

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2239 -2240 OF 2022
(@ SLP(Crl) NOS. 10707-10708 OF 2022)

The State of Rajasthan ...Appellant(S)

Versus

Komal Lodha ...Respondent(S)

ORDER

M. R. Shah, J.

1. Feeling aggrieved and dissatisfied with impugned judgment and order dated 11.05.2022 passed by the High Court of Judicature for Rajasthan Bench at Jaipur in D.B. Criminal Death Reference No. 6/2019 connected with D.B. Criminal Appeal (DB) No. 374/2019, by which, on remanding the matter by this Court, the Division Bench of the High Court has commuted the death penalty to life imprisonment, the State has preferred the present appeals. The State is also aggrieved of the observations made by the High Court in paragraph 42 in the impugned judgment and order.

2. The facts leading to the present appeals in a nutshell are as under: -

2.1 That the respondent – accused was convicted for the offence punishable under Section 302 IPC. The learned Trial Court awarded the death penalty. However, the High Court has commuted the death penalty to life imprisonment mechanically and without considering the aggravating and mitigating circumstances which were required to be considered while considering the case of death penalty. The matter was carried to this Court by the State against commuting the death penalty to life imprisonment.

2.2 That vide judgment and order dated 06.01.2002, this Court after hearing the counsel appearing on behalf of the State as well as the accused set aside the order passed by the High Court commuting the death penalty to life imprisonment and remanded the matter to the High Court to consider the question of sentence for the offence under Section 302 IPC, namely, whether death penalty and/or

life sentence or any other appropriate sentence. That thereafter, on remand after considering the aggravating and mitigating circumstances, the High Court not only has commuted the death penalty to life imprisonment, but also in paragraph 42 has made certain unwarranted observations on the investigation and that when this Court passed the order certain aspects were not brought to the notice of this Court and no assistance was provided to the accused – respondent herein to prefer an appeal before this Court. In the impugned judgment and order, the High Court has also directed to investigate the matter afresh to book certain other accused whose DNAs were obtained from the leggings of the deceased for the offence of murder, rape, sodomy and POCSO.

3. Having heard learned counsel appearing on behalf of the State and Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the respondent – accused and having gone through the impugned judgment and order passed by the High Court, more particularly, the observations made in paragraph 42, we are of the opinion

that the observations made by the High Court in paragraph 42 are absolutely unwarranted and against the judicial discipline and propriety. When this Court earlier confirmed the conviction of the accused for the offence under Section 302 IPC and that too after hearing learned Senior Advocate appearing on behalf of the accused, thereafter, it was not open for the High Court to make comments upon the investigation and/or on merits of the case.

4. The High Court also ought not to have made observations in paragraph 42 that certain aspects were not brought to the notice of this Court and no assistance was provided to the accused to prefer an appeal before this Court and that the conviction was upheld without hearing the side of the accused – respondent herein. However, it is required to be noted that when this Court passed the order remanding the matter for sentence and confirmed the conviction, this Court heard the learned Senior Advocate appearing on behalf of the accused. Therefore, the High Court is not right even factually in observing that this Court confirmed

the conviction without hearing the side of the accused on merits. Judicial discipline requires that once the conviction was confirmed by this Court that too after hearing the accused, the High Court should not have thereafter made any comment on the merits of the case, more particularly, when the conviction was specifically confirmed by this Court and the matter was remitted to the High Court only for the purpose of considering the sentence, namely, whether death penalty and/or life sentence or any other appropriate sentence. Even Shri K.V. Viswanathan, learned Senior Advocate appearing on behalf of the accused in the present case has also fairly conceded and stated that the observations made in paragraph 42 are absolutely unwarranted and are unsustainable. Leaving the matter there, we set aside the observations made by the High Court made in paragraph 42 of the impugned judgment and order.

5. Now so far as the impugned judgment and order passed by the High Court commuting the death penalty to life imprisonment is concerned, we see no reason to interfere

with the same, more particularly, when the High Court after considering the aggravating and mitigating circumstances has commuted the death penalty to life imprisonment.

6. In view of the above and for the reasons stated above we set aside and expunge paragraph 42 of the impugned judgment and order passed by the High Court. Rest of the impugned judgment and order commuting the death penalty to life imprisonment is not interfered with. Present appeals are partly allowed to the aforesaid extent.

.....J.
(M. R. SHAH)

.....J.
(S. RAVINDRA BHAT)

NEW DELHI,
JANUARY 13, 2023.