by the High Court is more than what is prescribed as the minimum. She pointed out that the incident occurred

on 8<sup>th</sup> May 2014, and the respondent has been incarcerated since then. She submitted that the factors of young age and caste of the respondent–accused, considered by the High Court, are certainly relevant. She pointed out that the respondent must have undergone the sentence by this time, including remissions. She would, therefore, submit that no interference was called for.

### **CONSIDERATION OF SUBMISSIONS**

8. The offence under clause (i) of sub-section (2) of Section 376 of IPC (as it stood before 21<sup>st</sup> April 2018) was of rape of a girl who is under sixteen years of age. The victim was only 5 to 6 years old at the relevant time. The offence under clause (m) of sub-section (2) of 376 of IPC is attracted when the offender, while committing rape, causes grievous bodily harm to the victim, causes her disfigurement, or endangers her life. In the present case, the medical evidence in the form of the medical report and evidence of Dr Vinod Garg (PW-6) indicates why the Trial Court invoked clause (m).

9. The offence is so gruesome and heinous that it will impact the victim for her entire life. The childhood of the victim has been destroyed. The victim's life has been ruined due to the trauma and everlasting impact on her mind. It must have converted the victim into a psychological wreck.

10. The reasons given by the High Court for showing leniency are:

- a. The age of the respondent–accused was twentytwo years;
- b. The respondent–accused belonged to a poor scheduled caste family;
- c. The respondent–accused is not a habitual offender and
- d. The respondent–accused has been suffering incarceration since 8<sup>th</sup> May 2014.

11. As far as the serious offences under Section 376 of IPC and the POCSO Act are concerned, the fact that the respondent–accused is not a habitual offender is entirely irrelevant. The intention of the legislature is clear from Section 376E of IPC, introduced with effect from 3<sup>rd</sup> February 2013. It provides that whosoever has been previously convicted for the offence punishable under Section 376 of IPC and is subsequently convicted for the same crime shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life or death. Therefore, the law takes care of habitual offenders by imposing stringent punishment under Section 376 of IPC. As law prescribes a minimum sentence, the fact that the respondent–accused was suffering incarceration from 8<sup>th</sup> May 2014 is not material. The caste of the accused is, *per se*, not a consideration for showing leniency in the cases of such offences. Here, we are dealing with a case where the victim was five to six years old. In a given case, the financial condition of an accused can be one of the considerations for not exceeding the minimum sentence. Still, again, when it comes to such a serious offence against a girl aged five to six, the financial condition of the accused should not normally weigh in the mind of the Court. In this case, the victim's family is from the same economic strata as the respondent.

12. While dealing with the issue of sentence, in such a case, the mitigating circumstances which weigh in favour of the accused must be balanced with the impact of the offence on the victim, her family and society in general. The rights of the accused must be balanced with the effect of the crime on the victim and her family. This is a case which impacts the society. If undue leniency is shown to the respondent in the facts of the case, it will undermine the common man's confidence in the justice delivery system. The punishment must be commensurate with the gravity of the offence. When it comes to sentencing, the Court is not only concerned with the accused but the crime as well.

**13.** Only two factors prevent us from restoring the life sentence. First is the young age of the accused. His age was 22 years, as noted by the High Court. The second is that he has undergone the sentence imposed by the High Court. Therefore, we are of the view that in this case, the sentence of rigorous imprisonment of fourteen years will be appropriate. However, while he undergoes the remaining sentence, the respondent shall not be entitled to remission. Under subsection (2) of Section 376 of IPC, the offence is also punishable with a fine. The Trial Court had imposed a fine of Rs.25,000/-. It is not clear whether the said amount of fine has been paid. We maintain the sentence in default of payment of the fine amount, which is six months imprisonment. We retain the punishment for the other offences and the sentence in default of fine. We also propose that after retaining a sum of Rs.5,000/- for the State, the rest of the fine amount shall be paid over to the victim as compensation.

**14.** We also propose to direct the Secretary of the Rajasthan State Legal Services Authority to ensure that the compensation is paid to the victim under the victim compensation scheme of the State.

**15.** Before we part with the judgment, we find from the cause title of the judgments of the Trial Court and the High Court that the respondent's caste has been mentioned. The same defect has been carried forward in the Special Leave Petition as the description of the respondent–accused must have been copied from the cause title of the judgments of the Courts. An accused has no caste or religion when the Court deals with his case. We fail to understand why the caste of the accused has been mentioned in the cause title of the judgments of the High Court and the Trial Court. The caste or religion of a litigant should never be mentioned in the cause title of the judgment. We have already observed in our order dated 14<sup>th</sup> March 2023 that such practice should never be followed. The cause title in this judgment has been amended accordingly. Formal amendment be carried out after pronouncement of this judgment.

**16.** We have a suggestion to make before we part with judgment. Whenever a child is subjected to sexual assault, the State or the Legal Services Authorities should ensure that the child is provided with a facility of counselling by a trained child counsellor or child psychologist. It will help the victim children to come out of the trauma, which will enable them to lead a better life in future. The State needs to ensure that the children who are the victims of the offence continue with their education. The social environment around the victim child may not always be conducive to the victim's rehabilitation. Only the monetary compensation is not enough. Only the payment of compensation will not amount to rehabilitation in a true sense. Perhaps the rehabilitation of the girl victims in life should be part of the “Beti Bachao Beti Padhao” campaign of the Central Government. As a welfare State, it will be the duty of the Government to do so. We are directing that the copies of this judgment should be sent to the Secretaries of the concerned departments of the State.

**17.** We may also appreciate the assistance rendered by Ms Shweta Garg, who was appointed amicus curiae to espouse the cause of the respondent–accused.

**18.** We partly allow the appeal by passing the following order:

**a.** The respondent–accused is sentenced to suffer rigorous imprisonment for fourteen years for the offences punishable under clauses (i) and (m) of sub-section (2) of Section 376 of IPC;

**b.** The respondent–accused shall not be entitled to remission while undergoing the enhanced sentence. The remission granted earlier will remain unaffected;

- c. The substantive sentence for the rest of the offences is maintained;
- d. The direction of the Trial Court, as regards the sentence to be undergone in default of payment of fine, is maintained;
- e. If the respondent–accused has already paid the fine amount payable under the judgment of the Trial Court while retaining the sum of Rs.5,000/for the State, the rest of the amount shall be paid over to the victim as compensation;
- f. We direct the Secretary of the Rajasthan State Legal Services Authority to ensure that compensation under the relevant victim compensation scheme is immediately paid to the victim as per her entitlement, if not already paid;
- g. If the respondent has already been released after undergoing the punishment in terms of the verdict of the High Court, he shall be forthwith arrested and sent to prison for undergoing the remaining sentence in terms of this judgment; and
- h. The Registry is directed to forward a copy of this judgment to the Secretary of the Ministry of Women and Child Development of the Central Government to enable the Government to take appropriate action in terms of paragraph 16 above.

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