

CHHOTELAL

v.

STATE OF M.P.

(Criminal Appeal No. 664 of 2006)

JULY 14, 2011

[HARJIT SINGH BEDI AND GYAN SUDHA MISRA, JJ.]

*Penal Code, 1860 – ss. 376 (2) and 302 – Rape and murder of a young girl aged ten years – Trial court convicted appellant-accused u/ss. 376(2) and 302 and sentenced him to imprisonment for life with further clarification that the sentence would continue for the remaining period of his entire life – Order upheld by the High Court – Interference with – Held: Not called for since the evidence against the appellant appears to be fully credible – However, direction issued that the appellant would serve out the sentence of imprisonment upto the end of his life subject to any remissions which the Government may choose to give to the appellant – Sentence/Sentencing.*

*Mulla v State of U.P. (2010) 3 SCC 508: 2010 (2) SCR 633 – relied on.*

**Case Law Reference:**

**2010 (2) SCR 633      Relied on.      Para 3**

**CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 664 of 2006.**

From the Judgment & Order dated 10.7.2003 of the High Court of Madhya Pradesh at Jabalpur in CRLA No. 136 of 1992.

Aishwarya Bhati, Harbans Lal Bajaj for the Appellant.

Praveena Gautam, C.D. Singh, Vibha Datta Makhija for the Respondent.

A The following Order of the Court was delivered

### O R D E R

B 1. The appellant Chhote Lal stands convicted under  
 Section 376(2) and 302 of the Indian Penal Code for having  
 committed rape and murder of a young girl 10 years of age and  
 has been sentenced by the trial court to imprisonment for life  
 under both the provisions by the Sessions Court and it was  
 further clarified that the sentence would continue for the  
 remaining period of the entire life of the accused. An appeal  
 C was thereafter taken to the High Court of Madhya Pradesh  
 which has confirmed the order of the Sessions Judge. This  
 appeal has been filed in this Court as a jail petition.

D 2. Mr. Harbans Lal Bajaj, the learned Amicus appointed  
 earlier did not put in appearance on the last several dates and  
 even yesterday when the matter was called out. We had,  
 accordingly, requested Ms. Aishwarya Bhati, learned counsel  
 who was present in the Court to assist us in the matter and  
 appointed her as an Amicus in place of Mr. Harbans Lal Bajaj.  
 E We have, accordingly, heard her as well as the State Counsel  
 on the merits of the case.

F 3. We have gone through the evidence with the assistance  
 of the learned counsel and find no cause for interference on the  
 facts of the case as the evidence against the appellant appears  
 to be fully credible. We, however, feel that in the light of the  
 judgment of this Court in *Mulla v. State of U.P.* (2010) 3 SCC  
 508, some modification has to be made in the sentencing part  
 of the impugned judgments. In the cited case, it has been  
 observed that though it was open to the courts to award a  
 G sentence prescribing the length of incarceration but the power  
 to commute the sentence or to grant remissions which rested  
 with the Government had to be respected. Paragraphs 85 and  
 86 of the judgment read as under:-

H "85. We are in complete agreement with the above

dictum of this Court. It is open to the sentencing court to prescribe the length of incarceration. This is especially true in cases where death sentence has been replaced by life imprisonment. The court should be free to determine the length of imprisonment which will suffice the offence committed. Thus we hold that despite the nature of the crime, the mitigating circumstances can allow us to substitute the death penalty with life sentence.

86. Here we would like to note that the punishment of life sentence in this case must extend to their full life, subject to any remission by the Government for good reasons."

4. We, accordingly, dismiss the appeal but direct (in the light of the aforesaid observations) that the appellant would serve out the sentence of imprisonment upto the end of his life but this direction would be subject to any remissions which the Government may choose to give under the circumstances to the appellant. In this background, we issue a further direction to the State Government that (as the appellant has been in custody since the 10th January, 1989) to take a decision on the appellant's continued detention or release in accordance with law within a period of six months from today.

5. Fee of the Amicus is fixed at Rs. 7,000/-.

N.J.

Appeal dismissed.