

NOTES AND COMMENTS

LIFE SENTENCE AFTER LIFE SENTENCE IN A SPAN OF LIFE : A PENAL MEASURE!

Abstract

Section 31(1) of the CrPC, 1973, empowers a court, subject to provisions of section 71 of the Indian Penal Code and its jurisdictional competence, to convict and sentence a person at one trial for several offences. In case of multiple sentences of imprisonment, one term of imprisonment commences after the expiry of the other (in the order directed by the court), unless the sentencing court directs that such terms of incarceration shall run concurrently. There exist conflicting judicial pronouncements of the apex court on desirability/feasibility of consecutive sentences of imprisonment for life in a span of life. Constitution bench of the Supreme Court, in the backdrop of the fact that a sentence of imprisonment for life means confinement until natural death of the convict, in *Muthuramalingam v. State* (2016) sets at rest the judicial ambivalence. The instant paper offers a penetrating analysis of the issue.

I Background

WHEN A person is convicted at a trial for committing two or more offences, the sentencing court, by virtue of its jurisdictional competency under section 31(1) of Code of Criminal Procedure, 1973 (hereinafter the CrPC) is empowered to sentence him, subject to the provisions of section 71 of the Indian Penal Code, 1860, (hereinafter the IPC) to several punishments prescribed therefor. Sentences of imprisonment out of these several punishments, unless directed otherwise by the court, commence after the expiration of the other as directed by the court.¹ However, in case of consecutive sentences, it is not necessary for the sentencing court to send the offender for trial to a higher court only because the aggregate sentence for several offences happens to be in excess of the punishment that it is competent to award on his conviction for a single offence.² However, it does put a restriction on the court. In no case can the

1 Code of Criminal Procedure, 1973, s. 31(1) reads: 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, 1860, sentence him for such offences, to the several punishments prescribed therefore 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.

2 *Id.*, s. 31(2).

court inflict on him the sentence of imprisonment for a period exceeding 14 years and the aggregate punishment should not exceed twice the amount of punishment which it is competent to inflict for a single offence.³

Consecutive sentence is legally permissible and follows automatically if the court does not direct that several sentences imposed by it will run concurrently.⁴ However, it is used by courts only when the enormity of crime at hand warrants it.⁵ Even in such cases, the courts have invariably taken the view that the longest custodial sentence subsumes the shorter ones.

In the backdrop of the provisions of section 31(1) of the CrPC, and the fact that the sentence of life imprisonment means imprisonment till natural death of the convict, a problem arises when sentences imposed for different offences in a trial happen to be imprisonment for life and the court has not directed that they should run concurrently.⁶

Hitherto response of the apex court to the question has been conflicting. In a few cases it has held that the sentences of imprisonment for life awarded for several offences in one trial run consecutively,⁷ while in others it ruled that they run concurrently.⁸ In such a situation, legal propriety of either view becomes doubtful and hazy.

Recently, when the Supreme Court was once again encountered with the problem of consecutive sentences of life imprisonment, it decided to give a final authoritative interpretation to section 31 of the CrPC and thereby clear the legal ambiguity encircling it.

II Life sentence after life sentence in a span of life : Conflicting approach of the Supreme Court

In *Kamalanantha v. State of Tamil Nadu*,⁹ a two-judge bench declined to interfere with the order of the trial court (and affirmed by the high court)

3 *Id.*, s. 31(2), proviso (a) and (b).

4 *Manoj @ Panu v. State of Haryana* (2014) 2 SCC 153.

5 The court, however, is expected to exercise its discretion of directing to run the sentences concurrently or consecutively not mechanically, but on judicial lines. See *O.M. Cherian @ Thankachan v. State of Kerala* (2015) 2 SCC 501.

6 In case where sentence of life imprisonment is not remitted or commuted.

7 See *Ranjit Singh @ Roda v. Union Territory of Chandigarh* (1984) 1 SCC 31 (wherein it justified the two consecutive sentences of life imprisonment with a view to ensuring that even if any remission is granted for the first life sentence, the second one should commence); *Kamalanantha v. State of Tamil Nadu* (2005) 5 SCC 194; *Sanaullah Khan v. State of Bihar* (2013) 3 SCC 52.

8 *Supra* note 5; see *Duryodhan Rout v. State of Orissa* (2015) 2 SCC 783.

9 *Kamalanantha*, *supra* note 7.

imposing on the appellant-convicts two sentences of life imprisonment (for committing rape on 13 girls and a murder of another) and directing them to undergo life imprisonment one after the other (with no remission at all). It ruled that the order of sentence resorting to section 31 of CrPC had no legal infirmity. Thereafter, in *Sanaullah Khan v. State of Bihar*,¹⁰ wherein the trial court sentenced the appellant-convict to death for triple murder and the high court confirmed the death sentence, another two-judge bench of the apex court, though placed its reliance on *Kamalanantha*, converted the death penalty to life imprisonment for each of the three murders. By relying on section 31(1) of the CrPC, it, in the interest of justice, directed that all the three sentences of imprisonment for life should run consecutively.¹¹

A year after *Sanaullah Khan*, the Supreme Court in its two pronouncements, however, read the provisions of section 31 of the CrPC differently. In *Duryodhan Rout v. State of Orissa*,¹² a two-judge bench was confronted with the issue of permissibility of consecutive sentences, particularly when one of the sentences is imprisonment for life. The trial court found the appellant-convict guilty of offences contrary to sections 302, 376(f), and 201 of the IPC and sentenced him to death, rigorous imprisonment for a term of 10 years (with a fine of Rs. 5,000), and rigorous imprisonment for a term of one year (with a fine of Rs.1,000) and directed him to serve the sentences of imprisonment consecutively. The high court commuted the sentence of death to life imprisonment but kept the other sentences and order of the trial court unaltered. However, the two-judge bench of the apex court stressed that life imprisonment means imprisonment for life, and not 14 years- confinement and therefore, by virtue of proviso (a) of section 31(2), a person cannot be sentenced to imprisonment for a period longer than 14 years. It ruled that the trial court was not justified in imposing the sentences under section 376(f), 302, and 201 of the IPC and directed that they should run consecutively. The bench also remarked on the failure of the high court to address the issue. It held that the question of consecutive sentences in case of conviction for several offences, including that of life imprisonment does not arise in view of the embargo put by proviso (a) of section 31(2) of the CrPC, that the aggregate period of consecutive sentence ordered cannot be longer than 14 years. When a person is tried at one trial for two or more offences and is convicted for several offences, no consecutive sentences, according to it, can be imposed

10 *Sanaullah Khan*, *supra* note 7.

11 *Id.*, paras 24-25.

12 *Duryodhan*, *supra* note 8.

on him if the aggregate period of the consecutive sentences ordered exceeds the limit of 14 years set by proviso (a) of section 31(2) of the CrPC.¹³ In *O.M. @ Thankachan v. State of Kerala*,¹⁴ a three-judge bench observed¹⁵ that when two life sentences are inflicted on a convict, the court has to direct the same to run concurrently.¹⁶ But it, interestingly, also said that the fourteen years rule contained in clause (a) of the proviso to section 31(2) is not applicable in relation to sentence of imprisonment for life, since imprisonment for life means the convict will have to remain in jail till the end of his life.¹⁷

Recently, in *Muthuramalingam v. State*,¹⁸ a three-judge bench of the Supreme Court, when called upon by the convict-appellant to decide legal propriety of the direction of the trial court (and endorsed by the high court)¹⁹ ordering him to undergo multiple sentences of life imprisonment consecutively, declined to give its ruling in the backdrop of the hitherto different, rather conflicting, opinions and reflections of the Supreme Court on the issue.

13 *Id.*, para 27.

14 *Supra* note 5.

15 It must be noted that no issue relating to consecutive running of the sentence of imprisonment for life with other sentences was involved in this case.

16 *Supra* note 5, para 13. In the case the appellant-convict was found guilty by the trial court under ss. 498A and 306 of the IPC, and was sentenced to rigorous imprisonment for a term of two and seven years respectively and was ordered to serve the sentences consecutively. The high court confirmed the conviction and the sentences of imprisonment. The Supreme Court, in the backdrop of the totality of circumstances, endorsed the conviction, but ordered the sentences to run concurrently. See also, *Ramesh Chilwal @ Bombayya v. State of Uttarakhand* (2012) 11 SCC 629, wherein a two-judge bench of the Supreme Court, in the absence of any specific direction from the trial court, ordered to run the sentences of imprisonment for life (under s. 302 of the IPC) and of rigorous imprisonment for ten years (under s. 3(1) of the Gangsters Act) concurrently by virtue of s. 31 of the CrPC.

17 *Supra* note 5.

18 (2016) 8 SCC 331.

19 Against a judicial pronouncement of the Madras High Court in *Muthuramalingam v. State of Inspector of Police*, MANU/TN/9725/2007, wherein a two-judge bench of the high court, placing reliance on phraseology of s. 31(1) of the CrPC, and *Kamalanantha*, ruled that the order of the trial court sentencing him to life imprisonment, along with rigorous imprisonment for terms of different periods, on each count of killing eight persons, including a child of one and a half year old and directing the sentences to run consecutively was not illegal and held that it is permissible for a court to direct the sentences of life imprisonment imposed in the same trial to commence one after the other.

A careful reading of *Kamalanantha* and *Sanaullah Khan* reveals that both the two-judge benches of the Supreme Court resorted to consecutive sentences of life imprisonment because of the gravity of the offences committed by the convicts and the need to impose on them corresponding severe punishment. In the former, the convict, Swami Premananda, who, in order to quench his insatiable lust for sex, raped 13 inmate girls of his *ashram*, most of whom were minor orphans and destitutes, and killed one person, while in the latter, the convict meticulously extinguished life of three innocent persons. In the former, the court rejected the argument that the term imprisonment used in section 31 of the CrPC does not include imprisonment for life and hence the court does not have the power to direct the sentence of life imprisonment to run consecutive to other sentences, including imprisonment for life. It ruled that the CrPC empowers the high courts and courts of sessions to pass any sentences authorised by law, and thereby held that the argument (that imprisonment in section 31 does not include imprisonment for life) is unacceptable. The latter bench approvingly referred thereto and relied upon the former to find no fault in directing three life sentences to run consecutively. While in its subsequent ruling in *Duryodhan Rout*, the Supreme Court, contrary to *Kamalanantha*, took the position that no sentences of imprisonment, including imprisonment for life, can run consecutively, if imprisonment in aggregate exceeds 14 years. The ruling, in ultimate analysis, perceives that the term imprisonment takes into its ambit imprisonment for life and proviso (a) to section 31(2) precludes a court from directing a convict of several offences in one trial to serve it consecutively with other sentences of imprisonment inflicted on him. In other words, only sentences of imprisonment, other than that of life imprisonment, can be ordered to run consecutively, that too when aggregate period of imprisonment does not exceed 14 years. While the fourth ruling of the apex court mentioned above, *i.e. O.M. Cherian @ Thankechan*, just by way of *obiter*, lends support to the view that sentences of life imprisonment cannot be directed to run consecutively for the simple reason that convict sentenced to imprisonment for life has to stay in incarceration until his last breath, unless it is remitted or commuted by appropriate authority.

Nevertheless, a concomitant reading of these five judicial pronouncements of the apex court in the context of section 31 of the CrPC disclose a couple of pertinent issues relating to consecutive and/or concurrent sentencing on which different benches of the Supreme Court have diverse opinions. The prominent among them are: (i) do several sentences of imprisonment imposed on a convict, who was tried for two or more offences in a single trial and sentenced to several punishments, subject to proviso (a), run consecutively, unless the

court directs them to run concurrently? (ii) does/does not the word imprisonment in section 31 include imprisonment for life and consequently does it prevent or allow the court to direct that the sentence of life imprisonment should run consecutively or concurrently with other sentences? (iii) does the term imprisonment appearing in proviso (a) of section 31(2) include imprisonment for life and thereby does it/does it not warrant the embargo of rule of fourteen years? (iv) does imprisonment for life run concurrently or consecutively with a fixed term of imprisonment? (v) does a fixed term of imprisonment run before or after the expiry of sentence of imprisonment for life? (vi) can two or more sentences of imprisonment for life be directed to run consecutively or need they always be directed to run concurrently?

The three-judge bench of the Supreme Court in the latest case, *i.e.* *Muthuramalingam*,²⁰ plausibly confronted with the issues formulated above and the sources thereof, requested the Chief Justice of India to constitute a Constitution bench and refer the matter to it for consideration. With this purpose, the bench formulated the following referral question for consideration and an authoritative pronouncement of the Constitution bench. It runs:²¹

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.

However, it seems that the bench has picked up one of the pertinent issues mentioned above and formulated a referral question for authoritative interpretation of the Constitution bench for the obvious reason that the issue involved before it required determination of legality of a judicial direction mandating consecutive multiple sentences of life imprisonment. But a careful reading of the referral question reveals that the answer thereto involves consideration of most of the issues identified and articulated above.

III Life Sentence after life sentence in a span of life : Impermissible

A Constitution bench, comprising T.S. Thakur, CJI, F.M. Ibrahim Kalifulla, A.K. Sikri, S.A. Bobde, and R. Banumathi, JJ, was constituted²² and was called

20 *Supra* note 18.

21 *Id.*, para 6.

22 Out of the five judges, two judges, *namely*, T.S. Thakur CJI, and R. Banumathi J, are drawn from the bench of three judges that heard *O.M. Cherian @ Thankachan*, and observed that two sentences of imprisonment for life cannot run consecutively. None from the benches that stroke a discordant note in *Kamalanantha*, and

upon to delve into the referral question and resolve the prevalent conflicting opinions by a correct and authoritative interpretation of section 31 of the CrPC. The Constitution bench, through T.S. Thakur, CJI, delved into the referral question and answered it in the negative.²³

Reading *Duryodhan Rout* and *O.M. Cherian @ Thankechan*, in the backdrop of the provisions of section 31 of the CrPC, T.S. Thakur, CJI, speaking for himself and other judges on the bench, felt that the logic behind sentences of imprisonment for life not running consecutively lies in the fact that life imprisonment implies detention of the convict in prison till the end of his normal life. If this logic is right, *Duryodhan Rout* and *O.M. Cherian @ Thankechan* rulings *i.e.* two or more sentences of imprisonment for life cannot run consecutively, the bench opines, are bound to be sound. Referring to a number of judicial pronouncements of the apex court wherein it has held that imprisonment for life means imprisonment till the last breath of the convict, unless it is commuted or remitted by competent authorities,²⁴ the bench argued that provisions of section 31 of the CrPC need to be interpreted in consonance with this meaning of life imprisonment. Therefore, it stressed that any direction that requires the offender to undergo imprisonment for life twice over would be anomalous and irrational for it will disregard the fact that humans like all other living beings have but one life to live. The bench further remarked that section 31(1) of the CrPC, would permit consecutive running of sentences only if such sentences do not happen to be life sentences and that is the only way one can avoid an obvious impossibility of a prisoner serving two consecutive life sentences.²⁵ Section 31(1), therefore, needs to be interpreted to mean that sentences awarded by the court for several offences committed by the prisoner must run consecutively, unless the court directs otherwise, except where such sentences include imprisonment for life which can and must run concurrently. If more than one life sentences are awarded

Sanaulab Khan, found place in the Constitution bench. T.S. Thakur, CJI, wrote the opinion on behalf of the Constitution bench, while R Banumathi J authored the court's opinion in *O.M. Cherian @ Thankechan*.

23 *Supra* note 18.

24 *Gopal Vinayak Godse v. State of Maharashtra* (1961) 3 SCR 440; *Maru Ram v. Union of India* (1981) 1 SCC 107; *Ashok Kumar @ Golu v. Union of India* (1991) 3 SCC 498; *Subash Chander v. Krishan Lal* (2001) 4 SCC 458; *Shri Bhagwan v. State of Rajasthan* (2001) 6 SCC 296; *Swamy Shraddananda (2) @ Murali Manohar Mishra v. State of Karnataka* (2008) 13 SCC 767, and *Union of India v. V Sribaran* (2016) 7 SCC 1.

25 *Supra* note 18, para 17.

to the prisoner, the same would get superimposed over each other, and in case he is granted the benefit of any remission or commutation *qua* one such sentence, the benefit of such remission would not *ipso facto* extend to the other life imprisonment. It will continue and shall remain unaffected by remission or commutation of the earlier life sentence.²⁶

In conclusion, the bench held that though multiple sentences for imprisonment for life can be awarded for multiple murders or other offences punishable with imprisonment for life, the life sentences so awarded cannot be directed to run consecutively plainly because of the fact that a single imprisonment for life ensures detention of the convict in jail till he breaths last. The question of consecutive running of sentences of life imprisonment, therefore, does not arise.²⁷ This proposition of law, however, is not premised on the proviso (a) of section 31(2) of the CrPC and the embargo of the rule of 14 years imprisonment, but it is based on impossibility and irrationality. The proviso is inapplicable in such a situational matrix as competent courts are authorised to award permissible sentences, including life imprisonment. In cases tried by the sessions court, there are no limitations as to the courts powers to award any punishment sanctioned by law.²⁸

Further, referring to consecutive running of the sentences of life imprisonment with the sentences of imprisonment for a fixed term, the bench ruled that it is legitimate for the court to direct the convict to first undergo the term sentence before the sentence of life imprisonment commences. Such a direction is perfectly legitimate and in tune with the provisions of section 31 of the CrPC, however the converse is not. The direction that he should first undergo his sentence of life imprisonment and then the fixed term of imprisonment will necessarily imply that the term sentence runs concurrently. Once he undergoes his life imprisonment, the question of undergoing the fixed term of imprisonment cannot arise.²⁹

IV Conclusion

Section 31 of the CrPC provides for trial of accused in a single trial for two or more offences, and the courts power to sentence him for such offences to several punishments, and to direct him to undergo the sentences of imprisonment (of these several punishments) one after another in the sequence indicated by it, subject to the

26 *Id.*, paras 19- 20 and para 29.

27 It overrules *Kamalanantha*, and *Sanaullah Khan*, see *supra* note 7.

28 It thereby overrules *Duryodhan Rout*, *supra* note 8.

29 *Id.*, para 32.

provisions of section 71 of the IPC. These sentences run concurrently if no such sequential order is specified by the sentencing court. The court's power, however, is subjected to two riders: (i) the period of sentence of imprisonment imposed on the convict should, in no case, be longer than 14 years, and (ii) the aggregate punishment should not exceed twice the amount of punishment which the court is empowered to inflict for a single offence.

In the recent past, a couple of pertinent questions relating to true ambit and contour of section 31 of the CrPC were agitated in the apex court of the land. Prominent among them were the questions as to: (i) whether multiple sentences of imprisonment for life run consecutively; (ii) whether sentences of imprisonment for life and for a term run consecutively, and if yes, in what order; (iii) whether the embargo of fourteen years rule applicable to sentence of life imprisonment when it is ordered to run consecutively with other sentences of imprisonment. These questions, unfortunately, emerged from the mechanical and blind application of the provisions of section 31 of the CrPC by different benches of the Supreme Court, without taking a pause to anticipate and realise the impracticable and irrational consequences of their rulings.

Recently, a Constitution bench of the Supreme Court, in *Muthuramalingam*,³⁰ however, has set the controversy at rest and the conflicting opinions in place by formulating, with well-reasoned arguments supported by apt judicial pronouncements, a few propositions of law. It is now impermissible for a court to order, under section 31(1) of the CrPC, consecutive sentences of imprisonment for life, not because it is hit by proviso (a) of s 31(2), but because of the fact that imprisonment for life is meant incarceration until last breath of the convict, unless his sentence is commuted or remitted, and it is irrational and impracticable to ask the convict to undergo the second imprisonment after the first is expired! Multiple sentences of life imprisonment, therefore, have to run concurrently, not consecutively. And if one of the multiple sentences of imprisonment for life is remitted or commuted, it does not *ipso facto* affect another. It is also impermissible for a court to order sentences of imprisonment for a fixed term to run consecutive to sentence for life. It would, in ultimate analysis, indeed mean that the convict has to undergo his sentence of fixed term after his death! The converse, for obvious reasons, is permissible. Imprisonment in section 31, CrPC, does not encompass therein imprisonment for life, as courts of competency have the legitimate authority to inflict permissible punishments on convicts. Hence, the embargo of fourteen years rule mentioned in proviso (a) of section 31(2) is inapplicable in cases of consecutive sentences of life imprisonment with other

30 *Supra* note 18.

sentences.

The latest *Muthuramalingam* dictum, therefore, deserves appreciation not only for its authoritative interpretation of section 31 of the CrPC, but also for articulating its contextual and operational orbit in a correct, pragmatic, and rational perspective.

KI Vibhute *

* Professor of Law and Dean, Rajiv Gandhi School of Intellectual Property Law, Indian Institute of Technology Kharagpur (West Bengal, India), and Emeritus Professor of Law, National Law University, Jodhpur (Rajasthan, India). Email: vibhutek@yahoo.co.in