# Shiva Kumar @ Shiva @ Shivamurthy vs State Of Karnataka on 28 March, 2023

## Author: Abhay S. Oka

## Bench: Abhay S. Oka, Rajesh Bindal

Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 942 OF 2023
(Arising out of Special Leave Petition (Crl.) No.3400 of 2017)

Shiva Kumar @ Shiva @ Shivamurthy …Appellant

versus

State of Karnataka ...Respondent

J U D G M E N T

ABHAY S. OKA, J.

1. Heard learned counsel for the parties. FACTUAL ASPECTS

2. The appellant has been convicted for the offences punishable under Sections 366, 376 and 302 of the Indian Penal Code, 1860 (for short, 'IPC'). The controversy is limited to the sentence for the offence punishable under Section 302 of the IPC. The learned Sessions Judge (Fast-Track Court) sentenced the appellant to undergo rigorous imprisonment for the rest of his life. The appellant preferred an appeal before Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 the High Court to challenge the conviction and sentence. The State Government preferred an appeal for enhancement of the sentence. The High Court, by the impugned judgment, dismissed both appeals. On 21 st April 2017, notice was issued by this Court only on sentence.

SUBMISSIONS

3. The learned counsel appearing for the appellant accused submitted that in view of the law laid down by the Constitution Bench of this Court in the case of Union of India v. V. Sriharan alias Murugan & Ors.1, a modified sentence can be imposed only by the Constitutional Courts and not by the Sessions Courts. He submitted that the Constitutional Courts can grant life sentence either for the entirety of life or for a specific period, only while commuting the death penalty imposed on an accused. If the death penalty is not imposed, the Courts are powerless to impose a modified sentence. He also relied upon a decision of this Court in the case of Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka2. He invited our attention to paragraph 105 of the decision of the Constitution Bench in the case of V. 1 2016 (7) SCC 1 2 2008 (13) SCC 767 Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 Sriharan1, wherein this Court has laid down that a modified sentence can be an alternative only to the death penalty. He, therefore, submitted that the Constitution Bench held that a fixed term sentence or modified sentence can be imposed by way of substitution for the death penalty.

4. He submitted that even the subsequent decisions of this Court show that imposition of a modified sentence was made only in the cases where the death penalty has been commuted. He relied upon the decision of this Court in the case of Sahib Hussain alias Sahib Jan v. State of Rajasthan3 and in the case of Gurvail Singh alias Gala v. State of Punjab4.

5. On facts, he pointed out that at the time of the commission of the offence, the appellant's age was 22 years. He pointed out that the appellant has a young wife, a small child and aged parents. Moreover, he has no antecedents and poses no threat to society. Moreover, his conduct in jail is all throughout satisfactory and in fact, he has completed B.A. degree course while in jail. Lastly, he pointed out that the 3 2013 (9) SCC 778 4 2013 (10) SCC 631 Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 appellant has undergone sentence for approximately seventeen years and two months.

6. The submission of the learned counsel appearing for the respondent – State is that the Constitutional Courts are not powerless to impose modified sentences considering the gravity of the offence, the conduct of the accused and other relevant factors even though the death penalty has not been imposed. He submitted that the power of the Constitutional Courts to grant a modified sentence could not be circumscribed by holding that the said power can be exercised only when the question is of commuting the death sentence. By pointing out findings of the Trial Court and the High Court, he submitted that in the facts of this case, the most stringent punishment was contemplated. He submitted that in any case, the High Court, after considering all the factual aspects, has reiterated the view taken by the Sessions Court by imposing a sentence for the entirety of the appellant's life. OUR VIEW

7. Under Chapter III of the IPC, different punishments have been provided. Section 53 provides for five categories of punishments: the death penalty, imprisonment for life, Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 imprisonment (either rigorous or simple), forfeiture of property and fine. It is also a settled position that when an offender is sentenced to undergo imprisonment for life, the incarceration can continue till the end of the life of the accused. However, it is subject to a grant of remission under the provisions of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') and the

Constitutional powers vested in the Hon'ble Governor and the Hon'ble President of India, as the case may be. While imposing a life sentence, if it is directed that the accused shall not be released for a specific period, it becomes a modified punishment. In such a case, before the expiry of the fixed period provided, the power to grant remission under Cr.P.C. cannot be exercised.

8. The learned counsel appearing for the appellant has relied upon what is held in paragraph 56 of the decision of this Court in the case of Swamy Shraddananda2, which reads thus:

> "56. But this leads to a more important question about the punishment commensurate to the appellant's crime. The sentence of imprisonment for a term of 14 years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. As a matter of fact, Mr. Hegde informed us that the appellant was taken in custody on 28□3□1994 and Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration. This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior courts in their respective States. A suggestion to this effect was made by this Court nearly thirty years ago in Dalbir Singh v. State of Punjab [(1979) 3 SCC 745 : 1979 SCC (Cri) 848] . In para 14 of the judgment this Court held and observed as follows: (SCC p. 753) "14. The sentences of death in the present appeal are liable to be reduced to life imprisonment. We may add a footnote to the ruling in Rajendra Prasad case [Rajendra Prasad v. State of U.P., (1979) 3 SCC 646 : 1979 SCC (Cri) 749] .

Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 Taking the cue from the English legislation on abolition, we may suggest that life imprisonment which strictly means imprisonment for the whole of the men's life but in practice amounts to incarceration for a period between 10 and 14 years may, at the option of the convicting court, be subject to the condition that the sentence of imprisonment shall last as long as life lasts, where there are exceptional indications of murderous recidivism and the community cannot run the risk of the convict being at large. This takes care of judicial apprehensions that unless physically liquidated the culprit may at some remote time repeat murder." We think that it is time that the course suggested in Dalbir Singh [(1979) 3 SCC 745 :1979 SCC (Cri) 848] should receive a formal recognition by the Court." (emphasis added)

9. In the case of V. Sriharan1, the Constitution Bench was dealing with the question which is quoted in paragraph 50, which reads thus:

> "50. Having thus noted the relevant provisions in the Constitution, the Penal Code, the Criminal Procedure Code and the DSPE Act, we wish to deal with the questions referred for our consideration in seriatim. The first question framed for the consideration of the Constitution Bench reads as under : (V. Sriharan case [Union of Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 India v. V. Sriharan, (2014) 11 SCC 1 :
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> (2014) 3 SCC (Cri) 1] , SCC p. 19, para 52) "52.1. Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 :
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> (2009) 3 SCC (Cri) 113], a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?"

10. While answering the question, the Constitution Bench (majority view) held that imprisonment for life in terms of Section 53 read with Section 45 of the IPC means imprisonment for the rest of the life of the convict. In such a case, right to claim remission, commutation etc. in accordance with law will always be available. Thereafter, in paragraph 105, the Constitution Bench held thus:

> "105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court." (emphasis added)

11. What is held by the Constitution Bench, cannot be construed in a narrow perspective. The Constitution Bench has held that there is a power which can be derived from the IPC to impose a fixed term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other Court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

12. In a given case, while passing an order of conviction for an offence which is punishable with death penalty, the Trial Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 Court may come to a conclusion that the case is not a 'rarest of the rare' case. In such a situation, depending upon the punishment prescribed for the offence committed, the Trial Court can impose other punishment specifically provided in Section 53 of the IPC. However, when a Constitutional Court finds that though a case is not falling in the category of 'rarest of the rare' case, considering the gravity and nature of the offence and all other relevant factors, it can always impose a fixed-term sentence so that the benefit of statutory remission, etc. is not available to the accused. The majority view in the case of V. Sriharan1 cannot be construed to mean that such a power cannot be exercised by the Constitutional Courts unless the question is of commuting the death sentence. This conclusion is well supported by what the Constitution Bench held in paragraph 104 of its decision, which reads thus:

> "104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed." (emphasis added)

13. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed-term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 of the IPC, shall be of a fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433A of Cr.P.C.

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14. Now, we come to the facts of the case. The facts are such, which will shock the conscience of any Court. The deceased woman, who was happily married, worked in a prominent company having an office at Electronic City, Bengaluru. Considering the nature of her duty, she had to work till late night or even till early in the morning. The company used to provide her conveyance in the form of a car. The company used to provide cars to employees on different designated routes. On the fateful day, the deceased left the office at 2:00 a.m. in a vehicle provided by the company. She used to take a vehicle plying on route no.131. On that day, she was informed by the appellant, who was the driver,

that the vehicle operating on route no.131 was not available. The appellant told her that she will have to travel by his vehicle operating on route no.405. The deceased, accordingly, sat in the car driven by the accused. The maternal uncle of the deceased lodged a complaint by stating that the deceased was missing. Ultimately, her dead body was recovered at the instance of the appellant. The clothes on the person of the deceased, footwear, etc. were found near the dead body. The prosecution successfully established the charge of the offence of rape, Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 punishable under Section 376 of the IPC as well as the offence under Section 366 of IPC. The appellant–accused was also convicted for the offence under Section 302. The life of the victim was cut short in this brutal manner at the age of 28 years.

15. In many leading cities, IT hubs have been established. In fact, Bengaluru is known as the Silicon Valley of India. Some of these companies have customers abroad and that is why the company staff members work at night. A large number of staff members in such companies are women. The issue is of safety and security of women working with such companies. We have perused the judgment of the Trial Court. It is true that the Trial Court could not have directed that the appellant shall not be released till the rest of his life. The Trial Court noted the fact that on the date of conviction, the age of the appellant was 27 years and he had a wife and small child as well as aged parents. Considering these factors along with the fact that this was the first offence committed by the appellant, the Trial Court found that the case was not falling in the category of the 'rarest of the rare' cases. We must hasten to add that the fact that the accused has no antecedents, is no consideration by Criminal Appeal @ S.L.P. (Crl.) No.3400 of 2017 itself for deciding whether the accused will fall in the category of the 'rarest of the rare' cases. It all depends on several factors. The State Government failed in its endeavour to get capital punishment by way of filing an appeal.

16. This is one case where a Constitutional Court must exercise the power of imposing a special category of modified punishment. The High Court expressed the view that the punishment imposed by the Trial Court was justified after considering the balance sheet of aggravating and mitigating circumstances. It is the duty of the Court to consider all attending circumstances. The Court, while considering the possibility of reformation of the accused, must note that showing undue leniency in such a brutal case will adversely affect the public confidence in the efficacy of the legal system. The Court must consider the rights of the victim as well. After having considered these circumstances, we are of the opinion that this is a case where a fixed□term sentence for a period of thirty years must be imposed.

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17. Accordingly, we modify the order of sentence of the Trial Court for the offence punishable under Section 302 of the IPC. We direct that the appellant shall undergo imprisonment for life. We also direct that the appellant shall be released only after he completes thirty years of actual sentence. The appeal is partly allowed to the above extent.

.....J. (Abhay S. Oka) .....J. (Rajesh Bindal) New Delhi;

March 28, 2023.