



IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

DATED THIS THE 20TH DAY OF DECEMBER, 2024

PRESENT

THE HON'BLE MR. JUSTICE MOHAMMAD NAWAZ

AND

THE HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA

CRIMINAL APPEAL NO. 100584 OF 2023 (C)

C/W

CRIMINAL REFERRED CASE NO. 100001 OF 2023

IN CRL.A NO.100584/2023

BETWEEN:

SHRI. SHETTAPPA S/O. BASAPPA WADDAR,
AGE: 26 YEARS, OCC: LABOUERER,
R/O: KURADIKERI VILLAGE, TQ: HUBBALLI,
DIST: DHARWAD-580024

...APPELLANT

(BY SRI. M.B. KANAVI, ADV.)

AND:

THE STATE OF KARNATAKA
REP. BY ADDL. PUBLIC PROSECUTOR
SHIGGAON POLICE STATION
SHIGGAON-581 205
HIGH COURT OF KARNATAKA
DHARWAD BENCH

...RESPONDENT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP.)

THIS CRIMINAL APPEAL IS FILED UNDER SECTION 374(2) OF CR.P.C., PRAYING TO, CALL FOR RECORDS IN SPL.S.C.NO.125/2019 DISPOSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-1, HAVERI ON 05.08.2023 AND SET



ASIDE THE JUDGMENT OF CONVICTION DATED 05.08.2023 AND SENTENCE DATED 21.10.2023, IN SPL. S.C.NO.125/2019 PASSED BY THE ADDL. DISTRICT AND SESSIONS JUDGE, FTSC-1, HAVERI, FOR THE OFFENCE PUNISHABLE UNDER SECTION 363, 376(A)(B), 302 OF IPC AND SECTION.5(1), 5(M), 6 OF POCSO ACT 2012, AND APPELLANT MAY BE ACQUITTED.

IN CRL.RC NO.100001/2023

BETWEEN:

THE STATE OF KARNATAKA,
BY STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
DHARWAD, REP. BY SHIGGAON
POLICE STATION, HAVERI.

...APPELLANT

(BY SRI. M.B. GUNDAWADE, ADDL. SPP.)

AND:

SHETTAPPA BASAPPA WADDAR
S/O. BASAPPA,
AGE: 22 YEARS, OCC: LABOURER,
R/O: KURADIKERI VILLAGE,
TQ: HUBBALLI, DIST: DHARWAD.

...RESPONDENT

(BY SRI. M.B. KANAVI, ADVOCATE)

THIS CRIMINAL REFERRED CASE IS REGISTERED AS REQUIRED U/S.366 OF CR.P.C., FOR CONFIRMATION OF DEATH SENTENCE AWARDED.

THESE APPEAL AND REFERRED CASE HAVING BEEN HEARD AND RESERVED FOR JUDGMENT ON 22/07/2024, COMING ON FOR 'PRONOUNCEMENT OF JUDGMENT', THIS DAY, **T.G.SHIVASHANKARE GOWDA J.**, PRONOUNCED THE FOLLOWING:



CORAM: HON'BLE MR. JUSTICE MOHAMMAD NAWAZ
AND
HON'BLE MR.JUSTICE T. G. SHIVASHANKARE GOWDA

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T. G. SHIVASHANKARE GOWDA)

The accused is challenging the judgment of conviction dated 05.08.2023 and order of sentence dated 21.10.2023 in Special S.C.No.125/2019 passed by the Additional District and Sessions Judge, FTSC-I, Haveri ('the Trial Court' for short), convicting and sentencing the accused to death and to be hanged by neck till his death, for the offences punishable under Section 6 of the Protection of Children from Sexual Offenses Act, 2012 ('POCSO Act', for short) and Sections 376A and B and 302 of IPC and to pay fine of Rs.1,50,000/- whereas, the Additional District and Sessions Judge, FTSC-I, Haveri, is seeking confirmation of the order of death sentence imposed against the accused.

2. For the sake of convenience, the parties shall be referred to as per their status before the Trial Court.



3. In brief, the case of the prosecution is, PW-1/Smt.Nirmala Hanumanthappa Waddar is the mother of the victim. On 06.05.2019, PW-1, her husband/PW-6 and their three children in order to attend the marriage of her sister's son at Yalavigi village to be held on 07.05.2019 had gone to Kurusapura village in Shiggaon taluk to attend engagement. The sister of PW-1 had arranged separate accommodation to the invitees in the adjoining house at Kurusapura. PW-1 and her family members and other invitees after taking dinner on 07.05.2019 at 10.00 p.m., went asleep in the said house. The accused herein, who had come to attend the said marriage, had also taken shelter in the same house. After attending the engagement ceremony at about 10.00 p.m., PW-1 returned to the said house and found the house was locked from inside; she called persons inside, the accused opened the door. She went inside, found victim in a deep sleep and accused was also sleeping in the same house. She went back to the engagement ceremony and returned at 11.00 p.m., and found victim and accused not present



in the house. She informed her husband and other relatives, who had come to attend the marriage and all of them went in search of the victim. PW-7 noticed the victim fallen in the Lavatory situated in the backyard of neighbouring house. Immediately all of them rushed to the spot. Accused, who was also present at the spot, on seeing the arrival of the people, fled away from the spot. The victim was retrieved from the Lavatory. She was found bleeding from her private part, immediately she was taken to Government Hospital, Shiggaon, for treatment, where she was declared brought dead.

4. The matter was informed to the elders and complaint was filed to the Police. Investigation commenced by registering FIR in Crime No.69/2019. The accused was secured and subjected to judicial custody. After investigation, charge sheet was laid against the accused for the offences punishable under Sections 363, 376A and B and 302 of IPC and Section 6 of the POCSO Act.



5. The accused pleaded not guilty of charged offences. In order to bring home the guilt of the accused, prosecution has examined as many as 18 witnesses as PWs-1 to 18, marked 38 documents as per Exs.P1 to P38 and 29 material objects as M.Os.1 to 29. The accused did not choose to lead any defence evidence. The Trial Court after hearing the arguments of both sides, by the impugned judgment convicted the accused for the offences punishable under Sections 363, 376A and B and 302 of IPC and Section 6 of the POCSO Act and imposed capital punishment of death. Aggrieved by the same, the accused is before this Court on various grounds whereas, the learned Sessions Judge submitted the reference for confirmation of the order of death sentence. Hence, appeal as well as reference case are taken up together for consideration.

6. We have heard the arguments of Sri.M.B.Kanavi, learned counsel for the accused and Sri.M.B.Gundawade, learned Additional SPP for the State.



7. It is contended by the learned counsel for the accused that all the invitees to the marriage were accommodated in a single house. There is no evidence on record to show that the accused is related either to the bride or bridegroom's family. No evidence is placed to explain as to how the accused came and stayed in the said house without invitation for the marriage. None of the inmates of the house are examined to explain the presence of the accused inside the house soon before the alleged incident. The FSL report as well as the medical evidence did not connect with the alleged rape, such as, seminal stains on the body and clothes of the victim or of the accused. The entire case of the prosecution rests on circumstantial evidence. It is not proper to impose capital punishment in a case which rests on circumstantial evidence. The accused is entitled to benefit of doubt and sought for interference.

8. Per contra, learned Additional SPP has contended that the presence of the accused in the house



has been witnessed by PWs-1, 4, 6 and 7. Even though the accused is not related either to the bride or bridegroom, he has attended the marriage and he was sleeping in the very same house where the victim was sleeping. At 10.00 p.m., it is the accused who opened the lock from inside and at that time, the victim was sleeping inside the house. When PW-1 returned at 11.00 p.m., the victim as well as the accused were found missing. Later it was noticed that the accused was present near the Lavatory and soon after seeing the arrival of the people near Lavatory, he ran away from the spot. The victim was found with injuries on her private parts and the victim was declared brought dead at the Hospital. This clearly shows that there is connectivity between the alleged incident and the accused. Accused knowing fully well that the victim was aged 7 years, who was an innocent, helpless child, taking advantage of absence of her parents, he kidnapped the child, carried her to Lavatory, committed sexual assault against her and committed her murder. The act of the accused is gruesome and heinous and the presence of



the accused has been witnessed by the witnesses. The prosecution has placed positive evidence in quality and the Trial Court has rightly appreciated the evidence and came to right conclusion that it is a rarest of rare cases and awarded capital punishment, which needs ratification.

9. We have given our anxious consideration to the arguments advanced on behalf of both parties and perused the materials on record.

10. The points that arise for our consideration are,

(i) Whether the victim died homicidal?

(ii) Whether the prosecution is able to prove that the accused has committed penetrative sexual assault against the victim leading to her death?

(iii) Whether the prosecution is able to prove the charged offences against the accused?

(iv) Whether the Trial Court is justified in awarding capital punishment to the accused?



Reg.Point No.(i):

11. There is no dispute regarding death of the victim and her age. PW-1 and 6 are the parents of the victim child. Their evidence point out that the victim was aged 7 years and the same has been corroborated by the inquest panchanama as per Ex.P-7 and postmortem report as per Ex.P-8.

12. It is alleged that on 06.05.2019 between 10.00 p.m. to 11.15 p.m., the deceased succumbed to death. PW-15, Dr.Vivek and PW-16, Dr.Sujata, who conducted the postmortem examination of the deceased, noticed the following external injuries on the body of the person of the deceased:

- "i) Contusion over lateral end of left eye measuring 1X1 cm.
- ii) Multiple abrasions over both lateral surfaces of the neck, they are horizontally lineal in nature, 3 on right side and 3 on left side.
- iii) On right side, at the junction of neck there was an injury measuring 3X1 cm, 2 cm below the first abrasion there was an another injury measuring 2X1 cm and mid part of the neck there was an injury measuring 5X0.5 cm.



- iv) *On the left side, there was an injury measuring 2.1 cm below 2 cm from lower margin of the body on left of mandible, 1X1 cm abrasion 1 cm posterior to first abrasion, injury measuring 3.1 cm at the junction of neck and head.*
- v) *An abrasion over right cheek just below the angle of mouth measuring 2X1 cm. edema of the face.*
- vi) *Upper part of both thighs and right knee joint are stained with blood. Contusion measuring 5X3 cm over right upper thigh in the inner part. Libia majora and minora were torn in the posterior end along with the fouchette and posterior vaginal wall similar to fourth degree perineal tear fourth degree perineal tear involving fouchette, posterior vaginal wall, both external and internal and anal sphincter and distal 3.5 cm of rectal mocosa leading to communication between vagina and rectum. Edges of the tear are irregular and partially covered with the blood clots. Tear appears fresh. Hymen was absent. Posterior wall of vagina was torn. No evidence of foreign body in the perineal region.*
- vii) *Fracture of left greater cornu of hyoid bone."*

12(a). The postmortem report at Ex.P-8 coupled with testimony of PW-15 and PW-16 shows:

- *Multiple abrasions over both lateral surfaces of the neck. They are horizontally linear in nature. Three on right side and three on left side.*
 - *Right side*
 - *At the junction of neck and head 3X1cms*
 - *2 cms below the first abrasion 2X1cms.*
 - *Mid part of the neck 5X0.5cms.*



- *Left side*
 - *2X1cms 2cms below the lower margin of body on left of mandible.*
 - *1X1cms abrasion 1cm posterior to 1st abrasion.*
 - *3X1cms at the junction of neck and head.*
- *Abrasion over right cheek just below the angle of mouth 2X1 cms.*
- *There is edema of the face.*
- *Examination of the Genital area:*
 - *External genital area, lower abdomen, upper part of both thighs and right knee joint are stained with blood.*
 - *There is contusion of 5X3cms over right upper thigh in the inner part.*
 - *Labia majora and minora are torn in the posterior end along with the fouchette and posterior vaginal wall similar to fourth degree perineal tear.*
 - *Fourth degree perineal tear involving fouchette, posterior vaginal wall, both external and internal anal sphincter and distal 3.5cms of rectal mucosa leading to communication between vagina and rectum. Edges of the tear are irregular and partially covered with blood clots. Tear appears fresh.*
 - *Hymen is absent.*
 - *Posterior wall of vagina is torn as described above. 3.5 cms involving the fouchette.*

13. They have also noticed the injuries on the private parts of the deceased which were found to be



fresh. Their evidence also ratify that there was a fracture of left greater cornu of hyoid bone. After conducting autopsy, recorded their preliminary opinion as per Ex.P-33 saying that the cause of death of the deceased was due to heavy bleeding from genitalia leading to hypovolemic shock or mechanical asphyxia due to throttling. Their evidence also points out that the sampling of viscera being sent to FSL.

14. PW-11/Dr.P.M. Nagaraj, Senior Scientific Officer, who examined the viscera sample, issued Ex.P-29 report confirming that there were no poisonous substances present in the viscera sample. PW-15 and PW-16 have examined the viscera report and finally gave the report as per Ex.P-36.

15. PW-14/Dr.Mamata Yadav, Scientific Officer, who examined 24 articles which were submitted for FSL examination and on examination of the said articles, she noticed the presence of 'O' group bloodstains on Articles No.1, 10, 11, 12, 24, 25 and 26. She has also examined



blood samples on Articles No.14 and 15, which carry 'O' group human blood and blood sample on Articles No.23 and 29 carry human 'A' blood group and she has issued report at Ex.P-34.

16. PW-15 and PW-16, on perusal of Exs.P-29 and P-34 and on considering the injuries found on the person of the body of the deceased, gave final opinion as per Ex.P-36 that the deceased died either due to mechanical asphyxia or due to throttling or due to hypovolemic shock secondly, due to extensive bleeding from perineal laceration. Cross-examination of PW-15 and PW-16/ Medical Officers and PW-11 and PW-14/RFSL experts point out that the grouping of the blood and presence of bloodstains on the articles are connected to the postmortem examination and final opinion of PW-15 and PW-16 suggests the cause of death was on account of the injuries on the body of the person of the deceased. The time of death corroborates to the alleged date and time of incident. The cross-examination of these witnesses has



not brought out anything suggesting any secondary hypothesis which could be one of the reasons for the deceased to succumb to death. The medical evidence coupled with FSL report clearly points out and suggests that the only hypothesis that can be drawn is that the deceased died due to throttling or due to extensive bleeding. Hence, we are persuaded to conclude that the deceased met with homicidal death. Accordingly, we answer point No.(i).

Re:Point No.(ii):

17. It is proposed by the prosecution that the accused made penetrative sexual assault against the victim leading to her death. As discussed while answering point No.1, the deceased met with homicidal death. Now the prosecution is required to prove the assault against the victim and that the accused was the assailant. In this regard, the prosecution has relied upon the evidence of PW-7/Shekappa apart from the parents of the child PW-1 and PW-6. The entire case of the prosecution rests on



circumstantial evidence as there is no direct evidence of anyone witnessing the accused committing sexual assault against the victim child. Hence, it is relevant to examine and scrutiny the evidence of these three witnesses.

18. The testimony of PW-1 points out that there was a marriage ceremony of one Timmanna, who is the son of her sister at Kurusapur village of Shiggaon Taluk and to attend the said marriage on 06.05.2019, she and her family members visited Kurusapur village. The marriage was set at Yalavigi village on 07.05.2019. Before the marriage, there was an engagement ceremony in the house of the bride at Kurusapura village. The family members of the bride had arranged a house to accommodate the guests who came from Ingalagi. The said invitees stayed in the house arranged by the bride's family. She has divulged that the accused has also attended the said marriage. He was staying along with the invitees in the said house. After dinner, the victim child was sleeping in the house where the accused was



also staying. She went to attend the engagement ceremony and when she returned, the child was sleeping, hence, she went back.

18(a). She returned to see the child at 11.00 p.m., but the child as well as the accused were missing. After informing the said aspect to her husband/PW-6, with the assistance of PW-4/Tirupati, CW-2/Gulappa and CW-17/Sanjeev, she searched here and there. Ultimately, PW-7 Shekappa called them near the toilet of adjoining house. When they went near the toilet, accused came out of the toilet and fled away. From inside the toilet the victim child was retrieved and there were marks of squeezing on the neck and injuries on the buttocks and legs and bleeding injuries in her private part. Immediately the victim was taken to the Government Hospital, Shiggaon where the Doctor declared her brought dead. PW-1 reported the incident to the police in the form of Ex.P-1 and set the law into motion. She asserted that the accused was the person responsible for the death of her daughter.



19. We have perused the evidence of PW-6, the father of the deceased who stood in support of his wife in the witness box about their visit to Kurushapura village along with his family members including the victim. He has deposed that, they stayed in the house of PW-7 to attend the marriage of their relative. At midnight, his wife informed about missing of his child victim and he went in search along with others. The victim was not found where she was sleeping. He stated that the accused has also attended the marriage. PW-7 called to come near the toilet of adjoining house where the child was lying and accused ran away from the toilet. They went and noticed the injuries on the body of the victim including bleeding from her private part. As the child was not responding, she was carried to the Government Hospital, Shiggaon where the Medical Officer declared the victim brought dead. Accordingly, he gave statement to the police.

20. PW-7/Shekappa is a resident of Kurusapur village of Shiggaon Taluk. We have carefully examined his



testimony. He has deposed that 2 years ago, there was a marriage of the daughter of one Devappa at Yalavigi village. The bridegroom's family members had invited the family members of PW-1 and PW-6 including the victim to their village and they were accommodated in his house and at about 11.00 p.m., PW-1 came in search of the victim and PW-7 himself went along with PW-1 and PW-6 in search of the victim. In the backyard of one Shankrappa, they saw the toilet door was opened. He went and found that the accused was inside the toilet, the victim was found lying on the floor and accused ran away from the toilet. He alerted PW-1 and PW-6 and others, after their arrival to the spot, he retrieved the child from the toilet and she was found unconscious and noticed bodily injuries and bleeding from her private part. When the victim was taken to the Government Hospital, Shiggaon, Medical Officer declared her brought dead. In this regard, the Police have also inspected the toilet on the next day and drawn spot mahazar and prepared Ex.P-14/ sketch by taking photographs at Exs.P-9 to 12 and also



the photo of dead body of the victim at Exs.P-3 to P-6. To show that the house belonging to him, he also tendered Ex.P-22/extract of his house which stands in the name of his wife.

21. We have carefully scrutinized the defence cross-examination of PW-1, PW-6 and PW-7. The cross-examination is mere denial and nothing was brought out to probablise the defence. From the evidence of these witnesses, it is very clear that to attend the said marriage, the family members of the bridegroom had arranged the house of PW-7 where the accused and family members of PW-1 and PW-6 and other guests were staying. In the midnight, PW-1 came to the house of PW-7, she saw that the accused as well as victim were sleeping inside the house and she went back to attend the ceremony. When she returned, she found her daughter as well as the accused missing. She informed this to her husband and other villagers. PW-7 being the owner of the house, hosting the guests, went in search of the victim child and



found that the victim was in the toilet belonging to the adjoining house. He saw the accused coming out of the said toilet and running away, whereas the victim was found on the floor of the toilet with bodily injuries including bleeding from her private part. The child was not responding, she was taken to the Government Hospital, Shiggaon where she was declared brought dead. In order to doubt this aspect, nothing is demonstrated. Even if PW-1 and PW-6 being the parents are interested in the prosecution, PW-7 is an independent witness. He has no enmity against the accused. It is he who saw the accused running away from the toilet and saw the child lying on the floor of the toilet with bleeding and bodily injuries. Evidence of PW-7 inspires the confidence of the Court and stands in support of the testimony of PW-1 and PW-6.

22. There is no dispute that the house where PW-1 and PW-6 stayed, stands in the name of the wife of PW-7 as indicated in Ex.P-22. We have scrutinized the



testimony of PW-13 Nagayya, Police Sub Inspector. His testimony shows registering Ex.P-2 FIR on the basis of Ex.P-1 complaint filed by PW-1. PW-12/R.F. Desai, Circle Police Inspector, who conducted investigation, has narrated the spot inspection, apprehending of the accused, collection of the samples of the dead body as well as accused and subjecting them to FSL examination and filing of the charge sheet. His cross-examination is mere denial.

23. PW-2/Basavaraj is the panch witness to the spot panchanama, who has spoken about mahazar drawn at Ex.P-13 and rough sketch prepared by PW-14 and the photographs taken at the spot.

23(a). PW-4/Tirupati is the witness for seizure of postmortem articles, which were seized by the Investigating Officer, who attended the postmortem and inquest. His evidence is supported by PW-17/Arati N. Dewadiga, Woman Police Constable.



23(b). PW-18/Ningappa is Police Constable who assisted the Investigating Officer during spot inspection and at the time of taking photographs. PW-9 is the Assistant Engineer who has prepared spot sketch and PW-10 is the Group-D official of the Government Hospital, Shiggaon who collected the blood samples which fell on the toilet from where the victim was retrieved as per M.O.3.

23(c). The testimony of PW-3/Durgappa and PW-5/Ningappa, who are also panch witnesses to Ex.P-21, stand in support of the prosecution.

23(d). PW-14/Dr.Mamata Yadav is the Scientific Officer of the RFSL. Her evidence explains about examination of 24 articles which were seized during the investigation and issuing Ex.P-34/report certifying that there are bloodstains in articles 1, 10, 11, 12, 24, 25 and 26 of 'O' group human blood and in the blood sample at articles 14 and 15 and 'A' blood group at articles 23 and 27.



24. We have also evaluated the testimony of PW-15 and PW-16 as well as PW-11 which clearly point out that the deceased was carrying 'A' group blood whereas accused is carrying 'O' group blood. How the bloodstains of the victim came in contact with the clothes of the accused is not explained either in the cross-examination or when the accused was examined under Section 313 of Cr.P.C. It is the accused who ran away from the toilet when PW-7 first saw him and immediately PW-7 and others went inside the toilet and found the dead body of the victim. The spot mahazar and collection of the material objects by the Investigating Officer has been subjected to FSL examination and the medical evidence suggests the injuries on the body of the victim and the victim being subjected to sexual assault.

25. We have carefully perused the impugned judgment. The Trial Court has rightly appreciated all the material on record and came to the conclusion that the homicidal death of the deceased was pointing towards the



accused and accused alone. We do not find any error or illegality in the appreciation of the material on record by the Trial Court and the Trial Court coming to the conclusion that the accused was the person who is responsible for the injuries on the body of the victim and also bleeding from her private part and ultimately held that the accused is guilty of the charged offences. As we have also re-appreciated the evidence, it demonstrates the ingredients of the charged offences. These are all the circumstances which point out the guilt towards the accused and in the absence of any explanation, it leads to the sole conclusion that the accused is the person, who is responsible for the alleged act committed against the victim resulting in her death. We answer point No.(ii) accordingly.

Reg: Point No.(iii):

26. As we have discussed above, the child sustained homicidal death with injuries on her body as well as on her private parts and there is no explanation on the



part of the accused with regard to the circumstances why he has attended the marriage, why he ran away from the toilet where the child was found soon after he leaving the toilet. The medical evidence clearly suggests that the victim was subjected to sexual assault which supports the medical evidence so also FSL report. The accused is charged with offence punishable under Section 6 of the POCSO Act, Section 376A and B and 302 of IPC. All these ingredients are required to be satisfied. The defence has failed to demonstrate any secondary hypothesis or any circumstances which lead to cloud of doubt, which can be benefited the accused. Under such circumstances, we are persuaded to hold that the ingredients of the offences are satisfied. Accordingly, point No.(iii) is answered.

Reg: point No.(iv):

27. The Trial Court after holding that the accused is guilty of the offences, sentenced him to death and to be hanged by neck till his death for the offence punishable under Section 6 of POCSO Act, Section 376A and B and



302 of IPC apart from imposing fine of Rs.50,000/-. The point that arises for our consideration is, *whether the case falls under the category of rarest of rare cases which attract capital punishment as opined by the Trial Court?*

28. The argument of the learned counsel for the accused is that it is not the rarest among rare cases, the entire case is based on circumstantial evidence and that there are no eyewitnesses. Hence, the Trial Court ought to have given benefit of doubt in favour of accused. To support his argument, he relied upon the judgment of the Hon'ble Apex Court in ***Veerendra vs. State of Madhya Pradesh¹*** and also in ***State of U.P. vs. Guddu @ Gubbu²***. At paragraph 96, the Hon'ble Apex Court in ***Veerendra***'s case, held that:

"96. Intention is a subjective element and every sane person must be presumed to intend the result that his action normally produces. Hence, the constriction of the neck of a girl child aged 8 years by fingers or palm by a young man aged 25 years, with such force to cause the injuries mentioned hereinbefore cannot be said to be sans intention to take her life. If the said act was

¹ (2022) 8 SCC 668

² Capital Case No.1/2021 dated 31.05.2022



subsequent to commission of rape in the diabolic and gruesome manner revealed from the grave injuries sustained on her private parts, causing death alone can be inferred from the circumstances."

28(a). Paragraphs-106 and 107 of **Veerendra's** case are extracted below:

"106. After taking into account the same and such other decisions specifically referred to therein, in Pappu case ((2022) 10 SCC 321), it was held thus: (Pappu case SCC para 144)

"144. It could readily be seen that while this Court has found it justified to have capital punishment on the statute to serve as deterrent as also in due response to the society's call for appropriate punishment in appropriate cases but at the same time, the principles of penology have evolved to balance the other obligations of the society i.e. of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and collective conscience of society. This has led to the evolution of "rarest of rare test" and then, its appropriate operation with reference to "crime test" and "criminal test". The delicate balance expected of the judicial process has also led to another mid-way approach, in curtailing the rights of remission or premature release while awarding imprisonment for life, particularly when dealing with crimes of heinous nature like the present one."

107. On going through the judgment of the trial court and the High Court, we are of the considered view that in handing down capital sentence what had weighed with the courts are the horrendous feature of commission of crime and the



hapless state of the victim. The trial court considered the question of sentence and awarded the same on the very same day on which the appellant was convicted. We shall not be understood to have held that this is absolutely illegal and impermissible."

29. The Allahabad High Court in **Guddu @ Gubbu's** case at paragraph-33 referring to the judgment in the case of **Bachan Singh vs. State of Punjab**³ case held as follows:

"33. In this background the guidelines indicated in Bachan Singh's case (supra) will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh's case:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime';

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be

³ AIR 1980 SC 898



an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

After referring to the feelings of the community and its desires for self-preservation, Hon'ble the Supreme Court opined that the community may well withdraw the protection by sanctioning death penalty. But the community will not do so in every case. It may do so 'in rarest of rare cases' when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. It has observed that the community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime, or the anti-social or abhorrent nature of the crime, magnitude of crime, personality of victim of murder. It then went on to give instances in this regard as already quoted hereinabove. One of the factors mentioned by Hon'ble the Supreme



Court was that victim of murder is (a) an innocent child who could not have or has not provided even an excuse, much less a provocation, for murder.

Thereafter, Hon'ble the Supreme Court opined that following questions were required to be asked and answered while applying the guidelines laid down by it."

It is argued that it is not a case for capital punishment and sought for modification.

30. *Per contra*, learned Addl. SPP has relied on the judgments of the Hon'ble Apex Court in ***Bachan Singh; Machhi Singh and others vs. State of Punjab***⁴ and ***B.A.Umesh vs. Registrar General, High Court of Karnataka***⁵ and argued that the victim was a minor child and accused has committed penetrative sexual assault against her and committed murder strangulating her neck. The nature of injury and the manner explains that it is a case of rarest among rare and he argued in support of the capital punishment.

⁴ AIR 1983 SC 957

⁵ 2011 (6) KLJ 1 (SC)



31. The Hon'ble Apex Court has laid down principles where a capital punishment shall be warranted in **Bachan Singh's** case and the same has been referred to in **Machhi Singh's** case. Referring to **Bachan Singh's** case, the Hon'ble Apex Court in **Machhi Singh's** case at paras- 33 to 35 held as follows:

"33. In this background, the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case:

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty, the circumstances of the 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided,



and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance-sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

34. 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?

35. 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."

32. The Hon'ble Apex Court in **B.A.Umesh's** case again referring to **Bachan Singh** and **Machhi Singh's** case, at paragraph-18 of the judgment observed that, to consider the nature of the case as "*rarest of rare cases*" or not, the Court has to keep in mind various factors, which is extracted hereunder:

"18. Coming to the question of sentencing, Ms.Suri submitted that even if the conviction of the appellant under Sections 302, 392 and 376 of IPC was to be accepted, the case did not fall within the category of "rarest of rare cases", which merits imposition of the death penalty. In order that a death sentence be passed on an accused, the court has to keep in mind various factors such as :

- (1) that the murder of the deceased was not premeditated;*
- (2) that the accused did not have any previous criminal record so as to draw a conclusion that the accused was a menace to society;*
- (3) that the death was caused in a fit of passion;*



- (4) *that the accused was of young age and there was nothing on record to indicate that he would not be capable of reform; and*
- (5) *that the death was not as a part of conspiracy or with the intention of causing death."*

Finally, it is observed that there are mitigating factors to bring the case within the category of *rarest of rare cases* as narrated in ***Bachan Singh*** case as well as in ***Machhi Singh***'s case and ultimately confirmed the death sentence warranted to the accused therein.

33. Having heard both sides and considering the factual matrix of the case and also the law laid down in the cases of ***Bachan Singh*** and also in ***Machhi Singh***, we are persuaded that there are no such circumstances, which warrant capital punishment. We are not persuaded by the reasons assigned by the Trial Court to ratify the same. Therefore, the order of imposition of capital punishment needs modification. Accordingly, we answer point No.(iv).



34. In view of the discussion made above on points No.(i) to (iv), we pass the following:

ORDER

- (i) Criminal Appeal No.100584/2023 is allowed in part;
- (ii) The conviction of the accused for the offences punishable under Sections 363, 376A and B and 302 of IPC and Section 6 of POCSO Act is hereby confirmed;
- (iii) The order of death sentence is modified. Accused is sentenced to undergo life imprisonment;
- (iv) The sentence of fine imposed by the Trial Court is confirmed. In default of payment of fine, accused shall undergo Simple Imprisonment for one year;
- (v) Crl.R.C.No.100001/2023 is rejected.

Sd/-
(MOHAMMAD NAWAZ)
JUDGE

Sd/-
(T. G. SHIVASHANKARE GOWDA)
JUDGE