

Court No. - 45

Case :- CRIMINAL APPEAL No. - 2035 of 2009

Appellant :- Dinesh

Respondent :- State of U.P.

Counsel for Appellant :- Vivek Kumar Singh, Abhay Kumar Singh, Ajay Kumar Singh, Anil Kumar Dubey, Chandra Bhan Dubey, Noor Mohammad

Counsel for Respondent :- Govt. Advocate

Hon'ble Saumitra Dayal Singh, J.

Hon'ble Dr. Gautam Chowdhary, J.

1. Heard Sri Chandra Bhan Dubey, learned counsel for the appellant and Sri Patanjali Mishra, learned AGA-I for the State as also valuable assistance offered by Sri Abhay Kumar Singh, learned *Amicus Curiae*.
2. Present criminal appeal arises from the judgment and order dated 30.03.2009 passed by the learned Additional Sessions Judge/Fast Track Court No.1, Baghpat in Sessions Trial No. 244 of 2008 (State Vs. Dinesh), arising out of Case Crime No. 56 of 2008, under Section 376 I.P.C., Police Station - Baleni, District - Baghpat. By that order the learned trial court has convicted the appellant and sentenced him to undergo life imprisonment and to pay fine Rs. 10,000/- for the offence under Section 376 I.P.C. and in default of payment of fine to further undergo simple imprisonment of six months.
3. The present prosecution story emerged on the strength of Written Report submitted by 'M' [father of 'X' – a two year old infant girl who was allegedly raped by the appellant (her cousin brother) who was aged about 20 years on the date of occurrence]. The Written Report dated 21.03.2008 reveals that 'X' went with the present appellant at about 7:00 p.m. Since she did not report by 10:30 p.m. and since the appellant did not drop her back to her home by that time, the first informant 'M' (P.W.- 1 at the trial) launched a search for 'X'. When he neared the boundary of Jagveer S/o Bhure, he heard cries of a girl. There the appellant was caught red handed committing rape on 'X'. She was described barely

conscious. The appellant was apprehended and handed over to the police. 'X' was bleeding from her mouth and from her private parts. The Written Report is Ex.Ka-1 at the trial. On that, an FIR was registered on 22.03.2008 at about 1:30 a.m. at Police Station – Baleni, District – Baghpat in Case Crime No. 33 of 2008. That FIR is Ex.Ka-5. Besides first aid rendered by the village doctor, Ved Pal Singh, on 22.03.2008 itself 'X' was subjected to medical examination by Dr. Mukesh Kumar Vatsya, Emergency Medical Officer District Hospital Meerut. The same day (22.03.2008), medical examination of 'X' was conducted by the doctor. In that, it was recorded as below :

“Injuries - (i) Contused swelling on whole of lower lip.

(ii) Abraded contusion row in shape in and out of 3.5 cm X 3 cm on left cheek.

(iii) Multiple linear abrasion in and out of 7 cm X 3 cm on outer part of right hip point. Soft scab present.

All injuries are multiple in nature.

Injury no.1 is caused by blunt and hard object while injury no.2 is caused by friction of some blunt and new object.

Injury no.3 is caused by friction of some pointed object

Duration – about half of a day.”

The said injury report is Ex.Ka-3 at the trial.

4. Later, 'X' was subjected to medical examination with respect to injuries suffered in the sexual assault. That injury report has been prepared by Dr. Manisha Agrawal (P.W.-9 at the trial). It is Ex. Ka-10 . In that the injuries reported were as under:

“No mark of injury seen on thighs. Baby having complete perineal tear with hymen torn. No fresh bleeding seen. Slide made for vaginal smear. Referred to MRT. Medical College for further management join to C.M.O.

3rd degree injury seen on perineum which could be caused by any blunt object case referred to MRT. Medical College for further management as advised by CMS.”

5. Also, on 22.03.2008, a medico legal report was prepared with respect to the appellant. That report is Ex.C-1 at the trial. In that, following injuries were noted :

“Injuries - (i) Contusion 4 cm X 2 cm on right side face just below right eye.

(ii) Multiple contusion all over back.

(iii) Abraded contusion 12 cm X 2 cm back of left forearm.

(iv) Multiple contusion on right arm and forearm.

Genitals - (i) Circumcised penis, radish & swelling over glans of penis

(ii) Minor abrasion present at the level of 11 ° clown of glans penis.

Underwear (blue colour) sealed & handed over to police persons.

Opinion : Above mention injuries caused by hard blunt object simple in nature and about ½ day old.

6. On 26.03.2008, Dr. Vikram Singh (P.W.-5 at the trial) submitted his report on the slides of the vaginal smear of 'X'. They did not reveal presence of spermatozoa but revealed red blood cells. That report is Ex.Ka-4 at the trial.

7. It is also on record that plastic slippers worn by 'X' at the time of the occurrence were recovered from the place of occurrence on 23.03.2008. That recovery memo is Ex.Ka-2 at the trial. With respect to further recovery of the undergarment of the appellant, a report was obtained from the Forensic Science Laboratory, Agra. It confirms the presence of blood as also human sperm on that garment of the appellant. The said report is Ex. Ka-11 at the trial.

8. Upon completion of investigation, charge sheet was submitted by the Investigating Officer. Upon the case being committed for trial for the Court of Sessions, following charges were framed against the appellant :

"यह कि दिनांक 21.03.2008 को 10:30 बजे रात्रि ग्राम रोशनगढ़ थानाक्षेत्र बालैनी जिला बागपत में आपने वादी 'M' दो वर्षीय पुत्री 'X' के साथ जबरदस्ती मैथुन करके बलात्संग किया। इस प्रकार आपने ऐसा अपराध कारित किया जो कि भा०द०सं० की धारा 376 के आधीन दण्डनीय है, जो कि इस न्यायालय के प्रसंज्ञान में है।"

9. At the trial, besides the above documentary evidence, the prosecution led evidence of nine witnesses namely 'M' (P.W.-1) - father of 'X', Anil Kumar, an independent witness as P.W.-2 at the trial, Babloo

Tyagi also an independent witness as P.W.-3, Dr. Mukesh Kumar Vatsya who first examined 'X' at about 7:40 a.m. on 22.03.2008 as P.W.-4 at the trial, Dr. Vikram Singh, the pathologist who submitted his report with respect to the medical examination of 'X' as P.W.-5, Constable Hari Singh Tomar who prepared check FIR and registered the case as P.W.-6, Dr. Rachna Chaudhary who examined and conducted medico-legal examination of 'X' on 22.03.2008 and who treated 'X' while she remained hospitalised till 03.04.2008 as P.W.-7, Sub Inspector Raj Singh who proved certain steps of the investigation as P.W.-8, Dr. Manisha Agrawal who examined 'X' at about 6:40 a.m. on 22.03.2008 and who referred 'X' for treatment to higher medical centre, as P.W.-9.

10. Further, Dr. Yatish Kumar who examined the appellant on 22.03.2008 and proved the injuries suffered by him was examined as Court Witness (C.W.-1 at the trial). Thereafter, the statement of the appellant was recorded under Section 313 Cr.P.C. He also examined Sheetal as defence witness (D.W.-1 at the trial). Thereafter, the learned court below has heard the parties and passed the order impugned in the present appeal.

11. Submissions advanced both on behalf of learned counsel for the appellant and learned *Amicus Curiae* are that the occurrence has not been proven beyond reasonable doubt. In that, it has been suggested that the father of 'X' namely 'M' (P.W.-1) did not prove the prosecution story, during his examination-in-chief. He did not stand by the fact that the FIR was lodged by him on his own narration of facts. He indicated that the FIR was lodged on the suggestion made by the police authorities. He also denied having caught the appellant red handed - committing rape on 'X'. He denied that the appellant was arrested on the spot. He was declared hostile. He did not stand by his statement made (by him), during investigation. He also disclosed that there were disputes between the appellant and the Anil Kumar (P.W.-2). For that reason, the police authorities may have registered the case against the appellant. In view of

such statement made by the father of 'X', it has been submitted that the other evidence of Anil Kumar (P.W.-2) and Babloo Tyagi (P.W.-3) is neither credible nor it may be accepted as true inasmuch as once the father of 'X' denied the occurrence as also denied the involvement of the present appellant, the statement made by the other witnesses lose their significance.

12. Second, reference has been made to the fact that the appellant had himself received injuries. They have remained unexplained. Therefore, reasonable doubt exists as to the truthfulness and completeness of the prosecution story.

13. Third, in the alternative, it has been submitted that in any case, the learned court below has erred in awarding maximum punishment being life imprisonment. The appellant was barely 20 years of age on the date of occurrence. He has remained incarcerated for 17 years. More than warranted punishment has already been undergone by the appellant. Therefore, on the issue of sentence, the appeal may be partly allowed and the appellant may be released against sentence undergone.

14. Learned counsel for the appellant has relied on a decision of a co-ordinate bench of this Court in **Sri Pal Vs. State of U.P., 2016:AHC:32002-DB**, wherein it has been observed as below :

“Appropriate sentence is the cry of the society. 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, the duty of the court to award proper and appropriate sentence, having regard to the nature of the offence and the manner in which it was executed or committed.

This position was considered by a three-Judge Bench of the Apex Court in Ahmed Hussein Vali Mohammed Saiyed and Anr. vs. State of Gujarat, (2009) 7 SCC 254, wherein it was observed as follows :

"99.....The object of awarding appropriate sentence should be to protect the society and to deter the criminal from achieving the avowed object to law by imposing appropriate sentence. It is expected that the courts would operate the sentencing system so as to impose such sentence, which

reflects the conscience of the society and the sentencing process has to be stern where it should be. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against the interest of society which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

100. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime.

The court must not only keep in view the rights of the victim of the crime but the society at large also while considering the imposition of appropriate punishment. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which both the criminal and the victim belong."

In Jameel vs. State of Uttar Pradesh (2010) 12 SCC 532, this Court reiterated the principle by stating that the punishment must be appropriate and proportional to the gravity of the offence committed. Speaking about the concept of sentencing, this Court observed thus :

"15. In operating the sentencing system, law should adopt the corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

16. It is 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. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence."

In Guru Basavaraj @ Benne Settapa vs. State of Karnataka, (2012) 8 SCC 734, while discussing the concept of appropriate sentence, this Court expressed that:

"It is the duty of the court to see that appropriate sentence is imposed regard being had to the commission of the crime and its impact on the social order. The cry of the collective for justice, which includes adequate punishment cannot be lightly ignored."

In Gopal Singh vs. State of Uttarakhand JT 2013 (3) SC 444 the Apex Court held as under :

"18. Just punishment is the collective cry of the society.

While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence....."

It is not disputed that the accused appellant has already undergone 13 years and 6 months of imprisonment which is a long period of incarceration. The appellant is now aged about 56 years.

Hence, in view of the aforestated discussions and in view of the facts and circumstances of the case, the sentence already undergone will be sufficient to meet the end of justice. Hence the imprisonment for life awarded by the impugned judgement is hereby reduced to period of sentence already undergone. However, fine of Rs.5000/- under section 376 I.P.C. and sentence in default of payment of fine are maintained. If the appellant is not wanted in any other case, he shall be released in the present case provided the fine imposed is deposited, if already has not been deposited Further he has to be released after compliance of the provision under Section 437-A Cr.P.C."

15. Sri Abhay Kumar Singh, the learned Amicus Curiae has relied on a decision of the Supreme Court in **Vipul Rasikbhai Koli Jankher Vs. The State of Gujarat, 2022 0 Supreme (SC) 1380**, wherein it has been observed as below :

"7. In determining the quantum of sentence, the Court must bear in mind the circumstances pertaining to the offence and all other relevant circumstances including the age of the offender. The appellant has undergone actual imprisonment for a period of 11 years as on date. In Dharambir v. State of Uttar Pradesh, (1979) 3 SCC 645 a two-Judge Bench of this Court specifically noted the impact of longer prison sentences on convicts who are young. Justice V R Krishna Iyer, speaking on behalf of the Court had noted the impact of prolonged incarceration:

"2. We, however, notice that the petitioners in this case are in their early twenties. We must naturally give thought to the impact on these two young lives of a life sentence which means languishing in prison for years and years. Such induration of the soul induced by indefinite incarceration hardens the inmates, not softens their responses. Things as they are, long prison terms do not humanise or habilitate but debase and promote recidivism. A host of other vices, which are unmentionable in a judgment, haunt the long careers of incarceration, especially when young persons are forced into cells in the company of callous convicts who live in sex-starved circumstances. Therefore, the conscience of the court constrains it to issue appropriate directions which are policy-oriented, as part of the sentencing process, designed to make the life of the sentence inside jail restorative of his crippled psyche. One of the principal purposes of punitive deprivation of liberty, constitutionally sanctioned, is decriminalisation of the criminal and

restoration of his dignity, self-esteem and good citizenship, so that when the man emerges from the forbidding gates he becomes a socially useful individual. From this angle our prisons have to travel long distances to meet the ends of social justice.”

8. In our view, the ends of justice would be met by directing that instead and in place of the sentence of life imprisonment which has been imposed for the conviction under Section 376, the appellant shall stand sentenced to a term of 15 years' imprisonment. We are not inclined to uphold the argument of the respondent-state that only the sentence of life imprisonment would meet the ends of justice. The principles of restorative justice find place within the Indian Constitution and severity of sentence is not the only determinant for doing justice to the victims. In *Maru Ram v. Union of India*, (1981) 1 SCC 107 Justice V R Krishna Iyer had poignantly highlighted the linkages between victimology and restorative justice:

“74. Some argument was made that a minimum sentence of 14 years' imprisonment was merited because the victim of the murder must be remembered and all soft justice scuttled to such heinous offenders. We are afraid there is a confusion about fundamentals in mixing up victimology with penology to warrant retributive severity by the back-door. If crime claims a victim criminology must include victimology as a major component of its concerns. Indeed, when a murder or other grievous offence is committed the dependants or other aggrieved persons must receive reparation and the social responsibility of the criminal to restore the loss or heal the injury is part of the punitive exercise. But the length of the prison term is no reparation to the crippled or bereaved and is futility compounded with cruelty. “Can storied urn or animated bust call to its mansion the fleeting breath?” Equally emphatically, given perspicacity and freedom from sadism, can flogging the killer or burning his limbs or torturing his psychic being bring balm to the soul of the dead by any process of thanatology or make good the terrible loss caused by the homicide? Victimology, a burgeoning branch of humane criminal justice, must find fulfilment, not through barbarity but by compulsory recoupment by the wrongdoer of the damage inflicted, not by giving more pain to the offender but by lessening the loss of the forlorn. The State itself may have its strategy of alleviating hardships of victims as part of Article 41. So we do not think that the mandatory minimum in Section 433- A can be linked up with the distress of the dependents.”

16. On the other hand, learned A.G.A. would submit, present is a case where the occurrence had been proved both through ocular evidence as also it finds wholesome corroboration through medical evidence. Undeniably the present appellant is the nephew of the first informant, 'M' (P.W.-1). Though the said 'M' (P.W.-1) may not have supported the

prosecution story in entirety, at the same time, he did not support the prosecution story in material part, to the extent, he specifically stated that 'X' had gone with the appellant to play. He also admitted that the appellant is the cousin brother of 'X'. Thus, it remained admitted to 'M' (P.W.-1) that the appellant had taken away 'X' from her home on the pretext of play at about 7:00 p.m. on 21.03.2008 but did not drop her back till 10:30 p.m., that day. In such circumstances, he launched a search for 'X'. When he returned home at about 10:30 p.m., the police had already arrived. It is with respect to that narration of events made by 'M' (P.W.-1) whereafter, he was declared hostile. To the extent, 'M' (P.W.-1) proved the disappearance of 'X' and the factum of search launched by him, the prosecution story is wholly corroborated by two independent witnesses Anil Kumar (P.W.-2) and Babloo Tyagi (P.W.-3). Those witnesses further proved that the appellant was caught red handed by them and 'M' (P.W.-1) and handed over to the police. In the process of public arrest thus made, injuries may have been caused to the appellant. Thus, the injuries suffered by the appellant are wholly explained. He would submit, it is not uncommon in our society, wherever a person suspected of causing occurrence that too a heinous occurrence such as rape on a minor is apprehended red-handed, citizens often take the law into their hands and thrash the accused persons when arrested or apprehended by public.

17. Both Anil Kumar (P.W.-2) and Babloo Tyagi (P.W.-3) categorically stated, the appellant was caught red handed while he was committing rape on 'X'. They also described that 'X' was bleeding both from her face and her private parts. Anil Kumar (P.W.-2) also described that there were bite marks on the left cheek of 'X'. During elaborate cross-examination he did not dilute that statement. Also, all suggestions brought by the defence to doubt his testimony for reason of some prior dispute existing with the appellant, was negated.

18. Similarly, Babloo Tyagi (P.W.-3) proved that the appellant was

caught red handed committing rape on 'X'. Nothing of consequence emerged during his extensive cross-examination. Referring to the medical report, it has been submitted, upon 'X' being recovered she was first taken to village doctor namely Dr. Ved Pal Singh who offered first aid and in that process he first cleaned her injured private parts, before referring her to higher medical center. Therefore, absence of spermatozoa on her private part, is of no consequence. Referring to extensive medical examination of 'X' by medical experts who were all examined at the trial and further referring to her hospitalization and treatment offered to 'X' over a period of time extending more than a week, it has been submitted, there is no doubt as to the occurrence caused by the present appellant.

19. On the issue of sentencing, it has been submitted, considering the fact that the appellant was 20 years of age and further considering the fact that he enjoyed the position of trust with 'X' being her elder cousin brother about 18 years of age, 'X' being an infant of 2 years of age, the learned court below has rightly awarded the maximum sentence.

20. Relying on the above discussion, he would submit, in the present proven facts, life sentence awarded is wholly justified and no lesser sentence would meet the ends of justice.

21. Learned AGA-I has relied on a decision of the Supreme Court in **Swamy Shraddananda (2) @ Murali Manohar Mishra Vs. State of Karnataka, (2008) 13 SCC 767**, wherein it has been observed as below :

“52. The inability of the criminal justice system to deal with all major crimes equally effectively and the want of uniformity in the sentencing process by the Court lead to a marked imbalance in the end results. On the one hand there appears a small band of cases in which the murder convict is sent to the gallows on confirmation of his death penalty by this Court and on the other hand there is a much wider area of cases in which the offender committing murder of a similar or a far more revolting kind is spared his life due to lack of consistency by the Court in giving punishments or worse the offender is allowed to slip away unpunished on account of the deficiencies in the criminal

justice system. Thus the overall larger picture gets asymmetric and lopsided and presents a poor reflection of the system of criminal administration of justice. This situation is a matter of concern for this Court and needs to be remedied.

53. These are some of the larger issues that make us feel reluctant in confirming the death sentence of the appellant.

54. Coming now to the facts of the case it is undeniable that the appellant killed Shakereh in a planned and cold-blooded manner but at least this much can be said in his favour that he devised the plan so that the victim could not know till the end and even for a moment that she was betrayed by the one she trusted most. Further, though the way of killing appears quite ghastly it may be said that it did not cause any mental or physical pain to the victim. Thirdly, as noted by Sinha, J. the appellant confessed his guilt at least partially before the High Court.

55. We must not be understood to mean that the crime committed by the appellant was not very grave or the motive behind the crime was not highly depraved. Nevertheless, in view of the above discussion we feel hesitant in endorsing the death penalty awarded to him by the trial court and confirmed by the High Court. The absolute irrevocability of the death penalty renders it completely incompatible to the slightest hesitation on the part of the Court. The hangman's noose is thus taken off the appellant's neck.

56. But this leads to a more important question about the punishment commensurate to the appellant's crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. As a matter of fact, Mr Hegde informed us that the appellant was taken in custody on 28-3-1994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration. This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior courts in their respective States. A suggestion to this effect was made by this Court nearly thirty years ago in *Dalbir Singh v. State of Punjab*, (1979) 3 SCC 745. In para 14 of the judgment this Court held and observed as follows:

“14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in *Rajendra Prasad* case. Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the men's life but in practice amounts to incarceration for a

period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder.”

We think that it is time that the course suggested in Dalbir Singh, (1979) 3 SCC 745 should receive a formal recognition by the Court.

57. As a matter of fact there are sufficient precedents for the Court to take such a course. In a number of cases this Court has substituted death penalty by life imprisonment or in some cases for a term of twenty years with the further direction that the convict would not be released for the rest of his life or until the twenty-year term was actually served out. In this case [Ed.: Swamy Shraddananda (1) v. State of Karnataka, (2007) 12 SCC 288] too Sinha, J. passed exactly the same order. After declining to confirm the death sentence given to the appellant he proceeded to give the following direction :

“98. However, while saying so, we (sic) direct that in a case of this nature ‘life sentence’ must be meant to be ‘life sentence’. Such a direction can be given, as would appear from some precedents.”

Sinha, J. then mentioned the following five cases in which this Court had passed similar orders.

58. In Subash Chander v. Krishan Lal, (2001) 4 SCC 458 five accused persons, including Krishan Lal were put on trial for committing multiple murders. The trial court acquitted one of the accused but convicted the rest of them and sentenced each of them to death. In the death reference/appeals preferred by the convicted accused, the High Court confirmed the conviction of all the four accused but commuted their death sentence to life imprisonment. One Subash Chander (PW 2) came to this Court in appeal. On a consideration of the material facts this Court felt that the High Court was not justified in commuting the sentence of death of at least one accused, Krishan Lal. But then the counsel appearing on his behalf implored that instead of death penalty this Court might order for imprisonment of Krishan Lal for the remaining period of his life. This Court took note of the counsel's submission as follows:

“19. Faced with the situation Mr U.R. Lalit, Senior Counsel appearing for the aforesaid respondents submitted that instead of depriving Krishan Lal (A-1) of his life, the Court can pass appropriate order to deprive the aforesaid accused person of his liberty throughout his life. Upon instructions, the learned Senior Counsel submitted that the said Krishan Lal, if sentenced to life imprisonment would never claim his premature release or commutation of his sentence on any ground. We record such a submission made on behalf of the said accused, upon instructions.”

This Court accepted the plea made by the counsel and passed the following order:

“23. However, in the peculiar circumstances of the case, apprehending imminent danger to the life of Subash Chander and his family in future, taking on record the statement made on behalf of Krishan Lal (A-1), we are inclined to hold that for him the imprisonment for life shall be the imprisonment in prison for the rest of his life. He shall not be entitled to any commutation or premature release under Section 401 of the Code of Criminal Procedure, Prisoners Act, Jail Manual or any other statute and the rules made for the purposes of grant of commutation and remissions.”

59. In *Subash Chander*, (2001) 4 SCC 458 this Court referred to an earlier judgment in *State of M.P. v. Ratan Singh*, (1976) 3 SCC 470 in which it was held that a sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure. The Court also referred to the earlier decisions in *Sohan Lal v. Asha Ram*, (1981) 1 SCC 106 (this is a mistake since *Sohan Lal*, (1981) 1 SCC 106 is a completely different case; apparently the reference was to *Maru Ram v. Union of India*, (1981) 1 SCC 107, *Bhagirath v. Delhi Admn.*, (1985) 2 SCC 580 and *Zahid Hussein v. State of W.B.*, (2001) 3 SCC 750.

60. In *Shri Bhagwan v. State of Rajasthan*, (2001) 6 SCC 296, the appellant, who was 20 years old at the time of commission of the offence, had come to this Court, condemned to death by the trial court and the High Court. According to the prosecution, he had killed five members of a family by mercilessly battering them to death. The manner of killing was brutal and the circumstances of the crime exhibited crass ingratitude on the appellant's part. The motive was theft of gold ornaments and other articles belonging to the victim family. In this case, K.G. Balakrishnan, J. (as the Hon'ble the Chief Justice was at that time) who wrote the judgment for the Court commuted the death sentence awarded to the appellant to imprisonment for life subject to the direction that he would not be released from the prison until he had served out at least 20 years of imprisonment including the period already undergone by him. In this case there is also a very useful discussion with regard to the provisions of commutation and remission in the Code of Criminal Procedure and the Prison Rules to which we shall advert later on in this judgment.

61. In *Prakash Dhawal Khairnar (Patil) v. State of Maharashtra*, (2002) 2 SCC 35 the condemned appellant had committed the murder of his own brother, their mother and four members of his brother's family because the deceased brother was not partitioning the property which the appellant claimed to be joint family property. In the totality of circumstances this Court set aside the death sentence awarded to the appellant but directed that for the murders committed by him, he would suffer imprisonment for life and further that he would not be released from prison until he had served out at least 20 years of imprisonment including the period already undergone by him. For giving such a direction, the Court referred to the decisions in *Shri Bhagwan*, (2001) 6 SCC 296 and *Dalbir Singh v. State of Punjab*, (1979) 3 SCC 745.

62. In *Ram Anup Singh v. State of Bihar*, (2002) 6 SCC 686 there were a father and his two sons before this Court. They had killed the father's brother, the brother's wife, his daughter and his son-in-law. On conviction for the murders the father was sentenced to life imprisonment but the two sons were given the death penalty. This Court once again interfered and set aside the death sentence awarded by the trial court and confirmed by the High Court to the two sons and instead sentenced them to suffer rigorous imprisonment for life with the condition that they would not be released before completing an actual term of 20 years including the

period of imprisonment already undergone by them. Reference was made to the decisions in *Shri Bhagwan*, (2001) 6 SCC 296, *Dalbir Singh*, (1979) 3 SCC 745 and *Prakash Dhawal Khairnar (Patil)*, (2002) 2 SCC 35.

63. The fifth decision mentioned by Sinha, J. was in *Mohd. Munna v. Union of India*, (2005) 7 SCC 417. In this case it was basically held that in the absence of an order of remission formally passed by the appropriate Government, there was no provision in the Penal Code or in the Code of Criminal Procedure under which a sentence of life imprisonment could be treated as for a term of 14 years or 20 years and further that a convict undergoing imprisonment for life could not claim remission as a matter of right.

64. To this list of five cases mentioned by Sinha, J. one could add one or two more.

65. In *Jayawant Dattatraya Suryarao v. State of Maharashtra*, (2001) 10 SCC 109 this Court had before it a batch of five analogous cases. There were three appeals on behalf of three of the accused convicted by the trial court; another appeal by the State in regard to the accused who were acquitted by the trial court and a death reference in regard to one of the appellants, *Subhashsingh Shobhnathsingh Thakur (A-6)* who was given sentences of death on two counts, one under the provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the other under Section 120-B of the Penal Code. According to the prosecution case the appellants, along with a number of other co-accused, armed with highly sophisticated weapons had raided J.J. Hospital in Mumbai where the victim, a member of another underworld gang, was admitted for treatment. In the hospital they made indiscriminate firing killing not only their target but also two policemen who were on guard duty and injuring several others. The Court confirmed the conviction of Appellant 6 but modified the sentence from death penalty to imprisonment for life—till rest of life. For the direction given by it the Court referred to the decisions in *Subash Chander*, (2001) 4 SCC 458, *State of M.P.*, (1976) 3 SCC 470, *Shri Bhagwan*, (2001) 6 SCC 296, *Maru Ram case*, (1981) 1 SCC 107, *Bhagirath v. Delhi Admn.*, (1985) 2 SCC 580 and *Zahid Hussein*, (2001) 3 SCC 750.

66. In *Nazir Khan v. State of Delhi*, (2003) 8 SCC 461, three of the appellants before the Court were sentenced to death for committing offences punishable under Section 364-A read with Section 120-B IPC. They were also convicted under the provisions of the Terrorist and Disruptive Activities (Prevention) Act (TADA) with different terms of imprisonment for those offences. This Court, however, commuted the death sentence of the three appellants but having regard to the gravity of the offences and the dastardly nature of their acts directed for their incarceration for a period of 20 years with the further direction that the accused-appellants would not be entitled to any remission from the term of 20 years. Reference was made to the earlier decisions in *Ashok Kumar v. Union of India*, (1991) 3 SCC 498 and *Sat Pal v. State of Haryana*, (1992) 4 SCC 172.”

22. Having heard learned counsel for the parties and having perused

the record, in the first place, there is nothing to doubt that the FIR came to be registered on 22.03.2008, at the instance of 'M' (P.W.-1). Merely because the said witness later made a bald statement that he had not submitted the Written Report, is of no consequence. It is a self-serving statement made by that witness at a late stage. During his cross-examination, he maintained a stand consistent to the disclosure made in the FIR that his daughter aged about two years namely 'X' went missing on 21.03.2008 in the circumstance-after the appellant, her cousin brother took her from her home, to play. He further maintained that 'X' did not report home till about 10:00 p.m. On that he launched a search for 'X'. Further, he could not and he did not deny the further facts proven at the trial with respect to the injuries suffered by 'X' as also the treatment offered to her. Therefore, the bald statement made by 'M' (P.W.-1) that he did not submit the Written Report and did not make any statement to the police that the appellant had caused the occurrence or that the appellant had been apprehended from the place of occurrence may not be relied as the gospel truth. To that extent, the statement rendered before the learned court below, is wholly unreliable. Therefore, he was rightly declared hostile at that stage. During his cross-examination by the prosecution, he admitted that the appellant was arrested by the police in the night of the occurrence, at about 10:30 p.m. Therefore, he has wholly supported the prosecution story in material parts that the offence involving his daughter 'X' occurred as was also narrated in the FIR giving rise to the prosecution.

23. Therefore, we are unable to accept the submission advanced by learned counsel for the appellant and learned *Amicus Curiae* that the prosecution story is completely unfounded inasmuch as the first informant i.e. 'M' (P.W.-1) who is the father of 'X' disowned the FIR. Plainly, 'M' (P.W.-1) has spoken falsehood to the extent he denied having lodged the FIR. What may have led him to make that statement is not for the Court to determine. However, in the present facts, a hint exists by

virtue of close relationship between him and the appellant, the appellant being his nephew - son of his elder brother. What family pressure may or may not have existed and what circumstance may have prompted 'M' (P.W.-1) the father of 'X' to make such false statement is extraneous to the issue at hand involving penetrative sexual assault on a two year old infant. That crime committed against the society to which 'X' is a traumatised, injured witness and victim, must not go unpunished merely because the first informant made a bald denial. In any case, no credible material or evidence exists to establish that 'M' (P.W.-1) did not write or sign or submit the Written Report leading to the FIR.

24. On the substantive basis, P.W.-2 and P.W.-3 – Anil Kumar and Babloo Tyagi who are independent witness of fact corroborated the testimony of 'M' (P.W.-1) to the extent they maintained that 'X' went missing on 21.03.2008 about 7:30 p.m. While in the company of the appellant and that the said 'M' (P.W.-1) launched a search along with others for 'X', at about 10:00 p.m. Therefore, it is undeniable that P.W.-2 and P.W.-3 were present with 'M' (P.W.-1) in a search for 'X', launched on 21.03.2008 after 10:00 p.m. They have offered a wholesome account of having witnessed the heinous offence being committed by the appellant. They have given a vivid account that the appellant was holding 'X' in his lap and was committing rape on her when he was caught red handed. He was thus arrested by the public. 'X' had suffered injuries both on her private parts as also on her lip area and face, including bite marks. She was rushed to the doctor and the appellant handed over to the police. During extensive cross-examination of those two ocular witnesses, no doubts emerged. Therefore, the occurrence as proven by the two independent witnesses whose presence is found established on the strength of deposition made by 'M' (P.W.-1) and which appears to be wholly natural in the circumstances thus proven, we have no reason to doubt the prosecution story that the appellant had caused the occurrence.

25. As to the nature of injuries suffered in the occurrence, those were duly proven at the trial. Four doctors were examined in that regard. They proved, first the examination of 'X' at 6:40 a.m. on 22.3.2008, preparation of pathological slides on that date, and treatment offered to 'X' from 22.03.2008 to 03.04.2008. It was clearly proven by the treating physician that 'X' had suffered extensive internal injury in the occurrence. Those were wholly natural to be caused if an infant of such tender age were subjected to such brutal assault. Therefore, medical evidence wholly corroborates the prosecution story of rape having been committed (by the appellant), on 'X'.

26. In such proven facts, the conviction order suffers from no defect. No reasonable doubt is shown to exist as may lead us to any other conclusion except to confirm the order of conviction.

27. Coming to the issue of sentencing, that remains the most difficult issue to be addressed in our jurisprudence. Though no statutory rules exist as may guide the Court, at the same time, the parameters that may weigh with the Court in such cases are uncontested. Those being delivery of justice to the victim, the society and the accused. The guiding principle remains that the sentence may be sufficient and adequate. What is sufficient sentence must vary from facts to facts. It may also vary from time to time, as our society evolves to achieve higher civilization goals. Without attempting to lay down any general principle of law and keeping in mind the ends of justice, we note that the parameters within which we may consider the issue of sufficient sentence are the proven facts. The appellant is the first cousin brother of the victim. He was 20 years of age. Clearly, he had attained the age of majority on the date of occurrence. No disability or reasoning or lack of understanding was proven by the defence as may allow the Court to make any exception in that regard. The victim was only two years of age. Though for biological gender identification, she may be described as a 'girl', at the same time, in the context of a civilized human society, she may never be described as a

person who may involve or be involved in any sexual activity. The occurrence of penetrative sexual assault on such a vulnerable entity remains an act of extreme perversion. Yet, the law only recognizes it as an act of falling under the genus rape.

28. The appellant would be about 37 years of age, today. He has remained confined for about 17 years. At the same time, we may also observe that he was a person who enjoyed the trust of the victim as also her family as may have allowed him to take her away without suspicion. It is that breach of trust towards the society that we must hold him accountable to as well, besides the occurrence for which 'X' would remain scarred for life.

29. Accordingly, we find, on the issue of sentencing, the appellant merits no concession, yet condemning first offender for his entire life may be to pronounce a judgement of 'confined till dead'. It would be to put him at par with repeat, serial and organised offenders etc. In that regard, we note, barring this occurrence, no other fact has been proven against the appellant to treat him as a repeat or serial offender etc.

30. Accordingly, we modify the sentence awarded to 20 years (without remission). The appeal is **partly allowed**. The appellant is in jail. He may be released after completing the modified sentence of 20 years. The imposition of fine is enhanced to Rs. 50,000/- to be paid to the victim. In default of payment of fine, the appellant to further undergo simple imprisonment of one year.

31. Sri Abhay Kumar Singh, learned *Amicus Curiae* appearing on behalf of the appellant has rendered his valuable assistance to the Court. He be paid Rs. 15,000/- towards fee for the able assistance provided by him, in hearing of the present appeal.

Order Date :- 17.4.2025

Abhilash/Salman/Prakhar

(Dr. Gautam Chowdhary, J.) (S. D. Singh, J.)