Tattu Lodhi @ Pancham Lodhi vs State Of M.P on 16 September, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4295, AIR 2016 SC (CRIMINAL) 1327, (2016) 3 UC 2209, (2016) 97 ALLCRIC 523, (2016) 9 SCALE 1, 2016 CRILR(SC&MP) 1021, (2016) 4 CRILR(RAJ) 1021, (2016) 4 RECCRIR 367, (2016) 3 CAL LJ 169, 2016 (9) SCC 675, (2016) 65 OCR 579, (2016) 2 ALD(CRL) 829, (2017) 1 MH LJ (CRI) 100, (2016) 4 PAT LJR 192, (2017) 1 RAJ LW 194, 2016 CRILR(SC MAH GUJ) 1021, (2016) 3 ALLCRIR 3190, (2016) 4 JLJR 77, (2016) 166 ALLINDCAS 35 (SC), 2016 (3) SCC (CRI) 761, 2016 (4) KLT SN 88 (SC)

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Bench: Abhay Manohar Sapre, Shiva Kirti Singh, J. Chelameswar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 292-293 OF 2014

Tattu Lodhi @ Pancham Lodhi ……Appellant

Versus

State of Madhya Pradesh ……Respondent

J U D G M E N T

SHIVA KIRTI SINGH, J.

The appellant, charge-sheeted for offences under Section 366(A), 363, 364, 376(2)(f)/511 and 201 of the Indian Penal Code (for brevity 'IPC') was tried by the Twelfth Additional Sessions Judge, Jabalpur in Sessions Trial No. 324 of 2011. He was found guilty of committing the murder of a minor girl, aged about seven years and also of kidnapping and attempt to commit rape on her and for destruction of evidence relating to the crime. The trial court awarded punishment of death under Section 302 IPC, RI for life and a fine of Rs.1,000/- with default stipulation for offence under Section 364 IPC, RI for seven years with similar fine for offence under Section 363 IPC, RI for seven years with similar fine for offence under Section 376(2)(f)/511 IPC and RI for seven years with

similar fine for offence under Section 201 IPC. All the punishments of imprisonment were directed to run concurrently. By the impugned judgment the High Court of Madhya Pradesh agreed with the findings of the trial court and answered the criminal reference in affirmative, confirming the death sentence and dismissed the criminal appeal preferred by the appellant.

2. Learned senior advocate for the appellant, Ms. Meenakshi Arora initially made an attempt to challenge the conviction of the appellant itself by pointing out absence of any eye-witness of the incident and dependence of the entire prosecution case on circumstantial evidence alone. Learned counsel for the State countered the challenge to conviction by submitting that in law there is no hurdle in securing conviction purely on circumstantial evidence. On facts, he highlighted that the trial court considered the entire evidence on record fairly and in detail and found the following five circumstances proved against the accused:

> (i) The accused asked the victim soon before the incident to purchase and bring "Gutka" for him and after sometime she became untraceable.
>
> (ii) Victim was last seen alive with the accused
>
> (iii)The accused avoided to hand over the keys of his house for the search of victim.
>
> (iv) Recovery and seizure of victim's dead body in a gunny bag from the house of the accused.
>
> (v) Seizure of blood-stained clothes including bed sheet from the house of accused pursuant to his memorandum statement.

3. In view of submission advanced on behalf of the appellant that the chain of evidence to prove his guilt beyond reasonable doubt was not complete, we have examined the relevant evidence and also the discussion thereof made by the trial court in detail from paragraphs 15 to 32 of its judgment and similar exercise by the High Court. On a careful consideration of the evidence of shopkeeker Anil Kumar Jain (PW-7) from where the victim bought "Gutka" for the accused and the evidence of complainant Gappu @ Kshirsagar, Hemraj, Ram Kumar, Sitaram, Maharaj Singh along with medical evidence, seizure report and report from the forensic science laboratory confirming the presence of human blood on the gunny bag, bed-sheet and bed- cover which were seized from the house of accused, we find no good reason to interfere with the findings of the trial court duly confirmed by the High Court that the appellant-accused kidnapped the victim and after subjecting her to sexual abuse, throttled her to death. The first submission on behalf of the appellant that the chain of circumstantial evidence is not complete and does not prove the guilt of accused is found to be without any substance. We have no hesitation in confirming the conviction.

4. Since there was no appeal before the High Court from the side of the State or the complainant nor there is any such appeal in this Court, We have confirmed the conviction as made by the trial court but we have no hesitation in indicating our disapproval of the error committed by the trial court in convicting the accused only for the attempted rape. The post- mortem report, besides showing

injuries on the neck and face showed several bruise marks on the left and right side of the abdomen as well as an injury on the left side of the vagina. The internal examination clearly records thus: "..... in the reproductive organ the hymen membrane was ruptured. Mild bleeding and inflammation were found. Vagina was congested and one finger could be inserted. White discharge was coming out of vagina." In view of aforesaid findings recorded in the post-mortem report of the seven year old victim duly proved by Dr. Khare (PW-9), there was no justification not to hold the accused guilty of rape simply because PW-9 in his oral deposition made a casual statement that there was attempt to commit rape on the deceased before her death. It may only be noticed that the Doctor confirmed that the death of the deceased was caused by asphyxia from choking out the throat by strangulation of the neck and all the injuries were ante mortem in nature. It may also be noted here that the post-mortem report (Ex. P-13) was prepared and signed not only by Dr. Rakesh Khare (PW-

9) but also by his colleague Dr. Ashish Raj who had also participated in the autopsy of the deceased.

5. Be that as it may, we have now to consider the next plea advanced on behalf of the appellant that the facts of the case do not make the crime to be "rarest of rare" and hence in such a case the Courts below should not have awarded the death sentence. In support of the aforesaid plea, learned senior counsel has submitted that at the time of occurrence accused was aged only about twenty seven years and there was no material to negate the chance of accused being reformed on account of sentence of imprisonment and gaining further maturity. On the basis of injuries which can be associated with rape, learned senior counsel submitted that no doubt it was a heinous offence as the victim was only seven years old but there were neither any broken bones nor brutal tearing etc. to make out a case of extreme brutality. Learned senior counsel referred to the statement of the accused recorded under Section 313 of the Code of Criminal Procedure to point out that since sometime back the accused was living alone as his wife had deserted him and he also admitted that there was only one case under Section 354 IPC pending against him. Reference was also made to memorandum statement of the accused recorded by the police in presence of some witnesses to show that as per such statement the accused killed the deceased because of loud cries by her. According to learned counsel the murder was in a state of panic and not a premeditated act and therefore, the appellant deserves a lenient punishment, anything other than death.

6. Ms. Arora, learned senior counsel for the appellant placed reliance upon judgment in the case of Swamy Shraddananda(2) v. State of Karnataka[1] to underscore that although Swamy Shraddananda's conviction under Sections 302 and 201 of the IPC was affirmed with a finding that the crime was a cold blooded murder yet this Court was not convinced to confirm the sentence of death even after discussing the diabolical crime in which a wealthy married woman fell in trap, divorced her husband married the accused and suffered death at his hands only for lust of her huge property. The dead body was found buried under the floor of her residential house, obviously to conceal the ghastly crime. In such a crime, while mulling over the vexed issue of adequate sentence in lieu of death sentence, this Court held that the Court had the power to substitute death by imprisonment for life and also to direct that the convict would not be released from prison for the rest of his life. A Constitution Bench judgment in the case of Union of India v. V. Sriharan alias Murugan & Ors.[2] has also been cited to show that judgment in the case of Swamy Shraddananda

(2) (supra) has been approved and followed. In paragraphs 89 and 90 of this judgment it was explained that life imprisonment means the whole life span of the person convicted and therefore in the facts of a case while not confirming death penalty, this Court may, while exercising its power to impose the punishment of life imprisonment, specify the period upto which the sentence of life must remain intact so as to be proportionate to the nature of the crime committed.

7. The submissions advanced on behalf of the State will be considered hereinafter, but keeping in mind all the submissions, it is clear that there is no opposition to the contention advanced by learned senior counsel for the appellant on the basis of Swamy Shraddananda(2) (supra) and the Constitution Bench Judgment in Sriharan (supra). In that view of the matter and even otherwise we are in respectful agreement with the views expressed in those judgments. The judicial innovation of bridging the gap between death sentence on the one extreme and only 14 years of actual imprisonment in the name of life imprisonment on the other, in our view serves a laudable purpose as explained in those judgments and does not violate any positive mandate of law in the Indian Penal Code or in the Code of Criminal Procedure. Hence, for doing complete justice in any case, this court can definitely follow the law laid down in the aforesaid judgments even by virtue of Article 142 of the Constitution of India. The innovative approach reflected in the aforesaid judgments, on the one hand helps the convict in getting rid of death penalty in appropriate cases, on the other it takes care of genuine concerns of the victim including the society by ensuring that life imprisonment shall actually mean imprisonment for whole of the natural life or to a lesser extent as indicated by the court in the light of facts of a particular case. Since there is no party who is actually a looser on account of such an approach in appropriate cases, we feel no hesitation in accepting the submissions advanced by the appellant. Hence the law is reiterated that in appropriate cases where this court is hesitant in maintaining death sentence, it may order that the convict shall undergo imprisonment for whole of natural life or to a lesser extent as may be specified.

8. Learned counsel for the State has made a strong attempt to support the death sentence. According to him the judgments in the case of Rajendra Pralhadrao Wasnik v. State of Maharashtra[3] and Shankar Kisanrao Khade v. State of Maharashtra[4] catalogue the relevant factors which should be looked for and examined for awarding or confirming death sentence. He highlighted factors such as brutality, helplessness of the victim, unprovoked and pre-meditated attack as well as societal concern in respect of a particular brutal or heinous crime. According to him the facts of the case showed brutality, helplessness of the victim as well as unprovoked and pre-meditated design to assault. Learned counsel for the State also referred to some other cases where death penalty had been confirmed by this Court on the basis of peculiar facts of those cases. Since there are large number of judgments either confirming death sentence or commuting the same into life imprisonment, rendered on the basis of peculiar facts of those cases, it would not be of any real help to consider those judgments for deciding the issue as to whether in the facts of the present case death sentence should be confirmed or commuted.

9. Having considered the rival submissions as well as judgments relied upon, we are of the considered view that the facts of this case do not make out a “rarest of rare” case so as to confirm the death sentence of the appellant. The death penalty is therefore not confirmed. The question as to what would be the appropriate period out of imprisonment for the whole natural life that the

appellant must spend in prison is not an easy one to be answered. As per submissions of learned counsel for the appellant in total an actual period of 20 years behind the bars would serve the ends of justice in the present case. Contra, learned State counsel has argued for whole of natural life.

10. The occurrence is of the year 2011 when the appellant was said to be about 27 years old. Considering the fact that the deceased, a helpless child fell victim of the crime of lust at the hands of the appellant and there may be probabilities of such crime being repeated in case the appellant is allowed to come out of the prison on completing usual period of imprisonment for life which is taken to be 14 years for certain purposes, we are of the view that the appellant should be inflicted with imprisonment for life with a further direction that he shall not be released from prison till he completes actual period of 25 years of imprisonment. With this modification in the sentence, the appeals of the appellant are dismissed.

.....J. [J. CHELAMESWAR] .....J. [SHIVA KIRTI SINGH] .....J. [ABHAY MANOHAR SAPRE] New Delhi.

September 16, 2016.

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[2] (2008) 13 SCC 767 [4] (2016) 7 SCC 1 [6] (2012) 4 SCC 37 [8] (2013) 5 SCC 546
