SUPREME COURT OF INDIA

Sachin Kumar Singhraha

Vs.

State of Madhya Pradesh

Crl.A.No. 473-474 of 2019

(N.V.Ramana,J., Mohan M.Shantanagoudar and Indira Banerjee,JJ.,)

12.03.2019

JUDGMENT

Mohan M.Shantanagoudar,J.,

SLP(Crl.)No.2453-2454 of 2016

1. Leave granted.

2. The First Additional Sessions Judge, Maihar, District Satna, Madhya Pradesh in Special Sessions Trial No. 41 of 2015 vide judgment dated 06.08.2015 convicted the accused/appellant for the offences punishable under Sections 363, 376(A), 302 and 201(II) of the Indian Penal Code (in short "the IPC") and Section sg,,a,ure5(i)i(m) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (in short "the POCSO Act") and sentenced him to death.

3. The judgment of the Trial Court was confirmed by the High Court of Madhya Pradesh at Jabalpur vide its judgment and order dated 03.03.2016 in Criminal Reference No. 5 of 2015 and in Criminal Appeal No. 2203 of 2015, except in respect of the offence under Section 363 IPC which means the accused was acquitted under Section 363 IPC by the High Court.
These appeals are presented by the convicted accused.

4. The case of the prosecution in brief is that on 23.02.2015, PW4 (the elder brother of the victim's father) came over from his village to drop the victim child to school in a vehicle bearing Registration No. MP 19 T 2374, owned and driven by the accused/appellant. PW4, on the assurance of the accused/appellant that he would go along with the victim child to her school, as he had to pay his own daughter's fees, alighted from the vehicle near the Sabzi Mandi. The child went along with the accused/appellant towards her school in the vehicle, but did not return home that day. Despite a frantic search by her parents, relatives and the villagers, the victim child could not be traced. The father of the deceased suspected that the accused/appellant had left his daughter somewhere else, however, the first information report (Ext. P1) came to be lodged against an unknown offender and the

accused/appellant was apprehended after two days. After the trial, as mentioned supra, the accused/appellant was convicted by the Trial Court and the order of conviction was confirmed by the High Court.

5. Shri Mrigandra Singh, learned senior Advocate appearing on behalf of the accused/appellant, took us through the material on record, and submitted that the case of the prosecution mainly rests on the last seen circumstance, but the said circumstance has not been duly proved. This is because grave suspicion arises against PW4 also, having regard to the evidence of PW5 Ramji Shukla. He also submits that the evidence that led to the recovery of the dead body based on the confession of the accused/appellant is liable to be rejected on the ground that the panchnama was drawn at the police station and not on the spot of recovery of the dead body; and that the Investigating Officer deliberately tried to conceal the main offender and framed the accused/appellant, and such lapse in the course of investigation would tilt the balance of justice in favour of the accused/appellant. In the alternative, he submits that the case on hand does not fall under the definition of the rarest of rare cases and, therefore, the accused/appellant may not be punished with death. Per contra, learned counsel for the State argued in support of the judgments of the Courts.

6. The instant case rests on circumstantial evidence, the prosecution relying mainly on the following circumstances:-

a) PW4 (uncle of the deceased) and the deceased child travelled from their native place Itma to Maihar in the vehicle owned and driven by the accused/appellant.

b) PW4 gave the custody of the child to the accused/appellant upon the assurance of the accused/appellant that he would take the child to school safely.

c) The deceased was last seen with the accused/appellant by PW4 and PW5.

d) The school bag and the dead body of the deceased were recovered at the instance of the accused/appellant pursuant to the disclosure statement.

e) The accused/appellant came out with a false explanation in his statement recorded under Section 313, CrPC.

7. There cannot be any dispute as to the well settled proposition that the circumstances from which the conclusion of guilt is to be drawn must or "should be" and not merely "may be" fully established. The facts so established should be consistent only with the guilt of the accused, that is to say, they should not be explicable through any other hypothesis except that the accused was guilty. Moreover, the circumstances should be conclusive in nature. There must be a chain of evidence so complete so as to not leave any reasonable ground for a conclusion consistent with the innocence of the accused, and must show that in all human probability, the offence was committed by the accused.

8. The records reveal that the distance between Itma (the village of the deceased) and Maihar (the town where her school was situated) was approximately 9 km. The deceased

was studying at New Horizon Public School, Maihar in L.K.G. and was aged about five years and two months at the time of occurrence of the offence. The accused/appellant was the registered owner of the vehicle in which he was last seen with the victim, and was driving the vehicle on the day of the incident. His daughter was also a student of the same school as the deceased. All the aforementioned facts are not in dispute. It is also practically not disputed before us by the counsel for the defence that it is a clear case of rape and murder of the child. However, according to the defence, the accused/appellant is not responsible for the crime.

9. PW1 is the father of the deceased. PW4 is the elder brother of PW1. Since PW4 was working in Maihar town as an electrician in an electrical shop, PW1 sent his child (the deceased) with PW4 to drop her to school at Maihar. At about 10.00 a.m., PW4 left with the deceased from home in the vehicle of the accused/appellant and went to Maihar. PW4 has deposed that he was told by the accused/appellant that he had to go to the victim's school to deposit his own daughter's fees, and believing his words, PW4 requested the accused/appellant to take the victim child to school. The accused/appellant assured PW4 that he would drop the victim child to school. Hence, PW4 got off the vehicle, leaving the victim child in the custody of the accused/appellant. Thus, PW4 is the main witness to depose about the last seen circumstance. PW4 also withstood his lengthy cross-examination and no major variations were brought out in his evidence through the same.

10. However, learned senior Counsel for the defence contended that the needle of suspicion also tilts towards PW4, inasmuch as PW5 has deposed that he saw the accused/appellant, the deceased and PW4 together in the vehicle of the accused/appellant, at a point near the Sabzi Mandi. According to the learned counsel, if PW4 had really alighted from the vehicle at the Sabzi Mandi, he could not have been seen by PW5 at the said point. On the said basis, he submits that the evidence of PW4 cannot be believed, since his statement before the Court was only meant to shield himself. We have carefully gone through the evidence of PW5 in order to satisfy our conscience, and find that the Trial Court and the High Court have on an evaluation of PW5's evidence, rightly concluded that it supported the prosecution's version. Thus, the contention as raised above cannot be accepted. PW5 has deposed that at about 9.30 a.m., he saw the accused/appellant sitting in the driver's seat in the vehicle, and the victim by his side, in her school uniform. There was a contradiction (Ext. D4) in the evidence of PW5 with respect to the deceased being seated in the front seat of the vehicle, which according to us is not material. Unfortunately, the Trial Court, instead of marking a specific portion of the statement of PW5, where he has contradicted his earlier version relating to the aforesaid version, has marked the entire statement recorded by the police under Section 161 of the Code of Criminal Procedure (in short "the CrPC"). Be that as it may, the contradiction thus marked is to be seen only with regard to the child sitting next to the seat of the accused/appellant. This contradiction has been explained by the Trial Court and the High Court by observing that it may be due to loss of memory, and that it is in any case not a material contradiction. PW5 has deposed in his cross-examination that he saw the accused/appellant, the deceased and PW4 together in the vehicle of the accused/appellant. The defence counsel based on this deposition of PW5 vehemently argues that PW5 fully contradicts the evidence of PW4 as he has deposed to seeing PW4 at a point inconsistent with where he claimed to have got

down from the vehicle of the accused/appellant. However, we do not find any confusion in the evidence of PW5, inasmuch as he has consistently deposed that he saw the accused/appellant, deceased and PW4 in the vehicle of the accused/appellant in the region of the Sabzi Mandi. This does not conflict with the case of the prosecution that all the aforementioned three persons left the village Itma in the vehicle of the accused/appellant and dropped PW4 near the Sabzi Mandi. The Court will have to evaluate the evidence before it keeping in mind the rustic nature of the depositions of the villagers, who may not depose about exact geographical locations with mathematical precision. Discrepancies of this nature which do not go to the root of the matter do not obliterate otherwise acceptable evidence. It need not be stated that it is by now well settled that minor variations should not be taken into consideration while assessing the reliability of witness testimony and the consistency of the prosecution version as a whole. In this view of the matter, in our considered opinion, the evidence of PW5 fully supports the evidence of PW4 and the case of the prosecution.

11. The case of the prosecution is further supported by PW6, who is also a resident of village Itma. At about 11.00 a.m., while he was sitting in his paan shop, he saw the deceased with the accused/appellant in a vehicle going towards Katni Road.

12. PW2 and PW3 have deposed about the recovery of the dead body as well as the school bag of the child based on the disclosure statement made by the accused/appellant. Needless to say, only so much of the statement as has led to the recovery of the dead body and the school bag is admissible in evidence under Section 27 of the Indian Evidence Act. Both these witnesses have deposed that after the disclosure statement of the accused/appellant was recorded, he led the police and the witnesses (PW2 and PW3) to the spot where the school bag and the dead body had been disposed of. The dead body was found in a well situated alongside Paraswara Canal. At this time, only an underwear was present on the dead body. The police took out the dead body of the deceased from the well, and after such recovery, recorded the recovery memo Ext. P7 and took the signatures of the witnesses. Thereafter, the accused/appellant led the police and the witnesses to the school at Dubehi, on the rooftop of which he had hidden the victim's school bag. The recovery memo of the school bag (Ext. P8) was prepared at the spot and the signatures of the witnesses were taken. Though certain suggestions were made to PW2, the same were denied. The evidence of PW2, in our considered opinion, has remained unshaken. The evidence of PW3 is almost similar to the evidence of PW2. In his cross-examination, PW3 has deposed that the police had prepared the police papers at several places, such as village Paraswara, and at the police station. It is also admitted by PW3 that the inquest panchnama was prepared at the police station. However, these admissions of PW3 will not take away the effect of Ext. P7 and Ext. P8, which are the recovery memos duly signed by the witnesses. It is clear from the evidence of PW2 and PW3 that immediately after the dead body was taken out from the well and after the recovery of the school bag from the rooftop of the school at Dubehi, the recovery memos Ext. P7 and Ext. P8 were prepared on the spot and the signatures of the witnesses were taken. As mentioned supra, PW3 has also deposed in his cross-examination that certain police papers were prepared at the village Paraswara as well as at the police station and that the inquest panchnama was prepared subsequently at the police station. However, on this basis, the entire case of the prosecution cannot be doubted,

inasmuch as neither the death of the deceased nor the place of death is disputed. The evidence relating to the recovery is relevant to show that certain incriminating material has been recovered at the instance of the accused/appellant, and that the accused/appellant knew about the place of throwing the dead body and the school bag after the crime. We find that the evidence of PW2 and PW3 is compatible with the prosecution version. Hence, we cannot reject the evidence merely based on the fault of the Investigating Officer in not preparing the inquest panchnama on the spot, particularly keeping in mind Ext. P7 and Ext. P8 which were prepared on the spot. At this juncture, we would like to recall that it is well-settled that criminal justice should not become a casualty because of the minor mistakes committed by the Investigating Officer. We may hasten to add here itself that if the Investigation Officer suppresses the real incident by creating certain records to make a new case altogether, the Court would definitely strongly come against such action of the Investigation Officer. There cannot be any dispute that the benefit of doubt arising out of major flaws in the investigation would create suspicion in the mind of the Court and consequently such inefficient investigation would accrue to the benefit of the accused. As observed by this Court in the case of State of H.P. v. Lekh Raj, (2000) (1) SCC 247, a criminal trial cannot be equated with a mock scene from a stunt film. Such trial is conducted to ascertain the guilt or innocence of the accused arraigned and in arriving at a conclusion about the truth, the courts are required to adopt a rational approach and judge the evidence by its intrinsic worth and the animus of the witnesses. The courts are not obliged to make efforts either to give latitude to the prosecution or loosely construe the law in favour of the accused. The traditional dogmatic hypertechnical approach has to be replaced by a rational, realistic and genuine approach for administering justice in a criminal trial. In this view of the matter, we find no error in the reliance placed by the Courts upon the circumstance of the recoveries effected at the instance of the accused/appellant.

13. Looking at the evidence of the doctors, PW10 and PW11, it is clear that the victim was sexually assaulted. Learned senior Advocate for the defence, fairly, did not argue contrary to the evidence of the doctors.

14. The last circumstance, which is actually an additional circumstance in the chain of circumstances, is that the accused/appellant has assigned a false explanation about leaving the company of the victim. The explanation offered by the accused/appellant is that he parted with the company of the child by leaving her at school and hence does not know what happened subsequently. This explanation offered by the accused/appellant is false, having regard to the evidence of Prahlad Patel, PW8, the Manager and teacher of the school and the records (attendance register) produced by him as Ext. P/15 for the month of February, 2015, which reveal clearly that the child did not come to school on the day of the incident. Since the accused/appellant has offered a false explanation regarding the events of that day, more particularly about the last seen circumstance, an adverse inference needs to be drawn against him.

15. Though the defence has also led the evidence of DW1, his evidence may not be relevant to discard the evidence of the prosecution witnesses as far as the incident of murder and rape is concerned, as it mainly pertains to the date and aftermath of arrest of

the accused/appellant. As rightly observed by the Courts, the evidence of DW1 does not create any sort of doubt in the mind of the Court and is not relevant to the commission of the offence in question.

16. Having regard to the totality of the facts and circumstances of the case, in our considered opinion, the Trial Court as well as the High Court have rightly concluded that the prosecution has proved its case beyond reasonable doubt for the offence with which the accused/appellant was charged. In our considered opinion, all the circumstances relied upon by the prosecution are proved beyond reasonable doubt and consequently the chain of circumstances is so complete so as to not leave any doubt in the mind of the Court that it is the accused and accused alone who committed the offence in question. It is worth reiterating that though certain discrepancies in the evidence and procedural lapses have been brought on record, the same would not warrant giving the benefit of doubt to the accused/appellant. It must be remembered that justice cannot be made sterile by exaggerated adherence to the rule of proof, inasmuch as the benefit of doubt given to an accused must always be reasonable, and not fanciful.

17. However, in our considered opinion, the Courts may not have been justified in imposing the death sentence on the accused/appellant. As has been well settled, life imprisonment is the rule to which the death penalty is the exception. The death sentence must be imposed only when life imprisonment appears to be an altogether inappropriate punishment, having regard to the relevant facts and circumstances of the crime. As held by this Court in the case of *Santosh Kumar Singh v. State through C.B.I.*[1], sentencing is a difficult task and often vexes the mind of the Court, but where the option is between life imprisonment and a death sentence, if the Court itself feels some difficulty in awarding one or the other, it is only appropriate that the lesser punishment be awarded.

18. We have considered the aggravating and mitigating circumstances for the imposition of the death sentence on the accused/appellant. He has committed a heinous offence in a premeditated manner, as is indicated by the false pretext given to PW4 to gain custody of the victim. He not only abused the faith reposed in him by the PW4, but also exploited the innocence and helplessness of a child as young as five years of age. At the same time, we are not convinced that the probability of reform of the accused/appellant is low, in the absence of prior offending history and keeping in mind his overall conduct.

19. Therefore, with regard to the totality of the facts and circumstances of the case, we are of the opinion that the crime in question may not fall under the category of cases where the death sentence is necessarily to be imposed. However, keeping in mind the aggravating circumstances of the crime as recounted above, we feel that the sentence of life imprisonment simpliciter would be grossly inadequate in the instant case. In this respect, we would like to refer to our observations in the recent decision dated 19.02.2019 in Parsuram v. State of M.P. (Criminal Appeal Nos. 314-315 of 2013) on the aspect of non-remissible sentencing:

> "13. As laid down by this Court in *Swamy Shraddananda (2) v. State of Karnataka*[2], and subsequently affirmed by the Constitution Bench of this Court in *Union of*

> *India v. V. Sriharan*[3], this Court may validly substitute the death penalty by imprisonment for a term exceeding 14 years, and put such sentence beyond remission. Such sentences have been awarded by this Court on several occasions, and we may fruitfully refer to some of these decisions by way of illustrations. In Sebastian alias *Chevithiyan v. State of Kerala*[4], a case concerning the rape and murder of a 2-year-old girl, this Court modified the sentence of death to imprisonment for the rest of the appellant's life. In *Raj Kumar v. Sta.te of Madhya Pradesh*[5] , a case concerning the rape and murder of a 14-year-old girl, this Court directed the appellant therein to serve a minimum of 35 years in jail without remission. In *Selvam v. State*[6], this Court imposed a sentence of 30 years in jail without remission, in a case concerning the rape of a 9-year-old girl. In *Tattu Lodhi v. Sta.te of Madhya Pradesh*[7], where the accused was found guilty of committing the murder of a minor girl aged 7 years, the Court imposed the sentence of imprisonment for life with a direction not to release the accused from prison till he completed the period of 25 years of imprisonment."

20. In the matter on hand as well, we deem it proper to impose a sentence of life imprisonment with a minimum of 25 years' imprisonment (without remission). The imprisonment of about four years as already undergone by the accused/appellant shall be set off. We have arrived at this conclusion after giving due consideration to the age of the accused/appellant, which is currently around 38 to 40 years.

21. Accordingly, the following order is made:

> The judgment and order of the High Court affirming the conviction of the accused/appellant for the offences punishable under Sections 376(A), 302 and 201(II) of the IPC and under Section 5(i)(m) read with Section 6 of the POCSO Act stands confirmed. However, the sentence is modified. The accused/appellant is hereby directed to undergo a sentence of 25 years' imprisonment (without remission). The sentence already undergone shall be set off. The appeals are disposed of accordingly.

Judgment Referred.

[1]*(2010) 9 SCC 0747*
[2]*(2008) 13 SCC 0767*
[3]*(2016) 7 SCC 0001*
[4]*(2010) 1 SCC 0058*
[5]*(2014) 5 SCC 0353*
[6]*(2014) 12 SCC 0274*
[7]*(2016) 9 SCC 0675*