

BLAST and another vs. Bangladesh and others ['Shukur Ali' Case]

Civil Appeal No. 16 of 2010

Appellate Division of the Supreme Court of Bangladesh

Facts: Shukur Ali, then aged 14, was convicted of sexually assaulting to death a 7 year old girl under section 6(2) of the Nari-o-Shishu Nirjaton (Bishesh Bidhan) Ain, 1995 by the Nari-o-Shishu Nirjaton Bishesh Adalat, Manikganj (the Special Tribunal on Violence against Women and Children) on 12 July, 2001. Shukur Ali was sentenced to death, according to the mandatory death sentence in effect at the time of the occurrence. While the case was under trial, the mandatory death penalty for the offence under section 6(2) was in February 2000 replaced by a sentence of life imprisonment or the death penalty. The 1995 Act was replaced by the Nari o Shishu Nirjaton Domon Bishesh Bidhan Ain 2000. It differed from the 1995 Act in that it did not necessarily prevail over the Children Act, 1974.

Shukur Ali was 14 years old at the time of the offence and 16 years old at the time of trial. He appealed the judgment and sentence, but these were upheld by both the High Court and Appellate Division of the Supreme Court.

At this stage, BLAST became involved and challenged the constitutionality of the mandatory death sentence under section 6(2) of the 1995 Act, and its application to Shukur Ali's case, given he was a minor at the time of the offence.

The High Court delivered its judgment and pronounced sentence on 2 March 2010. The Court ruled that section 6(2) of the Nari-O-Shishu Nirjaton (Bishesh Bidhan) Ain 1995, now repealed, was unconstitutional on the basis that a mandatory death penalty removed judicial discretion in a manner inconsistent with Articles 31 and 35 of the Constitution. It upheld the conviction of the Tribunal at Manikganj, but stayed the execution of the death sentence for two months to allow an appeal to the Appellate Division and gave a certificate to that effect. The appeal was filed before the AD on 28 April 2010 by BLAST and Shukur Ali.

Arguments: The petitioners argued that Section 6(2) of the Nari-O-Shishu Nirjaton (Bishesh Bidhan) Ain, 1995 was unconstitutional on the ground that it provided for a mandatory death penalty with no alternative. They argued that in removing any scope for the exercise of judicial discretion in sentencing, the power of the judiciary had been transgressed upon by the Legislature, which is inconsistent with Articles 31 and 35 of the Constitution. Further, they argued that no action detrimental to the life of a citizen can be taken except in accordance with law.

Judgment: The appeal was allowed in part. The Court declared that pending cases and appeals in respect to offences under the Ain of 1995 would be tried in accordance with the provisions of the Ain of 1995, but sentences would be imposed according to the Ain of 2000. The Appellate Division affirmed the High Court's decision that mandatory death sentences are unconstitutional. However, in the case of Shukur Ali, the Court upheld a sentence of death as appropriate for the facts of the case at bar. The Court held that, with regard to the young age of the victim (7 years old) and the "brutal and diabolical" nature of the killing, that there were no extenuating grounds to commute Shukur Ali's sentence. The Court did not address

Shukur Ali's status as a minor at the time of the offence, on the basis that he was charged under the 1995Ain.

Laws Cited: Constitution of Bangladesh, Articles 35, 44; Children Act, 1974; Nari-O-ShishuNirjatonDomon Ain, 2000.

International Instruments Cited: Universal Declaration of Human Rights; 1948, International Covenant on Civil and Political Rights (ICCPR), 1966.

Status: A review petition will be filed within 30 days of 5 May in the Appellate Division against the judgment and order of the Appellate Division dated 5 May 2015.