

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Decided on: 24th May, 2023

+ **CRL.A. 264/2019**

RAM TEJ

..... Appellant

Represented by: Mr. B. Badrinath, Advocate
(DHCLSC) with Mr. Rajesh
Raj, Advocate.

versus

STATE

..... Respondent

Represented by: Mr.Prithu Garg, APP for the
State with Insp. Mahender
Singh & SI Ranbir, P.S. Vasant
Kunj (South).

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

HON'BLE MS. JUSTICE POONAM A. BAMBA

MUKTA GUPTA, J. (ORAL)

1. Vide judgment pronounced on 18th May, 2023, this Court had upheld the impugned judgment of the Trial Court dated 02nd May, 2018 convicting the appellant. Notice was also issued to the appellant as to why his sentence be not modified to a fixed term in terms of the judgment of Hon'ble Supreme Court reported as (2016) 7 SCC 1 *Union of India vs. V.Sriharan*. Superintendent, Tihar Jail was also directed to produce the appellant before this Court. The appellant was explained the notice. Learned counsel for the appellant took some time to address arguments.

2. Learned counsel for the appellant contends that the appellant is the sole bread earner of the family. He has two sons aged 10 years and 11 years. Since his parents have died, the two children who are minor are residing with their maternal grand-parents. On instructions he further states

that the wife of the appellant is mentally challenged. The appellant has undergone nearly 8 years of imprisonment and is presently 38 years of age.

3. Heard the counsel appearing on behalf of the appellant and learned APP appearing for the State.

4. Constitution Bench of the Hon'ble Supreme Court in V. Sriharan (supra), held:

“Question 52.1 : Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767] , a special category of sentence may be made 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 application of remission?”

Answer

177. Imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code only means imprisonment for the rest of the life of the convict. The right to claim remission, commutation, reprieve, etc. as provided under Article 72 or Article 161 of the Constitution will always be available being constitutional remedies untouchable by the Court.

178. We hold that the ratio laid down in Swamy Shraddananda (2) [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767] 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”.

5. Hon’ble Supreme Court in the decision reported as (2017) 6 SCC 1 Mukesh v. State (NCT of Delhi) observed:

“516. Society's reasonable expectation is that deterrent punishment commensurate with the gravity of the offence be awarded. When the crime is brutal, shocking the collective conscience of the community, sympathy in any form would be misplaced and it would shake the confidence of public in the administration of criminal-justice system. As held in Om Prakash v. State of Haryana [Om Prakash v. State of Haryana, (1999) 3 SCC 19 : 1999 SCC (Cri) 334] , the Court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime”.

6. The mitigating circumstances as addressed by learned counsel for the appellant are the age of the appellant being 38 years at the moment, having undergone 8 years of imprisonment and that he has two minor children and a wife to look after and there is no other person in the family to look after three of them. At the same time, the diabolic and depraved manner in which the appellant took the victim to a solitary place and not only sexually assaulted her but inserted broken sticks in her vaginal and anal cavities and thereafter committed the murder by strangulation, deserves imprisonment for a fixed term beyond remission as provided in V. Sriharan (supra).

7. Dealing with a similar case of rape with murder, considering the gravity and depravity of the crime, this Court in 2022:DHC:3386-DB Sikander Soni & Anr. v. State, sentenced the appellant therein to a fixed term of 20 years without remission.

8. Considering the mitigating and extenuating circumstances, this Court finds that a sentence of imprisonment for a period of 20 years without remission would serve the purpose. Consequently, the sentence awarded to the appellant by the learned Trial Court is modified to rigorous imprisonment for a period of 20 years without remission. The appellant shall deposit a fine of ₹50,000/- each for offences punishable under Sections 376A IPC and 302 IPC and ₹10,000/- for offence punishable under Section 404 IPC and in default whereof to undergo simple imprisonment for six months each for offences punishable under Section 376A IPC and 302 IPC and one month for offence punishable under Section 404 IPC. This amount if deposited shall be released as compensation in favour of the legal heirs of the deceased.

9. Copy of the order be uploaded on the website of this Court and be also sent to the Superintendent Tihar Jail for intimation to the appellant and updation of records.

(MUKTA GUPTA)
JUDGE

(POONAM A. BAMBA)
JUDGE

MAY 24, 2023
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