

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

+ **CRL.A. 885/2010**

MANGAL SINGH Appellant
Through: Mr. Ajay Verma, Advocate.

versus

STATE (GOVT. OF NCT) OF DELHI Respondent
Through: Ms. Ritu Gauba, APP.

% Date of Decision: July 16, 2013

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL
HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Mangal Singh impugned the judgment dated 23.09.2009 and order of sentence dated 30.09.2009 passed by learned Additional Sessions Judge in Sessions Case No.423/2006 arising out of FIR No.569/2004, PS Tilak Nagar, vide which he was convicted for committing offences punishable under Sections 302/307 IPC and Section 27 Arms Act and sentenced to undergo rigorous imprisonment for life with a direction that he shall not be considered for being granted remission till he undergoes an actual sentence of 30

years and to pay a fine of Rs.50,000/- for the offence under Section 302 IPC, in default of payment of fine to further undergo simple imprisonment for a period of six months. He was further sentenced to undergo rigorous imprisonment for a period of ten years and to pay a fine of Rs.25,000/-, in default of payment of fine to undergo simple imprisonment for a period of three months under Section 307 IPC and to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/-, in default of payment of fine to undergo simple imprisonment for a period of three months under Section 27 Arms Act, 1959. All the substantive sentences of imprisonment were to run concurrently.

2. The factual matrix of the case is as under:-

On 26.07.2004 at about 7.30 a.m., one Harry Chowdhary (PW2) along with his elder sister Ritika Chowdhary @ Charu and Neha (PW7), a friend of his sister was going to the school at CRPF Camp, Tilak Vihar in a cycle rickshaw. When their cycle rickshaw reached near C-1, Tilak Vihar Mor, then, accused came on a motorcycle and stopped the motor cycle in front of the cycle rickshaw. He thereafter came near them and asked Ritika that he

wanted to talk to her in private. However, Ritika kept quiet, upon which accused asked her to get down. Ritika, refusing to talk to him, rather asked him as to why he was troubling her, upon which accused got annoyed and took out a khukri from his pocket and stabbed Ritika with it by saying '*Ritika tu meri nahi ho sakti to aur kisi ki bhi nahi ho sakti*'. Upon seeing this incident, the rickshaw puller and Ritika's friend Neha (PW7) both ran away from the spot. Harry Chowdhary (PW2), brother of the deceased got down from the rickshaw and caught hold of khukri, but his hand also got injured in the process. The accused, however, attacked him also on his stomach with khukri. Thereafter, he continued to attack Ritika repeatedly with khukri by uttering the same above mentioned words. In the meantime, some public persons, who were passing from nearby tried to catch hold of the accused, upon which accused started running away from the spot. While being chased by one Arvinder Pal Singh (PW3), he entered inside Police Post, Tilak Vihar carrying the bloodstained khukri in his hand. Inside the police post, he was overpowered and khukri was taken away from his hand. One Jasbir Kaur (PW21) residing nearby to the place of incident also reached the spot and she helped in

removing the injured persons to DDU Hospital. Information about the incident was received by Smt. Rajni Chowdhary (PW1), mother of the injured and maternal uncle Balvinder Singh (PW6), who reached the hospital. ASI Gian Singh (PW28) took into possession the khukri and also custody of the accused in the police post. He recorded the statement of Arvinder Pal Singh (PW3) and conveyed information about the incident to Incharge, police post and SHO. He himself went to the spot and found blood lying over there, besides a red colour Pulsar motorcycle bearing No.DL-4S-AL-4635, two school bags, a water bottle and a cello tape. SI Ishwar Singh also reached the spot and thereafter they all went to DDU hospital, where Inspector Pratap Singh (PW29) also met them besides SI Bhim Singh Rawat (PW20). While Ritika was declared brought dead by the doctors, the other injured child Harry was undergoing surgery inside the operation theatre. After collecting the MLC of injured Harry, ASI Gian Singh again came to the spot and prepared rukka on the basis of statement of Arvinder Pal Singh (PW3) and got FIR Ex.PW12/A registered at PS Tilak Nagar for the offences under Sections 302/307 IPC read with Section 27 Arms Act, 1959. The subsequent investigation was taken

over by Inspector Pratap Singh, who had also reached the spot. The spot was inspected by the crime team and photographs were taken. Site plan of the place of incident was prepared on the pointing out of Arvinder Pal Singh (PW3). The motorcycle lying at the spot, a water bottle, cello tape, two school bags containing books and copies carrying the names of Harry and Ritika were also taken into possession. Blood sample and bloodstained earth control besides earth control samples were seized from the spot. The bloodstained clothes of injured Harry were collected by the doctors and were also taken into possession. At the police post, Constable Anil Kumar produced the bloodstained khukri, which was seized from the hands of accused, which was also taken into possession after preparing its sketch and sealing it in a pulanda. After interrogation, accused was also arrested and his bloodstained clothes as well as bloodstained finger rings were taken into possession. Accused was also taken for medical examination as there was blood on his hand, where doctors took the scrap of blood from the hands of the accused and seized it in a pulanda. Inquest proceedings regarding death of Ritika were carried out. Post mortem examination was conducted by Dr.

M.M.Narnaware. Subsequent opinion of the doctor was also obtained during the course of investigation. Exhibits were sent to FSL for examination. After completing investigation challan was submitted in the Court of learned Metropolitan Magistrate who committed it to the Court of Sessions.

3. Vide order dated 17.03.2005, charges for offences under Sections 302/307 IPC and Sections 27/54/59 Arms Act were framed by learned Additional Sessions Judge. The accused pleaded not guilty to the charges and claimed trial. To substantiate the charges, prosecution examined 29 witnesses. In his statement under Section 313 Cr.P.C., the accused denied the incriminating circumstances and pleaded false implication in the case as he was having love affair with Ritika and her family was against this relationship. He did not prefer to lead any defence evidence.

4. After appreciating and considering the rival contentions of the parties, the learned Trial Court concluded that accused was responsible for committing the heinous crime of murdering Ritika, causing injuries on the person of Harry with such an intention and under such circumstances that if death of Harry would have been

caused then he would have been guilty of committing culpable homicide amounting to murder. Aggrieved by the said findings, the present appeal has been preferred.

5. We have heard Sh. Ajay Verma, Advocate for appellant and Ms. Ritu Gauba, Additional Public Prosecutor for the State. Learned counsel for the appellant challenged the finding of the Trial Court and urged that it did not appreciate the evidence in its true and proper perspective. As such, impugned order be set aside. On the other hand, supporting the judgment, learned APP urged that the impugned order does not call for any interference.

6. We have considered the submissions of both the parties and have examined the Trial Court record. PW2 Harry Chowdhary is victim, who was 13 years old on the date of examination in the court. The trial court put preliminary questions to ascertain if he understood the questions and was able to give rational answers. The court was of the opinion that the child witness is capable of making the statement. Since he was 13 years of age, oath was administered to him. In his deposition, PW2 Harry testified that on the date of incident i.e. 26.07.2004 he along with his sister Ritika Chowdhary engaged a rickshaw at the colony gate to go to the school. They left the house at around 7:05 a.m. and it took five minutes to reach the gate. Thereafter

they hired a rickshaw and reached GH-6, where Neha (PW7), his sister's friend also sat in the rickshaw. All three of them got down at Mira Bagh bus stop. They boarded a bus to CRPF camp and got down at CRPF camp. From there they took another rickshaw for Tilak Vihar to reach the school. His sister was sitting on the right side while her friend was sitting on the left. He was sitting on the seat at the back of the rickshaw. As they reached C Block Mor of Tilak Vihar, he saw accused Mangal Singh coming on his red coloured Pulsar motorcycle towards their rickshaw. He stopped the motorcycle in front of the rickshaw. Mangal Singh approached the rickshaw and asked his sister to get down as he wanted to talk to her privately. His sister kept quiet. Again accused asked his sister to get down as he wanted to talk to her alone. His sister replied that she did not wish to talk to her and asked him why he was troubling her. Then accused got annoyed and took out a khukri from his pocket and declared '*Ritika tu meri nahi ho sakti to aur kisi ki bhi nahi ho sakti*' and stabbed her with the khukri. On seeing the incident the rickshaw puller and Neha (PW7) fled away from the spot. He got down from the rickshaw and caught hold of the khukri from the side of blade. In that process, he sustained injuries on

right hand thumb. After releasing the khukri from his hand the accused struck khukri on his stomach. Thereafter, he kept on striking his sister with khukri. He became giddy and fell at a distance but did not lose consciousness. He saw accused repeatedly giving khukri blows to his sister and while doing so he was repeating the above said words. After some time he lost consciousness and when gained consciousness he was in the hospital. He was subjected to cross-examination, but the accused failed to elicit any material or relevant discrepancy or inconsistency despite searching cross-examination. Learned trial court had the occasion to see the witness as such there are court observations to the effect that there is cut mark on the mound below the thumb and there are marks in the middle of the abdomen in line with the umbilicus. Although, he was a child witness but rightly the testimony of this witness was not assailed on that account. It is well settled that the court can place reliance on the solitary testimony of a witness even if it is a child, if the evidence is found to be true and correct version of the case of the prosecution. In *Rameshwar vs. State of Rajasthan*, AIR 1952 SC 54; *Panchhi and Ors. vs. State of U.P.*, AIR 1998 SC 2726, (2012) 4 SCC 559;

Promode Dey vs. State of West Bengal, AIR 2012 SC 1598, (2011) 14 SCC 268; *Dinesh Prajapati vs. State of M.P.*, 2012 (Cri) LJ 1212; (*Alagupandi @ Alagupandian vs. State of Tamil Nadu*, AIR 2012 SC 2405 and *State of Uttar Pradesh vs. Krishna Master and Anr.*, (2010) 12 SCC 324, it was held that a child witness is a competent witness provided statement of such witness is reliable and truthful. A conviction can be based on the sole testimony of a child witness. The only precaution, which the Court should bear in mind while assessing evidence of a child witness is that witness must be reliable one and his demeanour must be like any other competent witness and that there exists no likelihood of being tutored. There is no rule of practice that in every case evidence of such a witness be corroborated by other evidence before a conviction could be allowed to stand, but as a rule of prudence court always find it desirable to seek corroboration to such evidence from other reliable evidence placed on record. In the last mentioned case, it was held that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to

abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. The witness has given a true and vivid picture of the entire incident in which not only his sister lost her life but he also sustained dangerous injuries and had to remain hospitalised for about 10 days. Therefore, it is inconceivable that he would not remember these facts. He recapitulated the facts correctly and narrated the same. The conviction of the accused can be based on the solitary testimony of this injured witness. However, in the instant case there is ample other material on record to corroborate his version.

7. PW3 Arvinder Pal Singh is a totally independent witness. It has come in his deposition that on the fateful day he was going to drop his son to S.S. Mota Singh Public School, Paschim Vihar on his scooter. At about 7:30 a.m., when he reached C Block Chowk, Tilak Vihar he saw two girls and one boy travelling in a rickshaw. Accused Mangal Singh, whose name he came to know subsequently had placed his motorcycle in front of the rickshaw to prevent it from moving further. He was having a khukri in his hand. The accused chased one of the

girls and also stabbed the boy. Boy fell at some distance and then accused began striking the girl with the khukri continuously. He tried his level best to stop him from stabbing the girl but accused kept on inflicting injuries on the girl with the khukri. The girl fell down on the ground but even thereafter accused kept on giving blows on her with khukri. Although, he tried to stop him, but accused did not stop and declared that he was bent upon killing her. He sought the assistance of others to chase him. The accused ran away from the spot with khukri in his hand covered with blood and got into the Police Post, Tilak Vihar. Police recorded his statement Ex.PW3/A. He accompanied the police to DDU Hospital, where he learnt that the girl had expired and the boy was being operated. He identified the khukri Ex.P-1 to be the same with which the accused had caused injuries on the boy and the girl. This witness was also subjected to cross-examination but he withstood the same. His testimony was sought to be challenged on the ground that he was a stock witness of police. Experience tells us that in big cities like Delhi there is general apathy and indifferent attitude and people are reluctant to join police proceedings. But it is very unfortunate that if a totally independent person comes to the

rescue of victim and tries to nab the accused, then he is termed as 'stock witness' of the police. The detailed cross examination of the witness reflects that neither he is on any friendly terms with the family of deceased or has any enmity, ill-will or grudge against the accused. As a good samaritan, on seeing the brutal assault on Ritika and Harry, helpless school going children, he tried to dissuade accused but when he did not pay any heed and tried to run away, he chased him with the assistance of others. It was only due to that reason that probably to save himself, accused entered the police post and then could be arrested. He deserves a word of appreciation instead of condemnation. Presence of this witness at the spot and then chasing him upto police post stands proved from the fact that it was on his statement Ex. PW3/A that FIR was registered which became bedrock of investigation.

8. It has come in cross-examination of this witness that he had helped in removing the injured in a three-wheeler scooter and a woman had accompanied the children to hospital. This part of his testimony finds corroboration from PW21 Smt. Jasbir Kaur, who testified that on the fateful day she was standing outside her house at

about 7:30 a.m. as she had come to see off her kids for school. Her husband took the children to school on scooter and she was still at gate when she heard the commotion. She locked the house and went towards the spot, where a crowd had gathered. She saw a boy lying in injured condition. Blood was oozing from his abdomen. A girl was also lying in injured condition. Both were in school uniform. A red coloured Bajaj Pulsar Motorcycle, two school bags, a water bottle and a cello tape were found lying at the spot. She picked up the boy with the help of other persons and took him to a nearby hospital called 'family hospital'. However, hospital authorities refused to admit the patient and advised her to take him to a bigger hospital. The girl was also brought by some other person to family hospital. She then took both of them to DDU Hospital in TSR. Some relations of injured also reached the hospital and got them admitted there. The girl, namely, Ritika was declared brought dead. As such, as a good citizen, she tried to provide immediate medical aid to the children who were unknown to her but the attitude of hospital authorities was deplorable. Instead of providing medical aid to the children, they asked her to take them to bigger hospital. As far back as in the year 1989 Hon'ble

Apex Court in *Parmanand Katara vs. UOI*, (1989) 4 SCC 286, AIR 1989 SC 2039 had emphasised the need for making it obligatory for hospitals and medical practitioners to provide emergency medical care. The view was reiterated in *Paschim Banga Khet Mazdoor Samity vs. State of West Bengal* 1996 (4) SCC 37. Recently this Court in W.P. (C) 7927/2012 *Court on its own motion vs. UOI through Secretary, Ministry of Home Affairs & Anr.* directed Govt. of NCT of Delhi to issue appropriate directions to all hospitals including private hospitals, whether they be recognized hospitals or not, to attend to the victims of all crimes and provide immediate treatment required by them depending upon the condition of the injured or victim, as the case may be and in which event, the hospitals shall not refuse to provide such medical treatment for any reason including that the case is of a medico legal nature.

9. Coming back to the factual matrix of the case, while Arvinder Pal Singh (PW3) helped in nabbing the accused, Jasbir Kaur (PW21) removed the children to hospital. On receipt of information Rajni Chowdhary (PW1), mother and Balwinder Singh (PW6), maternal uncle of the children reached DDU Hospital. Since the injured were

being admitted in hospital, as such Balwinder Singh gave his name as the person who brought them to hospital. While Ritika was declared brought dead, the condition of Harry was critical and he was in operation theatre.

10. Sequence of events leading to the present incident has been narrated by Rajni Chowdhary (PW1), who deposed that she came to know that her daughter Ritika and accused were friends. She had called the accused and her daughter and explained to the accused that nothing should be done which would lower their status and the children are too young. Her daughter immediately understood and agreed and assured her that she would not in future be friendly with people in this manner. But the accused did not pay any heed to her advice. Her children used to come and go by the same route to the school and to the house. The accused used to stand in the way and tease her daughter and harass her. Her daughter used to complain to her about harassment and teasing of the accused. She again called the accused and asked him not to indulge in such activities. The accused used to threaten her daughter that in case she did not speak to him the result would not be good. When she again reasoned with accused he

was not willing to listen to her. One day in her absence he came to her house and slapped and beat her daughter and ran away. Then she made a report Ex.PW1/A to police at Tilak Vihar Police Post. Accused was apprehended. ASI Gian Singh talked to the accused and accused finally understood and even touched her feet and asked forgiveness and assured her that he would not tease her daughter or harass her in any manner in future. He also returned to her, her photographs and letters. He also wrote down the apology letter marked 'A' in her presence and wept bitterly and asked for forgiveness. Things, however, did not improve as later on, her daughter again complained to her that accused and his friends used to stand on the roadside and harass her and on her query she assured that she was not even looking at him but the accused went on harassing her. Thereafter, she went to the house of bhabhi of accused. The bhabhi of the accused also reasoned with the accused but he misbehaved with her and spoke very rudely. Then the bhabhi advised her to talk to the mother of the accused as she had also come to Delhi. The mother of the accused also scolded the accused and she assured that she would take charge of accused since he was becoming much

undisciplined and she asked her to take care of her children. However, in the presence of his bhabhi and mother the accused threatened to kill her daughter. At that time, she told him as to how he would be killing a child but accused abused her and her daughter. His mother scolded him. While she was leaving their house accused again threatened that he would not leave any member of the family alive. PW6 has also corroborated her version by deposing that accused used to follow Ritika on his motorcycle and a complaint to this effect was made by Ritika to him when she had come to his house. It was not a bare and bald threat but turned into reality when on the fateful day he committed brutal murder of Ritika and even thereafter he was not remorseful as it has come in the testimony of PW6, Balvinder Singh that when Mangal Singh was brought in the hospital, he inquired from him as to why he has done such a terrible thing on which he informed him that after bribing the police officials he would get himself freed and then will kill the remaining children and mother.

11. The mere fact that PW7 Neha, friend of Ritika did not identify the accused as being the assailant is insignificant in view of the fact that even this witness does not dispute that an incident had taken

place. As per the case of prosecution, she fled away from the spot. It was quite natural that on seeing the attitude of accused, she must have got scared and, therefore, fled away from the spot. When she was cross examined by learned Public Prosecutor, although at one point of time she denied the suggestion that she is not identifying the accused out of fear but in the same breath she stated 'I do not remember' which makes it amply clear that out of fear of accused, she is not identifying him but in view of voluminous evidence coming on record against the accused, this fact pales into insignificance.

12. The ocular testimony of the prosecution witnesses finds substantial corroboration from medical record, which reflects that Ritika was declared brought dead. As many as 20 injuries were found on her person when the post mortem examination was conducted by Dr. M.M.Narnaware. The injuries on the person of Harry were also opined to be "dangerous" and he had to remain hospitalised for a period of about 10 days. The doctor M.M.Narnaware had given his subsequent opinion regarding the weapon of offence that the injuries on the person of the Ritika were possible by weapon of offence shown to him. The accused himself sustained injuries while stabbing

Ritika and Harry, which is reflected from his MLC Ex.PW22/A.

13. Blood gauge, earth control, school bags, bloodstained earth, water bottle, cello tape, motorcycle were seized from the spot vide seizure memo Ex.PW28/A. Blood sample on cotton piece, blood stained road concrete and sample road concrete were lifted vide Ex.PW21/B. Bloodstained clothes of injured Harry were seized vide seizure memo Ex.PW20/A. Khukri was seized vide seizure memo Ex.PW13/E. Bloodstained clothes and two rings of the accused were seized vide seizure memo Ex.PW19/C. Blood sample of accused and blood scrap from his hand were seized vide memo Ex.PW20/B. Clothes of the deceased and blood sample were also seized. All the exhibits were sent to FSL. The same were examined by Sh. V.Shankar Narayanan and as per report Ex. PW26/A blood was detected on all the exhibits except road concrete and earthly material. As per serological report Ex. PW26/B although human blood was detected on cotton wool, swab, bloodstained earthy material, cotton wool swab, bloodstained earthy material, shirt, ring, as regards other exhibits it was opined 'no reaction'. Except for shirt and ring on which blood group was opined to be 'A' Group, however for

remaining exhibits no blood group could be opined. As such, to certain extent, even this FSL report corroborates prosecution version.

14. The plea of the appellant in his statement recorded under Section 313 Cr.P.C. is that he was having love affair with Ritika. The family members of Ritika were against the love affair. Therefore, in order to teach him a lesson he was falsely implicated in the case. He has further taken a plea that he was not present at the spot and was brought from his home and then implicated in this case. In the face of cogent and clinching evidence coming on record, it is highly improbable that accused would be falsely named as assailant of the crime by allowing the real culprits to scot free. Moreover, it is important to note that accused is not disputing his presence at the spot in as much as to almost all the prosecution witnesses a suggestion has been given that he had tried to rescue Ritika and had gone to the police post to make a complaint where he was falsely implicated in this case. He does not dispute the factum of motorcycle No.DL-4S-AL-4635 lying at the spot. The fact that the motorcycle belongs to him stands proved from the record brought by PW24 Naresh Chand, LDC from Delhi Transport Authority, West Zone. As per the record,

the motorcycle was registered in the name of Mangal Singh, son of Sewa Singh, resident of WZ-3, Krishna Nagar, Delhi. Not only that, the accused is also not disputing the factum of incident which had taken place at the spot nor is he disputing the use of khukri as the weapon of offence being used in the incident in as much as he himself suggested to the prosecution witnesses that he had snatched away the khukri from the hands of the assailant. He also does not dispute that he himself had gone to the police post along with khukri where he was apprehended. The only plea taken by him is that he had gone to police post to make a complaint which in the face of voluminous evidence coming on record against him does not have any ring of truth. As regards the plea that he was not present at the spot or was picked up by the police from his house, same is clearly an afterthought having seen light of the day for the first time in his statement under Section 313 Cr.P.C. and has no legs to stand.

15. In view of the above discussion and our appraisal and analysis of the evidence on record we have no hesitation to hold that prosecution has successfully established the case against the appellant by clear, cogent and reliable evidence.

16. Coming to the quantum of sentence, learned counsel for the appellant prayed for leniency on the ground that the incident is a result of frustration in love. Appellant has no criminal background. His conduct during the entire trial remained above board. He is the only son and has five sisters. As such, it was submitted that there was no occasion for imposing the harsh punishment that he was not entitled to seek any remission in the sentence till he undergoes an actual sentence of 30 years. Reliance was placed on *Santosh Kumar Satishbhusan Bariyar vs. State of Maharashtra*, (2009) 6 SCC 498 and *Sangeet and Another vs. State of Haryana*, (2013) 2 SCC 452.

17. On the other hand, it was submitted by learned Public Prosecutor for the State that the victim was a tender aged school going girl of 10th standard and another victim was a school going kid of 7th standard between 13-15 years of age. The accused came with premeditated mind with a khukri in hand to the spot. He caused multiple stab blows on the girl as well as dangerous injuries on PW2 Harry, who was discharged from the hospital after 10 days as per MLC. Previous threats to do away with the entire family of the girl as well as on the fateful day disclosing his mind to kill the entire family

after paying bribe to police officials and hushing up the case is another factor which goes against him. Testimony of witnesses reflects that the girl Ritika was not willing to talk to the accused and remained silent. Hence she was being stalked by the appellant. The victims did not give any provocation and were young children. As such, death sentence was the appropriate sentence but a liberal view has already been taken by awarding life imprisonment with the rides of not seeking remission till he undergoes an actual sentence of 30 years which does not call for any interference. Moreover, it is a crime against women. As such, leniency in sentence was otherwise unwarranted. Reliance was placed on *Ashabai and Another vs. State of Maharashtra*, (2013) 2 SCC 224, (2013) 1 SCC (Cri) 943 and *Guru Basavaraj @ Benne Settappa vs. State of Karnataka*, (2012) 8 SCC 734, (2013) 1 SCC (Cri) 972. Ratio decidendi of both these decisions is that crime against women are to be dealt with sternly and adequate sentence is required to be imposed.

18. Needless to say, the offence committed by the appellant is very grave and serious in nature inasmuch as out of frustration in love, he inflicted as many as 20 stab blows on the person of Ritika which

proved fatal and thus, treated her with bestiality and cruelty besides subjecting her to extreme pain. Not only that when her brother Harry who was only aged about 13-14 years tried to intervene, even he was attacked and injuries on his person were opined to be dangerous. He had to remain hospitalized for about ten days. However, after taking note of the aggravating and mitigating circumstances learned Trial Court was of the view that the case does not fall within the category of rarest of rare cases. Therefore, death sentence was not awarded. However, relying on the decision of this Court in *Shree Gopal @ Mani Gopal*, Death Reference No. 1/2009 & CrI. A. 528/2009, the appellant was sentenced to undergo RI for life with a direction that he shall not be considered for being granted remission till he undergoes an actual sentence of 30 years u/S 302 IPC besides imposing other sentence & fine u/S 307 IPC & Section 27 Arms Act.

19. The vexed question which now arises for consideration is: whether the facts of the instant case warrants the imposition of condition that appellant shall not be considered for being granted remission till he undergoes an actual sentence of 30 years.

20. This aspect of the matter was dealt with in *Sangeet* (Supra), where, after referring to various earlier decisions rendered by Hon'ble Supreme Court, it was observed as under:-

“55. 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 had done in *Swamy Shraddananda vs. State of Karnataka*, (2008) 13 SCC 767 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 be the reason.”

21. It was further observed that it is true that a convict undergoing a sentence does not have the right to get a remission of sentence, but he certainly does have a right to have his case considered for the grant of remission, as held in *State of Haryana Vs. Mahender Singh* (2009) 1 SCC (Cri.) 221 and *State of Haryana Vs. Jagdish* (2010) 2 SCC (Cri.) 806. Referring to Section 45 of the Indian Penal Code, it

was observed that this Section defines “life” as denoting the life of a human being unless the contrary appears from the context. Therefore, when a punishment for murder is awarded under Section 302 IPC, it might be imprisonment for life, where life denotes the life of the convict or death. The term of sentence spanning the life of the convict can be curtailed by the appropriate Government for good and valid reasons in exercise of its powers under Section 432 Cr. P.C. This Section statutorily empowers the appropriate Government to suspend the execution of a sentence or to remit the whole or any part of the punishment of a convict. The statute provides some inherent procedural and substantive checks on the arbitrary exercise of this power as embodied in Sub-section 2 to Sub-section 5 of Section 432 Cr.P.C. and Section 433-A Cr.P.C. After referring to these provisions, it was observed that there is a misconception that a prisoner serving a life sentence has an indefeasible right to release on completion of either fourteen years’ or twenty years’ imprisonment. The prisoner has no such right. A convict undergoing life imprisonment is expected to remain in custody till the end of his life, subject to any remission granted by the appropriate government under

Section 432 Cr. P.C which in turn is subject to the procedural checks in that section and the substantive checks in Section 433-A Cr.P.C. The death penalty awarded to the appellant was converted into a sentence of life imprisonment subject to the procedural and substantive checks as referred above. Substantially similar view was taken in *Mohinder Singh Vs. State of Punjab*, 2013 (2) Scale 24. Under the circumstances, curtailing the power of the appropriate Govt. to consider his plea of remission before the expiry of 30 years is impermissible.

22. In the case of *Kaushal Singh Vs. State of NCT of Delhi*, 194 (2012) DLT 342 and *Rajinder Singh @ Raju Vs. The State*, 2012 6 AD (Delhi) 196 also condition was imposed upon the convict that he shall not be considered for grant of remission till he undergoes an actual sentence of 20 years and 35 years respectively, which was modified to imprisonment of life only without any such condition. The facts and circumstances of the present case also does not warrant imposition of such a condition. That being so, the sentence is modified only to the extent that the appellant will undergo life imprisonment which means till the end of his life, subject to any

remission granted by the appropriate government under Section 432 Cr. P.C. which in turn will be subject to the procedural checks in that Section and the substantive check in Section 433A Cr. P.C. The fine imposed upon the appellant and the default sentence awarded to him shall remain unaltered. Out of the fine, if realised, a sum of Rs.60,000/- be paid to the parents of deceased and Rs.25,000/- be paid to injured Harry as compensation as provided under Section 357 Cr. P.C. The appeal is disposed of in the above terms in modification of the order passed by the Court below.

SUNITA GUPTA, J

REVA KHETRAPAL, J

JULY 16, 2013
aks/as/rs