

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NOS.1391-1393 OF 2018**

[Arising out of SLP (Crl.) Nos. 6454-6456 of 2014]

Vijay Kumar

.. Appellant

Versus

The State of Jammu & Kashmir

.. Respondents

**J U D G M E N T**

Leave granted.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 06.03.2014 passed by the High Court of Jammu and Kashmir at Jammu in Criminal Appeal No.05 of 2010, Crl.M.A.No.06 of 2010 and C/W Confirmation No.23 of 2009, the original accused has preferred the present appeals.

2. That the learned trial Court held the accused guilty for the offence punishable under Section 302 as well as for

offences punishable under Sections 307, 326, 324 and 448 of the IPC. That the learned trial Court, while convicting the accused for the offence punishable under Section 302 of the IPC, imposed the death sentence. The learned trial Court also sentenced the accused-appellant to undergo R.I. for 10 years and a fine of Rs.10,000/- for the offence punishable under Section 307 of the IPC and in default of payment of fine to further undergo six months' S.I. The learned trial Court also sentenced the appellant-accused to undergo 5 years R.I. and a fine of Rs.500/- under Section 326 of the IPC and in default of payment of fine to undergo 3 months' S.I. The learned trial Court also sentenced the accused for one year R.I. for the offence punishable under Section 324 of the IPC and S.I. for one year for the offence punishable under Section 448 of the IPC. The learned trial Court also ordered that all the sentences to run concurrently.

3. That by the impugned judgment and order, the High Court has confirmed the conviction and sentence imposed by the learned trial Court, while convicting the accused-appellant for the offences punishable under Sections 302,

307, 324, 326 and 448 of the IPC. Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High Court in confirming the death sentence while convicting the accused under Section 302 of the IPC and convicting the accused for the offences under Sections 307, 324, 326 and 448 of the IPC, the original accused has preferred the present appeal.

4. At the outset, it is required to be noted that, as such, by the order dated 19.08.2014, this Court directed to issue notice only on the question of sentence. Therefore, as such, in the present appeals, now the only question which is required to be considered by this Court is the sentence imposed by the learned trial Court and confirmed by the High Court, while convicting the accused for the offences under Sections 302, 307, 324, 326 and 448 of the IPC.

4.1 Even otherwise, on a close reading of the evidence on record as well as the judgments of the learned trial Court and the High Court, we are satisfied that both the Courts had sufficient reasons to conclude that the appellant was guilty for the offence under Section 302 of the IPC. On a close

reading of the evidence on record, we are fully satisfied that, in the present case, the prosecution has been successful in proving the case against the accused for the offences for which the accused has been convicted and sentenced. To bring home the charge, the prosecution has examined as many as 27 witnesses, including the injured eye-witnesses who have fully supported the case of the prosecution. That at about 1.15 a.m. (in the midnight) of 20.09.2009, the accused killed/committed murder of three minor children and also seriously caused injury to Jia Lal (PW-3), Kamlesh Kumari (PW-4) and also to Gulshan (the 4<sup>th</sup> minor child). In any case, as observed above, this Court issued the limited notice in the present appeals on the question of sentence only, vide order dated 19.08.2014 and, therefore, the only question posed before this Court in the present appeals now is whether in the present circumstances of the case, the learned trial Court was justified in imposing the death sentence while convicting the accused under Section 302 of the IPC, as confirmed by the High Court by the impugned judgment and order?

4.2 Shri A.T.M. Ranga Ramanujam, learned senior counsel appearing on behalf of the appellant has vehemently submitted that, in the facts and circumstances of the case, both the learned trial Court as well as the High Court had committed grave error in imposing the death sentence while convicting the accused for the offences punishable under Section 302 of the IPC.

4.3 Relying upon the following decisions of this Court, it is vehemently submitted by the learned senior counsel appearing on behalf of the appellant that the present case cannot be said to be the rarest of rare case warranting the death sentence. In support, he has relied upon the following decisions of this Court:-

- 1) ***Bachan Singh vs. State of Punjab*** (1980) 2 SCC 684,
- 2) ***Machhi Singh vs. State of Punjab*** (1983) 3 SCC 470,
- 3) ***Swamy Shraddhananda (2) vs. State of Karnataka*** (2008) 13 SCC 767.

5. The learned senior counsel appearing on behalf of the appellant has vehemently submitted that both the learned

trial Court as well as the High Court have not properly appreciated the mitigating circumstances in favour of the accused. It is vehemently submitted that the accused is not a previous convict or a professional killer.

6. *Per contra*, Ms. Fauzia Shakil, learned counsel appearing on behalf of the State has supported the impugned judgment and order passed by the High Court. It is vehemently submitted that both the learned trial Court as well as the High Court have in detail considered the mitigating circumstances pointed out by the accused. However, considering the fact that the accused committed the murder of three minor children who, as such, were sleeping and also caused the serious injury on the 4<sup>th</sup> minor child and also caused serious injuries to Jia Lal and having found that the act of the accused was brutal and, thereafter, after considering the balance sheet of the aggravating and mitigating circumstances, the learned trial Court has imposed the death sentence, which is rightly confirmed by the High Court. It is vehemently submitted by the learned counsel for the appellant that the present case can be said to

be the rarest of rare case warranting death sentence. Relying upon the decision of this Court in the case of ***Union of India vs. V. Sriharan*** (2016) 7 SCC 1 at para 87, it is requested to dismiss the present appeals. In the alternate, it is submitted that if this Court is of the opinion that the present case may not fall within the category of rarest of rare case and the death sentence is to be substituted to life imprisonment, it may be suitably observed that the life means till the natural death of the appellant and that the appellant shall not be entitled to remission.

7. Having heard the learned counsel appearing on behalf of the accused as well as the State on the question of death sentence imposed by the learned trial Court and confirmed by the High Court and considering the totality of the facts and circumstances of the case and the decisions in the cases of ***Bachan Singh*** (supra) and ***Machhi Singh*** (supra) and in ***Swamy Shraddananda*** (supra), we are of the opinion that the present case does not fall within the category of rarest of rare case warranting death sentence. We have considered each of the circumstances of the crime 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 the case would fall in the category of rarest of rare cases. The offence has undoubtedly been committed which can be said to be brutal but does not warrant death sentence. It is required to be noted that the accused, as such, is not a previous convict or a professional killer. There was a matrimonial dispute and the accused was of the opinion that Jia Lal and his wife Kamlesh Kumari refused to extend any helping hand to the accused for bringing his wife back. From the material on record, it appears that, that was the motive for the accused to commit the offence and eliminate the family of Jia Lal. Jia Lal was the co-brother and Kamlesh Kumari was the sister-in-law. As has been born out from the record, they were the persons who were instrumental in arranging the marital ties of the accused. Considering the aforesaid mitigating circumstances and the motive which led to commit the offence by the accused and considering the decisions of this Court in the cases of **Bachan Singh** (supra) and **Machhi Singh** (supra) and in **Swamy Shraddhananda** (supra), we think that it will



be in the interest of justice to convert the death sentence into life sentence till the death of the accused and without remission. So far as imposing the sentence of life imprisonment without remission is concerned, we are supported by the decision of this Court in the case of **V. Sriharan** (supra) by which while approving the earlier decision in the case of **Swamy Shraddananda** (supra), this Court has held that, while converting the death sentence to life, it can be said to be a special category of sentence and, therefore, imposing the life sentence without remission is permissible. In the case of **V. Sriharan** (supra), this Court in paragraph 178 held as under:

“178. We hold that the ratio laid down in *Swamy Shraddananda (2)* [*Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767: (2009) 3 SCC (Cri) 113] that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative.”

8. Thus, while confirming the impugned judgment and order passed by the High Court convicting the accused for

the offence punishable under Sections 302, 307, 324, 326 and 448 IPC, the following order is made:

“These appeals arising out of the impugned judgment and order dated 06.03.2014 passed by the High Court in Criminal Appeal No.05 of 2010, Cr.M.A.No.06 of 2010 and C/W Confirmation No.23 of 2009 filed by the original accused are disposed of by commuting the death sentence to one of life imprisonment and the death sentence imposed by the trial Court and, subsequently, confirmed by the High Court, is converted into life i.e. till the natural death of the appellant. It is specifically clarified that the appellant shall not be entitled to remission.”

9. The present appeals are partly allowed in the aforesaid terms.

.....J.  
(N. V. RAMANA)

.....J.  
(MOHAN M. SHANTANAGOUDAR)

.....J.  
(M. R SHAH)

New Delhi,  
November 14, 2018