

In the Court of Ms. Kaveri Baweja
Additional Sessions Judge- Special FTC – 2 (Central)
Tis Hazari Courts: Delhi

Sessions Case No. : 02/2015

Unique ID No. : 02401R0673232014

State **versus** **Shiv Kumar Yadav**
S/o Sh.Ram Nath Yadav
R/o VPO Ramanagar, PS Mainpuri,
U.P.
Temporary Address:
B-18, Chanderpuri, Dholipyau,
Mathura, U.P.

Case arising out of:

FIR No. **:** **1291/2014**
Police Station **:** **Sarai Rohilla**
Under Section **:** **376(2)(m)/323/366/506 IPC**

Judgment pronounced on **: 20.10.2015**

ORDER ON SENTENCE

1. Accused *Shiv Kumar Yadav S/o Sh.Ram Nath Yadav* has been convicted for the offences under Sections 323/366/376[2][m]/506 IPC vide judgment dated 20.10.2015.
2. Detailed arguments have been advanced by learned defence

counsel as well as learned Addl. PP for the State on the point of sentence.

3. Whereas, on the one hand Prosecution prays for the maximum prescribed punishment to be awarded to the convict, the defence on the other hand, prays for a lenient view.

4. It is submitted by learned Addl. PP that convict Shiv Kumar Yadav has committed the heinous crime of rape while endangering the life of Prosecutrix. It is a grave crime, not only against the rape survivor but also against society at large and the convict deserves no leniency.

5. It is further submitted that by extending threat of inserting iron 'Saria' inside her body, the Accused also criminally intimidated the Prosecutrix by threatening to cause grievous harm to her and thereby committed offence under Section 506 Part II IPC, besides committing offence under Sections 366/323 IPC.

6. In the course of his submissions, learned Addl. PP highlighted the previous criminal involvements of the convict in the following cases:

a) Case FIR No.196/01 under Section 457/380/511 IPC, PS Itava, Mainpuri.

b) Case FIR No.189/03 under Section 354/323 IPC PS PS Itava, Mainpuri.

c) Case FIR No.232/03 under Section 3 UP Gunda Act PS Itava, Mainpuri.

d) Case FIR No.113/06 under Section 3/25 Arms Act PS Kishni, Mainpuri.

e) Case FIR No.110/06 under Section 356 IPC PS Kishni, Mainpuri.

f) Case FIR No.128/13 under Section 376/394 IPC PS Itava, Mainpuri.

g) Case FIR No.255/09 under Section 3 UP Gunda Act PS Itava, Mainpuri.

7. It is further submitted that the above named convict was also involved in the case FIR No.521/11 of PS Mehrauli registered under Section 376/506 IPC in which he admittedly stands acquitted.

8. Learned Addl. PP submits that despite his involvements in numerous cases including under Section 354 and 376 IPC, the convict yet again committed the offence for which he has been convicted in the present case and it is apparent that there is no room for his reformation. Accordingly, learned Addl. PP prays for the maximum prescribed punishment to be awarded to the convict.

9. On the other hand, learned defence counsel submits that the convict deserves leniency considering the fact that he has a family to support, which comprises of his old aged parents, wife and three minor children. Though his father is a retired teacher of a government school and his getting pension, however the remaining family members are solely dependent upon the earnings of the convict Shiv Kumar Yadav.

10. It is submitted that the father of the convict has already lost two of his sons and his other son is mentally challenged, who is also dependent upon the father of the convict.

11. Learned defence counsel further submitted that violence used by the accused in the present case was minimal and only scratch marks were found on the neck of the Prosecutrix and thus the convict be punished

only for the minimum period i.e. 10 years, and not to life imprisonment as provided under Section 376 [2] [m] IPC.

12. I have considered the rival submissions in the entire facts and circumstances of the case.

13. In its recent pronouncement titled as *State of Saurabh Bakshi, (2015) 5 SCC 182*, the Hon'ble Apex Court quoted the eminent thinker and author Sophocles as under :

“Laws can never be enforced unless fear supports them.”

Hon'ble Apex Court further observed that:

“Though the aforesaid statement was made centuries back, it has its pertinence, in a way, with the enormous vigour, in today's society. It is the duty of every right-thinking citizen to show veneration to law so that an orderly, civilized and peaceful society emerges. It has to be borne in mind that law is averse to any kind of chaos. It is totally intolerant of anarchy. If anyone defies law, he has to face the wrath of law, depending on the concept of proportionality that the law recognizes.”

14. In yet another judgment titled as *State of Punjab vs. Bawa*.

Singh, (2015) 3 SCC 441, the Hon'ble Apex Court laid down that:

“16. ...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. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.”

15. In this case **State of Punjab vs. Bawa Singh** (supra), the Hon'ble Apex Court relied upon the judgment of **Dhananjoy Chatterjee vs. State of W.B. (1994) 2 SCC 220**, where it had observed:

“...In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime, the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals.

Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering the imposition of appropriate punishment.”

16. Hon'ble Apex Court also relied upon the judgment of *Ahmed, Hussein Vali Mohammed Saiyed vs. State of Gujarat, 7 (2009) 7 SCC 254*, where 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 (sic break the) law by imposing appropriate sentence.”

17. It is thus settled law of the land that punishment needs to be proportionate to the nature and magnitude of the offence. It is essential for the court to ensure that adequate and just punishment, befitting the crime, is imposed upon the convict, keeping in view the atrocity of the crime, the manner in which it was committed and the defenceless state of the victim.

18. There can be no doubt that the convict in the present case, namely Shiv Kumar Yadav, committed the above stated heinous offence, not

only against the rape survivor in this case, but also against the society at large. He endangered the life of the victim while committing rape upon her and his act demands imposition of most severe punishment so that it acts as a deterrent and rebuilds the public confidence in the efficacy of law. The sentence in this case, must therefore, serve as a step towards the effort to put an end to commission of such crimes against the women in our country. Every women needs to feel secure in her motherland, which necessarily demands dealing with such offenders with an iron hand.

19. In the light of the above observations and keeping in view the totality of the facts and circumstances of the case, I am therefore of the opinion that the interest of justice would be served, if convict ***Shiv Kumar Yadav S/o Sh.Ram Nath Yadav*** is sentenced as under:

[i] For offence punishable under Section 376 [2] [m] IPC, the above named convict is sentenced to undergo Rigorous Imprisonment for life, which shall mean imprisonment for the remainder of convict's natural life, in addition to payment of fine of Rs. 10,000/-, in default whereof, he shall undergo Simple Imprisonment for 02 years.

[ii] For offence punishable under Section 366 IPC, the above named convict is sentenced to undergo Rigorous Imprisonment for 10 years, in addition to payment of fine of Rs. 5000/-, in default whereof, he shall undergo Simple Imprisonment for 02 years.

[iii] For offence punishable under Section 506 IPC, the above named convict is sentenced to undergo Rigorous Imprisonment for 07 years, in

addition to payment of fine of Rs. 5000/-, in default whereof, he shall undergo Simple Imprisonment for 02 months.

[iv] For offence punishable under Section 323 IPC, the above named convict is sentenced to undergo Rigorous Imprisonment for 01 year, in addition to payment of fine of Rs. 1000/-, in default whereof, he shall undergo Simple Imprisonment for 01 month.

20. It is directed that all the sentences shall run concurrently. Needless to add that the convict shall also be entitled to the benefit of Section 428 Cr.PC.

21. It is also clarified that the fine paid by the accused, as aforesaid shall be released to the victim by way of compensation.

22. In addition, I also recommend payment of adequate compensation to the victim in the present case, as per provisions of Section 357A Cr.PC. The quantum of compensation to be awarded under Victim Compensation Scheme shall be decided by Delhi Legal Aid Services in terms of provision under Section 357A Cr.PC.

23. I am also conscious of the fact that the family of the convict, about whom he did not give a single thought while committing the offence in question, would suffer greatly due to his acts. Though monetary relief cannot be an adequate compensation for the helpless and innocent family members of the convict, yet having considered their plight in view of the offence committed by the convict and the sentences imposed upon him as a consequence thereof, I deem it appropriate to direct the DLSA to consider and

make necessary provisions for care and maintenance of the old aged parents, wife and minor children of the convict.

24. Copy of the judgment has already been supplied to learned counsel for Accused on 23.10.2015. Let copy of order on sentence be supplied to above named convict free of cost.

25. It is also directed that a copy of the judgment and order on sentence be also sent to Secretary, DLSA (Central District) for necessary action.

26. Let the file be consigned to Record Room.

**Announced in the open Court
on 03.11.2015**

**(Kaveri Baweja)
Additional Sessions Judge-SFTC-2 (Central)
Tis Hazari Courts: Delhi.**