Research Paper Law

Case study on possibilities of settlement or compromise in rape cases

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ABSTRACT

Rape is a heinous crime. It is a crime against human dignity, a crime against society, a crime that reduces a man to an animal. To view such an offence once it is proved, lightly, is itself an affront to society as well as to the dignity of a woman. The punishments prescribed by the Penal Code reflect the gravity of the concerned offence and the legislative recognition of the social needs. In this context, this paper seeks to examine through judicial decisions, the desirability of enforcing settlement or compromise in such cases.

INTRODUCTION

Rape is the most common crime against women in India. According to the National Crime Records Bureau (hereinafter called NCRB) 2013 annual report, 24,923 rape cases were reported across India in 2012. Out of these, 24,470 were committed by someone known to the victim (98% of the cases). The number of reported rape cases in India has been steadily rising over the past decade. According to NCRB latest 2014 report, there were 33,764 victims of rape out of 33,707 reported rape cases in the country during the year 2013. 13.1% (4,427 out of 33,764) of the total victims of rape were girls under 14 years of age, while 26.3% (8,877 victims out of 33,764) were teenage girls (14–18 years). 46.1% (15,556 victims) were women in the age-group 18–30 years. However, 13.8% (4,648 victims) victims were in the age-group of 30–50 years while 0.7% (256 victims) was over 50 years of age. Such a spurt in the incidents of rape has increasing tendency to put such cases to the test of alternate dispute resolution mechanism in the name of speedy disposal of cases which in turn may have wide repercussions upon the victim.

DEFINITION OF RAPE

Rape is a type of sexual assault usually involving sexual intercourse or other forms of sexual penetration perpetrated against a person without that person's consent. The act may be carried out by physical force, coercion, abuse of authority or against a person who is incapable of valid consent, such as one who is unconscious, incapacitated, or below the age of legal consent. The term rape is sometimes used interchangeably with the term sexual assault. The term rape as defined in Indian Penal Code is reproduced as under:

Section 375. A man is said to commit "rape" if he-—

a. penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or
b. inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or
c. manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any ~ of body of such woman or makes her to do so with him or any other person; or
d. applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions:—

First—Against her will.

Secondly—Without her consent.

Thirdly—With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly—With her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly—With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome Substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly—With or without her consent, when she is under eighteen years of age.

Seventhly—When she is unable to communicate consent.

Explanation I—For the purposes of this section, "vagina" shall also include labia majora.

Explanation 2—Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.

Exception I.—A medical procedure or intervention shall not constitute rape.

Exception 2.—Sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape.

SETTLEMENT IN RAPE CASES

After the famous Delhi gang rape case (Nirbhaya's case), rape laws in India have been extensively amended making these provisions more stringent. One of the remarkable amendments is deletion of proviso from Section 376 (1) which provided discretionary powers to the court to reduce the prescribed sentence of imprisonment for adequate and special reasons. It implies that the legislature has deliberately taken away the hitherto vested power of the court to use discretionary powers in imposing sentence in rape cases. In this context an important question arises "Is there any possibility of reduction in sentence in a proved case of rape on the basis of com-

promise or settlement between the parties"? The judicial opinion seems to be divided on this important question.

In *Kulwinder Singh* v. *State of Punjab*, a large bench of Punjab & Haryana High Court has held that the High Court has power under Section 482 Criminal Procedure Code to allow the compounding of non-compoundable offence and quash the prosecution where the court felt that the same was required to prevent the abuse of the process of any court or to otherwise secure the ends of justice. Only caution that may need to be kept in view by the court can be noticed in para 32 of the judgment, which is :-

"The power under Section 482 of the Criminal Procedure Code has no limits. However, the High Court will exercise it sparingly and with utmost care and caution. The exercise of power has to be with circumspection and restraint. The Court is a vital and an extra-ordinary effective instrument to maintain and control social order. The Courts play role of paramount importance in achieving peace, harmony and ever-lasting congeniality in society. Resolution of a dispute by way of a compromise between two warring groups, therefore, should attract the immediate and prompt attention of a Court which should endeavour to give full effect to the same unless such compromise is abhorrent to lawful composition of the society or would promote savagery."

Acting on this analogy, the same Court in another rape case *Surinder Kamboj* v. *State of Punjab* quashed proceedings against the alleged accused on the ground of non trustworthy behaviour of the prosecutrix. It was observed by the Hon'ble Court, "There is nothing to suggest that compromise in this case is abhorrent to lawful composition of the society or would promote savagery. Considering the facts as noticed in detail, it will be futile to allow this prosecution to continue and if allowed to continue, it may lead to abuse of the process of Court".

Giving a word of caution in exercising its discretion by the courts, the Apex Court in *Shimbhu* v. *State of Haryana* has held that the discretion vested in the judges to levy appropriate sentence is not unfettered in nature rather various factors like the nature, gravity, the manner and the circumstances of the commission of the offence, the personality of the accused, character, aggravating as well as mitigating circumstances, antecedents etc., cumulatively constitute as the yardsticks for the judges to decide on the sentence to be imposed. Indisputably, the sentencing Courts shall consider all relevant facts and circumstances bearing on the question of sentence and impose a sentence commensurate with the crime committed. A three Judge Bench in this case ruled thus:

"Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and it is an offence against the society and is not a matter to be left for the parties to compromise and settle."

The final word in this context has been given by the Supreme Court in its verdict delivered on July 1, 2015 wherein it has specifically ruled that rapists have no right to seek lesser punishment citing marriage proposals or any other compromise with the victim. A Bench comprising Justices Dipak Mishra and Prafulla C Pant made the clarification in a rape case in which the trial court had awarded five years rigorous imprisonment, but the Madhya Pradesh High Court reduced it to the period of custody already undergone (about one year) by setting aside the conviction for rape under section 376 (2)(f) and making it an offence of attempt to rape under Section 354 of IPC. Remitting the case back to the High Court for re-appraisal of evidence and fresh decision, the Bench observed:

"We would like to clearly state that in a case of rape or attempt of rape, the conception of compromise under no circumstances can really be thought of. These are crimes against the body of a woman which is her own temple. These are offences which suffocate the breath of life and sully the reputation. And reputation, needless to emphasize, is the richest jewel one can conceive of in life. No one would allow it to be extinguished."

Holding that dignity of woman is "sacrosanct", the apex court said "sometimes solace is given that the perpetrator of the crime has acceded to enter into wedlock with her which is nothing but putting pressure in an adroit manner. We say with emphasis that the Courts are to remain absolutely away from this subterfuge to adopt a soft approach to the case, for any kind of liberal approach has to be put in the compartment of spectacular error."

CONCLUSION

Rape is a heinous crime. It is a crime against human dignity, a crime against society, a crime that reduces a man to an animal. To view such an offence once it is proved, lightly, is itself an affront to society as well as to the dignity of a woman. The punishments prescribed by the Penal Code reflect the gravity of the concerned offence and the legislative recognition of the social needs. It is necessary for the courts to imbibe that legislative wisdom and to respect it. Further, a compromise entered into between the parties cannot be construed as a leading factor based on which lesser punishment can be awarded. Rape is a non-compoundable offence and as it is an offence against the society also, it cannot be left for the parties to compromise and settle. In all such cases, the Court cannot always be assured that the consent given by the victim in compromising the case is a genuine consent. There is very high probability that she might have been pressurized by the convicts, or it may be that the trauma undergone by her all the years might have compelled her to opt for a compromise. In fact, if such proposition is accepted it will put additional burden upon the victim. The accused may use all his influence to pressurize her for a compromise. So, in the interest of justice and to avoid unnecessary pressure to the victim, it would not be safe in considering the compromise arrived at between the parties in rape cases to be a ground for the Court to exercise its discretionary powers to levy sentence and further it would not be in the interest of justice, in such cases, to enforce mediation or settlement between the parties.

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