

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NOS.231-233 OF 2009

MUTHURAMALINGAM & ORS.

Appellant(s)

VERSUS

STATE REP. BY INSP. OF POLICE

Respondent(s)

WITH
CRIMINAL APPEAL NOS.225 OF 2009
CRIMINAL APPEAL NOS.226-227 OF 2009
CRIMINAL APPEAL NO.895 OF 2009
CRIMINAL APPEAL NO. _____ OF 2015
(Arising out of SLP (Crl.) No.5351 OF 2014)

ORDER

Leave granted in SLP (Crl.) No.5351 of 2014.

These appeals arise out of a common judgment and order passed by the High Court of Madras, whereby criminal appeals filed by the appellants against their conviction and sentence of life imprisonment awarded to each one of them have been dismissed.

When the appeals came up for hearing before us, Mr. K.K. Mani, learned counsel for the appellants, confined his submissions to the validity of the direction issued by the trial Court and affirmed by the High Court that the sentence of imprisonment for life awarded to each one of the appellants for the several murders allegedly committed by them would run consecutively and not concurrently. It was contended by Mr. Mani that in terms of Section 31 of the Cr.P.C., the sentence of life imprisonment awarded to the appellants even for different murders they were alleged to have committed could run but concurrently and not consecutively as has been ordered by the trial Court and the High Court. In support of his submission Mr. Mani placed heavy reliance upon the decision of a three-Judge Bench of this Court in ***O.M. Cherian @ Thankachan vs. State of Kerala & Ors. [2014 (12) Scale 636]***, in para 13 whereof, this Court has observed:

"13. Section 31(1) Cr.P.C. enjoins a further direction by the court to specify the order in which one particular sentence shall commence after the expiration of the other. Difficulties arise when the Courts impose sentence of imprisonment for life and also sentences of imprisonment for fixed term. In such cases, if the Court does not direct that the sentences shall run concurrently, then the sentences will run consecutively by operation of Section 31 (1) Cr.P.C. There is no question of the

convict first undergoing the sentence of imprisonment for life and thereafter undergoing the rest of the sentences of imprisonment for fixed term and any such direction would be unworkable. Since sentence of imprisonment for life means jail till the end of normal life of the convict, the sentence of imprisonment of fixed term has to necessarily run concurrently with life imprisonment. In such case, it will be in order if the Sessions Judges exercise their discretion in issuing direction for concurrent running of sentences. Likewise if two life sentences are imposed on the convict, necessarily, Court has to direct those sentences to run concurrently.'

Reliance was also placed upon the decision of another two-Judge Bench of this Court in ***Duryodhan Rout vs. State of Orissa [2014 (8) Scale 96]***, in which this Court, in para 27, has observed:

"Section 31 of Cr.P.C. relates to sentence in cases of conviction of several offences at one trial. Proviso to Sub-Section (2) to Section 31 lays down the embargo whether the aggregate punishment of prisoner is for a period of longer than 14 years. In view of the fact that life imprisonment means imprisonment for full and complete span of life, the question of consecutive sentences in case of conviction for several offences at one trial does not arise. Therefore, in case a person is sentenced of conviction of several offences, including one that of life imprisonment, the proviso to Section 31(2) shall come into play and no consecutive sentence can be imposed."

Mr. Subramonium Prasad, learned counsel for the respondents, on the other hand, argued that the question whether consecutive life sentences could be awarded to a convict stands concluded by two earlier decisions of this Court in

Kamalanantha & Ors. vs. State of T.N. (2005) 5 SCC 194

and ***Sanaullah Khan vs. State of Bihar (2013) 3 SCC 52.***

In ***Kamalanantha's*** case (supra), this Court observed:

"75. Regarding the sentence, the trial court resorted to Section 31 CrPC and ordered the sentence to run consecutively, subject to proviso (a) of the said section.

76. The contention of Mr Jethmalani that the term "imprisonment" enjoined in Section 31 CrPC does not include imprisonment for life is unacceptable. The term "imprisonment" is not defined under the Code of Criminal Procedure. Section 31 of the Code falls under Chapter III of the Code which deals with power of courts. Section 28 of the Code empowers the High Court to pass any sentence authorised by law. Similarly, the Sessions Judge and Additional Sessions Judge may pass any sentence authorised by law, except the sentence of death which shall be subject to confirmation by the High Court. In our opinion the term "imprisonment" would include the sentence of imprisonment for life."

In ***Sanaullah Khan's*** case (supra), this Court referred to Section 31(1) of the Cr.P.C. and relying upon the observations made in ***Kamalanantha's*** case (supra) in para 23 observed :

"23. We have, however, sufficient evidence to establish the culpability of the appellant for three offences of murder as defined in Section 300 IPC, and for each of the three offences of murder, the appellant is liable under Section 302 IPC for imprisonment for life if not the extreme penalty of death. Section 31(1) CrPC provides that:

"31. (1) When a person is convicted at one trial of two or more offences, the court may, subject to the provisions of Section 71 of the

Indian Penal Code (45 of 1860), sentence him for such offences, to the several punishments prescribed therefor which such court is competent to inflict; such punishments when consisting of imprisonment to commence the one after the expiration of the other in such order as the court may direct, unless the court directs that such punishments shall run concurrently."

Thus, Section 31(1) CrPC empowers the Court to inflict sentences of imprisonment for more than one offence to run either consecutively or concurrently. In Kamalanantha v. State of T.N. this Court has held that the term "imprisonment" in Section 31 CrPC includes the sentence for imprisonment for life. Considering the facts of this case, we are of the opinion that the appellant is liable under Section 302 IPC for imprisonment for life for each of the three offences of murder under Section 300 IPC and the imprisonments for life should not run concurrently but consecutively and such punishment of consecutive sentence of imprisonment for the triple murder committed by the appellant will serve the interest of justice."

It is evident from the passages extracted above that there is an apparent conflict in the views taken by different Benches of this Court on the question whether consecutive life sentences are legally permissible. While in **O.M. Cherian's** case (supra) this Court has held that such consecutive life sentences are not permissible, the view taken in **Kamalanantha** and **Sanaullah Khan** (supra) appears to strike a discordant note. So also the decision in **Duryodhan Rout's** case (supra) holds that consecutive life sentences are not permissible in terms of Section

31 on account of the proviso to sub-section (2) to Section 31 not permitting any such consecutive life sentences for the cumulative effect of such sentence shall inevitably take the total period of imprisonment to more than 14 years. Suffice it to say that the question that falls for our determination is not free from difficulty and the cleavage in judicial opinion as to the true and correct legal position needs to be authoritatively resolved. It is interesting to note that the appellants have been sentenced to undergo several consecutive life sentences ranging between two to eight such sentences. In the circumstances, therefore, we are inclined to refer to the Constitution Bench the following question which is the only question raised in these appeals for an authoritative pronouncement :

“Whether it is legally permissible for a Court to award consecutive life sentences to a convict based on a series of murders for which the convict was tried in a single trial.”

The Registry shall place the matters before the Hon’ble Chief Justice of India for constituting an appropriate Bench.

Additional sets of paper books may be furnished by the
counsel for the parties.

.....J.
[T.S. THAKUR]

.....J.
[ROHINTON FALI NARIMAN]

.....J.
[PRAFULLA C. PANT]

NEW DELHI;
FEBRUARY 12, 2015

ITEM NO.108

COURT NO.2

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 231-233/2009

MUTHURAMALINGAM & ORS.

Appellant(s)

VERSUS

STATE REP.BY INSP.OF POLICE

Respondent(s)

WITH

Cr1.A. No. 225/2009
(With Office Report)

Cr1.A. No. 226-227/2009
(With Office Report)

Cr1.A. No. 895/2009
(With Office Report)

SLP(Cr1) No. 5351/2014
(With appln.(s) for exemption from filing O.T. and bail and Office Report)

Date : 12/02/2015 These appeals and petition were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE T.S. THAKUR
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN
HON'BLE MR. JUSTICE PRAFULLA C. PANT

For Appellant(s) Mr. K. K. Mani, Adv.
Mrs. T. Archana, Adv.

Mr. A.T.M. Ranga Ramanujam, Sr. Adv.
Mr. Hitesh Kumar Sharma, Adv.
Mr. Dipankar Das, Adv.
Mr. Devesh Singh, Adv.
For Ms. Anu Gupta, AOR

Mr. Ratnakar Das, Sr. Adv.
Mr. G. Sivabala Murugan, Adv.
Ms. Vandana S., Adv.
Mr. Sandeep Kumar, Adv.
Mr. L. K. Pandey, Adv.

Mr. Vinodh Kanna B., Adv.
Mr. Kaustubh Shukla, Adv.

For Respondent(s) Mr. Subramonium Prasad, AAG
Mr. M. Yogesh Kanna, Adv.
Ms. J. Janani, Adv.

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

Leave granted in SLP (Crl.) No.5351 of 2014.

The Registry shall place the matters before the Hon'ble
Chief Justice of India for constituting an appropriate Bench in
terms of the signed order.

(R.NATARAJAN)
Court Master

(VEENA KHERA)
Court Master

(Signed order is placed on the file)