

**HIGH COURT OF MADHYA PRADESH, PRINCIPAL SEAT
AT JABALPUR**

Case No.	Cr. Appeal No.262/2002
Parties Name	Karan Singh Vs. State of M.P.
Date of Order	30/06/2021
Bench Constituted	<u>Division Bench:</u> Justice Prakash Shrivastava Justice Akhil Kumar Srivastava
Judgment delivered by	Justice Prakash Shrivastava
Whether approved for reporting	Yes
Name of counsels for parties	Shri Ahadulla Usmani, learned counsel for the petitioner. Shri S.K. Kashyap, Government Advocate for the respondent.
Law laid down	1(i) Whether the sentence of life imprisonment awarded to the appellant means actual sentence of 14 years or 20 years ? Ans: Section 53 of the IPC provides for sentence of imprisonment of life and the definition of life as contained in Section 45 makes it clear that life means the life of human being till he breath his last. A sentence for imprisonment of life will run for the entire life of the convict unless the remission is granted in accordance with law. (ii) Whether this Court can

commute or reduce the sentence giving the benefit of remission ?

Ans: Section 432 of the Cr.P.C. gives power to the appropriate government to suspend or remit sentence and Section 433 of the Cr.P.C. empower the appropriate government to commute the sentence. The restrictions imposed upon the power of remission or commutation of sentence is contained in Section 433A of the Cr.P.C.

2. In terms of Section 433 Cr.P.C., the appropriate government is empowered to commute the sentence of a convict for imprisonment for life for a term not exceeding 14 years and in terms of Section 433A Cr.P.C., the power of remission or commutation is restricted and a convict with sentence of imprisonment of life for an offence for which death is one of the punishment, cannot be

	released before completion of at least 14 years of imprisonment. Section 432 and 433 of the Cr.P.C. also reveal that the remission can be granted only by the appropriate government. Such an exercise of power is an executive discretion and the same is not available to the High Court in exercise of review jurisdiction.
Significant paragraph numbers	9 & 16.

J U D G M E N T
30.06.2021

Per: Prakash Shrivastava, J.

By this appeal under Section 374(2) of Criminal Procedure Code, 1973, appellant has challenged the judgment dated 25th of January, 2002 passed by the Additional Sessions Judge, Asdhta, District Sehore in Session Trial No.19/2001 convicting the appellant for offence under Section 363, 366, 376 and 376 of the IPC and sentencing him to imprisonment for life.

2. The prosecution story is that the appellant is son of Kamla Bai's Uncle and was residing in her house for last two months. On Wednesday, Kamla Bai had gone out of the house to work as a labour and the appellant was in the house with the children. In the evening when Kamla Bai came back, she found that her son Babu aged about 5 years, daughter Akeela Bai aged about 8 years and Sarju Bai aged about 10 years were missing. She had lodged the missing report on 14.09.2000 vide Exhibit P/23 in

Police Chowki, Mehatwada, Police Station, Jawar and had expressed the suspicion that the appellant had taken those children. The children were recovered from the custody of the appellant on 13.11.2000. On inquiry, Akeela Bai and Sarju Bai had disclosed that the appellant used to commit rape upon them. The statements of Sarju Bai, Babu, Kamla Bai and Shankarlal were recorded by the police on 14.11.2000. The appellant was arrested and medical examination of the appellant and Sarju Bai and Akeela Bai was done. The clothes and semen slides were also seized. After investigation, challan was filed. Appellant had abjured the guilt and the trial had taken place. During the trial, Abdul Hamid Qureshi (PW/16) had produced the record of Central Jail, Bhopal and proved the earlier conviction of the appellant under Sections 363, 366 and 376 of the IPC and the fact that the appellant had earlier remained in custody in Central Jail, Bhopal from 30.06.1991 to 12.06.2000.

3. The trial court after appreciating the ocular as well as the documentary evidence had found that the offences against the appellant were proved and; accordingly' convicted and sentenced the appellant in the manner indicated above.

4. Learned counsel for the appellant has submitted that the appellant has falsely implicated in the matter and that the appellant had already remained for a sufficient period in custody after completing 14 years and; therefore, now he should be released.

5. Learned counsel for the State has opposed the appeal and has submitted that having regard to the nature of the case and the material available, no ground for interference is made out.

6. We have heard the learned counsel for the parties and perused the record.

7. Akeela Bai (PW/7) is a minor aged about 10-12 years and she in her Court statement has deposed that the appellant had come to her house and had taken her on the pretext of going to her mother. She has also stated that the appellant has taken Sarju Bai her cousin sister and Babu her brother alongwith her and had kept all three of them in Buddleia Forest and had committed rape upon her and Sarju Bai. She has given the clear description of the commission of rape by the appellant. She has also disclosed that the appellant had kept them in Media, Deria and other forests and used to commit rape of and on. She has also stated that the appellant used to beat them in case of any resistance. Similar is the statement of Sarju Bai (PW/8) who had also given the description of commission of rape upon her in her Court statement. The statements of Akeela Bai (PW/7) and Sarju Bai (PW/8) and further corroborated it the statement of PW/9 Babu who was the eye-witness of the entire incident. Dr. (Smt.) Archana Soni (PW/3) had examined Sarju Bai and had found swelling on her private parts and also found hymen missing and expressed the possibility of sexual intercourse. As per the X-Ray report (Ex.P/3), she has disclosed the age of Sarju Bai to be around 10-12 years. Smt. Malti Arya (PW/6) had medically examined Akeela Bai and has found old ruptured hymen and had opined that she was subjected to sexual intercourse since 1 and 1/2 - 2 months. As per the X-Ray report (Exhibit P/10), she had opined that her age was 8-10 years. Dr. Bharat Arya (PW/13) had medically examined the appellant and had found him capable of doing sexual intercourse. Kamla Bai (PW/10), mother of prosecutrix Akeela Bai had also disclosed that the children were missing and that Akeela Bai and Sarju Bai

had disclosed about the commission of rape by the appellant. Madan(PW/4) had disclosed that the appellant had come to Village Bapcha Varampt alongwith two girls and he had informed this fact to Chowkidar Devi.

8. From the above material, it is clear that the trial Court has not committed any error in reaching to the conclusion that the appellant had committed offence under Section 363, 366, 376 and 376 of the IPC.

9. Coming to the question of sentence, the record reflects that the appellant has suffered the actual sentence of 20 years 4 months and 11 days as on 26.03.2021 as reflected in the communication dated 30th of March, 2021 received from the Superintendent of Jail, Bhopal. As per the said communication, he had also earned remission of 9 years 5 months and 15 days as on 31.12.2020, therefore, following two issues arise for consideration before this Court:-

(i) Whether the sentence of life imprisonment awarded to the appellant means actual sentence of 14 years or 20 years ?

(ii) Whether this Court can commute or reduce the sentence giving the benefit of remission ?

10. Section 53 of the IPC provides for life imprisonment as a punishment as under:

“53. Punishments.—The punishments to which offenders are liable under the provisions of this Code are—

First-Death

¹[Secondly-Imprisonment for life;]

*²[***]*

Fourthly-Imprisonment, which is of two descriptions, namely-

(1) Rigorous, that is, with hard labour;

(2) Simple;

Fifthly-Forfeiture of property;

Sixthly-Fine”

11. Section 45 of Indian Penal Code defines “Life Imprisonment” as under:

“45. “Life”- The word “life” denotes the life of a human being, unless the contrary appears from the context.”

12. Section 53 of the IPC provides for sentence of imprisonment for life and the definition of ‘life’ as contained in Section 45 makes it clear that life means the life of a human being i.e. till he breaths his last. The Supreme Court in the matter of **Gopal Vinayak Godse vs. State of Maharashtra and others** reported in **AIR 1961 SC 600** has held that a sentence for transportation for life or imprisonment for life must *prima facie* be treated as transportation or imprisonment for whole or remaining period of convicted person’s natural life. In the matter of **Maru Ram vs. Union of India and others** reported in **(1981) 1 SCC 107**, the Constitution Bench has followed the earlier judgment in the case of **Gopal Vinayak Godse**(supra) and reiterated in paragraph 72(4) that the imprisonment for life lasts until the last breath and the prisoner can claim release only if the remaining sentence is remitted by the government. The above position of law was reiterated again by the Hon’ble Supreme Court in the matter of **State of M.P. vs. Ratan Singh** reported in **(1976) 3 SCC 470**. Hence, from the aforesaid pronouncements, it is clear that a sentence for imprisonment of life will run for the entire life of the convict unless the remission is granted in accordance with law.

13. This takes us to the next question if this Court can grant remission and release a life convict on completion of 14 years or 20 years of actual sentence.

14. Section 432 of the Cr.P.C. gives power to the appropriate Government to suspend or remit sentence and Section 433 of the

Cr.P.C. empowers the appropriate Government to commute the sentence. Section 433 reads as under:

“433. Power to commute sentence.- The appropriate Government may, without the consent of the person sentenced commute -

- (a) a sentence of death, for any other punishment provided by the Indian Penal Code (45 of 1860);*
- (b) a sentence of imprisonment for life, for imprisonment for a term not exceeding fourteen years or for fine;*
- (c) a sentence of rigorous imprisonment, for simple imprisonment for any term to which that person might have been sentenced, or for fine;*
- (d) a sentence of simple imprisonment, for fine.”*

15. The restriction imposed upon the power of remission or commutation of sentence is contained under Section 433-A of the Cr.P.C. which provides that:

“433A- Restriction on powers of remission or Commutation in certain cases- Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by laws, or where a sentence of death imposed on a person has been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.”

16. In terms of Section 433 Cr.P.C., the appropriate government is empowered to commute the sentence of a convict for imprisonment for life for a term not exceeding 14 years and in terms of Section 433A Cr.P.C., the power of remission or commutation is restricted and a convict with sentence of imprisonment of life for an offence for which death is one of the punishment, cannot be released before completion of atleast 14 years of imprisonment. Section 432 and 433 of the Cr.P.C. also reveal that the remission can be granted only by the appropriate government. Such an exercise of power is an executive discretion and the same is not available to the High Court in exercise of review jurisdiction.

17. The Constitution Bench of the Supreme Court in the matter of *Union of India vs. V. Sriharan @ Murugan and others* reported in (2016) 7 SCC 1 has held that the power of remission vests with the State executive and the Court at best can only give a direction to consider any claim for remission and cannot grant any remission and provide for premature release. It has further been held that -

“114. Therefore, it must be held that there is every scope and ambit for the Appropriate Government to consider and grant remission under Sections 432 and 433 of the Criminal Procedure Code even if such consideration was earlier made and exercised under Article 72 by the President and under Article 161 by the Governor. As far as the implication of Article 32 of the Constitution by this Court is concerned, we have already held that the power under Sections 432 and 433 is to be exercised by the Appropriate Government statutorily, it is not for this Court to exercise the said power and it is always left to be decided by the Appropriate Government, even if someone approaches this Court under Article 32 of the Constitution. We answer the said question on the above terms.”

18. In the matter of **Ratan Singh**(supra), the Supreme Court has held as under:

“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;”

19. Having regard to the aforesaid position in law, we are of the opinion that the life sentence which is awarded to the appellant is for a period of his entire remaining life till his last breath and the power to grant remission lies with the State Government. In view of the fact that the appellant has completed more than 20 years of sentence, we are of the opinion that the issue relating to release of the appellant after granting the benefit of remission now needs to be considered by the competent authority of the State Government in accordance with law.

20. Hence, we **dispose of** the appeal affirming the conviction and sentence of the appellant and by directing the competent authority of the State Government to consider the release of the appellant in accordance with law by granting the benefit of remission. Let this exercise be completed by the competent authority as expeditiously as possible preferably within a period of three months from today.

(PRAKASH SHRIVASTAVA)
JUDGE

(AKHIL KUMAR SRIVASTAVA)
JUDGE