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

Reserved on: 24.09.2026
Pronounced on: 04.11.2026
Uploaded on: 04.11.2026

\# **CNR No. DLHC010451562026**

\+ **W.P.(CRL) 2943/2026 & CRL.M.(BAIL) 1806/2026**

MAHENDER @ DABBU .....Petitioner

Through: Mr.Rishi Malhotra, Sr. Adv. with Ms.Amuiya, Mr.Shivansh Maini, Mr.Saurabh Kumar Gupta and Ms.Shweta Sharma, Advs.

versus

STATE (GOVT OF NCT OF DELHI) .....Respondent

Through: Mr.Amol Sinha, ASC with Mr.Kshitiz Garg, Mr.Anshul Sharma, Mr.Nitish Dhawan and Mrs.Chavi Lazarus, Advs. with SI Parveen, PS Subhash Place

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MR. JUSTICE ARUN BHARDWAJ

J U D G M E N T

NAVIN CHAWLA, J.

1. This petition has been filed by the petitioner under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') [Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

'BNSS')], praying for the following reliefs:

> *"A. Issue a Writ, Order or direction in the nature of Certiorari to quash the order of sentence dated 13.05.2011 in SC no. 145/2008 and direct the Ld. Trial Court to re-hear the petitioner on order of sentence keeping in view the law laid down in Union of India v. V. Sriharan @ Murugan & Ors., (2016) 7 SCC 1.*
>
> *B. Set aside order of sentence dated 13.05.2011 in SC no. 145/2008 arising out of FIR no. 109/2008 u/s 302 IPC, P.S Saraswati Vihar being unconstitutional and arbitrary in teeth of decision laid down by the Hon'ble Supreme Court in Union of India v. V. Sriharan@Murugan & Ors., (2016) 7 SCC 1."*

2. By an order dated 12.05.2011 passed by the learned Additional Sessions Judge-01, (North-West District), Rohini Courts, Delhi (hereinafter referred to as 'Trial Court') in SC No.145/2008, titled ***State v. Mahender @ Dabbu,*** arising out from FIR No.109/2008 registered at Police Station: Saraswati Vihar under Section 302 of the Indian Penal Code, 1860 (hereinafter referred to as '*IPC*'), the petitioner herein had been convicted for commission of offence punishable under Section 302 of the IPC on the case of the prosecution, as under:

> *"On 29.02.2008 on receiving the DD No. 17A, IO SI Daya Chand along with Constable Amar Singh went to petrol pump, Britannia Chowk, J.J. Colony, Shakurpur where no eye witness or complainant met them. In the meantime, PCR control room informed that the injured was removed by PCR van Commander 21 to Bhagwan Mahavir Hospital. IO along with constable Amar Singh reached the hospital and collected the MLC of injured Jyoti, w/o Mahender@ Dabbu aged 24 years, r/o. G-23,*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

J.J. Colony, Shakurpur, Delhi. Doctor had mentioned on the MLC alleged history of 75% acid burn and declared her unfit for statement and result on the nature of injuries as grievous. No eye witness met them at the hospital. IO prepared rukka on DD No. 17A and handed over the same to Constable Amar Singh for registration of FIR, who left the hospital. During the investigation, doctor handed over the burnt clothes of injured Jyoti, in a sealed parcel along with sample seal. In the meantime Constable Amar Singh returned back to the hospital and handed over the copy of FIR and original Rukka to the IO. IO along with Constable Amar Singh Nath again went to the place of incident and took into the possession some burnt clothes lying at the spot, which were smelling like acid and turned it into clothes parcels and sealed and seized with the seal of DCS. IO prepared the site plan of the spot and informed the SDM about the incident. SDM, Model Town went to the LNJP hospital and recorded the statement of the injured Jyoti and made inquiries from her. Thereafter IO recorded the statement of the witness and tried to search the accused but the accused could not be traced. On 05.03.2008, accused surrendered himself before the court. The court made inquiries from the police and remanded him to the police custody for one day. Thereafter he was formally arrested and send in the judicial custody where his disclosure statement was recorded. IO prepared the site plan at the instance of the accused and tried to search the acid bottle, which could not be traced. IO recorded the statement of witnesses and deposited the case property to malkhana. On 12.04.2008, IO received the information from the LNJP hospital that injured Jyoti has expired. The offence thereafter was converted from section 307 IPC to section 302 IPC and further investigation was handed over to Inspector Ajay Kumar. Thereafter on 13.04.2008 M.Z.Ansari, Executive Magistrate, Model

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

Town reached the hospital and recorded the statement of the witness in respect to identification of dead body of Jyoti. Executive Magistrate prepared the inquest report and directed for the post-mortem of the deceased Jyoti and prepared scaled site plan of the spot through draftsman. After the completion of the investigation IO filed the charge sheet before the concerned court. "

3. The learned Trial Court, while convicting the petitioner herein, relied upon the dying declaration of the deceased (Ex.PW-15/A), recorded by Shri B.S. Thakur, Deputy Director, then posted as Sub Divisional Magistrate (SDM), Division Model Town, Delhi. The same was found corroborated by the testimonies of PW-8/*Sanjay*, PW-12/*Head Constable Devi Dutt*, and PW-16/*ASI Nain Singh*, to whom the deceased had also informed that acid had been thrown on her by her husband, that is, the petitioner herein.

4. By the order dated 13.05.2011 passed in the above Session Case, the learned Trial Court sentenced the petitioner to undergo rigorous imprisonment for life along with fine of Rs.10,000/- and in default of payment of fine, simple imprisonment for one year for offence punishable under Section 302 of the IPC. Relying upon the judgment of the Supreme Court in ***Swami Shraddhanand v. State Karnataka***, 2008 (13) SCC 767, the learned Trial Court further held that the appropriate sentence of imprisonment for life in the present case was that the petitioner has to undergo actual sentence of 35 years and grant of remission shall not be considered till the actual sentence of 35 years is completed.

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

5. Aggrieved by the said orders of conviction and sentence, the petitioner preferred an appeal under Section 374 of the Code of Criminal Procedure, 1973, being Crl.A. 788/2011, titled ***Mahender v. State***, which came to be dismissed by this Court *vide* its judgment dated 01.11.2013. This Court had also placed reliance, not only on the dying declaration made by the deceased to the SDM (PW-15), but also on the testimony of PW-12/*Head Constable Devi Dutt*. We quote from the judgment of this Court as under:-

> *"8. The present case is primarily based on two dying-declarations of the deceased. Firstly, when she was being taken to the LNPJ hospital and secondly, when she gave her statement to the Sub-Divisional Magistrate. In her statement made to the SDM, she had categorically stated that on 29th February, 2008 at about 8.30 a.m. Mahender gave a telephonic call to her that at 10.00 a.m. both of them will go to Tis Hazari to meet their lawyer who was to prepare divorce papers and for that the accused also told the deceased to bring photo and certificate. The call was repeated by Mahender at 10.30 a.m. telling the deceased to come at Telephone Exchange, Ring Road Bus Stand with the papers and when she had reached at the said place, Mahender- accused met her and started enquiring as to why she was taking divorce from him, at which, she had replied that since he had ruined her life after subjecting her to harassment, therefore, she would not like to live with him. On this, she started looking towards other side when Mahender had poured acid on her from a bottle containing acid. She started crying and felt complete darkness in front of her eyes. She could gain a little consciousness to find that she was brought to the hospital by the police. In her this statement, she also disclosed that she was residing with her parents and her first*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

marriage had taken place in the year 2001 with one Mr. Arun and there was a male child aged 6 years born out of the said wedlock. She also stated that after two years of her marriage with Mr. Arun, her marriage ended with divorce. She also stated that on 28th September, 2005 she had married the present appellant Mahender @ Dabbu in a Court and thereafter she started living with Mahender in a rented accommodation. She also stated that just after one year of marriage, Mahender started harassing her and had also thrown her out of the matrimonial home. Thereafter she started residing with her parents. She also stated that Mahender paid repeated visits to her and extended threats by saying that he will physically eliminate her if she dared to take any step to divorce him. She also stated that earlier Mahender used to ask for the divorce but when she gave her willingness then he started extending threats to kill her. A portion of the dying-declaration is also in question-answer form. To a question whether she was in her full senses?, she replied that she was in her full senses. She was also put a question as to whether Mahender was carrying acid when she had met with him? She replied stating that he was hiding acid in his jacket in a cream colour bottle and he was also carrying divorce papers which he got signed from her few days back. When questioned as to how she knew that it was Mahender who has thrown acid at her? She replied that when Mahender had thrown something at her then she saw that her clothes and the papers, which she were holding in her hands, got burnt and gradually her eyes got glued and thereafter she felt that Mahender had poured acid at her. The deceased had clearly stated that she was the wife of Mahender and her husband had poured acid at her.

9. The PCR Form-I wherein the first dying-declaration recorded was proved on record as Ex. PW-12/A1 in the deposition of PW-12 Head Constable Devi Dutt, 2091, PCR,

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

North West Zone, PCR, Delhi. PW-12 in his cross-examination stated that he had received a call from Mobile No.9891847761 informing him that acid was thrown on a lady near Petrol Pump, Britannia Chowk, J.J. Colony, Shakurpur, Delhi on 29th February, 2008 at about 11.08 a.m. This witness further stated that the said message was transmitted to PCR van and a PCR van reached the spot at about 11.16 a.m. on the same day and then Incharge PCR van transmitted the message to the Police Control Room that they were proceeding towards hospital with the said lady. The said witness also deposed that after the lady was admitted in LNJP Hospital, Incharge PCR van gave back information to the Police . Control Room informing that the injured had informed him that her husband had poured acid on her. He also informed the Police Control Room that doctor had disclosed that the injured had received 75% burn injuries. There is no reason to disbelieve the statement of PW-12 and the PCR Form No.1, proved on record as Ex. PW-12/A1, which also records the first dying-declaration of the deceased. The testimony of PW-12 also remained unrebutted as the defence did not choose to cross-examine the said witness. Similarly, the second dying-declaration which was recorded before the SDM and was proved on record as Ex. PW-15/ A in the deposition of PW-15 also remained unchallenged as the appellant did not choose to cross-examine the said material witness. PW-15 in his deposition categorically deposed about the fitness of the victim to give her statement. He also deposed that her statement was recorded in his presence and under his directions, on the questions as were put by him to her. He also deposed that the deceased Jyoti had put thumb impression at point 'C' and had signed at point 'D' on Ex. PW-15/A. The defence utterly failed to rebut or challenge the testimonies of the said two important witnesses, who proved on record; the said two dying-declarations as Exs. PW-12/A and PW-

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

15/A.

xxx

17. In the light of the above legal position, there is no reason to disbelieve the said dying-declaration made by the deceased, one before Incharge, PCR van proved on record as Ex. PW-12/A1 and the other dying-declaration made by the deceased before the SDM, proved on record as Ex.PW-15/A. Both the said dying-declarations were made by her truthfully and voluntarily without being tutored or prompted by any person and there is no reason for this Court to raise any suspicion over the same. The contention raised by the counsel for the appellant with regard to his challenge to the said two dying-declarations has no merit and deserve an outright rejection.

xxx

27. In the light of the aforesaid discussion we find our self fully satisfied that the said two dying declarations were made by the deceased voluntarily and truthfully, free from any kind of tutoring or prompting, and they were duly recorded by the Incharge, PCR van and the SDM. The learned Trial Court has rightly convicted the appellant for the offence committed by him under Section 302 IPC."

6. On the question of sentence, this Court, in fact, prefaced its judgment by taking note of the horrifying form of gender-based violence and a phenomenon growing in India, which is of acid attack. We would quote from the judgment as under:-

"2. One of the most horrifying forms of gender-based violence, a growing phenomenon in India, is acid attack. Though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women, for spurning suitors, for rejecting proposals of

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

> *marriage, for denying dowry etc. The acid is used with malicious intent to take revenge, disfigure and harm the person. Some men ego will not allow them to accept rejection and when their advances are spurned they retaliate by throwing acid at the woman. An acid attack is a terrifying experience. Acid melts human flesh and even bones. It causes excruciating pain and terror. The victims are left mutilated and scarred for the rest of their lives. Some suffer permanent disabilities such as blindness and some victims even die as a result of their injuries. The attacks are made possible by the easy availability of cheap acids as cleaning fluid or for use in the cotton industry. Dealing with this cruellest menace, the Hon'ble Supreme Court in a recent case of Laxmi vs. Union of India and Others reported in 2012 (9) SCALE 291 directed the State governments and the Union territories to make appropriate rules for the sale of acid in states and union territories respectively. The Hon'ble Apex Court also directed the government to take appropriate measures for proper treatment, after care, rehabilitation and payment of compensation to the victims of acid attack."*

7. The petitioner challenged the said judgment before the Supreme Court by way of SLP (Crl.) No.6040/2014, titled ***Mahender@ Dabbu v. State (Govt. of NCT Delhi)***, which came to be dismissed by the Supreme Court *vide* its order dated 01.08.2014, finding no reason to interfere with the judgment of this Court.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

8. The petitioner has now filed the present petition by placing reliance on the judgments of the Supreme Court in ***Union of India v. V. Sriharan @ Murugan & Ors.***, (2016) 7 SCC 1; ***Shiva Kumar***

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

Alias Shiva Alias Shivamurthy v. State of Karnataka, (2023) 9 SCC 817; ***Vikas Chaudhary v. State (NCT of Delhi)***, (2023) 19 SCC 144, and ***Ravinder Singh v. State Government of NCT of Delhi***, (2024) 2 SCC 323, wherein the Supreme Court has held that the Trial Court does not have a power to impose a fixed term sentence or a modified punishment on the accused, and that the same can be imposed only by the High Court or, in the event of further appeal, by the Supreme Court and not by any other court. It has been held that the power to impose a modified punishment of providing any specific term of incarceration or till the end of the convict's life as an alternative to the death penalty, can be exercised only by the High Court and Supreme Court and not by any other subordinate court. The learned senior counsel for the petitioner submits that, therefore, the sentence awarded by the learned Trial Court was without jurisdiction and void.

9. Placing reliance on the judgment of the Supreme Court in ***Kanishk Sinha & Anr. v. State of West Bengal & Anr.***, 2025 SCC OnLine SC 443, he submits that as the judgment of the Supreme Court in ***V. Sriharan @ Murugan*** (supra) was not held by it to apply only prospectively, the same would have retrospective operation. Therefore, merely because the sentence awarded to the petitioner stood confirmed by this Court and the SLP thereagainst stood dismissed by the Supreme Court prior to the said judgment, would be no ground to deny the benefit of the same to the petitioner.

10. He, therefore, prays that the order on sentence dated 13.05.2011 passed by the learned Trial Court be set aside and the learned Trial Court be directed to re-hear the petitioner on the order on sentence.

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

11. On the other hand, the learned Additional Standing Counsel appearing for the respondent submits that the order on sentence having been confirmed by this Court by dismissing the appeal filed by the petitioner, and by the Supreme Court, by dismissing the SLP filed by the petitioner, cannot be interfered with in a writ jurisdiction by this Court. In support of his plea, he places reliance on the judgment of the Supreme Court in ***Neeta Singh & Ors. v. State of Uttar Pradesh & Ors.***, 2024 SCC OnLine SC 5761.

12. On the merits of the writ petition, he submits that the imposition of a fixed-term sentence has been accepted by the Supreme Court way back in its judgment in ***Dalbir Singh & Ors. v. State of Punjab***, (1979) 3 SCC 745, and reiterated in ***Swamy Shraddananda v. State of Karnataka***, (2008) 13 SCC 767. He submits that the subsequent judgment of the Supreme Court in ***V. Sriharan @ Murugan*** (supra) does not invalidate the concept of a modified or special category life sentence, but in fact, affirms the same, with the only difference being that it can be imposed only by the High Court or the Supreme Court and not by any Court subordinate thereto. He submits that this is only a question of forum and not of power.

13. He submits that, at the time when the order on sentence was passed by the learned Trial Court, the imposition of a special category sentence had already been recognised by the Supreme Court in ***Dalbir Singh*** (supra) and ***Swamy Shraddananda*** (supra) and, therefore, the subsequent restriction placed by the Supreme Court in ***V. Sriharan @***

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

Murugan (supra) would not invalidate the same.

ANALYSIS & FINDINGS:

14. We have considered the submissions made by the learned counsels for the parties.

15. In ***Swamy Shraddananda*** (supra), the Supreme Court took note of the large gap between a sentence of life imprisonment, curtailed by the provision relating to remission, and the death sentence, and explored the 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. It took note of its earlier decision in ***Dalbir Singh*** (supra), wherein the Court had also advocated that at the option of the convicting court, the sentence of imprisonment lasting as long as life lasts can be awarded. The Court also took note of Section 45 of the IPC and Sections 53, 54, 55, 55A and 57 of the IPC, as also Articles 72 and 161 of the Constitution of India, dealing with the powers of the President of India and the Governors of the States, respectively, to grant pardon, reprieves, respites or remissions of punishment or to suspend, remit or to commute the sentence of any person convicted for an offence, as also Sections 432, 433A, 434 and 435 of the Cr.P.C. and the power of remission contained in the Prison Acts and the Rules, and observed as under:-

> *"**91**. The legal position as enunciated in Pandit Kishori Lal, Gopal Vinayak Godse, Mau Ram, Ratan Singh and Shri Bhagwan and the unsound way in which remission is*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

actually allowed in cases of life imprisonment make out a very strong case to make a special category for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond the application of remission.

92. *The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment that subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then the Court should do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the court, i.e., the vast hiatus between 14 years' imprisonment and death. It needs to be emphasized that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years imprisonment would amount to no punishment at all.*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

> ***93.*** *Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of the rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh (supra) besides being in accord with the modern trends in penology.*
>
> ***94.*** *In light of the discussions made above we are clearly of the view that there is a good and strong basis for the Court to substitute a death sentence by life imprisonment or by a term in excess of fourteen years and further to direct that the convict must not be released from the prison for the rest of his life or for the actual term as specified in the order, as the case may be."*

16. In ***V. Sriharan @ Murugan*** (supra), a Constitution Bench of the Supreme Court considered the following questions:-

> *"(i) As to whether the imprisonment for life means till the end of convict's life with or without any scope for remission?*
> *(ii) Whether a special category of sentence instead of death for a term exceeding 14 years can be made by putting that category beyond grant of remission?"*

17. In answer to question (i), it was held that imprisonment for a life, in terms of Section 53 read with Section 45 of the IPC, only means imprisonment for rest of the life of the prisoner, subject, however, to the right to claim remission, etc., as provided under Articles 72 and 161 of the Constitution of India, to be exercisable by the President and the Governor, and also as provided under Section 432 of the Cr.P.C. The Supreme Court then considered its earlier

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

judgment in ***Swamy Shraddananda*** (supra) and, while endorsing the anguish expressed by the Court therein, upheld the imposition of life imprisonment for a specified period, having regard to the nature of the offence committed. In answer to question (ii), the Court, however, held that it is only the High Court, and on further appeal, only the Supreme Court, and not any other Court in this country, which derives the power under the IPC, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years depending on the gravity of the crime committed and the exercise of judicial conscious befitting such an offence found proved to have been committed. We quote from the judgment as under:-

> *"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

to have been committed.

> *105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."*

18. The above limitation on the power of the Trial Court, however, at the same time, accepting such power of imposing a fixed-term sentence on the convict to be vested with the High Court and the Supreme Court, has been reiterated by the Supreme Court in ***Shiva Kumar*** (supra), wherein it has been held as under:-

> *"10. While answering the question, the Constitution Bench (majority view) in V. Sriharan held that imprisonment for life in terms of Section 53 read with Section 45 IPC means imprisonment for the rest of the life of the convict. In such a case, right to claim remission, commutation etc. in accordance with law will always be available. Thereafter, in paragraph 105, the Constitution Bench held thus:*
>
> > *"105. We, therefore, reiterate that the power derived from the Penal Code for any modified punishment within the punishment provided for in the Penal Code for such specified offences can only be exercised by the High Court and in the event of further appeal only by the*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

Supreme Court and not by any other court in this country. To put it differently, the power to impose a modified punishment providing for any specific term of incarceration or till the end of the convict's life as an alternate to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior court."

(emphasis supplied)

11. What is held by the Constitution Bench in V. Sriharan, cannot be construed in a narrow perspective. The Constitution Bench has held that there is a power which can be derived from the IPC to impose a fixed term sentence or modified punishment which can only be exercised by the High Court or in the event of any further appeal, by the Supreme Court and not by any other Court in this country. In addition, the Constitution Bench held that power to impose a modified punishment of providing any specific term of incarceration or till the end of convict's life as an alternative to death penalty, can be exercised only by the High Court and the Supreme Court and not by any other inferior Court.

12. In a given case, while passing an order of conviction for an offence which is punishable with death penalty, the Trial Court may come to a conclusion that the case is not a 'rarest of the rare' case. In such a situation, depending upon the punishment prescribed for the offence committed, the Trial Court can impose other punishment specifically provided in Section 53 IPC. However, when a Constitutional Court finds that though a case is not falling in the category of 'rarest of the rare' case, considering the gravity and nature of the offence and all other relevant factors, it can always impose a fixed term sentence so that the benefit of statutory remission, etc. is not available to the accused. The majority view in the case of V. Sriharan cannot be

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

construed to mean that such a power cannot be exercised by the Constitutional Courts unless the question is of commuting the death sentence.

13. This conclusion is well supported by what the Constitution Bench held in paragraph 104 of its decision, which reads thus:

> *"104. That apart, in most of such cases where death penalty or life imprisonment is the punishment imposed by the trial court and confirmed by the Division Bench of the High Court, the convict concerned will get an opportunity to get such verdict tested by filing further appeal by way of special leave to this Court. By way of abundant caution and as per the prescribed law of the Code and the criminal jurisprudence, we can assert that after the initial finding of guilt of such specified grave offences and the imposition of penalty either death or life imprisonment, when comes under the scrutiny of the Division Bench of the High Court, it is only the High Court which derives the power under the Penal Code, which prescribes the capital and alternate punishment, to alter the said punishment with one either for the entirety of the convict's life or for any specific period of more than 14 years, say 20, 30 or so on depending upon the gravity of the crime committed and the exercise of judicial conscience befitting such offence found proved to have been committed."*
>
> *(emphasis supplied)*

14. Hence, we have no manner of doubt that even in a case where capital punishment is not imposed or is not proposed, the Constitutional Courts can always exercise the power of imposing a modified or fixed term sentence by directing that a life sentence, as contemplated by "secondly" in Section 53 IPC, shall be of a

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

fixed period of more than fourteen years, for example, of twenty years, thirty years and so on. The fixed punishment cannot be for a period less than 14 years in view of the mandate of Section 433A of Cr.P.C."

19. In ***Vikas Choudhary*** (supra), the Supreme Court again placing reliance on ***V. Sriharan @ Murugan*** (supra), held as under:-

"17. It is thus clear that Sriharan, approved an alternative third sentencing option in cases where the accused are convicted of serious and grave crimes which carried with it the option of capital sentence. Realising that a life sentence per se can lead to early release of the accused upon their undergoing the minimum sentence prescribed under Section 433-A, and highlighting that the asymmetry in State rules with respect to minimum incarceration in different kinds of life sentences, this Court decided to retain to itself (and the High Courts) the option of imposing what Sriharan, termed as "special" or "fixed term sentences". This was seen as serving the following purposes:

17.1. As a feasible alternative in capital cases where the Court was of the opinion that death sentence is inappropriate, and:

17.2. That the Court was of the opinion that there were elements in the crime and/or the conduct of the criminal which warranted imposition of a mandatory sentence beyond a minimum of 14 years prescribed by the Code of Criminal Procedure.

17.3. Where the Court felt, independently, that the serious nature of the crime and the manner of its commission warranted a special sentence, whereby the State's discretion in releasing the offender, should be curtailed so that the convict is not let out before undergoing a specified number of years, of

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

incarceration .

18. It is hence clear that the trial courts, are foreclosed from imposing such a modified or specific term sentence, or life imprisonment for the remainder of the convict's life, as an alternative to death penalty. The court, when trying an offence punishable by death penalty or life imprisonment, has merely these two options. While the principles evolved in Sriharan are clear, there are nevertheless issues which still remain unexplored and unresolved. Whenever the State proposes and urges for imposition of death sentence, it has to, perforce provide material to facilitate the court to carry out the exercise of balancing the aggravating factors with the mitigating circumstances - the test propounded in Bachan Singh and examined in many cases; the recent trend being that the reformative element acquires equal attention. The obligation to carry out this balancing interest is upon the courts imposing the sentence in the first instance i.e. the trial courts; the prosecution (per Bachan Singh) is also under an obligation to show that the mitigating circumstances are absent especially that there are no chances of reformation of the accused. Since this exercise is mandated whenever a heinous capital crime is committed, at the stage of conviction, the court has no idea that the prosecution may urge for capital sentence. When that stage occurs, and the prosecution seeks a capital sentence, the court has to carry out the exercise of conducting a review of aggravating circumstances (which are already on the record, being factors that lead to the conviction of the accused) and balancing the mitigating circumstances (which are not matters of the record and have to be adduced by the prosecution and the accused).

xxx

21. Since the judgment in Sriharan reserves the power to impose special or fixed term

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

sentences (which may be longer than the minimum specified in Section 433-A CrPC - i.e. may extend to considerably long periods, such as 30 years), with only the High Courts and this Court, it is imperative that this exercise is carried out even in cases where the accused might eventually not be imposed the death sentence. To put it simply - although the trial courts are not empowered to impose such special sentences, yet at the stage when they arrive at findings of guilt in the case of a heinous offence, what would be the nature of the sentence imposed eventually, is unknown; therefore, the prosecution would have to inform the court, and present relevant materials (as elaborated in Manoj), in case the death sentence is proposed. In that event, if ultimately death sentence is not imposed, it is open to the State (or the aggrieved party, under Section 372 CrPC) to appeal against the trial court judgment on the point of sentence; at that stage the evaluation before the High Court would be nuanced, and informed with full materials, about the convict, which otherwise it would not have the benefit of. Further, if considerable time has elapsed since the trial stage at which this exercise was undertaken, the appellate court should direct that a fresh attempt be made, to take into account the contemporaneous progress, if any, made by the convict.

22. In view of the above discussion, it is held that wherever the prosecution is of the opinion that the crime an accused is convicted for, is so grave that death sentence is warranted, it should carry out the exercise of placing the materials, in terms of Manoj, for evaluation. In case this results in imposition of death sentence, at the stage of confirmation, the High Court would have the benefit of independent evaluation of these materials. On the other hand, if death sentence is not imposed, then, the High Court may still be in a position to evaluate, if the sentence is

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

adequate, and wherever appropriate and just, impose a special or fixed term sentence, in the course of an appeal by the State or by the complainant/informant. Given the imperative need for such material to form a part of the court's consideration, it has to be emphasised that in case the trial court has failed to carry out such exercise (for whatever reason), the High Court has to call for such material while considering an appeal filed by the State or complainant for enhancement of sentence (whether resulting in imposition of capital punishment, or a term sentence)."

20. In ***Ravinder Singh*** (supra), the above proposition was reiterated by the Supreme Court in the following words:-

"22. In this context, we may note that the observations made in Swamy Shraddananda and V. Sriharan clearly indicate the existence of such power, though the Court stopped short of declaring so and linked the special category sentences passed in those cases to substitution for a death sentence. As pointed out in Swamy Shraddananda, the Court would take recourse to the expanded option primarily because the life sentence of 14 years' imprisonment may amount to no imprisonment . at all in a given case. This observation is wide enough to take within its ambit all sentences of life imprisonment. Similarly, in V. Sriharan, the majority opinion noted that there is no prohibition in the Penal Code, where death penalty or life imprisonment is provided for, that imprisonment cannot be imposed for a specified period within the said life span and when life imprisonment means the whole life span of the convict, the court which is empowered to impose the said punishment would also have the power to specify the period up to which the said sentence of life should remain, befitting the nature of crime. Again, this edict would hold good for all

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

sentences of life imprisonment. No doubt, the majority opinion also linked it to capital punishment, by observing that such special category of sentences could be substituted for death. More recently, in Shiva Kumar, this Court affirmed that even in a case where capital punishment is not "proposed", constitutional courts would have the power to impose a modified or fixed-term sentence.

23. The above observations manifest the applicability of the same principle in cases where the maximum punishment prescribed by law is imprisonment for life with nothing further. Even in such cases, it would be a parody of justice to allow the convicts so sentenced to avail the benefit of remissions and the like, liberally conferred by the State, and cut short the length of their life sentence to a mere 14 years. We are, therefore, of the considered opinion that the law laid down in Swamy Shraddananda and V. Sriharan with regard to special category sentencing to life imprisonment in excess of 14 years by fixing a lengthier term would be available to the High Courts and this Court, even in cases where the maximum punishment, permissible in law and duly imposed, is life imprisonment with nothing further. We must, however, hasten to add that exercise of such power must be restricted to grave cases, where allowing the convict sentenced to life imprisonment to seek release after a 14-year-term would tantamount to trivialising the very punishment imposed on such convict. Needless to state, cogent reasons have to be recorded for exercising such power on the facts of a given case and such power must not be exercised casually or for the mere asking."

21. Recently, in ***Ramasrey alia Fakkad v. State of Uttar Pradesh***, 2026 SCC OnLine SC 1402, the Supreme Court again considered the above issue and held that sentence for remainder of natural life is

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

valid.

22. In ***Naval Kishore & Anr. v. State of Punjab***, 2026 SCC OnLine SC 2000, the Supreme Court, while reiterating that the Trial Court did not have the power to impose punishment for a fixed period, and finding that the High Court had affirmed the sentence imposed by the Trial Court without examining the competence of the Trial Court to impose such a sentence, proceeded to consider the appropriate sentence to be awarded in the given facts of that case. Applying the sentencing principle to the facts of the given case, the Court modified the sentence to rigorous imprisonment for a period of 25 years without the benefit of statutory remission. We quote from the judgment as under:-

> *"25. In light of the decisions considered hereinabove, we are of the view that there is no doubt that the Trial Court was competent to impose the punishment of imprisonment for life upon the appellants for the offence under Section 302 read with Section 34 IPC, however, at the same time, the Trial Court was not competent to impose a special category sentence that the appellants "to remain in prison till rest of their life", which in substance and effect, excludes the statutory power of remission or commutation. Therefore, the High Court, while affirming the sentence imposed by the Trial Court, did not examine the competence of the Trial Court to impose such a sentence and thus, to that extent, the impugned judgment requires interference of this Court.*
>
> *26. Having held that the direction issued by the Trial Court that the appellants shall "remain in prison till rest of their life" cannot be sustained, the next question that arises for our consideration is as to the sentence to be*

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

imposed upon the appellants having regard to the facts and circumstances of the present case.

27. As noted hereinabove, the power to impose a special category of sentence, whereby a convict is required to undergo imprisonment for a specified period beyond the ordinary remission or commutation regime, is vested only in the Constitutional Courts. In this regard, paragraph 79 of Navas (supra), reproduced hereinabove, is relevant, wherein this Court provides for the sentencing principles and considerations that guide the exercise of such power and it is held that the power is to be exercised sparingly and upon a holistic consideration of the facts and circumstances of each case, including the nature and gravity of the offence, the circumstances in which the offence was committed, the role attributable to the accused, the period of incarceration already undergone, the conduct of the convict while in custody and the prospects of rehabilitation of the convict.

28. We are of the view that the offence in the present case involves the premeditated murder of three persons, including two minor children, which aggravates the seriousness of the offence. Further, the manner in which the offence was committed, i.e. by inflicting injuries on their throats and other body parts by sharp-edged weapons, is also a circumstance which cannot be lost sight of while determining the appropriate sentence.

29. At the same time, sentencing is not an exercise which can be determined solely by the nature of the crime. We are of the view that the Court must balance the circumstances of the offence with the circumstances of the accused and thus, the sentence must be proportionate to the crime while also preserving the possibility of reformation and rehabilitation of

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

the accused, wherever the circumstances of the case permit.

30. In the present case, the appellants have undergone a substantial period of incarceration. The custody certificates placed on record show that, as on 08.07.2026, Naval Kishore had undergone an actual period of custody of 12 years, 5 months and 20 days, including the period of custody undergone as an undertrial, whereas Jyoti Kumar had undergone an actual period of custody of 11 years, 6 months and 9 days.

31. Furthermore, the conduct of the appellants during their incarceration is also a relevant consideration. We have perused the conduct certificates issued in respect of both the appellants, which were called for by this Court vide order dated 26.05.2026. The certificates indicate that the conduct of both the appellants has remained satisfactory. They have maintained good discipline, complied with the prison rules and regulations and their behaviour towards the prison staff and fellow inmates has also been found to be satisfactory.

32. Therefore, having regard to the gravity of the offence, the fact that three persons were killed including two minor children, the respective roles attributed to the appellants, the substantial period of incarceration already undergone by them, their satisfactory conduct during custody and the fact that the present proceedings are confined to the question of sentence, the ordinary imprisonment for life subject to the statutory remission or commutation regime would not adequately meet the ends of justice, whereas, imprisonment for the remainder of the natural life of the appellants would be disproportionate in the circumstances of the present case. In our considered view, the ends of justice would be adequately met by altering the sentence of the appellants awarded by the Trial Court, i.e. rigorous imprisonment for life

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

and "to remain in prison till rest of their life", to the sentence of rigorous imprisonment for a period of 25 years, without any statutory remission.

33. In view of the above discussion, Question (A) is answered in the negative. The Trial Court was competent to impose the punishment of imprisonment for life upon the appellants under Section 302 read with Section 34 IPC, however, it was not competent to direct that the appellants shall "remain in prison till rest of their life". Accordingly, Question (B) is answered and while exercising our powers as a Constitutional Court, we alter the sentence of the appellants from rigorous imprisonment for life with the direction that they shall "remain in prison till rest of their life" to the sentence of rigorous imprisonment for a period of 25 years without the benefit of statutory remission. At this stage, it is required to be observed that as on 08.07.2026, appellant No.1 had already undergone a period of custody of 12 years, 5 months and 20 days and appellant No.2 had already undergone a period of custody of 11 years, 6 months and 9 days.

34. Accordingly, the conviction of the appellants under Section 302 read with Section 34 of the IPC is affirmed. However, the sentence imposed upon the appellants by the Trial Court, which was affirmed by the High Court, is modified to the extent indicated above. The direction requiring the appellants "to remain in prison till the rest of their life" is hereby set aside and in substitution thereof, both the appellants are sentenced to undergo rigorous imprisonment for a period of 25 years, without the benefit of any statutory remission."

23. In the present case, the High Court and, for that matter, even the Supreme Court, did not have the benefit of the judgment of ***V.***

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58

Sriharan @ Murugan (supra) at the time when the sentence awarded to the petitioner was confirmed by the High Court and SLP filed there-against was dismissed by the Supreme Court. Be that as it may, the High Court, in its judgment dated 01.11.2013, considered the gravity of the allegations made against the petitioner herein and as he was found guilty of having thrown acid on his wife resulting in her death, upheld the sentence awarded to him.

24. The sentence having been affirmed by the High Court, which admittedly, even as per the judgment of the Supreme Court in ***V. Sriharan @ Murugan*** (supra) and the other judgments that we have referred to hereinabove, has the power to impose a fixed-term sentence on a convict, and the said order having been affirmed by the Supreme Court by dismissing the SLP filed there-against, we see no reason in the present Writ Petition to interfere with the sentence awarded to the petitioner.

25. Accordingly, we find no merit in the present petition. The same alongwith the pending application is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

ARUN BHARDWAJ, J

NOVEMBER 4, 2026/ns/***rv***/as

Signature Not Verified
Digitally Signed
By:REYMON VASHIST
Signing Date:04.11.2026
19:05:58