LAW MANTRA THINK BEYOND OTHERS
(International Monthly Journal, I.S.S.N 2321 6417)
Journal.lawmantra.co.in www.lawmantra.co.in

SUPREME COURT AND SENTENCING IN RAPE CASES: A CRITICAL COMMENT ON RAVINDRA V. STATE OF MADHYA PRADESH BY MS. RITIKA SINGHAL *

Introduction

Sentencing continues to be the most important aspect of criminal justice system. Judges need to exercise judicial discretion within the bounds of the legislature and keeping in mind the gravity of offence, the societal conditions and other relevant factors. Incorrect and ignorant application of discretion can lead to injustice. One recent example of this *Ravindra* v. *State of Madhya Pradesh*[1], where the court reduced the sentence of a rape convict on account on pendency in trial and the supposed compromise reached by the rapist and the rape survivor. The present paper attempts to comment on the viability and desirability of the judgment of the court and the reasoning given by it.

Ravindra Case

In order to understand the point of contention a brief look at the facts of the case is essential. In the present case the defendant was raped by the appellant in his field in the year 1994. The trial court found the accused guilty and sentenced him to 10 years of rigorous imprisonment with a fine of Rs. 2000/-, and on account of default of payment of fine, six months simple imprisonment. The high court upheld the conviction and sentence awarded by the trial court. Aggrieved by this order of the high court the present appeal was filed before the Supreme Court by way of a special leave petition. During the long pendency of trial, twenty years have passed for the case to reach the Supreme Court, both the appellant and the rape survivor got married (not to each other). It was also brought to the notice of the court that they have since then entered into a compromise the copy of which was also submitted to the bench. In the compromise duly signed by the rape survivor, it was stated that she does not want to proceed with the case against the accused and wants to close the case.

Taking into account the above mentioned factors the division bench examined whether the case falls under the proviso to section 376 of the IPC[2] to award a lesser sentence for "adequate and special reasons".

Even though the court upheld the conviction of the appellant it reduced the sentence to the period already undergone by the accused by holding that it was a fit case to invoke the proviso to section 376 of IPC for awarding lesser sentence. The court observed "in the present case, the incident took place 20 years ago and now with passage of time both victim and accused are married (not to each other) and they have entered into a compromise. Thus,

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[1]Special leave petition No. 1410 of 2013 (Arising out of Criminal Appeal No. 1275 of 1997), decided on 12.03.2013.

[2] Before the Criminal Law (Amendment) Act of 2013 proviso to section 376 allowed the judges to award lesser sentence of imprisonment for a term of less than seven years on account of "special and adequate reason".

an adequate and special reason for awarding a lesser sentence exists in terms of proviso to Section 376". While invoking the proviso to section 376 the bench relied upon the case of Baldev Singh v. State of Punjab[3]. The bench noticed that similar circumstances existed in that case and therefore the proviso is applicable.

Baldev Singh Case:

This was a case of gang rape in which the victim was raped by three men in 1997. By the time the case reached the Supreme Court fourteen years had passed. The division bench while upholding the conviction reduced the sentence to period already undergone in view of proviso to section 376. In a two page order the division bench noticed that "considering the incident happened in the year 1997 and that parties have themselves entered into a compromise" there exist special and adequate reasons to reduce the sentence under the proviso to section 376(2)(g) of the IPC.

However it is important to note that in *Shimbhu* v. *State of Haryana*[4], a three judge bench of the Supreme Court held that Baldev Singh case was not a precedent.

Shimbhu Case:

In 1995 the prosecutrix was raped by the two appellants. The trial court convicted and sentenced the Appellants to undergo rigorous imprisonment for ten years along with a fine of Rs. 5,000/- each, and in case of default, to further undergo RI for six months for the offence punishable Under Section 376(2)(g) read with Section 34 of Indian Penal Code. They were also sentenced to undergo rigorous imprisonment for three years along with a fine of Rs. 1,000/- each, in default, to further undergo rigorous imprisonment for two months for the offence punishable under Section 366 read with Section 34 of Indian Penal Code. The High Court dismissed their appeal and upheld the conviction and sentence as given by the trial court. Aggrieved they appealed to the Supreme Court.

One of the main argument that was presented before the court was that incident had occurred fourteen years ago and since then both the appellants and the prosecutrix have moved on with their lives. They also contended that the rapists and the survivor had reached a settlement and therefore this was a fit case for the court to apply the proviso and reduce their sentence since adequate and special reasons exist.

The court while deciding the case discussed the importance that sentencing plays in a criminal justice system. The bench observed that while ample discretion has been provided to the judges in India this discretion can never be unfettered. Therefore "it is a fundamental rule of construction that a proviso must be considered in relation to the main provision to which it stands as a proviso, particularly, in such penal provisions."

In context of Baldev Singh case the court held "*In Baldev Singh and Others* v. *State of Punjab*, though courts below awarded a sentence of ten years, taking note of the facts that the occurrence was 14years old, the appellants therein had undergone about 3 1/2 years of imprisonment, the prosecutrix and the appellants married (not to each other) and entered into a compromise, this Court, while considering peculiar circumstances, reduced the sentence to

[3] (2011) 13 SCC 705.
[4] AIR 2014 SC 739.

the period already undergone, but enhanced the fine from Rs. 1,000/- to Rs. 50,000/-. In the light of series of decisions, taking contrary view, we hold that the said decision in **Baldev Singh cannot be cited as a precedent and it should be confined to that case**"

Oversights in the judgment:

In the Ravindra Case as was in the Baldev Singh Case the division bench of the Supreme Court made serious errors while deciding to apply the proviso to section 376. In both these cases the reasons given for applying the proviso are same; long pendency in trial, compromise reached between the parties and the marriage of parties.

Firstly, the court has overlooked that offence under section 376 is a non-compoundable offense. In fact rape is considered such a serious offense that there is no provision for plea bargaining in such cases. Rape is a crime against society where the prosecution is conducted by the state in such cases any compromise that the defense reaches with the purported victim is meaningless. In a country like India where the societal mindset is patriarchal and often the rape survivor is blamed for the crime how can the judiciary ensure that the rape survivor has entered the compromise of her own will and not out of society and family pressure. Cases have been reported where the families of the rape survivors to save the "family honor" are even willing to marry off their daughters to their rapists. By recognizing such compromises and citing them as adequate reason for reducing the sentences the court is unwittingly allowing and encouraging the harassment of victim at the hands of accused and their families to reach a settlement.

Secondly, the court has stated that the long pendency of the trial also constitutes as an "adequate and special reason". But the court failed to notice that this point has already been discussed and decided upon by a three judge bench of the Supreme Court in 2000. In *Kamal Kishore* v. *State of H.P.*[5] the court concluded that the fact that the occurrence took place ten years ago and that the victim and the accused have settled in life is no special reason for giving a reduced sentence. The court stated "The expression "adequate and special reasons" indicates that it is not enough to have special reasons, or adequate reasons disjunctively. There should be a conjunction of both for enabling the court to invoke the discretion. Reasons which are general or common in many cases cannot be regarded as special reasons. Such reasons can be noticed in many other cases and hence they cannot be regarded as special reasons."

Unfortunately long pendency of trials is a normal occurrence in India. In many instances the case gets delayed due to the strategy and tricks of the defense lawyers.[6] Before reducing the sentence on account of delay at least it should be found out what caused the delay. Reducing the sentence due to the delay caused by defense lawyers is unfair to the victim. Also victim's

[5] (2000) 4 SCC 502

[6] The Law Commission of India in its Report No. 239 titled Expeditious Investigation and Trial of Criminal Cases against Influential Public Personalities has detailed the reasons for delay in criminal trial. The top reasons given by the commission are: absence of some or all accused at the stage of framing charges and trial; advocate appearing for the accused seeking adjournments without adequate justification mainly to delay the trial or to give handle to the accused party to win over the witnesses; Trial Judges not putting in place effective case management measures such as fixing up proper time-schedules and ensuring continuity in trial and dealing with the advocates with firmness and tact.

subsequent marriage and settling down while the case is pending should not be regarded as an "adequate and reason" to invoke the proviso. When the cases go on for decades due to judicial and administrative logjam it is not fair to expect the victim to not find closure and try to move on in her life. By reducing the sentence because she has moved on is a very discouraging trend which seems to signify that severity of punishment to the convict depends upon how she has (not) progressed in life.

Doctrine of Stare decisis:

C. K. Allen has described that doctrine of precedent is the 'life-blood of every legal system'. The *Black's Law Dictionary* translates the phrase of stare decisis 'To adhere to precedents, and not to unsettle things which are established.' A *precedent* in common law parlance means a previously decided case which establishes a rule or principle that may be utilized by a court or a judicial body in deciding cases that are similar in facts or issues. According to the Dias "a precedent is a previous instance or case which furnishes an example or rule for subsequent conduct, and a pattern upon which subsequent conduct is based."[7]

As per the doctrine of stare decisis the judgments of larger bench are authoritative precedents for the lower bench. Courts lower in the hierarchy follow and honor the findings of law made by a court higher in the hierarchy. This doctrine requires subsequent courts to abide by the decisions of prior courts, whenever similar of identical questions of law as were decided by the prior courts arise before them.

However in this case the court has relied upon that division bench judgment whose value as a precedent has already been discarded by a subsequent three judge bench of the court. Not only did they ignore the latest judgment of the court on this subject matter but they also ignored previous decisions of larger bench on the same matter with similar facts and arguments.[8] Due to this want of care and ignorance of binding precedent this case is now on the long list of *per incuriam* judgments given by the Supreme Court.

Conclusion

Sentencing is the most crucial aspect of criminal justice system. In India enough discretion has been provided to the judges to award appropriate sentences. It recognizes that every case is unique and that no two offences are committed in exactly the same set of circumstances. The existence of a broad sentencing discretion allows each case to be judged on its own facts. The discretion which the law commits to the sentencing judges is of vital importance to the administration of justice.[9] However while exercising this discretion the judges are expected to apply their mind in each and every individual case. Thus courts must exercise their discretion in deciding the type and length of sentence to be imposed within the range provided under the law.[10]

[7] DIAS, JURISPRUDENCE, (2d ed.)

[8] In *Shimbhu* v. *State of Haryana* the bench has discussed a number of cases in which the court discussed the applicability of proviso to section 376. It was while discussing these various previous cases that the court held that Baldev Singh should not be followed as a precedent.

[9] *Lowndes* v. *The Queen* (1999) 195 CLR 665.

[10] V.R Dinkar, *Structuring Judicial Discretion in Sentencing by Guideline Judgment*, 26 ALR 138(2002).

In *State of M.P* v. *Balaram* the court noticed that "the punishment prescribed in the IPC reflects the legislative recognition of social needs, the gravity of the concerned offence, its impact on the society and what the legislature consider as a suitable punishment. It is necessary for the courts to imbibe that legislative wisdom and to respect it."

The court in this judgment has ignored the amendments made to the IPC by the Criminal Law (Amendment) Act of 2013, which not only deleted the proviso which gave the discretion to the court to reduce the minimum sentence by giving adequate and special reasons but has also enhanced the minimum sentence to twenty years, which may extend to life which shall mean imprisonment for the remainder of that person's natural life and with fine.

The court rightly observed in Shimbhu Case the trend of reducing sentences on such grounds by the judiciary exhibits stark insensitivity to the need for proportionate punishments to be imposed in such cases.