State of U.P. Vs. Sanjay Kumar.

State of U.P. Vs. Sanjay Kumar.

SooperKanoon Citation : sooperkanoon.com/952885

Court : Karnataka

Decided On : Aug-19-1987

Reported in : 2012(8)SCC537; 2012AIRSCW5157; JT2012(8)175; 2012(8)SCALE3

Judge : B.S. Chauhan; Swatanter Kumar, Jj.

Acts : Indian Penal Code (IPC), 1860 - Sections 376, 302; Code of Criminal Procedure (CrPC), 1973 - Sections 164, 433(A); Constitution of India - Articles 142, 72, 161

Appeal No. : SLP (Crl.) No.6467 of 2012 (Crl.M.P.No.17082 of 2012)

Appellant : State of U.P.

Respondent : Sanjay Kumar.

Advocate for Pet/Ap. : Vivek Vishnoi, Adv.

Judgement :

1. Delay condoned.

2. This petition has been filed against the impugned judgment and Order dated 8.2.2012 passed by the High Court of Judicature at Allahabad in Criminal Appeal (Capital Case) No. 7760 of 2009, by which the High Court has commuted the death sentence awarded to the respondent by the Sessions Court, in life

imprisonment upon recording its conclusion that it was not among the `rarest of rare cases', in which death penalty could be awarded.

3. Facts and circumstances giving rise to this petition are as follows:

A. The respondent was engaged in the work of whitewash in the house of one Shyam Ji Sharma, resident of Tulsi Vihar Colony, Varanasi and his very close relative Divya Rani was staying with him, as she was appearing for her Intermediate examination. The complainant Shyam Ji Sharma alongwith his wife Rajni Sharma had gone to the market on 24.2.2007 to purchase goods while Divya Rani (deceased) was supervising the said work. When the complainant came back with his wife they found the door of the house open and saw that the respondent had killed Divya Rani and was now trying to conceal her body in a tin box after throwing out the clothes contained in it. There was blood on Divya's face. The complainant and his wife tried to catch hold of the respondent but he pushed them aside and ran away. They immediately lodged a First Information Report and Divya's body was henceforth sent for post- mortem examination.

B. In addition to several simple injuries on her body, a ligature mark measuring 29 cm in length, 1/2-1 cm in thickness at places all around the neck, with a pattern of pressure points 3 cm below the sternal notch and 3 cm below both the ears, was found. The doctor also found that there was laceration of the vagina and the vaginal vault, and rupturing of hymen was also observed. Asphyxia as a result of strangulation contributed to her death. The doctor also opined that the victim had been subjected to sexual assault.

C. On the basis of the post-mortem report, the charges under Sections 376 and 302 of Indian Penal Code, 1860 (hereinafter called 'IPC'), were framed against the respondent, to which he pleaded not guilty and claimed trial.

D. After conclusion of the trial and particularly placing reliance upon the confessional statement made by the respondent under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter called 'Cr.P.C.), the trial Court vide its judgment and order dated 5.12.2009 in Sessions Trial No. 245 of 2007 convicted the respondent of the said charges and awarded him death sentence. The reason

for giving death sentence had been recorded stating that the deceased was 18 years of age and the offence committed by the respondent would have a very negative effect on society. The offence committed by the respondent was in fact rarest of the rare. The confessional statement recorded by the Judicial Magistrate was worth placing reliance upon, wherein the respondent had admitted his guilt and, therefore, taking into consideration all the facts and circumstances of the case, the Court reached the conclusion that it was a case under the category of ‘rarest of rare cases’. Therefore, death penalty was awarded to the respondent alongwith a fine of Rs.10,000/- in default of which, he would have to suffer further RI for 4 months. For the charge of rape, he was awarded life imprisonment, with a fine of Rs.10,000/- and in default, he would have to suffer further RI for 4 years.

E. Being aggrieved, the respondent filed an appeal and while considering his appeal alongwith the Death Reference made to the High Court, the High Court after appreciating the entire evidence, came to the conclusion that upon consideration of the totality of circumstances, the charges stood fully proved against the respondent. However, the case did not fall within the category of ‘rarest of rare cases’ where the option of awarding a sentence of imprisonment for life was unquestionably foreclosed.

Hence, this petition.

4. Learned counsel for the State has submitted that the High Court committed an error in not accepting the capital reference and in the facts and circumstances of the case, particularly, where a girl of 18 years of age has been raped and murdered, in order to ensure some deterrent effect, the High Court ought to have affirmed the death sentence, particularly, when the respondent himself has admitted his guilt on both charges, while making a confessional statement under Section 164 Cr.P.C. before the Judicial Magistrate.

5. It has been submitted at the bar that this Court has given different terms as minimum sentence to be served by convicts and, thus, the Court failed to ensure consistency in sentence and in laying down an effective and elaborate sentencing policy.

In Neel Kumar @ Anil Kumar v. State of Haryana, (2012) 5 SCC 766; and Sandeep v. State of U.P. (2012) 6 SCC 107 while commuting the awarded death sentence into a sentence of life imprisonment, it has been directed by this Court that convicts therein must serve a minimum of 30 years in jail without remissions before the consideration of their respective cases for premature release.

It has been further submitted that the aforesaid judgments reveal that there is no definite yardstick for the purpose of sentencing and that it varies from court to court to award the term of sentence. If the court awards a sentence of a particular term, subject to the clemency power of the sovereign or subject to premature release under Section 433-A Cr.P.C., then the period of sentence so fixed by the court remains meaningless.

Questions arise as to whether the direction of the court, that the convict has to serve a particular period of sentence before his case for premature release is considered, infringes upon the clemency or other statutory powers of the executive; whether such an order can be said to have been passed under Article 142 of the Constitution; and whether the court can issue such direction in exercise of the power vested in it under Article 142 of the Constitution. Whether this kind of sentence awarded by the court, if made subject to the clemency power and other statutory powers could be held merely to be a recommendation, as a result of which, while exercising such a power, the executive may bear in mind the opinion expressed by the court and take a decision, accordingly.

6. The High Court after placing reliance upon the judgments of this Court in Ramraj v. State of Chhattisgarh, AIR 2010 SC 420; Mulla & Anr. v. State of Uttar Pradesh, AIR 2010 SC 942; and Rameshbhai Chandubhai Rathod v. State of Gujarat, AIR 2011 SC 803; passed the order of sentence as under:

“We think that in the present case the ends of justice would be met if the sentence of death awarded to the appellant be substituted with a sentence of imprisonment for the whole of the remaining natural life of the appellant, subject further, to the condition that the prisoner could be eligible to any commutation and remissions that may be granted by the President and the Governor under Articles 72 and 161 of the Constitution of India or of the State Government under Section 433-A of the

Code of Criminal Procedure, 1973 for good and sufficient reasons".

7. We have gone through the impugned judgments and the evidence produced by the petitioner-State. We are of the view that the High Court is correct to the extent, that the facts of the case did not warrant death sentence.

8. Undoubtedly, a comprehensive sentencing policy is required to be laid down by the Court, however, the same would be a herculean task as it is impossible to foresee all possible circumstances which may take place in the future.

In Swamy Shraddananda @ Murali Manohar Mishra v. State of Karnataka, AIR 2008 SC 3040, after considering various provisions of various statutes, a three-Judge Bench observed as under:

"The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e., the vast hiatus between 14 years' imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all. In light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term

in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be.

…….We accordingly substitute the death sentence given to the appellant by the trial court and confirmed by the High Court by imprisonment for life and direct that he shall not be released from prison till the rest of his life."

(Emphasis added)

The Court further clarified that while passing an order of punishment, the Court deals with the powers of the State under the provisions of the Cr.P.C., the Prisons Acts and the Rules framed by the States, and not with clemency power, that is, the power of the Sovereign in this respect.

9. Another three-Judge Bench of this Court in Rameshbhai Chandubhai Rathod (supra) passed a similar order, wherein, the Bench made it clear, that the sentence of natural life would be subject to the power of clemency and powers under Section 433-A Cr.P.C.

10. The concept of Separation of Powers is inherent in the polity of the Constitution. This doctrine creates a system of checks and balances by reason of which, powers are so distributed that none of the three organs set up can become so pre-dominant, so as to disable the others from exercising and discharging the powers and functions entrusted to them. The separation of powers between the legislature, the executive and the judiciary constitutes one of the basic features of the Constitution. There is distinct and rigid separation of powers under the Indian Constitution. The scrupulously discharged duties of all guardians of the Constitution include among them, the duty not to transgress the limitations of their own constitutionally circumscribed powers by trespassing into what falls properly within the domain of other constitutional organs. (Vide: His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala & Anr., AIR 1973 SC 1461; Smt. Indira Nehru Gandhi v. Shri Raj Narain and Anr. , AIR 1975 SC 2299; and State of West Bengal & Ors. v. The Committee for Protection of Democratic Rights, West Bengal and Ors., AIR 2010 SC 1476).

11. In Jayawant Dattatraya Suryarao v. State of Maharashtra, (2001) 10 SCC 109, this Court after considering a large number of judgments, having conjoint reading of Sections 433 and 433-A Cr.P.C., and taking into account the facts of the case particularly that the appellant therein had committed a heinous act of terrorism and brutal murder of two police constables who were on duty to guard the person to whom they wanted to kill held that they could not be awarded death sentence and thus, commuted the same to imprisonment for life but directed that the accused therein would not be entitled to any commutation or premature release under Section 433-A Cr.P.C., Prisons Act, Jail Manual or any other Statute and the Rules made for the purpose of commutation and remissions.

12. In Manish Goel v. Rohini Goel, AIR 2010 SC 1099, after placing reliance on a very large number of Constitution Bench judgments of this Court, the Court came to the conclusion that the Court cannot exercise its power under Article 142 of the Constitution for passing an order or granting a relief, which is totally inconsistent with, or which goes against the substantive or statutory provisions pertaining to the case.

13. The purpose of conferring the power of clemency has been explained by Chief Justice Taft in Ex p. Grossman, (1924) 69 L.ed. 527 observing as under:

“The administration of justice by the courts is not necessarily always wise or certainly considerate of circumstances which may properly mitigate guilt. To afford a remedy, it has always been thought essential in popular governments as well as monarchies, to vest in some other authority than the courts power to avoid particular judgments. It is a check entrusted to the Executive for special cases. To exercise it to the extent of destroying the deterrent effect of judicial punishment would be to pervert it; but whoever is to make it useful must have full discretion to exercise it.”

14. In State of Haryana v. Jagdish, AIR 2010 SC 1690, this Court dealt with the issue of clemency power elaborately and held that such powers are unfettered and absolute. Where the State authority frame rules under Article 161 of the Constitution, the case of the convict is required to be considered under the said rules. Even if the life convict does not satisfy the requirements of the remission

rules or of the short sentencing scheme, there can be no prohibition for the President or the Governor of the State, as the case may be, to exercise the power of clemency vested in them, under the provisions of Articles 72 and 161 of the Constitution. Therefore, this Court while passing such orders never meant that clemency power could not be exercised by the President/Governor. The order of the Court in such an eventuality always remains subject to the said clemency powers.

15. Sentencing Policy is a way to guide judicial discretion in accomplishing particular sentencing. Generally, two criteria, that is, the seriousness of the crime and the criminal history of the accused, are used to prescribe punishment. By introducing more uniformity and consistency into the sentencing process, the objective of the policy, is to make it easier to predict sentencing outcomes. Sentencing policies are needed to address concerns in relation to unfettered judicial discretion and lack of uniform and equal treatment of similarly situated convicts. The principle of proportionality, as followed in various judgements of this Court, prescribes that, the punishments should reflect the gravity of the offence and also the criminal background of the convict. Thus the graver the offence and the longer the criminal record, the more severe is the punishment to be awarded. By laying emphasis on individualised justice, and shaping the result of the crime to the circumstances of the offender and the needs of the victim and community, restorative justice eschews uniformity of sentencing. Undue sympathy to impose inadequate sentence would do more harm to the public system to undermine the public confidence in the efficacy of law and society could not long endure under serious threats.

Ultimately, it becomes the duty of the Courts to award proper sentence, having regard to the nature of the offence and the manner in which it was executed or committed etc. The Courts should impose a punishment befitting the crime so that the Courts are able to accurately reflect public abhorrence of the crime. It is the nature and gravity of the crime, and not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. Imposition of sentence without considering its effect on social order in many cases may be in reality, a futile exercise. The survival of an orderly society demands the extinction of the life

of a person who is proved to be a menace to social order and security. Thus, the Courts for the purpose of deciding just and appropriate sentence to be awarded for an offence, have to delicately balance the aggravating and mitigating factors and circumstances in which a crime has been committed, in a dispassionate manner. In the absence of any foolproof formula which may provide a basis for reasonable criteria to correctly assess various circumstances germane for the consideration of gravity of crime, discretionary judgment, in relation to the facts of each case, is the only way in which such judgment may be equitably distinguished. The Court has primarily dissected the principles into two different compartments - one being, the 'aggravating circumstances' and the other being, the 'mitigating circumstance'. To balance the two is the primary duty of the Court. The principle of proportionality between the crime and the punishment is the principle of 'just deserts' that serves as the foundation of every criminal sentence that is justifiable. In other words, the 'doctrine of proportionality' has valuable application to the sentencing policy under Indian criminal jurisprudence. While determining the quantum of punishment the court always records sufficient reasons. (Vide: Sevaka Perumal etc. v. State of Tamil Nadu AIR 1991 SC 1463; Ravji v. State of Rajasthan, AIR 1996 SC 787; State of Madhya Pradesh v. Ghanshyam Singh AIR 2003 SC 3191; Dhananjay Chatterjee alias Dhana v. State of W.B. AIR 2004 SC 3454; Rajendra Pralhadrao Wasnik v. The State of Maharashtra, AIR 2012 SC 1377; and Brajendra Singh v. State of Madhya Pradesh, AIR 2012 SC 1552).

16. In view of the above, we reach the inescapable conclusion that the submissions advanced by learned counsel for the State are unfounded. The aforesaid judgments make it crystal clear that this Court has merely found out the via media, where considering the facts and circumstances of a particular case, by way of which it has come to the conclusion that it was not the `rarest of rare cases', warranting death penalty, but a sentence of 14 years or 20 years, as referred to in the guidelines laid down by the States would be totally inadequate. Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years, rather it always meant as the whole natural life. This Court has always clarified that the punishment so awarded would be subject to any order passed in exercise of the clemency powers of the President of India or Governor of State, as the case may be. Pardons, reprieves and remissions are granted in exercise of prerogative

power. There is no scope of judicial review of such orders except on very limited grounds for example non-application of mind while passing the order; non-consideration of relevant material; or if the order suffers from arbitrariness. The power to grant pardons and to commute sentences is coupled with a duty to exercise the same fairly and reasonably.

Administration of justice cannot be perverted by executive or political pressure. Of course, adoption of uniform standards may not be possible while exercising the power of pardon. Thus, such orders do not interfere with the sovereign power of the State. More so, not being in contravention of any statutory or constitutional provision, the orders, even if treated to have been passed under Article 142 of the Constitution do not deserve to be labelled as unwarranted. The aforesaid orders have been passed considering the gravity of the offences in those cases that the accused would not be entitled to be considered for premature release under the guidelines issued for that purpose i.e. under Jail Manual etc. or even under Section 433-A Cr.P.C.

With these observations, the Petition is dismissed.