

PHUL SINGH

v.

STATE OF HARYANA

September 10, 1979.

[V. R. KRISHNA IYER AND P. N. SHINGHAL, JJ.]

Criminal Procedure Code—Sentence—When can be reduced.

The appellant who was 22 committed rape on the wife of his cousin who was a next door neighbour in broad-day-light. The Sessions Judge found the appellant guilty of the offence of rape and sentenced him to four years R.I. On appeal, the High Court affirmed it. It was urged that the appellant was in his early twenties and that there were signs of repentance. The fact remains that the two families being close cousins are ready to take a lenient view of the situation which of course does not bind the court in any manner. Partly accepting the appeal, the Court

HELD : The appellant is not a 'habitual' and has no vicious antecedents except this fugitive, randy molestation which is bad enough in a society where women are often socially weak and sexually victimised. It may be marginally extenuatory to mention that modern Indian conditions are drifting into societal permissiveness on the carnal front promoting proneness to pornos in life, what with libidinous 'brahmacharis', womanising public men, lascivious dating and mating by unwed students, sex explosion in celluloid and book stalls and corrupt morals teaching a new 'high' in high places. [591 F-H]

The appellant is a youth barely 22 with no criminal antecedents save this offence. He has a young wife and a farm to look after. Given correctional courses through meditational therapy and other measures, his erotic aberration may wither away. A man like the appellant has a reasonable prospect of shaping into a balanced person, given propitious social environs, curative and congenial work and techniques of internal stress release or of reformatory self expression. In this background the court regarded a four year term of rigorous imprisonment more hardening than habilitative, even though the court deplored the sex violence the young appellant had inflicted on his cousin's wife snatching a tricky opportunity. [592 B-D]

A hyper sexed homo sapiens cannot be habilitated by humiliating or harsh treatment. In prison treatment must, therefore, be geared to psychic healing, release of stresses, restoration of self-respect and cultural normalisation, apart from training to adapt oneself to the life outside. The functional failure of our pachydermic prison projects, exacerbated by its tension and trauma on the one hand and the reverse ethos inside on the other, deserves judicial cognisance. [591 A, D-E]

The current efforts of Governments, Central and State, to reform jail regimen, it was hoped, will give a better deal to the caged community. For these reasons, in this case, it is desirable to superadd to the sentence of imprisonment a few directives to ensure that the carceral period reforms the convict. A set of positive prescriptions will ensure appellant turning a new leaf. One major method in securing this goal is to keep alive the family ties of the person in

A prison so that the appellant may not deteriorate into a non-person. Within the limits of the Prison Act and Rules thereunder, the State Government or the Inspector General of Prisons will ensure that on parole, furlough or orders, the young appellant turns a new leaf of normal life. [591 E-F, 592 F]

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 503 of 1979.

Appeal by special leave from the Judgment and Order, dated 3-5-79 of the Punjab & Haryana High Court in CrI. A. No. 166/76.

Harbans Singh Marwah for the Appellant.

R. N. Sachthey for the Respondent.

C The Judgment of the Court was delivered by

D KRISHNA IYER, J. A philanderer of 22, appellant Phul Singh, overpowered by sex stress in excess, hoisted himself into his cousin's house next door, and in broad day-light, overpowered the temptingly lonely prosecutrix of twenty-four, Pushpa, raped her in hurried heat and made an urgent exit having fulfilled his erotic sortie. The screaming victim complained to her mother working in the field; thereafter a first information, prosecution and conviction ensued, a sentence of 4 years R.I. was imposed by the Sessions Court, and the High Court affirmed it in appeal. The broad facts bearing on the instant act of carnal assault look too probable for pettifogging legalistics about poor corroboration, consent and false implication to devalue their credibi-

E lity. The culpability is beyond doubt and we uphold the conviction.

Ordinarily, rape is violation, with violence, of the private person of a woman—an outrage by all canons. In our conditions of escalating sex brutality a four-year term for rape is not excessive. But here, the offender is in his early twenties and signs of repentance are seen. The victim and her parents have forgiven the molester who is a first cousin, says counsel. An affidavit from the father-in-law of the woman has been filed and, if needed, counsel is ready to produce the victim's statement that she has forgiven the criminal. While it is possible that the accused may procure such condonation from an unwilling victim, the fact remains that the two families being close cousins are ready to take a lenient view of the situation. Of course, this does not bind the Court in any manner. Therefore, taking an overall view of the familial and the criminal factors involved, we reduce the imprisonment from 4 years to 2 years R.I.

H We must, however, direct our attention in a different penological direction. For sentencing efficacy in cases of lust-loaded criminality cannot be simplistically assumed by award of long incarceration, for,

often that remedy aggravates the malady. Punitive therapeutics must be more enlightened than the blind strategy of prison severity where all that happens is sex starvation, brutalisation, criminal companionship, versatile vices through bio-environmental pollution, dehumanised cell drill under 'zoological' conditions and emergence, at the time of release, of an embittered enemy of society and its values with an indelible stigma as convict stamped on him—a potentially good person 'successfully' processed into a hardened delinquent, thanks to the penal illiteracy of the Prison System. The Court must restore the man.

A hyper-sexed homo sapiens cannot be habilitated by humiliating or harsh treatment, but that is precisely the perversion of unreformed Jail Justice which some criminologists have described as the crime of punishment. This Court has held, in *Sunil Batra's* case and later that, constitutionally viewed, punitive deprivation of personal freedom must be goal-oriented and humanely restorative, apart from being deterrent. The insulated years behind the insensitive bars must possess a hospital setting if correction is a social purpose, as Gandhiji often insisted. In-prison treatment must, therefore, be geared to psychic healing, release of stresses, restoration of self-respect and cultural normalisation, apart from training to adapt oneself to the life outside. The functional failure of our pachydermic prison projects, exacerbated by its tension and trauma on the one hand and the reverse ethos inside on the other, deserves judicial cognizance. The current efforts of Governments, Central and State, to reform jail regimen, we hope, will give a better deal to the caged community. For these reasons, in this case, we deem it desirable to superadd to the sentence of imprisonment a few directives to ensure that the carceral period reforms the convict.

The appellant is not a 'habitual' and has no vicious antecedents except this fugitive, randy molestation which is bad enough in a society where women are often socially weak and sexually victimised. It may be marginally extenuatory to mention that modern Indian conditions are drifting into societal permissiveness on the carnal front promoting proneness to pornos in life, what with libidinous 'brahmacharis', womanising public men, lascivious dating and mating by unwed students, sex explosion in celluloid and book stalls and corrupt morals reaching a new 'high' in high places. The unconvicted deviants in society are demoralisingly large and the State has, as yet, no convincing national policy on female flesh and sex sanity. We hope, at this belated hour, the Central Government will defend Indian Womanhood by stamping out voluptuous meat markets by merciless criminal action.

A. Isolated prosecutions and annual suppression rhetoric will stultify the law where the vice is widespread and the larger felons are often let loose.

This reflection apart, we must, as part of the sentencing package, design a curative course for this prisoner to rid him of his aphrodisiac overflow and restore him into safe citizenship.

B

He is a youth barely 22 with no criminal antecedents save this offence. He has a young wife and a farm to look after. Given correctional courses through meditational therapy and other measures, his erotic aberration may wither away. A man like the appellant has a reasonable prospect of shaping into a balanced person, given propitious social environs, curative and congenial work and techniques of internal stress release or of reformatory self expression.

C

In this background, we regard a four year term of rigorous imprisonment more hardening than habilitative, even though we deplore the sex violence the young appellant has inflicted on his cousin's wife snatching a tricky opportunity. Even so, the incriminating company of lifers and others for long may be counter-productive, and in this perspective, we blend deterrence with correction and reduce the sentence to rigorous imprisonment for two years. We wish to emphasise that the special circumstances of this case constrain us to relent a little on principle because the restorative approach to sentencing has been jettisoned by the courts below.

D

The task is not done by a negative reduction in the prison term. What is more important is a set of positive prescriptions which will ensure his turning a new leaf. One major method in securing this goal is to keep alive the family tie of the person in prison so that he may not deteriorate into a non-person. Within limits of the Prison Act and Rules thereunder, the State Government or the Inspector General of Prisons will ensure that on parole, furlough or orders, the young appellant turns a new leaf of normal life.

E

N.K.A.

Appeal allowed in part.