

Reportable

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NOS.62-63 OF 2014

ANOKHILAL

...Appellant

VERSUS

STATE OF MADHYA PRADESH

...Respondent

J U D G M E N T

Uday Umesh Lalit, J.

1. These appeals by special leave challenge the final judgment and order dated 27.06.2013 passed by the High Court<sup>1</sup> in Criminal Reference No.4 of 2013 and Criminal Appeal No.748 of 2013.

2. The relevant facts for the purposes of these appeals, in brief, are as under:

Signature invalid  
Digitally signed by  
INDU MISHRA  
Date: 2013.06.27  
17:30:18 IST  
Reason:

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1 The High Court of Madhya Pradesh at Jabalpur

(A) On 30.01.2013 a missing report was lodged by one Ramlal that his daughter (hereinafter referred to as 'the victim') aged about nine years was missing since 6 pm and that the appellant, his neighbour had sent the victim to get a *bidi* from a *kirana* shop but the victim never returned back. Pursuant to this reporting, FIR No.38 of 2013 was registered on 30.01.2013 with Police Station Chaigaon Makhan, Khandwa for offences under Sections 363, 366 of the Indian Penal Code.1860 ('IPC', for short) against the appellant.

(B) The body of the victim was found in an open field on 01.02.2013.

(C) The appellant was arrested on 04.02.2013, and after completion of investigation charge-sheet was filed on 13.02.2013 in the concerned court and the case was committed to Sessions Court on 18.2.2013. The case was posted for 19.02.2013 to consider whether charges be framed or not.

(D) It appears that since no Advocate had entered appearance on behalf of the appellant, on 18.02.2013 a learned Advocate was appointed by the Legal Aid Services Authority to represent the appellant on 19.02.2013. That learned Advocate, however, did not

appear on 19.02.2013 when the case was taken up, and as such another learned Advocate came to be appointed through Legal Aid Services to represent the appellant. Such appointment was done on 19.02.2013 and on the same day the charges were framed against the appellant for the offences punishable under Sections 302, 363, 366, 376(2)(f) and 377 IPC and under Sections 4, 5 and 6 of Protection of Children from Sexual Offences Act, 2012.

(E) In the next seven days i.e. by 26.2.2013, all thirteen prosecution witnesses were examined.

(F) Thereafter, the case was dealt with on 27.2.2013, 28.2.2013, 1.3.2013, 2.3.2013 and 4.3.2013 and the orders passed by the Trial Court were :-

**“(i) 27.02.2013**

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.

The prosecution filed application together with letter of District Prosecution Officer and with copy of warrant etc documents. Copies are supplied. The defense has no objection in taking above documents on record, hence considering the reasons of as explained for delay the application is liable to be accepted and above documents are taken on record.

The prosecution stated that it does not want to produce any other oral evidence it has been requested that DNA report and FSL report will be placed on record as and when they are received, which is immediately to be received, not any other oral evidence are to be adduced and besides placing on record above report, rest of evidence was declared to be ended.

It would be just and proper to examine accused under Section 313 Cr.P.C. for evidence available. Hence, accused examined under Section 313 Cr.P.C. On entering in defense, the accused stated that he does not want to adduce any evidence in defense. Not any written statement under Section 232 (2) Cr.P.C. has been filed.

Put up on 28.02.2013 for placing on record DNA report etc and final arguments.

Sd/- (illegible)  
Sessions Judge and Special Judge  
Under Protection of Children from Sexual Offences  
Act,  
Khandwa

**(ii) 28.02.2013**

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.

An application was filed on behalf of prosecution with FSL reports. Copies supplied. Heard arguments.

Since there is no effective objection regarding allowing above application and taking on record above FSL report and even otherwise these may be helpful in providing justice, hence reports are taken on record.

Above reports may be acceptable under Section 293 Cr.P.C., on this basis it was requested to mark exhibit on above reports. Defense has not raised any objection in this regard, hence with consent of both the parties above reports presented by Regional Forensic Science Laboratory Jhumarghat Rau Indore (M.P.) are marked as ext. C-1, C-2 and C-3.

The prosecution has not yet received DNA report, the same will be placed on record as and when it is received, saying such like earlier it was stated that any other evidence is not to be produced, hence hearing final arguments in case started, which remained incomplete.

Put up on 01.03.2013 for placing on record DNA report and rest final arguments.

Sd/-  
Sessions Judge Khandwa

**(iii) 01.03.2013**

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf. The prosecution has not received DNA report, same will be placed on record on receipt.

Hearing of rest of final arguments started which remained incomplete.

Put up on 02.03.2013 for placing on record DNA report and rest of final arguments.

Sd/-  
Sessions Judge  
Khandwa

**(iv) 02.03.2013**

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody. Shri D.S. Chauhan advocate present on his behalf.

The accused is being tried under Section 9 of Protection of Children from Sexual Offences Act, 2012 and according to Provisions of Section 5 (f) of above Act, the situation of previous conviction for the sexual offence under Section 377 IPC is also clear and above fact has found mention in charge No.8 framed in earlier with intention that despite being previously convicted for sexual offence under Section 377 IPC but in above charge date time and place etc is not mentioned regarding conviction according to provisions of Section 211 (7) Cr.P.C. Hence, as is provided under Section 211 (7) Cr.P.C. the Court before passing order of conviction may add statement of fact, date and place of conviction, hence in this regard both the parties were heard. In earlier the copy of judgment of previous conviction was not filed due to which date, place etc were not mentioned in charge and during examination under Section 313 Cr.P.C. in question No.14 in this regard by giving reference of copy of judgment together with date, time and place etc conviction was passed and appeal was filed or not in this regard clear questions were asked, hence it also does not reflect that any prejudice has been caused to accused nevertheless to avoid technical fault, according to provisions of Section 211 (7) Cr.P.C. charge was modified and amended charge was read over and explained to accused and his plea was recorded.

Giving opportunity of additional evidence/cross examination to both parties regarding amended charge would be just and proper, in this regard both the parties were intimated.

Prosecution today by placing on record certain additional documents articles etc. led additional

evidence and application under Section 311 Cr.P.C. has been filed. Besides this, he stated not to adduce any other additional evidence in regard to amendment in charge. On the other hand defense also in this regard stated not to conduct cross examine any witness already examined and also stated not to furnish any additional evidence or evidence in defense.

The prosecution presented articles relating to case in sealed condition and an application with documents was filed under Section 311 Cr.P.C. Copy supplied. Arguments heard.

It is proposed to file received DNA report and correspondent of FSL/DNA and in above regard also request has been made to re-examine Investigating Officer K.K. Mishra (PW-13) and Head Constable Harikaran PW-12 and accordingly, permission has been sought.

It has been stated that concerned document and report since were received in delay and it was filed as earliest and by virtue of this correspondence relating to above are being filed now. It is mentioned that DNA report was received on 01.03.2013 itself hence considering the reason so disclosed during arguments defense has not raised any effective objection hence, application stands allowed and concerned documents are taken on record and witness K.K. Mishra PW-13 and Hari Karan PW-12 are permitted to be re-examined.

It has been stated by the public prosecutor that above witnesses are present today, hence, above both the witnesses were additionally examined with consent of defense and they were discharged after re-examination. Prosecution stated not to adduce any other evidence as such closed its evidence.

The packet of article so filed is in sealed condition, which was opened in presence of both the parties. After evidence let same be deposited in malkhana by duly sealing with memo of property.

In regard to additional evidence so adduced accused was re-examined under Section 313 Cr.P.C. and again on entering in defense, the accused stated not to adduce any evidence in defense nor any written statement was filed under Section 232(2) Cr.P.C. and as such defense closed its evidence. Put up again for final arguments.

Sd/-  
Sessions Judge and Special Judge  
Under Protection of Children from Sexual Offences  
Act, Khandwa

Again

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody.  
Shri D.S. Chauhan, Advocate present on his behalf.

Heard final arguments. Put up on 04.03.2013 for judgment.

Sd/-  
Sessions Judge and Special Judge  
Under Protection of Children from Sexual Offences  
Act, khandwa

(v) 4.3.2013

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody.  
Shri D.S. Chauhan, advocate present on his behalf.  
The judgment pronounced and signed separately in open court, according to which accused was convicted under Section 363, 366, 377, 376(2)(f) and Section 302 IPC read with Section 6 of Protection of Children from Sexual Offences Act, 2012.

Arguments were heard on the question of sentence. It was informed to both the parties that if they wish, they may adduce evidence regarding order of sentence.

It was stated by the prosecution that due to framing charge under Section 211(7) Cr.P.C. regarding previous conviction of accused, it has already adduced evidence at evidence stage regarding previous conviction of accused and his previous criminal conduct, hence now he does not want to adduce evidence regarding conviction.

On the other hand, learned counsel for the defense Shri D.S. Chauhan he has stated that during whole trial not any member of family of accused has appeared and in regard to his conduct in jail the prosecution itself has already adduced certificate etc. hence he stated not to adduce any evidence regarding order of sentence, nevertheless both the parties were informed that if they wish to adduce any evidence in this regard, then they may do so. By giving above information to both the parties, detailed arguments were heard regarding order of sentence.

Put up again after some time for order of sentence.

Sd/-

Sessions Judge and special Judge  
Under Protection of Children from Sexual Offences  
Act, Khandwa

Again

State through Shri B.L. Mandloi P.P.

Accused Anokhilal present from judicial custody.  
Shri D.S. Chauhan, Advocate present on his behalf.

Both the parties again stated not to adduce any evidence regarding order of sentence, hence order of sentence was pronounced separately in open court according to which accused is convicted and sentenced as follows regarding charges:

No.	Offence U/s	Sentence of rigorous imprisonment	Fine	In default of payment of fine, additional sentence of rigorous imprisonment
1.	302 IPC	Death Sentence	-	-
2.	363 IPC	Seven years	1000/-	One month
3.	366 IPC	Seven years	1000/-	One month
4.	377 IPC	Seven years	1000/-	One month
5.	376(2) IPC	Life imprisonment	1000/-	One month

Due to being similar act, no separate sentence is being awarded for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012.

By preparing warrant of conviction in this regard let accused be sent to jail.

The accused has been sentenced to death also and in above regard according to Section 366 Cr.P.C. it has also been directed that death penalty be not executed so long as it is not confirmed by the Hon'ble High Court, hence in that regard according to provision of Section 366(2) Cr.P.C. warrant of handing over accused sentenced to death to taken in custody of jail, is attached separately with warrant. Copy of judgment is given to accused and according to provisions of section 363 (4) Cr.P.C. accused is informed that he has right to appeal and period of appeal.

Let entire record of this case be sent for placing before the Hon'ble High Court forthwith for confirmation of death penalty as per provisions of Section 366 Cr.P.C.

Sd/-  
Sessions Judge and Special Judge  
Under Protection of Children from Sexual Offences  
Act, Khandwa

(G) In its judgment and order dated 4.3.2013, the Trial Court accepted the case of the prosecution and stated:-

“65. From above analysis it is clear that present case having similar facts like judicial citation of Rajendra Prahladrao Vasnic is in the category of ‘rarest of rare’ case and excess to that in the present case accused is previous convict in sexual offence of similar nature. Hence, in view of above analysis imposing punishing of only imprisonment for life cannot be adequate and death sentence is necessary.

66. Accused Anokhilal son of Sitaram has been convicted in charge of offence punishable under Section 363, 366, 376(2)(f), 377 and 302 IPC and Section 6 of Protection of Children from Sexual Offences Act, 2012 hence, according to analysis so done:

(one) for the offence under Section 302 IPC accused Anokhilal son of Sitaram is awarded ‘death sentence’. By tying knot in neck, he be hanged till his death. It is also directed that above death sentence be not executed unless it is confirmed by the Hon'ble High Court.

(two) For the offence under Section 363 IPC the accused is sentenced to seven years rigorous imprisonment with fine of Rs.1000/-, in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(three) For the offence under Section 366 IPC, the accused is sentenced to seven years rigorous imprisonment with fine of Rs.1,000/-, in default of payment of fine, the accused is directed to undergo another one month rigorous imprisonment.

(four) For the offence under Section 376 (2)(f) IPC the accused is sentenced to imprisonment for life with fine of Rs.1000/-, in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(five) For the offence under Section 377 IPC the accused is sentenced to imprisonment for seven years with fine of Rs.1,000/- in default of payment of fine, he is directed to undergo another one month rigorous imprisonment.

(Six) Considering the provisions of Section 42 of Act, where for similar act the accused has been convicted under the sections of Act and IPC, then he should be sentenced for the offences having larger punishment and in this regard principle of Section 71 IPC is also perusable and in Section 376(2)(f) IPC and in Section 6 of the Act, there is provision of punishment for imprisonment for life and minimum sentence of 10 yrs rigorous imprisonment and for similar act, order of sentence is being passed for the offence under Section 376(2) (f) and Section 377 IPC also, hence separate order of sentence for the offence under Section 6 of Protection of Children from Sexual Offences Act, 2012 is not being passed.

All the sentences of imprisonment shall run concurrently.

67. The accused is in detention since 04.02.2013 hence, let certificate of the period undergone by him in detention during trial be attached with warrant as per provisions section 428 Cr.P.C. which may be used for setting off under Section 428 Cr.P.C. or as per requirement for computing sentence as provided in Section 433 Cr.P.C.

68. On payment of fine, entire amount of fine means Rs.4000/- unless otherwise directed, after expiry of period of appeal be paid to Shantubai PW-3 mother of deceased as compensation.

69. According to provisions of Section 366 Cr.P.C. let entire records and proceeding of the case be placed before the Hon'ble High Court, Jabalpur for confirmation of death sentence and death sentence be not executed till it is confirmed by the Hon'ble Madhya Pradesh High Court and for keeping accused in custody in above period let he be handed over with warrant in above regard for jail custody.

70. I appreciate for assistance of all where in regard to incident which happened in mid night of 30-31 January, after arrest of accused on 04.02.2013, completing investigation immediately charge-sheet was submitted on 18<sup>th</sup> February and to prosecution which ensured quick trial by placing entire evidence from 19 February to 02 March, 2013 and specially for assistance of defence because disposal of case is ensured within only 1 month of incident only because of above assistance and completing trial only in 12 working days could be possible."

(H) Criminal Reference No.4/2013 was accordingly registered in the High Court for confirmation of death sentence. The appellant also preferred Criminal Appeal No.748 of 2013 challenging his conviction