Bhaggi @ Bhagirath @ Naran vs The State Of Madhya Pradesh on 5 February, 2024

Author: C.T. Ravikumar

Bench: Rajesh Bindal, C.T. Ravikumar

2024 INSC 82 Report

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Special Leave Petition (Crl.) No.2888 of 2023

Bhaggi @ Bhagirath @ Naran

…Petiti

Versus

The State of Madhya Pradesh

…Responden

ORDER

1. The petitioner-convict seeks to assail the judgment dated 11.10.2018 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.5725 of 2018.

2. In troth, it is a common judgment in Criminal Reference No.6/2018 submitted by the Trial Court under Section 366 of the Code of Criminal Procedure, 1973 (Cr.PC) for confirmation of the conviction under Section 376 AB of the Indian Penal Code, 1860 (IPC) as amended by Act No.22 of 2018 and in Criminal Appeal No.5725 of 2018 filed by the petitioner-convict herein aggrieved by the conviction and sentence imposed against him for certain other offences under the IPC, as also against the conviction under 12:29:24 IST Reason:

> the Protection of Children from Sexual Offences Act, 2012 (for short, 'POCSO Act'). As per the impugned judgment, the capital punishment awarded for the conviction under Section 376 AB, IPC was not confirmed and it was commuted to imprisonment for life, which, going by the provisions thereunder, means imprisonment for the remainder of the convict's natural life.

3. Heard the learned counsel appearing for the petitioner- convict and the learned Additional Advocate General for the State of Madhya Pradesh.

4. It is to be noted that in the instant case, after condoning the delay, limited notice on the question of sentence alone was issued on 24.02.2023. Since we do not find any reason to enlarge the scope, the parties confined their arguments within the permissible scope.

5. We are of the considered view that for considering the aforesaid question it is apposite to refer succinctly to the facts of the case. On 21.05.2018, the complainant Munni Bai (PW-8) who is the grandmother of the victim lodged a report that her granddaughter X, who was examined as PW-1, aged 7 years was kidnapped and raped by the petitioner-convict. After the trial, the Trial Court found that the prosecution had succeeded in bringing damning evidence to establish that the victim, aged 7 years was taken to Rajaram Baba Thakur Mandir by the petitioner-convict and there upon making her and himself nude he committed rape. Upon her screaming, the prosecution witnesses who went there found the convict, belonging to the same village, laying over and violating the victim and at their sight running away from there. The oral testimonies of the prosecution witnesses (PWs-1, 2 and 14) on the culpability of the convict got credence from the medical evidence unerringly pointing to his guilt. The consequential conviction inter alia, under Section 376 AB, IPC as amended by Act No.22 of 2018, originally, brought him capital sentence. Though, the petitioner was also convicted under Section 376 (2) (i) and under Sections 3/4, Sections 5(d)/6 of the POCSO Act taking note of his conviction under Section 376 AB, IPC, no separate sentences were awarded for the aforesaid offences by the trial Court. In view of the commutation of capital punishment awarded for the conviction under Section 376 AB, IPC it is also a matter to be considered if we interfere with the sentence of life imprisonment for the offence under Section 376 AB, IPC as amended under the Act No.22 of 2018.

6. As noticed hereinbefore, on appreciating the evidence on record and coming to the conclusion that the guilt of the petitioner under Section 376 AB, IPC has been conclusively proved, but capital punishment imposed therefor, is to be commuted while confirming the conviction under Section 376 AB, IPC. The High Court commuted it to imprisonment for life though another alternative punishment was also possible viz. rigorous imprisonment for a term not less than 20 years with fine.

7. In the decision in Mulla v. State of U.P.1, this Court held:-

> "85.....It is open to the sentencing court to prescribe the length of incarceration. This is especially true in cases where death sentence has been replaced by life imprisonment....."

8. Evidently, the decision in Mulla's case (supra) and a catena of decisions where death sentence was commuted to the imprisonment for life including the decisions in Bantu alias Naresh Giri v. State of M.P.2, Amrit Singh v. State of Punjab3 and Rameshbhai Chandubhai Rathod (2) v. State of Gujarat 4 were considered by the High Court while commuting capital sentence to imprisonment for life. A bare perusal of all those decisions would reveal that those are cases involving rape and murder of young (2010) 3 SCC 508 (2001) 9 SCC 615 (2006) 12 SCC 79 (2011) 2 SCC 764 girls aged between 4 to 12 years. It is true that after referring to those decisions the High Court, in the instant case held in paragraph 34 of the impugned judgment thus:-

> "ln the present case the important consideration is the manner in which the alleged offence is committed. The evidence of Dr. Saroj Bhuriya (PW -3) is relevant. She stated that there was no external injury on the person of the prosecutrix, specially on her neck, chick, chest, abdomen and thigh. She also did not find any injuries on the

> outer part of the genital part of the prosecutrix. She has found the hymen was ruptured recently and there was bleeding. The injury was ordinary in nature. She further stated that the same could have been possibly be caused by hard and blunt object as well. The evidence has established that a minor child was violated by the accused. However, there was no other injury inflicted him either on the other parts of the body and also on the private part. Thus the manner in which the offence is committed is not barbaric and brutal. We have given our anxious consideration to the material on record and find that though the offence is condemnable, reprehensible, vicious and a deplorable act of violence but the same does not fall within the aggravating circumstances namely extreme depravity and the barbaric manner in which the crime was committed. Taking into consideration the totality of the facts, nature, motive and the manner of the offence and further that nothing has been brought on record by the prosecution that the accused was having any criminal antecedent and the possibility of being rehabilitation and reformation has abo not been ruled out. Nothing is available on record to suggest that he cannot be useful for the society. In our considered opinion, it is not a ease in which the alternative punishment would not be sufficient to the facts of the case."

9. Now, we will refer to the rival contentions. The contention of the learned counsel for the petitioner is that at the time of commission of offence, the petitioner was aged only 40 years. The High Court after taking note of the manner in which the alleged offence was committed observed that it was not barbaric and brutal and further that owing to the absence of anything on record to suggest that the convict is having criminal antecedents the possibility of rehabilitation and chances for his reformation could not be ruled out and opined that the case is not one where the alternative punishment would not be sufficient. The alternative punishment provided under Section 376 AB, IPC viz., sentence of rigorous imprisonment not less than 20 years and with fine alone may be imposed after altering the life imprisonment for the conviction under Section 376 AB, IPC and no separate sentence be awarded for the conviction under the other offences mentioned above. According to the learned counsel, rigorous imprisonment for 20 years with a minimal fine will be the comeuppance. Per contra, the learned counsel appearing for the respondent State would submit that the question as to what extent the capital sentence could be commuted, in the facts and circumstances of the case was considered in detail with reference to the decisions mentioned in the impugned judgment by the High Court and no case has been made out by the petitioner for further interference qua the quantum of sentence imposed on the petitioner.

10. We have taken note of the observation of the High Court made after referring to the manner of commission of the crime concerned that it was not barbaric and brutal. We are of the concerned view that when the words 'barbaric' and 'brutal' are used simultaneously they are not to take the character of synonym, but to take distinctive meanings. In view of the manner in which the offence was committed by the petitioner-convict, as observed by the High Court under the above extracted recital, according to us, one can only say that the action of the petitioner-convict is barbaric though he had not acted in a brutal manner. We will take the meanings of the words 'barbaric', 'barbarians' and 'brutal' to know the distinctive meanings of the words 'barbaric' and 'brutal'. As per the New International Webster's Comprehensive Dictionary of the English Language, Encyclopedia Edition

they carry the following meanings:

> 'Barbaric' (adj): 1. of or characteristic of barbarians.
>
> 2. Wild; uncivilized; crude 'Barbarians' : (n) 1. One whose state of culture is between savagery and civilization;
>
> 2. Any rude, brutal or uncultured person.

'Brutal' (adj) : Characteristic of or like a brute; cruel;

savage.

In the light of the evidence on record and rightly noted by the High Court in the above-extracted paragraph 34 of the impugned judgment it may be true to say that the petitioner-convict had committed the offence of rape brutally, but then, certainly his action was barbaric. In the instant case, the petitioner-convict was aged 40 years on the date of occurrence and the victim was then only a girl, aged 7 years. Thus, the position is that he used a lass aged 7 years to satisfy his lust. For that the petitioner-convict took the victim to a temple, unmindful of the holiness of the place disrobed her and himself and then committed the crime. We have no hesitation to hold that the fact he had not done it brutally will not make its commission non-barbaric.

11. In the circumstances obtained in this case there can be no doubt regarding the requirement of deterrent punishment for the conviction under Section 376 AB, IPC. The only question is whether the commutation of capital punishment to sentence of life imprisonment requires further interference. There can be no doubt with respect to the position that on such commutation of sentence for the conviction under Section 376 AB, IPC, the other alternative available is only imprisonment for a period not less than 20 years with fine. This position is clear from the provision under Section 376 AB, IPC which reads thus:-

> "376AB. Punishment for rape on woman under twelve years of age.—Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:
>
> Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim: Provided further that any fine imposed under this section shall be paid to the victim."
>
> 12. Thus, a bare perusal of Section 376 AB, IPC would reveal that imprisonment for life thereunder means imprisonment for the remainder of the convict's natural life and the minimum term of imprisonment under the Section is 20 years. Now, while considering the question whether further interference with the sentence handed

> down for the conviction of the offence under Section 376 AB, IPC is warranted, it is only appropriate to refer to a decision of this Court in Shiva Kumar @ Shiva @ Shivamurthy v.

State of Karnataka5. In Shiva Kumar's case (supra) this Court referred to the decision of a Constitution Bench of this Court in Union of India v. V. Sriharan alias Murugan and Ors. 6 and also the decision in Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka7. Evidently, this Court in V. Sriharan's case (supra), upon considering the question whether imprisonment for life in terms of Section 53 read with Section 45 IPC means imprisonment for rest of life of the prisoner or a convict undergoing life imprisonment has a right to claim remission, held after referring to the decision in Swamy Shraddananda (2) (supra) that the power derived from the Penal Code for any modified (2023) 9 SCC 817 (2016) 7 SCC 1 (2008) 13 SCC 767 punishment within the punishment provided for in the Penal Code for any specified offence could only be exercised by the High Court and in the event of further appeal only by the Supreme Court. Furthermore, in paragraph 105 of the said decision it was held:- "to put it differently, the power to impose modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court." In Shiva Kumar's case (supra) this Court further took note of what was held by the Constitution Bench in V. Sriharan's case (supra) paragraph 104 as well, which reads thus: -

> "104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."

> 13. After referring to the relevant paragraphs from the said decisions in Shiva Kumar this Court held as follows: -

> "13.Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 of the IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of

Section 433A of Cr.P.C."

14. In view of the decisions referred (supra) and taking note of the position that when once the conviction is sustained under Section 376 AB, IPC the fixed term punishment could not be for a period of less than 20 years. Evidently, the High Court had referred, in paragraph 33 of the impugned judgment, to decisions where minor girls were raped and murdered, but did not pointedly consider whether for the conviction under Section 376 AB, IPC involving commission of rape of victim, aged 7 years not coupled with murder what would be the comeuppance, after deciding to commute the capital sentence.

15. We have taken note of the hapless situation of the victim after being taken to a temple by the petitioner-convict. The evidence would reveal that unmindful of the holiness of the place he disrobed her and himself and raped her. When such an act was done by the petitioner, who was then aged 40 years and X who was then aged only 7 years and the evidence that when PW-2 and PW- 14 reached the place of occurrence, blood was found oozing from the private parts of the disrobed child. The High Court had rightly considered the aggravating and mitigating circumstances while commuting the capital sentence into life imprisonment which going by the provisions under Section 376 AB, IPC means rest of the convict's natural life. For effecting such commutation, the High Court also considered the question whether there is possibility for reformation and rehabilitation of the petitioner and opined that it is not a case in which the alternative punishment would not be sufficient in the facts of the case. But then, it is noted that if the victim is religious every visit to any temple may hark back to her the unfortunate, barbaric action to which she was subjected to. So also, the incident may haunt her and adversely impact in her future married life.

16. Then, we are also to take into account the present age of the petitioner and the fact that he has already undergone the incarceration. On consideration of all such aspects, we are of the considered view that a fixed term of sentence of 30 years, which shall include the period already undergone, must be the modified sentence of imprisonment.

17. We have already taken note of the fact that while commuting the capital sentence to life imprisonment, the High Court had lost sight of the fact that despite conviction under Section 376 (2) (i) and under Sections 3/4, Sections 5(d)/6 of the POCSO Act, no separate sentences were imposed on the petitioner for the offence under Section 3/4 and 5(m)/6 of the POCSO Act by the Trial Court, evidently, only on the ground that capital sentence is imposed on the petitioner for the offence under Section 376 AB, IPC. However, it is a fact that the said aspect escaped the attention of the High Court. That apart, in terms of the provisions under Section 376 AB, IPC when a sentence of imprisonment for a term not less than 20 years which may extend upto life imprisonment is imposed, the convict is also liable to suffer a sentence of fine

which shall be just and reasonable to meet the medical expenses and rehabilitation of the victim which we quantify as Rupees One Lakh and the same shall be paid to the victim with respect to the conviction under Section 363, IPC. In that regard also, there is absolutely no consideration in the impugned judgment.

18. It is submitted by the learned counsel, with reference to paragraph 1 of the impugned judgment that the order in paragraph 35 of the impugned judgment that the conviction and sentence under Section 366, IPC is maintained, can also be in relation to the conviction under Section 363, IPC and the sentence imposed therefor.

19. We fully endorse the said contention as paragraph 1 of the impugned judgment itself would reveal that the High Court had actually taken into consideration the fact that the petitioner-convict was convicted only under Section 376 AB, IPC as amended by Act No.22 of 2018 and under Section 363 IPC. In such circumstances, the conviction and sentence imposed on the petitioner-convict is confirmed. We have taken note of the fact that though the petitioner-convict was convicted for the offence under Section 3/4 and 5 (m)/6 of the POCSO Act, no separate sentence was imposed on the petitioner-convict by the Trial Court taking note of the provision under Section 42 of the POCSO Act. The said provision reads thus:-

"42. Alternate punishment.—Where an act or omission constitutes an offence punishable under this Act and also under sections 166A, 354A, 354B, 354C, 354D, 370, 370A, 375, 376, [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], [376E, section 509 of the Indian Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal Code as provides for punishment which is greater in degree."

20. Since, even after the interference with the sentence imposed for the conviction of the petitioner-convict under Section 376 AB, IPC and modified sentence imposed on commutation by the High Court, we have awarded 30 years of rigorous imprisonment with a fine of Rupees One Lakh, no separate sentence for the aforesaid offence under POCSO Act is to be imposed on the petitioner-

convict. While maintaining the conviction of the petitioner-convict under Section 376 AB, IPC, the sentence imposed thereunder is modified to a sentence of rigorous imprisonment for a term of 30 years, making it clear that this will also include the period of sentence already undergone and the period, if any ordered by the Trial Court for set off. The imprisonment awarded for the conviction under Section 363, IPC shall run concurrently. The amount of fine imposed thereunder shall be added to the fine imposed by us viz., Rupees One Lakh.

21. We further direct that the petitioner-convict shall not be released from jail before completion of actual sentence of 30 years, subject to the observation made in the matter of its computation, as

mentioned above.

22. The Special Leave Petition is partly allowed, as above.

....., J.

(C.T. Ravikumar) ....., J.

(Rajesh Bindal) New Delhi;

February 05, 2024