

# Rape And Girl: SC Sentence Imprison

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Madhya Pradesh in Criminal Appeal No. 94 of 2019 (Arising out of S.L.P. (Cri.) No. 7645 of 2013) has commuted to life imprisonment the death sentence which was earlier confirmed by the Madhya Pradesh High Court of a convicted for the rape and murder of an eight-year-old girl. It must be noted that this notable judgment which was authored by Justice R Subhash Reddy for himself, Justice Sharad A Bobde and Justice L Nageswara Rao took a balanced and reasonable view after taking into account all the facts and circumstances of the case. This alone explains why death penalty was not confirmed rather was commuted to that of life imprisonment with actual imprisonment of 25 years without remission.

While craving for the exclusive indulgence of esteemed readers, it must be informed here that the Bench of Apex Court observed right at the outset in para 2

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that, 'This criminal appeal is filed by the appellant in Criminal Appeal No. 798 of 2013 filed before the High Court of Madhya Pradesh at Jabalpur, aggrieved by the judgment dated 25.06.2013. By the aforesaid judgment, while dismissing the appeal preferred by the appellant herein convicted for the offence under Sections 302, 363, 366 and 376(2)(i) of the Indian Penal Code (IPC), the High Court answered the reference in affirmative by confirming the death sentence awarded to the appellant.'

To recapitulate, para 3 then starting from the scratch brings out that, 'Necessary facts, in brief, giving rise to this appeal are that the deceased, a minor girl aged about 8 years, had gone to attend the 'Mela' along with her younger brother namely Chhunu (PW-4) on 03.02.2013. It is the case of the prosecution that the appellant who is aged about 50 years then, took away the deceased from the 'Mela' and committed rape and murdered her. Narendra (PW-2) informed the police stating that his daughter, who had gone to attend the 'Mela', has not returned home. Upon such complaint, case was registered and investigation commenced. In the course of investigation one Amit Mourya (PW-1) informed the Investigating Officer that when he was coming to his shop from residence, he saw a dog running away with a leg of a child in its mouth and on being chased, the dog dropped the leg and ran away. Further, it was the case of the prosecution that in the process of investigation, Investigating Officer found a headless body of the deceased in the bushes near the 'Dushera Maidan', Bhopal. It is alleged that the left leg of the deceased was found at a distance of 100 ft and both legs were fractured. Further, it is noticed that there were severe injuries on the private parts of the deceased inflicted by the appellant due to which the intestine had come out. During the process of investigation the statement of the appellant was recorded under Ex. P8 and the blood stained cloths and articles he used for the offence were recovered from his house. After completing the investigation, the appellant was chargesheeted for the offence punishable under Sections 363, 366, 376(2)(i) and 302 of the IPC and Sections 5 and 6 of Protection of Children from Sexual Offences Act, 2012.'



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Needless to say, it is then brought out in para 4 that, 'The trial court, after appreciation of the evidence on record, which is mainly circumstantial, came to the conclusion that the appellant has committed rape on the minor girl and murdered her and further, by recording a finding that the crime committed by the appellant is heinous and barbaric, falls within the category of 'rarest of rare'cases, imposed the death sentence. The appellant is also convicted and sentenced for the offence punishable under Sections 363, 366, 376(2)(i) of the IPC. In view of the award of death sentence, the trial court has made a reference to the High Court for confirmation, as contemplated under Section 366 of the Code of Criminal Procedure (Cr.PC). Questioning the conviction recorded and sentence imposed, the accused has filed appeal in Criminal Appeal No. 798 of 2013 and the High Court has disposed of, by common judgment, Criminal Reference No. 05/2013 and Criminal Appeal No. 798/2013. The High Court, by judgment dated 25.06.2013, while dismissing the appeal of the appellant, has affirmed the reference confirming the death sentence awarded to the appellant." The Bench then observes in para 5 that, 'We have heard learned senior counsel for the appellant, Sri Sanjay R. Hegde and also learned counsel appearing for the State Ms. Swarupama Chaturvedi."

What must be noted here is that the learned senior counsel for the appellant Sanjay R Hegde while pooh-pooing the manner in which the trial court and the high court imposed death sentence on the appellant called for it to be modified as we see has been pointed out also in para 6 which states that, 'In this appeal, it is contended by learned counsel for the appellant that there is no acceptable and convincing evidence to prove the guilt of the accused beyond reasonable doubt, the appellant is convicted by the trial court based on the circumstantial evidence which is not enough to record guilt of the accused. It is submitted that from the evidence on record, the prosecution has also failed to prove concept of 'last seen'. It is further submitted that the trial court as well as High Court has committed error in imposing the death sentence upon the appellant without examining mitigating circumstances. It is submitted that the sentence imposed is illegal and contrary to the legislative mandate under Sections 235(2) and 354(3)

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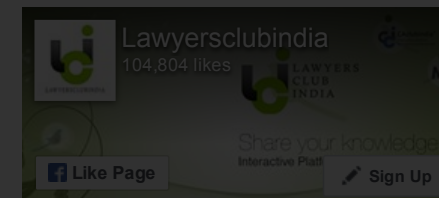
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of the Cr.PC. It is contended that without examining relevant considerations of legislative policy discernible from Sections 354(3) and 235(2) of the Cr.PC, only by recording a finding that the incident is barbaric, the trial court and the appellate court have recorded that the case of the prosecution falls under 'rarest of rare' cases and imposed death sentence. It is submitted that all the mitigating circumstances which exist were to be considered. The penalty of death imposed is required to be modified."

What is more, it is then pointed out further in para 7 that, 'To support his contention, learned counsel has referred to certain cases decided by this Court in identical circumstances. It is specifically submitted that relevant aspects, like, the socio-economic background of the appellant, lack of criminal antecedents, possibility of reform, are not considered. It is also brought to the notice of this Court that the local Bar Association, Bhopal had refused to represent the appellant, as such, the appellant was not represented by counsel before the trial court until the date of the framing of the charge. On request made by the appellant on the day of framing of charge, for grant of legal aid, trial court has requested one Mr. Katyayani to appear and the same day charges were framed and the trial was preceded with."

It is beyond a shadow of doubt that the local Bar Association of Bhopal by refusing to represent the appellant has done no good to the victim who was brutally raped and murdered! It only served to arouse sympathy among the Judges of the Apex Court who decided this case as the accused was not represented by any lawyer in lower court! This only worked to the advantage of the accused!

Of course, every accused has a right to be defended by a lawyer no matter how heinous the crime may be and this among other reasons only served to save the appellant from being pushed to the gallows! Let us not be oblivious of the irrefutable and basic principle of law that, 'One of the cardinal principles of the

criminal justice system in India is that an accused is deemed innocent until proven guilty." The Apex Court too has time and again sent a loud and clear message that every accused has a right to be represented by an advocate of his choice and this is reiterated in Section 303 of Cr.PC also and no accused under any circumstances should be condemned unheard as the doctrine of audi alteram partem very clearly enunciates which literally means 'hear the other side'!

To be sure, no accused should be judged without a fair hearing in which the accused too are given the opportunity to respond to the evidence against them. How can this be possible if they are denied access to lawyer who is supposed to represent them? All lawyers who are in the legal profession must always bear it in mind!

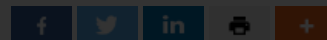
Anyway, coming back to the case itself, it is then finally and most importantly rightly pointed out in para 14 that, 'The learned counsel appearing for the State has placed reliance on the judgment of this Court in the case Mukesh & Anr. V. State (NCT of Delhi) & Ors (2017) 6 SCC 1 [known as Nirbhaya case] in support of her case and submitted that applying the ratio laid down in the aforesaid judgment, the case falls in the 'rarest of rare' cases attracting death penalty. With reference to above said arguments of learned counsel for the State, it is to be noticed that the case of Mukesh (supra) is distinguishable on the facts from the case on hand. It is to be noticed that Mukesh (supra) is a case of gang-rape and murder of the victim and an attempt to murder of the male victim. It was the specific case of the prosecution that the crimes were carried out pursuant to a conspiracy and the accused were convicted under Section 120-B of the IPC apart from other offences. Further, as a fact, it was found in the aforesaid case that the accused-Mukesh had been involved in other criminal activity on the same night. Further, it is also to be noticed that in the aforesaid case, there was a dying declaration, eye witness to the incident etc. So far as the present case is concerned, it solely rests on circumstantial evidence. It is the specific case of the appellant that he was denied the proper legal assistance in the matter and he is a manhole worker. The appellant was aged about 50 years. Further, in this

case there is no finding recorded by the courts below to the effect that there is no possibility of reformation of the appellant. We are of the view that the reasons assigned by the trial court as confirmed by the High Court, do not constitute special reasons within the meaning of Section 354(3) of the Cr.PC to impose death penalty on the accused. Taking into account the evidence on record and the totality of the circumstances of the case, and by applying the test on the touchstone of case law discussed above, we are of the view that the case on hand will not fall within the 'rarest of rare'cases. In that view of the matter, we are of the view that the death sentence imposed by the trial court, as confirmed by the High Court, requires modification. Accordingly, this appeal is allowed in part; while confirming the conviction recorded by the trial court, as confirmed by the appellate court, we modify the sentence to that of life imprisonment with actual period of 25 years, without any benefit of remission. It is further made clear that sentences imposed for all offences shall run concurrently.”

All said and done, this landmark, latest and laudable judgment clearly and convincingly has sent a loud and clear message that death sentence should not be inflicted at the drop of a hat! There must be very serious and compelling reasons and the case must fall within the 'rarest of rare'cases! If there are chances of accused reforming himself/herself then death penalty should not be imposed. All courts from top to bottom must abide by what has been laid down by the Apex Court in this landmark case!



Sanjeev Sirohi  
on 30 January 2019



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louis d'rose  11 February 2019

Well worded explains the crux of the matter on the whole. Excellent My Friend. Professor Louis D'Rose sr lawyer supreme court of india

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