

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL Nos. 622-623 OF 2016

JAWED KHAN @ TINGRYA

APPELLANT(S)

VERSUS

THE STATE OF MAHARASHTRA

RESPONDENT(S)

O R D E R

These appeals are filed by the appellant Jawed Khan @ Tingrya who was tried and convicted for offences under Sections 302, 376, 456, 457, 458, 392 read with Section 397 and 201 of the Indian Penal Code ("IPC"). Along with the appellant (who was arrayed as accused No.-1), two more persons were also put on trial. The charge against the said two persons was that they had received stolen property. The said two accused persons, namely, Pradip Chandaliya (A-2) and Ram Bodkhe (A-3) were also convicted by the trial court and imposed certain monetary fine, which has attained finality as there is no further challenge by A-2 and A-3. Insofar as the appellant is concerned, after convicting him of the aforesaid offences, the trial court imposed the sentence of life imprisonment insofar as conviction under Section 302 IPC is concerned. Different punishments have been given in respect of other offences and all sentences were to

run concurrently. Therefore, the maximum punishment which is awarded is the life imprisonment in respect of the conviction under Section 302 IPC.

The appellant challenged the aforesaid conviction by filing appeal in the High Court of Judicature at Bombay, Bench at Aurangabad. The State also felt aggrieved by the life imprisonment given to the appellant and, therefore, preferred an appeal for enhancing the sentence. By the impugned judgment dated 08.03.2016, the High Court has dismissed the appeal of the appellant thereby maintaining the conviction. At the same time, the appeal preferred by the State has been accepted and allowed. The imprisonment of life is substituted with death penalty.

In these appeals preferred by the appellant, there is a challenge to the conviction as well as imposition of death penalty. We have heard learned counsel for the appellant at length insofar as the conviction of the appellant is concerned. It may be recorded that it is a case of circumstantial evidence as there were no eye-witness to the crime allegedly committed by the appellant.

The criminal machinery was set into motion on a complaint filed by Aniket Shankarrao Deshpande, brother of the deceased (Mansi), who was residing with him at the time of the incident. According to

the complainant, on 11.06.2009, he left for Office at around 9:00 a.m. and the deceased was alone in the house. He was to return home from work at 7:00 p.m. but he could not return on time as he was required to overstay in the Office. He came back home on the next day, i.e., 12.06.2009 at 5:00 a.m. He knocked the door and also called the deceased on her mobile but did not receive any response. He thought that she (his sister) might be fast asleep and her mobile battery might have been discharged. Instead of disturbing her he went to the house of his friend and again came to his house at around 10:00 a.m. and noticed that his house was closed from inside. Again, he knocked the door and also called the deceased on phone but did not receive any response. On this, according to the complainant, he suspected something wrong and went down stair to the house of the owner and informed him that he wanted to climb from the grill of their *Verandah* in order to enter his house. Then he climbed the grill and went to the gallery of his flat. He noticed that door of the room attached to balcony was opened. He entered the drawing room and then to bedroom of the deceased. He was shocked to see the deceased lying on the bed in injured condition. Her hands were tied with wire of headphone of mobile and legs were tied with big scarf of her and bed sheet covered around her face. He noticed

injury on her neck and profused bleeding. A screw driver and a scissor were lying there. Many articles in the house were found scattered. He asked his neighbour to call the doctor immediately. In the meanwhile, the Police was also informed. The Doctor examined her and declared that she died before 3-4 hours. The dead body was sent for post-mortem to Ghati Hospital. Inquest Panchanama was drawn by P.S.I. Akmal in the presence of Panch witnesses. P.S.I. Akmal seized black mobile, one scarf, one T-shirt, one blood stained bracier under separate Panchanama. Later on, these articles were handed over to PW-32 Investigating Officer Sopan Borse. On 13.06.2009, blood sample of the deceased, pubic hair, vaginal swab were preserved by the Medical Officer at the time of performing post-mortem. Viscera and seized clothes of the deceased were sent to the Central Forensic Science Laboratory, Mumbai for analysis and DNA test to find out whether the deceased was ravished.

During investigation, the complainant informed the Police that the deceased was having a mobile phone and he did not find the mobile phone in the room. From IMEI number of mobile of the deceased, the Police traced the location of the mobile and ultimately the mobile was seized from A-2. On interrogation, A-2 disclosed that his son had given

a simcard to him and a customer, the appellant, gave him the mobile towards a bill of his hotel. On the basis of the information received from A-2, the appellant was arrested on 22.06.2009. The appellant admitted that he gave the mobile to A-2. During interrogation, the appellant disclosed that the gold ring of the complainant, which was found missing from the house, was given by him to A-3 against some dues which he owed to A-3. At the instance of A-3, gold ring of the complainant was recovered.

The appellant (A-1) was referred to Ghati Hospital for medical examination. Medical Officer was requested to take his blood, pubic hair, semen sample and nail clippings. Investigating agency also recovered the clothes the appellant was wearing at the time of commission of the offence which were concealed in garbage by him in front of the spot of incident. The shirt of the appellant was stained with blood. Investigating Agency then forwarded clothes of the appellant to the Central Forensic Science Laboratory for analysis. On 25.06.2009, original simcard which was in the mobile of the deceased was recovered at the instance of the appellant.

The prosecution examined as many as 33 witnesses. After going through the evidence adduced in the case, the learned Additional Sessions Judge convicted and sentenced the Accused as stated above.

On appeal by the State before the High Court, the High Court maintained the conviction of the appellant under the various provisions of the IPC, as stated above, however, in respect of the offence punishable under Section 302 IPC it modified the sentence to death.

The conviction is sustained on the basis of recovery of the cell phone though from A-2, who had deposed that it is the appellant who had given him the cell phone which belonged to the deceased in lieu of the amount which was due from the appellant and payable to A-2. There is a recovery of ring and clothes as well on the disclosure statement made by the appellant.

Mr. Trideep Pais, learned counsel for the appellant, strived to argue that all these recoveries cannot be believed and he sought to point out certain loopholes therein. It is not necessary to go into all these aspects. We find that, apart from the aforesaid recoveries, the samples of blood and semen of the appellant were taken and sent to Central Forensic Science Laboratory, Mumbai, along with samples of blood and semen which were recovered from the place of the incident. The DNA report conclusively concluded that these samples matched 100%, namely, the blood and the semen which were collected from the place of the incident is that of the appellant.

Though, Mr. Pais tried to argue that this DNA report should not be acted upon as there are various infirmities/ irregularities therein, we are not convinced with the said argument. The DNA report which is a scientific report nails the appellant and clinchingly proves the charge against the appellant beyond reasonable doubt. We also find that the learned Sessions Judge as well as the High Court have examined these aspects in detail and in the light of the said evidence as well as the depositions of various witnesses have arrived at the aforesaid finding of fact which is without blemish. Therefore, insofar as the conviction of the appellant under the aforesaid provisions of the IPC is concerned, we uphold the same.

Coming to the sentence, we find that the trial court had given detailed and cogent reasons while awarding life imprisonment to the appellant and came to the conclusion that it was not rarest of rare case which deserved death penalty. The High Court, on the other hand, has been swayed by the so-called previous criminal record of the appellant. It is mentioned that the appellant was involved in five offences relating to housebreaking and two offences of theft. In the first instance, it may be pointed out that in none of these cases the appellant had been convicted. Furthermore, the cases are of trivial nature which

could not be treated as circumstances of aggravating nature. That apart and more importantly, we find that the conduct of the appellant in jail, in last few years, has been quite satisfactory. In fact, there is material on record to show that the appellant is on the path of reformation and it is possible that he has already been a reformed person. We are making these observations having regard to the fact that while in jail the appellant has participated in the Examination on Gandhian Thoughts organized by the Sahyog Trust, Sarvodaya Ashram Nagpur & Mumbai Sarvoday Mandal based on the life and teachings of Mahatma Gandhi. He has been awarded certificate of participation. The appellant has also qualified B.P.P. (Bachelor Preparatory Programme) from Indira Gandhi National Open University ("IGNOU") which qualifies him to get admission in B.A. On that basis, he has even secured admission in B.A. course in IGNOU and is pursuing the same. The Jail report shows that his jail conduct is satisfactory.

For these reasons, we are of the opinion that the High Court is not correct in enhancing the sentence from life imprisonment to capital punishment. These appeals are, accordingly, partly allowed by restoring the sentence as awarded by the trial court and setting aside that part of the Order of the High Court.

Before parting, we may place on record our appreciation for the efforts put in by Mr. Trideep Pais, learned counsel who appeared for the appellant, as well as the able assistance rendered by his juniors. In this legal aid matter, the case was argued with passion and preparedness with minutest details.

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

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

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

NEW DELHI,
FEBRUARY 6, 2019

ITEM NO.101

COURT NO.2

SECTION II-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Criminal Appeal No(s). 622-623/2016

JAWED KHAN @ TINGRYA

Appellant(s)

VERSUS

THE STATE OF MAHARASHTRA

Respondent(s)

([TO GO BEFORE THREE HONBLE JUDGES] DEATH CASE)

Date : 06-02-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE S. ABDUL NAZEER
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. Trideep Pais, Adv.
 Ms. Sanya Kumar, Adv.
 Mr. N.K. Verma, Adv.
 Mr. Rishad Ahmed Chowdhury, AOR
 Mr. Shivam Sharma, Adv.
 Mr. Himanshu Agarwal, Adv.
 Mr. Anshu Raj Singh, Adv.

For Respondent(s) Ms. Deepa M. Kulkarni, Adv.
 Mr. Nishant Ramakantrao Katneshwarkar, AOR
 Mr. Anoop K., Adv.

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

The appeals stand disposed of in terms of the signed order.

Pending applications, if any, stand disposed of.

(SUSHIL KUMAR RAKHEJA)
AR CUM PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

(Signed order is placed on the file.)