2025 INSC 387

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.257 OF 2013

FIROZ KHAN AKBARKHAN **…APPELLANT**

VERSUS

THE STATE OF MAHARASHTRA **…RESPONDENT**

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Heard learned senior counsel/counsel for the parties.

2. The present appeal assails the Final Judgment and Order dated 26.07.2012 (hereinafter referred to as the 'Impugned Judgment') passed by a learned Division Bench of the High Court of Judicature

at Bombay, Nagpur Bench, Nagpur (hereinafter referred to as the 'High Court') in Criminal Appeal No.92 of 2008, whereby the appeal filed by the appellant was dismissed and Judgment dated 23.11.2007 passed by the *Adhoc* District Judge-3 and Additional Sessions Judge, Amravati (hereinafter referred to as the 'Trial Court') in Sessions Trial No.143 of 2005, was upheld. Aggrieved, the appellant is before this Court.

THE FACTUAL MATRIX:

3. The appellant (accused no.1) and two other co-accused (accused no.2/Md. Jakaria and accused no.3/Kalimkhan)[1] were prosecuted for offences punishable under Section 302[2] read with Section 34[3] of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). The case of the prosecution is that on 18.04.2005, at about 11.00 PM in the night, there was a quarrel between the accused and

[1] There is some inconsistency as far as the spellings of the names of the accused and witnesses are concerned, with slight variations in different record. However, these inconsistencies are irrelevant for the purposes of the present adjudication as the identities of the persons concerned is not in the realm of dispute.

[2] '***302. Punishment for murder.***—*Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine.*'

[3] '***34. Acts done by several persons in furtherance of common intention.***—*When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.*'

one Sukhdeo Mahadeorao Dhurve (hereinafter referred to as the 'deceased') at S.T. Stand, Village Hiwarkhed. Thereafter, on the fateful day, i.e., on 19.04.2005 at about 9.00 AM, the deceased went to Gujri Bazar and he came near a hair saloon/shop, which is in front of the shop of PW3 (Nandu Ganjre). In the meantime, the three accused reached there and there was hot talk between the deceased and the accused, on account of the alleged illicit relations between the informant Ramkala (deceased's sister) and one Rashid Kazi of that village. Suddenly, accused no.2 caught hold of the collar of the deceased. The appellant took a knife and inflicted blows by means of said knife on the chest of the deceased, while accused no.2 kicked the chest and neck of the deceased. Accused no.3 was also present at the time of such assault. Having sustained serious injuries, the deceased was bleeding. It was stated that many persons gathered around the deceased while blood was oozing from his mouth. The accused threw the knife at the site of the incident and fled from the scene. Unfortunately, the deceased died on the spot itself.

4. PW7 (the Investigating Officer) received information about the incident and he immediately reached the site with other police

personnel. He saw many persons gathered there, who were damaging houses and beating each other up. The police managed to bring the situation under control. The informant, sister of the deceased, gave an oral report, which culminated into the First Information Report being Crime No.61 of 2005 (hereinafter referred to as the 'FIR'), lodged at Morshi Police Station.

5. The informant stated that she was married to one Gajanan with whom she had three children - one female and two males. She stated that she started residing separately from her husband on account of dispute(s) between them. She further stated that due to her (then) on-going relationship with Rashid Kazi, which had caused tension and disputes in the village, in the night of 18.04.2005, a quarrel occurred between her brother and the accused over her relationship with the said Rashid Kazi. The very next morning, on 19.04.2005, the accused allegedly attacked the deceased with a knife in Gujri Bazar, resulting in his death.

6. The Trial Court convicted accused nos.1 and 2 for offence punishable under Section 302 read with Section 34 of the IPC. It

sentenced the appellant and accused no.2 to suffer Imprisonment for Life and pay a fine of Rs.1000/- (Rupees One Thousand) each and in default of payment of the fine, to suffer further rigorous imprisonment for six months each. The Trial Court acquitted the accused no.3. The conviction and sentence of the appellant has been confirmed by the High Court by way of the Impugned Judgment.

THE APPELLANT'S SUBMISSIONS:

7. Learned senior counsel submitted that he has been falsely implicated in this case because he belongs to a particular community and the persons belonging to the community of the deceased wanted to create a false case against the appellant. It was submitted that all the eyewitnesses deposed against the appellant because of the rivalry between the two communities in the village.

8. It was further argued by the learned counsel that: the statements of the witnesses were recorded after 2/3 days of the incident; the deceased had sustained injuries during a riot; there is no cogent and reliable evidence against the appellant; the delay in

recording of the statements of these witnesses itself indicates that nobody had, in fact, seen the incident of assault on the deceased, and; the witnesses had been manipulated later on by the police to create a false case against the appellant.

9. It was submitted that from amongst the total 8 prosecution witnesses, PW1 & PW2 had turned hostile. Learned senior counsel submitted that though PW3 in his examination stated that he was an eye-witness to the incident as the same took place at a near distance in front of his shop, yet there is no explanation by him as to why no attempt was made to prevent the appellant from inflicting knife stab on the deceased, especially when they had stated that there were repeated blows and that the accused no.2 had also given kick blows on his chest and neck and many persons had gathered there. He has stated that, surprisingly, in the crowd he could hear somebody saying that whoever came to him would have to face the same consequences though it is not attributed to any of the accused including the appellant. It was submitted that as per PW3, the knife was thrown by the appellant at the spot of the incident itself. Thus, it

was submitted that the conduct of the witness raises serious doubts with regard to the veracity of his deposition and in such facts and circumstances in law, the appellant is entitled to the benefit of doubt. It was stated that PW4 was also an eye-witness and has almost repeated the same version with a slight difference, being that he states in his examination-in-chief that the knife might be the same but he could not definitely say so as the knife was rusted. He further stated that the police had recorded his statement after 2/3 days, whereas the police had reached the spot within half-an-hour where all the persons were said to have been present, and thus, there is no explanation as to why the police could record the statement of such vital eye-witness only after 2/3 days. With regard to PW5, who also claims to be an eyewitness, learned senior counsel submitted that he has also almost deposed in similar terms that the knife was thrown by the appellant at the spot of the incident itself and after 2/3 days, the police recorded his statement.

10. As regards PW6, it is stated that the examination-in-chief is the same as the others, with the only variance that accused no.3 is said to have also been present at the spot and he also gave leg blows to

the deceased. PW6's statement was also said to have been recorded 2/3 days after the incident.

11. PW7, who is the Investigating Officer had explained in detail the incident and the action taken by him and also the *panchnama* for the inquest and from where the clothes of the deceased were seized. He has further stated that appellant no.1 was arrested on 19.04.2005 and accused nos.2 and 3 were arrested on 20.04.2005 and their clothes were seized on which blood stains had been found.

12. As far as PW8 is concerned, he is the doctor who conducted the *post-mortem* examination on the deceased.

13. It was submitted that DW1 is the informant herself and she has explained that she knew only the appellant and not the accused nos.2 and 3. It was contended that DW1, the sister of the deceased, has not been produced as a prosecution witness, though she has supported the version of other eye-witnesses that the appellant inflicted blows of knife in the stomach of her brother, but has stated

that she had put her thumb-impression on the statement which was written by the police as she could not sign.

14. It was stated that it was clear that in order to save themselves, the accused nos.2 and 3 had put the entire blame for the incident on the appellant.

15. Learned senior counsel further submitted that moreover, there is discrepancy in the statement of the witnesses apropos occurrence of Hindu-Muslim riots immediately after the incident, as not all the witnesses have stated about the same. Despite this, there is no explanation as to why the police took 2/3 days to record the statements of the witnesses. It was submitted that neither in the investigation nor in the record, it has come as to why the appellant would take the extreme step of killing the deceased, that too, for the alleged relations of the informant with Rashid Kazi, when no other motive nor even any relationship of the appellant with Rashid Kazi has been established. It was submitted that the informant, who claims to be an eyewitness, says that she was there at some distance and had seen the incident. However, she herself has said that there were

100-150 persons and thus, to say she would have actually witnessed the unfortunate incident from amongst the crowd, cannot be believed. It was suggested to us that the statement obviously is tutored and deliberate so as to ensure that the appellant is convicted. Furthermore, it was submitted that given the appellant's character, there being no past criminal antecedents or history, the appellant ought not to have been convicted under Section 302, IPC and, at best, under Section 304-I[4], IPC for the simple reason that the incident was not pre-planned and occurred on the spot as all the eye-witnesses have admitted that initially there was hot talk, followed by blows and a scuffle, whereafter the stabbings, allegedly by the appellant, happened.

16. Learned senior counsel summed up the arguments by submitting that in any view of the matter, sufficient doubts have been raised on the prosecution story for which the benefit of doubt under

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[4] '***304. Punishment for culpable homicide not amounting to murder***.—*Whoever commits culpable homicide not amounting to murder, shall be punished with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death;*

or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.'

the law should go to the appellant. Thus, there has been a miscarriage of justice, which, it was prayed, this Court should rectify by interfering with the Impugned Judgment.

SUBMISSIONS BY THE RESPONDENT-STATE:

17. Learned counsel submitted that the Impugned Judgment does not need any interference as both the Courts below have concurrently convicted the appellant and the prosecution case stands proved beyond reasonable doubt. Circumstantial evidence also points towards the factum of the appellant having murdered the deceased.

18. Learned counsel urged that even though there were minor discrepancies but the fact that the appellant initially ran away from the crime scene is enough to prove his complicity.

19. Learned counsel contended that the Impugned Judgment should be upheld by this Court and prayed that the appeal be dismissed.

ANALYSIS, REASONING AND CONCLUSION:

20. To our mind, the prosecution has succeeded in proving its case beyond reasonable doubt. Having carefully gone through the material on record, especially the depositions of the witnesses and upon a keen examination of the relevant aspects of the case, we find that the presence of the appellant at the site of the incident and him having stabbed the deceased on the stomach repeatedly has been the consistent stand of the PWs who were eye-witnesses. The Courts below have also concurrently found the same. The accused-appellant has not been able to controvert the evidence on record. Minor and immaterial inconsistencies and/or discrepancies shall not harm the case of the prosecution, as held, *inter alia*, in ***State of Himachal Pradesh v Lekh Raj*****, (2000) 1 SCC 247**; ***Narayan Chetanram Chaudhary v State of Maharashtra*****, (2000) 8 SCC 457**; ***State of Madhya Pradesh v Ramesh*****, (2011) 4 SCC 786**; ***Mekala Sivaiah v State of Andhra Pradesh*****, (2022) 8 SCC 253**, and; ***Rameshji Amarsingh Thakor v State of Gujarat*****, 2023 SCC OnLine SC 1321**. The following observations from ***Lekh Raj*** (*supra*) are instructive:

'***7.*** *In support of the impugned judgment the learned counsel appearing for the respondents vainly attempted to point out some discrepancies in the statement of the prosecutrix and other witnesses for discrediting the prosecution version. Discrepancy has to be distinguished from contradiction. Whereas contradiction in the statement of the witness is fatal for the case, minor discrepancy or variance in evidence will not make the prosecution's case doubtful. The normal course of the human conduct would be that while narrating a particular incident there may occur minor discrepancies, such discrepancies in law may render credential to the depositions. Parrot-like statements are disfavoured by the courts. In order to ascertain as to whether the discrepancy pointed out was minor or not or the same amounted to contradiction, regard is required to be had to the circumstances of the case by keeping in view the social status of the witnesses and environment in which such witness was making the statement. This Court in Ousu Varghese v. State of Kerala [(1974) 3 SCC 767 : 1974 SCC (Cri) 243] held that minor variations in the accounts of the witnesses are often the hallmark of the truth of their testimony. In Jagdish v. State of M.P. [1981 Supp SCC 40 : 1981 SCC (Cri) 676] this Court held that when the discrepancies were comparatively of a minor character and did not go to the root of the prosecution story, they need not be given undue importance. Mere congruity or consistency is not the sole test of truth in the depositions. This Court again in State of Rajasthan v. Kalki [(1981) 2 SCC 752 : 1981 SCC (Cri) 593] held that in the depositions of witnesses there are always normal discrepancies, however, honest and truthful they may be. Such discrepancies are due to normal errors of observation, normal errors of memory due to lapse of time, due to mental*

disposition such as shock and horror at the time of occurrence, and the like. Material discrepancies are those which are not normal and not expected of a normal person.

8. *Referring to and relying upon the earlier judgments of this Court in State of U.P. v. M.K. Anthony [(1985) 1 SCC 505 : 1985 SCC (Cri) 105 : AIR 1985 SC 48] , Tahsildar Singh v. State of U.P. [AIR 1959 SC 1012 : 1959 Supp (2) SCR 875] , Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : JT (1988) 1 SC 249] and Rammi v. State of M.P. [(1999) 8 SCC 649 : JT (1999) 7 SC 247], this Court in a recent case Leela Ram v. State of Haryana [(1999) 9 SCC 525 : JT (1999) 8 SC 274] held:*

> *"There are bound to be some discrepancies between the narrations of different witnesses when they speak on details, and unless the contradictions are of a material dimension, the same should not be used to jettison the evidence in its entirety. Incidentally, corroboration of evidence with mathematical niceties cannot be expected in criminal cases. Minor embellishment, there may be, but variations by reason therefor should not render the evidence of eyewitnesses unbelievable. Trivial discrepancies ought not to obliterate an otherwise acceptable evidence….*
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> *The court shall have to bear in mind that different witnesses react differently under different situations: whereas some become speechless, some start wailing while some others run away from the scene and yet there are some who may come forward with courage, conviction and belief*

that the wrong should be remedied. <u>As a matter of fact it depends upon individuals and individuals.</u> There cannot be any set pattern or uniform rule of human reaction and to discard a piece of evidence on the ground of his reaction not falling within a set pattern is unproductive and a pedantic exercise.'"

(emphasis supplied)

21. Insofar as the delay of 2/3 days in recording the statements of the eye-witnesses under Section 161[5] of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'Code') is concerned, the said delay has been thoroughly explained by the witnesses, including the Investigating Officer, to the effect that there were riots in

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[5] '***161. Examination of witnesses by police***.—*(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.*

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records:

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under Section 354, Section 354-A, Section 354-B, Section 354-C, Section 354-D, Section 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB, Section 376-E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.'

the area. On this score, the Investigating Officer was involved in maintaining law and order in the affected area. In the attendant facts and circumstances, the course of action adopted by the police cannot be termed unjustified and no adverse inference can be drawn on this count. No doubt that Court has laid down that an inordinate delay in recording witness statements can prove to be fatal for the prosecution, as pointed out by three learned Judges in ***Ganesh Bhavan Patel v State of Maharashtra*****, (1978) 4 SCC 371**; however, therein, the delay in recording statements of the material witnesses was accompanied by a delay in registering of the FIR and the surrounding circumstances, which led the Court to hold that there was a '*a cloud of suspicion on the credibility of the entire warp and woof of the prosecution story.*' In ***Jagjit Singh v State of Punjab*****, (2005) 3 SCC 689** and ***State of A.P. v S Swarnalatha*****, (2009) 8 SCC 383**, the Court held in favour of the convict/accused, as the inordinate delays therein could not be sufficiently explained. Delay of about 27 days, in a case where communal violence had broken out, was held not fatal, in ***Lal Bahadur v State (NCT of Delhi)*****, (2013) 4 SCC 557**. Delay of over 2 years in recording witness statements was deemed not fatal, when explained, in ***Baldev Singh v State of Punjab*****,**

(2014) 12 SCC 473. Delay in recording witness statements was held not fatal *per se* in ***Sunil Kumar v State of Rajasthan*****, (2005) 9 SCC 283** and ***V K Mishra v State of Uttarakhand*****, (2015) 9 SCC 588**. Delay in recording statements of witnesses was held to have cast serious doubts on the prosecution version in ***Shahid Khan v State of Rajasthan*****, (2016) 4 SCC 96** and ***Jafarudheen v State of Kerala*****, (2022) 8 SCC 440**. It was held, in ***Goutam Joardar v State of W. B.*****, (2022) 17 SCC 549**, by a Coordinate Bench that '*there was some delay in recording the statements of the eyewitnesses concerned but mere factum of delay by itself cannot result in rejection of their testimonies.*' Per our understanding, ***Ganesh Bhavan Patel*** (*supra*) is not an authority to contend that delay in recording witness statements is always fatal to the prosecution's case. Thus, *stricto sensu*, delay in recording witness statements, moreso when the said delay is explained, will not aid an accused. Of course, no hard-and-fast principle in this regard ought to be or can be laid down, as delay, if any, in recording statements will have to be examined by the Court concerned in conjunction with the peculiar facts of the case before it. Our reading of the above shall apply on all fours to delays in the context of Section 164 of the Code.

22. Inasmuch as the question relates to the informant not having been examined as a prosecution witness, we need only point out that she was examined as a defence witness. The important factor is that she and her testimony were available to the Trial Court in its pursuit of truth. Thus, it does not matter as to whether she was produced as a witness from the side of the prosecution or from the defence. The pertinent aspect is that she was before the Trial Court, and the prosecution, or the other accused, had the occasion and the opportunity to cross-examine her, which was availed of. Her testimony has been consistent with the version in the FIR and in sync with the other eye-witnesses.

23. Coming now to the alternate argument put forth by the appellant, that since the matter occurred in the heat of the moment after an altercation on the spot, such plea might have had some relevance and we could have been open to considering the same, provided the appellant was not armed with a knife. It is not the case put up by either the prosecution or the defence that the appellant picked up a knife from/around the spot and then inflicted stabs. Every

eyewitness has maintained that the appellant inflicted the knife stabs on the deceased which could only have been possible if the knife was already with him, which clearly indicates that he had come with prior intention to cause bodily injury by knife which obviously is a weapon sufficient to cause of death. In other words, the intention to kill was was very much present from the beginning and is not covered by any exception to Section 300 of the IPC. This persuades us to refrain from converting conviction from under Section 302, IPC to one under Section 304-I, IPC. No fault can be found with the Trial Court and the High Court, which have rightly reached the conclusion that the appellant was guilty as charged.

24. After the arguments concluded on the merits of the appeal, learned senior counsel for the appellant submitted that the appellant had already undergone more than 14 years of actual incarceration and his case for premature release should have been considered by the State. *Vide* Order dated 01.02.2024, this Court had directed the State '*to consider the case of the appellant for grant of pre-mature release/permanent remission as per the policy applicable.*' It was submitted that he is entitled to be released under the most beneficial

policy which was in operation on the day when he completed his term, under which he became fit for consideration for remission.

25. Learned counsel for the State submitted that the appellant's case for remission has already been considered by the State and rejected by order No.RLP1421/C.No.425/Prison-3 dated 13.08.2024 passed by the Deputy Secretary, Home Department, Government of Maharashtra, where it has been stated that he can be granted pre-mature release only upon him '*serving a sentence of 14 years of actual imprisonment and 24 years inclusive of all remissions…*', subject to fulfilment of certain other conditions. We were informed at the Bar that the total undergone sentence, inclusive of remission, is nearly 20 years.

26. Learned senior counsel for the appellant submitted that the Court may permit the appellant to apply afresh for remission as the stand taken by the State is erroneous as in the case of the appellant his case for remission has to be considered under the policy which takes into account 14 years of actual incarceration and 20 years total

with remission and not 24 years as stated in the order dated 13.08.2024 (*supra*).

27. In ***State of Haryana v Jagdish*, (2010) 4 SCC 216**, it was laid down:

> '***27.*** *In Mahender Singh [(2007) 13 SCC 606 : (2009) 1 SCC (Cri) 221], this Court as referred to hereinabove held that the policy decision applicable in such cases would be which was prevailing at the time of his conviction. This conclusion was arrived on the following ground : (SCC p. 619, para 38)*
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> > *"38. A right to be considered for remission, keeping in view the constitutional safeguards of a convict under Articles 20 and 21 of the Constitution of India, must be held to be a legal one. Such a legal right emanates from not only the Prisons Act but also from the Rules framed thereunder."*
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> xxx
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> ***54.*** *The State authority is under an obligation to at least exercise its discretion in relation to an honest expectation perceived by the convict, at the time of his conviction that his case for premature release would be considered after serving the sentence, prescribed in the short-sentencing policy existing on that date. The State has to exercise its power of remission also keeping in view any such benefit to be construed liberally in favour of a convict which may depend upon case to case and for that purpose, in our opinion, it should relate to a policy which, in the instant case, was in favour of the respondent. In case a liberal policy prevails on the date*

of consideration of the case of a "lifer" for premature release, he should be given benefit thereof.'

(emphasis supplied)

28. Five learned Judges in ***Union of India v V Sriharan*, (2016) 7 SCC 1** examined threadbare the contours of the law pertaining to remission. In ***Bilkis Yakub Rasool v Union of India*, (2024) 5 SCC 481**, it was culled out as under:

'***181.*** *With regard to the remission policy applicable in a given case, the following judgments are of relevance.*

182. *In Jagdish [State of Haryana v. Jagdish, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806], a three-Judge Bench of this Court considered the conflicting opinions expressed in State of Haryana v. Balwan [State of Haryana v. Balwan, (1999) 7 SCC 355 : 1999 SCC (Cri) 1193] ("Balwan") on the one hand and Mahender Singh [State of Haryana v. Mahender Singh, (2007) 13 SCC 606 : (2009) 1 SCC (Cri) 221], and State of Haryana v. Bhup Singh [State of Haryana v. Bhup Singh, (2009) 2 SCC 268 : (2009) 1 SCC (Cri) 710] ("Bhup Singh") on the other. The question considered by the three-Judge Bench was, whether, the policy which provides for remission and sentence should be that which was existing on the date of the conviction of the accused or should it be the policy that existed on date of consideration of his case for premature release by the appropriate authority. Noting that remission policy would be changed from time to time and after referring to the various decisions of this Court, including Gopal Vinayak Godse [Gopal Vinayak Godse v. State of Maharashtra, 1961 SCC OnLine SC*

70 : (1961) 3 SCR 440 : AIR 1961 SC 600] and Ashok Kumar [Ashok Kumar Pandey v. State of W.B., (2004) 3 SCC 349 : (2011) 1 SCC (Cri) 865], this Court observed that, liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of a life convict, as an objective of punishment become a paramount importance in a welfare State. The State has to achieve the goal of protecting the society from the convict and also rehabilitate the offender. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activities and is required to be rehabilitated. Thus, punishment should not be regarded as the end but only a means to an end. Relevancy of circumstances to an offence such as the state of mind of the convict when the offence was committed, are factors to be taken note of.

183. *It was further observed as under: (Jagdish case [State of Haryana v. Jagdish, (2010) 4 SCC 216 : (2010) 2 SCC (Cri) 806] , SCC p. 237, para 46)*

> *"46. At the time of considering the case of premature release of a life convict, the authorities may require to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances."*

That the executive power of clemency gives an opportunity to the convict to reintegrate into the society. However, the power of clemency must be pressed into

service only in appropriate cases. Ultimately, it was held that the case for remission has to be considered on the strength of the policy that was existing on the date of conviction of the accused. It was further observed that in case no liberal policy prevails on the date of consideration of the case of a convict under life imprisonment for premature release, he should be given the benefit thereof subject of course to Section 433-A CrPC.

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222.4. *The policy of remission applicable would therefore be the Policy of the State which is the appropriate Government and which has the jurisdiction to consider that application. The policy of remission applicable at the time of the conviction could apply and only if for any reason, the said policy cannot be made applicable a more benevolent policy, if in vogue, could apply.*'

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223. *On the basis of the aforesaid discussion, we arrive at the following summary of conclusions:*

xxx...'

(emphasis supplied)

29. In ***Mafabhai Motibhai Sagar v State of Gujarat*****, 2024 SCC OnLine SC 2982** [where the *coram* comprised two of us (Abhay S. Oka and Augustine George Masih, JJ.)], speaking through Oka, J., the Court held, *inter alia*:

'***17.*** *Our conclusions can be summarised as under:*

(i) Under sub-section (1) of Section 432 of the CrPC or subsection (1) of Section 473 of the BNSS, the appropriate Government has the power to remit the whole or any part of the punishment of a convict. The remission can be granted either unconditionally or subject to certain conditions;

(ii) The decision to grant or not to grant remission has to be well-informed, reasonable and fair to all concerned;

(iii) A convict cannot seek remission as a matter of right. However, he has a right to claim that his case for the grant of remission ought to be considered in accordance with the law and/or applicable policy adopted by the appropriate Government;

(iv) Conditions imposed while exercising the power under sub-section (1) of Section 432 or sub-section (1) of Section 473 of the BNSS must be reasonable. If the conditions imposed are arbitrary, the conditions will stand vitiated due to violation of Article 14. Such arbitrary conditions may violate the convict's rights under Article 21 of the Constitution;

(v) The effect of remitting the sentence, in part or full, results in the restoration of liberty of a convict. If the order granting remission is to be cancelled or revoked, it will naturally affect the liberty of the convict. …

(vi) …'

(emphasis supplied)

30. Having considered this aspect, as the appellant has undergone more than 14 years and 10 months of actual incarceration and the contention that his case be considered by the provision/policy in vogue at the time of his conviction, if not, a more beneficial policy, could be applied. In this background, this Court gives liberty to the appellant to apply afresh with a detailed representation justifying his claim to be considered for pre-mature release accounting for his actual incarceration of over 14 years and with remission included, of over 20 years. Upon such representation being filed, the State Government shall pass a reasoned order expeditiously and latest within 3 months from the date of filing such representation, having regard to the position of law enunciated by us hereinabove.

31. The appeal is dismissed accordingly, subject to the observations and directions *supra*.

32. The Registry is directed to return the original records to the concerned Court(s) forthwith.

33. The efforts of Mrs. Kiran Suri, learned senior counsel and Ms. Nidhi, learned Advocate-on-Record, who appeared for the appellant under the aegis of the Supreme Court Legal Services Committee, are appreciated.

34. I.A. No.21892/2021 is dismissed as not pressed.

…….....J.
[ABHAY S. OKA]

…….....J.
[AHSANUDDIN AMANULLAH]

…….....J.
[AUGUSTINE GEORGE MASIH]

NEW DELHI
MARCH 24, 2025