

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA  
CRIMINAL APPELLATE JURISDICTION  
CRIMINAL APPEAL NO. 1186 OF 2018

SHIVALINGA @ SHIVALINGAYYA

... Appellant(s)

VERSUS

STATE OF KARNATAKA

... Respondent(s)

J U D G M E N T

Mohan M. Shantanagoudar, J.

Heard and perused records. With consent of both parties, the matter is taken up for final hearing.

2. The appellant was charged with the offence punishable under Sections 396 and 307 read with Section 34 of the Indian Penal Code, 1860 (IPC). The case of the prosecution is that the appellant and other accused were dacoits and were using Jayamma to lure the drivers of the lorries for illicit sex. These accused would attack the drivers and loot the goods of the lorry.

3. It is alleged that on 23.12.1998, the lorry bearing No. A.P.9 T

4948 was being driven by PW-3 and Shivashankar, the cleaner was also traveling in the lorry towards Bangalore. The accused No.5 was standing near Kunigal by the side of the road which was noticed by PW-3. PW-3 and accused No.5 had undressed. Accused Nos. 1 to 4 started assaulting PW-3 with sharp edged weapons. Though PW-3 disengaged himself and ran away to some distance, he was chased and assaulted. PW-3's left hand got chopped due to which he became unconscious. The accused took away the watch of PW-3.

4. It is further case of the prosecution that the accused assaulted the cleaner and took the lorry towards Kudur, the injured cleaner was taken to a field and was assaulted which resulted in his murder. The accused took away the two tyers, one jack, tarpaulin, a tape recorder, two speakers etc. from the lorry.

5. The Trial Court, after considering the entire material on record, convicted the appellant and others for offence punishable under Sections 396 and 307 read with Section 34 of the IPC and awarded death sentence against the appellant and others.

6. The appellant and others filed an appeal before the High Court of Karnataka which was allowed in part. The High Court in its detailed judgment of 250 pages have converted the death sentence to imprisonment for life. We have carefully gone through the reasons

assigned by the High Court. We fully agree with the reasons assigned by the High Court. The High Court has given detailed reasons as to why it has converted the death sentence to imprisonment for life. The operative part of the judgment reads as follows :

“In the result, therefore, this Criminal Reference made by the Trial Court under Section 366 Cr.P.C. in CrI.R.C. No. 6/2003 is hereby rejected modifying the sentence awarded by the Trial Court on the accused persons A-1 to A-4 for their conviction under Section 396 of IPC from death to life imprisonment. The sentence awarded for the offence under Section 307 IPC for which the accused are convicted shall run concurrently. The reference in CrI. R.C. No. 6/2003 is accordingly disposed of in the manner as indicated above by commuting the death sentence of Accused Nos. 1 to 4 for their conviction under Section 396 IPC to life imprisonment. The connected criminal appeals filed by the accused persons A1 to A3 in Criminal Appeal No. 1749 of 2003 and Criminal Appeal No. 1820/2003 challenging their convictions and sentences are hereby dismissed, except to the fact that the death sentence awarded to them for their conviction under Section 396 IPC stands commuted to life imprisonment. “

7. Consequently, now the appellant is suffering imprisonment for life. It is brought to our notice and it is borne out of the records that the appellant has already undergone imprisonment for a period of about 18 years. His application for early release on remission is rejected by the Government of Karnataka vide letter No.HD 01 PRA

2020 dated 27<sup>th</sup> January, 2020.

8. Having gone through the entire material on record, we find that it is a heinous crime of dacoity-cum-murder. The appellant and other accused have not only chopped the hand of PW-3 but also committed murder of the cleaner, namely, Shivashankar. They have also committed dacoity by taking away the tyres, jack, tarpaulin, tape recorder etc., of course, they are not so worthy.

9. Be that as it may, it may not be proper to keep the appellant in jail forever. Hence, we heard on the point of sentence also and have taken decision consciously under the facts and circumstances of the case. In Prem Singh vs. State of Uttarakhand (Criminal Appeal No. 1734 decided on April 5, 2018), wherein the appellant was sentenced to undergo imprisonment for life. This Court having regard to the totality of facts and circumstances of the case, held as under to convert the sentence already undergone :

“The trial court as well as the High Court concurrently and rightly concluded that the eye-witnesses are reliable and their depositions cannot be doubted. In view of the consistent evidence of the eye-witnesses, in our considered opinion, the judgment of conviction under Section 394 IPC need not be interfered with. However, we find from the records that the appellant appears to have already undergone more than 14 years of sentence till this date.

9. Having regard to totality of facts and circumstances, interest of justice would be met if the sentence is modified to the period already undergone by the appellant. Ordered accordingly.”

10. In Rakesh Manohar Kamble @ Niraj Ramesh Wakekar vs. The State of Maharashtra (Criminal Appeal No.1767/2014), a three Judge Bench of this Court commuted the death sentence to life imprisonment for 30 years as under :

“... we are of the opinion that the death sentence given to the appellant should also be commuted to the sentence of life imprisonment for 30 (thirty) years imprisonment without remission, before he can be considered for premature release. That would meet the ends of justice. We order accordingly.”

11. Looking to the totality of facts and circumstances, we feel the interest of justice would be met if the sentence of the appellant is restricted to 22 years instead of whole life. Since the appellant’s application for early release on remission is rejected, the appellant shall undergo 22 years of compulsory imprisonment. It is brought to our notice that he is still young and is about 38 years of age. Be that as it may, he may improve his conduct after coming from jail.

12. Therefore, maintaining the conviction under Sections 396 and 307 read with Section 34 of the IPC, we reduce the sentence restricting the same to 22 years actual imprisonment. Ordered

accordingly.

13. The judgment of the High Court is modified to the aforesaid extent keeping the judgment of conviction in tact.

14. Accordingly, the appeal is partly allowed to the above extent.

.....,J.  
**(Mohan M. Shantanagoudar)**

.....,J.  
**(Vineet Saran)**

**New Delhi;**  
**February 15, 2021.**

ITEM NO.1 Court 10 (Video Conferencing) SECTION II-C

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 1186/2018

SHIVALINGA @ SHIVALINGAYYA

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(FOR INTERIM RELIEF GRANT OF BAIL )

Date : 15-02-2021 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MR. JUSTICE VINEET SARAN

For Appellant(s) Ms. Rajni K. Prasad, Adv.  
Mr. B.K. Prasad, Adv.  
Ms. N. Annapoorani, AOR

For Respondent(s) Mr. Shubhranshu Padhi, AOR

UPON hearing the counsel the Court made the following  
O R D E R

Maintaining the conviction under Sections 396 and 307 read with Section 34 of the IPC, we reduce the sentence restricting the same to 22 years actual imprisonment. Ordered accordingly.

The judgment of the High Court is modified to the aforesaid extent keeping the judgment of conviction in tact.

The appeal is partly allowed in terms of the signed non-reportable judgment.

(GULSHAN KUMAR ARORA)  
AR-CUM-PS

(R.S. NARAYANAN)  
COURT MASTER

(Non-reportable judgment is placed on the file)