AILET

Important Cases for CLAT 2023: Mohd. Firoz v. State of Madhya Pradesh

Indrasish Majumder · 22 Oct 2022

Dated – 19th April 2022

Court – The Supreme Court of India

Bench – Justice Uday U Lalit, Justice S. Ravindra Bhat, Justice Bela M. Trivedi

Oscar Wilde has said – "The only difference between the saint and the sinner is that every saint has a past, and every sinner has a future". One of the basic principles of restorative justice as developed by this Court over the years, also is to give an opportunity to the offender to repair the damage caused, and to become a socially useful individual, when he is released from the jail. The maximum punishment prescribed may not always be the determinative factor for repairing the crippled psyche of the offender.

Facts of the case

1. On 04.2013, at about 06:30 PM, one Rakesh Choudhary (original accused no. 2) came to the house of the informant Ramkumari (mother of the victim) along with an unknown person (the present appellant-original accused no. 1) and requested the said Ramkumari and her mother Himmabai to provide an accommodation to the said unknown person for a day, however, Himmabai refused to provide such accommodation.
2. Thereafter, Rakesh Choudhary left and his friend sat for a while at the courtyard of the house of the complainant, where the victim aged about four years was playing with her brother Ramkishan and other After sometime, Ramkumari found that her daughter was missing and the other person (the accused no. 1) was also not there. She along with others tried to search her daughter at the nearby places, however, her daughter was not found.
3. After sometime Ramkishan came with some bananas and told Ramkumari that Bhaijaan (accused no. 1) had taken the victim with him. Ramkumari therefore went to the police station Ghansaur for lodging a missing report. On the next day i.e., on 18.04.2013 morning, some

villagers found that one girl child was lying unconscious in the field of one Badri Yadav. On receiving such information, Shyam Yadav, the brother of Ramkumari went to the spot and found that the victim was lying unconscious and blood was oozing from her mouth and nostrils.

4. He immediately took the victim first to the Police Station and then to the Government Hospital at Ghansaur, however, since the condition of the victim was deteriorating, she was shifted to the hospital at Jabalpur. The Doctors who examined and treated her confirmed that a rape was committed on the Considering her serious conditions, the victim was taken to the Care Hospital at Nagpur, however, on 29.04.2013, the victim expired at the said hospital.
5. Pradeep Gangadhar Dixit, a professor and H.O.D. in Forensic Medicine Department, Medical College, Nagpur along with his colleagues conducted the post-mortem of the dead body of the victim at about 10.35 AM on 30th April 2013 and noted the external and internal injuries on the body of the victim. The final cause of death was stated to be “bronchopneumonia and cerebral hypoxia, which was caused by smothering the nose and mouth.”
6. During investigation police found that the accused Firoz Khan (the present appellant), who was working in Jhabua Power Plant had taken away the victim He therefore registered an FIR against the accused under Section 363 and 366 of IPC. The accused Rakesh Choudhary came to be arrested on 20th April 2013 and the appellant-accused Firoz was arrested on 23rd April, 2013 from Husainabad, Police Station Mojahidpur, Balsaur, Bhagalpur, Bihar.
7. Further, the accused Mohd. Firoz was charged for the offenses under sections 363, 366, 376(2)(i), 376(2)(m), and 302 of IPC and under sections 5(i), 5(m), and Section 6 of the protection of children from the sexual offenses act, 2012 (hereinafter referred to as the POCSO Act), and the accused Rakesh Choudhary was charged for the offenses under sections 363 and 366 with respect to section 34 and under section 109 of IPC and under Section 16/17 of the POCSO Act.

Sessions Court Judgement

- The sessions court at Seoni after appreciating the evidence on record convicted both the accused for the offences charged against them and awarded the death sentence to the accused Firoz for the offense under section 302 of IPC and directed to undergo rigorous imprisonment for a period of 07 years and pay fine of Rs. 2000/- for the offense under section 363, to undergo rigorous imprisonment for a period of 10 years and pay fine of Rs. 2000/- for the offense under section 366 of IPC, to undergo life imprisonment and pay fine of Rs. 2000/- for

the offences under sections 376(2)(i), 376(2)(m) of IPC and under sections 5(i)r/w 6 & 5(m) r/w 6 of POCSO Act.

- The sessions court directed the accused Rakesh Choudhary to undergo rigorous imprisonment for a period of 07 years and pay fine of Rs. 2000/- for the offences under section 363/34, to undergo rigorous imprisonment for a period of 10 years and pay fine of Rs. 2000/- for the offences under section 366/34 and to undergo life imprisonment and pay fine of Rs. 2000/- for the offence under section 109 of IPC and for the offences under section 16/17 of POCSO Act.

Appeal before the High Court

- Aggrieved by the impunged judgement, The accused Mohd. firoz and the accused Rakesh Choudhary had filed an appeal being before the Madhya Pradesh high Court.
- The high court impugned common judgement and order dated 15.07.2014 allowed the criminal appeal filed by the accused Rakesh Choudhary and acquitted him from the charges levelled against him, high court dismisses Mohd Firoz's criminal appeal and confirms his death Having been aggrieved by the same, the appellant has filed this appeal. Due to which he approached the Supreme Court.

Appellant's Arguments

- Learned Senior Counsel Mr. B.H. Marlapalle, appearing for the accused- appellant submitted that while appreciating the evidence of the partisan and interested witnesses, the Court should be very careful in weighing such He also relied upon various decisions of this Court to substantiate his submission that the case of the prosecution being dependent on the circumstantial evidence alone, the entire chain was required to be proved beyond reasonable doubt by leading cogent evidence, which the prosecution had failed to prove.
- He added that the trial court had also failed to bring to the knowledge of the accused the clear questions with regard to the incriminating evidence against the accused. The "last seen theory" as propounded by the prosecution was also not proved which could connect the accused with alleged crime. Merely because the accused had admitted his visit at the place of the victim, no inference could be drawn against the accused that he had committed the alleged crime of rape and murder.
- He further submitted that there was a great media pressure on the investigating agency when the incident occurred and, therefore, the investigating officer without carrying out an in-depth

investigation hurriedly submitted the charge-sheet against the accused. Since no advocate was ready to appear for the accused, the trial court had appointed a common advocate for both the accused from the legal service committee, however no fair trial was conducted.

Respondent's Arguments

- The learned Advocate Mr. P.V. Yogeswaran, appearing for the 10 respondent-State vehemently submitted that this was one of the heinous and despicable crimes committed by the appellant-accused. The trial court and the High Court having relied upon the cogent evidence adduced by the prosecution and convicted the appellant, this Court may not re-appreciate the evidence which has already been properly appreciated by the said two
- He added that according to him, the appellant-accused by admitting his visit at the house of the victim along with Rakesh Chaudhary, admitting his arrest as per the case of the prosecution and by not disputing the medical reports of the victim had relieved, half of the burden of the prosecution to prove the allegations against
- He further submitted that every minor contradiction or discrepancies in the evidence of the witnesses cannot be termed as major contradictions requiring the court to throw the evidence of prosecution overboard. It was duly proved that the victim was lastly seen in the company of the accused and it was within special knowledge of the accused as to what happened to the victim after he took her with him from the shop of fruit vendor. The time gap between the victim being lastly seen with the accused and the time when she was found unconscious in the field was so proximate an inference was required to be drawn that it was the accused alone who had committed the alleged
- Lastly, he submitted that the grievance of mis-trial or trial having not been conducted in fair manner, was not taken by the appellant-accused either during the course of the trial before the trial Court or even before the appellate stage, and the same is sought to be raised for the first time before this Court which should not be

Supreme Court's Observation

1. The Supreme Court observed that the visit of the present appellant along with Rakesh Chaudhary on the date and time as alleged was very crucial and that was admitted by the appellant. By such admission, even his identity had stood proved. There cannot be gainsaying that no conviction could be based on the statement of the accused recorded under section 313

of the Cr.P.C. and the prosecution has to prove the guilt of the accused by leading independent and cogent evidence, nonetheless it is equally settled proposition of law that when the accused makes inculpatory and exculpatory statements, the inculpatory part of the statement can be taken aid of to lend credence to the case of prosecution.

2. The Top Court further observed that the conviction of the appellant- accused could not be made merely on his admission of the circumstance of his visit to the house of the informant on the previous day evening of the fateful day, such admission could certainly be taken aid of to lend assurance to the evidence of the prosecution.
3. The Supreme Court with regard to the theory of "last seen together" propounded by the prosecution, after analysing the evidence on record said that, it was also duly proved that the appellant-accused had taken the victim with him from the shop of fruit vendor Nitin Namdev in the evening hours of the alleged incident, which was a very strong circumstance proved against the accused.
4. The Supreme Court further said that once the theory of "last seen together" was established, the accused was expected to offer some explanation as under which circumstances, he had parted the company of the victim. It hardly needs to be reiterated that in the criminal jurisprudence, the entire burden of proving the guilt of the accused rests on the prosecution, nonetheless if the accused does not throw any light upon the facts which are proved to be within his special knowledge in view of Section 106 of the Evidence Act, such failure on the part of the accused may also provide an additional link in the chain of circumstances required to be proved against him.
5. The Apex Court said that the prosecution had proved the close proximity of time when the victim was last seen with the appellant and when the victim was found unconscious and in injured condition, which ultimately resulted into her death. The DNA profile obtained from the hair found from the place of incident and the DNA profile obtained from the source of blood sample of the appellant was identical, and confirmed that the hair strands were of the appellant only, as per the opinion of Dr. Pankaj Srivastava, Scientific Officer, FSL, Sagar.

Judgement

1. The Supreme Court three judges' bench of Justice Uday U Lalit, Justice S. Ravindra Bhat, Justice Bela M. Trivedi issued the order observing that maximum punishment may not always lend itself to repairing the psyche of the offender. The bench reviewed the evidence in the case

and found it to be very conclusive so as to rule out any other possibility other than the guilt of the Having regard to section 376A of the IPC, the SC panel found it appropriate to commute the death penalty for life imprisonment under section 302 of the IPC. It stated that this sentence would have been appropriate in light of the severity and gravity of the offense.

2. The panel emphasized the principle of restorative justice by quoting British novelist Oscar Wilde's statement, "The only difference between a saint and a sinner is that each has a past and every sinner has a future". Courts have noted that it is important to give offenders an opportunity to repair the damage they caused and to become productive members of society when they are released from prison. Thus, the court ruled, "While balancing retributive justice with restorative justice, we believe it appropriate to impose upon the defendant-appellant the penalty of twenty years' imprisonment instead of life imprisonment for the offence under section 376A.

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