

CRIMINAL APPEAL NO. 25 OF 2021

Mr. G. N. Chincholkar, Advocate for the appellant
Smt. Geeta L. Deshpande, APP for the respondent - State

RESERVED ON : 24th JUNE, 2021
PRONOUNCED ON : 29th JUNE, 2021

. Heard.

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imprisonment for one year and to pay fine of Rs.1,000/-, in default of payment of fine, he is directed to undergo rigorous imprisonment for fifteen days.

3. Shri G. N. Chincholkar, learned Advocate appointed to represent the appellant, would submit that the trial Court has not directed that substantive sentences to run concurrently. The appellant was undertrial prisoner and as of now, he is behind the bars for over three years and five months. According to the learned Advocate, the normal rule is to direct the substantive sentences to run concurrently. The appellant is 28 years of age. The facts and circumstances of the case would warrant the direction for the sentences to run concurrently.

4. The learned APP would, on the other hand, submit that the appellant has committed heinous offence. The victim was about 10 years of age. In the facts and circumstances of the case, the trial Court was justified in not directing the substantive sentences to run concurrently.

5. The appellant is not challenging his conviction. I have perused the evidence in the case and the impugned judgment, as

well. Section 31 of the Code of Criminal Procedure speaks of sentence in cases of conviction of several offences at one time. The section reads as under:-

“31. Sentence in cases of conviction of several offences at one trial. - (1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:

Provided that -

(a)

(b)

(3) For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence.”

6. The Hon’ble Three Judge Bench of the Apex Court, in the case of ***O. M. Cherian Alias Thankachan vs State of Kerala and others – (2015) 2 SCC 501***, has observed thus:-

“20. Under Section 31 CrPC it is left to the full discretion of the court to order the sentences to run concurrently in case of conviction for two or more offences. It is difficult to lay down any straitjacket approach in the matter of exercise of such discretion by the courts. By and large, trial courts and appellate courts have invoked and exercised their discretion to issue directions for concurrent running of sentences, favouring the benefit to be given to the accused. Whether a direction for concurrent running of sentences ought to be issued in a given case would depend upon the nature of the offence or offences committed and the facts and circumstances of the case. The discretion has to be exercised along the judicial lines and not mechanically.”

7. The facts of the case indicate that the appellant was the neighbour of the victim, 10 years old girl. On 04.01.2018, at about 2.30 p.m., he went to the house of the victim and asked her mother for leman. While returning home, he asked the victim to accompany him. It was the case of the prosecution that the appellant removed the nicker of the victim and committed rape of her. On the same day, First Information Report (FIR) was lodged by the mother of the victim. The allegations in the FIR are said to be based on what the victim narrated to her mother. The victim was medically examined on the same day. The medical examination report altogether ruled out offence of rape. In the opinion of the Medical Officer, tip of vagina was normal and hymen not torn. There was no sexual violence against the victim girl on 04.01.2018. Opinion of

gynecologist does not suggest sexual violence. The aforesaid evidence suggests that allegations of rape have not been proved. The trial Court, therefore, acquitted the appellant of the charge of offence of rape. The victim testified that her statement was recorded as per the say of her mother. The appellant has already served out sentence for the period of three years and five months. In the aforesaid factual backdrop, I am inclined to allow the appeal to the limited extent in terms of the following order:-

ORDER

- (I) The appeal is partly allowed.
- (II) The substantive sentences of imprisonment imposed on the appellant for the offence punishable under Section 8 of the Protection of Children from Sexual Offences (POCSO) Act and the offence punishable under Section 506 part II of the Indian Penal Code, shall run concurrently.
- (III) Rest of the terms of order of conviction and sentence to stand unaltered.

[R. G. AVACHAT, J.]