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## Bhaggi @ Bhagirath @ Naran Vs State Of Madhya Pradesh

Court: Supreme Court Of India

Date of Decision: Feb. 5, 2024

Acts Referred: Indian Penal Code, 1860 â€" Section 45, 53, 363, 366, 376AB, 376(2)(i)

Code of Criminal Procedure, 1973 â€" Section 366, 433A

Protection of Children from Sexual Offences Act, 2012 â€" Section 3, 4, 5(d), 5(m), 6, 42

Citation: C.T.Ravikumar, J; Rajesh Bindal, J

Bench: Division Bench

**Advocate:** K. Sarada Devi, R.Vijay Nandan Reddy, V.krishna Swaroop, Ankita Chaudhary, Mrinal Gopal Elker, Abhimanyu Singh-g.a., Abhijeet Pandove, Saurabh Singh, Divyansh Singh, Aarushi Gupta, Asosh Rawat

Final Decision: Allowed

## **Judgement**

1. The petitioner-convict seeks to assail the judgment dated 11.10.2018 of the High Court of Madhya Pradesh at Jabalpur in Criminal Appeal No.5725

of 2018.

2. In troth, it is a common judgment in Criminal Reference No.6/2018 submitted by the Trial Court under Section 366 of the Code of Criminal

Procedure, 1973 (Cr.PC) for confirmation of the conviction under Section 376 AB of the Indian Penal Code, 1860 (IPC) as amended by Act No.22 of

2018 and in Criminal Appeal No.5725 of 2018 filed by the petitioner-convict herein aggrieved by the conviction and sentence imposed against him for

certain other offences under the IPC, as also against the conviction under the Protection of Children from Sexual Offences Act, 2012 (for short,

 $\tilde{A}\phi\hat{a}, \neg \tilde{E}\varpi POCSO Act \tilde{A}\phi\hat{a}, \neg \hat{a}, \phi)$ . As per the impugned judgment, the capital punishment awarded for the conviction under Section 376 AB, IPC was not

confirmed and it was commuted to imprisonment for life, which, going by the provisions thereunder, means imprisonment for the remainder of the

convict¢â,¬â,,¢s natural life.

- 3. Heard the learned counsel appearing for the petitioner-convict and the learned Additional Advocate General for the State of Madhya Pradesh.
- 4. It is to be noted that in the instant case, after condoning the delay, limited notice on the question of sentence alone was issued on 24.02.2023. Since

we do not find any reason to enlarge the scope, the parties confined their arguments within the permissible scope.

5. We are of the considered view that for considering the aforesaid question it is apposite to refer succinctly to the facts of the case. On 21.05.2018,

the complainant Munni Bai (PW-8) who is the grandmother of the victim lodged a report that her granddaughter X, who was examined as PW-1, aged

7 years was kidnapped and raped by the petitioner-convict. After the trial, the Trial Court found that the prosecution had succeeded in bringing

damning evidence to establish that the victim, aged 7 years was taken to Rajaram Baba Thakur Mandir by the petitioner-convict and there upon

making her and himself nude he committed rape. Upon her screaming, the prosecution witnesses who went there found the convict, belonging to the

same village, laying over and violating the victim and at their sight running away from there. The oral testimonies of the prosecution witnesses (PWs-1,

2 and 14) on the culpability of the convict got credence from the medical evidence unerringly pointing to his guilt. The consequential conviction inter

alia, under Section 376 AB, IPC as amended by Act No.22 of 2018, originally, brought him capital sentence. Though, the petitioner was also convicted

under Section 376 (2) (i) and under Sections 3/4, Sections 5(d)/6 of the POCSO Act taking note of his conviction under Section 376 AB, IPC, no

separate sentences were awarded for the aforesaid offences by the trial Court. In view of the commutation of capital punishment awarded for the

conviction under Section 376 AB, IPC it is also a matter to be considered if we interfere with the sentence of life imprisonment for the offence under

Section 376 AB, IPC as amended under the Act No.22 of 2018.

6. As noticed hereinbefore, on appreciating the evidence on record and coming to the conclusion that the guilt of the petitioner under Section 376 AB,

IPC has been conclusively proved, but capital punishment imposed therefor, is to be commuted while confirming the conviction under Section 376 AB,

IPC. The High Court commuted it to imprisonment for lifeÃ, though another alternative punishment was also possible viz. rigorous imprisonment for a

term not less than 20 years with fine.

7. In the decision in Mulla v. State of U.P. (2010) 3 SCC 508, this Court held:-

 $\tilde{A}\phi\hat{a}, \neg \hat{A}$ "85 $\tilde{A}\phi\hat{a}, \neg \hat{A}$ ! $\tilde{A}\phi\hat{a}, \neg \hat{A}$ !...It is open to the sentencing court to prescribe the length of incarceration. This is especially true in cases where death

sentence has been replaced by life imprisonmentââ,¬Â¹...ââ,¬â€€

8. Evidently, the decision in Mullaââ,¬â,¢s case (supra) and a catena of decisions where death sentence was commuted to the imprisonment for life

including the decisions in Bantu alias Naresh Giri v. State of M.P. (2001) 9 SCC 615, Amrit Singh v. State of Punjab 3 (2006) 12 SCC 79 and

Rameshbhai Chandubhai Rathod (2) v. State of Gujarat (2011) 2 SCC 764 were considered by the High Court while commuting capital sentence to

imprisonment for life. A bare perusal of all those decisions would reveal that those are cases involving rape and murder of young girls aged between 4

to 12 years. It is true that after referring to thoseÃ, decisionsÃ, theÃ, HighÃ, Court,Ã, inÃ, theÃ, instantÃ, caseÃ, heldÃ, in paragraph 34 of the

impugned judgment thus:-

 $\tilde{A}\phi\hat{a}, \neg \tilde{A}$  "In the present case the important consideration is the manner in which the alleged offence is committed. The evidence of Dr. Saroj

Bhuriya (PW -3) is relevant. She stated that there was no external injury on the person of the prosecutrix, specially on her neck, chick,

chest, abdomen and thigh. She also did not find any injuries on the outer part of the genital part of the prosecutrix. She has found the

hymen was ruptured recently and there was bleeding. The injury was ordinary in nature. She further stated that the same could have been

possibly be caused by hard and blunt object as well. The evidence has established that a minor child was violated by the accused. However,

there was no other injury inflicted him either on the other parts of the body and also on the private part. Thus the manner in which the

offence is committed is not barbaric and brutal. We have given our anxious consideration to the material on record and find that though the

offence is condemnable, reprehensible, vicious and a deplorable act of violence but the same does not fall within the aggravating

circumstances namely extreme depravity and the barbaric manner in which the crime was committed. Taking into consideration the totality

of the facts, nature, motive and the manner of the offence and further that nothing has been brought on record by the prosecution that the

accused was having any criminal antecedent and the possibility of being rehabilitation and reformation has abo not been ruled out. Nothing

is available on record to suggest that he cannot be useful for the society. In our considered opinion, it is not a ease in which the alternative

punishment would not be sufficient to the facts of the case.ââ,¬â€€

9. Now, we will refer to the rival contentions. The contention of the learned counsel for the petitioner is that at the time of commission of offence, the

petitioner was aged only 40 years. The High Court after taking note of the manner in which the alleged offence was committed observed that it was

not barbaric and brutal and further that owing to the absence of anything on record to suggest that the convict is having criminal antecedents the

possibility of rehabilitation and chances for his reformation could not be ruled out and opined that the case is not one where the alternative punishment

would not be sufficient. The alternative punishment provided under Section 376 AB, IPC viz., sentence of rigorous imprisonment not less than 20

years and with fine alone may be imposed after altering the life imprisonment for the conviction under Section 376 AB, IPC and no separate sentence

be awarded for the conviction under the other offences mentioned above. According to the learned counsel, rigorous imprisonment for 20 years with a

minimal fine will be the comeuppance. Per contra, the learned counsel appearing for the respondent State would submit that the question as to what

extent the capital sentence could be commuted, in the facts and circumstances of the case was considered in detail with reference to the decisions

mentioned in the impugned judgment by the High Court and no case has been made out by the petitioner for further interference qua the quantum of

sentence imposed on the petitioner.

10. We have taken note of the observation of the High Court made after referring to the manner of commission of the crime concerned that it was not

barbaric and brutal. We are of the concerned view that when the words  $\tilde{A}\phi\hat{a},\neg\tilde{E}$  cobarbaric  $\tilde{A}\phi\hat{a},\neg\hat{a},\phi$  and  $\tilde{A}\phi\hat{a},\neg\tilde{E}$  cobrutal  $\tilde{A}\phi\hat{a},\neg\hat{a},\phi$  are used simultaneously they are not to

take the character of synonym, but to take distinctive meanings. In view of the manner in which the offence was committed by the petitioner-convict,

as observed by the High Court under the above extracted recital, according to us, one can only say that the action of the petitioner-convict is barbaric

though he had not acted in a brutal manner. We will take the meanings of the words  $\tilde{A}\phi\hat{a}$ ,  $\neg\ddot{E}$  cobarbaric  $\tilde{A}\phi\hat{a}$ ,  $\neg\hat{a}$ ,  $\phi$ ,  $\tilde{A}\phi\hat{a}$ ,  $\neg\ddot{E}$  cobarbarians  $\tilde{A}\phi\hat{a}$ ,  $\neg\hat{a}$ ,  $\phi$  and  $\tilde{A}\phi\hat{a}$ ,  $\neg\ddot{E}$  cobrutal  $\tilde{A}\phi\hat{a}$ ,  $\neg\ddot{a}$ ,  $\phi$  to know

the distinctive meanings of the words ââ,¬Ëœbarbaricââ,¬â,,¢ and ââ,¬Ëœbrutalââ,¬â,,¢.

As per the New International Webster  $\tilde{A}$   $\phi$   $\hat{a}$ ,  $-\hat{a}$ ,  $\phi$   $\hat{a}$  Comprehensive Dictionary of the English Language, Encyclopedia Edition they carry the following

meanings:

 $\tilde{A}$ ¢â,¬ $\ddot{E}$ œBarbaric $\tilde{A}$ ¢â,¬â,,¢ (adj): 1. of or characteristic of barbarians.

2. Wild; uncivilized; crude

ââ,¬ÊœBarbariansââ,¬â,¢: (n) 1. One whose state of culture is between savagery and civilization;

2. Any rude, brutal or uncultured person.

ââ,¬ËœBrutalââ,¬â,¢ (adj) : Characteristic of or like a brute; cruel; savage.

In the light of the evidence on record and rightly noted by the High Court in the above-extracted paragraph 34 of the impugned judgment it may be

true to say that the petitioner-convict had committed the offence of rape brutally, but then, certainly his action was barbaric. In the instant case, the

petitioner-convict was aged 40 years on the date of occurrence and the victim was then only a girl, aged 7 years. Thus, the position is that he used a

lass aged 7 years to satisfy his lust. For that the petitioner-convict took the victim to a temple, unmindful of the holiness of the place disrobed her and

himself and then committed the crime. We have no hesitation to hold that the fact he had not done it brutally will not make its commission non-

barbaric.

11. In the circumstances obtained in this case there can be no doubt regarding the requirement of deterrent punishment for the conviction under

Section 376 AB, IPC. The only question is whether the commutation of capital punishment to sentence of life imprisonment requires further

interference. There can be no doubt with respect to the position that on such commutation of sentence for the conviction under Section 376 AB, IPC,

the other alternative available is only imprisonment for a period not less than

20 years with fine. This position is clear from the provision under Section 376 AB, IPC which reads thus:-

 $\tilde{A}$ ¢â,¬Å"376AB. Punishment for rape on woman under twelve years of age. $\tilde{A}$ ¢â,¬"Whoever, commits rape on a woman under twelve years of age

shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for

life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this section shall be paid to the victim.ââ,¬â€€

12. Thus, a bare perusal of Section 376 AB, IPC would reveal that imprisonment for life thereunder means imprisonment for the remainder of the

convict $\tilde{A}$ ¢ $\hat{a}$ , $\neg \hat{a}$ ,¢s natural life and the minimum term of imprisonment under the Section is 20 years. Now, while considering the question whether further

interference with the sentence handed down for the conviction of the offence under Section 376 AB, IPC is warranted, it is only appropriate to refer

to a decision of this Court in Shiva Kumar @ Shiva @ Shivamurthy v. State of Karnataka (2023) 9 SCC 817. In Shiva Kumarââ,¬â,¢s case (supra) this

Court referred to the decision of a Constitution Bench of this Court in Union of India v. V. Sriharan alias Murugan and Ors. (2016) 7 SCC 1 and also

the decision in Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka (2008) 13 SCC 767. Evidently, this Court in V.

Sriharanââ,¬â,¢s case (supra), upon considering the question whether imprisonment for life in terms of Section 53 read with Section 45 IPC means

imprisonment for rest of life of the prisoner or a convict undergoing life imprisonment has a right to claim remission, held after referring to the decision

in Swamy Shraddananda (2) (supra) that the power derived from the Penal Code for any modified punishment within the punishment provided for in

the Penal Code for any specified offence could only be exercised by the High Court and in the event of further appeal only by the Supreme Court.

Furthermore, in paragraph 105 of the said decision it was held:- ââ,¬Å"to put it differently, the power to impose modified punishment providing for any

specific term of incarceration or till the end of the convict  $\tilde{A}\phi$ ,  $-\hat{a}$ ,  $\phi$ s life as an alternate to death penalty, can be exercised only by the High Court and the

Supreme Court and not by any other inferior Court.  $\tilde{A}\phi\hat{a}$ ,  $\neg$  In Shiva Kumar  $\tilde{A}\phi\hat{a}$ ,  $\neg\hat{a}$ ,  $\phi$ s case (supra) this Court further took note of what was held by the

Constitution Bench in V. Sriharanââ,¬â,¢s case (supra) paragraph 104 as well, which reads thus: -

 $\tilde{A}$ ¢â,¬Å"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and

confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further

appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal

jurisprudence, we can assert after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or

life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power

under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of

the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed

and the exercise of judicial conscience befitting such offence found proved to have been committed.ââ,¬â€€

13. After referring to the relevant paragraphs from the said decisions in Shiva Kumar this Court held as follows: -

 $\tilde{A}$ ¢â,¬Å"13.Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the

Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as

contemplated by  $\tilde{A}\phi\hat{a}, \neg \hat{A}$  "secondly  $\tilde{A}\phi\hat{a}, \neg$  in Section 53 of the IPC, shall be of a fixed period of more than fourteen years, for example, of twenty

years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433A of

Cr.P.C.ââ,¬â€∢

14. In view of the decisions referred (supra) and taking note of the position that when once the conviction is sustained under Section 376 AB, IPC the

fixed term punishment could not be for a period of less than 20 years. Evidently, the High Court had referred, in paragraph 33 of the impugned

judgment, to decisions where minor girls were raped and murdered, but did not pointedly consider whether for the conviction under Section 376 AB,

IPC involving commission of rape of victim, aged 7 years not coupled with murder what would be the comeuppance, after deciding to commute the

capital sentence.

15. We have taken note of the hapless situation of the victim after being taken to a temple by the petitioner-convict. The evidence would reveal that

unmindful of the holiness of the place he disrobed her and himself and raped her. When such an act was done by the petitioner, who was then aged 40

years and X who was then aged only 7 years and the evidence that when PW-2 and PW-14 reached the place of occurrence, blood was found oozing

from the private parts of the disrobed child. The High Court had rightly considered the aggravating and mitigating circumstances while commuting the

capital sentence into life imprisonment which going by the provisions under Section 376 AB, IPC means rest of the convict $\tilde{A}$ ¢ $\hat{a}$ , $\neg \hat{a}$ ,¢s natural life. For

effecting such commutation, the High Court also considered the question whether there is possibility for reformation and rehabilitation of the petitioner

and opined that it is not a case in which the alternative punishment would not be sufficient in the facts of the case. But then, it is noted that if the

victim is religious every visit to any temple may hark back to her the unfortunate, barbaric action to which she was subjected to. So also, the incident

may haunt her and adversely impact in her future married life.

16. Then, we are also to take into account the present age of the petitioner and the fact that he has already undergone the incarceration. On

consideration of all such aspects, we are of the considered view that a fixed term of sentence of 30 years, which shall include the period already

undergone, must be the modified sentence of imprisonment.

17. We have already taken note of the fact that while commuting the capital sentence to life imprisonment, the High Court had lost sight of the fact

that despite conviction under Section 376 (2) (i) and under Sections 3/4, Sections 5(d)/6 of the POCSO Act, no separate sentences were imposed on

the petitioner for the offence under Section 3/4 and 5(m)/6 of the POCSO Act by the Trial Court, evidently, only on the ground that capital sentence is

imposed on the petitioner for the offence under Section 376 AB, IPC. However, it is a fact that the said aspect escaped the attention of the High

Court. That apart, in terms of the provisions under Section 376 AB, IPC when a sentence of imprisonment for a term not less than 20 years which

may extend upto life imprisonment is imposed, the convict is also liable to suffer a sentence of fine which shall be just and reasonable to meet the

medical expenses and rehabilitation of the victim which we quantify as Rupees One Lakh and the same shall be paid to the victim with respect to the

conviction under Section 363, IPC. In that regard also, there is absolutely no consideration in the impugned judgment.

18. It is submitted by the learned counsel, with reference to paragraph 1 of the impugned judgment that the order in paragraph 35 of the impugned

judgment that the conviction and sentence under Section 366, IPC is maintained, can also be in relation to the conviction under Section 363, IPC and

the sentence imposed therefor.

19. We fully endorse the said contention as paragraph 1 of the impugned judgment itself would reveal that the High Court had actually taken into

consideration the fact that the petitioner-convict was convicted only under Section 376 AB, IPC as amended by Act No.22 of 2018 and under Section

363 IPC. In such circumstances, the conviction and sentence imposed on the petitioner-convict is confirmed. We have taken note of the fact that

though the petitioner-convict was convicted for the offence under Section 3/4 and 5 (m)/6 of the POCSO Act, no separate sentence was imposed on

the petitioner-convict by the Trial Court taking note of the provision under Section 42 of the POCSO Act. The said provision reads thus:-

ââ,¬Å"42. Alternate punishment.ââ,¬"Where an act or omission constitutes an offence punishable under this Act and also under sections 166A,

354A, 354B, 354C, 354D, 370, 370A, 375, 376, [376A, 376AB, 376B, 376C, 376D, 376DA, 376DB], [376E, section 509 of the Indian

Penal Code or section 67B of the Information Technology Act, 2000 (21 of 2000)], then, notwithstanding anything contained in any law for

the time being in force, the offender found guilty of such offence shall be liable to punishment only under this Act or under the Indian Penal

Code as provides for punishment which is greater in degree.ââ,¬â€€

20. Since, even after the interference with the sentence imposed for the conviction of the petitioner-convict under Section 376 AB, IPC and modified

sentence imposed on commutation by the High Court, we have awarded 30 years of rigorous imprisonment with a fine of Rupees One Lakh, no

separate sentence for the aforesaid offence under POCSO Act is to be imposed on the petitioner-convict. While maintaining the conviction of the

petitioner-convict under Section 376 AB, IPC, the sentence imposed thereunder is modified to a sentence of rigorous imprisonment for a term of 30

years, making it clear that this will also include the period of sentence already undergone and the period, if any ordered by the Trial Court for set off.

The imprisonment awarded for the conviction under Section 363, IPC shall run concurrently. The amount of fine imposed thereunder shall be added to

the fine imposed by us viz., Rupees One Lakh.

21. We further direct that the petitioner-convict shall not be released from jail before completion of actual sentence of 30 years, subject to the

observation made in the matter of its computation, as mentioned above.

22. The Special Leave Petition is partly allowed, as above.