

[NON-REPORTABLE]

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal Nos. 1100-1101 of 2023
(Arising out of SLP (Crl) Nos. 12679-12680 of 2022)

Kashi Nath Singh @ Kallu Singh

...Appellant

Versus

The State of Jharkhand

...Respondent

J U D G M E N T

Rajesh Bindal, J.

1. The appellant was convicted under Sections 302 and 376 of the Indian Penal Code (hereinafter referred to as 'the IPC') by the Trial Court and punishment of death penalty along with fine was imposed. As he had been awarded death sentence, the matter was referred to the High Court of Jharkhand at Ranchi for confirmation. Simultaneously, the appellant also filed appeal challenging his conviction and sentence. Both were heard together. The Division Bench of the High Court while upholding conviction of the appellant, modified the sentence. The death sentence was commuted

into life sentence and it was directed that the appellant shall remain in jail for whole of his biological life, without any benefit of remission. Aggrieved by the judgment of the High Court, the appellant has filed the present appeal.

2. The facts of the case, as are evident from the order passed by the High Court, are that a complaint was lodged by informant, Bikash Kumar Mandal (PW-5), brother of the deceased girl (aged about 14 years at the time of incident), about an incident which took place at village Rangamati, Raja Basti, near Kali Temple, P.S. Baliapur, District Dhanbad on 3.11.2007 at about 10.45 a.m. He claimed that his sister had gone to take bath in the village pond along with wife and daughter of his neighbour, Raju Mukherjee (PW-9). At about 9.30 a.m., wife (PW-10) and daughter (PW-16) of Raju Mukherjee returned, but his sister did not return. On enquiry, he was informed that his sister had left the pond before them after taking bath. The informant (PW-5), his mother (PW-11) and Raju Mukherjee (PW-9) went out in search of his sister towards Kali Temple. They saw the appellant assaulting his sister by a stone in the field of Jag Bandhu Ram. She was bleeding profusely. Upon seeing them, the appellant fled away

from the spot. They found his sister dead. There were number of injuries. Her face was entirely defaced and there were no clothes on her body. Her skirt, top, panty, earrings, bangles, mala and payal were found at a distance of about 20-30 feet. On the basis of the aforesaid complaint, FIR No. 63/2007 dated 3.11.2007 was registered under Sections 376 and 302/34 IPC.

3. From the post mortem report of the deceased, it was found that her hymen was lacerated, spermatozoa was found on testing of vaginal swab, frontal bone of the skull was found fractured into pieces, besides other grievous injuries. The cause of death was found to be the injuries suffered by the deceased on head and brain, which were caused by hard and blunt object and a forceful sexual assault before her death.

4. Considering the aforesaid report and the unimpeachable evidence of the eye-witnesses, the appellant was convicted by the Trial Court. Considering the case to be falling in the category of rarest of rare, the Trial Court proposed to award death sentence. The High Court, in appeal filed by the appellant and on a reference by the Trial Court for confirmation of the death sentence, modified the same to life imprisonment.

5. Notice in the appeal was issued confined only to the direction of the High Court that the life sentence awarded to the appellant shall be for the whole of his biological life, without any benefit of remission.

6. The argument raised by the learned counsel for the appellant was that there is no reasoning given by the High Court that there are no chances of his reformation. As there is no criminal history of the appellant, there are chances of his reformation. Therefore, this court may modify the sentence awarded to the appellant while granting him benefit of remission, to whatever he is entitled to. He has further submitted that if the benefit of remission cannot be granted, the sentence awarded to the appellant may be reduced to certain limited period instead of whole of his biological life. Reference was made to the decision of this Court in ***Shiva Kumar alias Shivamurthy v. State of Karnataka***¹.

7. On the other hand, learned counsel for the respondent submitted that it is a case of brutal rape and murder of a 14 year old girl. The appellant, after committing the rape, was in the process of killing her by hitting her head

1 2023 SCC Online SC 345

and body with stone. He was trying to deface her face so that she could not be recognised. He was seen doing so by family members of the deceased when they went out for search. Keeping in view the mindset of the appellant, he does not deserve any further leniency in sentencing as the High Court had already commuted the death sentence to life imprisonment.

8. Heard learned counsel for the parties and perused the record.

9. We need not go into the facts of the controversy in detail for the reason that there is no challenge to the conviction of the appellant. The fact remains that there was rape and murder of a 14 year old girl. The guilt of the appellant was proved beyond reasonable doubt on account of testimony of direct eye-witnesses. The sentence awarded by the High Court is life imprisonment for the whole of biological life of the appellant without any remission. Though notice was issued only to consider whether the appellant could be extended the benefit of remission, however, considering the severity of the offence committed by the appellant, we do not find any merit in that submission. However, still considering the fact that the

appellant was 26 years of age when the offence was committed and there may be chances of his reformation, but still undue leniency in sentencing shakes public confidence in the criminal justice system, the deterrent effect may not be there. The rights of the victim and his family members are also to be considered.

10. Keeping in view the totality of circumstances, the sentence of life imprisonment for the whole of the biological life of the appellant, without any benefit of remission deserves to be modified to the fixed term sentence for a period of 30 years without any benefit of remission so that prime period of his life is spent in jail. The appellant shall be released from jail only after undergoing full sentence of 30 years, excluding the period of imprisonment already undergone.

11. The present appeals are disposed of accordingly.

_____, J.
(Abhay S. Oka)

_____, J.
(Rajesh Bindal)

New Delhi
April 20, 2023

// NR, PM //