SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Jamil Khan

Crl.A.No.659 of 2006

(Chandramauli Kr. Prasad and Kurian Joseph JJ.)

27.09.2013

JUDGMENT

KURIAN, J.:

1. All murders shock the community; but certain murders shock the conscience of the Court and the community. The distinguishing aspect of the latter category is that there is shock coupled with extreme revulsion. What should be the penological approach in that category is one question arising for consideration in this case. What is the scope of consideration of Death Reference by the High Court under Chapter XXVIII of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.PC'), is the other question. Whether there is any restriction on the exercise of power under Section 432 Cr.PC for remission and Section 433 Cr.PC for commutation in cases of minimum sentence is the third main issue.

2. On 23.12.2002, Pooja, a tiny girl below five years of age was brutally raped and thereafter murdered by the respondent. He packed the dead body in a sack and further in a bag and secretly left it in a train. By Judgment dated 15.04.2004, the Sessions Court, having regard to the overwhelming evidence, convicted the respondent under Section 302 of the Indian Penal Code (45 of 1860) (hereinafter referred to as 'IPC') and sentenced him to death. He was also found guilty under Section 376 of IPC and was sentenced to imprisonment for life with a fine of Rs.2,000/-. Under Section 201 of IPC, he was convicted and sentenced to rigorous imprisonment for three years and a fine of Rs.500/-. There was default clause as well. The Sessions Court mainly relied on the decision of this Court in Kamta Tiwari vs. State of Madhya Pradesh[1]. In that case, a seven year old child was

raped, murdered and the body was thrown into a well. This Court awarded death sentence. In the instant case, the Death Reference was considered by the High Court of Rajasthan along with the Appeal leading to the impugned Judgment dated 09.11.2004.

> The case law on sentencing has been extensively referred to by the High Court. But without reference to the aggravating or mitigating circumstances or to the special reasons, the High Court held that the case does not fall in the category of rarest of rare cases warranting death sentence. Thus, the High Court declined to confirm the death sentence and awarded life imprisonment under Section 302 of IPC. The conviction and sentence under Sections 376 and 201 of IPC was maintained.

3. The State has come in appeal contending that it is a fit case where punishment of death should be awarded to the respondent. There is no appeal by the respondent challenging the conviction and sentence as confirmed by the High Court under Sections 302, 376 and 201 of IPC.

4. Having regard to the above background, it is not necessary to extensively refer to the factual matrix, except for the relevant aspects. However, to understand the nature of the crime, we shall refer to the injuries noticed by the medical board in the post mortem: "Ext. genital part blood stained and vaginal bleeding present, vaginal tear (2nd degree) extend upto anal office postrly, hymen rupture, cervix admit one finger loose, vaginal smear is taken, send for FSL & slide is prepared from vaginal secretion, send for FSL.

> 1. Ligature mark 1cm x 0.5cm deep is present around the whole neck below the thyroid cartilage, base is brownish Red dry parchment lobe appearance on cut sectioned the sub cut tissue beneath the ligature mark is ecchymosed;
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> 2. Abrasion- 3cm x 0.2cm in size three in number parallel to each other, vertical position mid of the neck antrly below the ligature mark;
>
> 3. Ligature mark 1cm breadth is present on antero lateral and post part of middle of both leg, this mark is post mortem in nature.
>
> Injury No. 1 & 2 ante mortem in nature."

5. In the opinion of the Medical Board, asphyxia due to strangulation was the cause of death.

6. The injuries present on the body of the tiny child would clearly establish the barbaric nature of the commission of the offence. The respondent had some previous acquaintance with the child when he used to visit his parents who stayed in the neigbourhood. It has come in evidence that the respondent had planned the crime. On the fateful day, he had come to the place, drunk, carrying with him a sack and a blue bag. PW2, who knows the accused, had seen him proceeding towards his house carrying a white coloured katta (sack) on his shoulder and a blue coloured bag in his hands. According to PW3, the accused had gone to his shop, bought peanuts and madhu gutka. He lured the child by offering peanuts and took her to his parents' house. PW3 had seen the accused carrying the loaded bag on his shoulder. It is not necessary to discuss the other evidence available from the recovered articles which all have conclusively established that it was the respondent who committed the offence.

7. Aggravating factors qua the crime and mitigating factors qua the criminal should be properly balanced so as to decide whether an offence of murder would fall under the rarest of rare category to be visited with the extreme punishment of death. The Court, under Section 354(3) of Cr.PC, has to give special reasons, in case death sentence is awarded. The very decision of the Court that a case falls under the rarest of rare category would ordinarily meet the requirement of special reasons under Section 354(3) of the Cr.PC since inclusion of a case in that category can be only on such finding. As held by the Constitution Bench of this Court in Bachan Singh vs. State of Punjab[2], the finding would depend on facts and circumstances of each case. To quote:

> "201. …As we read Sections 354(3) and 235(2) and other related provisions of the Code of 1973, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors, depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because "style is the man". In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the

circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and, therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist."

(Emphasis supplied)

8. In Machhi Singh and Others vs. State of Punjab[3], a three-Judge Bench of this Court has made an attempt to cull out certain aggravating and mitigating circumstances and it has been held that in case imprisonment for life is inadequate in view of the peculiar aspects of the crime, then alone the sentence of death should be awarded. To quote:

"38. xxx xxx xxx

i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."
(Emphasis supplied)

9. In Shankar Kisanrao Khade vs. State of Maharashtra[4], referring to the recent decisions (of about fifteen years), this Court has summarized the mitigating factors and aggravating factors. Young age of the accused, the possibility of reforming and rehabilitating the accused, the accused having no prior criminal record, the accused not likely to be a menace or threat or danger to society or the community, the accused having been acquitted by one of the courts, the crime not being premeditated, the case being of circumstantial evidence, etc., are some of the mitigating factors indicated therein. The cruel, diabolic, inhuman, depraved and gruesome nature of the crime, the crime result in public abhorrence, shocks the judicial conscience or the conscience of society or the community, the reform or rehabilitation of the convict is not likely or that he would be a menace to society, the crime was either unprovoked or that it was premeditated, etc., are some of the aggravating factors indicated in the said decision.

10. In State of Uttar Pradesh vs. Sattan alias Satyendra and Others[5], this Court had an occasion to consider the penological purpose of sentencing. To quote:

"30. "21.'9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross- cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a

> cornerstone of the edifice of "order" should meet the challenges confronting the society. ...

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. …"

(Emphasis supplied)

11. This Court did not mince words while discussing the requirement of adequate punishment in Mahesh s/o Ram Narain and Others vs. State of Madhya Pradesh[6]. To quote:

> "6. …it will be a mockery of justice to permit these appellants to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the appellants would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon. ..."
>
> (Emphasis supplied)

12. In Devender Pal Singh vs. State of NCT of Delhi and Another[7], after referring to the Bachan Singh and Machhi Singh cases (supra), this Court held that when the collective conscience of the community is so shocked, it will expect the judiciary to inflict death penalty. To quote: "58. From Bachan Singh v. State of Punjab and Machhi Singh and Others v. State of Punjab, the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the same can be awarded. It was observed:

> The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money or reward; or cold-blooded murder for gains of a person vis-a-vis whom the murderer is in a dominating position or in a position of trust; or murder is committed in the course of betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath; or in cases of 'bride burning' or 'dowry deaths' or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so".

(Emphasis supplied)

13. According to Lord Denning, the punishment inflicted for grave crimes should reflect the revulsion felt by the great majority of citizens. To him, deterrence, reformation or prevention are not the determinative factors. His statement to the Royal Commission on Capital Punishment made in 1950 reads:

> "Punishment is the way in which society expresses its denunciation of wrong doing; and, in order to maintain respect for the law, it is essential that the punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizens for them. It is a mistake to consider the objects of punishments as being a deterrent or reformative or preventive and nothing else... The truth is that some crimes are so outrageous that society insists on adequate punishment, because the wrong doer deserves it, irrespective of whether it is a deterrent or not."
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> (Emphasis supplied)

14. As held by this Court in Ajitsingh Harnamsingh Gujral vs. State of Maharashtra[8], a distinction has to be drawn between ordinary murders and murders which are gruesome, ghastly or horrendous. In such cases,

> "93. …While life sentence should be given in the former, the latter belongs to the category of the rarest of rare cases, and hence death sentence should be given. …"

15. Any murder would cause a shock to the society but all murders may not cause revulsion in society. Certain murders shock the collective conscience of the Court and community. Heinous rape of minors followed by murder is one such instance of a crime which shocks and repulses the collective conscience of the community and the Court. Such crimes arouse extreme revulsion in society. While culling out the rarest of rare cases on the basis of aggravating and mitigating factors, we are of the view that such crimes, which shock the collective conscience of the society by creating extreme revulsion in the minds of the people, are to be treated as the rarest of rare category.

16. Although the crime in the present case is gruesome and renders a loathsome shock to the community, we are bound by the ratio in Bachan Singh's case (supra) which requires the Court to consider the mitigating factors qua the criminal. In the instant case, the respondent no doubt was young at the time of the commission of the offence, above nineteen years of age. He was a labourer. But while considering the mitigating factors, poverty has to be understood in light of whether it was a factor influencing the commission of offence. In a recent decision by coordinate Bench of this Court, authored by one of us (Kurian, J.) in Sunil Damodar Gaikwad vs. State of Maharashtra[9], decided on 10.09.2013, in Criminal Appeal Nos. 165-166 of 2011, it has been held that:

> "Poverty, socio-economic, psychic compulsions, undeserved adversities in life are thus some of the mitigating factors to be considered, in addition to those indicated in Bachan Singh and Machhi Singh cases."
>
> That was a case where a poor tailor finding it difficult to maintain his family of wife and three children, one of whom also required constant treatment, decided to wipe out the entire family. Poverty shall not be understood and applied as disjunct from the factual position. In other words, poverty or socio-economic, psychic or undeserved adversities in life shall be considered as mitigating factors only if those factors have a compelling or advancing role to play in the commission of the crime or otherwise influencing the criminal. Thus, merely because the offender is a poor person, his poverty will not be a mitigating factor. In this case the mitigating factor of the crime is not poverty. The lust fuelled crime of rape and murder and that too of a minor child of tender age has nothing to do with the poverty, socio-economic background or other psychic compulsions of the criminal. The decision in Sunil Damodar Gaikwad's case (supra) will stand clarified to the above extent.

17. In the instant case, there cannot be any doubt that the crime is of extreme mental perversion. It was a well-planned crime as can be seen from the discussion at Paragraph 7 ibid. The major mitigating factor as far as respondent in this case is concerned is that he was young. However, in Shankar Kisanrao's case (supra), this Court held that the fact that the accused is young by itself is not a major and deciding factor while considering the mitigating factors. Dhananjoy Chatterjee vs. State of W.B.[10], Jai Kumar vs. State of M.P.[11], Shivu and Another vs. Registrar General, High Court of Karnataka and Another[12], Vikram Singh and Others vs. State of Punjab[13], Atbir vs. Government Of NCT of Delhi[14], Mohd. Ajmal Amir Kasab alias Abu Mujahid vs. State of Maharashtra[15], are some of the cases where this Court, in view of the overwhelming and aggravating circumstances, declined to consider the mitigating factor of young age.

18. That the accused was under the influence of alcohol at the time of the commission of the offence also is not a mitigating factor. It is not a case where somebody had forcefully administered intoxicating drinks or drugs to the respondent and made him commit the offence. That he had taken alcoholic drinks at around 10.00 a.m. is also an indicator to the premeditation of the crime shortly thereafter. Thus, having regard to the nature of the crime, the manner in which it

was committed and above all, having regard to the major aggravating factor of extreme repulsion which has shocked the collective conscience of the community and the Court, as also the sole mitigating factor of his young age, we are of the opinion that punishment of life imprisonment is grossly inadequate.

19. We are also fortified in our view by the following decisions of this Court in similar circumstances.In State of U.P. vs. Satish[16], this Court reversed the acquittal by the High Court and awarded death sentence. It was case of rape and murder of a minor girl aged less than six years. Shivu (supra) was a case of rape and murder of an eighteen year old girl by the neighbours. The death sentence on both the accused was upheld by this Court. Bantu vs. State of Uttar Pradesh[17] was a case of the accused alluring a five year old child with a balloon, committing rape and murder. The death sentence was upheld by this Court. Shivaji alias Dadya Shankar Alhat vs. State of Maharashtra[18] was a case of a nine year old child being taken by a neighbour who promised to help her to collect wood from the forest, raped and murdered her. This Court upheld the death sentence. Mohd. Mannan alias Abdul Mannan vs. State of Bihar[19], authored by one of us (Prasad, J.), is a case of rape and murder of a seven year old child. The death sentence awarded by the Sessions Court as confirmed by the High Court was upheld. Rajendra Pralhadrao Wasnik vs. State of Maharashtra[20] is a case of rape and murder of a three year old girl child. There also, the death sentence awarded by the Sessions Court as confirmed by the High Court was upheld by this Court.

20. Although the High Court in this case referred to several decisions on sentencing, it is sad to note that there is no discussion on any of the aggravating and mitigating circumstances. There is no consideration as to whether the case on facts falls under the rarest of rare category.

21. Chapter XXVIII of Cr.PC (containing Sections 366 to 371) deals with the process of confirmation of death sentence by the High Court. For the purpose of ready reference, we shall extract the provisions:

> 1 “366. Sentence of death to be submitted by Court of Session for confirmation.-(1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.
>
> 2 (2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

3

4 367. Power to direct further inquiry to be made or additional evidence to be taken.-(1) If, when such proceedings are submitted, the High Court thinks that a further inquiry should be made into or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.

5 (2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.

6 (3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

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8 368. Power of High Court to confirm sentence or annul conviction.-In any case submitted under section 366, the High Court-

a) may confirm the sentence, or pass any other sentence warranted by law, or

b) may annul the conviction, and convict the accused of any offence of which the Court of Session might have convicted him, or order a new trial on the same or an amended charge, or

c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

9

10 369. Confirmation or new sentence to be signed by two Judges.-In every case so submitted, the confirmation of the sentence, or any new sentence or

order passed by the High Court, shall when such Court consists of two or more Judges, be made, passed and signed by at least two of them.

11

12 370. Procedure in case of difference of opinion.-Where any such case is heard before a Bench of Judges and such Judges are equally divided in opinion, the case shall be decided in the manner provided by section 392.

13

14 371. Procedure in cases submitted to High Court for confirmation.-In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order under the seal of the High Court and attested with his official signature, to the Court of Session."

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22. These provisions lay down the detailed procedure on confirmation of death sentence. The following are the mandatory requirements:

i) Death Reference shall be heard by a Bench of minimum two Judges. The Chief Justice being the master of roster is free to constitute a Bench of more Judges.

ii) On any point having a bearing on the guilt or innocence of the convicted person, for which there is no clarity, the High Court may,

(a) conduct a further inquiry;

(b) take additional evidence;

(c) may get the inquiry conducted or additional evidence taken by the Sessions Court.

(iii) On the basis also of the inquiry or additional evidence, if any, the High Court may,

a) confirm the death sentence;

however, in case the convict has filed an appeal, the same has to be disposed of before passing the order of confirmation;

and, no order of confirmation shall be passed until the period allowed for filing an appeal has expired.

b) pass any other sentence;

c) annul conviction;

d) convict the accused of any offence which the Court of Sessions would or could have convicted him.

(iv) Amend the charges.

v) Order fresh trial on charges already framed or on amended charges.

vi) May acquit the accused.

vii) In case the Bench is equally divided in opinion, their opinions shall be laid before a third Judge of that Court and the decision will depend on the opinion of the third Judge.

viii) If the third Judge before whom the opinions have been placed is of opinion that the matter should be heard by a larger Bench of Judges, the reference has to be heard by a larger Bench, in view of the requirement under Section 392 of Cr.PC.

23. The detailed procedure would clearly show the seriousness with which the High Court has to consider a reference for the confirmation of death sentence. In a recent decision in Kunal Majumdar vs. State of Rajasthan[21], a coordinate Bench of this Court has held that it is a special and onerous duty of the High Court. To quote:

"18. … A duty is cast upon the High Court to examine the nature and the manner in which the offence was committed, the mens rea if any, of the

culprit, the plight of the victim as noted by the trial court, the diabolic manner in which the offence was alleged to have been performed, the ill-effects it had on the victim as well as the society at large, the mindset of the culprit vis-à-vis the public interest, the conduct of the convict immediately after the commission of the offence and thereafter, the past history of the culprit, the magnitude of the crime and also the consequences it had on the dependants or the custodians of the victim. There should be very wide range of consideration to be made by the High Court dealing with the reference in order to ensure that the ultimate outcome of the reference would instill confidence in the minds of peace-loving citizens and also achieve the object of acting as a deterrent for others from indulging in such crimes."

24. The High Court must refer to the special reasons found by the Sessions Court for inclusion of the case in the rarest of rare category. It has to be seen that the Court of Sessions has already passed a sentence and what is required is only confirmation before execution. On the facts and circumstances of the case, the High Court has to consider whether the case actually falls under the rarest of rare category. In other words, in the process of consideration of a case for confirmation of death sentence, the High Court has to see whether there is presence or absence of special reasons many of which are indicated in the decision in Kunal Majumdar's case (supra). If on such consideration, the High Court finds that special reasons are available in the facts and circumstances of the case, the High Court has to confirm the death sentence. In the absence of such compelling special reasons, the High Court shall award only imprisonment for life.

25. In the facts of the present case, the offence was committed in 2002. The accused was convicted and sentenced to death by the Sessions Court in April, 2004. In November 2004, the High Court commuted the death sentence to life imprisonment but maintained the other punishments under Sections 376 and 201 of IPC of life and three years respectively. The State moved this Court in Special Leave Petition in May 2005. Leave was granted on 08.05.2006. For one reason or the other, the matter was finally heard only in September 2013. The question is: Whether this Court would be justified in imposing the extreme punishment of death at this point of time?

26. The Constitution Bench of this Court in Triveniben vs. State of Gujarat[22] and various other cases had occasion to consider the consequences of inordinate delay in disposal of mercy petitions under Article 72 or 161 of the Constitution of India. It has been held by this Court that when a matter is pending before this Court, the

person always has a ray of hope and hence, it cannot be said that the delay occasioned in Court would be a ground for commutation of death sentence. To quote: "16. Even in this Court although there does not appear to be a specific rule but normally these matters are given top priority. Although it was contended that this reference before us - a Bench of five Judges, was listed for hearing after a long interval of time. We do not know why this reference could not be listed excepted what is generally well-known the difficulty of providing a Bench of five Judges but ordinarily it is expected that even in this Court the matters where the capital punishment is involved will be given top priority and shall be heard of and disposed of as expeditiously as possible but it could not be doubted that so long as the matter is pending in any court before final adjudication even the person who has been condemned or who has been sentenced to death has a ray of hope. It therefore could not be contended that he suffers that mental torture which a person suffers when he knows that he is to be hanged but waits for the doomsday. The delay therefore which could be considered while considering the question of commutation of sentence of death into one of life imprisonment could only be from the date the judgment by the Apex Court is pronounced i.e. when the judicial process has come to an end."

(Emphasis supplied)

27. In a recent decision in Mahendra Nath Das vs. Union of India and Others[23], this Court had considered the consequence of delay of 12 years in deciding a mercy petition under Article 72 of the Constitution of India and held that it was a case of inordinate delay causing mental torment to the convict, and hence commuted the sentence of death to life imprisonment.

28. It is significant to note that all these were cases where the persons convicted under Section 302 of IPC and sentenced for death had been waiting for the decision on the mercy petitions. The instant case is one where a person whose death sentence has been substituted to life imprisonment. Apparently reconciled to his fate, he has been serving his term. Whether, at this juncture, it would be just and proper to alter his sentence to death is the disturbing question. State of Madhya Pradesh vs. Vishweshwar Kol[24], authored by one of us (Prasad, J.), was a case where the Trial Court had convicted the accused and imposed death penalty and in appeal, the High Court acquitted him. It was a case of bride burning. The incident was of October, 2003. The Trial Court convicted the accused under Section 302 of IPC and the sentence of death was passed on 30.04.2004. The High Court acquitted him on 06.12.2004 and this Court finding that it is a fit case for awarding death

sentence and yet taking note of the course of events referred to above, it was held that:

> "11…. notwithstanding the horrendous nature of the crime and that it called for the capital punishment, we find it difficult to reimpose the death sentence on the accused at this stage."
>
> And the accused consequently was awarded sentence of life imprisonment.

29. In the case before us, nine years have passed after substitution of his death sentence by life imprisonment. We are reluctantly of the view that it would not be just and proper to alter the sentence from life imprisonment to death at this stage. In future, in order to avoid such contingencies, cases where enhancement of life sentence to death is sought, should be given due priority.

30. Section 53 of the IPC provides for the following punishments: "First.- Death;

> Secondly.- Imprisonment for life;
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> xxx xxx xxx
>
> Fourthly.-Imprisonment, which is of two descriptions, namely:-
>
> (1) Rigorous, that is, with hard labour;
>
> (2) Simple;
>
> Fifthly.-Forfeiture of property;
>
> Sixthly.-Fine."

31. Imprisonment for life is till the end of the biological life of the person, as held by a Constitution Bench of this Court in Gopal Vinayak Godse vs. The State of Maharashtra and Others[25]. However, this Court has been, for quite some time, conscious of the liberal approach and sometimes discriminatory too, taken by the States in exercise of their power under Sections 432 and 433 of Cr.PC in remitting or commuting sentences. In Jagmohan Singh vs. State of U.P.[26], this Court had expressed concern about such approach made by the States in remitting life sentences. That led to the amendment in Cr.PC introducing Section 433A by Act

45 of 1978. Under Section 433A of Cr.PC, a sentence of imprisonment for life is imposed for an offence for which death is one of the punishments or where a death sentence is commuted to life under Section 433, he shall not be released unless he has served fourteen years of imprisonment. It appears that the provision has been generally understood to mean that life sentence would only be fourteen years of incarceration. Taking judicial notice of such a trend, this Court has, in cases where imposition of death sentence would be too harsh and imprisonment for life (the way it is understood as above) too inadequate, in several cases, has adopted different methods to ensure that the minimum term of life imprisonment ranges from at least twenty years to the end of natural life. In Shri Bhagwan vs. State of Rajasthan[27], Prakash Dhawal Khairnar (Patil) vs. State of Maharashtra[28] and Ram Anup Singh and Others vs. State of Bihar[29], it was 20 years; in Dilip Premnarayan Tiwari and Another vs. State of Maharashtra[30], it was 25 years; in Neel Kumar alias Anil Kumar vs. State of Haryana[31], it was 30 years; and in Swamy Shraddananda (2) alias Murali Manohar Mishra vs. State of Karnataka[32], it was till the end of life without remission or commutation. Ranjit Singh alias Roda vs. Union Territory of Chandigarh[33] is a case where a person committed a second murder. He was sentenced for life imprisonment for the first murder. Taking note of the fact that the co-accused was not given death sentence and awarded only life imprisonment, this Court in the second offence also awarded only life imprisonment. However, it was made clear that:

> "2. … in case any remission or commutation in respect of his earlier sentence is granted to him the present sentence should commence thereafter."

32. However in some cases, the Court had also been voicing concern about the statutory basis of such orders. We are of the view that it will do well in case a proper amendment under Section 53 of IPC is provided, introducing one more category of punishment - life imprisonment without commutation or remission. Dr. Justice V. S. Malimath in the Report on "Committee of Reforms of Criminal Justice System", submitted in 2003, had made such a suggestion but so far no serious steps have been taken in that regard. There could be a provision for imprisonment till death without remission or commutation.

33. In the present case, the respondent has been awarded life imprisonment under Section 302 of IPC. Under Section 376 of IPC also he has been awarded life imprisonment. The third substantive sentence is under Section 201 of IPC. All these sentences are ordered to run concurrently. The sentence of life imprisonment

is till the end of one's biological life. However, in view of the power of the State under Sections 432 and 433 of Cr.PC, in the present case, we are of the view that the sentences shall run consecutively, in case there is remission or commutation. We further make it clear that the remission or commutation, if considered in the case of the respondent, shall be granted only after the mandatory period of fourteen years in the case of offence under Section 302 of IPC.

34. Section 433A of the Cr.PC has imposed a restriction with regard to the period of remission or commutation. It is specifically provided that when a sentence of imprisonment of life, where death is also one of the punishments provided by law, is remitted or commuted, such person shall not be released unless he has served at least fourteen years of imprisonment. In the case of the respondent herein, second life imprisonment is under Section 376 of IPC. A minimum sentence under Section 376 of IPC is seven years. Death is not an alternate punishment. However, the sentence may even be for life or for a term which may extend to ten years. Of the three options thus available, in view of the brutal rape of a minor girl child, the Sessions Court has chosen to impose the extreme punishment of life imprisonment to the respondent.

35. Punishment has a penological purpose. Reformation, retribution, prevention, deterrence are some of the major factors in that regard. Parliament is the collective conscience of the people. If it has mandated a minimum sentence for certain offences, the Government being its delegate, cannot interfere with the same in exercise of their power for remission or commutation. Neither Section 432 nor Section 433 of Cr.PC hence contains a non-obstante provision. Therefore, the minimum sentence provided for any offence cannot be and shall not be remitted or commuted by the Government in exercise of their power under Section 432 or 433 of the Cr.PC. Wherever the Indian Penal Code or such penal statutes have provided for a minimum sentence for any offence, to that extent, the power of remission or commutation has to be read as restricted; otherwise the whole purpose of punishment will be defeated and it will be a mockery on sentencing.

36. Having regard to the facts and circumstances of the present case, we make it clear that in the event of State invoking its powers under Section 432 or 433 of Cr.PC, the sentence under Section 376 of IPC shall not be remitted or commuted before seven years of imprisonment. In other words, in that eventuality, it shall be ensured that the respondent will first serve the term of life imprisonment under Section 302 of IPC. In case there is any remission after fourteen years, then imprisonment for a minimum period of seven years under Section 376 of IPC shall

follow and thereafter three years of rigorous imprisonment under Section 201 of IPC. The sentence on fine and default as awarded by the Sessions Court are maintained as such.

37. The appeal is disposed of as above.

[1] (1996) 6 SCC 250
[2] (1980) 2 SCC 684
[3] (1983) 3 SCC 470
[4] (2013) 5 SCC 546
[5] (2009) 4 SCC 736
[6] (1987) 3 SCC 80
[7] (2002) 5 SCC 234
[8] (2011) 14 SCC 401
[9] JT (2013) SC 310
[10] (1994) 2 SCC 220: (1994) SCC (Cri) 358
[11] (1999) 5 SCC 1: (1999) SCC (Cri) 638
[12] (2007) 4 SCC 713
[13] (2010) 3 SCC 56
[14] (2010) 9 SCC 1
[15] (2012) 9 SCC 1
[16] (2005) 3 SCC 114
[17] (2008) 11 SCC 113: (2009) 1 SCC (Cri) 353
[18] (2008) 15 SCC 269
[19] (2011) 5 SCC 317
[20] (2012) 4 SCC 37: (2012) 2 SCC (Cri) 30
[21] (2012) 9 SCC 320
[22] (1989) 1 SCC 678
[23] (2013) 6 SCC 253
[24] (2011) 11 SCC 472
[25] AIR 1961 SC 600
[26] (1973) 1 SCC 20
[27] (2001) 6 SCC 296
[28] (2002) 2 SCC 35
[29] (2002) 6 SCC 686
[30] (2010) 1 SCC 775
[31] (2012) 5 SCC 766
[32] (2008) 13 SCC 767
[33] (1984) 1 SCC 31

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