NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1791-1795 OF 2014

CENTRAL BUREAU OF INVESTIGATION .....APPELLANT(S)

VERSUS

SAKRU MAHAGU BINJEWAR AND ORS. .....RESPONDENT(S) Etc. Etc.

WITH

CRIMINAL APPEAL NO. 1802 OF 2014

AND

CRIMINAL APPEAL NO. 1801 OF 2014

ORDER

SURYA KANT, J.

This is a set of cross-appeals preferred by (i) Central Bureau of Investigation (hereinafter referred to as "CBI"), and (ii) the convicts against the judgment dated 14th July, 2010 passed by the High Court of Judicature at Bombay, Nagpur Bench, Nagpur whereby five criminal appeals have been decided by way of a common order. While the CBI is aggrieved by the commutation of death sentence, the convicts (hereinafter referred to as the 'respondents–accused' in the lead case)

have questioned their conviction by the Special Court as affirmed by the High Court.

2) Firstly, a very brief reference to the facts may be made. Bhaiyyalal Sudam Bhotmange was residing on the outskirts of Khairlanji Village called as 'Toli' with his wife Surekha, two sons, Sudhir and Roshan and one daughter, Priyanka. They belong to Mahar caste (Scheduled Caste). Siddharth Gajbhiye (PW-18) of nearby Village Dhusala was their family friend. Siddharth Gajbhiye came to the house of Bhaiyyalal Sudam Bhotmange in the morning when Accused no. 2 (Sakru) met him and demanded back wages on account of which there arose a dispute and Siddharth Gajbhiye slapped Sakru. In the evening when Siddharth Gajbhiye was proceeding towards Kandri, he was assaulted by some villagers. Upon hearing the news of the assault, Surekha Bhotmange and Priyanka rushed to the spot and brought Siddharth Gajbhiye to their house. After two days, Siddharth Gajbhiye lodged a report at Andhalgaon Police Station pursuant to which Crime No. 52/06 was registered. Surekha Bhotmange gave a statement identifying the persons who had assaulted Siddharth Gajbhiye. On the basis of that statement, the attackers were arrested. They were released on bail on 29th September, 2006.

3) On 29th September, 2006 itself, at about 6.00 pm to 6.30 pm, a group of about 40 persons surrounded the house of Bhaiyyalal Sudam Bhotmange with some of them loudly implying that they were falsely implicated by Surekha. On seeing the crowd, Bhaiyyalal Sudam Bhotmange ran from the house whereas Surekha Bhotmange came out of the house and set fire to her cattle shed probably to ward off the attackers. Then Surekha also tried to escape but she was chased and caught by the accused. She was assaulted with sticks, bicycle chains and kicks and fists. Sudhir, son of Bhaiyyalal Sudam Bhotmange, tried to run away but he too was caught and assaulted in the same manner as his mother. His body was dragged near the body of Surekha who had already died. All the accused then searched for other family members of Bhaiyyala Sudam Bhotmange. They traced Roshan in the nearby cattle shed. Roshan also tried to run away towards the hand pump but was unfortunately caught and he was assaulted in a manner alike his mother and brother. The accused thereafter caught hold of Priyanka and beat her in the same fashion as described above. Roshan and Priyanka also met with the same fate and they too died at the spot. The accused persons, thereafter, arranged for a bullock cart; took all four dead bodies therein and threw them in a canal.

4) Bhaiyyalal Sudam Bhotmange, after running from his house, went

to Dhusala and met Sidharth and narrated the incident. Sidharth made a phone call to Andhalgaon Police Station. Thereafter, Bhaiyyalal Sudam Bhotmange, accompanied by the son of Siddharth, went to Andhalgaon Police Station but did not lodge any report as he was totally frightened. On the next morning, Bhaiyyalal Sudam Bhotmange went in search of his family members but could not trace them. He then went to Andhalgaon Police station and lodged the report. By this time, the police had received information that the dead body of a girl with a tatoo mark 'Priyanka' on the hand was found in a canal which was fished out. Bhaiyyalal Sudam Bhotmange identified the dead body of Priyanka. On the same day, a case under Sections 120B, 147, 148, 149, 302 and 201 of the Indian Penal Code (for short, "IPC") read with Section 3(1)(x) of the Act was registered.

5) The Sub-Divisional Police Officer arrested about eighteen persons on suspicion on 1st October, 2006 and on that very day, three more dead bodies of Surekha, Sudhir and Roshan Bhotmange were also found. Since the investigation was not being carried out properly, the State Government handed over the further probe to State C.I.D. However, not much progress could be made by the State C.I.D. also, hence vide Notification dated 20th November, 2006, the State Government requested Union of India to hand over the investigation of

the case to the C.B.I. The investigation was thereafter taken over by the CBI, who after recording statements of several witnesses including statements under Section 164 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code'), sought discharge of thirty six suspects and also submitted Charge-Sheet against the eleven accused for the offences punishable under Sections 147, 148, 149, 120B and 302 of the IPC and offences under the Act.

6) The Special Court at Bhandara held the respondents–accused guilty of committing the aforesaid offences and awarded death penalty to Accused nos. 2, 3 and 6 to 9 whereas Accused nos. 1 and 11 were sentenced with life imprisonment and Accused nos. 4, 5 & 10 were acquitted of all the offences. Accused nos. 1 to 3, 6 to 9 and 11 were not found guilty of committing any offence under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the "Act"). The aforementioned judgment gave rise to five cross-appeals at the instance of CBI as well as the convicts besides Reference Case No. 4 of 2008 for the confirmation of death sentence.

7) The High Court weighed the aggravating circumstances vis-a-vis mitigating circumstances as summarised in paragraphs 45 and 45A of

its judgment under appeal, and came to the conclusion that in the light of the tests laid down by this Court in ***Bachan Singh vs. State of Punjab***[1] and ***Machhi Singh and Others*** vs. ***State of Punjab***[2], no case of imposing death sentence on Accused Nos. 2, 3 and 6 to 9 was made out for the reasons that (i) the incident did not take place on account of caste stature but the root cause was that the accused felt that they were falsely implicated in the crime of beating Sidharth Gajbhiye by Surekha and Priyanka; (ii) there is no evidence to suggest that the accused have a criminal record.

8) The High Court, thereafter proceeded to hold that the most appropriate sentence to be inflicted upon the respondents–accused should be imprisonment for life with a condition that they shall not be released before completing 25 years of actual imprisonment including the period already undergone by them.

9) As regards the conviction of Accused nos. 1 to 3, 6 to 9 and 11 (who are in cross-appeals), the High Court firstly scrutinised the medical evidence and relying upon the statement of the Medical Officer, Dr. Avinash John Shende (PW-14) who conducted post-mortem on the dead bodies, it observed that the testimony of this witness could not be

1 (1980) 2 SCC684
2 (1983) 3 SCC470

shaken on any material aspect in the cross-examination. The High Court thereafter held that all the four victims died homicidal death. This conclusion was further corroborated by the inquest panchnama of the deceased persons.

10) The High Court then dissected the entire oral evidence, especially the statements of five eye-witnesses. The evidence of PW-2 (Mukesh Pusam) and PW-3 (Suresh Khandate) was tested on the touchstone of probabilities whereupon the High Court held that their statements inspired confidence and established the role of accused Nos. 1 to 3, 6 to 9 and 11. The High Court also found the version of PW-5 (Rashtrapal Narnavare), PW-18 (Siddharth Gajbhiye), PW-19 (Dinesh Dhande) and PW-22 (Premlal Walke) worth credible and fully corroborative of the medical evidence to uphold the conviction of the above-mentioned accused. The High Court nevertheless disbelieved PW-20 (Mahadeo Zanzad) and also did not deem it necessary to bank upon the extra judicial confession allegedly made by Accused No. 2 (Sakru) before PW-10 (Anil Lede) and by Accused No. 8 (Jagdish Ratan Mandlekar) before PW-16 (Sunil Lede).

11) Consequently, the High Court upheld the conviction of Accused Nos. 1 to 3, 6 to 9 and 11 though it allowed in part the appeal of

Accused Nos. 2,3 and 6 to 9 to the extent that their death sentence was commuted to imprisonment for life with the condition that they shall not be released before completing 25 years of actual imprisonment.

12) While the CBI has questioned the rejection of death reference by the High Court in the lead case, the respondents–accused therein have filed the cross-appeals assailing their conviction by the courts below.

13) The following questions, thus, fall for consideration in these appeals:

(i) Whether the High Court was justified in commuting the death sentence to life imprisonment with a condition that the respondents–accused shall have to undergo actual sentence of not less than 25 years?

(ii) Whether the case in hand falls in the category of rarest of the rare cases and the offence(s) committed are of the gravest nature, such that no punishment less than the death sentence will suffice?

(iii) Whether the conviction of appellants in the cross-appeals, namely, the respondents–accused in the main case is sustainable in law?

14) We have heard learned counsel for the parties at a considerable length on the questions formulated above and have also gone through

the relevant record with their assistance.

15) The Constitution Bench of this Court in ***Bachan Singh (supra),*** while upholding the constitutional validity of death penalty for murder as provided in Section 302 IPC and the sentencing procedure embodied in Section 354(3) of the Code, also elucidated the principles to be adhered to by the courts in the matter of award of death sentence. This Court emphatically expressed that the courts will discharge the onerous function with evermore scrutiny and care and will be guided by the legislative policy outlined in Section 354(3) of the Code, viz., for persons convicted of murder, life imprisonment is the 'rule' and death sentence an 'exception'. The court thus viewed that 'a real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought to be done save in the rarest of rare case when the alternative option is unquestionably foreclosed'.

16) In ***Machhi Singh and others (supra)***, this Court postulated the following two questions to be considered as a test to determine the 'rarest of rare' cases in which death sentence can be inflicted:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for

a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

17) ***Machhi Singh and others (supra)*** further summarised the guidelines emanating from ***Bachan Singh's (supra),*** though to be applied to the facts of each individual case and thus it ruled that:

> "(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.
>
> (ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.
>
> (iii) Life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.
>
> (iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

18) It goes without saying that the parameters evolved in ***Bachan Singh's (supra)*** and ***Machhi Singh's (supra)*** have been consistently followed by the Courts depending upon the facts and circumstances of each case wherever the question of imposition of death sentence has arisen.

19) On an indepth consideration of the facts and the circumstances in which the ghastly crime of taking away the lives of four innocent persons took place, we find that the High Court was fully conscious of the binding principles illustratively laid down by this Court in the cited decisions and after carefully drawing the balance-sheet of 'aggravating' and 'mitigating' circumstances, the High Court rightly deemed it appropriate that the instant case does not fall amongst the exceptional category of 'rarest of the rare' cases where the extreme penalty of death and death alone must be inflicted.

20) It needs no elaborate discussion that the judicial discretion conferred upon a Court in the matter of awarding sentence is an onerous duty which has to be exercised keeping in view the settled and binding dictates including the Doctrine of Proportionality for assigning justifiable reasons to award death penalty and also to keep in mind the Doctrine of Reform and Rehabilitation. [Ref: ***Santosh Kumar***

Satishbhushan Bariyar Vs. State of Maharashtra[3]].

21) We cannot be oblivious of the fact that the High Court in the instant case was alive to the question of the adequacy of sentence and has not commuted the death sentence into life imprisonment, as understood in the ordinary parlance to be a term of 14 years imprisonment only. The High Court, following the evolution of a new concept of sentencing conceptualized by this Court in ***Swamy Shraddananda (2) Alias Murali Manohar Mishra vs. State of Karnataka[4]*** and several other previous decisions, has held that the respondents–accused shall not be released from prison unless they complete 25 years of actual sentence.

22) This Court in ***Swamy Shraddananda (2) (supra)*** has held that the punishment of imprisonment for life "means a sentence of imprisonment for the convict in the rest of his life". It was explained that Section 57 of the IPC does not in any way limit the punishment of imprisonment for life to a term of 20 years. After explaining the true import of Sections 432, 433 and 433A of the Code, the Court very aptly explained the two aspects of sentencing. In a given case, the sentence may be excessively and unduly harsh or it may be highly

3 (2009) 6 SCC 498
4 (2008) 13 SCC 767

disproportionately inadequate where the Court comes to the conclusion that the case falls short of the 'rarest of the rare' category and thus may feel reluctant in endorsing the death sentence. It was thus viewed that a far more just, reasonable and proper course would be to expand the options and to take over, as a matter of fact what lawfully belongs to the court, namely, the formalization of 'special category' of sentence of more than 14 years' actual imprisonment.

23) The doubts, if any, as regards to the powers of the High Court or this Court in awarding a 'special sentence' as a substitute for death sentence, have been set at rest by the Constitution Bench in ***Union of India Vs. V. Sriharan Alias Murugan and others[5],*** affirming the view taken in ***Swamy Shraddananda (2) (supra)*** and holding that:

> "105. ...xx…...xx…….xx…. 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 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 convicts 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.
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> 106. Viewed in that respect, we state that the ratio laid down in Swamy Shraddananda (2)4 that a special category of sentence; instead of death; for a term exceeding 14 years and put that category beyond application of remission is well

5 (2016) 7 SCC 1

> founded and we answer the said question in the affirmative. We are, therefore, not in agreement with the opinion expressed by this Court in ***Sangeet vs. State of Haryana*** that the deprival of remission power of the appropriate as not permissible is not in consonance with the law and we specifically overrule the same."

24) The recourse followed in the case in hand by the High Court in substituting the death penalty by imposing the sentence for a term not less than 25 years' actual imprisonment has got the seal of approval of this court in ***V. Sriharan (supra)*** case, which has been consistently and continuously followed in a catena of later decisions also. [Ref. (i) ***Raju Jagdish Paswan vs. The State of Maharashtra ; 2019 (1) SCALE 735; (ii) Jagdish Vs. State of Madhya Pradesh; 2019(3) SCALE 888 & (iii) Sachin Kumar Singhraha vs. State of Madhya Pradesh; 2019(5)SCALE 39]***

25) The cited decisions have indeed more intuitive and persuasive value in the instant case for the reason that the death sentence in those cases was commuted regardless of its confirmation by the High Court(s). In the present case, the High Court itself did not find it a fit case to affirm the death sentence. We, therefore, see no reason to take a view different than the High Court. Question Nos. (i) and (ii) stand answered accordingly.

26) Adverting to the cross-appeals preferred by the respondents–

accused, their Learned Counsel strenuously urged that it is a fit case for extending the benefit of doubt for:—(i) the statements of eye-witnesses (PW-2, PW-3, PW-17, PW-19 and PW-22) do not inspire confidence and are full of material inconsistencies and contradictions; (ii) there has been inordinate and unexplained delay of 22-26 hours in lodging the FIR by Bhaiyyalal Sudam Bhotmange (PW-17); (iii) there is also an unexplained delay in recording the statements of witnesses, especially the eye-witnesses which is fatal to the prosecution case; (iv) the medical evidence is at variance with the ocular testimony, hence no reliance can be placed on the statements of eye-witnesses; and that (v) the prosecution evidence is tainted and full of discrepancies.

27) Having pondered over the above summarized submissions, we do not find any substance therein. We say so for the reasons that Dr. Avinash John Shende (PW-14) who conducted the post-mortem on the dead bodies of the victims found multiple ‘external’ injuries sustained by them as reproduced by the High Court in paragraphs 15 to 16C of the impugned judgment. All those injuries were ante-mortem and each victim had suffered two or more injuries on vital parts of their respective bodies. All such injuries were found sufficient enough to have caused death in the ordinary course of nature.

On ‘internal’ examination of the dead bodies of the victims, PW-14 found hemorrhage under the scalp in the cases of all the victims, caused mostly due to head injuries. In the case of Surekha Bhotmange, the medical evidence further suggested that some of the injuries were caused by sharp edged weapons. His evidence coupled with the inquest panchanama (Exhibits 86, 87, 88 and 91), unequivocally establishes that all the four victims died a homicidal death.

28) There is an eye-witness account consisting of statements of PW-2, PW-3, PW-19, PW-20 and PW-22. Each one of them had witnessed the occurrence and identified most of the assailants. They also elaborated as to how the four hapless victims were brutally killed with premeditated intent. Both the courts below have evaluated the statements of eye-witnesses with specific reference to the minor discrepancies except that the High Court has declined to rely upon the statement of Mahadeo Zanzad (PW-20), and rightly so, as he had made a false statement to the Magistrate for which he was prosecuted and convicted. Even after discarding the version of this witness in entirety there is overwhelming oral evidence on record, the testimony whereof could not be impeached in cross-examination, to establish the guilt of the respondent–accused beyond any doubt. There is no reason to falsely implicate the respondents–accused, more so, when there is

not even a whisper that any of the witnesses had an axe to grind against the convicts. Similarly, the statement of Bhaiyyalal Sudam Bhotmange (PW-17) with respect to the motive of the crime cannot be discarded merely because he is the husband or the father of the victims. Relationship, *per-se,* is not a factor to affect the credibility of a witness.

29) The delay of some hours in registration of the FIR has also been convincingly explained by the complainant—Bhaiyyalal Sudam Bhotmange (PW-17) and Siddharth Gajbhiye (PW-18). Where the prosecution has satisfactorily explained the cause of delay in the registration of FIR, there is no rhyme or reason for a court to look at the prosecution case with suspicious eyes. The plea of so-called delay in recording the statements of the witnesses, is to be merely noticed and rejected. It has come on record that the investigation was not carried out properly by the local police, therefore, the State Government handed over the case to the State CID. No effective progress could be made by the State CID also, hence the investigation was entrusted to CBI. It is thereafter that the statements of several witnesses including under Section 164 of the Code were recorded. The long drawn process has caused no prejudice to the respondents–accused.

30) There are concurrent findings of facts by the Special Court as well as the High Court holding Accused Nos. 1 to 3, 6 to 9 and 11 guilty. Regardless of the restrictive scope of further re-appraisal and re-appreciation of the evidence, we have minutely scanned the ocular as well as medical evidence and are of the firm view that there is no scope of deviation from the well-reasoned conclusions drawn by the courts below. No interference by this Court is, thus, warranted.

31) In the light of the above scrutinous analysis, we do not find any ground to interfere with the judgments under appeal. Consequently, the appeals preferred by the CBI as well as the convicts are, hereby, dismissed.

..... J.
(ARUN MISHRA)

..... J.
(BHUSHAN RAMKRISHNA GAVAI)

..... J.
(SURYA KANT)

NEW DELHI
DATED : 24-05-2019