

**BURNISHED LAW JOURNAL****IN THE SUPREME COURT OF INDIA****CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPEAL NOS. 607-608 OF 2017****(Arising out of S.L.P (Criminal) Nos 3119 – 3120 of 2014)****Mukesh & Anr. ... Appellants****Versus****State of NCT Delhi and Ors. ... Respondents****CRIMINAL APPEAL NOS. 607-608 OF 2017****(Arising out of S.L.P (Criminal) Nos 3119 – 3120 of 2014)****JUDGEMENT****Dipak Misra [for himself and Ashok Bushan,J.]<sup>1</sup>****Relevant Sections:****INDIAN PENAL CODE, 1860 - Section 120B;****INDIAN PENAL CODE, 1860 - Section 201;****INDIAN PENAL CODE, 1860 - Section 302;****INDIAN PENAL CODE, 1860 - Section 307;****INDIAN PENAL CODE, 1860 - Section 365;****INDIAN PENAL CODE, 1860 - Section 366;****INDIAN PENAL CODE, 1860 - Section 376(2)(g);****INDIAN PENAL CODE, 1860 - Section 377;****INDIAN PENAL CODE, 1860 - Section 395;**

---

<sup>1</sup> <https://www.manupatrafast.in/pers/Personalized.aspx>

**INDIAN PENAL CODE, 1860 - Section 397;**

**INDIAN PENAL CODE, 1860 - Section 412;**

### **Facts of the case**

Nirbhaya is the pseudonym used for the rape victim of the infamous 16 December 2012, Delhi gang rape incident. On just another chilly December night in Delhi, Nirbhaya and her friend were returning from a movie theatre, they were waiting for a bus. One of the would-be culprits convinced them to get on an empty bus with tinted windows. They were assaulted by six males, one of whom was a minor, aged 17. The friend, when he tried to protect Nirbhaya, was beaten up by the perpetrators. Nirbhaya was not just sexually violated, her body was mutilated beyond human imagination. Her intestines were pulled out, and private parts mutilated. She later died of multiple organ failure.

PW-49 Dr. Rashmi Ahuja and PW-50 Dr. Raj Kumar Chejara; and the injuries as depicted in the post-mortem certificate, including the other external injuries which are evidently marks of violence during the incident, exhibit the cruel nature of gang rape committed on the victim. The profused bleeding from vagina and tag of vagina hanging outside; completely recto-vaginal septum clearly demonstrate the violent act of gang rape committed on the victim. The medical reports including the operation theatre notes (Ex. PW-50/A and 50/B) and the injuries thereon indicates the pain and suffering which the victim had undergone due to multiple organ failure and other injuries caused by insertion of iron rod.

**Issue in the case : Is it the rarest of the rare case? S 302.6 “Doctrine of Rarest of rare”<sup>2</sup>**

### **Arguments**

**Respondent:** Insertion of the iron rod: Presently, we shall advert to the contentions raised as regards the use of iron rod for causing recto-vaginal injury. The case of the prosecution is that the accused, in most inhumane and unfeeling manner, inserted iron rod in the rectum and vagina of the prosecutrix and took out the internal organs of the prosecutrix from the vaginal and anal opening while pulling out the said iron rod. They also took out the internal organs of the prosecutrix by inserting iron rod in the vagina of the prosecutrix thereby causing dangerous injuries. Two iron rods, Ex. P-49/1 and Ex.P-49/2, were recovered vide seizure memo Ex.PW-74/G by the Investigating Officer, PW-80, at the instance of accused Ram Singh (since deceased). As per Ex.PW-49/A, the internal injuries sustained by the victim were like vaginal tear, profused bleeding from vagina, rectal tear communicating with vaginal tear and other injuries.

---

<sup>2</sup> THE INDIAN PENAL CODE BY RATANLAL & DHIRAJLAL 36<sup>th</sup> Edition Page No. 470.

**Appellant:** The contention of the appellants is that the testimony of PW-82 is not bereft of doubt for several reasons, namely, a) delay in lodging FIR, b) PW1 cannot be relied on. b. Validity of CCTV footage. c) There was manipulation in police custody.

Learned counsel for the appellants, has countered the prosecution case on the use of iron rods. He submits that the prosecution has fabricated the story as regards the use of iron rods only to falsely implicate all the accused. The defence has refuted the use of iron rods by the accused on the ground that the informant as well as the prosecutrix did not mention about the use of iron rods in their first statements. The main contention of the accused is that the prosecutrix herself, in her first statement given to Dr. Rashmi Ahuja, PW-49, Ex. PW-49/A, failed to disclose the use of iron rods. He relies on the absence of the words 'iron rods' in Ex.PW-49/A to fortify this submission. He contends that as recorded by PW-49, the prosecutrix was in a fit state of mind for she even gave her residential address, but she failed to mention that the accused persons also used the iron rods on her. Counsel for the appellants also submitted that if the rods purported to be used had actually been inserted through the vagina, it would have first destroyed the uterus before the intestines were pulled out. Reliance on:- the first OT notes, Ex. PW-50/A that were made following the first operation of the prosecutrix on 17.12.2012 and where the following was recorded: "uterus, B/L tubes and ovaries seen and healthy"

### **Judgement**

Considering the facts and circumstances of the present case and upon appreciation of the evidence and the material on record, in our view, all the three dying declarations are consistent with each other and well corroborated with other evidence. Bite marks on the chest of the victim and Odontology, Use of Iron Rod and death of the victim, Recovery of the bus and its Involvement in the incident, DNA Analysis were recorded.

In a landmark judgment [Shankar Kisanrao Khade v. State of Maharashtra](#)<sup>3</sup> (2013) Justice Madan B. Lokur after analysing various cases of rape and murder, briefly laid down the grounds which weighed with the Court in confirming the death penalty and the same read as under:-122. The principal reasons for confirming the death penalty in the above cases include: the cruel, diabolic, brutal, depraved and gruesome nature of the crime, the crime results in public abhorrence, shocks the judicial conscience or the conscience of society or the community, the reform or rehabilitation of the convict is not likely or that he would be a menace to society, the victims were defenceless.

### **It seems to me that though the Courts have been applying the rarest of rare principle.**

The question would be whether the present case could be one of the rarest of rare cases warranting death penalty. Before the court proceed to make a choice whether to award death sentence or life imprisonment, the court is to draw up a balance-sheet of aggravating and mitigating circumstances attending to the commission of the offence and then strike a balance between those aggravating and mitigating circumstances. Two questions are to be asked and

---

<sup>3</sup> AIR 2013 SCC 546

answered - (i) Is there something uncommon about the crimes which regard sentence of imprisonment for life inadequate; (ii) Whether there is no alternative punishment suitable except death sentence. Where a crime is committed with extreme brutality and the collective conscience of the society is shocked, courts must award death penalty, irrespective of their personal opinion as regards desirability of death penalty. By not imposing a death sentence in such cases, the courts may do injustice to the society at large.

**From the critical analysis, keen appreciation of the evidence and studied scrutiny of the oral evidence and other materials, we arrive at the following conclusions:**

The evidence of PW-1 is unimpeachable and it deserves to be relied upon. The accused persons along with the juvenile in conflict with law were present in the bus when the prosecutrix and her friend got into the bus. There is no reason or justification to disregard the CCTV footage, for the same has been duly proved and it clearly establishes the description and movement of the bus. The arrest of the accused persons from various places at different times has been clearly proven by the prosecution. The custodial confession made under torture is highly specious plea and they do not remotely create a dent in the said aspects. The contention raised by the accused persons that the recoveries on the basis of disclosure were a gross manipulation by the investigating agency does not merit acceptance. The relationship between the parties have been established, their arrest gains more credibility of each accused gains credence. That apart, the dying declaration by gestures has been proved beyond reasonable doubt. There is no justification in any manner, to think that PW-1 and the deceased would falsely implicate the accused appellants and leave the real culprits. The dying declarations made by the deceased have received from the oral and documentary evidence and also enormously from the medical evidence. The DNA profiling, is noted only to be rejected because it has no legs to stand upon. The scientific evidence relating to odontology shows how far the accused have proceeded and where the bites have been found and definitely, it is extremely impossible to accept the that there is a manipulation by the investigating agency. The evidence brought on record as regards criminal conspiracy stands established.

In view of the aforesaid summation, the inevitable conclusion is that the prosecution has proved the charges levelled against the appellants beyond reasonable doubt. One of the accused, Ram Singh, had hanged himself in the jail and another, the juvenile, was convicted of rape and murder and given the maximum sentence of three years' imprisonment in a reform facility. He was sent to a correction home because he was a minor at that time.

**Analysis**

The principles laid down in Bachan Singh's case<sup>4</sup> is that, normal rule is awarding of 'life sentence', imposition of death sentence being justified, only in **rarest of rare case**. Life imprisonment' became the rule and 'death sentence' an exception. now the nature and gravity of the crime needs to be analysed juxtaposed to the peculiar circumstances attending the societal existence of the criminal. Following factors would emerge: Diabolic nature of the crime and the manner of committing crime, the brazenness and coldness with which the acts

---

<sup>4</sup> A.I.R1980 SC 898

were committed, the horrific acts reflecting the in-human, the acts committed so shook the conscience of the society. A-4 and A-5 placed, following **mitigating circumstances**: - Family circumstances such as poverty and rural background, Young age, family situation including age of parents, absence of criminal antecedents, conduct in jail, and Likelihood of reformation. Imposition of appropriate punishment is the manner in which the courts respond to the **society's cry for justice** against the crime. Factors like young age of the accused and poor background cannot be said to be mitigating circumstances. Likewise, post-crime remorse and good conduct of the accused, the statement of the accused as to their background and family. circumstances, age, absence of criminal antecedents and their good conduct in prison, in my view, the of the category of "rarest of rare cases". The circumstances stated by the accused in their affidavits are too slender to be treated as mitigating circumstances. A balance of aggravating and mitigating circumstances was considered.<sup>5</sup>

Cases like Bantu V. State of U.P<sup>6</sup> where a five year girl is raped and murdered and State of Tamil Nadu V. Suresh<sup>7</sup> and others where a pregnant women is raped and murdered were referred.

**Crimes against women** – An area of concern: Over the past few decades, legal advancements and policy reforms have done much to protect women from all sources of violence and also to sensitize the public on the issue of protection of women and gender justice. Still, the crimes against women are on the increase. As per the annual report of National Crime Records Bureau titled, '**Crime in India 2015**'<sup>8</sup> available a total of 3,27,394 cases of crime against women were reported in the year 2015, which shows an increase of over 43% in crime against women since 2011, when 2,28,650 cases were reported. A percentage change of 110.5% in the cases of crime against women has been witnessed over the past decade (2005 to 2015), meaning thereby that crime against women has more than doubled in a decade. An overall crime rate under head crime against women was reported 53.9% in 2015 with Delhi on top spot. The offence created a "**tsunami of shock**".

Heinous crimes like rape and murder, try 16-year-olds as adults. In such cases, the Juvenile Justice Boards comprising a metropolitan magistrate or a judicial magistrate and two social workers will have the discretion to decide whether the offender should be tried by courts of law like adults, or whether the offender should be tried as a juvenile.

Badrinath Singh, father of the deceased 23-year-old medical student "**There should be no distinction between adults and young criminals when it comes to rape. Both deserve the strictest punishment,**" Singh, who is a porter at Delhi airport, told DW.<sup>9</sup>

<sup>5</sup> A.I.R 1983 SC 957

<sup>6</sup> A.I.R 2008 SC 113

<sup>7</sup> A.I.R 1998 SC 372

<sup>8</sup> <http://ncrb.nic.in/StatePublications/CII/CII2015/FILES/Compendium-15.11.16.pdf>

<sup>9</sup> <https://www.dw.com/en/india-proposes-new-law-for-juvenile-rape-offenders/a-17791929>

We hope that this gruesome incident in the capital and death of this young woman will be an eye-opener for a mass movement **“to end violence against women”** and **“respect for women and her dignity”** and sensitizing public at large on gender justice.

