CASE NO.:
Appeal (crl.) 1277 of 2005

PETITIONER:
State of M.P.

RESPONDENT:
Bala @ Balaram

DATE OF JUDGMENT: 03/10/2005

BENCH:
P.K. BALASUBRAMANYAN

JUDGMENT:
JUDGMENT
(Arising out of Special Leave Petition (Crl.) No\005\005./2005)
(Crl. M.P. No. 6542)

P.K. BALASUBRAMANYAN, J.

I respectfully agree. My excuse for adding these few words is the perception that the awarding of inadequate punishments by courts is becoming disturbingly frequent.

2. The crime here is rape. It is a particularly heinous crime, a crime against society, a crime against human dignity, one that reduces a man to an animal. The penal statute has prescribed a maximum and a minimum punishment for an offence under Section 376 I.P.C. To view such an offence once it is proved, lightly, is itself an affront to society. Though the award of maximum punishment may depend on the circumstances of the case, the award of the minimum punishment, generally, is imperative. The provisos to Section 376(1) and 376(2) I.P.C. give the power to the court to award a sentence lesser than the minimum for adequate and special reasons. The power under the proviso is not to be used indiscriminately or routinely. It is to be used sparingly and only in cases where special facts and circumstances justify a reduction. The reasons must be relevant to the exercise of such discretion vested in the court. The reasons must be set out clearly and cogently. The mere existence of a discretion by itself does not justify its exercise. The long pendency of the criminal trial or the offer of the rapist to marry the victim are not relevant reasons. Nor is the age of the offender by itself an adequate reason.

3. The punishments prescribed by the Penal Code reflect the legislative recognition of the social needs, the gravity of the concerned offence, its impact on the society and what the legislature considers as a punishment suitable for the particular offence. It is necessary for the courts to imbibe that legislative wisdom and to respect it.

4. The rationale for advocating the award of a punishment commensurate with the gravity of the offence and its impact on society, is to ensure that a civilized society does not revert to the days of 'an eye for an eye and a tooth for a tooth'. Not awarding a just punishment might provoke the victim or its relatives to retaliate in kind and that is what exactly is sought to be prevented by the criminal justice system we have adopted.

5. Even in the time of Kautilya, the need for awarding just punishment was recognized. According to Kautilya, "whoever imposes severe punishment becomes repulsive to people, while he who awards mild punishment becomes contemptible. The ruler just with the rod is honoured. When deserved punishment is given, it endows the subjects with spiritual good, material well being and pleasures of the senses." (See Kautilyan Jurisprudence by V.K. Gupta under the head 'Nature and Scope of punishment'). This philosophy is woven into our statute and our jurisprudence and it is the duty of those who administer the law to bear this in mind.

6. This Court has on a number of occasions indicated that the punishment must fit the crime and that it is the duty of the court to impose a proper punishment depending on the degree of criminality and desirability for imposing such punishment. In Earabhadrappa Vs. State of Karnataka [(1983) 2 S.C.C. 330] this Court observed, " A sentence or pattern of sentence which fails to take due account of the gravity of the offence can seriously undermine respect for law. It is the duty of the court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment as a measure of social necessity as a means of deterring other potential offenders." In Rajendra Prasad Vs. State of Uttar Pradesh [(1979) 3 S.C.C. 646] Justice Sen stated, "Judges are entitled to hold their own views, but it is the bounden duty of the Court to impose a proper punishment, depending upon the degree of criminality and the desirability to impose such punishment as a measure of social necessity, as a means of deterring other potential offenders."

7. It is not necessary to multiply authorities. In a recent decision in State of M.P. Vs. Munna Choubey & Another [(2005) 2 S.C.C. 710], this question has again been dealt with. This Court observed:

"Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system."

8. It is true that reformation as a theory of punishment is in fashion but under the guise of applying such theory, courts cannot forget their duty to society and to the victim. The Court has to consider the plight of the victim in a case involving rape and the social stigma that may follow the victim to the grave and which in most cases, practically ruins all prospects of a normal life for the victim. Could a Court afford to forget these aspects while imposing a punishment on the aggressor? I think not. The Court has to do justice to the society and to the victim on the one hand and to the offender on the other. The proper balance must be taken to have been stuck by the legislature. Hence, the legislative wisdom reflected by the statute has to be

respected by the Court and the permitted departure therefrom made only for compelling and convincing reasons.