

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.1059-1060/2019
[@ SLP [CRL.] NOS.6522-6523/2013]

DILEEP BANKAR

Appellant (s)

VERSUS

STATE OF MADHYA PRADESH

Respondent(s)

O R D E R

The appeals arise out of the final judgment and order dated 04.07.2013 in Criminal Appeal No.647/2013 and Criminal Reference No.2/2013 passed by the High Court of Madhya Pradesh at Jabalpur whereby the High Court confirmed the reference made by the trial Court and dismissed the appeal of the appellant.

The brief facts of the case are that the victim was a minor girl aged about 5 years. On 20.8.2005, she was playing with her brother Chhutu @ Jagmohan near a temple situated adjacent to her house. The appellant at that time went there and took her away. Thereafter, he committed rape on her and throttled her to death. When the victim did not return home till evening, her father lodged a report. The Investigating Officer during the course of inquiry learnt that one person whose appearance resembled with the appellant was last seen with the victim. The appellant was interrogated and a memorandum statement was prepared, on the basis of which, body of the

victim and shirt containing dust particles and hair were recovered from the appellant.

The body of the victim was sent for post-mortem examination, which was conducted by Dr. Mukesh Goyal(PW-12). The following injuries were found on the body of the victim which is evident from the post-mortem report (exhibit-P-55):

- "i) Multiple abrasions and contusions on back area.
- ii) Ligature mark around the neck.
- iii) Lacerated wound present over the external orifice, post part of labia majora and minora.
- iv) labia minora severally contused."

The police after completing the investigation, charge-sheeted the appellant for offences under Sections 363, 366, 376 and 302 of the Indian Penal Code.

The trial Court after appreciating the evidence adduced by the prosecution, awarded death sentence to the appellant and referred the proceedings for confirmation to the High Court. The Division Bench of the High Court vide judgment dated 21.07.2008 in Criminal Reference No.02/2007 set aside the judgment of the trial Court and remanded the case to the trial Court to record its satisfaction as to whether the appellant is of sound mind and is in fit mental condition to defend himself. It was further directed that in case the appellant is found to be in fit mental condition to defend himself, he should be put to trial. The trial Court thereafter got the appellant medically examined by the Assistant Professor, G.R. Medical

College, Gwalior who after keeping the appellant under observation from 13.10.2008 till 09.06.2010 submitted report that the appellant is in fit condition and is able to defend himself. The trial thereafter commenced against the appellant.

The trial Court after appreciating the evidence examined by the prosecution and material brought on record found the appellant guilty of committing murder of the victim after raping her. The trial Court also took note of the fact that earlier also on two occasions the appellant was found guilty of committing rape on minor girls and was sentenced to 10 years and 2 years rigorous imprisonment, respectively. The trial Court again sentenced the appellant to death penalty.

The High Court vide its final judgment and order dated 04.07.2013 answered the reference made by the trial Court in affirmative by confirming the death sentence awarded to the appellant. The conviction and sentence awarded to the appellant for offences under Sections 363, 366 and 376(2)(f) of the Indian Penal Code were affirmed and the Criminal Appeal preferred by the appellant was dismissed.

We have heard learned counsel for the parties at length.

We are not inclined to interfere with the conviction part. However, with respect to sentence, in the facts and circumstances of the case, we are inclined to set aside the capital sentence. It was stated by learned counsel for the appellant that the appellant has become the victim of his own past and there is only circumstantial evidence against him. We deem it proper to impose the sentence of total 25 years of

imprisonment. However, death sentence is set aside.

The appeals are partly allowed.

..... J .

[ARUN MISHRA]

..... J .

[S. ABDUL NAZEER]

..... J .

[M.R. SHAH]

NEW DELHI;

JULY 10, 2019.

ITEM NO.103

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (CrI.) Nos.6522-6523/2013

(Arising out of impugned final judgment and order dated 04-07-2013 in CRLA No. 647/2013 and CRLR No. 2/2013 passed by the High Court Of M.P. Principal Seat At Jabalpur)

DILEEP BANKAR

Petitioner(s)

VERSUS

STATE OF MADHYA PRADESH

Respondent(s)

([TO GO BEFORE THREE HONBLE JUDGES] DEATH CASE
IA No. 16508/2013 - EXEMPTION FROM FILING TRIAL COURT ORDER)

Date : 10-07-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE M.R. SHAH

For Petitioner(s) Mr. B.H. Marlapalle, Adv.
Mr. Yash S. Vijay, Adv.
Ms. Ninnin Susan Thomas, Adv.
Mr. Balaji Srinivasan, AOR

For Respondent(s) Mr. Harsh Parashar, AOR
Ms. Tanvi Bhatnagar, Adv.
Mr. Aman Pandey, Adv.
Ms. Swaroopama Chaturvedi, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeals are partly allowed in terms of the signed order.

Pending application stands disposed of.

(ASHA SUNDRIYAL)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER

[SIGNED ORDER IS PLACED ON THE FILE]