NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 814 OF 2023

Shiv Mangal Ahirwar **...Appellant**

versus

State of Madhya Pradesh **...Respondent**

J U D G M E N T

ABHAY S. OKA, J.

1. Heard learned counsel for the parties.

FACTUAL ASPECTS

2. This is a case where, on 15th March 2006, the present appellant, along with other co-accused, committed the murder of three persons. According to the case of the prosecution, the incident occurred at about 7 p.m. on 15th March 2006 at Village Khaira Kasar, PS Jujharnagar. It is alleged that the accused persons

formed a wrongful assembly with the common object of murdering Rambabu, Dileep and Babbu. The accused were armed with deadly weapons, such as a country-made pistol, lance, javelin, battle-axe, axe and sticks. Apart from killing three persons, they caused injuries to one Bhola and Smt. Shanti. The Sessions Court convicted the appellant for the offence under Section 302, read with Section 149 (on three counts) of the Indian Penal Code, 1860 (for short, 'the IPC'). Three other co-accused were also convicted for the same offence. All the accused were sentenced to undergo life imprisonment with a direction that their imprisonment shall continue for the rest of their lives. In the appeal preferred by the present appellant, the High Court has confirmed the sentence.

3. The learned counsel appearing for the appellant has challenged the conviction on merits by contending that the identification of the accused is doubtful. His submission is that as far as the appellant is concerned, there is no convincing evidence of his involvement in the offence. His other submission is that at the time of the commission of the offence, the age of the appellant was about 20 years, and on the date of the order of conviction passed by the Trial Court on 20th April 2010, his age was about 25 years. He submitted that the present age of the

appellant is 38 years. He submitted that in view of the decision of the Constitution Bench in the case of ***Union of India v. V. Sriharan alias Murugan & Ors.***[1], the Sessions Court had no jurisdiction to direct that the appellant shall undergo imprisonment for the rest of his life. His submission is that such a power could have been exercised only by the Constitutional Courts when there was a question of commuting the death sentence.

4. The learned Additional Advocate General appearing for the respondent – State submitted that it is a case of the brutal murder of three persons at a time. His submission is that the appellant and other co-accused were carrying deadly weapons with the intention of killing three victims. He submitted that both the Courts believed the testimony of the three prosecution witnesses, namely Shanti Bai (PW-3), Sangeeta (PW-4) and Guddi Bai (PW-7). He would, therefore, submit that no interference is called for. As regards the sentence, his submission is that the High Court always had the power to impose a modified punishment which will run through the life of the appellant. After an application of mind, the High Court has confirmed the view taken by the Sessions Court, as far as the sentence of the appellant is concerned. He pointed out that the trial of the five other

1 2016 (7) SCC 1

accused was separated. This Court has confirmed their conviction and sentence by order dated 23rd September 2022 in S.L.P. (Crl.) Diary No.16999 of 2022.

5. We have perused the judgments of both the Courts and depositions of material witnesses and, in particular, the evidence of PW-3, PW-4 and PW-7, who were the eye-witnesses. We find that in their cross-examination, no material is brought on record to discredit their version. After appreciating the evidence of these three eyewitnesses, the Sessions Court and the High Court found them to be trustworthy and therefore, their evidence has been relied upon.

6. After having perused their evidence, we find no reason to take a contrary view. Now, the only question which survives is about the sentence.

7. This Court, in the case of ***Shiva Kumar alias Shiva alias Shivamurthy v. State of Karnataka***[2], had an occasion to deal with the decision of the Constitution Bench of this Court in the case of ***V. Sriharan***[1]. This Court also considered its earlier decision in the case of ***Swamy Shraddananda (2) alias Murali Manohar Mishra v. State of Karnataka***[3]. While considering the

2 2023 SCC Online SC 345
3 2008 (13) SCC 767

law laid down by the Constitution Bench in the case of ***V. Sriharan***[1], in ***Shiva Kumar's case***[2], this Bench in paragraphs 11 to 13 held thus:

> "**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.
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> **12. In a given case, while passing an order of conviction for an offence which is punishable with death penalty, the Trial 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. Sriharan***[1] 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 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."**

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."

(emphasis added)

8. Though the Sessions Court could not have imposed a modified sentence by directing that the appellant shall be imprisoned for the rest of his life, the High Court could have certainly imposed such a punishment.

9. We find from the record that at the time of the commission of the offence, the age of the present appellant was only 20 years. When the appellant was convicted by the Sessions Court, his age was 25 years. As of now, he has undergone an actual sentence for a period of about 15 years and 3 months. The finding of the Trial Court is that there was no material placed on record by the prosecution to show that the appellant was involved in any other offence. However, this is a case of a very brutal offence committed by a group of accused who were armed with deadly weapons. They have killed three persons at a time and injured two.

10. Looking at the gravity of the offence, the High Court was justified in imposing a fixed-term sentence. The question is whether the appellant should be directed to undergo imprisonment till the end of his life.

11. After weighing all the relevant factors indicated in paragraph 9 above, we are of the opinion that a modified

sentence for a period of 30 years deserves to be imposed on the appellant.

12. Hence, we pass the following order:-

i. The conviction of the appellant, under the impugned judgments, is upheld. However, the order of sentence is modified. We direct that the appellant shall undergo rigorous imprisonment for a fixed period of 30 years.

ii. The appellant will not be entitled to claim any statutory remission under the Code of Criminal Procedure, 1973.

13. The appeal is, accordingly, partly allowed with no order as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Rajesh Bindal)

New Delhi;
April 13, 2023.