

SUPREME COURT OF INDIA

Chhotelal

Vs.

State of M.P.

Crl.A.No.664 of 2006

(Harjit Singh Bedi and Gyan Sudha Misra, JJ.,)

14.07.2011

ORDER

1. The appellant Chhote Lal stands convicted under Section 376(2) and 302 of the Indian Penal Code for having committed rape and murder of a young girl 10 years of age and has been sentenced by the trial court to imprisonment for life under both the provisions by the Sessions Court and it was further clarified that the sentence would continue for the remaining period of the entire life of the accused. An appeal was thereafter taken to the High Court of Madhya Pradesh which has confirmed the order of the Sessions Judge. This appeal has been filed in this Court as a jail petition.

2. Mr. Harbans Lal Bajaj, the learned Amicus appointed earlier did not put in appearance on the last several dates and even yesterday when the matter was called out. We had, accordingly, requested Ms. Aishwarya Bhati, learned counsel who was present in the Court to assist us in the matter and appointed her as an Amicus in place of Mr. Harbans Lal Bajaj. We have, accordingly, heard her as well as the State Counsel on the merits of the case.

3. We have gone through the evidence with the assistance of the learned counsel and find no cause for interference on the facts of the case as the evidence against the appellant appears to be fully credible. We, however, feel that in the light of the judgment of this Court in *Mulla v. State of U.P.*¹ some modification has to be made in the sentencing part of the impugned judgments. In the cited case, it has been observed that though it was open to the courts to award a sentence prescribing the length of incarceration but the power to commute the sentence or to grant remissions which rested with the Government had to be respected. Paragraphs 85 and 86 of the judgment read as under:-

"85. We are in complete agreement with the above dictum of this Court. 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 This is especially true in cases where death sentence has been replaced by life imprisonment. The court should be free to determine the length of imprisonment which will suffice the offence committed. Thus we hold that despite the nature of the crime, the mitigating circumstances can allow us to substitute the death penalty with life sentence.

86. Here we would like to note that the punishment of life sentence in this case must extend to their full life, subject to any remission by the Government for good reasons."

4. We, accordingly, dismiss the appeal but direct (in the light of the aforesaid observations) that the appellant would serve out the sentence of imprisonment upto the end of his life but this direction would be subject to any remissions which the Government may choose to give under the circumstances to the appellant. In this background, we issue a further direction to the State Government that (as the appellant has been in custody since the 10th January, 1989) to take a decision on the appellant's continued detention or release in accordance with law within a period of six months from today.

5. Fee of the Amicus is fixed at `7,000/-.