2025 INSC 1453

Reportable

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. of 2025
(@Special Leave Petition (Crl.) No.15786 of 2024)

Kiran

...Appellant

Versus

The State of Karnataka

...Respondent

J U D G M E N T

K. VINOD CHANDRAN, J.

Leave granted.

2. A widow, with five children was torched to death, for not having responded to the lustful advances of the accused, a relative by marriage.

3. This Court had issued notice on 08.11.2024, limited to the question as to whether the trial court was correct in imposing life imprisonment meaning that it will be till the end of his natural life and directing the accused to be not granted the benefit of remission under Section 428 of the Code of Criminal Procedure, 1973[1].

[1] for short, the Cr.PC

4. Despite the limited notice, we have gone through the evidence to convince ourselves on the conviction, especially since the witnesses, including the daughter of the deceased, an eyewitness turned hostile. The crime was committed on 01.01.2014 at 11:30 pm when the accused was alleged to have entered the *shanty* in which the deceased was living with her daughters. The woman having not succumbed to the sexual advances made, which had been continuing for some time earlier, the accused poured kerosene over her and set her ablaze. The woman was rushed to the hospital, taken to a higher center but later, after ten days, she succumbed to death. That the death was due to 60% burns caused, has been established by the medical evidence, making a clear case of homicide.

5. The crucial witnesses, who were close relatives, including the father and daughter of the deceased, PW-1 and PW-7, turned hostile. PW-1 though did not support the allegation against the accused, deposed on the incident and spoke of the deceased having been taken to the hospital after having sustained burns, to which she succumbed. As found by the High Court, PW-7 though turned hostile with

respect to the allegation against the accused, admitted the presence of PW-8 and PW-24, neighbors who had come to the crime scene immediately after it occurred, hearing the hue and cry. PW-24 was the brother-in-law of the deceased who shifted her to the hospital along with PW-8, a neighbor, who also spoke of this factum. PW-24, additionally spoke of having seen the accused running away from the scene of occurrence, known to him as a relative by marriage. The presence of PW-24 having been spoken of by the other prosecution witness, the presence of the accused and his flight from the scene of occurrence is established.

6. One other compelling circumstance is the dying declaration made by the deceased. Though there was a dying declaration made to PW-1, PW-9, PW-10 and PW-11 they resiled from their statements. However, it has been established from the testimony of PW-9, the sister of the deceased that the victim was conscious and could speak at the time when she was admitted in the Hospital and continued as an inpatient. Exhibit P-27 is the dying declaration given by the deceased on 02.01.2014 at Nikhil Hospital, Hyderabad to PW-25, the Head Constable

deputed on medical intimation having been received from the Government Hospital, Bidar, to which place the deceased was first taken before transferring her to Hyderabad. PW-25 categorically stated that he was the Station House Officer of Santapur Police Station and on receiving intimation from the Government Hospital, Bidar, he had gone there when he was informed of the victim having been taken to Hyderabad. He then, after obtaining sanction from the higher authorities, proceeded to Hyderabad where he recorded Exhibit P-27, the dying declaration, categorically pinning the crime on the accused. He also stated that at Hyderabad he submitted a request to the Chief Metropolitan Magistrate to record the dying declaration which request was produced as Exhibit D-1. In Exhibit D-1, the recital was of a suicide having been committed by pouring kerosene over oneself. However, this was explained insofar as the crime scene was in the northernmost part of Karnataka and the victim having been taken to Hyderabad within the then State of Andhra Pradesh. It was the deposition of PW-25 that he could not communicate in Telugu, which resulted in the police at

Hyderabad not being properly communicated with the offence; resulting in a mistaken intimation of suicide being made in the request to the CJM, written in Telugu.

7. In any event, the Magistrate was examined as PW-21 who clearly spoke of Exhibit P-23, the dying declaration in a question-and-answer form, on the very next day of admission, again implicating the accused, in accordance with the prosecution story, as also speaking of the detestable prior conduct of the accused, resistance to which was the motive projected. The dying declaration was taken in the presence of PW-22, the duty doctor, who signed on the declaration and fully corroborated in the box. PW-22 also confirmed that the deceased was conscious and coherent when the statements were given. In the totality of circumstances, as coming out from the case records, we are convinced that the conviction was entered into properly.

8. Now, the question remains as to whether the Sessions Court was competent to award a sentence of imprisonment for life till the remainder of life and prohibit the benefit of set-off as provided under Section 428 of the Cr.PC.

9. The sentence of life imprisonment no doubt means the entire life, subject only to the remission and commutation provided under Cr. PC and also to Articles 72 and 161 of the Constitution of India, which cannot be curtailed by a Sessions Court. Nor can the Sessions Court, a creation of the Cr.PC curtail the provision under Section 428, Cr.PC, available in the Code which created it.

10. The learned counsel for the appellant relied on the decision in ***Navas Alias Mulanavas v. State of Kerala***[2] in which the principle under ***Swamy Shraddananda (2) v. State of Karnataka***[3] was employed to confirm the sentence imposed by the High Court of a life sentence without remission but modifying the period of 30 years imprisonment to that of a period of 25 years of imprisonment without remission.

11. In ***Swamy Shraddananda***[3], this Court held that: -

> *"**56.** But this leads to a more important question about the punishment commensurate to the appellant's crime. The sentence of imprisonment for a term of 14*

[2] (2024) 14 SCC 82
[3] (2008) 13 SCC 767

years, that goes under the euphemism of life imprisonment is equally, if not more, unacceptable. As a matter of fact, Mr. Hegde informed us that the appellant was taken in custody on 28 March, 1994 and submitted that by virtue of the provisions relating to remission, the sentence of life imprisonment, without any qualification or further direction would, in all likelihood, lead to his release from jail in the first quarter of 2009 since he has already completed more than 14 years of incarceration. This eventuality is simply not acceptable to this Court. What then is the answer? The answer lies in breaking this standardisation that, in practice, renders the sentence of life imprisonment equal to imprisonment for a period of no more than 14 years; in making it clear that the sentence of life imprisonment when awarded as a substitute for death penalty would be carried out strictly as directed by the Court. This Court, therefore, must lay down a good and sound legal basis for putting the punishment of imprisonment for life, awarded as substitute for death penalty, beyond any remission and to be carried out as directed by the Court so that it may be followed, in

appropriate cases as a uniform policy not only by this Court but also by the High Courts, being the superior Courts in their respective States" (sic-para 56).

12. An alternative measure was brought in, to break the standardisation in sentencing in such cases wherein the crime is heinous, dastardly and brutal. Though life sentence literally denotes imprisonment till the last breath, it operates only as an imprisonment for 14 years with the power of remission and commutation conferred on the Government. Balancing, the need to provide proportionate punishment at least in crimes which shocks human society, with the need to avoid death; an irreversible penalty, a middle ground was found. A measure by which, in crimes possible of categorisation as *'rarest of the rare',* the Courts even then finds a need to avoid death, on mitigating circumstances, could award life imprisonment without remission. Also, when the case falls short of the '*rarest of the rare'* category, thus excluding imposition of death sentence, but by the nature of crime the normal sentence of life imprisonment subject to remission or commutation,

working out to a term of 14 years would not suffice and would be grossly disproportionate and inadequate, again this measure could be employed. It was in such circumstances that this Court considered the possibility of expanding the options so as to cover the '*vast hiatus between 14 years imprisonment of life and death'* (para 92). The Court thus, substituted the death sentence awarded by the Trial Court and confirmed by the High Court, with imprisonment for life and directed that the accused shall not be released till the rest of his life.

13. This Court, hence, as evident from the extract hereinabove, clearly held that in appropriate cases as a uniform policy, punishment of imprisonment for life beyond any remission can be awarded, substituting the death penalty; not only by the Supreme Court but also by the High Courts. The power to impose punishment of imprisonment for life without remission was conferred only on the Constitutional Courts and not on the Sessions Courts.

14. In ***Union of India v. V. Sriharan alias Murugan and Others***[4]***,*** a Constitution Bench of this Court by majority reaffirmed the alternative option as laid down in ***Swamy Shraddananda (2)***[3] restricting the principle to be applied only by the Constitutional Courts, the Supreme Court and the High Courts. While upholding the principle of alternative sentencing, it was also held that this would not affect the power conferred under Articles 72 & 161 of the Constitution of India. It is on the same principle that we say, the Sessions Court is not competent to interfere with or curtail the effect of the provisions of the Cr.PC.

15. Going by the decisions cited, it has to be held that life imprisonment awarded would be for the rest of the life, the power to grant remission and commutation under Sections 432 to 435 Cr.PC cannot be curtailed by the Sessions Court, when the remission as provided under the Constitution was declared to be not permissible of interference by the Constitutional Courts. The power of alternate sentencing to cover the hiatus between 14 years and death, cannot be

[4] (2016) 7 SCC 1

applied by the Sessions Courts. Hence, the sentence of life imprisonment cannot be directed to be till the end of natural life, by the Sessions Court which direction would be in conflict with the provisions of the Cr. PC. The power of remission or commutation conferred on the State cannot be taken away and the sentence as awarded by the trial court and confirmed by the High Court for the offence under Section 302 of the Indian Penal Code, 1860[5] is confirmed as imprisonment for life.

16. Now, we come to the question of set-off under Section 428, Cr. PC having been curtailed. The learned Government Advocate brought to our notice a refence made by a Division Bench of this Court, in ***The Superintendent of Prison and Anr. v. Venkatesan @ Senu @ Srinivasan @ Baskaran @ Radio @ Prakasam***[6]. Therein the question referred was the principle of set-off being made applicable insofar as the period of detention with respect to other offences, suffered in the course of a separate investigation inquiry and trial. In the present case, no such question arise

[5] for short, 'the IPC'
[6] 2025 INSC 541

insofar as the direction of the trial court is not to grant the set-off for the period of detention undergone by the accused in the course of the investigation and trial of the same case. The statutory imprimatur in Section 428, Cr. PC is that the period of detention undergone by an accused during the investigation, inquiry or trial of a case, before the date of conviction in the case shall be set-off against the term of imprisonment imposed on the accused, as the sentence on such conviction. The direction of the Sessions Court not to grant set-off under Section 428, Cr. PC will stand deleted, as there is no escape from it.

17. The learned Government Advocate also relied on ***Ravinder Singh v. State (NCT of Delhi)***[7]**,** in which this Court following the decisions in ***Swamy Shraddananda***[3] and ***V. Sriharan alias Murugan***[4], upheld the special category of sentence of a life term for 20 years as imposed by the trial court, finding it to be fit and proper in the circumstances of the case. We do not think the offence herein requires the same treatment.

[7] (2024) 2 SCC 323

18. The appeal stands partly allowed, modifying the sentence to imprisonment for life under Section 302, IPC and permitting set-off, as provided under Section 428, Cr. PC as also confirming the sentence under the other offences, which would run concurrently. The accused would be entitled to avail of remission/commutation, in due course, but subject to the decision being taken by the Government as per its policy.

19. Pending applications, if any, shall also stand disposed of.

..... J.
(AHSANUDDIN AMANULLAH)

..... J.
(K. VINOD CHANDRAN)

NEW DELHI
DECEMBER 18, 2025.