**Non-Reportable**

# IN THE SUPREME COURT OF INDIA
# CRIMINAL APPELLATE JURISDICTION

Criminal Appeal Nos. 88-89 of 2019
(Arising out of SLP (Crl.) Nos.5422-5423 of 2013)

RAJU JAGDISH PASWAN **.... Appellant(s)**

Versus

THE STATE OF MAHARASHTRA **....Respondent(s)**

## J U D G M E N T

**L. NAGESWARA RAO, J.**

Leave granted.

**1.** The issue that arises in these Appeals is whether the death penalty imposed on the Appellant is disproportionate to the crime committed by him.

**2.** At 20.45 hrs on 21.06.2010, Hanmant Sheshrau Shirsat gave a statement in the Miraj Rural Police Station that his daughter who was 9 years old and studying in the 4th standard at Shri Samarth Ashram School, Bedag was missing since 10.00 am. He stated that he could not find his daughter when he went to the school to bring her home at 5.15 pm on that day. He was

informed by her class teacher that his daughter did not come to school. Shirsat started searching for his missing daughter. Akash (PW-4), a boy residing behind Marguaai Temple and his sister Pooja gave information that Shirsat's daughter was taken by a person wearing black pant and black shirt to the sugarcane field ahead of Odya village. Shirsat accompanied the police in the search for his daughter in the sugarcane field where they found her school record book. On further inquires made in the village, Sidram Sakharam Khade (PW-13) who owns a provision store at Bedag informed that he spotted a person wearing black clothes who came to his shop to buy tobacco. The villagers and the police reached Balakrishna Poultry Farm and inquired about the person wearing black clothes. It is relevant to state that Shirsat is also working in Balakrishna Poultry Farm. The Appellant initially denied any knowledge about the missing girl. However, on further interrogation by the police, he revealed that the girl was dragged to the nearby sugarcane field by closing her mouth tightly to stop her from screaming. He forcibly raped her and then pushed her into a nearby well. A search was conducted to find the body from the well which was

unsuccessful. The police summoned an experienced diver Balu Mahadeo Patil (PW-5) who took out the dead body from the well. Shirsat identified the dead body to be that of his daughter. An FIR was registered under Section 302, 376, 201 of the Indian Penal Code, 1860 (hereinafter 'IPC'). Postmortem was conducted by PW-3 Dr. Sunil Patil and PW-9 Dr. Juber Momin. They have stated in their evidence that froth was coming out of the mouth of the deceased and there was nasal bleeding as well. They found cutis anserina on both palms and sole of the feet. They also found that the mucosa of vagina was congested and redness present over mucosa of anus with congestion. There was a recent complete rupture of hymen. Some sticky liquid was coming out of the mouth of the deceased. All the injuries were found to be ante-mortem. The Doctors deposed that there was evidence of vaginal as well as anal intercourse. The cause of death was stated to be drowning.

**3.** After examining the evidence on record, the trial court convicted the Appellant under Sections 302, 376 (2) (f) and 201 IPC. The trial court considered the following aggravating and

mitigating circumstances before sentencing the Appellant :

*“i. Accused was serving in the same factory where the victim's father was serving and residing in the same factory premises.*

*ii. There is strong circumstance of accused knowing the school timing of the victim and the fact that she used to go to school alone, which is far away from factory premises.*

*iii. The road from village to factory has less traffic.*

*iv. The girl was taken from Marguaai Temple to the sugarcane field. The distance is approximately 1 km.*

*v. The height of the sugarcane in the field can be seen from the photographs on record. It makes the inside things not visible from the road going nearby.*

*vi. Accused had natural as well as unnatural sexual intercourse with the girl, which resulted in the girl becoming unconscious.*

*vii. Accused had pressed her mouth and nose in such a way that froth had come out of her mouth and there was nasal bleeding.*

*viii. Accused had then taken the girl in unconscious state to the well at a distance of 150 sq.ft. away from the place of rape and then thrown her into the well.*

*ix. The throwing of the girl in unconscious state in the well was with knowledge or reasonably given knowledge that death will occur. The said act was done in order to screen himself.*

*x. There was no enmity between informant accused.*

*xi. No reasonable ground has been shown for alleged false-implication.*

*xii. The defence of false implication is unbelievable and unsustainable. Informant was not any way connected to any political party, who had conducted agitation against Bihari persons.*

*xiii. The minor child was helpless when the accused committed the cruel act.*

*xiv. The girl was aged 9 years only and was innocent.*

*xv. The girl was required to go through the torture as is evident*

*from medical evidence.*

*The mitigating circumstances are almost nil. If at all they are to be searched then they are-*

*(i) Age of the accused is 22 years.*

*(ii) Case rests on circumstantial evidence."*

**4.** By holding that the Appellant does not deserve any leniency in view of the heinous crime committed by him, the trial court sentenced the Appellant to be hanged by neck till his death for an offence under Section 302 IPC. The Appellant was also convicted for an offence punishable under Section 376(2)(f) of IPC and sentenced for life and under Section 201 IPC for an imprisonment of 7 years.

**5.** The trial court made a reference to the High Court for confirmation of the death sentence awarded to the Appellant in accordance with Section 366 CrPC. After re-appreciation of the evidence on record, the High Court affirmed the conviction of the Appellant under Sections 302, 376 (2)(f) and 201 IPC. The High Court held that the Appellant was responsible for the horrendous crime of rape and murder of a 9 year old girl. The High Court observed that the Appellant threw the victim in the well while

she was still alive and the victim died due to drowning. By observing that the Appellant did not show any compunction, regret or remorse after committing a gruesome and heinous act on a hapless child, the High Court was of the opinion that no leniency could be shown to the Appellant. A detailed examination of the aggravating and mitigating circumstances was carried out by the High Court before confirming the sentence of death imposed by the trial court for an offence under Section 302 IPC.

**6.** Notice was issued in this case on 08.07.2013 limited to the sentence. We have heard the learned counsel for the Appellant and the State on the justifiability of the sentence of death. The learned counsel for the Appellant took us through the evidence on record to support his submission that the entire case rests on circumstantial evidence and the circumstances proved do not warrant death penalty.

**7.** The maintenance of peace, order and security is one of the oldest functions of the civil society. The imposition of penal sanctions on those who have infringed the rules by which a

society has bound itself are a matter of legitimate interest to the members of the society.[1] Punishment is the just desert of an offender. The society punishes not because it has the moral right to give offenders what they deserve, but also because punishment will yield social useful consequences: the protection of society by incapacitating criminals, the rehabilitation of past offenders, or the deterrence of potential wrongdoers.[2] The purposes of criminal sentencing have traditionally been said to be retribution, deterrence and rehabilitation. To these there may now perhaps be added: incapacitation (*i.e.* putting it out of the power of the offender to commit further offences) and the maintenance of public confidence. [3]

**8.** The punishment prescribed under Section 302 IPC for committing a murder is death or imprisonment for life. This Court in ***Jagmohan Singh*** *v.* ***State of Uttar Pradesh*** [4] turned down the challenge to Section 302 IPC which prescribes the sentence of death for murder. It became necessary for this Court

1 Tom Bingham, The Business of Judging Selected Essays & Speeches (Oxford United Press, 2005), p. 299
2 Bruce W. Gilchrist, "Disproportionality in Sentences of Imprisonment ", Columbia Law Review, Vol. 79, No.6 (Oct., 1979), pp. 1119-1167
3 Tom Bingham, The Business of Judging Selected Essays & Speeches (Oxford United Press, 2005), p. 302
4 (1973) 1 SCC 20

to reconsider the validity of Section 302 IPC in view of certain findings of Justice V.R. Krishna Iyer, speaking for the majority in ***Rajendra Prasad*** v. ***State of U.P.***[5] being contrary to the judgment of the Constitution Bench in ***Jagmohan's*** case (supra). This Court in ***Bachan Singh*** v. ***State of Punjab***[6] concluded that Section 302 providing death penalty for the offence of murder is constitutional. Another question regarding the sentencing procedure provided in Section 354(3) of the Code of Criminal Procedure, 1973 (CrPC) being unconstitutional in view of the unguided and untrammelled discretion of the court was considered in ***Bachan Singh's*** case (supra). According to Section 354(3) CrPC, when the conviction is for an offence punishable with death or, in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence. It was held that imprisonment for life shall be the normal punishment for murder according to the changed legislative policy after introduction of Section 354(3) CrPC and death sentence an exception. It was further held that the sentencing discretion conferred on the courts cannot be said to be

5 (1979) 3 SCC 646
6 (1980) 2 SCC 684

untrammelled or unguided. The discretion has to be exercised judiciously in accordance with well-recognized principles crystallised by judicial decisions after balancing all the aggravating and mitigating circumstances. What is the relative weight to be given to the aggravating and mitigating factors depends on the facts and circumstances of the case. More often than not, the aggravating and mitigating factors are so intertwined that it is difficult to give a separate treatment to each of them.[7] A planned murder involving extreme brutality or exceptional depravity and the murder of any member of the armed forces or police force or a public servant were a few circumstances which were categorized as aggravating. The age of the accused, possibility of reformation and rehabilitation of the accused, probability that the accused would not indulge in a criminal act in future, the extreme mental or emotional disturbance due to which the offence was committed, the duress or domination of another person under which the accused committed the offence and the mental unsoundness or incapacity were listed as some of the mitigating circumstances. Every relevant circumstance relating to the crime as well as the criminal has to be considered before imposing a sentence of death

7 Bachan Singh (supra) ¶197, 201

under Section 302 IPC. This Court in ***Bachan Singh's*** case (supra) ultimately concluded that life imprisonment is the rule and death sentence is an exception for persons convicted of murder. Taking a life through law's instrumentality can be done only in the rarest of rare cases when the alternative option is unquestionably foreclosed.[8] The application of the rule of the rarest of rare in ***Bachan Singh*** (supra) was considered by this Court in ***Machhi Singh & Ors.*** v. ***State of Punjab***[9]. It was held that the manner and motive for commission of murder, magnitude of the crime, anti-social or abhorrent nature of the crime and the personality of the victim of murder are certain factors which have to be taken into account for deciding whether a case would fall in the category of the rarest of rare cases.

**9.** The Appellant dragged a girl of nine years into a sugarcane field, raped her and dumped her in a well. The cause of death according to the medical evidence was signs of recent sexual intercourse with death due to drowning. There is no doubt that the murder involves exceptional depravity which is one of the aggravating circumstances. The manner of commission of the

8 Ibid.¶209
9 (1983) 3 SCC 470, ¶¶ 33-37

crime is extremely brutal. However, we are of the considered opinion that the Appellant does not deserve the sentence of death in view of the following mitigating circumstances:

a) On a thorough examination of the offence, we are unable to accept the prosecution version that the murder was committed in a pre-planned manner.

b) The Appellant was a young man aged 22 years at the time of commission of the offence.

c) There is no evidence produced by the prosecution that the Appellant has the propensity of committing further crimes, causing a continuing threat to the society.

d) The State did not bring on record any evidence to show that the Appellant cannot be reformed and rehabilitated.

**10.** In view of the above, we are unable to agree with the courts below that the sentence of death is appropriate in this case. Applying the guidelines laid down by this Court for sentencing an accused convicted of murder and being mindful that a death sentence can be imposed only when the alternative option is unquestionably foreclosed, we are of the opinion that this case does not fall within the rarest of rare cases.

**11.** Punishment should be proportionate to the offence. A savage sentence is an anathema to the civilised jurisprudence

of Article 21.[10] In ***Solem*** v. ***Helm***[11], the U.S. Supreme Court held that the general principle of proportionality was applicable to a sentence of imprisonment. Helm was sentenced under the Recidivist Statute of South Dakota to undergo imprisonment for life without possibility of parole after being found guilty of uttering a "no account" check for US $ 100. The gravity of the offence and the harshness of the penalty was one of the criteria to be taken into account by the court in its proportionality analysis. Sentence of life imprisonment awarded to Helm was found to be disproportionate to the crime and hence prohibited under the 8th Amendment to the U.S. Constitution. Imposition of capital punishment for rape of an adult woman was found to be 'grossly disproportionate' and a violation of the 'cruel and unusual punishments' clause in ***Coker*** **v.** ***Georgia***[12]. In another case, the sentence of death penalty on a participant in a felony which resulted in murder, without any inquiry into the participant's intention to kill, was held to be violative of the 8th Amendment to the U.S. Constitution because of disproportionality.[13] The U.S. Supreme Court treated this line of authority as an aspect of the death penalty jurisprudence rather

10 (1983) 2 SCC 277, at 284
11 463 U.S. 277 (1983)
12 433 U.S. 584 (1977)
13 Enmund v. Florida 458 U.S. 782 (1982)

than a generalizable aspect of the 8th Amendment to the U.S. Constitution.[14] Justice Scalia who delivered the plurality opinion in ***Harmelin*** v. ***Michigan***[15] reasserted that the proportionality review is applicable to cases involving death sentence. The principle of proportionality has been recognized by this Court in ***Vikram Singh @ Vicky*** v. ***Union of India***[16] wherein it was stated that punishment must be proportionate to the nature and gravity of offences.

**12.** Though imprisonment for life is a sentence for the rest of the convict's life, in practice, it amounted to 12 years imprisonment prior to the introduction of Section 433-A, CrPC. After the insertion of Section 433-A, CrPC, imprisonment for life works out to 14 years. In ***Swamy Shraddananda's*** case[17], it was held that the court is empowered to substitute a death sentence by life imprisonment of a term in excess of 14 years and further directed that the convict must not be released from the prison for the rest of his life or for the actual term specified in the order, as the case may be. While not endorsing the death sentence that was imposed on Swamy Shraddananda, this Court found that since life imprisonment,

14 Rummel v. Estelle, 445 U.S. 263 (1980)
15 501 U.S. 957 (1991)
16 (2015) 9 SCC 502, ¶52.1
17 Swamy Shraddananda @ Murali v. State of Karnataka (2008) 13 SCC 767.

subject to remission, normally worked out to 14 years, it would be grossly disproportionate and inadequate. The view expressed in ***Swamy Shraddananda's*** case (supra) was upheld in ***Union of India*** **v.** ***Sriharan and Others***[18] by a Constitution Bench.

**13.** Though we have already expressed our view that the Appellant does not deserve to be put to death, he is not entitled to be released on completion of 14 years while serving life imprisonment. The brutal sexual assault by the Appellant on the hapless victim of nine years and the grotesque murder of the girl compels us to hold that the release of the Appellant on completion of 14 years of imprisonment would not be in the interest of the society. Considering the gravity of the offence and the manner in which it was done, we are of the opinion that the Appellant deserves to be incarcerated for a period of 30 years. To arrive at this conclusion, we have taken into consideration the opinion of this Court in similar cases - ***Tattu Lodhi*** v. ***State of M.P.***[19], ***Selvam*** v. ***State***[20], ***Rajkumar*** v. ***State of MP***[21], ***Neel Kumar @ Anil Kumar*** v. ***State of Haryana***[22], ***Anil @ Antony*** v. ***State of***

18 (2016) 7 SCC 1
19 ( 2016) 9 SCC 675 (25 yrs)
20 (2014) 12 SCC 274 (30 yrs)
21 (2014) 5 SCC 353 (30 yrs)
22 (2012) 5 SCC 766 (30 yrs)

***Maharashtra***[23].

**14.** In the case of **Rajendra Prasad** (supra), the Court had suggested as follows:

> *"114. Social defence against murderers is best insured in the short run by caging them but in the long run, the real run, by transformation through re-orientation of the inner man by many methods including neuro-techniques of which we have a rich legacy. If the prison system will talk the native language, we have the yogic treasure to experiment with on high-strung, high-risk murder merchants. Neuroscience stands on the threshold of astounding discoveries. Yoga, in its many forms, seems to hold splendid answers. Meditational technology as a tool of criminology is a nascent-ancient methodology. The State must experiment. It is cheaper to hang than to heal, but Indian life — any human life — is too dear to be swung dead save in extreme circumstances."*

Taking note of the above suggestion, we asked Mr. Katneshwarkar, learned counsel for the State of Maharashtra, as to what steps were taken by the State for reformation and rehabilitation of the prisoners. An affidavit signed by the Deputy Inspector General of Prisons (Headquarters), Maharashtra was circulated on 27.11.2018 in which it was stated that Circulars were issued to all the Jail Superintendents to start Yoga and meditation classes for improvement of physical and mental health of the inmates in the penitentiaries. It was also stated that the Maharashtra Prison Department has started a programme namely

23 (2014) 4 SCC 69 (30 yrs)

“Prerna Path” for which persons like Shri Ram Dev Baba and others were invited to Yerwada Central Prison, Pune for motivating the prisoners to participate in the programmes of Yoga. It was further stated that the Department was encouraging the prisoners to participate in Yoga and meditation and was even giving to prisoners who excelled in Yoga.

**15.** In spite of our direction, the Government of India did not file an affidavit regarding the status of rehabilitation of prisoners in Jails in this country. As there was no response from the Government of India, we did our own research to find out about the reform and rehabilitation measures. An All India Model Prison Manual Committee was constituted in the month of November, 2000 under the Chairmanship of Director General of Bureau of Police Research and Development (BPR&D) to prepare a Model Prison Law for the superintendence and management of prisons in India in order to maintain uniformity in the working of prisons throughout the country. The Model Prison Manual of 2016 (“2016 Manual”) which was approved by the Ministry of Home Affairs refers to the education of prisoners which is vital for the overall development of prisoners. Para 14.06 of the Chapter 14 in the 2016 Manual deals with the nature of educational programmes which includes physical

education such as Yoga, health/hygiene education, moral and spiritual education among others. We do not have any material on record about how many States have adopted the 2016 Manual. We direct the States to consider implementing the reformative and rehabilitation programmes contained in the 2016 Manual. In addition, it is open to the States to adopt any other correctional measures.

**16.** Accordingly, the Appeals are partly allowed and the sentence of death is set aside. The Appellant shall suffer an imprisonment for a period of 30 years without remission.

.....J.
[S.A.BOBDE]

.....J
[L. NAGESWARA RAO]

.....J
[R. SUBHASH REDDY]

New Delhi,
January 17, 2019.