

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 135 OF 2021
(Arising out of SLP(Crl.) No(s).1836 of 2020)

GAURI SHANKAR

...APPELLANT

VERSUS

STATE OF PUNJAB

...RESPONDENT

J U D G M E N T

Rastogi, J.

1. Leave granted.
2. The sole accused appellant faced trial for committing the murder of two minor children aged 4 years and 2 years in brutal manner by administering celphos to them. After being convicted by learned trial Judge for offence under Section 302 IPC by judgment dated 1st July, 2013 and confirmed by the High Court on appeal

preferred at his instance being dismissed by judgment impugned dated 13th December, 2018, the appellant has preferred this appeal.

3. The case of the prosecution was that complainant Anju was married with Ajay Kumar, S/o Sajjan Singh and from this wedlock, she had two children, namely, Vijay Kumar @ Bittu aged 4 years and Muskan aged 2 years. Ajay Kumar was addicted to liquor and because of intoxicants, he died. The accused appellant was residing on rent in the neighbourhood of complainant Anju. Accused appellant allegedly enticed Anju and brought her with her two children to Punjab where the fateful incident took place. The appellant used to quarrel with Anju and frequently beat the children and used to proclaim that he did not like the children as they were not his own and that some day he would kill both of them. About a month and half before the incident, he had fractured the arm of Vijay @ Bittu, deceased son of Anju. On the fateful day of 18th March, 2013, at about 7.30 a.m., Anju went to the temple for prayers. At that time, the children were sleeping in the house and the accused appellant was present. When Anju returned from the temple, she saw both her children lying on the

cot struggling for life. The accused appellant went away telling the complainant Anju that he had given poison to both the children. The complainant Anju raised alarm and with the assistance of Jagdev Singh, PW-2, the landlord and his nephew Kamaldeep Singh, PW-3, both the children were taken to Civil Hospital, Mandi, Gobindgarh, where they were declared dead. On intimation to the police, statement of the complainant Anju was recorded and FIR was registered. The bodies were sent for post- mortem examination. The viscera was sent for chemical examination. After completion of investigation, challan was presented in the Court.

4. Initially, the appellant pleaded guilty and did not claim trial. He admitted that he administered poison to the children as a result of which the children died within 15-20 minutes. However, after the examination of the complainant Anju (PW-1) and the landlord Jagdev Singh (PW-2), he moved an application dated 14th May, 2013 stating that he had no concern with the crime and that he had been misled by Government counsel to make a wrong statement admitting his guilt.

5. The prosecution examined number of witnesses including Anju PW-1, the complainant, whose both children were murdered by the accused appellant. The statement of PW-1 Anju was duly supported by PW-2 Jagdev Singh and PW-3 Kamaldeep Singh who are the landlord and his nephew where the complainant Anju along with the accused appellant were residing at the time of the incident.

6. Apart from other prosecution witnesses duly supported by the Histopathology reports Exhibits P-8 and P-9, the cause of death in case of both the children was found to be Aluminium Phosphide insecticide ingestion. The statement of the accused appellant was recorded under Section 313 CrPC where he denied having committed the crime, but did not lead any evidence in defence.

7. Learned trial Judge finally held the appellant guilty of an offence under Section 302 IPC and punished him with imprisonment for life which would mean remainder of natural life and fine of Rs.5000/- by judgment dated 1st July, 2013.

8. On the appeal being preferred by the appellant, the High Court revisited the record in totality and confirmed the finding of guilt

recorded by the learned trial Judge by judgment dated 13th December, 2018 which is impugned before us in the instant appeal.

9. At the motion stage when the matter came up before this Court on 20th February, 2020, the plea which was raised by learned counsel for the appellant was that on the date of framing of charges, i.e., 29th April, 2013, the statement of material prosecution witnesses PW-1 and PW-2 was recorded without affording reasonable opportunity to the accused appellant to cross examine the prosecution witnesses as mandated under Section 230 of Code of Criminal Procedure, 1973. After the notice was served, counter affidavit has been filed by the respondent and the fact noticed by us in our Order dated 20th February, 2020 has been explained in paragraph 13 of the counter affidavit that after framing of charges, the appellant pleaded guilty, however following the rule of prudence, the trial Court decided to examine four witnesses before recording the conviction, and accordingly PW-1 and PW-2 were examined first and perusal of their statements, i.e. Annexure P-2 and Annexure P-3 would show that the opportunity was granted

to the accused appellant to cross-examine the witnesses on 29th April, 2013 and in fact cross-examination was done by counsel for the accused appellant. However, after cross-examination of these two witnesses, the appellant pleaded to claim trial on 14th May, 2013 and thereafter the evidence of other prosecution witnesses was recorded. At no stage, the appellant moved any application for recalling the witnesses and to be more specific, of PW-1 and PW-2 and this issue has been raised for the first time before this Court.

10. After taking note of the statement of fact which has been stated by the respondent in the counter affidavit and paragraph 13 in particular, of which the reference has been made and with assistance of the learned counsel, we have gone through the material available on record and find no error in the finding of guilt being recorded by the trial Court and confirmed by the High Court in the impugned judgment which calls for our interference.

11. Learned counsel for the appellant at this stage submitted that while convicting the accused appellant for offence under Section 302 IPC, he has been sentenced with imprisonment for life which would mean a remainder of natural life which was not in the

domain of the trial Court, and this could have been exercised only by the High Court or by this Court. In support of his submission, learned counsel has placed reliance on para 105 and 106 of the Constitution Bench judgment of this Court in **Union of India Vs. V. Sriharan @ Murugan and Others** 2016(7) SCC 1, which is extracted hereunder:-

“**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 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.

106. Viewed in that respect, we state that the ratio laid down in *Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 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 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 v. State of Haryana* (2013) 2 SCC 452 that the deprivation of remission power of the appropriate Government by awarding sentences of 20 or 25 years or without any remission as not permissible is not in consonance with the law and we specifically overrule the same.”

12. Taking assistance thereof, learned counsel for the appellant submits that at least judgment of the trial Court in imposing

punishment of life imprisonment to the remainder of natural life needs to be interfered by this Court.

13. Per contra, learned counsel for the respondent submits that imprisonment for life could indeed be imposed by the learned trial Judge and since this question was not raised by the appellant before the High Court and has been raised for the first time before this Court, it can be considered as to whether for such a heinous crime which the appellant has committed, at least this Court may exercise its power and approve the sentence which has been imposed taking note of what has been observed by this Court in the judgment referred to supra.

14. We find substance in what being urged by learned counsel for the respondent, and after the accused has been held guilty for offence under Section 302 IPC, and sentenced to imprisonment for life could indeed be imposed by the learned trial Judge under its judgment dated 1st July, 2013.

15. On the legal principles, the learned counsel for the appellant appears to be correct, but we have taken note of the prosecution

case in totality with motive of the crime that he was living in a relationship with the complainant Anju who had two children from the previous marriage, and had taken away the life of two minor innocent children at the very threshold of their life and murdered in a brutal manner by administering cephos to them has been established. It is true that the punishment of remainder of natural life could not have been imposed by the learned trial Judge but after looking into the entire case, we consider it appropriate to confirm the sentence of imprisonment for life to mean the remainder of natural life while upholding the conviction under Section 302 IPC.

16. Consequently, the appeal fails and is accordingly dismissed.

17. Pending application(s), if any, stand disposed of.

.....J.
(INDU MALHOTRA)

.....J.
(AJAY RASTOGI)

NEW DELHI
FEBRUARY 16, 2021

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