



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR**

CRIMINAL CONFIRMATION CASE NO.2 OF 2024

STATE OF MAH. THR. PSO PS KALAMNA DIST.NAGPUR

VS

GUDDU CHHOTELAL RAJAK

AND

CRIMINAL APPEAL NO.322 OF 2024

GUDDU CHHOTELAL RAJAK

VS.

STATE OF MAH. THR. PSO PS KALAMNA DIST.NAGPUR

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. D.V. Chauhan, P.P. a/w Mr. S.S. Doifode, APP for the State
Mr. R.S. Nayak, Advocate for the accused

**CORAM : SMT. VIBHA KANKANWADI
& MRS. VRUSHALI V. JOSHI, JJ.**
DATE : 24.06.2024

1. Heard.

2. The appellant/accused stood prosecuted for committing the offences punishable under Section 302, 307, 376, 376(2)(f), 376(2)(n), 323,, 120-B, 201, 182, 193, 194, 196, 203 of the Indian Penal Code (IPC) r/w Section 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) r/w Section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 (JJBA Act) before the Special Court (POCSO) and District Judge-3 and Additional Judge, Nagpur and has been convicted on 21.05.2024.

3. In each of the offences, he has been sentenced separately, however, for our purposes the consideration at this stage, is the sentence of death under Section 302 of the IPC as well as under Section 6 of the POCSO Act. The accused challenges his conviction in Appeal No.322 of 2024, whereas the other proceedings are under Section 366 of the CrPC in confirmation case.
4. Both the proceedings i.e. Criminal Confirmation case and Criminal Appeal are **admitted**.
5. Issue notice to the respondent in Criminal Confirmation Case No.2 of 2024 and Criminal Appeal No. 322 of 2024.
6. Learned Advocate Mr. R.S. Nayak, waives service of notice for respondent/ accused. Learned PP waives service of notice on behalf of respondent/State in Criminal Appeal No.322 of 2024.
7. The learned Advocate for the appellant/accused is directed to add the victim as a party respondent in Criminal Appeal No.322 of 2024.
8. The amendment be carried out within a period of one week. After amendment, issue notice to the newly added respondent/victim, returnable on **08/08/2024**.
9. After going through the judgment and the order passed by the learned trial Court, it appears that he has considered only the behavior of the accused in jail, as further Report Exh.297 when the question of hearing the accused on the point of sentence

came. Further there appears to be a medical report and in respect of the same, it is stated in the paragraph 160 of the impugned judgment that the Medical Officer had submitted the status of the health of the accused that his general condition is satisfactory at present.

10. We consider that the learned trial Court has not complied with the mandatory requirements as per Three-Judges Bench decision of the Hon'ble Supreme Court in ***Manoj and others Vs. State of Madhya Pradesh reported in (2023) 2 SCC 353***. What is required as per the mandatory provision or stipulation is the psychological evaluation report, a Probation Officer's report and the Prison's report, which are required to be considered at the time of considering the sentence as it may help the concerned trial Court to evaluate the aggravating circumstances or mitigating circumstances. As per the said decision, the concerned Court should consider a psychological evaluation report, Probation Officer's report and Prison's report including material, on the conduct of the accused and the work done, has to be considered while imposing the sentence.

11. It has been stated that it would be imperative on the part of the Court to call these reports and also to give an opportunity to the accused to place on record any such material circumstance, which would be helpful in assessing the mitigating circumstances. It has been observed by the Hon'ble Supreme Court as under:

“248. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the bru-

tality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

252. It is pertinent to point out that this court, in Anil v. State of Maharashtra (2014)4 SCC 69 has in fact directed criminal courts, to call for additional material: (SCC)P.86, para 33

33.“Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.” (emphasis supplied) We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.”

12. The said decision in ***Manoj*** (supra) is then reiterated and explained in ***Vikas Chaudhary Vs. State of Delhi 2023 SCC OnLine SC 472***. In the said decision in paragraph Nos.21 and 22 the following observations are made:

“21. Since the judgment in Sriharan (supra) reserves the power to impose special or fixed term sentences (which may be longer than the minimum specified in Section 433A CrPC – i.e., may extend to considerably long periods, such as 30 years), with only the high courts and this court, it is imperative that this exercise is carried out

even in cases where the accused might eventually not be imposed the death sentence. To put it simply although the trial courts are not empowered to impose such special sentences, yet at the stage when they arrive at findings of guilt in the case of a heinous offence, what would be the nature of the sentence imposed eventually, is unknown; therefore, the prosecution would have to inform the court, and present relevant materials (as elaborated in Manoj), in case the death sentence is proposed. In that event, if ultimately death sentence is not imposed, it is open to the state (or the aggrieved party, under Section 372 CrPC) to appeal against the trial court judgment on the point of sentence; at that stage the evaluation before the High Court would be nuanced, and informed with full materials, about the convict, which otherwise it would not have the benefit of. Further, if considerable time has elapsed since the trial stage at which this exercise was undertaken, the appellate court should direct that a fresh attempt be made, to take into account the contemporaneous progress, if any, made by the convict.

22. In view of the above discussion, it is held that wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, it should carry out the exercise of placing the materials, in terms of Manoj, for evaluation. In case this results in imposition of death sentence, at the stage of confirmation, the High Court would have the benefit of independent evaluation of these materials. On the other hand, if death sentence is not imposed, then, the High Court may still be in a position to evaluate, if the sentence is adequate, and wherever appropriate and just, impose a special or fixed term sentence, in the course of an appeal by the state or by the complainant/informant. Given the imperative need for such material to form a part of the court's consideration, it has to be emphasized that in case the trial court has failed to carry out such exercise (for whatever reason), the High Court has to call for such material while considering an appeal filed by the state or complainant for enhancement of sentence (whether resulting in imposition of capital punishment, or a term sentence)".

13. In view of the said decisions and in the present matter as it appears that all the above said material is not collected, it is the bounden duty of this Court to collect the said material.

14. For the above said reasons, we direct the State Government to file, for the accused, a psychological evaluation report, a Probation Officer's report and Prison report including the material on the conduct of the accused and work done by the accused. We also give liberty to the accused person to place on record the mitigating circumstances in any form i.e material in respect of the circumstances in his favour. The entire exercise to be carried out on or before 5th August 2024.

15. Place the matters for further consideration on **08.08.2024**.

16. Registry to prepare translation of the depositions and the exhibited documents, which are in Marathi.

17. Registry to take steps for preparation of paper-book as per the Rules.

[MRS. VRUSHALI V. JOSHI, J]

[SMT. VIBHA KANKANWADI, J]