REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 2083-2084 OF 2008

Sahib Hussain @ Sahib Jan .... Appellant(s)

Versus

State of Rajasthan .... Respondent(s)

J U D G M E N T

P.Sathasivam,J.

1) These appeals are directed against the final judgment and order dated 05.03.2008 passed by the High Court of Judicature for Rajasthan at Jaipur in Criminal Death Reference No. 1 of 2007 and Criminal Appeal Nos. 91 and 92 of 2008 whereby the High Court disposed of the appeals filed by the appellant herein against the order of conviction and sentence dated 13.12.2007 passed by the Court of Additional Sessions Judge (Fast Track), Serial No. 1, Jaipur,

District Jaipur (Rajasthan) by commuting the sentence of death to imprisonment for life.

2) **Brief facts:**

a) It is an unfortunate incident of killing of five persons who were residing at Bharti Colony, Kunda, Tehsil Aamer, District Jaipur, Rajasthan.

b) On 27.10.2006, at 10.30 p.m., one Zafar (PW-1)-the informant, who was also residing at the above said place, while on his way back home found the appellant herein talking to one Satish (PW-4) that he had finished Seema Bhabhi (sister-in-law) and also killed the three children and Munna Mawali. On hearing this, PW-1 went towards their house and found that Munna Mawali was lying in a pool of blood on the Chabutra outside his room and his nephew Kalu was lying dead inside the room and the bodies of Seema–the wife of Munna, Isha-son of Lalu Chacha and Sonu-son of Munna were lying in pool of blood in the other room. After seeing this, he ran towards Satish (PW-4) and asked him about the appellant herein. PW-4 informed him that he ran towards the Highway after changing the clothes. Thereafter,

PW-1 informed the same to Ballu Bhai @ Ballu (PW-2) over telephone. After some time, a written report was handed over to the S.H.O., Police Station, Aamer by PW-1, at 12.30 a.m. Munna Mawali was removed to the hospital by the police but he died on the way.

c) On the basis of the said information, a case being Crime No. 466/2006 under Section 302 of the Indian Penal Code, 1860 (in short 'the IPC) was registered against Sahib Hussain. *Post mortem* on the dead bodies was also performed. After investigation and filing of chargesheet, the case was committed to the Court of Additional Sessions Judge (Fast Track), Serial No. 1, Jaipur, District Jaipur (Rajasthan) and numbered as Session Case No. 90/2006. During trial, it came to the knowledge of the court that there was a scuffle between the appellant herein and Seema (since deceased) on the day of Eid which resulted in such a gruesome act. However, taking note of circumstantial evidence, the Additional Sessions Judge, by order dated 13.12.2007, convicted the appellant-accused for the offence

punishable under Section 302 of IPC and sentenced him to death.

d) Aggrieved by the said order, the appellant-accused preferred appeals being Criminal Appeal Nos. 91 and 92 of 2008 before the High Court. Death Reference No. 1 of 2007 under Section 366 of the Code of Criminal Procedure, 1973 (in short 'the Code) was also preferred by the trial court for confirmation of the death sentence. By impugned judgment dated 05.03.2008, the High Court disposed of the appeals filed by the appellant-accused by commuting the sentence of death to the imprisonment for life and also made a direction that he shall not be released from the prison unless he serve out at least 20 years of imprisonment including the period already undergone and also he shall not get the benefit of any remission either by the State or by the Government of India on any auspicious occasion.

e) Aggrieved by the said order, the appellant preferred these appeals from jail by way of special leave before this Court.

3) Heard Mr. Pijush K. Roy, learned *amicus curiae* for the appellant-accused and Ms. Archana Pathak Dave, learned counsel for the State of Rajasthan.

Contentions:

4) (a) Mr. Pijush K. Roy, learned *amicus,* after taking us through the entire materials, submitted that there is no direct eye witness to speak about the incident and the case of the prosecution entirely rests upon circumstantial evidence. According to him, the circumstances relied on by the prosecution have not been satisfactorily established and, in any event, the circumstances said to have been established against the appellant do not provide a complete chain to bring home the guilt against the appellant. He further submitted that the FIR itself is doubtful, there are contradictions with regard to the place where the accused has first of all disclosed about the incident to Satish (PW-4), a number of infirmities in the statements of witnesses in respect of the fact that the place of incident was surrounded by many housesholds, no reliable person was examined on

the side of the prosecution and recovery of weapon (Axe), clothes, pair of chappal etc. are doubtful, hence, he prayed for acquittal of the appellant-accused. Alternatively, Mr. Roy contended that the High Court was not justified in passing the order taking away the right of remission by the Government before completion of 20 years' of imprisonment.

(4)(b) On the other hand, Ms. Archana Pathak Dave, learned counsel for the State, after taking us through all the materials submitted that the prosecution has fully established various circumstances which speak about the guilt of the appellant including the recoveries, extra judicial confession, conduct of the appellant mentioning false name at the time of his arrest etc. She further submitted that there is no denial in his statement under Section 313 of the Code that he was absconding from the scene of occurrence till he was arrested and the evidence of PWs 1 & 4 with regard to the same are also consistent and reliable. Ms. Archana also submitted that taking note of the fact that the appellant caused the death of 5 persons and the High Court has commuted the death sentence into life imprisonment,

based on various earlier decisions of this Court, the High Court justified in imposing restrictions in granting remission before completion of 20 years' of imprisonment.

5) We have carefully considered the rival contentions and perused all the materials including oral and documentary evidence.

Discussion:

6) It is not in dispute that in the incident in question 5 persons, viz., Seema, Munna Mawali, Kalu, Isha and Sonu died and as per the *post mortem* reports, the deaths were due to multiple injuries on various parts of the bodies. It is also not in dispute that there is no direct eye witness to the incident which occurred around 10.30 p.m., on 27.10.2006. Even in the absence of eye-witness to the incident, if various circumstances prove that the appellant-accused was responsible and involved in the gruesome murders, the decision of the Court based on such circumstances cannot be faulted with. However, we have to see whether the circumstances relied on by the prosecution have been fully established or not?

7) The *post mortem* report, *ante mortem* injuries noted therein and the evidence of doctors concerned show that all the five deaths were homicidal in nature. Since the above aspect is not seriously disputed, there is no reason to refer the nature of injuries and the ultimate opinion of the doctor who conducted the *post mortem*.

8) The prosecution heavily relied on the evidence of Jafar (PW-1) and Satish (PW-4). PW-1, in his evidence has stated that he used to reside with one Ballu Bhai in Bharti Colony Kunda, Aamer. According to him, Ballu Bhai had many elephants and he used to ride one of his elephant. Munna and Munna Mawali (since deceased) were also elephant riders. He further explained that on the day of the occurrence, around 10.30 p.m., while he was going to his home, he noticed the appellant-accused talking to Satish (PW-4) that he had committed the murder of Seema Bhabai, Munna Mawalai and three children. On hearing this, he immediately rushed to their house and noticed that Munna Mawali was lying outside his room in pool of blood and inside the rooms, Seema and three children were lying dead. In

addition to the evidence of PW-1, one Satish, who was examined as PW-4, supported the testimony of Jafar (PW-1). In his evidence, he explained that he was an elephant rider and used to ride the elephant of Ballu Bhai and also residing at the above said place. He further stated that at about 10.30 p.m., the appellant-accused came to him and disclosed about the incident.

9) A perusal of the entire evidence of PWs 1 & 4, though they did not witness the occurrence, as rightly observed by the High Court, the manner in which they deposed before the Court and the details stated by them are acceptable and there is no valid reason to disbelieve their statements. Their evidence very clearly establishes that the appellant-accused was the person who was involved in the incident occurred.

10) The prosecution heavily relied on the extra judicial confession. The extra judicial confession, though a weak type of evidence, can form the basis for conviction if the confession made by the accused is voluntary, true and trustworthy. In other words, if it inspires the confidence, it can be acted upon. We have already noted that the

appellant-accused mentioned the details of the incident to Satish (PW-4) and the courts below accepted his version as reliable and trustworthy. Ms. Archana, learned counsel for the State took us through the entire evidence of Satish (PW-4) and on going through the same, we are satisfied that his evidence is reliable, acceptable and inspires our confidence. We have already noted that the evidence of PW-4 supports the stand taken by PW-1. It is also on record that PW-4 was the friend of the appellant-accused and they were residing in the same area. In those circumstances, the confession made by the appellant to PW-4 can be acted upon along with other material evidence.

11) Let us consider the recoveries made and relied upon by the prosecution for proving the case. It is the case of the prosecution that the appellant-accused was arrested on 28.10.2006, at 10.30 a.m. On the basis of his disclosure statement, a blood stained axe got recovered vide recovery memo (Exh. P-10) and the clothes worn by him, which were concealed in a room, got recovered vide recovery memo (Exh. P-11) in the presence of Mohd. Salim @ Ballu (PW-2)

and Abdul Majid (PW-3). Further, a pair of blood stained chappal was also seized vide recovery memo (Ex.P-8). On going through the evidence of PWs 2 & 3, both the courts below found that the recoveries are acceptable and concluded that there is no reason to disbelieve their statements.

12) Another important aspect relied on by the prosecution is the conduct of the appellant-accused. Though it may not be a main link in the chain of circumstances to prove the guilt of the appellant-accused, however, absconding from the scene would establish the guilt of the accused and rule out hypothesis of innocence. In the case on hand, it has come out from the evidence that immediately after the incident, he left village Kunda and boarded a bus to Delhi. However, he was arrested at 2.20 a.m., on 28.10.2006, at old Barrier Shahjahanpur. It has come out from the evidence of Murari Lal (PW-16), sub-Inspector, Kotwali Jhunjhunu that on 28.10.2006, at about 2.00 a.m., Commanding Officer, Behrod, informed him that one Sahib Hussain had absconded after committing murder of 5 persons. He further explained

that he recorded the said information in Rojnamcha (Exh. P-51). According to him, around 2.20 a.m., he stopped a bus at Shahjahanpur Barrier which was proceeding to Delhi from Jaipur and the appellant was sitting in that bus. When he asked the appellant about his identity, initially, he gave his name as Zakir Hussain but when he got panicked, it raised suspicion in his mind. On being interrogated, he disclosed his correct name as Sahib Hussain and, thereafter, he was handed over to Police Station Aamer. There is no proper explanation by the appellant-accused even under Section 313 statement for his sudden departure from the scene and going to Delhi. In the absence of any reason, the conduct of the appellant supports the case of the prosecution.

13) Another aspect which goes against the conduct of the appellant which relates to the earlier paragraph is that when he was questioned by PW-16 in the bus, which was going to Delhi from Jaipur, he suppressed his original name and gave his name as Zakir Hussain and only on further interrogation, he disclosed his original name. As rightly pointed out by learned counsel for the State, there was no reason to

suppress his original name and furnish false name to PW-16. These aspects go against his conduct and support the case of the prosecution.

14) As regards motive, the prosecution relied on the evidence of Jafar (PW-1) - the informant, that the appellant had a quarrel with Seema (the deceased) on the day of Eid. The above statement of Jafar (PW-1) gets corroboration from the evidence of Satish (PW-4) who deposed before the Court that on the day of Eid there was a quarrel between the deceased and the accused. As rightly pointed out by learned counsel for the State, the above incident cannot be ruled out in view of the fact that while the appellant was inflicting blows using an axe on the person of Seema, Munna Mawali, Kalu, Isha and Sonu arrived there to help her but they were also done to death.

15) Another important aspect which supports the prosecution theory is the FSL report and DNA report which matches with the blood group of the deceased and the blood group found on the chappals, pant, shirt and axe. According

to us, as rightly concluded by the courts below, the above reports support the case of the prosecution.

16) In addition to the same, we also verified the statement of the accused recorded under Section 313 of the Code which shows that the appellant has neither denied nor stated about the incriminating circumstances relied on by the prosecution.

17) Though Mr. Roy, learned counsel for the appellant-accused has stated that the FIR itself is doubtful, on going through the same, along with other materials relied on by the prosecution, we are satisfied that the FIR was not deliberately withheld by the prosecution. Learned counsel for the appellant has also pointed out that non-examination of Munna-the husband of the deceased Seema, is fatal to the case of the prosecution. It is true that the prosecution could have examined Munna, however, in view of various circumstances stated by the prosecution, we are of the view that merely because one person was not examined, the entire case of the prosecution cannot be thrown out. We are satisfied that all the circumstances relied on by the

prosecution are reliable, acceptable and connect the appellant-accused in respect of the guilt in question. We are in agreement with the conclusion arrived at by the High Court.

18) Regarding the alternative argument, viz., that the direction of the High Court that the appellant shall not be released from prison unless he has served out 20 years of imprisonment including the period already undergone by him and not entitled to the benefit of any remission either from the State or from the Government of India on any auspicious occasion, let us consider various earlier decisions of this Court on this aspect. In other words, we are posing a question whether the courts are warranted to limit the remission power under the Code for whatsoever reasons?

19) In the case of ***Shri Bhagwan*** vs. ***State of Rajasthan*** (2001) 6 SCC 296, this Court held as under:

> "24 Therefore, in the interest of justice, we commute the death sentence imposed upon the appellant and direct that the appellant shall undergo the sentence of imprisonment for life. We further direct that the appellant shall not be released from the prison unless she had served out at least **20 years** of imprisonment including the period already undergone by the appellant."

20) In ***Prakash Dhawal Khairnar (Patil)*** vs. ***State of Maharashtra*** With ***State of Maharashtra*** vs. ***Sandeep @ Babloo Prakash Khairnar (Patil)*** (2002) 2 SCC 35, this Court held as under:

> "24....In this case also, considering the facts and circumstances, we set aside the death sentence and direct that for murders committed by him, he shall served out at least **20 years** of imprisonment including the period already undergone by him."

21) In ***Ram Anup Singh and Ors***. vs. ***State of Bihar*** (2002) 6 SCC 686, a three-Judge Bench of this Court held as follows:

> "27.....Therefore, on a careful consideration of all the relevant circumstances we are of the view that the sentence of death is not warranted in this case. We, therefore, set aside the death sentence awarded by the Trial Court and confirmed by the High Court to appellants Lallan Singh and Babban Singh. We instead sentence them to suffer rigorous imprisonment for life with the condition that they shall not be released before completing an actual term of **20 years** including the period already undergone by them."

22) In ***Nazir Khan and Ors.*** vs. ***State of Delhi*** (2003) 8 SCC 461, this Court concluded,

> "44....Considering the gravity of the offence and the dastardly nature of the acts and consequences which have flown out and, would have flown in respect, of the life sentence, incarceration for the period of **20 years** would be appropriate. The accused appellants would not be entitled to any remission from the, aforesaid period of 20 years."

23) In ***Swamy Shraddananda (2) @ Murali Manohar Mishra*** vs. ***State of Karnataka***, (2008) 13 SCC 767, this aspect has been considered in detail by a three-Judge Bench of this Court which we are going to refer in the later part of our order.

24) In ***Haru Ghosh*** vs. ***State of West Bengal*** (2009) 15 SCC 551, this Court held as under:

> "43. That leaves us with a question as to what sentence should be passed. Ordinarily, it would be the imprisonment for life. However, that would be no punishment to the appellant/accused, as he is already under the shadow of sentence of imprisonment for life, though he has been bailed out by the High Court. Under the circumstance, in our opinion, it will be better to take the course taken by this Court in the case of Swamy Shraddananda (cited supra), where the Court referred to the hiatus between the death sentence on one part and the life imprisonment, which actually might come to 14 years' imprisonment. In that case, the Court observed that the convict must not be released from the prison for rest of his life or for the actual term, as specified in the order, as the case may be.
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> 44. We do not propose to send the appellant/accused for the rest of his life; however, we observe that the life imprisonment in case of the appellant/accused shall not be less than 35 years of actual jail sentence, meaning

thereby, the appellant/accused would have to remain in jail for **minimum 35 years**.

45. With this observation, the appeal is disposed of, however, the death sentence is not confirmed and instead, would be substituted by the sentence that we have indicated."

25) In ***Ramraj @ Nanhoo @ Bihnu*** vs. ***State of Chhattisgarh*** (2010) 1 SCC 573, this Court held,

"25. In the present case, the facts are such that the petitioner is fortunate to have escaped the death penalty. We do not think that this is a fit case where the petitioner should be released on completion of 14 years imprisonment. The petitioner's case for premature release may be taken up by the concerned authorities after he completes **20 years** imprisonment, including remissions earned."

26) ***Neel Kumar @ Anil Kumar*** vs. ***The State of Haryana*** (2012) 5 SCC 766, this Court held as follows:

"39. Thus, in the facts and circumstances of the case, we set aside the death sentence and award life imprisonment. The Appellant must serve a **minimum of 30 years** in jail without remissions, before consideration of his case for pre-mature release."

27) In ***Sandeep*** vs. ***State of UP*** (2012) 6 SCC 107, this Court observed as follows:

"75. Taking note of the above decision and also taking into account the facts and circumstances of the case on hand, while holding that the imposition of death sentence to the accused Sandeep was not warranted and while awarding life imprisonment we hold that accused Sandeep must serve a **minimum of 30 years** in jail without remissions before consideration of his case for

premature release."

28) In the case of ***Gurvail Singh @ Gala and Anr***. vs. ***State of Punjab*** (2013) 2 SCC 713, this Court concluded:

> "20....Considering the totality of facts and circumstances of this case we hold that imposition of death sentence on the Appellants was not warranted but while awarding life imprisonment to the Appellants, we hold that they must serve a minimum of thirty years in jail without remission. The sentence awarded by the trial court and confirmed by the High Court is modified as above. Under such circumstance, we modify the sentence from death to life imprisonment. Applying the principle laid down by this Court in **Sandeep** (supra), we are of the view that **the minimum sentence of thirty years** would be an adequate punishment, so far as the facts of this case are concerned."

29) It is clear that since more than a decade, in many cases, whenever death sentence has been commuted to life imprisonment where the offence alleged is serious in nature, while awarding life imprisonment, this Court reiterated minimum years of imprisonment of 20 years or 25 years or 30 years or 35 years, mentioning thereby, if the appropriate Government wants to give remission, the same has to be considered only after the expiry of the said period. No doubt, the said aspect was not agreeable by this Court in the case of ***Sangeet and Anr.*** vs. ***State of Haryana*** (2013) 2

SCC 452 in which it was held as under:

> "54. A reading of some recent decisions delivered by this Court seems to suggest that the remission power of the appropriate Government has effectively been nullified by awarding sentences of 20 years, 25 years and in some cases without any remission. Is this permissible? Can this Court (or any Court for that matter) restrain the appropriate Government from granting remission of a sentence to a convict? What this Court has done in Swamy Shraddananda and several other cases, by giving a sentence in a capital offence of 20 years or 30 years imprisonment without remission, is to effectively injunct the appropriate Government from exercising its power of remission for the specified period. In our opinion, this issue needs further and greater discussion, but as at present advised, we are of the opinion that this is not permissible. The appropriate Government cannot be told that it is prohibited from granting remission of a sentence. Similarly, a convict cannot be told that he cannot apply for a remission in his sentence, whatever the reason."

In this case, though the Division Bench raised a doubt about the decision of a three-Judge Bench in ***Swamy Shraddananda (supra),*** yet the same has not been referred to a larger Bench. In ***Swamy Shraddananda (supra),*** after taking note of remissions by various State Governments without adequate reasons or even on flimsy grounds, in order to set right the same, a three-Judge Bench analysed all the relevant aspects including the earlier decisions and discussed them in the following paragraphs:

"88. It is thus to be seen that both in Karnataka and Bihar remission is granted to life convicts by *deemed* conversion of life imprisonment into a fixed term of 20 years. The deemed conversion of life imprisonment into one for fixed term by executive orders issued by the State Governments apparently flies in the face of a long line of decisions by this Court and we are afraid no provision of law was brought to our notice to sanction such a course. It is thus to be seen that life convicts are granted remission and released from prison on completing the fourteen-year term without any sound legal basis. One can safely assume that the position would be no better in the other States. This Court can also take judicial notice of the fact that remission is allowed to life convicts in the most mechanical manner without any sociological or psychiatric appraisal of the convict and without any proper assessment as to the effect of the early release of a particular convict on the society. The grant of remission is the rule and remission is denied, one may say, in the rarest of rare cases.

89. Here, it may be noted that this has been the position for a very long time. As far back as in 1973, in *Jagmohan Singh*–a Constitution Bench of this Court made the following observation:

"*14*. ... In the context of our criminal law which punishes murder, *one cannot ignore the fact that life imprisonment works out in most cases to a dozen years of imprisonment and it may be seriously questioned whether that sole alternative will be an adequate substitute for the death penalty.*" (emphasis added)

Five years after *Jagmohan*, Section 433-A was inserted in the Code of Criminal Procedure, 1973 imposing a restriction on the power of remission or commutation in certain cases. After the introduction of Section 433-A another Constitution Bench of this Court in *Bachan Singh* made the following observation:

"*156*. It may be recalled that in *Jagmohan* this Court had observed that, in practice, life imprisonment amounts to 12 years in prison. Now, Section 433-A restricts the power of remission and commutation conferred on the appropriate Government under Sections 432 and 433, so that a person who is sentenced to imprisonment for life or whose death

sentence is commuted to imprisonment for life must serve actual imprisonment for a minimum of 14 years."

Thus all that is changed by Section 433-A is that before its insertion an imprisonment for life in most cases worked out to a dozen years of imprisonment and after its introduction it works out to fourteen years' imprisonment. But the observation in *Jagmohan* that this cannot be accepted as an adequate substitute for the death penalty still holds true.

90. Earlier in this judgment it was noted that in the decision in *Shri Bhagwan* there is a useful discussion on the legality of remission in the case of life convicts. The judgment in *Shri Bhagwan*, refers to and quotes from the earlier decision in *State of M.P.* v. *Ratan Singh* which in turn quotes a passage from the Constitution Bench decision in *Gopal Vinayak Godse*. It will be profitable to reproduce here the extract from *Ratan Singh*:

"*4*. As regards the first point, namely, that the prisoner could be released automatically on the expiry of 20 years under the Punjab Jail Manual or the Rules framed under the Prisons Act, the matter is no longer res integra and stands concluded by a decision of this Court in *Gopal Vinayak Godse* v. *State of Maharashtra*, where the Court, following a decision of the Privy Counsel in *Pandit Kishori Lal* v. *King Emperor*-observed as follows:

'*4*. ... Under that section a person transported for life or any other terms before the enactment of the said section would be treated as a person sentenced to rigorous imprisonment for life or for the said term.

5. If so the next question is whether there is any provision of law whereunder a sentence for life imprisonment, without any formal remission by appropriate Government, can be automatically treated as one for a definite period. No such provision is found in the Penal Code, Code of Criminal Procedure or the Prisons Act. ... A sentence of transportation for life or imprisonment for life must prima facie be treated as transportation or imprisonment for the whole of the remaining period of the convicted person's natural life.'

The Court further observed thus:

'*7*. ... *But the Prisons Act does not confer on any authority a power to commute or remit sentences; it* provides only for the regulation of prisons and for the treatment of prisoners confined therein. Section 59 of the Prisons Act confers a power on the State Government to make rules, inter alia, for rewards for good conduct. Therefore, the rules made under the Act should be construed within the scope of the ambit of the Act. ... Under the said rules the order of an appropriate Government under Section 401, Criminal Procedure Code, are a prerequisite for a release. No other rule has been brought to our notice which confers an indefeasible right on a prisoner sentenced to transportation for life to an unconditional release on the expiry of a particular term including remissions. The rules under the Prisons Act do not substitute a lesser sentence for a sentence of transportation for life.

8. ... The question of remission is exclusively within the province of the appropriate Government; and in this case it is admitted that, though the appropriate Government made certain remissions under Section 401 of the Code of Criminal Procedure, it did not remit the entire sentence. We, therefore, hold that the petitioner has not yet acquired any right to release.'

It is, therefore, manifest from the decision of this Court that the Rules framed under the Prisons Act or under the Jail Manual do not affect the total period which the prisoner has to suffer but merely amount to administrative instructions regarding the various remissions to be given to the prisoner from time to time in accordance with the rules. This Court further pointed out that the question of remission of the entire sentence or a part of it lies within the exclusive domain of the appropriate Government under Section 401 of the Code of Criminal Procedure and neither Section 57 of the Penal Code nor any Rules or local Acts can stultify the effect of the sentence of life imprisonment given by the court under the Penal Code. In other words, this Court has clearly held that a sentence for life would ensure till the lifetime of the accused as it is not possible to fix a particular period the prisoner's death and remissions given under the Rules could not be regarded as a substitute for a sentence of transportation for life."

(emphasis supplied)

Further, in para 23, the judgment in *Shri Bhagwan* observed as follows:

"*23*. In *Maru Ram* v. *Union of India* a Constitution Bench of this Court reiterated the aforesaid position and observed that the inevitable conclusion is that since in Section 433-A we deal only with life sentences, *remissions lead nowhere and cannot entitle a prisoner to release*. Further, in *Laxman Naskar* v. *State of W.B.*, after referring to the decision of *Gopal Vinayak Godse* v. *State of Maharashtra*, the Court reiterated that sentence for 'imprisonment for life' ordinarily means imprisonment for the whole of the remaining period of the convicted person's natural life; that a convict undergoing such sentence may earn remissions of his part of sentence under the Prison Rules but such remissions in the absence of an order of an appropriate Government remitting the entire balance of his sentence under this section does not entitle the convict to be released automatically before the full life term if served. It was observed that though under the relevant Rules a sentence for imprisonment for life is equated with the definite period of 20 years, there is no indefeasible right of such prisoner to be unconditionally released on the expiry of such particular term, including remissions and that is only for the purpose of working out the remissions that the said sentence is equated with definite period and not for any other purpose."

(emphasis supplied)

91. The legal position as enunciated in *Pandit Kishori Lal*, *Gopal Vinayak Godse*, *Maru Ram*, *Ratan Singh* and *Shri Bhagwan* 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.

92. 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.

93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in *Bachan Singh* besides being in accord with the modern trends in penology.

94. In the light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be.

95. In conclusion, we agree with the view taken by Sinha, J. We accordingly substitute the death sentence given to the appellant by the trial court and confirmed by the High Court by imprisonment for life and direct that he shall not be released from prison till the rest of his life."

30) It is clear that in ***Swamy Shraddananda (supra),*** this Court noted the observations made by this Court in ***Jagmohan Singh*** vs. ***State of U.P.***, (1973) 1 SCC 20 and 5 years after the judgment in ***Jagmohan's case***, Section 433-A was inserted in the Code imposing a restriction on the power of remission or commutation in certain cases. After the introduction of Section 433-A another Constitution Bench of this Court in ***Bachan Singh*** vs. ***State of Punjab,*** (1980) 2 SCC 684, with reference to power with regard to Section 433-A which restricts the power of remission and commutation conferred on the appropriate Government, noted various provisions of Prisons Act, Jail Manual etc. and concluded that reasonable and proper course would be to expand the option between 14 years imprisonment and death. The larger Bench has also emphasized that "the Court would take recourse to the extended option primarily because in the facts of the case the sentence of 14 years' imprisonment would amount to no punishment at all." In the light of the detailed discussion by the larger Bench, we are of the view that the observations made in ***Sangeet's case***

(supra) are not warranted. Even otherwise, the above principles, as enunciated in ***Swami Shraddananda (supra)*** are applicable only when death sentence is commuted to life imprisonment and not in all cases where the Court imposes sentence for life.

31) Taking note of the fact that the prosecution has established the guilt by way of circumstantial evidence, analyzed and discussed earlier, and of the fact that in the case on hand 5 persons died and also of the fact that the High Court commuted the death sentence into life imprisonment imposing certain restrictions, the decision of the High Court cannot be faulted with and in the light of well reasoned judgments over a decade, we agree with the conclusion arrived at by the High Court including the reasons stated therein.

32) Consequently, both the appeals fail and are dismissed.

33) We record our appreciation for the assistance rendered by learned *amicus curiae* and the counsel for the State.

.....J.

(P. SATHASIVAM)

.....J.

(M.Y. EQBAL)

NEW DELHI;
APRIL 18, 2013.