SUPREME COURT OF INDIA

Jitendra @ Kalla

Vs.

State of Govt. of NCT of Delhi

Crl.A.No.2133 of 2017

(A.K.Sikri and Ashok Bhushan,JJ.,)

25.10.2018

JUDGMENT

A.K.Sikri,J.,

1. Criminal Appeal Nos. 2133 of 2017 and 2134 of 2017 are filed by Jitendra @ Kalla (hereinafter referred to as the "appellant") against whom two FIRs, namely, FIR No. 67 of 1999 under Sections 302/307/34 of the Indian Penal Code (for short, "IPC") and FIR No. 68 of 1999 under Sections 120B/302, IPC were registered. After investigation and filing of charge sheets in both the incidents, the charges under aforesaid provisions were framed and trial took place. The trial court convicted the appellant by a common judgment dated July 01, 2013. Though we would take note of the facts, which are relevant for these appeals, in some detail hereinafter, it would be pertinent to mention at this stage that as per the case of the prosecution the appellant murdered one Anil Badana on March 10, 1999 in the marriage reception of one, Vijay, within the area of Police Station Keshav Puram. Apart from other persons, one, Sumit Nayyar, son of Kimti Lal Nayyar was eyewitness to the said incident and had immediately informed the police about the murder of Anil Badana by making PCR calls wherein he had specifically named the appellant as a person who had committed the crime. As per the prosecution, in order to liquidate this eyewitness also, on the same night, intervening March 10 and 11, 1999, at around 12:30 am, the appellant went to he house of Sumit Nayyar in Mukherjee Nagar, Delhi and rang doorbell. Sumit's father, Kimti Lal Nayyar came out to check as to who had rung doorbell of his house, someone fired upon with a gun and three bullets hit his body. The investigation revealed that it is the appellant who had shot dead Kimti Lal Nayyar as well. The two FIRs mentioned above pertain to these two incidents.

2. After recording the finding of guilt in both the cases and convicting the appellant for the charges framed against him in the FIR No. 67 of 1999 the appellant was sentenced to rigorous imprisonment for life with a direction that he shall not be considered for grant of remission till he undergoes the actual sentence of 30 years plus fine in the sum of Rs. 3 lac. In default of payment of fine further simple imprisonment for a period of three years was awarded. Out of the aforesaid fine of Rs. 3 lac, a sum of Rs. 1 lac was to be paid to the State

and balance of Rs. 2 lac was directed to be paid to the family of deceased — Anil Badana as compensation under Section 357 of Code of Criminal Procedure (For short, 'CrPC"). For offences under Section 307 of the I PC, the appellant was sentenced to rigorous imprisonment for 10 years and a fine of Rs. 1 lac, in default of payment of fine further simple imprisonment for a period of one year. These sentences are to run concurrently. Insofar as conviction under FIR No. 68 of 1999 are concerned, the appellant was sentenced to undergo rigorous imprisonment for life by making it clear that it is till the rest of his life and he was also directed to pay a fine of Rs. 3 lac in this case also which was to be shared in the same manner, namely, Rs. 1 lac to the State and Rs. 2 lac to the family of deceased — Kimti Lal Nayyar. The trial court also directed that sentence in this case would start running consequent to and only after the conclusion of sentence imposed in FIR No. 67 of 1999.

3. Against these convictions, the appellant filed two appeals before the High Court which were decided by a common judgment dated December 24, 2016. During the arguments, the counsel for the appellant made a statement at the Bar to the effect that the appellant did not intend to press the challenge to the findings of conviction recorded by the Trial Court and confined his submissions only to the sentencing part.

4. Still, the High Court discussed the evidence which was produced by the prosecution in both the cases and remarked that the appellant was rightly convicted.

5. Thereafter, the High Court went into the question of respective sentences which are given in each of the cases by the trial court. The argument of the counsel for the appellant challenging the sentence of life imprisonment, with the condition that the appellant would have to undergo the actual sentence of 30 years without any remission and life imprisonment in the second case to mean that it would be for the rest of his life, was challenged by the learned counsel for the respondent.

6. After taking note of reasons which were given by the trial court in awarding specific sentences in the two cases, the High Court found that two broad issues arise for consideration which are as follows:

> (i) The first issue which arose for consideration was whether the order of the trial court that both the sentences are to run consecutively requires interference or not"?
>
> (ii) If the sentences are not to run consecutively, whether the order on sentence in both the appeals requires interference?

7. Insofar as issue no. (i) is concerned, the High Court referred to the provisions of Section 427(2) of the CrPC on the basis of which it concluded that it was not to run consecutively. Thereafter, the High Court adverted to the issue no. (ii) and in the process took note of various judgments[1], on the basis of which it concluded that the trial court exceeded its jurisdiction in awarding the sentences in the aforesaid manner. The discussion in this behalf is contained in para 52 of the judgment of the High Court which reads as under:

> "55. In view of the decision rendered by the five Judge Bench of the Supreme Court in the case of Union of India v. V. Sriharan @ Murugan and Ors. (supra), more particularly as held in paragraphs 103 and 104, we are of the view that the trial court exceeded its jurisdiction. Even otherwise, we are of the view that the trial court in this case has acted in utter haste by passing the order on sentence on the same day with a per-determined mind. Having regard to the gravity of the matter, the trial court should have allowed reasonable opportunity to the counsel for the accused to address arguments on sentence. The trial court has shown utter impatience and also incorrectly applied the law. We may notice that the Full Bench of the Supreme Court in the case of Union of India v. V. Sriharan @ Murugan and Ors. (supra) held that the ratio laid down in the case of Swamy Shraddananda (supra) with a very special category of sentence instead of death for a terms exceeding 14 years and put that category beyond application of remission is well-founded. We have extracted above the aforegoing paragraph 92 in the case of *Swamy Shraddananda (II) v. State of Karnataka*[1] wherein the Hon'ble Supreme Court discussed a situation where a sentence may be excessive and duly harsh or may be highly disproportionately inadequate. The Court may find that a case falls short of the rarest of the rare category. But at the same time, having regard to the nature of the crime, the court may strongly feel that a sentence of life imprisonment that subject to remission which normally works out to a term of 14 years may be grossly disproportionate and inadequate. Faced with this quandary with two alternates, i.e., either death or life of not more than 14 years, the Court may be led to passing a death sentence. The Court cautioned of such a prejudice and viewed such a condition to be disastrous and held the Court would take recourse to the expanded option."

8. Thereafter, the Court discussed the adequacy of sentence in the circumstances of the two cases in which the appellant had been convicted and went through various judgments[2] of this Court.

9. After taking note of the principles laid down in the judgments taken note of by the High Court, the Court summed up the position as under:

> "We believe that being a civilised society—a tooth for a tooth and an eye for an eye ought not to be the criterion and as such the question of there being acting under any haste in regard to the life imprisonment would not arise; rather our jurisprudence speaks of the factum of the law courts being slow in that direction and it is in that perspective a reasonable proportion has to be maintained between the heinousness of the crime and the punishment. While it is true, punishment disproportionately severe ought not to be passed but that does not even clothe the law courts, however, with an opinion to award the sentence which would be manifestly inadequate having due regard to the nature of offence since an inadequate sentence would not subserve the cause of justice to the society. The Courts would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime

> and the punishment is the principle of "just deserts" that serves as the foundation of every criminal sentence that is justifiable. In other words, the "doctrine of proportionality" has a valuable application to the sentencing policy under the Indian Criminal Jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.

10. On the application of the aforesaid principles, the High Court concluded that the punishments awarded to the appellant were excessive in nature and modified the same by removing the cap of 30 years and sentencing the appellant to the period already undergone, i.e., 16 years and 10 months. The direction was given to release the appellant forthwith if not required in any other case. The aforesaid judgment was delivered on December 24, 2016. Thereafter, the High Court listed the matter of its own for directions on February 14, 2017 as according to it, a typographical error was noticed in the said judgment. On this day, following order was passed:

> "This matter has been listed today for directions. A typographical error was noticed post delivery this judgment dated 24.12.2016 in the concluding portion. The error is rectified and the extraneous sentence, which crept in, is deleted.
>
> " to the period already undergone by the appellant i.e. 16 years and 10 month."
>
> " The appellant be released forthwith, if not required in any other case "
>
> Mr. Sharma, learned counsel for the appellant, submits that he has no contact with the appellant. Let a copy of this order be sent to Superintendent Central Jail for appropriate action and DASTI be also given to the counsel for the parties, under the signatures of the Court Master."

11. In these appeals, both the aforesaid orders have been challenged. The appellant has challenged his conviction insofar as the trial in two cases is concerned. It may be noted that the appellant was satisfied with the orders dated December 24, 2016 as per which he was released on serving the sentence already undergone. However, after the correction in the said order dated February 14, 2017, he chose to challenge the conviction as well and filed the instant appeals. Other two appeals are filed by the families of the victims in two cases questioning the modification of sentence by the High Court vide judgment dated December 24, 2016. Even the State has filed the appeal against the modification order.

12. We may record that in the special leave petitions filed by the appellant though the notice was issued on April 07, 2017, this Court refused to stay the orders dated February 14, 2017 and directed the appellant to surrender. He was permitted to make an application for bail with the observation that the same would be considered on its own merits. The appellant, accordingly, surrendered and, at present, he is in jail. The appellant did move the application for bail. However, instead ofhearing the argument in the said application, the Court decided to hear these appeals finally. This is how the matters were heard on merits.

13. In the aforesaid context, three questions have arisen for consideration, which are as follows:

(i) Whether the appellant has been rightly convicted for the offences mentioned in the two chargesheets? Here, the incidental question is as to whether the appellant can raise such a plea when it was not pressed before the High Court.

(ii) Whether the order of the High Court modifying the sentences as awarded by the trial court is proper and justified?

(iii) Whether the High Court could pass the 'correction' orders on February 14, 2017 on the ground that typographical error had been noticed in the main judgment dated December 24, 2016?

14. Ms. Vibha Makhija, learned senior counsel appearing for the appellant made a fervent plea to the effect that the manner in which this case has progressed from the stage of trial till the High Court would reflect that the appellant has been given a raw deal and his case has not been properly dealt with either by the trial court or the High Court, insofar as conviction of the appellant in the two cases is concerned. Form the events that took place in the trial court, she laboured to demonstrate that it depicted biased investigation and there was even judicial bias which resulted in denial of fair trial. According to her, conviction was illegal and even the sentences passed by the trial court were contrary to law. According to her, the same mistake occurred at the High Court level as the High Court took a shortcut by recording the concession of the counsel for the appellant that insofar as conviction is concerned it was not pressed. She also submitted that though the High Court, in the first instance, gave a partial relief by reducing the sentence to the period already undergone but thereafter committed a grave error in rectifying the said order which was beyond its powers. Her submission was that the order of sentence already undergone could, by no imagination, be termed as "typographical error" and on that pretext "corrected" by the High Court in such a manner, unknown to the law. She also argued that even if the order dated December 24, 2016 releasing the appellant after surrendering the sentence already undergone was not correct in law, such an error could be rectified only by a higher forum as the High Court had become functus officio after delivering its judgment of December 24, 2016. On the basis of the aforesaid submissions, plea of the learned senior counsel was that the matter should be remitted back to the High Court for fresh consideration on merits, i.e., on the issue of conviction as well as on the sentence, if the conviction is sustained by the High Court on fresh consideration.

15. In an attempt to commend this Court to accept the aforesaid approach, Ms. Makhija made submissions at two levels. In the first instance, it was argued that even if the counsel for the appellant had made a statement that she was not pressing the case insofar as conviction is concerned, such a concessions should not have been accepted by the Court and it was the bounden duty of the court to decide the case on merits. In support of this submission, she

referred to the judgment of this Court in *Jeetu @ Jitendra and Others v. State of Chhattisgarh*[3], relevant portion thereof is reproduced hereunder:

> "23. At this juncture, we are obliged to state that when a convicted person prefers an appeal, he has the legitimate expectation to be dealt with by the courts in accordance with law. That apart, he has intrinsic faith in the criminal justice dispensation system and it is the sacred duty of the adjudicatory system to remain alive to the said faith. He has embedded trust in his counsel that he shall put forth his case to the best of his ability assailing the conviction and to do full justice to the case. That apart, a counsel is expected to assist the courts in reaching a correct conclusion. Therefore, it is the obligation of the court to decide the appeal on merits and not accept the concession and proceed to deal with the sentence, for the said mode and method defeats the fundamental purpose of the justice delivery system. We are compelled to note here that we have come across many cases where the High Courts, after recording the non-challenge to the conviction, have proceeded to dwell upon the proportionality of the quantum of sentence. We may clearly state that the same being impermissible in law should not be taken resort to. It should be borne in mind that a convict who has been imposed substantive sentence is deprived of his liberty, the stem of life that should not ordinarily be stenosed, and hence, it is the duty of the Court to see that the cause of justice is subserved with serenity in accordance with the established principles of law.

16. She submitted that apart from the above legal position, insofar as present case is concerned no such instructions were given to the lawyer by the appellant to give such a concession.

17. At second level, the learned senior advocate tried to submit that there were various circumstances in the case which would reflect that it was an arguable case on merits and, therefore, there was no question of giving up the issue of conviction. In this behalf, she flagged the aspects of improper motive, inimical eyewitnesses, contradiction in the testimony of those witnesses, non-examination of independent witnesses even when the murder of Anil Badana took place in a marriage function where so many persons were present, father of the groom had turned hostile, recoveries which were made were illegal, forensic examination was conducted after much delay and circumstances of second murder were also suspicious. Her passionate plea was that had chance been given to the appellant, there could have been detailed arguments on these aspects, with a possibility of favourable verdict for the appellant.

18. Mr. A.N.S. Nadkarni, learned Additional Solicitor General as well as Ms. Kiran Suri, learned Senior Advocate appearing for the State strongly refuted the aforesaid submissions. They submitted that during the arguments before the High Court when it was found that the appellant had no case on merits, his counsel pleaded only on sentencing. It was also argued that statement of the counsel is specifically recorded in para 6 of the High Court judgment and the sanctity of the court record has to be maintained which cannot be questioned by approaching the higher forum. It was emphasised that inspite of this statement, the High Court had, in fact, gone into the evidence and satisfied its conscience to the effect that the

trial court had come to a right conclusion about the conviction of the appellant. In this backdrop, the judgment cited by the appellant was not applicable. They also briefly touched the merits of the case in the context of replying to the arguments of the learned counsel for the appellant and submitted that the issues flagged now on which the learned senior counsel for the appellant wanted to argue, do not even arise from the record. It was contended that nothing of the nature was even put to the prosecution witnesses and an attempt to find the alleged loopholes in the prosecution case was made for the first time before this Court. Insofar as sentence given by the trial court is concerned, it was argued that the trial court was perfectly justified in putting a cap of 30 years' rigorous imprisonment before the request for remission can be granted referring to the Constitution Bench judgment of this Court in Sriharan @ Murugan (supra).

19. Mr. Sanjay R. Hegde, learned senior counsel who appeared for the complainant in one case and Mr. Prashant Bhushan, Advocate who appeared for complainant in other case, supported the aforesaid submissions of the State. It was additionally argued that even if the 'correction' order dated February 14, 2017 was wrong, since the appeals were preferred against the main judgment dated December 24, 2016, this Court could always go into the issue as to whether modification of sentence carried out by the High Court was proper or not. On the aspect that the statement contained in para 6 of the judgment of the High Court could not be questioned by the appellant, Mr. Hegde referred to the judgment of this Court in *State of Maharashtra v. Shrinivas Nayak and Another*[4]. He also relied upon the judgment in *Muthuramalingam and others v. State represented by Inspector of Police*[5]

20. Having noted the submissions of the counsel for the parties, we proceed to discuss three questions formulated above. Insofar as question No. 1 is concerned, the contention of Ms. Makhija that counsel for the appellant had made a statement before the High Court without instructions from the appellant cannot be accepted. We may reproduce paragraph 6 of the High Court judgment which states to the contrary. It reads as under:

> "6. At the outset, learned counsel for the appellant on instructions has submitted that the appellant does not press the appeals on merits with respect to the judgment on conviction but has laid challenge to the order on sentence passed in both the appeals."
>
> It records "that the appellant does not press the appeal on merits with respect to the judgment of conviction" and specifically states that the statement is made 'on instructions' in this behalf. It is clear from the above that the counsel for the appellant had received the instructions not to press the case on merits. After the judgment was pronounced, at no stage, the appellant took the objection that the aforesaid statement was made without instructions. It is stated for the first time in these appeals and the special leave petitions were filed in March, 2017, only after the High Court had passed orders dated February 14, 2017 "correcting" earlier order dated December 24, 2016 by terming it as typographical error. It is argued by the appellant that since the order of sentence passed in the judgment dated December 24, 2016 went in his favour, he was not bothered about the aforesaid statement of his counsel. However, fact remains that even thereafter he did not approach the High Court with the plea that

> he had not authorised his advocate to make such a statement. Law on this subject is well settled in the judgments cited by Mr. Hegde. The Court record has to be believed. If according to the aggrieved party there is some error, the only option with the aggrieved party is to approach that very court, seeking correction of that order. It was not done. Therefore, we have to proceed on the premise that the counsel for the appellant had made the aforesaid statement on instructions from the appellant.

21. Notwithstanding, the said statement, it was necessary for the High Court to still go through the record to satisfy as to whether the conviction is properly recorded. We find that this exercise has in fact been duly undertaken by the High Court. After recording the statement in para 6, discussion ensued on merits from paragraph 7 onwards. The High Court has taken note of the witnesses who were examined by the prosecution to prove its charges in both the cases. It has mentioned that the prosecution based on the testimony of eyewitnesses thereafter brief description of the depositions of these witnesses have been recorded by the High Court. The High Court has also taken note of MLC report which was duly proved by the prosecution. It has also gone through the testimony of FSL Expert (Ballistic Expert). Deposition of the police officials who played their part at different stages including investigation has also been taken note of. The testimony of certain other official witnesses is also kept in mind by the High Court with specific reference thereto. On the basis of such discussions, the High Court has made the following observations qua each of these cases:-

> "22. Based on the testimonies of these witnesses, the trial court held the appellant to be guilty. Although the counsel for the appellant had submitted that he does not challenge the judgment on conviction yet we have carefully examined the testimonies of these witnesses and, in our view, the trial court has correctly held the appellant to be guilty.
>
> 29. In our view, the trial court based on the testimonies of various witnesses including eyewitness and based on the scientific evidence rightly convicted the appellant under Section 302 of the Indian Penal Code."

22. We, therefore, do not find any force in this argument and decide this issue against the appellant.

23. Before dealing with Question No. 2, it would be apt to first discuss Question No. 3. We are of the view that order dated February 14, 2017 deleting two lines from the main judgment dated December 24, 2016 does not stand judicial scrutiny, inasmuch as, by no stretch of imagination it can be treated as typographical error. When the judgment dated December 24, 2016 is read in its entirety on the issue of sentencing, a brief narration whereof has already been given above, it becomes apparent that the High Court, in its wisdom, thought it proper to modify the order of sentence to the period already undergone. As pointed out above, the High Court took note of various judgments including of the Supreme Court. Thereafter in paragraph 61, it made categorical averments that in a civilised society, a tooth for a tooth ad an eye for an eye ought not to be the criterion in awarding the sentence. It also observed that the Court was required to pass a sentence which is neither dispassionately severe nor

manifestly inadequate. For this purpose, it is required to give due regard to the nature of offence and draw a balance-sheet of aggravating and mitigating circumstances. After this discussion, the Court modified the order of sentence in the following manner:

> "62. In the contextual facts, on considering the aforesaid principles and having regard to the nature of the offence and the methodology adopted, we are convinced that the power to impose a 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 depending on the facts of the case. Further, the punishment awarded to the appellant herein is in excess of the requirement of the situation and as such the mitigating facts put forth by the learned counsel for the appellant are meant to invite mercy on the appellant. We are of the considered view that to meet the ends of justice, the cap of 30 years must be removed. Hence, we modify the order on sentence to the period already undergone by the appellant, i.e. 16 years and 10 months."

24. It does not need further elaboration to hold that the last sentence in the aforesaid paragraph by which the Court modified the punishment to the period already undergone, i.e., 16 years and 10 months was not a typographical error.

25. One thing is absolutely clear. In both the FIRs there was a charge of murder under Section 302, IPC. Conviction was recorded on both the charges by the trial court which was affirmed by the High Court as well. For the offence of murder, minimum sentence is 'life imprisonment'. For that reason, obviously, the High Court could not have modified the sentence to the one already undergone. Therefore, modification in the aforesaid manner as done by the High Court was clearly erroneous. In fact, it appears that the High Court realised this mistake and, therefore, made amends by correcting this mistake vide orders dated February 14, 2017. However, that step taken by the High Court was beyond its jurisdiction. It could have been done only in appeal. That exercise is precisely done by this Court by setting aside that part of the order.

26. Order dated February 14, 2017, therefore, cannot hold the ground and is hereby set aside.

27. We now take up the second issue. This question arises for consideration because of the reason that main judgment dated December 24, 2016 is challenged by the two complainants as well as the State.

28. To answer this issue, we are called upon to decide related question, viz. whether the manner of imposition of sentences by the trial court was justified? To recapitulate, in the first charge sheet in respect of 1st offence the trial court, while imposing sentence of life imprisonment, put a cap of 30 years thereby clearly stating that no remission would be permissible before them. Again, while inflicting life imprisonment in the second case, it stated that the sentence would be for whole life and would start only after completion of the sentence in the first offence. In other words, it awarded consecutive sentences and not concurrent sentences.

29. Both the cases were tried together. Conviction was recorded by one common judgment. Likewise sentences were also recorded by one common order. In this backdrop, the High Court has correctly come to conclusion that there was no question of giving consecutive sentences and sentences had to be concurrent. For coming to this conclusion various judgments on the point were noted. The High Court also specifically referred to Section 427 of CrPC. relevant portion whereof reads as under:

> "S. 427 : (1) xxx xxx xxx
>
> (2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence."

30. We now advert to the issue of 30 years' cap while awarding life conviction. This aspect is now conclusively determined by a Constitution Bench judgment of this Court in Sriharan @ Murugam (Supra) wherein this Court held as under:

> "62. As far as remissions are concerned, it consists of two types. One type of remission is what is earned by a prisoner under the Prison Rules or other relevant rules based on his/her good behaviour or such other stipulations prescribed therein. The other remission is the grant of it by the appropriate Government in exercise of its power under Section 432 of the Criminal Procedure Code. Therefore, in the latter case when a remission of the substantive sentence is granted under Section 432, then and then only giving credit to the earned remission can take place and not otherwise. Similarly, in the case of a life imprisonment, meaning thereby the entirety of one's life, unless there is a commutation of such sentence for any specific period, there would be no scope to count the earned remission. In either case, it will again depend upon an answer to the second part of the first question based on the principles laid down in Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113
>
> 63. With that when we come to the second part of the first question which pertains to the special category of sentence to be considered in substitute of death penalty by imposing a life sentence i.e. the entirety of the life or a term of imprisonment which can be less than full life term but more than 14 years and put that category beyond application of remission which has been propounded in paras 91 and 92 of *Swamy Shraddananda (2) v. State of Karnataka*, and has come to stay as on this date."

31. Judgement by the Constitution Bench in Muthuramalingam (Supra) deals with this aspect very clearly, in the following words:

> "23. Parliament, it manifests from the provisions of Section 427(2) CrPC, was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an

exception to the general rule to clearly recognise that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively. The provisions of Section 427(2) CrPC apart, in Ranjit Singh case [Ranjit Singh v. UT of Chandigarh, (1991) 4 SCC 304 : 1991 SCC (Cri) 965] , this Court has in terms held that since life sentence implies imprisonment for the remainder of the life of the convict, consecutive life sentences cannot be awarded as humans have only one life. That logic, in our view, must extend to Section 31 CrPC also no matter Section 31 does not in terms make a provision analogous to Section 427(2) of the Code. The provision must, in our opinion, be so interpreted as to prevent any anomaly or irrationality. So interpreted Section 31(1) CrPC must mean that sentences awarded by the court for several offences committed by the prisoner shall run consecutively (unless the court directs otherwise) except where such sentences include imprisonment for life which can and must run concurrently. We are also inclined to hold that if more than one life sentences are awarded to the prisoner, the same would get superimposed over each other. This will imply that in case the prisoner is granted the benefit of any remission or commutation qua one such sentence, the benefit of such remission would not ipso facto extend to the other."

32. As a consequence, the order of the High Court removing the cap of 30 years is not correct and that portion has to be set aside.

33. The upshot of the aforesaid discussion would be to conclude as under:

(a) Order dated February 14, 2017 is set aside.

(b) Insofar as judgment dated December 24, 2016 is concerned, the modification of sentence as carried out by the High Court is set aside meaning thereby the life sentence with 30 years' cap without remission was awarded by the trial court is upheld. Further, direction of the High Court in modifying the sentence to the one already undergone is also set aside.

(c) Rest of the judgment dated December 24, 2016 of the High Court is upheld. Effect thereof is that the conviction of the appellant is sustained. However, sentences in both the cases shall run concurrently. The net effect thereof would be that the appellant is given life imprisonment in both the cases with the condition that he will have no right to seek remission till the completion of 30 years of rigorous imprisonment. Resultantly, the appeals of the appellant are dismissed and that of complainants and the State are partially allowed to the aforesaid extent and disposed of in the aforesaid manner.

Judgment Referred.

[1]*(i) Swamy Shraddananda (I) v. State of Karnataka (2007) 12 SCC 288*
(ii) Swamy Shraddananda (II) v. State of Karnataka (2008) 13 SCC 767
(iii) Shri Bhagwan v. State of Rajasthan (2016) 6 SCC 296

(iv) Union of India v. V. Sriharan @ Murugan & Ors. (2016) 7 SCC 1 = 2015 (13) SCALE
(v) Birju v. State of M.P. [(2014) 3 SCC 421];
(vi) Sumer Singh v. Surajbhan Sing and Ors. 2014 (3) JCC 2282

[2] *(i) State of M.P. v. Babulal AIR 2008 SC 582*
(ii) Jameel v. State of Uttar Pradesh; (2010) 12 SCC 532
(iii) Gopal Singh v. State of Uttarakhand [2013 (2) SCALE 533
(iv) Dulla and Ors. v. State AIR 1958 All 198
[3]*(2013) 11 SCC 0489*
[4]*(1982) 2 SCC 0463*
[5]*(2016) 8 SCC 0313*