PETITIONER:
AMRUTLAL SOMESWAR JOSHI

Vs.

RESPONDENT:
STATE OF MAHARASHTRA (II)

DATE OF JUDGMENT10/08/1994

BENCH:
REDDY, K. JAYACHANDRA (J)
BENCH:
REDDY, K. JAYACHANDRA (J)
PUNCHHI, M.M.

CITATION:
1994 AIR 2516 1994 SCC (6) 186
JT 1994 (5) 25 1994 SCALE (3)721

ACT:

HEADNOTE:

JUDGMENT:
The Judgment of the Court was delivered by
K. JAYACHANDRA REDDY, J.- Amrutlal Someshwar Joshi, the petitioner in this review petition is the appellant in Criminal Appeal No. 87 of 1994 which has been dismissed by us on 10-8-1994. The appellant has been convicted by the trial court under Section 302 IPC and sentenced to death. The same has been confirmed by the High Court. We heard Criminal Appeal No. 87 of 1994 filed by him in this Court at length and ultimately dismissed the same holding that the appellant killed three persons including a child aged about three years in a brutal and diabolical manner with a view to commit robbery. We also held that the motive was heinous and the crime committed was a cold-blooded, brutal and diabolical one and that his case fell within the category of "rarest of rare cases". Accordingly we confirmed the judgments of the courts below awarding death sentence to the petitioner herein. Hence the present review petition has been filed seeking review of our judgment dated 10-8-1994 in Criminal Appeal No. 87 of 1994.
2. In the meanwhile a separate petition dated 22-8-1994 to review the judgment in Criminal Appeal No. 87 of 1994 sent by the convicted accused from jail is received which is not separately numbered. In this review petition as well as the regular review petition filed through counsel, some points regarding appreciation of evidence by this Court have been raised. We have examined these points and we see no merit in any of them. It may be mentioned here that all the relevant evidence has been considered in detail and thereafter we reached the conclusion that the said items of evidence considered by us by themselves are sufficient to bring home the guilt to the accused and we accordingly confirmed the concurrent findings of the courts below. There is no need to consider each one of them again in these review petitions. We may incidentally mention here that in the petition sent from jail the convicted accused has given

his age as 25 years. He, however, has not raised any point regarding his age stating that it should be taken as a mitigating circumstance. Learned counsel for the petitioner, however, mainly concentrated on the age of the convicted accused on the date of commission
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of the offence in support of his plea that the young age should be treated as a mitigating circumstance in the matter of awarding death sentence.

3. Since this is a case of death sentence, we have heard the learned counsel for the petitioner as well as learned counsel for the State. Learned counsel for the petitioner submitted that the petitioner on the date of occurrence i.e. 4-8-1987 was only 17 years old and therefore having regard to his age, death sentence ought not to have been awarded. In support of this submission strong reliance is placed on a judgment of this Court in Harnam v. State of U. PI, which was followed in Raisul v. State of U. p 2 In Harnam case', Justice P.N. Bhagwati, as he then was, having held that the crime committed by the appellant was most reprehensible and heinous disclosing brutality and callousness to human life, yet having noted that the appellant was of 16 years of age at the time of commission of crime, however, held that a murderer who is below 18 years of age at the time of commission of the offence should be considered to be "too young" and that "he would be entitled to the clemency of penal justice and it would not be appropriate to impose the extreme penalty of death on him". In Raisul case2, Justice P.N. Bhagwati, who spoke for the Bench in a short judgment following the judgment in Harnam case1, again held that the appellant Raisul was below 18 years of age at the time of commission of the offence and therefore death sentence should not have been imposed on him.

4. The learned counsel for the petitioner, in the instant case, submitted that the age of the accused is one of the mitigating circumstances and that if the accused is young he shall not be sentenced to death. In this context the learned counsel also placed reliance on the judgments of this Court in Bachan Singh v. State of Punjab3 and Shankar @ Gauri Shankar v. State Of T.N.4 It may be mentioned here that in Bachan Singh case3, a Constitution Bench of this Court mentioned some aggravating circumstances warranting the imposition of death sentence and also mentioned some mitigating circumstances and age of the accused was mentioned to be one such mitigating circumstance. It was also observed by this Court that: (SCC p. 75 1, para 209)

> "There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. 'We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society.' "

In Machhi Singh v. State of Punjab5, a Bench of three Judges of this Court having noted the principles laid down in Bachan Singh case3 observed thus: (SCC p. 489, paras 39, 40)

1 (1976) 1 SCC 163 1975 SCC (Cri) 794
2 (1976) 4 SCC 301 1976 SCC (Cri) 613
3 (1980) 2 SCC 684: 1980 SCC (Cri) 580
4 (1994) 4 SCC 478 : 1994 SCC (Cri) 1252: JT (1994) 3 SC 54
5 (1983) 3 SCC 470: 1983 SCC (Cri) 681
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> "In order to apply these guidelines inter alia the following questions may be asked and

answered:
(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?
(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?
If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

In Allauddin Mian v. State of Bihar6 this Court after referring to Bachan Singh case3 observed thus: (SCC p. 22, para 12)

"That is why this Court in Bachan Singh case3 observed that when the question of choice of sentence is under consideration the Court must not only took to the crime and the victim but also the circumstances of the criminal and the impact of the crime on the community."

5. Neither in Bachan Singh case3 decided by a Constitution Bench nor in Machhi Singh case5 nor in Allauddin Mian case6, which are later in point of time, there is any reference to Harnam case1 or Raisul case2 nor is there any indication in those three later cases that a person aged about 18 years of age on the date of commission of the offence should under no circumstances be sentenced to death. We are only referring to this aspect to show that there is no inflexible rule that a criminal aged about 17 or 18 years should never be sentenced to death irrespective of other circumstances, however aggravating they may be.

6. Learned counsel for the petitioner, however, submitted that the view taken in Harnam case1 or Raisul case2 certainly comes to the rescue of the petitioner who was aged only about 17 years at the time of commission of the offence. Assuming for argument sake that this Court in these two cases has laid down that the accused who is under 18 years of age should not be sentenced to death, still the important question to be considered in this case is whether the petitioner was aged only 17 years on the date of commission of the offence as is being claimed. The date of the occurrence in this case was 4-8-1987. The accused-petitioner when examined under Section 313 CrPC on 26-8-1992 gave his age to be about 22 years. Relying on this, the learned counsel submitted that the age of the petitioner on 4-8-1987 i.e. the date of commission of the offence, was only about 17 years and therefore death sentence should not have been imposed. The trial court after having convicted the petitioner under Sections 302 and 394 IPC examined the accused on the next day on the point of sentence after explaining the sum

6 (1989) 3 SCC 5: (1989 SCC (Cri) 490: AIR 1989 SC 1456

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and substance of the reasoning of its judgment. The accused stated that justice has not been done to him and that considering his young age, the court should show him sympathy. The learned trial Judge also heard the advocate for the accused on the point of sentence who stated that when the offence was committed, the accused was of 17 years

of age. The public prosecutor contended that the accused was not 17 years of age at the time of commission of offence placing reliance on a true copy of the school leaving certificate of the accused in which his date of birth was mentioned as 1-5-1967. The learned trial Judge held that the accused was not of 17 years of age relying on the said certificate. It is very pertinent to note that nobody questioned the authenticity of the said certificate. The learned trial Judge after elaborate discussion on the question of sentence and also on the question of age ultimately held that this is a case where death sentence alone would meet the ends of justice. Before the High Court, on question of sentence, the learned counsel for the accused urged that the accused was a young man of about 20 years of age. The High Court, however, having taken all the circumstances and findings of the court below into consideration, by its judgment dated 26-10-1993 dismissed the appeal and confirmed the death sentence. We are unable to understand as to how the petitioner who gave his age as 22 years on 26-8-1992 when examined under Section 313 CrPC could be of 20 years of age in the year 1993 when the High Court heard the appeal. Likewise in the special leave petition filed in this Court on 27-1-1994 the age of the petitioner is given as 20 years. Strangely in the review petition dated 22-8-1994 sent by the convicted accused from jail, which is also attested by the Jail Superintendent, he has given his age as 25 years. If one goes by this age, then he would have almost completed 18 years on the date of commission of the offence. We are only pointing out these aspects only to show that the age as such given by the accused or by his advocates at various stages differently is of no consequence and cannot be given any weight. Even before the High Court, the authenticity of the date of birth of the appellant as given in the school leaving certificate has not been questioned. Consequently the statement of the accused regarding his age cannot be the criteria to hold that he was below 18 years of age on the date of commission of the offence. Learned counsel for the petitioner, however, submitted that the accused has not been questioned separately with reference to the date of birth given in the school leaving certificate and therefore that cannot be acted upon. We see no force in this submission. It is only after the conclusion of the trial and after rendering the judgment, the accused as per the provisions of CrPC was questioned in the matter of awarding of sentence. When there was a vague statement regarding age, the prosecution produced the school leaving certificate and the same was placed on record and the authenticity of the same has never been in doubt. Learned counsel, however, further submitted that the accused can be medically examined at this stage. Under the above circumstances, we do not think that this exercise has to be undertaken by this Court at this stage when the authenticity of the school leaving certificate has never been in doubt. The date of birth given in the said certificate is 1-5-1967 and the petitioner was aged more than 20 years

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on the date of commission of the offence. Therefore the petitioner's case does not come within the principle laid down in Harnam case1 which has been followed in Raisul case2.

7. Having given our earnest consideration to the questions raised, we see absolutely no grounds to reduce the sentence to imprisonment for life on the grounds urged by the learned counsel. Accordingly the review petitions are dismissed.

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JUDIS