

CONSECUTIVE LIFE IMPRISONMENT SENTENCING: ITS LEGALITY AND VIABILITY UNDER INDIAN CRIMINAL LAW

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ABSTRACT

The criminal sentencing is a complex task especially when the court is called upon to award sentencing in multiple offences committed by the convict. In such cases, the court either follows concurrent sentencing or consecutive sentencing. The consecutive sentencing implies that the convict will undergo imprisonment for one offence and thereafter for another offence and so on. On the contrary, the concurrent sentencing implies that the convict shall undergo imprisonment for all the offences in one go. The decision to award consecutive or concurrent sentencing rests with the discretion of the court. However, the problem arises when the life imprisonment is one of the punishments awarded in such cases. The question that arises, in such cases, is whether the court can award consecutive life term sentencing in the sense that whether the court can direct that sentence of life imprisonment for second offence is to run after the completion of the sentence of life imprisonment awarded for the first offence or whether the court can direct that fixed term sentence for second offence is to run after the completion of first sentence of life imprisonment? There have been many conflicting judgments on the point by the Supreme Court taking both the contrary sides. There have been cases where the Supreme Court has taken the stand that consecutive life imprisonment sentencing is permissible on the ground that if the executive remit the first life sentence then subsequent sentence of life or fixed term would start to run. On the other hand, there are good number of cases wherein the Apex Court has taken the stand that consecutive life imprisonment sentencing is not permissible in view of the fact that life imprisonment means imprisonment till the end of life and hence legally there can be no question of consecutive sentencing. In such cases, all the sentences shall superimpose on the life sentence. In the light of the above background information, this paper aim to look into the prevailing anomalies and conflicting judgments on the subject and how the Constitution Bench of the Supreme Court has address the issue.

Keywords: Criminal Sentencing, Life Imprisonment, Consecutive Sentencing, Concurrent Sentencing.

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INTRODUCTION

The criminal sentencing is a complex task. When multiple offences are committed by the convict, the question before the court arises as to whether to award consecutive or concurrent sentencing. The laws relating to consecutive and concurrent sentencing are governed by the provisions of Criminal Procedure Code, 1973 (CrPC). However, there are no specific legislative guidelines and hence the same is left to the discretion of the courts. The courts generally resort to past judicial precedents to decide the same. One of the contentious areas in consecutive and concurrent sentencing is the awarding of consecutive life imprisonment sentencing wherein for one or for more than one offences, the convict has been awarded life imprisonment. Where the court has awarded two life imprisonment in a case, the question is can both the life sentence be directed to run consecutively, that is, one after another? Similarly, where the court has awarded one life imprisonment and other fixed term imprisonment(s), the question will be can the sentence of fixed term sentencing be directed to run after the expiration of the sentence of life imprisonment? This question assumes importance in criminal sentencing because there are good number of cases where the accused is convicted of multiple offences including offence (s) punishable with life imprisonment. It has been argued by one school of thought that award of consecutive sentence in life imprisonment cases goes against the principles laid down by the Constitution Bench in *Gopal Vinayak Godse*¹ and *Maru Ram*² cases wherein the Supreme Court has held that life imprisonment means imprisonment till the end of life and not the imprisonment for any fixed period i.e. 14 years or 20 years. If life imprisonment is taken to be imprisonment till the end of life, then it is difficult to conceive how consecutive life imprisonment sentencing can be awarded since there is only one life. In such cases, only concurrent sentencing can be awarded, that is, one life imprisonment superimposed over another life imprisonment or the fixed term sentencing superimposed over life imprisonment. However, there is another school of thought which takes the contrary stand and contends that consecutive life sentencing is legally permissible. According to this school, when the convict is undergoing life imprisonment and if the executive exercises the power of remission and remit the first sentence, then the convict can be directed to undergo another life imprisonment or fixed term sentencing and there is nothing illegal about it. The application of these two contrary schools of thoughts has been reflected in a number of judgments of the Supreme Court. As a consequence, there had been uncertainty on this point. However, of late, the Supreme Court

¹ *Gopal Vinayak Godse v. The State of Maharashtra and Ors* (AIR 1961 SC 600).

² *Maru Ram and Ors. v. Union of India (UOI) and Ors* (AIR 1980 SC 2147).

has tried to settle down this contentious issue. In the light of the above background information, in this research paper, the author would discuss the issue of consecutive life imprisonment sentencing and its legality and viability taking into account the authoritative judicial pronouncement on the subject.

TWO OPPOSING LINES OF JUDICIAL THOUGHTS ON CONSECUTIVE LIFE IMPRISONMENT SENTENCING

As mentioned in the introductory part, the question remains in sentencing arena as to whether consecutive life imprisonment sentencing can be imposed or not where the accused is convicted of several offences. In a 2013 judgment of the Supreme Court in *Sanaullah vs. State of Bihar*³, the Court awarded triple life imprisonment sentencing directing each to run consecutively. However, as mentioned above, since the celebrated judgment of the Constitution Bench in *Gopal Vinayak Godse* and *Maru Ram* cases, life imprisonment has always been interpreted to mean imprisonment till the end of life. If that be so, will it be practical to award triple life imprisonment sentencing directing it to run consecutively? *Sanaullah* was a case of triple murder. In that case, both the trial court and the High Court, on appeal and reference, had awarded death penalty to the appellant for committing triple murder. The appellant went to the Supreme Court and challenged the sentence of death penalty. The Supreme Court commuted the death penalty into rigorous imprisonment of life for each of the three offences of murder with the direction that punishment shall run consecutively and not concurrently. The Supreme Court resorted to Section 31(1) of the Criminal Procedure Code, 1973 which empowers the court to inflict sentences of imprisonment for more than one offences to run either consecutively or concurrently. Taking into account the brutality of the crime, the Court held that sentences of rigorous imprisonment for life for triple murder will run consecutively and not concurrently. However, the question is whether it is legally sustainable to award consecutive life imprisonment sentencing since life imprisonment has always been taken to mean imprisonment till the end of life? If the remission power is exercised by the State Government under Section 433-A of Criminal Procedure Code, 1973 on all the three occasions, then the minimum total length of imprisonment will be 42 years in prison (presuming that the remission is exercised soon after complying with Section 433-A of the Criminal Procedure Code, 1973 i.e. completion of minimum 14 years of incarceration). Thus, there are two possibilities in *Sanaullah* case: either the appellant will remain in jail for the rest of his life (if

³ (2013) 3 SCC 52.

the appropriate government choose not to remit the sentence in either of the three occasions) or if the remission power is exercised by the government on all the three occasions, he shall remain in jail for a minimum period of 42 years. This sentencing approach in *Sanaullah* conflict with the earlier judgment of the Supreme Court in *Najakat Ali Mubarak Ali* case⁴ wherein the Court has said that the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through as one. The Court in *Najakat* was of the view that consecutive sentencing in life imprisonment cases will not be statutorily compatible. In *Najakat*, the Court observed:

“Thus, the sentence of life imprisonment imposed on the same person in two different convictions would converge into one and thereafter it would flow through one alone. Even if the sentence in one of those two cases is not imprisonment for life but only a lesser term the convergence will take place and the post-convergence flow would be through the same channel. In all other cases, it is left to the Court to decide whether the sentence in two different convictions should merge into one period or not. If no order is passed by the Court the two sentences would run one after the other. No doubt Section 427 is intended to provide amelioration to the prisoner. When such amelioration is a statutory operation in cases falling under the second Sub-section, it is a matter of choice for the court when the cases fall within the first Sub-section. Nonetheless, the entire section is aimed at providing amelioration to a prisoner. Thus a penumbra of the succeeding section can be glimpsed through the former provision.”

However, the *Najakat* judgment is in conflict with the earlier decision of the Supreme Court in *Ranjit Singh* case⁵ wherein the Court has awarded two life imprisonments in double murder and ordered that both the sentence shall run consecutively. The Court interpreted it in the manner that in case any remission or commutation is granted in respect of the earlier sentence of life imprisonment then the benefit of that remission or commutation will not ipso facto be available in respect of the subsequent sentence of life imprisonment. The subsequent sentence would remain unaffected by the remission or commutation in respect of the earlier sentence. In other words, in order to get the practical benefit of remission, the appropriate government has to exercise the power of remission twice and by virtue of Section 433-A of Criminal Procedure Code, 1973, it can exercise that power only after the convict has suffered minimum incarceration of fourteen years each. Thus, in *Ranjit Singh* case, the convict has to be in

⁴ *State of Maharashtra v. Najakat Ali Mubarak Ali* (2001) 6 SCC 311.

⁵ *Ranjit Singh v. Union Territory of Chandigarh* AIR 1991 SC 2296.

imprisonment for the minimum period of 14+14 years = 28 years if the State Government exercises power of remission soon after fourteen years of incarceration for both the offences. If the appropriate government does not exercise the power of remission, the convict will be in jail for the rest of his life. However, the question remain whether such sentencing is statutorily compatible.

Following *Sanaullah* and *Ranjit Singh* cases, the two Judge Bench of the Supreme Court in *State of Rajasthan v. Jamil Khan*⁶ resorted to consecutive life imprisonment sentencing. In *Jamil Khan* case, the accused was convicted for the offences under Sections 302, 376 and 201 of Indian Penal Code, 1860. The trial court had awarded death penalty for the offence of murder, life imprisonment for the offence of rape and three years rigorous imprisonment for the offence under Section 201 (destruction of evidence) of Indian Penal Code, 1860. The High Court commuted the death into life for the offence of murder. As against the commutation, the State made appeal to the Supreme Court with the argument that the case was a fit case for award of death sentence. However, the Supreme Court rejected the argument of the State and affirmed the punishment of life imprisonment awarded by the High Court. Similarly, for the offence of rape, the Supreme Court commuted life imprisonment into seven years. As far as the nature of sentencing is concerned, the Supreme Court reversed the direction of the High Court and held that all the sentencing shall be directed to run consecutively in case any remission or commutation is exercised by the executive authority in favour of the convict for the punishment of life imprisonment. Thus the order of sentence will be that the convict will undergo life imprisonment first. If it is remitted by the State, then the convict will undergo seven years imprisonment for the offence of rape and after that the convict shall undergo three years rigorous imprisonment for the offence under Section 201 of the IPC. If the punishment of life imprisonment is not remitted, the convict shall remain in prison for the rest of his life. Thus, in *Jamil Khan* case, the Supreme Court applied consecutive sentencing on the same line as *Sanaullah* and *Ranjit Singh* cases.

Even prior to *Sanaullah Khan* case, the Supreme Court has awarded consecutive life sentencing in a number of cases. For instance, in *Ravindra Trimbak Chouthmal*⁷ case, the Court awarded life imprisonment for the offence of murder and maximum sentence of seven years rigorous imprisonment for the offence under Section 201 (causing disappearance of evidence) of the IPC which is to run only after the sentence of life imprisonment is over. *Ravindra Trimbak* was

⁶ (2013) 10 SCC 721.

⁷ *Ravindra Trimbak Chouthmal v. State of Maharashtra* (AIR 1996 SC 740).

a case of greed for dowry which led to the murder of the deceased. On the facts of the case, Justice Hansaria (who delivered the judgment) said that the atrocious way in which the head of the deceased was severed and the body was cut into nine pieces to cause disappearance of evidence, the convict was liable not only to maximum punishment under Section 201 of the Indian Penal Code, 1860 but also that the sentence of seven years should run consecutively after the completion of life imprisonment. The Court said, “...*the sentence has to run consecutively, and not concurrently, to show our strong disapproval to the loathsome, revolting and dreaded device adopted to cause disappearance of the dead body.*”

Again in an earlier judgment of *Ronny vs. State of Maharashtra*⁸, the Supreme Court has awarded consecutive life imprisonment sentencing. The brief facts of the case were that the appellants committed gruesome murder of three members of a family after committing gang rape upon the female member of the house. They also committed the offence of robbery. The trial court sentenced all the three appellants to death under Section 302 read with Section 34 of the IPC, and also convicted them for other offences such as Sections 449,376(2) (g), 467/471 of the IPC. On reference being made by the trial court and appeal by the appellants, the High Court confirmed the death penalty. On appeal, the Supreme Court noted certain mitigating circumstances and reached to the conclusion that the case is not fit for awarding death and commuted death into life imprisonment. However, looking at the gravity of the offence and the fact that it was pre-planned and cold blooded murder, the Supreme Court directed that the sentence of 10 years imprisonment for gang rape shall be served after the sentence of life imprisonment for the offence of murder is over.

Following the same approach, the Supreme Court in 2013 judgment of *Sandesh vs. State of Maharashtra*⁹ awarded consecutive life imprisonment sentence. In *Sandesh* case, the appellant committed robbery in the house of the deceased and in course of committing robbery brutally murdered the deceased, an old woman, by inflicting multiple injuries on her body. He also committed rape and inflicted serious injuries on another woman who happens to present in the house at that time and was five months pregnant. The appellant was arrested and prosecuted. The trial court convicted him for a number of offences under Sections 302, 307,376 (e), 394 and 397 of the IPC. The trial court in a detailed judgment sentenced the appellant to death for offence under Section 302 of the IPC, ten rigorous imprisonments for offence under Section 307 of the IPC, imprisonment for life for offence under Section 376 (e) of the IPC,

⁸ AIR 1998 SC 1251.

⁹ (2013) 2 SCC 479.

imprisonment for life for offence under Sections 394 and 397 of the IPC. The trial court held that all the sentences shall run concurrently. On appeal being made by the appellant and reference made by the trial court, the High Court confirmed the death penalty. On appeal, the Supreme Court took the view that the trial court and the High Court did not take into account the state of mind of the accused at the relevant time, his capacity to realize the consequences of his crime he was committing and the lack of intent on his part to commit the offence of murder. Taking into account these factors including abnormal behaviour of the appellant, the Court commuted the death penalty into rigorous imprisonment for life with the direction that sentences for different offences shall run consecutively.

Again in 2013, the Supreme Court awarded consecutive life sentencing in *Shankar Kisanrao Khade v. State of Maharashtra*.¹⁰ case. The brief facts of the case were that the appellant committed rape and murder of an eleven year old girl. The deceased was subjected to sexual assault on more than one occasions. The deceased was also suffering from moderate intellectual disability. The trial court sentenced the appellant to death for the offence of murder under Section 302 of the IPC, imprisonment for life for the offence of rape under Section 376 of the IPC, seven years rigorous imprisonment for the offence of kidnapping under Section 366 A (procurement of minor girl) of the IPC and five years rigorous imprisonment for the offence under Section 363 (punishment for kidnapping) of the IPC. The High Court confirmed the death sentence. On appeal, the Supreme Court commuted the death penalty into rigorous imprisonment for life and held that all the punishments shall run consecutively. Thus, once the rigorous imprisonment for life is over for the offence of murder, the appellant has to undergo another life imprisonment for the offence of rape, and then seven years rigorous imprisonment for the offence under Section 366 A of the IPC and so on.

Taking the debate further, in a 2014 judgment of *Duryodhan Rout v. State of Orissa*¹¹, the Supreme Court took the contrary position and held that in the case of life term, other sentences would run concurrently and not consecutively. The Court also said that in case a person is convicted 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. The Bench observed, “*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.*”¹²

¹⁰ (2013) 5 SCC 546.

¹¹ AIR 2014 SC 3345.

¹² Please refer to Para 27 of the *Duryodhan Rout* Judgment.

The same view was espoused by the Supreme Court in its 2015 judgment of *Om Cherian @ Thankachan v. State of Kerala*¹³, wherein the Court said “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) CrPC. 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.”

The Supreme Court in *Cherian* case referred to the case of *Ramesh Chilwal v. State of Uttarakhand*.¹⁴ In *Ramesh Chilwal* case, the appellant was convicted under Section 302 of the IPC and sentenced to undergo imprisonment for life. The appellant was also convicted under Section 3(1) of the U.P. Gangsters and Anti-Social Activities (Prevention) Act and sentenced to rigorous imprisonment for ten years. He was also convicted under Section 27 of the Arms Act and sentenced to further undergo rigorous imprisonment for seven years. Considering the fact that the trial court had awarded life sentence under Section 302 of the IPC, the Supreme Court directed all sentences imposed under various statutory provisions to run concurrently. Thus, *Ronny, Sandesh, Sanaullah* and *Shankar Kishan Rao Khade* cases are in direct conflict with *Najakat, Ranjit, Duryodhan, Cherian* and *Ramesh Chilwal* and other like cases as far as imposition of consecutive life imprisonment sentencing is concerned.

Thus, the consecutive sentencing in life imprisonment cases poses a serious question:

- Is consecutive sentencing statutorily permissible in life imprisonment cases as life imprisonment legally means imprisonment till the end of life? (Section 427(2) of the Criminal Procedure Code, 1973 adheres to the same principle).¹⁵

¹³ AIR 2015 SC 303.

¹⁴ (2012) 11 SCC 629.

¹⁵ It says that when a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment for a term or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.

SETTLING THE UNCERTAINTY BY CONSTITUTION BENCH

The Constitution Bench of the Supreme Court in its 2016 judgment of *Muthuramalingam and Ors. v. State*¹⁶ put to rest the controversy regarding consecutive life sentencing. In this case, the appellants were convicted for several offences including the offences under Section 302 of the Indian Penal Code, 1860. For several offences of murder, the trial Court had awarded life sentences to run consecutively. Against the consecutive running of life sentences, the appellants preferred appeal to the Supreme Court. The three Judge Bench, having noticed the conflicting judgments of various benches of the Supreme Court on the matter, referred it to the Constitution Bench. The Constitution Bench laid down the following propositions in context of consecutive life imprisonment¹⁷:

- The question is whether the provision admits of more than one life sentences running consecutively. That question can be answered on a logical basis only if one accepts the truism that humans have one life and the sentence of life imprisonment once awarded would require the prisoner to spend the remainder of his life in jail unless the sentence is commuted or remitted by the competent authority. That, in our opinion, happens to be the logic behind Section 427(2) of the Code of Criminal Procedure, 1973 mandating that if a prisoner already undergoing life sentence is sentenced to another imprisonment for life for a subsequent offence committed by him, the two sentences so awarded shall run concurrently and not consecutively. Section 427(2) in that way carves out an exception to the general rule recognised in Section 427(1) that sentences awarded upon conviction for a subsequent offence shall run consecutively. The Parliament, it manifests from the provisions of Section 427(2), was fully cognizant of the anomaly that would arise if a prisoner condemned to undergo life imprisonment is directed to do so twice over. It has, therefore, carved out an exception to the general rule to clearly recognise that in the case of life sentences for two distinct offences separately tried and held proved the sentences cannot be directed to run consecutively.
- While multiple sentences of 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. Such sentences would, however, be super imposed over each other so that any remission or commutation granted by the

¹⁶ AIR 2016 SC 3340.

¹⁷ Please refer to Paras 31 and 32 of the judgment for these propositions.

competent authority in one does not ipso facto result in remission of the sentence awarded to the prisoner for the other.

- The power of the Court to direct the order in which sentences will run is unquestionable in view of the language employed in Section 31 of the Code of Criminal Procedure, 1973. The Court can, therefore, legitimately direct that the prisoner shall first undergo the term sentence before the commencement of his life sentence. Such a direction shall be perfectly legitimate and in tune with Section 31 of the Criminal Procedure Code, 1973. The converse however may not be true for if the Court directs the life sentence to start first it would necessarily imply that the term sentence would run concurrently. That is because once the prisoner spends his life in jail, there is no question of his undergoing any further sentence.

CONCLUSION

With the landmark judgment of the Constitution Bench in *Muthuramalingam* case, the Supreme Court has settled an important contentious issue in criminal sentencing jurisprudence regarding the legality of consecutive life imprisonment sentencing in multiple offences cases. It was a perplexing issue in criminal sentencing for long as can be seen from the conflicting judgments of the Supreme Court on the point. The trial courts and the High Courts had also conflicting opinions on the point. However, the authoritative principles laid down in the judgment has put to rest all the anomalies and inconsistencies prevailing hitherto.