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IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
K.M. JOSEPH; J., S. RAVINDRA BHAT; J.
CRIMINAL APPEAL NO(S). 2276 & 2277 OF 2022; APRIL 21, 2023
VIKAS CHAUDHARY *versus* **THE STATE OF DELHI**

Indian Penal Code, 1860 - Trial Court has no jurisdiction to sentence the accused to life imprisonment for the remainder of their life, or life imprisonment without entitlement to remission for a fixed term, in serious crimes which carry the death penalty apart from life sentence as a sentencing option - The court took note that the Apex Court in *Union of India vs Sriharan @ Murugan & Ors., [2015] 14 SCR 613*, has approved a special category of sentence for serious crimes where death sentence is substituted with life imprisonment for a fixed number of years which may be longer than the minimum sentence specified in Section 433A of the Code of Criminal Procedure, 1973 (CrPC) and may extend to considerably long periods, such as 30 years. However, Sriharan (2015) reserves the power to impose such special or fixed term sentences only with the High Courts and the Supreme Court.

Death Penalty - Mitigating Circumstances - Wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, it should carry out the exercise of placing the materials, in terms of *Manoj vs State of MP*, for evaluation.

For Appellant(s) Ms. Meenakshi Arora, Sr. Adv. Mr. Mohit D. Ram, AOR Mr. Krishan Kumar, Adv. Ms. Sunita Arora, Adv. Ms. Monisha Handa, Adv. Mr. Rajul Shrivastav, Adv. Mr. Shivam Bedi, Adv. Mr. Anubhav Sharma, Adv. Mr. Gopal Jha, AOR

For Respondent(s) Mr. Chirag M. Shroff, AOR Mr. Shailendra P. Singh, Adv. Mr. Rishabh Shivhase, Adv.

J U D G M E N T

S. RAVINDRA BHAT, J.

1. The limited question on which this Court issued notice[1] was to consider the correctness of the sentence imposed on the accused/appellants. The appellants' grievance is with the imposition of a fixed term sentence of 30 years, without remission, by the trial court, which was affirmed by the impugned judgment[2] passed by the Delhi High Court.

2. The facts of the case briefly are that the deceased (aged 18-20 years), had been kidnapped for ransom on 18.01.2003. On the same day itself, he was killed by strangulation, and the body was burnt, to eliminate evidence. The deceased's father (complainant) filed a 'missing person report' with the police on 18.01.2003 itself, after which he received six ransom calls (on 19.01.2003, 20.01.2003, 01.02.2003, 02.02.2003, 10.03.2003, 11.03.2003) from different people, seeking money in exchange for information about his son's whereabouts, and his safety. By tracking of call records, a link was established first with A-1, who disclosed involvement of A-2 and A-3. A gold chain belonging to the deceased, and a motorcycle on which the deceased was last seen, were recovered at the behest of A-1; the deceased's wristwatch, and a black muffler used to strangle him, were recovered from A-2. A-1's disclosure also led to recovery of the car

[1] Order dated 09.05.2019, in SLP (Crl) D. No. 5964/2019, with Special Leave to Appeal (Crl) No. 3129/2019.
[2] Order dated 31.10.2018 passed by the Delhi High Court in Crl. Appeal No. 319/2018.

used to abduct, and in which the deceased had been strangulated. Evidence collected against them included voice samples to compare ransom call recordings, and identification by PW-7, PW-2, and others as to the deceased last being seen with them. On 09.05.2003, the three accused persons disclosed where the dead body had been dumped, but the same could not be recovered. Upon investigation, it was found that another police station, in which jurisdiction the *nala* fell, had recovered a half-burned dead body on 19.01.2003 itself (i.e., one day after abduction). This was identified by the father, to be that of the deceased. 41 prosecution witnesses were examined over the course of 11 years, and 8 defence witnesses.

3. The trial court[3] convicted the three accused persons for the commission of offence under Sections 302, 364A, 201, read with Section 120B IPC. A-1 and A-2 (present appellants) were also convicted under Section 411, with A-1 additionally being convicted for offences punishable under Sections 420, 468 and 471 IPC. They were sentenced to life imprisonment for the remainder of their natural life, and an additional condition was imposed on A-1 and A-2 - that they would not be entitled to any parole, remission, or furlough, before completing 30 years of imprisonment. They were also sentenced to each pay ₹ 2,10,000 as fine, and ₹ 4,00,000 as compensation to the victim's family.

4. The High Court, by its common impugned judgment, on an appreciation of the facts at hand, acquitted A-3 Joginder @ Mintu of all charges; and acquitted the present appellants only for offence under Section 411, but affirmed their conviction for other offences, as well as the corresponding sentence imposed by the trial court. Aggrieved by the impugned judgment, A-1 and A-2 have approached this court, challenging both the conviction and sentence; this court issued notice on the limited question of sentence.

Appellants' contentions

5. Ms. Meenakshi Arora, learned senior counsel, appearing for the appellants, placed strong emphasis on this court's decision in *Union of India v. Sriharan @ Murugan &Ors.*[4]*,* which categorically held that it was outside the jurisdiction of the trial court, to provide a specific term punishment or till the end of ordinary life, as an alternative to the death penalty. It was urged that this aspect, however, was overlooked by the High Court – which was reason enough to set aside the erroneous decision.

6. It was urged that the High Court had, in its impugned judgment, while dismissing the appeal on conviction, also rejected the arguments made on sentencing, without proper consideration. Reliance was placed on Section 386(b)(ii) and (iii) of the CrPC to argue that adjudication and examination of the order on sentence was still necessary, even when order of conviction has been upheld or modified under Section 386(b)(i); the appellate court had to specifically hear the accused on the quantum and nature of sentence imposed. While doing so, it is imperative to call for the report by the Officer under the Probation of Offenders Act, and/or psychological assessment report, to adjudicate the same.

7. Ms. Arora submitted that weight had to be given to mitigating circumstances, to guide sentencing discretion; relevant factors being – age at which the offence was committed, likelihood of convict reforming in jail, etc. Reliance was placed on this court's

[3] Sessions Case No. 130/2014 - Orders dated 13.11.2017 (conviction) and 23.12.2017 (sentence)
[4] [2015] 14 SCR 613: (2016) 7 SCC 1 (hereafter '*Sriharan*')

decisions in *Amit v. State of Maharashtra*[5]and *Laxman Naskar v. West Bengal*[6]. Counsel submitted that there was strong evidence supporting good and normal social behaviour, reformation, and possibility of reintegration into society, as per the probation officer's report, jail conduct report, and psychologist's report – all of which were prepared in compliance of this court's orders. That the appellants had no criminal antecedents was also a factor in their favour. It was pointed out that the appellant Vikas Chaudhary, was below 18 years of age at the time of kidnapping and murder but had attained majority during the alleged ransom calls. Therefore, the benefit of juvenile was denied to him, and the conviction was based solely on circumstantial evidence.

8. Counsel also relied on judgments of this court, which elaborated on sentencing policy in the case of imposing death penalty. In *Rajendra Prahladrao Wasnik v. State of Maharashtra* [7], a three-judge bench of this court emphasised the importance of determining whether the accused, notwithstanding their crime, can be reformed, rehabilitated, and reintegrated, and that the activity of obtaining this information is essential, and must be undertaken. It was argued that the mitigating circumstances, and report of the probation officer were neither considered by the trial court, nor High Court. Counsel stressed on the importance of the theory of reformation through punishment and submitted that the special category of sentence for serious crimes where death sentence is substituted with life imprisonment for a fixed number of years (as evolved in *Swamy Shraddananda (2) v. State of Karnataka* [8], and upheld in *Sriharan*), still requires consideration of these factors. Reliance was also placed on *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*[9], *State of Haryana v. Jagdish*[10], *Ramesh v. State of Rajasthan*[11], *Birju v. State of MP*[12], *Shankar Kisanrao Khade v. State of Maharashtra*[13], *Anil @ Anthony Arikswamy Joseph v. State of Maharashtra*[14], *Raju Jagdish Paswan v. State of Maharashtra*[15], *Satish @ Sabbe v. State of UP*[16], and *Mohd Firoz v. State of MP*[17].

State's contentions

9. Mr. Chirag M. Shroff, learned counsel for the State, contended that the conviction based on concurrent findings, and sentence imposed was commensurate in the present case, which was a cold-blooded murder. It was submitted that the act of abduction committed in a clandestine manner and the thought process that guided the series of events, was executed with preplanning and premeditation. This was evidenced by the fact that the deceased was murdered on 19.01.2003, and the family was made to believe that their son was alive, and in view of which they regularly demanded ransom from the family. Reliance was placed on *Arvind Singh v. State of Maharashtra*[18] for the submission that if a mere threat for the purpose of ransom or otherwise becomes reality, and the victim is

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[5] [2003] Supp. 2 SCR 285: (2003) 8 SCC 93 [para 10]
[6] [2000] Supp. 3 SCR 62: (2000) 7 SCC 626 [para 6]
[7] [2018] 14 SCR 585: (2019) 12 SCC 460 [para 47] (hereafter '*Rajendra Prahladrao Wasnik*')
[8] [2008] 11 SCR 93: (2008) 13 SCC 767 [para 94-95] (hereafter '*Swamy Shraddananda*')
[9] [2009] 9 SCR 90: (2009) 6 SCC 498 [para 127-128] (hereafter '*Santosh Kumar Satishbhushan Bariyar*')
[10] [2010] 3 SCR 716: (2010) 4 SCC 216 [para 41, 44-46]
[11] [2011] 4 SCR 585: (2011) 3 SCC 685 [para 66, 69, 76]
[12] [2014] 1 SCR 1047: (2014) 3 SCC 421 [para 20]
[13] [2013] 6 SCR 949: (2013) 5 SCC 546
[14] [2014] 3 SCR 34: (2014) 4 SCC 69 [para 33] (hereafter '*Anil @ Anthony Arikswamy Joseph*')
[15] (2019) 16 SCC 380 [para 20]
[16] 2020 SCC OnLine SC 791 [para 13]
[17] (2022) 7 SCC 433 [para 60]
[18] (2021) 11 SCC 1 [para 94, 98, 101, 102]

done to death, then if the sessions court had passed a specified sentence which is upheld by the High Court, intervention by this court was unwarranted.

10. It was pointed out that the gruesome nature of the murder of a minor victim (nearly 18 years), despite the appellants being educated and belonging to well-to-do families, reflected that they were well aware and had full knowledge of their actions – of kidnapping, murder, and finally, disposing of the body by burning and dumping the remains in a pond. These circumstances, it was argued, justified that this was a cold-blooded murder, which fell within the gravest of grave category of cases.

11. Counsel conceded that this court in *Sriharan* (supra) held that only the High Court or Supreme Court had the power to pass a sentence in excess of life imprisonment, but lesser than capital punishment; however, it was pointed out that this court had also denied in that judgment, the proposition that the court awarding punishment should merely impose the punishment of death or life imprisonment, as prescribed in the CrPC. Therefore, merely because the sessions court had exercised such power, did not vitiate the sentence altogether. Instead, it was contended that the fact that the High Court had affirmed the sentence, meant the spirit of the law laid down in *Sriharan* (supra) had been given effect to. Reliance was placed on *Gauri Shankar v. State of Punjab*[19]wherein in view of the grotesque nature of the crime, this court had upheld the session's court order on sentencing, which had been passed in excess of the scope of its powers.

12. Mr. Shroff also submitted that the VIMHANS report submitted pursuant to this court's directions, was a neutral report which could not be relied on as demonstrating 'mitigating circumstances' as it cannot speak to the mental state of the appellants, at the time of commission of the offences. It does not necessarily support any prospect of rehabilitation or reformation.

Analysis and Reasoning

13. In *Bachan Singh v. Union of India*[20], this court upheld the imposition of capital sentence, subject to the caveat that it should be invoked in *the rarest of rare cases.* The court, in its later judgments sought to evolve a principled approach towards capital sentencing. In *Machhi Singh v. State of Punjab*[21] this court, building upon the observations in *Bachan Singh,* observed that a balance sheet of "aggravating and mitigating circumstances" needs to be drawn where "*mitigating circumstances have 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*". The court also laid down a broad two-pronged approach:

"(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?"

14. During the last two decades or so, however, the capital sentencing decisions adopted no symmetrical approach; this led to the court to lament, on more than one occasion, that the exercise of considering aggravating and mitigating circumstances (which *Bachan Singh* had highlighted) had become more of a formality. In *Santosh Kumar*

[19] (2021) 3 SCC 380
[20] [1983] 1 SCR 145: (1980) 2 SCC 684
[21] [1983] 3 SCR 413: (1983) 3 SCC 470

Satishbhushan Bariyar (supra), this court enunciated a *two-step process* to decide whether a convict deserved the death sentence: first, that the case belonged to the "rarest of rare" category, and second, that the option of life imprisonment would simply not suffice. The aggravating and mitigating circumstances – according to the first step, were to be identified and considered equally. The court, in the second step, was to consider whether the alternative of life imprisonment was unquestionably foreclosed as the sentencing aim of reformation was unattainable, for which the *State was obliged to provide material*. In *Shankar Kisanrao Khade* (supra) the court fashioned 'the crime'; 'the criminal' and 'the R&R test' (rarest of rare test) which emphasized the need to look intensively into all factors. This court also highlighted that in many previous decisions, sentencing was resorted to without considering mitigating circumstances, *and without any material on the possibility of reformation of the convict.*

The decision in Sriharan

15. In *Swamy Shraddananda* (supra) this court had to decide the appropriate sentence to be imposed in a case, where two judges had differed on the issue of imposition of capital sentence. The court considered its previous Constitution Bench ruling in *Gopal Vinayak Godse* v. *State of Maharashtra*[22], observations in other judgments (such as *Dalbir Singh* v. *State of Punjab*[23], *Subash Chander* v. *Krishan Lal*[24]; *Shri Bhagwan* v. *State of Rajasthan*[25]; *State of Madhya Pradesh* v. *Ratan Singh*[26] and other cases). The court had, in *Swamy Shraddananda* (supra), observed as follows [SCR, p. 143-144]:

"65. […] The legal position as enunciated in Kishori Lal v. King Emperor, (1945) 58 LW 251 , Gopal Vinayak Godse v. State of Maharashtra, (1961) 3 SCR 440; Maru Ram v. Union of India, (1981) 1 SCR 1196; State of M.P. v. Ratan Singh, (1976) 3 SCC 470 and Shri Bhagwan v. State of Rajasthan, (2001) 6 SCC 296 and the unsound way in which remission is actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.

66. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all."

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[22] [1961] 3 SCR 440
[23] [1979] 3 SCR 1059: (1979) 3 SCC 745
[24] [2001] 2 SCR 864: (2001) 4 SCC 458
[25] [2001] 3 SCR 656: (2001) 6 SCC 296
[26] [1976] Supp. 1 SCR 552: (1976) 3 SCC 470

16. The appropriateness of imposing a punishment (termed as a special or fixed term sentence) in serious crimes, which carried, as a sentencing option, the death penalty (apart from life sentence), was considered by this court in *Sriharan.* The majority decision, after considering the previous decisions, held that the ratio in *Swamy Shraddananda* (supra) was correct. Commenting on the decision in *Swamy Shraddananda,* the court held in *Sriharan* that [SCR, p. 701; and 710-711]:

"87. […] What all it seeks to declare by stating so was that within the prescribed limit of the punishment of life imprisonment, having regard to the nature of offence committed by imposing the life imprisonment for a specified period would be proportionate to the crime as well as the interest of the victim, whose interest is also to be taken care of by the Court, when considering the nature of punishment to be imposed.

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104. 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.

105. 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 deprival 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."

17. It is thus clear that *Sriharan* (supra), approved an alternative third sentencing option in cases where the accused are convicted of serious and grave crimes which carried with it the option of capital sentence. Realising that a life sentence *per se* can lead to early release of accused upon their undergoing the minimum sentence prescribed under Section 433A, and highlighting that the asymmetry in state rules with respect to minimum incarceration in different kinds of life sentences, this court decided to retain to itself (and the High Courts) the option of imposing what *Sriharan* termed as "special" or "fixed term sentences". This was seen as serving the following purposes:

(a) As a feasible alternative in capital cases where the Court was of the opinion that death sentence is inappropriate, and:

(b) That the Court was of the opinion that there were elements in the crime and or the conduct of the criminal which warranted imposition of a mandatory sentence beyond a minimum of 14 years prescribed by the Code of Criminal Procedure.

(c) Where the court felt, independently, that the serious nature of the crime and the manner of its commission warranted a special sentence, whereby the state's discretion in releasing the offender, should be curtailed so that the convict is not let out before undergoing a specified number of years, of incarceration.

18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life imprisonment for the remainder of the convict's life, as an alternative to death penalty. The court, when trying an offence punishable by death

penalty or life imprisonment, has merely these two options. While the principles evolved in *Sriharan* (supra) are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the state proposes and urges for imposition of death sentence, it has to, *per force* provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances – the test propounded in *Bachan Singh* and examined in many cases; the recent trend being that the reformative element acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance, i.e., the trial courts; the prosecution (*per Bachan Singh*) is also under an obligation to show that the mitigating circumstances are absent[27] *especially that there are no chances of reformation of the accused*. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, *being factors that lead to the conviction of the accused*) and balancing the mitigating circumstances (which are not matters of the record and *have to be adduced by the prosecution and the accused*).

19. This court, in *Manoj v. State of Madhya Pradesh*[28], considered the judgments reported as *Rajendra Prahladrao Wasnik* (supra), *Chhannu Lal Verma v. State of Chhattisgarh*[29], *Anil @ Anthony Arikaswamy Joseph* (supra) and several other decisions, the Law Commission's reports, and held that [SCR, p. 573-576]:

"212. The goal of reformation is ideal, and what society must strive towards – there are many references to it peppered in this court's jurisprudence across the decades – but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this court deems it necessary to frame practical guidelines for the courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances.

Practical guidelines to collect mitigating circumstances

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[27] The observations in *Bachan Singh,* listing mitigating factors are that
"(1) That the offence was committed under the influence of extreme mental or emotional disturbance.
(2) The age of the accused. If the accused is young or old, he shall not be sentenced todeath.
(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.
(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.
(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.
(6) That the accused acted under the duress or domination of another person, (7) Thatthe condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."
[28] [2022] 9 SCR 452: (2023) 2 SCC 353
[29] [2018] 14 SCR 355: (2019) 12 SCC 438

213. *There is urgent need to ensure that mitigating circumstances areconsidered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.*

214. *To do this, the trial court must elicit information from the accused andthe state, both. The state, must - for an offence carrying capital punishment at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) - an onus placed squarely on the state – conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.*

215. *Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:*

a) *Age*

b) *Early family background (siblings, protection of parents, any history of violence or neglect)*

c) *Present family background (surviving family members, whether married, has children, etc.)*

d) *Type and level of education*

e) *Socio-economic background (including conditions of poverty or deprivation, if any)*

f) *Criminal antecedents (details of offence and whether convicted, sentence served, if any)*

g) *Income and the kind of employment (whether none, or temporary or permanent etc);*

h) *Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc. This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.*

216. *Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., probation and welfare officer, superintendent of jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be – a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for an more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformative progress, and reveal post-conviction mental illness, if any.*

217. *It is pertinent to point out that this court, in Anil v State ofMaharashtra has in fact directed criminal courts, to call for additional material:*

"Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case."

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence."

20. The imperative to conduct evaluation of mitigating circumstances at the trial stage, *"to avoid slipping into a retributive response to the brutality of the crime"* which this court noticed was frequently occurring in several cases, was underlined, and it was categorically held that the court had to elicit information from the state and the accused. The prosecution also is mandated to produce before the Sessions Court, material disclosing psychiatric and psychological evaluation of the accused, which is to preferably be collected beforehand. At the stage when the trial court is informed that the prosecution intends to press for imposition of capital sentence, the evaluation should be insisted upon; the state is under a duty to present all objective materials, as mentioned in *Manoj* (supra), having regard to the decision in *Bachan Singh* (supra) and importantly, the fact that it is in a position to actually gather the materials. Its task is to present the facts- relating to the accused, which are favourable and unfavourable, for the court to impose a just sentence.

21. Since the judgment in *Sriharan* (supra) reserves the power to impose special or fixed term sentences (which may be longer than the minimum specified in Section 433A CrPC – i.e., may extend to considerably long periods, such as 30 years), with only the high courts and this court, it is imperative that this exercise is carried out even in cases where the accused might eventually not be imposed the death sentence. To put it simply - although the trial courts are not empowered to impose such special sentences, yet at the stage when they arrive at findings of guilt in the case of a heinous offence, what would be the nature of the sentence imposed *eventually,* is unknown; therefore, the prosecution would have to inform the court, and present relevant materials (as elaborated in *Manoj*), in case the death sentence is proposed. In that event, if ultimately death sentence is not imposed, it is open to the state (or the aggrieved party, under Section 372 CrPC) to appeal against the trial court judgment on the point of sentence; at that stage the evaluation before the High Court would be nuanced, and informed with full materials, about the convict, which otherwise it would not have the benefit of. Further, if considerable time has elapsed since the trial stage at which this exercise was undertaken, the appellate court should direct that a fresh attempt be made, to take into account the contemporaneous progress, if any, made by the convict[30].

22. In view of the above discussion, it is held that wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, it should carry out the exercise of placing the materials, in terms of *Manoj,* for evaluation. In case this results in imposition of death sentence, at the stage of confirmation, the High Court would have the benefit of independent evaluation of these materials. On the other hand, if death sentence is not imposed, then, the High Court may still be in a position to evaluate, if the sentence is adequate, and wherever appropriate and just, impose a special or fixed term sentence, in the course of an appeal by the state or by the complainant/informant. Given the imperative need for such material to form a part of the court's consideration, it has to be emphasized that in case the trial court has failed to carry out such exercise (for whatever reason), the High Court has to call for such material while considering an appeal filed by the state or complainant for enhancement of sentence (whether resulting in imposition of capital punishment, or a term sentence).

[30] See *Manoj,* para 216 (SCR).

Sentence in the present case

23. Recently, this court, on three previous occasions, was faced with a similar situation – wherein the trial court had sentenced the accused to undergo life imprisonment for the remainder of their life[31], or without entitlement to remission for a fixed term (of not less than 20 years)[32]. This, in light of the judgment in *Sriharan* (supra) was clearly beyond the scope of jurisdiction that the trial court is empowered with. However, the High Courts in each of the three cases, had affirmed the conviction and sentence. In these cases, the offending part of the life imprisonment sentence (i.e., remainder of life, or fixed term without entitlement of remission) was either set aside, and life imprisonment simplicitor was imposed[33], or based on the facts and circumstances, modified to a term sentence[34].

24. During the course of hearing this matter, it was noticed that there was limited material regarding the mitigating circumstances of the appellants; existing jail reports and probation officer reports, were also outdated. So, on 05.08.2021, this court directed the preparation and submission of three reports, to facilitate fairer consideration of the question of sentence. These were: a report of the probation officer, report on nature of work done while in jail (by the jail administration), and a psychological and psychiatric evaluation report (by Director of VIMHANS); these are on record, and form part of this court's consideration, to ascertain the *individualised* sentences appropriate in the present case. Counsel for the appellants have also placed on record, written submissions outlining the mitigating factors and justification for a modification, on the question of sentence.

25. The appellant Vikas Chaudhary, was merely 18-19 years old at the time of offence and is currently about 37-38 years old. As per the social investigation report (probation report), he comes from an educated, urban, 'middle-class' family background; he has passed 10th standard, but his 12th standard was interrupted by the facts relating to this offence. He continues to undertake written work during his time in custody. He has undergone more than 17 years of actual sentence, during which he has demonstrated satisfactory conduct (as per jail reports dated 30.11.2017 and 18.11.2020). The report dated 08.09.2021, regarding work done in jail is positive and mentions that he has worked as Sahayak in the Langar, jail control room, and ward, during his incarceration period, for which he has received appreciation certificates. Barring three episodes of aggression which were prior to 2012, there is no other negative instance on the record. The VIMHANS report too, did not disclose any cause for concern. The latest probation report dated 06.09.2021 is encouraging; similar to the earlier report (dated 01.12.2017) given the to the trial court, the report mentions that the appellant had strong continuing relations with his parents and relatives. His parents have accepted him and remain worried about his future. The interviews with the neighbours of his family home, i.e., members of the community, were also positive. He has no other criminal antecedents. The report further suggests that the appellant has ample scope for reformation and reintegration into society, and that the appellant could look after his parents and lead a normal social life.

26. The appellant, Vikas Sidhu, who was in his early 20s at the time of offence, is currently 40-41 years old, and has undergone over 17 years of actual imprisonment. He

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[31] *Narendra Singh @ Mukesh @ Bhura Vs. The State of Rajasthan* SLP (Crl.) No.7830/2021, dd 28.02.2022 https://main.sci.gov.in/supremecourt/2021/13046/13046_2021_43_21_33781_Order_28-Feb2022.pdf; *Baljeet Singh @ Jeeta v. State of Haryana* SLP (Crl.) No. 11787-11788/2019, dd 02.08.2022

[32] *Manohar @ Manu v. The State of Karnataka*Crl. Appeal No.564 of 2021, dd 06.07.2021https://main.sci.gov.in/supremecourt/2021/5351/5351_2021_39_15_28288_Order_06-Jul2021.pdf

[33] *Narendra Singh @ Mukesh @ Bhura* (see n 31) and *Manohar @ Manu* (see n 32).

[34] *Baljeet Singh @ Jeeta* (see n 31).

is a graduate of Delhi University and was a medical representative at the time of the offence. His family consisted of five people; however, he has lost his father who was a government servant, and his younger brother, to illness. He too grew up in an urban, 'middle-class', educated family setting. He is married, and enjoys the affection of his mother, spouse, and elder sister. During his incarceration period, he worked as a volunteer teacher under the 'Padho aur Padhao', and at different times as a sahayak at the legal cell, jail control room, IGNOU study center, vocational training institute, bakery unit, jail dispensary; he also worked in the paper making unit of jail factory for a few months. In addition to having attended some vocational training and cultural programmes, he has received numerous appreciation certificates for work done in jail – especially most recently, for his efforts during the COVID-19 crisis. As per request made in the initial report received from VIMHANS, Vikas Sidhu underwent a more detailed psychometric evaluation – the results of which reflected no clinical signs or symptoms of psychopathology; there is no negative inference made in the report. He has no criminal antecedents and continues to enjoy a strong bond with his family members. In his case as well, the probation report suggested that there was sufficient scope for his reformation and reintegration into society, and that he showed promise in looking after his wife and aged mother.

27. This court is also cognizant of the nature of the crime that the appellants committed. They kidnapped the deceased, an 18-year-old boy, and sought ransom in exchange. The prosecution was able to prove that these appellants strangulated the kidnapped boy, burnt his body to eliminate evidence, and disposed of the body in a *nala*. The sole motive for this crime seems to have been greed. Undoubtedly, there was premeditation in the commission of the crime. These are the aggravating circumstances.

28. Both appellants in the present case, share some commonalities: they were of young age at the time of offence, hail from educated backgrounds, and they continue to enjoy the love and affection of their families, each of which have a good standing and strong ties within the communities they live in. While the material relating to their lives and social conditions pre-conviction do not offer an explanation as to the cause for commission of offence, it can certainly be said that the material available regarding their conduct post-conviction, remains encouraging. They have applied themselves during the time of incarceration and used their time to contribute meaningfully – for which they have each received commendations. Their psychological and psychiatric evaluations were concluded to be normal, without cause for concern. A strong case is made out in support of the appellants' probability of reform (as already evidenced by their jail conduct), and reintegration into society. The state, too, has not indicated any material to the contrary, regarding this aspect.

29. In view of the totality of the facts and circumstances, and for the above reasons, this court is of the opinion that it would be appropriate to modify the sentence awarded to both appellants to a minimum term of 20 years actual imprisonment. The appeals are partly allowed in the above terms.