

DNYANESHWAR SURESH BORKAR

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v.

STATE OF MAHARASHTRA

(Criminal Appeal No. 1411 of 2018)

FEBRUARY 20, 2019

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[A. K. SIKRI, S. ABDUL NAZEER AND M.R. SHAH, JJ.]

Sentence/Sentencing: Death sentence – For killing a minor child – Held: The offence committed was brutal, but did not warrant death sentence as the accused was not a previous convict or a professional killer – At the time of commission of offence, he was 22 years of age – His jail conduct was also reported to be good – Mitigating circumstances being in favour of the appellant, in the interest of justice, death sentence is commuted to life imprisonment.

Partly allowing the appeal, the Court

HELD: Striking the balance between the aggravating and mitigating circumstances, mitigating circumstances are in favour of the accused while commuting the death sentence to life imprisonment. The mitigating circumstances in favour of the accused are that : the accused at the time of commission of the offence was aged of 22 years; that, by now, he has spent 18 years in the jail; that, while in jail, his conduct was good; that, the accused tried to become a civilized man and completed his graduation in B.A. from jail. He has tried to become reformatory; that, from the poems, written by him in the jail, it appeared that he realised his mistake which was committed by him at the time when he was of young age and therefore he can be reformed and rehabilitated. These details show there was a possibility that accused would not commit similar criminal acts. That the accused would not be a continuing threat to the society. In the facts and circumstances of the case, the decision of capital punishment is not warranted. [Para 6.1, 7] [866-C-H]

*Sunil v. State of Madhya Pradesh (2017) 4 SCC 393;
Bachan Singh v. State of Punjab (1980) 2 SCC 684;
Shyam Singh alias Bhima v. State of Madhya Pradesh
(2017) 11 SCC 265 – relied on.*

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Case Law Reference

(2017) 4 SCC 393	relied on	Para 4
(1980) 2 SCC 684	relied on	Para 8
(2017) 11 SCC 265	relied on	Para 8

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.1411 of 2018.

C From the Judgment and Order dated 05.05.2006 of the High Court of Judicature at Bombay in Confirmation Case No. 1 of 2005 with Criminal Appeal No. 618 of 2005.

Anand Grover, Sr. Adv., Himanshu Agarwal, Shadan Farasat, Ms. Jahnavi Sindhu, Ms. Shruti Narayan, Anshu Raj Singh, Ms. Tripti Tandon, Advs. for the Appellant.

D Ms. Deepa Kulkarni, Nishant Ramakantrao Katneshwarkar, Advs. for the Respondents.

The Judgment of the Court was delivered by

E **M. R. SHAH, J.** 1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 05.05.2006 passed by the High Court of Bombay in Confirmation Case No.1 of 2005 with Criminal Appeal No.618 of 2005 whereby the High Court has allowed the Confirmation Case filed by the State and dismissed the appellant's Criminal Appeal and confirmed the conviction for the offences punishable under Section 302 of the Indian Penal Code (IPC) and confirmed the death sentence awarded by the learned Sessions Court, the accused *viz* Dnyaneshwar Suresh Borkar has preferred the present appeal.

G 2. That the appellant herein-original accused was tried by the learned Sessions Court for the offences under Sections 302, 364 and Section 201 read with Section 34 of the IPC for having killed a minor child *viz* 'Rishikesh'. That the learned Additional Sessions Judge, Pune held the appellant herein guilty for the offences punishable under Sections 302, 364 and Section 201 read with Section 34 of the IPC and awarded the capital punishment. The conviction and sentence imposed by the learned Additional Sessions Judge have been confirmed by the High Court by the impugned judgment and order. Hence the present appeal.

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3. At the outset, it is required to be noted that Shri Anand Grover, learned Senior Counsel appearing on behalf of the appellant has fairly stated and conceded that so far as the conviction is concerned, the appellant is not challenging the same. However, he has prayed for to commute the capital punishment imposed by the learned Sessions Court, confirmed by the High Court. Therefore, as such the present appeal is now restricted to the sentence imposed by the learned Additional Sessions Judge of capital punishment confirmed by the High Court.

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4. Shri Grover has pointed out the mitigating circumstances which warrant commutation of death sentence to life imprisonment. It is vehemently submitted that accused, at the time of crime, was aged of 22-23 years. That he neither have any criminal record nor was he a hardened criminal. That he was a student studying in a college without any history or misdemeanour noted in the college or in the village of his residence. That he has a widowed mother and is the eldest child. By now he has undergone 18 years of sentence without remission and with remission it would be $23^{1/2}$ years. It is submitted that conduct of the accused in the jail is very good. It is submitted that the appellant's behaviour and conduct in jail has shown that though the appellant may have committed a crime when he was a young adult, he has used his incarceration to reflect on his actions and learnt from his mistakes. As an 18 years old boy, he was a young impressionable citizen trying to make something out of himself and in the process lost his way and made a fatal mistake. However, if there is anything the appellant's years in prison have shown, it is that he is by no means a hardened criminal and most definitely not beyond the pale of reformation. He further submitted that during the span of 18 years in the jail, not only he has learned a lesson but he has realized the mistake committed by him and he has tried to become a civilized person and that he has completed his graduation in Bachelor of Arts (B.A.) and has also undergone training of Gandhian thoughts undertaken by Gandhi Research Foundation, Jalgaon. It is further submitted that the poems written by the accused in the jail reflect his current mind of state and by which it can be said that he has realized the mistake committed by him at the time when he was just 22 years of age and that he is reformative. In view of the above submission and relying upon the decision of this Court in *Sunil v. State of Madhya Pradesh* (2017) 4 SCC 393, it is prayed to commute the death sentence to life imprisonment.

- A 5. Ms. Deepa Kulkarni learned Counsel appearing for the State has submitted that in view of the fact that the accused killed a minor child for ransom, which has ultimately affected the family members of the deceased and the manner in which the offence was committed was pre-planned, it is prayed not to show any leniency.
- B 6. We have heard the learned counsel appearing on behalf of the respective parties and the prayer made by the learned counsel appearing on behalf of the appellant to commute the death sentence to life imprisonment.
- 6.1 Having heard learned counsel appearing on behalf of the
- C parties on the sentence, we are of the opinion that, in the facts and circumstances of the case, capital punishment is not warranted. Striking the balance between the aggravating and mitigating circumstances, we are of the opinion that mitigating circumstances are in favour of the accused while commuting the death sentence to life imprisonment. The mitigating circumstances in favour of the accused are that :
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- the accused at the time of commission of the offence was aged of 22 years;
 - that, by now, he has spent 18 years in the jail;
 - that, while in jail, his conduct is good;
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- that, the accused has tried to join the society and has tried to become a civilized man and has completed his graduation in B.A. from jail. He has tried to become reformatory;
 - that, from the poems, written by him in the jail, it appears that he has realised his mistake which was committed by him at the time when he was of young age and that he is reformatory;
 - therefore the appellant can be reformed and rehabilitated.
7. The above details show there is a possibility that accused would not commit similar criminal acts. That the accused would not be a
- G continuing threat to the society. Considering the aforesaid facts and circumstances of the case and applying the law laid down by this Court in the case of Sunil (supra), we are of the opinion that in the facts and circumstances of the case, the decision of capital punishment is not warranted. We have considered each of the circumstance and the crime
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as well as the facts leading to the commission of the crime by the accused. Though, we acknowledge the gravity of the offence, we are unable to satisfy ourselves that this case would fall in the category of 'rarest of rare case' warranting the death sentence. The offence committed, undoubtedly, can be said to be brutal, but does not warrant death sentence. It is required to be noted that the accused was not a previous convict or a professional killer. At the time of commission of offence, he was 22 years of age. His jail conduct is also reported to be good.

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8. Considering the aforesaid mitigating circumstances and considering the decision of this Court in *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 as well as another decision of this Court in *Shyam Singh alias Bhima v. State of Madhya Pradesh* (2017) 11 SCC 265 and the decision of this Court in Sunil (Supra), we think that it will be in the interest of justice to commute the death sentence to life imprisonment.

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9. In view of the reasons stated above, present appeal is allowed in part. The conviction of the accused for the offences under Sections 302, 364 and Section 201 read with Section 34 of the IPC is confirmed. However, in the facts and circumstances of the case and in view of the reasons stated above, we commute the death sentence to life imprisonment. It will be open to the accused to apply for remission to the State Government which may be considered in accordance with law and on its own merits. Present appeal is disposed of accordingly in terms of the above.

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Devika Gujral

Appeal partly allowed.