Shri Bhagwan vs State Of Rajasthan on 10 May, 2001

Equivalent citations: AIR 2001 SUPREME COURT 2342, 2001 (6) SCC 296, 2001 AIR SCW 2189, 2001 (6) SRJ 272, 2001 (1) JT (SUPP) 14, 2001 (2) LRI 1305, 2001 (4) SCALE 153, 2001 SCC(CRI) 1095, 2001 (2) UJ (SC) 1361, 2001 UJ(SC) 2 1361, 2001 CRILR(SC MAH GUJ) 425, 2001 CRILR(SC&MP) 425, (2001) 2 RECCRIR 12, 2001 CHANDLR(CIV&CRI) 76, (2001) 2 CHANDCRIC 77, (2001) 1 ALLCRILR 167, (2001) 2 EASTCRIC 318, (2001) 2 RAJ LW 273, (2001) 2 RECCRIR 695, (2001) 2 CURCRIR 302, (2001) 4 SUPREME 180, (2002) 2 ALLCRIR 1758, (2001) 4 SCALE 153, (2001) 2 UC 182, (2001) 2 ALLCRILR 812, (2001) 3 CRIMES 35, 2001 (2) ANDHLT(CRI) 225 SC

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Bench: M B Shah, K.G. Balakrishnan

CASE NO.:
Appeal (crl.) 242 of 2000

PETITIONER:
SHRI BHAGWAN

Vs.

RESPONDENT:
STATE OF RAJASTHAN

DATE OF JUDGMENT: 10/05/2001

BENCH:
M B Shah & K.G. Balakrishnan

JUDGMENT:

K.G. BALAKRISHNAN, J.

L...I...T.....T.....T.....T.....T.....T.....T..J The facts in this criminal appeal disclose acts of unparalleled evil and barbarity as five persons of a family were battered to death without mercy by a young culprit aged about 20 years.

PW-17 Shiv Pratap, his wife, three daughters and aged parents were residing in a house at Bidasar. The marriage of the eldest daughter of Shiv Pratap was fixed to be held on 20.2.1994. In order to purchase some articles for the marriage, Shiv Pratap and his wife Bhanwari had left for Jaipur on 14th December, 1993. They came back to Bidasar from Jaipur on 17th December, 1993 at about 9.30 PM. On reaching the house, they found the outer door of the house open and the inside room was found bolted from within. PW-17 knocked at the door in vain and after sometime he scaled over the wall and gained entry into the room. He found his parents lying dead with multiple injuries. PW-17 and his wife then went to the room of their daughters. That room was found locked from outside. PW-17 broke open the lock and found dead bodies of his three daughters. Various blood-stained articles were found strewn in the room. PW-17 used to peg the bag containing gold and silver jewellery of the shop. That bag was also found missing. Shocked at the incident, they made a hue and cry. The brother of PW-17 who was staying nearby came to the house. Some neighbours also came there in the meanwhile and saw the ghastly incident. By about 9.45 P.M., PW-17 gave the P-8 statement before the Station House Officer of Police Station Chhapar (PW-23). PW-23 registered a case and immediately visited the place of occurrence. He recorded the statement of Bhanwari (PW-1); Murlidhar (PW-2) and also the further statement of Shiv Pratap (PW-17). On the next day, he took various photographs and conducted inquest of the dead bodies of all the five deceased persons. The various articles, including clothes found lying in the house, were recovered. Many of these articles were found blood-stained.

In his statement, PW-2, Murlidhar mentioned that on the evening of 14th December, 1993, he had seen the deceased Jora Ram, the father of Shiv Pratap, at about 6.00 PM going to his house after closing the shop and the appellant, Shri Bhagwan was also accompanying him. PW-2 further stated that Shri Bhagwan was known to him previously as he had worked in the shop of Shiv Pratap for about 8 to 10 months. He also stated that he saw the appellant and Jora Ram entering the house of Shiv Pratap. Based on this information, appellant Shri Bhagwan was arrested on the night of 18th December, 1993 and the investigation of the case was taken over by PW-24 . He too visited the place of occurrence and collected various articles from there. A broken iron 'Kunta', a wooden Pestle and an iron scissors were also recovered from the scene of occurrence and all these articles were stained with blood. The appellant was interrogated and based on his statement, an axe was recovered from the water tank located on the terrace of the house of Shiv Pratap. During the course of further investigation, the appellant gave a statement regarding the place of concealment of golden jewellery and other articles taken away from the house of Shiv Pratap. Appellant's brother-in-law (Bahnoi) Ramu Ram was a resident of Sardar Shahar. The appellant led the police party to the house of Ramu Ram and from his house a bag containing jewellery and other articles were seized under Ex. P-83. These articles included one gold finger-ring, gold ear tops and nose tops, white pearls, etc. All these articles were later identified by Shiv Pratap as gold ornaments belonging to his mother and daughters. From the house of Ramu Ram, a small tobacco box was recovered which contained 12 copper pieces and an envelope of 'Kumkum Patri' addressed to Shiv Pratap, Bidasar, and the sender's name was one Manak Chand Soni (PW-10). Manak Chand was examined and he deposed that this invitation had been sent by him to Shiv Pratap on the occasion of the marriage of his daughter which was on 10th December, 1993.

Appellant, Shri Bhagwan also gave a statement to the effect that while he was travelling in a bus, he had thrown away the shirt worn by him at the time of occurrence, near a place three kilometers away from Sujangarh. The appellant led the police party to that place and the said shirt was recovered from the bushes near the place where the appellant had stated to have thrown the same. This shirt was blood-stained and it bore the label of 786 J.K. Tailors, Subzi Mandi, S.R.D.R. On the shirt, number 427 was found marked. The investigation officer later visited the said shop of J.K. Tailors and questioned the owner of the shop, Zafar Hussain (PW-18). PW-18 stated that he had stitched the shirt for the appellant and he had also recorded the name of the appellant and the measurements in the register. Exh. P-48 is the register maintained by him and as against serial number 427, the name of appellant, Shri Bhagwan Soni was found written.

The appellant was tried for offences under Section 302 and 392 read with Section 397 IPC and was found guilty. For the offences under Section 392 and 397 IPC, he was sentenced to undergo R.I. for seven years and to pay a fine of Rs.200/-. For the offence under Section 302 IPC, the appellant was sentenced to death and to pay a fine of Rs.200/- by the Sessions Judge. This was challenged in appeal and the Division Bench of the Rajasthan High Court confirmed the conviction and sentence of the appellant.

On behalf of the appellant, Dr. Shyamla Pappu, learned Senior Advocate (A.C.) very ably argued the case. It was pointed out by her that the evidence adduced by the prosecution was not sufficient to find the guilt for the offences he had been charged with. It was contended that various incriminating circumstances relied on by the court are not sufficient to draw an inference of guilt of the appellant and the chain of circumstances was not cogently and firmly established and these circumstances have no definite tendency to unerringly point the guilt of the accused. It was also contended that in a case of circumstantial evidence, the chain of circumstances should be so complete that there is no escape from the conclusion that in all probability the crime was committed by the accused and none else.

The counsel for the appellant also argued that in the Exh. P-8 Statement given by PW-17 Shiv Pratap, the name of the appellant was not mentioned, though he was accompanied by PW-2 Murlidhar, who is alleged to have seen the appellant along with one of the deceased prior to the incident. It may be noted that PW-17 must have been under severe psychic trauma at the time of giving the Exh.P-8 Statement before the police and naturally he did not mention the name of the appellant to PW- 23 who recorded his statement. PW-23 himself recorded the statement of PW-2 immediately thereafter and in that statement the name of the appellant was mentioned as the person last seen with one of the deceased. Another contention urged by appellant's counsel is that in the instant case series of injuries had been caused to the deceased persons and sticks, wooden pestle, broken handle of axe, scissors and 'kunta' were alleged to have been used and it was argued that from these facts, it is possibe that there must have been more than one assailant and therefore, the prosecution suppressed the real facts and the appellant is entitled to the benefit of doubt. All the articles allegedly used by appellant as weapons of offence are things which might have been collected from the house itself and according to the prosecution, the appellant was seen with deceased Jora Ram in the evening and in all probability he must have spent the night in the house of Shiv Pratap. The incident might have happened in the dead of the night and that being a winter

season, it is quite possible that attention of the neighbours might not have been attracted. The fact that household items were used as weapons of offence rules out the possibility of the presence of any outsider. Moreover, it is also not possible to infer anything from the nature of injuries as to how many assailants were involved. It is quite reasonable and probable that one assailant alone can cause so much of injuries especially during the night when the victims might have been in deep slumber.

The counsel for the appellant also raised serious doubts regarding the various recoveries effected at the instance of the appellant, but we do not find any reason to disbelieve the evidence adduced by the prosecution as there is further corroborative evidence to support the recoveries. The articles were recovered from the close relative of the appellant and they were identified by PW-17. It is also established beyond doubt that the recovered blood stained shirt belonged to the appellant.

Having regard to the various facts, we do not find any reason to suspect the guilt of the accused as it is proved that the appellant was seen with one of the deceased Jora Ram in the evening of 14th November, 1993 and the appellant had an acquaintance with the family members of the deceased as he had already worked as an apprentice in the shop of PW-17 to learn the trade of goldsmithy. PW-17 deposed that the appellant was sent away from the shop as he had committed some minor gold thefts.

It is also relevant to note that the appellant had some injuries at the time of his arrest. These injuries are of minor nature, but even then the appellant could not give any satisfactory explanation with regard thereto. The recovery of various articles at the instance of the appellant, that too immediately after the incident, goes a long way in proving the guilt of the appellant.

The possession of the fruits of the crime recently after it has been committed, affords a strong and reasonable ground for the presumption that the party in whose possession they are found was the real offender, unless he can account for such possession in some way consistent with his innocence. It is founded on the obvious principle that if such possession had been lawfully acquired, that party would be able to give an account of the manner in which it was obtained. His unwillingness or inability to afford any reasonable explanation is regarded as amounting to strong, self inculpatory evidence. If the party gives a reasonable explanation as to how he obtained it, the courts will be justified in not drawing the presumption of guilt. The force of this rule of presumption depends upon the recency of the possession as related to the crime and that if the interval of time be considerable, the presumption is weakened and more especially if the goods are of such kind as in the ordinary course of such things frequently change hands. It is not possible to fix any precise period. This Court has drawn similar presumption of murder and robbery in series of decisions especially when the accused was found in possession of these incriminating articles and was not in a position to give any reasonable explanation. Earabhadrappa @ Krishnappa vs. State of Karnataka (1983) 2 SCC 330 was a case where the deceased Bachamma was throttled to death and the appellant was taken into custody and gold ornaments and other articles were recovered at his instance. This Court observed:

> This is a case where murder and robbery are proved to have been integral parts of one and the same transaction and therefore the presumption arising under Illustration (a) to Section 114 of the Evidence Act is that not only the appellant committed the murder of the deceased but also committed robbery of her gold ornaments which form part of the same transaction.
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> In another case reported in (1997) 10 SCC 130 [Mukund vs. State of M.P.], the prosecution case was that in the night intervening 17.1.1994 and 18.1.1994, the appellants trespassed into the residential house of one Anuj Prasad Dubey, committed murders of his wife and their two children and looted their ornaments and other valuable articles. On the next night, the appellants were arrested and interrogated. Pursuant to the statement made by one of the accused, gold and silver ornaments and other articles were recovered. This court, relying on an earlier decision reported in Gulab Chand vs. State of M.P. (1995) 3 SCC 574, observed :
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> "If in a given case --- as the present one --- the prosecution can successfully prove that the offences of robbery and murder were committed in one and the same transaction and soon thereafter the stolen properties were recovered, a court may legitimately draw a presumption not only of the fact that the person in whose possession the stolen articles were found committed the robbery but also that he committed the murder."

In the instant case, the appellant could not give an explanation as to how he came into possession of various gold ornaments and other articles belonging to Shiv Pratap and the members of his family. The appellant also could not give any reasonable explanation how he sustained injuries on his body and how his shirt became blood-stained. In the facts and circumstances, it is a fit case where the presumption under Illustration (a) to Section 114 of the Evidence Act could be drawn that the appellant committed the murders and the robbery. The courts below have rightly held the appellant guilty of the offences charged against him.

As regards the question of sentence, the counsel for the appellant submitted that the appellant was a youngster aged 20 at the time of crime and ever since the imposition of death penalty on him he has been under devastating and degrading fear that is imposed on the condemned and that appellant must have been under intense mental suffering that is inevitably associated with confinement under sentence of death. It is submitted that these factors had been taken note of by this Court as relevant mitigating factors to commute the sentence of death to life imprisonment.

Of course, the nature of the crime committed by the appellant was so horrendous and exceptionally cruel and sadistic. However, we are inclined to take a lenient view having regard to the various facts and circumstances of the case. In dealing with criminal matters where death sentence is prescribed in law as the punishment for the crime, the courts are required to answer new challenges as the object has to be not only to protect the society at large, but impose appropriate sentence lest there should be a tendency to undermine the public confidence in the criminal justice delivery system.

In A. Devendran v. State of Tamil Nadu [(1997) 11 SCC 720], while considering the question of imposition of death penalty, this Court observed:- (in para 26) Bearing in mind the ratio of the aforesaid cases it may be seen that since the evidence of an approver has been taken out of consideration the conviction of the appellant Devendran under Section 302 has been upheld on the basis of the evidence of PW2, PW5 and the recovery of the pistol which was used for the commission of murder from the house of the said Devendran as well as the recoveries of ornaments and other jewelleries belonging to the informant recovered from the house of Devendran on the basis of his statement, while in custody and those jewelleries being identified by PW4. The aforesaid evidence by no stretch of imagination brings the case in hand to be one of the rarest of rare cases where the extreme penalty of death can be awarded.

Similar is the position in the present case. The circumstantial evidence discussed above, even though held to be reliable for convicting the accused, we do not think it to be one of the rarest of rare cases warranting death sentence.

Hence, what would be the appropriate punishment?

Crimes, like the one before us, cannot be looked upon with equanimity because they tend to destroy ones faith in all that is good in life. A young man was given opportunity to learn gold-smithery. He was once sent away for alleged act of theft. Yet again, on the day of incident, he was permitted to accompany the deceased old man and as per the evidence, he accompanied the deceased in his house. The reward of that kindness is murder of old man and his wife alongwith three daughters including one whose marriage was fixed after two months. Hence, even though we reduce the death penalty, we think that punishment should be sufficient so as to have deterrent effect as well as no further chance to the accused for relapsing into the crime and becoming danger to the Society.

Section 57 IPC provides that in calculating fractions of terms of punishment, imprisonment for life is to be reckoned as equivalent to the imprisonment for twenty years. In our view, considering the heinous barbaric offence committed by the accused, in no set of circumstances accused should be released before completion of 20 years of imprisonment. This Court in Dalbir Singh and others v. State of Punjab [(1979) 3 SCC 745] considered the question that in case where sentence of death is reduced to life imprisonment, for how many years accused should be detained in prison. The Court in paragraph 14 held thus:- 14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in Rajendra Prasad case. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the mans life, but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.

(Emphasis added) In case of Subash Chander v. Krishan Lal & Ors. [2001 (3) SCALE 130], the said principle is followed by this Court and it was ordered that accused shall be incarcerated for the

remainder of his life and that he shall not be let loose upon the society as he is a potential danger.

Question may arisewhether in view of the provision of Section 433(b) read with Section 433-A Cr.P.C. accused should be released on completion of 14 years of imprisonment? For this purpose, we would make it clear that under Section 433 (b) enables the appropriate Government to commute the sentence of imprisonment for life, for imprisonment of a term not exceeding 14 years or for fine. Under Section 433-A, there is an embargo on that power by providing that where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided under the law, such person is not to be released from prison unless he had served at least fourteen years of imprisonment. This question is considered by various decisions rendered by this Court and by the Privy Council and it has been reiterated that a sentence of imprisonment for life imposed prima facie be treated as imprisonment for the whole of the remaining period of the convicted persons natural life. It is also established law that rules framed under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life. This Court in State of Madhya Pradesh v. Ratan Singh and others [(1976) 3 SCC 470] in paragraphs 4 and 9 held thus:-

> 4. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in Gopal Vinayak Godse v. State of Maharashtra [(1961) 3 SCR 440], where the Court, following a decision of the Privy Council in Pandit Kishori Lal v. King Emperor [(LR 72 IA 1 : AIR 1945 PC 64] observed as follows:
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> Under that section, a person transported for life or any other term before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.
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> If so, the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code of Criminal Procedure or the Prisons Act.
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> * * * * * A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted persons natural life.
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> The Court further observed thus:
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> But the Prisons Act does not confer on any authority a power to commute or remit sentences; it provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the

rules made under the Act should be construed within the scope of the ambit of the Act. . . . Under the said rules the orders of an appropriate Government under Section 401, Criminal Procedure Code, are a pre-requisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Indian Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Indian Penal Code. In other words, this Court has clearly held that a sentence for life would ensure till the lifetime of the accused as it is not possible to fix a particular period the prisoners death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life.

In Maru Ram v. Union of India [(1981) 1 SCC 107], Constitutional Bench of this Court reiterated the aforesaid position and observed that the inevitable conclusion is that since in Section 433-A we deal only with life sentences, remissions lead nowhere and cannot entitle a prisoner to release. Further, in Laxman Naskar (LIFE CONVICT) v. State of W.B. and another [(2000) 7 SCC 626], after referring to the decision of the case of Gopal Vinayak Godse v. State of Maharashtra [(1961) 3 SCR 440], the Court reiterated that sentence for imprisonment for life ordinarily means imprisonment for the whole of the remaining period of the convicted persons natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term is served. It was observed that though under the relevant Rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions

that the said sentence is equated with definite period and not for any other purpose.

Therefore, in the interest of justice, we commute the death sentence imposed upon the appellant and direct that the appellant shall undergo the sentence of imprisonment for life. We further direct that the appellant shall not be released from the prison unless he had served out at least 20 years of imprisonment including the period already undergone by the appellant. As regards offences under Sections 392 & 397 IPC, we confirm the conviction of the appellant and no separate sentence is awarded.

With the above directions and modification in the sentence, the appeal is disposed of.