



SUB-MINIMUM SENTENCE IN A RAPE CASE

THE SUPREME Court in *Premchand V. State of Haryana*,¹ speaking through Justices B.C. Ray and Ratnavel Pandian, while upholding the conviction of the appellants for the offence of rape, held that a sub-minimum sentence of five years imprisonment would suffice in view of the peculiar facts and circumstances of the case and *conduct of the victim girl*.²

The court's reference as to the conduct of the victim girl in its judgment had evoked furious debate among academicians³ and public⁴ at large. Subsequently, some public spirited citizens,⁵ voluntary organisations⁶ and the State of Haryana filed review petitions⁷ before the court seeking review of the judgment and to pass such other or further order(s) as may be necessary in the circumstances of the case.⁸

The court while addressing as to the scope of reviewing a judgment in a criminal case in the light of the relevant articles⁹ of the Constitution and Supreme Court Rules¹⁰ and decisional aspects,¹¹ dismissed the petition, as there is no error apparent on the facts of the record.

Even after dismissing the review petitions, the court preferred to give its observations because of elaborate submissions made by the petitioners. The court went on record by stating that it used the expression *conduct* only in its lexicographical sense to indicate how Suman Rani conducted herself in not complaining for about five days regarding the occurrence of offence and certainly not with reference to the character.¹²

Undoubtedly, the court's observation had unmasked the whole controversial issue and reaffirmed the fundamental canon of rape law *i.e.*, the character or reputation of the victim can never serve either as a mitigating or extenuating circumstance for ascertaining the guilt and in the sentencing process as well. Indeed, it is a welcome gesture by the apex body of judiciary. However, one relevant but unanswered question in this regard is

1. 1989 Supp. (1) S.C.C. 286; 1989 S.C.C. (Cri.) 418.

2. Emphasis added.

3. For instance, see, S.V. Joga Rao, "Premchand v. State of Haryana. An Epitome of Soft-Justice Syndrome?" (1989) 1 *N.L.S.J.* 181.

4. For instance, see, Purewal Jasjit, "What Price Virtue?", *The Indian Express*, 12th February 1989.

5. Rajinder Sachar appeared on behalf of People's union for civil liberties.

6. *Mahila Sanyukt Morcha*,

7. (1990) 1 S.C.C. 249.

8. *Id.* at 250.

9. Articles 137 and 145.

10. Order XL, Rule 1 of the Supreme Court Rules.

11. *P.N. Eswar Iyer v. Registrar, Supreme Court of India*, (1980) 4 S.C.C. 680 and *Chandra Kanta v. Sheikh Habib*, (1975) 1 S.C.C. 674.

12. *Supra* note 7 at 251-252.



whether the established facts and circumstances of the case do warrant the imposition of sub-minimum sentence in the light of proviso to section 376 (2)¹³ of the Indian Penal Code.

In the present case, the court relied upon “the peculiar facts and circumstances of the case coupled with the conduct of the victim in not disclosing the matter to the sub-inspector for about five days” and thereby invoked the sub-minimum sentence under this section.

The object of minimum sentence implies that “more severe is the punishment, the greater is the deterrent effect.” However, the law makers in their wisdom felt the necessity of a provision which gives scope to the judiciary to award less than the minimum sentence. The discretion under the section must be exercised in a manner so as to meet the ends of justice. Accordingly, while invoking section 376(2), proviso, the court is under an obligation to record adequate and special reasons for granting less than the minimum sentence.

In *Premchand* after having examined the court’s observation in the review petition,¹⁴ the following questions crop up in a reader’s mind:

- (a) Whether peculiar facts and circumstances of the case and the conduct of suman Rani in not disclosing the matter to the sub-inspector of police for about, five days, as perceived by the court, can be construed as adequate and special reasons. If so, is it not incumbent on the part of the court to substantiate what are those peculiarities in the case so as to mitigate the sentence to a sub-minimum punishment.
- (b) When all the courts from the highest to the lowest *i.e.*, from Supreme Court to the sessions court have consistently found the accused guilty of the offence of rape beyond all reasonable doubt, need any weightage be attached to the victim’s non-complaining about the offence for about five days as a special and adequate reason.
- (c) Even while assuming the above peculiar facts and circumstances and the victim’s behaviour as special and adequate reasons for mitigation of the sentence, does it call for such a huge discount in the punishment.

Even after the dismissal of the review petitions in question, in the context of above unanswered questions, undoubtedly *Premchand* still warrants *desiderate inquisition*.

S.V. Joga Rao*

13. The Proviso reads as, “Provided that the court may for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term less than ten years.”

14. *Supra* note 7.

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