

IN SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION

IN

CRIMINAL APPEAL NOS.1720-1721/2014

KAMLESH @ GHANTI

APPELLANT(S)

VERSUS

STATE OF M.P.

RESPONDENT(S)

O R D E R

Though limited notice on the question of sentence was issued by this Court by order dated 09.12.2013, Shri Anand Grover, learned senior counsel for the appellant, has urged that in the peculiar facts of the case the Court should travel beyond the terms of the notice issued and should examine the legality of the conviction of the accused-appellant on merits. To substantiate the aforesaid contention, Shri Grover has drawn our attention to the report of the DNA expert (Ex.P/33) and has submitted that a reading of the said report would go to show some amount of doubt with regard to the DNA profiling in respect of some of the genetic markers as mentioned in the said report.

Shri Grover has therefore contended that the DNA report does not fully establish the culpability of the accused and leaves room for some doubt in the matter.

Incidentally in the present case the expert who had submitted the report was not examined and the report was taken into evidence on the strength of Section 293 Cr.P.C. In the present case the expert was not examined and no request for such examination was made either before the learned trial court or the High Court or even in the memo of appeal before us. Such a request is, in fact impliedly contained in the submissions of Shri Grover in the course of the oral hearing. We have perused the contents of Ex.P/33 and we are of view that it would not be necessary for us to adopt any other course of action except to hold that the DNA report read with the circumstantial evidence on record does establish the guilt of the accused beyond all reasonable doubt. We, therefore, confirm the conviction of the accused-appellant under Section 376A, 302, 201, 363 and 366A of the Indian Penal Code.

This will bring the Court to the question of sentence. The accused appellant has been sentenced to death for commission of the offences under Sections 376A & 302 of Indian Penal Code. Shri Grover has placed before us the list of extenuating circumstances in favour of the accused, namely, the young age of the accused (26 years), the absence of any previous criminal history; the conduct of the accused-appellant while in custody and also the social-economic strata to which the accused-appellant belongs. Shri Grover has also urged before us that in the present case the prosecution has not established that the possibility of reformation of the accused-appellant is ruled out.

On the other hand, the learned counsel appearing for the State has submitted that the offences in question were committed in a brutal and depraved manner. The details of the post mortem report which is on record has also been laid before us.

We have considered the matter. Time and again this court has held that the imposition of the death penalty should be the only option available

to the Court and the question of any another sentence must be unquestionably foreclosed so as to justify the extreme penalty. The mitigating circumstances enumerated above, which admittedly are present in the present case, have been relied upon by this Court in numerous previous cases to commute a sentence of death to one of life imprisonment. It would not be necessary for this Court to burden the present order by a detailed reference of any such precedent as the position in law is not in doubt any more.

In the totality of the facts of the case and for the reasons stated above the present is not a case where the imposition of the extreme penalty would be justified. We have noticed that the legislature by incorporating Section 376A by the Criminal Law (Amendment) Act, 2013 has provided for rigorous imprisonment of not less than 20 years which may extend to imprisonment for life which shall mean imprisonment for the remainder of that person's natural life or with death as alternative punishments for the offence under Section 376A. As the accused-appellant has been found guilty of commission of said offence along with the offence

under Section 302 IPC we direct that the accused appellant shall suffer rigorous imprisonment for the remainder of the natural life of the accused-appellant. The sentence of death is accordingly commuted.

Consequently, with the aforesaid modification in the sentence this appeal is partly allowed as indicated above.

.....J.  
(RANJAN GOGOI)

.....J.  
(PRAFULLA C. PANT)

.....J.  
(UDAY UMESH LALIT)

NEW DELHI  
21 SEPTEMBER, 2016

ITEM NO.101

COURT NO.6

SECTION II

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

Criminal Appeal Nos.1720-1721/2014

KAMLESH @ GHANTI

Appellant(s)

VERSUS

STATE OF M.P.

Respondent(s)

Date : 21/09/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE RANJAN GOGOI  
HON'BLE MR. JUSTICE PRAFULLA C. PANT  
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Appellant(s)      Mr. Anand Grover, Sr. Adv.  
                                 Mr. Balaji Srinivasan, Adv.  
                                 Ms. Sahana Manjesh, Adv.  
                                 Mr. Himanshu, Adv.  
                                 Mr. Nishant, Adv.  
                                 Ms. Tripti, Adv.  
                                 Ms. Pratiksha Mishra, Adv.  
                                 Ms. Srishti Govil, Adv.  
                                 Ms. Vaishnavi Subrahmanyam, Adv.  
                                 Mr. Arunava Mukherjee, Adv.  
                                 Mr. Mayank Kshirsagar, Adv.

For Respondent(s)      Mr. C. D. Singh, Adv.  
                                 Ms. Sakshi Kakkar, Adv.  
                                 Ms. Sylona Mohapatra, Adv.  
                                 Mr. Udit, Adv.

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

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

[RASHMI DHYANI]  
SR.P.A.

[ASHA SONI]  
COURT MASTER

(Signed order is placed on the file)