

A AMBADAS LAXMAN SHINDE AND ORS.

v.

THE STATE OF MAHARASHTRA

(Review Petition (Crl.) Nos. 18-19 of 2011)

B In

(Criminal Appeal Nos. 881-882 of 2009)

OCTOBER 31, 2018

C **[KURIAN JOSEPH, A. M. KHANWILKAR AND  
DR. DHANANJAYA Y CHANDRACHUD, JJ.]**

*Sentence/Sentencing: Accused no.1, 2 and 4 were convicted for murder and rape and awarded death sentence while accused 3, 5 and 6 were convicted for murder and awarded life imprisonment – Appeal by accused no.1, 2 and 4 challenging conviction while State filed appeal for enhancement of sentence of life imprisonment on accused 3, 5 and 6 – Two judge bench of this court dismissed appeals of accused no.1, 2 and 4 and allowed State’s appeal and passed death sentence against accused 3, 5 and 6 – Review petitions by accused, dismissed – Reopening of review petitions permitted in view of Constitution Bench decision in Mohd. Arif case– Held: Hearing of appeals had commenced even before service of notice was effected on the accused – Accused no.3, 5 and 6 were not represented by counsel – The court appointed amicus curiae and he was heard on the same day and judgment was reserved – Thus, accused no.3, 5 and 6 had no opportunity to be heard by the bench before the appeals filed by State for enhancement of sentence was decided – They were deprived of an opportunity of engaging counsel and of urging such submissions as they may have been advised to urge in defence to the appeals filed by the State for enhancement – Judgment awarding death sentence to accused no.3, 5 and 6 must be recalled – Similarly judgment as regards accused no.1, 2 and 4 is also recalled as the appeals are interlinked and disposed of by common judgment and in view of fact that evidence was common and offence related to the same incident – Thus, judgment is recalled in its entirety in relation to all the six accused – Penal Code, 1860 – s.302.*

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AMBADAS LAXMAN SHINDE AND ORS. v. THE STATE OF MAHARASHTRA 1189

*Mohd. Arif v. Registrar, Supreme Court of India (2014)* A  
9 SCC 737 : [2014] 11 SCR 1009 – referred to.

**Case Law Reference**

**[2014] 11 SCR 1009 referred to Para 7**

CRIMINAL APPELLATE JURISDICTION: Review Petition (Criminal) Nos. 18-19 of 2011 [arising out of Judgment and Order dated 30.04.2009 in Criminal Appeal Nos. 881-882 of 2009]. B

With

R.P.(Crl.) Nos.34-35 of 2010 in Criminal Appeal Nos.1008-1009 of 2007, Crl. MP Nos.7008-09 of 2016 in R.P.(Crl.) Nos.34-35 of 2010 in Criminal Appeal Nos.1008-1009 of 2007. C

T. Harish Kumar, Rahul Kaushik, Mrs. Geetha Kovilan, Advs. for the Petitioner.

Nishant Ramakantrao Katneshwarkar, Ms. Suverna, Anoop Kandraj, Ms. Deepa Kulkarni, Advs. for the Respondent. D

The following Order of the Court was passed :

**ORDER**

1. On 22 March 2007, a Division Bench of the Bombay High Court disposed of a reference which was made under Section 366 of the Code of Criminal Procedure 1973 by the 3<sup>rd</sup> Ad-hoc Additional Sessions Judge, Nasik. E

2. The High Court upheld the conviction of and the sentence of death imposed on Accused Nos. 1, 2 and 4. While upholding the conviction of Accused Nos. 3, 5 and 6, the High Court sentenced them to imprisonment for life. All the six accused were convicted of the offence punishable under Section 302 read with Section 34 of the Penal Code. In addition, Accused Nos. 1, 2 and 4 were convicted of the offence punishable under Section 376 (2)(g) for which they were sentenced to suffer rigorous imprisonment for a period of ten years. The conviction of Accused Nos. 3, 5 and 6 under Section 376 (2)(g) was set aside by the High Court. All the Accused were convicted of offences under: F  
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(i) Section 307 read with Section 34 for which they have been

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A sentenced to suffer five years imprisonment;

(ii) Section 397 read with Section 395 for which they have been sentenced to suffer rigorous imprisonment for seven years; and

(iii) Section 396 for which they were sentenced to suffer rigorous imprisonment for ten years.

B 3. Criminal Appeals Nos. 1008-09 of 2007 were filed before this Court by Accused No. 1 (Ankush Maruti Shinde), Accused No. 2 (Rajya Appa Shinde) and Accused No. 4 (Raju Mhasu Shinde).

C 4. The State of Maharashtra filed Criminal Appeal Nos. 881-882 of 2009 for seeking enhancement of the sentence of life imprisonment imposed by the High Court on Accused Nos. 3, 5 and 6.

D 5. By a judgment dated 30 April 2009, a two judge Bench of this Court dismissed the appeals filed by Accused Nos. 1, 2 and 4. While allowing the appeals filed by the State, this Court sentenced Accused Nos. 3, 5 and 6 to suffer the sentence of death.

6. Review Petitions were filed by the accused. Review Petition Nos. 34-35 of 2010 were filed by Accused Nos. 1, 2 and 4. Review Petition Nos. 18-19 of 2011 were filed by Accused Nos. 3, 5 and 6. The petitions seeking review were dismissed.

E 7. Following the decision of the Constitution Bench in **Mohd. Arif v Registrar, Supreme Court of India**<sup>1</sup>, criminal miscellaneous petitions have been filed for reopening the review petitions. In terms of the judgment of the Constitution Bench, we permit the reopening of the review petitions. They have been listed for hearing before this Bench in open court.

F 8. Certain salient features about the proceedings which took place before this Court in the course of the hearing need to be set out:

G (i) On 3 August 2007, leave was granted in the Special Leave Petitions filed by Accused Nos. 1, 2 and 4. Execution of the sentence of death was stayed during the pendency of the appeals;

(ii) On 21 November 2008, notice was issued in the appeals filed by the State of Maharashtra. The appeals by the State were tagged with the criminal appeals filed by the accused;

(iii) The notice issued by this Court on 21 November 2008 was

H <sup>1</sup> 2014 (9) SCC 737

served on the accused in jail on 6 December 2008; A

(iv) The hearing of the appeals had commenced on 4 December 2008 even before service of notice was effected;

(v) The order sheet dated 4 December 2008 indicates that all the appeals were heard in part and were directed to be listed on 10 December 2008 “for continuation of arguments”; B

(vi) On 10 December 2008, the following order was passed :

“Since the respondents have not appeared inspite of service of notice, Mr Sushil Karanjakar, learned counsel, who is appearing in the connected appeals is appointed as Amicus-Curiae to assist in this case to represent the respondents because he is ascertained with the facts of the case. C

Mr. Sushil Karanjakar, learned counsel resumed arguments at 11.20AM and concluded at 2.45PM. Thereafter, Mr. Ravindra Keshavrao Adsure, learned counsel started his arguments and addressed the Court till 3.20PM. D

Hearing concluded. Judgment reserved”.

(vii) The appeals filed by Accused Nos. 1, 2 and 4 were dismissed. The appeals filed by the State were allowed. The sentence of death was imposed on Accused Nos. 3, 5 and 6; E

(viii) The three accused – Accused Nos. 3, 5 and 6 were not represented by Counsel;

(ix) The Court appointed *Amicus Curiae* on 10 December 2008. Counsel was heard on the same day and judgment was reserved; and F

(x) Eventually, by the judgment of this Court, Accused Nos. 3, 5 and 6 were sentenced to death and the appeals of the State of Maharashtra were allowed. The appeals filed by Accused Nos. 1, 2 and 4 were dismissed.

9. From the above narration of facts, it is evident that Accused Nos. 3, 5 and 6 had no opportunity to be heard by the Bench, before the appeals filed by the State of Maharashtra for enhancement of sentence were decided. They have been deprived of an opportunity of engaging counsel and of urging such submissions as they may have been advised to urge in defence to the appeals filed by the State for enhancement. G

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A 10. In the circumstances, we are clearly of the view that the judgment and order of this Court dated 30 April 2009 awarding the death sentence to Accused Nos. 3, 5 and 6 must be recalled. We order accordingly.

B 11. We are then left with the issue of Accused Nos. 1, 2 and 4. The judgment of this Court dated 30 April 2009 dismissed their appeals, while confirming the sentence of death imposed by the High Court. In view of our conclusion that the judgment imposing the sentence of death on Accused Nos. 3, 5 and 6 must be recalled, both fairness and propriety require that the judgment should similarly be recalled as regards Accused Nos. 1, 2 and 4. In coming to this conclusion, we take note of the fact that the judgment of this Court dated 30 April 2009 records that :

C “these appeals are interlinked and are disposed of by this common judgment” (Emphasis supplied)

D The evidence is common and the offences relate to the same incident. Hence, it is both appropriate and proper that the judgment dated 30 April 2009 should be recalled in its entirety, in relation to all the six accused.

12. We accordingly order and direct that :

E (i) The orders passed by this Court dismissing the Review Petitions are recalled. The Review Petitions are, in consequence, allowed;

(ii) The judgment dated 30 April 2009 in Criminal Appeal Nos. 1008-09 of 2007 and Criminal Appeal Nos. 881-882 of 2009 is recalled. The criminal appeals are restored to the file of this Court and shall be placed before the appropriate Bench for hearing afresh;

F (iii) Permission is granted to Accused Nos. 3, 5 and 6 to file appeals against the judgment of the High Court convicting them, if so advised; and

G (iv) Execution of the sentence of death imposed by the High Court on Accused Nos. 1, 2 and 4 shall stand suspended pending the disposal of the appeals.

(v) The Registry shall call for the records, if not already called.

(vi) CrI.MP Nos 7008-7009/2016 are disposed of accordingly.