

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1112 OF 2015

Vijay Raikwar

...Appellant

Versus

State of Madhya Pradesh

...Respondent

J U D G M E N T

M.R.SHAH, J.

Feeling aggrieved and dissatisfied with the impugned judgment and order dated 02.07.2014 passed by the High Court of Madhya Pradesh at Jabalpur passed in Criminal Appeal No.198 of 2014 by which the High Court has dismissed the said appeal and confirmed the judgment and order dated 23.12.2013 passed by the learned Additional Sessions Judge, Rehli, District Sagar, Madhya Pradesh in Sessions Trial No.49 of 2013 and has

confirmed the conviction of the original accused for the offences punishable under Section 376 (2) (f) and Section 201 of the Indian Penal Code (IPC) as well as Sections 5(i), 5(m) and 5(r) read with Section 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act) and has confirmed the death penalty imposed, original accused has preferred the present appeal.

2. That the appellant/original accused was tried by the Trial Court for the offences punishable under Section 376 (2) (f) and Section 201 of the IPC as well as Sections 5(i), 5(m) and 5(r) read with Section 6 of the POCSO Act for having committed the murder of the minor girl aged 7^{1/2} years after raping her. On considering the incriminating material against the accused and on appreciation the evidences and having considered that the accused was last seen together with the deceased and that the frock of the victim was found lying on the cot along with blood stains on bed mattress and bedsheet in the house of the accused, which was not explained by the accused, and also considering the medical evidence, the Trial Court convicted the accused for

the offences under Section 376 (2) (f) and Section 201 of the IPC as well as Sections 5(i), 5(m) and 5(r) read with Section 6 of the POCSO Act. The Trial Court sentenced the accused to life imprisonment and other terms of the imprisonment with fine. All the sentences were directed to run concurrently. Learned Additional Sessions Judge also sentenced the accused to death penalty. Having sentenced the accused with death penalty, the learned Additional Sessions Judge made the reference to the High Court. Being aggrieved with the conviction and the sentence, the accused also preferred Criminal Appeal No.198 of 2014 before the High Court. By the impugned common judgment and order, the High Court has decided the reference against the accused and has also dismissed the criminal appeal preferred by the accused, whereby, the High Court has confirmed the conviction and sentence imposed by the Trial Court. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court, the conviction and sentence of death penalty, the accused has preferred the present criminal appeal.

3. We have heard learned counsel appearing on behalf of the accused at length.

4. Learned counsel appearing on behalf of the accused has vehemently submitted that in the facts and circumstances of the case, both the courts below have materially erred in holding the accused guilty for the offences under Section 376 (2) (f) and Section 201 of the IPC as well as Sections 5(i), 5(m) and 5(r) read with Section 6 of the POCSO Act. He has vehemently submitted that in the present case, there is no eye-witness of the incident and the entire case is based on circumstantial evidence. It is submitted that unless and until the chain of evidence proves the guilt of the accused beyond reasonable doubt in committing the crime, both the courts have materially erred in convicting the accused.

5. Alternatively, the learned counsel appearing on behalf of the accused has prayed to commute the death sentence to life imprisonment. Learned counsel appearing on behalf of the accused has heavily relied upon the decision of this Court in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 as well as the

recent decision of this Court in *Shyam Singh alias Bhima v. State of Madhya Pradesh* (2017) 11 SCC 265.

6. Heard the learned counsel appearing on behalf of the respective parties at length. Considering the submissions made by the learned counsel appearing on behalf of the respective parties and the findings recorded by the Trial Court on appreciation of evidence which were confirmed by the High court, we are of the firm view that the conviction of the accused for the offences under Section 376 (2) (f) and Section 201 of the IPC as well as Sections 5(i), 5(m) and 5(r) read with Section 6 of the POCSO Act does not call for any interference as the findings recorded by the Sessions Court and confirmed by the High Court are on appreciation of evidence.

6.1 In the present case, prosecution has been successful in proving that the accused was last seen together with the victim; that he gave one rupee coin to the victim; he told one of the witness viz Bharati, who was with the victim to go away; thereafter the dead body of the victim was found near the house of the accused and that the frock of the victim was lying on the

cot and the bed mattress and bedsheet were blood stained and the same was matched with the blood group of the victim and that the accused failed to explain the incriminating material/evidence found against him in the statement under Section 313 of Cr.P.C, the Trial Court has rightly convicted the accused which has rightly been confirmed by the High Court. Learned counsel appearing on behalf of the accused has failed to satisfy this Court how the findings recorded by the Trial Court, confirmed by the High Court, holding the accused guilty for having committed the murder after raping a minor girl are perverse and/or contrary to the evidence on record. Under the above circumstances, we confirm the judgment and order of the conviction passed by the Trial Court, confirmed by the High Court.

7. Now, so far as the request and the prayer made on behalf of the accused to commute the death sentence to life imprisonment is concerned, having heard the learned counsel appearing on behalf of the accused on the question of death sentence imposed by the learned Sessions Court, confirmed by the High Court and

considering the totality and circumstances of the case and the decisions of this Court in the cases of *Bachan Singh* (supra) and *Shyam Singh* (supra), we are of the opinion that the present case does not fall within the category of 'rarest of rare case' warranting death penalty. We have considered each of the circumstance and the crime as well as the facts leading to the commission of the crime by the accused. Though, we acknowledge the gravity of the offence, we are unable to satisfy ourselves that this case would fall in the category of 'rarest of rare case' warranting the death sentence. The offence committed, undoubtedly, can be said to be brutal, but does not warrant death sentence. It is required to be noted that the accused was not a previous convict or a professional killer. At the time of commission of offence, he was 19 years of age. His jail conduct also reported to be good. Considering the aforesaid mitigating circumstances and considering the aforesaid decisions of this Court, we think that it will be in the interest of justice to commute the death sentence to life imprisonment.

8. In view of the above and for the reasons stated above, present appeal challenging the conviction is hereby dismissed. His conviction for the offences under Section 376 (2) (f) and Section 201 of the IPC as well as Sections 5(i), 5(m) and 5(r) read with Section 6 of the POCSO Act is hereby confirmed. However, in the facts and circumstances of the case and for the reasons stated above, we commute the death sentence to life imprisonment.

9. Present appeal stands disposed of accordingly, in terms of the above.

.....J.
(A. K. SIKRI)

.....J.
(S. ABDUL NAZEER)

.....J.
(M. R. SHAH)

New Delhi,
February 05, 2019.