REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 2277-2278 OF 2009

DURYODHAN ROUT … APPELLANT

VERSUS

STATE OF ORISSA … RESPONDENT

J U D G M E N T

Sudhansu Jyoti Mukhopadhaya, J.

These appeals are directed against the common judgment dated 8th January, 2008 passed by the High Court of Orissa at Cuttack in Death Reference Case No.2 of 2007 and J. Crl. A.No.12 of 2007. By the impugned judgment, the High Court upheld the conviction of the appellant for the offence under Section 376, 302 and 201 IPC. However, taking into consideration the facts and circumstances of the case, the age of the appellant, his family background and the fact that the appellant had no criminal antecedent, the capital sentence for the offence under Section 302 IPC has been commuted to life imprisonment; and rest of sentence remain unaltered.

2. The case of the prosecution is that on 11th September, 2004, at about 3 p.m. accused Duryodhan Rout, on the pretext

that the deceased, Subhasini, a minor girl aged about 10 years would talk over phone with his brother, Bamodev Bhoi took her on a bicycle. When the evening set in, the accused alone returned to the village and on enquiry about Subhasini, by Mulia Bhoi (PW-5), father of the deceased, he told that she had gone with a woman of Ranibandha to her house. On the next day, as she did not return Mulia Boi (PW-5) again questioned the accused regarding the where about of the deceased. The accused confessed in presence of Rabi Biswal (PW-3), Dasarathi Bhoi (PW-4) and Subashini Bhoi that he killed the deceased by pressing her neck. With the help of these three witnesses, Mulia Bhoi (PW-5) took the accused to Thakurgarh P.S. got the FIR scribed by one Laxman Senapti and lodged it before Udit Narayan Pany, Officer-in-charge of the said Police Station. A P.S. Case No.51 dated 12th September, 2004 under Section 302/201 IPC was instituted. The accused was arrested, his statement was recorded under Section 27 of the Indian Evidence Act on the basis of which he went to the spot made recovery of the dead body of the deceased, held inquest over it, seized the Chadi (underwear) of the victim lying near the spot, prepared seizure list in respect thereof and sent the dead body to Adhamalik Hospital for autopsy. He also seized the wearing apparels of the accused, forwarded to the Court on 13th December, 2004 and handed over charge of investigation of

the case to the C.I. of Police. After completion of investigation, Investigating Officer (I.O.) submitted charge sheet against the accused under Sections 376/302/201 IPC.

3. Learned Session Judge secured the presence of the accused, framed charges u/s 376/302/201 I.P.C. The accused pleaded not guilty and claimed to be tried.

4. In order to establish its case, the prosecution examined 8 witnesses. The accused examined himself as DW-1 besides examined DW-2, his father to prove his stand. After assessing the evidence on record, the Trial Court found the accused guilty for the offence under Sections 376(f)/302/201 IPC convicted him thereunder and sentenced him to death for the offence punishable under Section 302 IPC. The Session Judge also sentenced him to undergo RI for 10 years and to pay a fine of Rs.5,000/- for the offence punishable under Section 376(f)IPC and RI for one year and to pay a fine of Rs.1,000/- for the offence punishable under Section 201 IPC. It was further ordered that in default of payment of fine, the convict would suffer imprisonment for one year for the offence punishable under Section 376(f) IPC and three months for the offence punishable under Section 201 IPC and the substantive sentences would run consecutively.

5. The High Court, as noticed above in Reference, converted the capital sentenced to life imprisonment but ordered that rest of the sentence remain unaltered.

6. Admittedly, there was no eye-witness to the occurrence, the order of conviction was based on the circumstantial evidence only. From the evidence of Paramla Nahak (PW-1) and Pechi @ Bilas Bhoi (PW-2), it transpires that on the date occurrence at about 4 p.m. while they were making chips by braking boulders by the side of road, they saw the accused carrying the deceased on a cycle and at about 5 p.m. they saw him returning alone. Mulia Bhoi (PW-5) and Kalpana Bhoi (PW-6), the father and the mother of the deceased respectively, stated that the accused took the deceased on a cycle on the pretext that the later would talk to her brother, working at Bargarh, over phone from the house of Bijaya Bhoi of village Anandpur. While the accused was in Police custody, he confessed his guilt which was recorded under Ext.7. The Ext.7 reflects that on 11th September, 2004 afternoon he took the deceased near Arakhkuda Salabani Jungle, undraped her and then committed rape on her. When she cried. He strangulated her to death and left the dead body covering it with branches of trees. On the basis of statement of the accused the I.O recovered the dead body and the Chadi (underwear) of the deceased lying nearby, from Arakhkuda Salabani Jungle. The statement of the accused made before the Police Officer which distinctly relates to the facts of recovery is admissible under the law.

7. Dr. Narayan Udgata (PW-9) stated that on 12th September, 2004 he was attached to Sub-Divisional Hospital, Athamallik as a Specialist in O and G. On that date at 5 p.m. on Police requisition, he conducted autopsy over the dead body of the deceased-Subhasini Bhoi aged about 10 years and found as follows:

> "*(i) Bleeding from nostrils and mouth and both the ears with small clotting of blood.*
> (*ii) Eyes were half opened.*
> (*iii) Bloody froth present in the nostrils and mouth.*
> (iv) *Stool had been discharged from anus.*
> *(v) Thumb marks were present on the front of the neck.*
> *(vi) Two linear abrasions of size 3" x 4" on the front of the neck due to scratching by some sharp weapon like human nail.*
> *(vii) Finger marks were present on both sides of the neck and back of the neck.*
> *(viii) Extravasation of blood in to the sub-cutaneous tissues under the thumb and finger marks and adjacent muscles of the neck.*
> *(ix) Muscles of neck corresponding to the thumb and finger marks were mildly lacerated.*
> *(x) Multiple abrasions (linear) of size varying from 2" and 3" on both sides of scapular region. Most probably caused by weapon like human nails.*
> *(xi) Multiple abrasions on the back of both buttocks due to friction on a rough surface, like rough ground and the abrasions were associated with very mild bleeding. The size of multiple abrasions varies from ½" x ½" to ¾" x ½".*
> *(xii) Laceration of the vagina with bleeding with clots, most probably because of attempt to introduce the penis-forcibly. The penis most probably was large in size and the vaginal orifice of the deceased girl, aged about 10 years was very narrow. The laceration appears to have been caused by several attempts to introduce the penis into the vagine.*
> *(xiii) All the injuries were ante mortem in nature. The throttling was also ante mortem in nature. There was no evidence of seminal fluid in or around vagina or on any part of the body of anywhere in the clothings of the victim.*

According to Dr. Narayan Udgata (PW-9), the cause of death was due to throttling and probably homicidal in nature. He further stated that the accused might have attempted three to four times to introduce his penis into the vaginal orifice of the deceased. From his evidence, it further transpires that on 13th September, 2004, he examined the accused and found seminal fluid marks on his pant. He also found one linear abrasion of size ¼ on the postero-lateral aspect of the left elbow and another linear abrasion of the same size on the medial aspect of his right knees. According to him, those injuries might have been caused 12 hours earlier to the alleged incident. Therefore, it is not safe to hold that in course of rape and murder of deceased, the accused sustained those injuries. Dr. Narayan Udgata (PW-9),however, could not notice any sign of recent sexual intercourse on the private part of the accused.

8. Mulia Bhoi (PW-5), stated that the accused confessed before him and Rabindra Biswal (PW-3) and Dasarathi Bhoi (PW-4) that he killed the deceased. Rabindra Biswal (PW-3) and Dasarathi Bhoi (PW-4) turned hostile and did not support the prosecution. However, Kalpana Bhoi (PW-6) corroborated this part of evidence of Mulia Bhoi (PW-5). When asked by Mulia Bhoi (PW-5) regarding the whereabout of the deceased, accused told that she went with a woman of Ranibandha, which was found to be incorrect.

9. The Trial Court convicted the appellant on the basis of the chain of circumstantial evidence available against the accused. It was found that the accused carried on the deceased in his cycle at about 4 p.m. but returned alone at 5 p.m. He confessed to have murdered the deceased before Mulia Bhoi (PW-5). On the basis of the statement of the accused recorded under Section 27 of the Evidence Act, the I.O. discovered the dead body; the opion of the Doctor was that the deceased was raped and murdered. The Doctor examined the accused and found seminal fluid marks on his pant. The accused gave false statement that the deceased went with a woman of Ranibandha. Paramla Nahak (PW-1) and Pechi @ Bilas Bhoi (PW-2)saw the accused carried the deceased on a cycle at about 4 p.m. and returned alone one hour thereafter. Thus, the accused was last seen with the deceased. There is nothing to indicate that within one hour, there was any scope for anybody else, other than the accused to commit rape and murder of the deceased. The chain of circumstances of the case thereby leads to the hypothesis that the accused and the accused alone was the author of the crime, and therefore, the Trial Court rightly convicted the accused under Sections 376(f)/302/201 IPC.

10. During the arguments, learned counsel for the appellant mainly argued on the question of consecutive sentence as passed by the Trial Court and upheld by the High Court. It

was contended that Trial Court and the High Court wrongly held that the sentences under Sections 376(f)/302/201 IPC to run consecutively.

11. The question arises whether the judgment passed by the Trial Court as affirmed by the High Court, that the sentences under Sections 376(f)/302/201 IPC are to run consecutively is contrary to the proviso to sub Section (2) of Section 31 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C.").

12. According to the learned Counsel for the respondent-State of Orissa proviso to Sub Section (2) of Section 31 of the Cr.P.C. cannot be made applicable to a conviction for life imprisonment under Section 302 IPC.

13. It was submitted that imprisonment can be rigorous or simple (Section 60 of the Indian Penal Code). As far as life imprisonment is concerned, there is no such classification. The first classification was attempted by the Law Commission of India through its 39th report to qualify it as rigorous but the same was never translated into legislation. But such submission is not based on any reasoning.

14. In order to fully appreciate the question involved in the present case it is desirable to notice the relevant provisions of Criminal Procedure Code and Indian Penal Code.

15. Section 31 of the Cr.P.C. relates to sentences in cases of conviction of several offences at one trial. Under

proviso to Sub Section (2) of Section 31 of Cr.P.C. in no case a person can be sentenced to imprisonment for a period longer than fourteen years and the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence. Section 31 of Cr.P.C. reads as follows:

> ***"31. Sentences in cases of conviction of several offences at one trial.***
>
> ***(1) When a person is convicted at one trial of two or more offences, the Court may, subject to the provisions of section 71 of the Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such Court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the Court may direct, unless the Court directs that such punishments shall run concurrently.***
>
> ***(2) In the case of consecutive sentences, it shall not be necessary for the Court by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to inflict on conviction of a single offence, to send the offender for trial before a higher Court:***
>
> ***Provided that-***
>
> > ***(a) in no case shall such person be sentenced to imprisonment for longer period than fourteen years;***
> >
> > ***(b) the aggregate punishment shall not exceed twice the amount of punishment which the Court is competent to inflict for a single offence.***

> ***(3)** For the purpose of appeal by a convicted person, the aggregate of the consecutive sentences passed against him under this section shall be deemed to be a single sentence."*

16. Section 45 of the Indian Penal Code defines life as "The word "life" denotes the life of a human being, unless the contrary appears from the context".

The word "imprisonment" has not been defined either in the Code of Criminal Procedure or in the Indian Penal Code.

As per the General Clauses Act, 1897 under Section 3(27) – "imprisonment" shall mean imprisonment of either description as defined in the Indian Penal Code. The definition of imprisonment under the General Clauses Act would, therefore, in case of life imprisonment mean imprisonment for life/imprisonment for the remainder of the convict's life.

We are not in agreement with submission made on behalf of the State that imprisonment for life has not been included in the definition of term 'imprisonment' under Section 3(27) of the General Clauses Act, 1897.

17. Imprisonment for life is not confined to 14 years of imprisonment. A reading of Section 55 IPC and Section 433 and 433A Cr.P.C. would indicate that only the appropriate Government can commute the sentence for imprisonment of life for a term not exceeding fourteen years or exceeds the

release for such person unless he has served at least fourteen years of imprisonment.

Section 57 of the Indian Penal Code merely relates to calculating fractions of terms of punishment by providing a numerical value of 20 years to life imprisonment.

Section 53 of the Indian Penal Code lists the punishments to which offenders are liable under the Code which reads as follows:

> **"First-Death;**
> **Secondly-Imprisonment for life;**
> **Fourthly-Imprisonment, which is of two Descriptions, namely:-**
>
> **(1)Rigorous, that is, with hard labour;**
>
> **(2)Simple**
>
> **Fifty-Forfeiture of property;**
>
> **Sixthly-Fine."**

Therefore, a person sentenced to life imprisonment is bound to serve the remainder of his life in prison unless the sentence is commuted by the appropriate Government in terms of the Section 55, 433 and 433A of the Code of Criminal Procedure.

18. In *Gopal Vinayak Godse vs. The State of Maharashtra & Ors., AIR 1961 SC 600*, the Constitution Bench of this Court while dealing with the question as to whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by the

appropriate Government can be automatically treated as one for a definite period. In the said case this Court held:

> ***"5. If so, the next question is whether there is any provision of law where under a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Indian Penal Code, Code of Criminal Procedure or the Prisons Act. Though the Government of India stated before the Judicial Committee in the case cited supra that, having regard to Section 57 of the Indian Penal Code, 20 years' imprisonment was equivalent to a sentence of transportation for life, the Judicial Committee did not express its final opinion on that question. The Judicial Committee observed in that case thus at p. 10:***
>
> > ***"Assuming that the sentence is to be regarded as one of twenty years, and subject to remission for good conduct, he had not earned remission sufficient to entitle him to discharge at the time of his application, and it was therefore rightly dismissed, but in saying this, Their Lordships are not to be taken as meaning that a life sentence must in all cases be treated as one of not more than twenty years, or that the convict is necessarily entitled to remission."***
>
> ***Section 57 of the Indian Penal Code has no real bearing on the question raised before us. For calculating fractions of terms of punishment the section provides that transportation for life shall be regarded as equivalent to imprisonment for twenty years. It does not say that transportation for life shall be deemed to be transportation for twenty years for all purposes; nor does the amended section which substitutes the words "imprisonment for life" for "transportation for life" enable the drawing of any such all embracing fiction. A sentence of transporta-***

> ***tion for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.”***

19. In State of *Madhya Pradesh vs. Ratan Singh & Ors., (1976) 3 SCC 470*, this Court held that sentence of imprisonment for life does not automatically expire at the end of 20 years. This Court held:

> **“9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:**
>
> **“(*1*) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Indian Penal Code. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;”**

20. This Court in *Naib Singh vs. State of Punbaj & Ors., (1983) 2 SCC 454*, relying upon the judgment made by the Privy Council in *‘Kishor Lal’* and Constitution Bench decision of this Court in *‘Gopal Vinayak Godse’* held that the appellant in the said case was liable to serve the sentence until the remainder of his life in prison.

21. In *Ashok Kumar vs. Union of India & Ors., (1991) 3 SCC 498*, this Court held that the expression “life imprisonment”

must be read in the context of Section 45 of the Indian Penal Code which would mean imprisonment for the full or complete span of life. This Court further held that the provisions in Section 57 that imprisonment for life shall be reckoned as equivalent to imprisonment for 20 years is for the purpose of working out the fraction of the terms of punishment.

22. This Court endorsed the view taken by this Court in the case of Niab Singh, the Privy Council judgment in *Kishori Lal* and the judgment in the case of *Gopal Vinayak Godse in Satpal vs. State of Haryana & Anr., (1992) 4 SCC 172*.

23. In *Subash Chander vs. Krishan Lal & Ors., (2001) 4 SCC 458*, this Court held that life imprisonment means imprisonment for the whole of the remaining period of the convicted person's natural life unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 Cr.P.C.

Similar was the view taken by this Court in *Shri Bhagwan vs. State of Rajasthan, (2001) 6 SCC 296*.

24. This Court reiterated that life imprisonment was not equivalent to imprisonment for 14 years or 20 years in *Mohd. Munna vs. Union of India & Ors., (2005) 7 SCC 417*. The Court held that the life imprisonment means imprisonment for whole of the remaining period of the convicted person's natural

life. There is no provision either in the Indian Penal Code or in the Criminal Procedure Code, whereby life imprisonment could be treated as either 14 years or 20 years without there being of formal remission by the appropriate Government.

25. In *Swamy Shraddananda vs.State of Karnataka, (2008) 13 SCC 767*, this Court while substituting the sentence of death to life imprisonment held that the prisoner shall not be released from prison till the rest of his life.

Similar view was taken by this Court in *Sangeet & Anr. vs. State of Haryana, (2013) 2 SCC 452*. In the said case this Court held that a prisoner serving a life sentence has no indefeasible right to release on completion of either 14 years or 20 years imprisonment. A convict undergoing life imprisonment is expected to remain in custody till the end of his life subject to any remission granted by the appropriate Government under Section 432 Cr.P.C.

26. From the aforesaid decisions rendered by this Court, it is clear that a sentence of imprisonment for life means a sentence for entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under the provisions of the Criminal Procedure Code.

27. Section 31 of Cr.P.C. relates to sentence in cases of conviction of several offences at one trial. Proviso to Sub

Section (2) to Section 31 lays down the embargo whether the aggregate punishment of prisoner is for a period of longer than 14 years. In view of the fact that life imprisonment means imprisonment for full and complete span of life, the question of consecutive sentences in case of conviction for several offences at one trial does not arise. Therefore, in case a person is sentenced of conviction of several offences, including one that of life imprisonment, the proviso to Section 31(2) shall come into play and no consecutive sentence can be imposed.

28. In the case of *Kamalanantha and others vs. State of T.N., (2005) 5 SCC 194*, this Court held:

> ***"75. Regarding the sentence, the trial court resorted to Section 31 CrPC and ordered the sentence to run consecutively, subject to proviso (a) of the said section.***
>
> ***76. The contention of Mr Jethmalani that the term "imprisonment" enjoined in Section 31 CrPC does not include imprisonment for life is unacceptable. The term "imprisonment" is not defined under the Code of Criminal Procedure. Section 31 of the Code falls under Chapter III of the Code which deals with power of courts. Section 28 of the Code empowers the High Court to pass any sentence authorised by law. Similarly, the Sessions Judge and Additional Sessions Judge may pass any sentence authorised by law, except the sentence of death which shall be subject to confirmation by the High Court. In our opinion the term "imprisonment" would include the sentence of imprisonment for life."***

29. The aforesaid judgment was relied upon by this Court in *Chatar Singh vs. State of M.P., (2006) 12 SCC 37*, and held:

"9. Although, the power of the court to impose consecutive sentence under Section 31 of the Criminal Procedure Code was also noticed by a Constitution Bench of this Court in K. Prabhakaran v. P. Jayarajan[2], but, therein the question of construing proviso appended thereto did not and could not have fallen for consideration.

10. The question, however, came up for consideration in Zulfiwar Ali v. State of U.P.[3] wherein it was held: (All LJ p. 1181, para 25)

> *"25. The opening words 'In the case of consecutive sentences' in sub-section (2) of Section 31 make it clear that this sub-section refers to a case in which 'consecutive sentences' are ordered. After providing that in such a case if an aggregate of punishment for several offences is found to be in excess of punishment which the court is competent to inflict on a conviction of single offence, it shall not be necessary for the court to send the offender for trial before a higher court. After making such a provision, proviso (a) is added to this sub-section to limit the aggregate of sentences which such a court pass while making the sentences consecutive. That is this proviso has provided that in no case the aggregate of consecutive sentences passed against an accused shall exceed 14 years. In the instant case the aggregate of the two sentences passed against the appellant being 28 years clearly infringes the above proviso. It is accordingly not liable to be sustained."*

11. In view of the proviso appended to Section 31 of the Criminal Procedure Code, we are of the opinion that the High Court committed a manifest error in sentencing the appellant for 20 years' rigorous imprisonment. The maximum sentence imposable being 14 years and having regard to the fact that the appellant is in custody for more than 12 years. Now, we are of the opinion that interest of justice would be subserved if the appellant is directed to be sentenced to the period already undergone."

30. In the recent judgment in *Ramesh Chilwal alias Bambayya vs. State of Uttarakhand, (2012) 11 SCC 629*, this Court held:

> ***"4. Since this Court issued notice only to clarify the sentence awarded by the trial Judge, there is no need to go into all the factual details. We are not inclined to modify the sentence. However, considering the fact that the trial Judge has awarded life sentence for an offence under Section 302, in view of Section 31 of the Code of Criminal Procedure, 1973, we make it clear that all the sentences imposed under IPC, the Gangsters Act and the Arms Act are to run concurrently."***

31. In view of the aforesaid discussions and decisions rendered by this Court, we hold that the Trial Court was not justified in imposing the sentence under Section 376(f)/302/201 IPC to run consecutively. The High court failed to address the said issue.

32. For the reasons stated above, while we are not inclined to interfere with the order of conviction and the sentence, considering the fact that the accused has been awarded life imprisonment for the offence under Section 302, we direct that all the sentences imposed under Indian Penal Code are to run concurrently. The judgment passed by the Session Judge as affirmed by the High Court stands modified to the extent above. The appeals are allowed in part with the aforesaid observations.

……J.
(SUDHANSU JYOTI MUKHOPADHAYA)

……J.
(DIPAK MISRA)

NEW DELHI,
JULY 01, 2014.

ITEM NO.1D **COURT NO.6** **SECTION IIB**

(For Judgment)

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). 2277-2278/2009

DURYODHAN ROUT **Appellant(s)**

VERSUS

STATE OF ORISSA **Respondent(s)**

Date : 01/07/2014 **These appeals were called on for pronouncement of Judgment today.**

For Appellant(s) **Mr. T. N. Singh ,Adv.**

For Respondent(s) **Mr. Shibashish Misra ,Adv.**

Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya pronounced the reportable judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Dipak Misra.

The appeals are allowed in terms of the signed reportable judgment.

(MEENAKSHI KOHLI) **(USHA SHARMA)**

COURT MASTER **COURT MASTER**

[Signed reportable judgment is placed on the file]