

IN THE HIGH COURT OF JUDICATURE AT PATNA

Death Reference No.4 of 2016

=====

The State of Bihar

.... Petitioner

Versus

Nepali Mandal @ Manish Mandal, son of Sudhir Mandal @ Bhuto Mandal,

.... Respondent

with

=====

Criminal Appeal (DB) No. 564 of 2016

(Against the judgment of conviction, dated 06.05.2016, and order of sentence, dated 07.05.2016, passed by Sri Jyoti Swaroop Srivastava, learned 5th Additional Sessions Judge, Munger in Sessions Trial No. 308 of 2012, arising out of Jamalpur P.S. Case No. 36 of 2012)

=====

Nepali Mandal @ Manish Mandal, son of Sudhir Mandal, Resident of Mohalla Keshopur, Nakki Nagar, P.S.- Jamalpur, District Munger.

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

(In D. REF. No.4 of 2016)

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

(In CR. APP (DB) No.564 of 2016)

Appearance :

For the Appellant/s : Mr. Rajiv Kumar Verma, Sr. Adv, Mr. Karuna Nath Sahay, Adv Mr. Rajneesh, Adv, Mrs. Meeta Sinha, Adv

For the State : Mr. A.K. Sinha, A.P.P & Mr. S.C. Mishra, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 30-03-2017

Heard Mr. Rajiv Kumar Verma, learned senior
counsel assisted by Mr. Karuna Nath Sahay, Adv as well as Mrs.



Meeta Sinha, Adv who has been appointed *amicus curiae*.

2. Death Reference No. 04 of 2016 has been preferred by the State of Bihar for confirmation of capital sentence. Cr. Appeal (DB) No. 564 of 2016 has been preferred by the sole appellant, namely, Nepali Yadav, challenging the judgment of conviction, dated 06.05.2016, and order of sentence, dated 07.05.2016, passed by the trial court in Sessions Trial No. 308 of 2012 under Sections 302, 377, 364A and 201 of Indian Penal Code.

3. For the offence under Section 302 of Indian Penal Code, the appellant has been sentenced to death along with fine of Rs. 10,000/- and in default of payment of fine, to undergo S.I. for one month. For offence under Sections 377 and 364(A) of Indian Penal Code, he has been sentenced to rigorous imprisonment for life, till his last breath and a fine of Rs. 5,000/-, under each count, and in default of payment of fine, to undergo S.I. for one month each. For offence under Section 201 of Indian Penal Code, he has been sentenced to R.I. for a period of 07 years and a fine of Rs. 5,000/- and in default of payment of fine to undergo S.I. for one month.

4. The prosecution story, as per written report of informant Raj Kamal @ Raju Mandal, resident of Keshopur, Nakki Nagar, P.S.-Jamalpur, Dist-Munger made before the officer-in-charge of Jamalpur P.S., is that on 09.04.2012 after taking lunch, his



youngest son Aditya Raj @ Chhotu had gone out to play. At about 2:46 pm a call came on his mobile no. 9308894813 from mobile no. 09572588101. The caller stated that his son is in his captivity and if he wants to see his son alive, he has to pay a ransom of Rs. 50,000/-. The caller also got informant to talk to his son who asked his father to save him. The voice seemed familiar to the informant to be that of his co-villager Nepali Mandal @ Manish Mandal resident of Keshopur Nakki Nagar. The caller asked the informant to come to Naugachia. The informant, thus, was sure that his son has been kidnapped for ransom from Mandal Talab by Nepali Mandal and others. On the basis of written report of the informant, police registered Jamalpur P.S. case no. 36 of 2012, dated 09.04.2012, under Sections 364(a), 302, 377, 201/34 of Indian Penal Code.

5. In course of investigation, police took re-statement of the informant and apprehended accused, persons namely, Nepali Mandal. On the next day i.e. on 10.04.2014, police recovered the dead body of the victim, Aditya Raj @ Chhotu, on the confession of Nepali Mandal from the Mosmatia talab covered under dry leaves. He prepared inquest report in presence of informant and his brother-in-law Chandan Kumar (PW.1). In view of confession of Nepali Mandal, the police raided the house of two co-accused, namely, Manoj and Amit, and recovered blue shirt of deceased from the house of Manoj



Kumar and also recovered blue half-pant of deceased from the house of other co-accused Amit Jha. The police forwarded the dead body of the deceased for post-mortem which was conducted by the medical board and the copy of the post-mortem report is in the hand-writing of Dr. Yogendra Kumar Diwakar, Medical Officer, Sadar hospital, Munger. The police, in course of investigation, took statements of witnesses and after finding the case to be true, submitted charge-sheet under Sections 302, 377, 364A and 201/34 of Indian Penal Code against the appellant Nepali Mandal, keeping the investigation pending against two co-accused, namely, Manoj Kumar and Amit Kr. Jha.

6. On the basis of charge-sheet, learned Magistrate took cognizance of offence and committed the case to the Court of Sessions for trial. Charges were framed against the appellant under Sections 302, 377, 364A and 201/34 of Indian Penal Code, to which, he pleaded not guilty and claimed to be tried. In his statement, under Section 313 Cr.P.C., the accused denied his involvement in the crime. The Trial Court, on consideration of materials on record, held the appellant guilty of charges.

7. The prosecution, in order to substantiate its case, examined as many as nine witnesses.

8. P.W.1 Chandan Kumar, is the brother-in-law of the



informant. He stated that on 09.04.2012, while he was coming to the place of his brother-in-law, he saw Aditya @ Chhotu having ice-cream along with appellant Nepali Mandal and accused Manoj Kumar and Amit Kr. Jha at Kali Asthan. He also stated that the dead body was recovered on the next day, i.e. on 10.04.2012, on the confession of Nepali Mandal.

9. P.W. 2 Akash Raj Kamal, is the elder brother of the deceased. He has stated that at about 2 pm, on 09.04.2012, while he was returning from the market, he saw Aditya @ Chhotu going along with Nepali Mandal, Manoj Kumar and Amit Jha towards Kutiyara Kali Asthan. He has further stated that the dead body was recovered on the confession of Nepali Mandal.

10. PW. 3 Kamla Verma, is the mother of the deceased. She stated that on the relevant date and time, she had gone to market. At about 3 pm, she received a call from her husband that the son Aditya Raj has been kidnapped by Nepali Mandal, Manoj Kumar and Amit Jha. On hearing the news, she came to her house and her husband went to the police station around 4 pm to lodge a report. She stated that her husband has telephonically informed that Nepali Mandal was demanding a ransom of Rs. 50,000/- and only on receiving the ransom, he would release his son, otherwise he would kill him. She recognized Nepali Mandal, who was present in the dock.



She stated that the place, from where the dead body was recovered, was one kilometer away from her house.

11. PW.4 Raj Kamal @ Raju Mandal, is the informant himself. He supported the prosecution story stated in the First Information Report. In his evidence, he stated that on the relevant date, his son had gone out to play at about 2 pm after taking his food. He received a call from mobile number 9572588101 on his mobile number 9308894813. The caller demanded a sum of Rs. 50,000/- for safe return of his son and if the demand was not fulfilled, his son would be killed. He identified the words of the caller to be that of his neighbour Nepali Mandal. Then, on the next day, i.e. on 10.04.2012, the police arrested Nepali Mandal and on his confession, the dead body of his son was recovered from mosmataia talab, at about 6 pm. The police prepared inquest report of the dead body, on which he and Chandan Kumar (P.W. 1) signed as witnesses. He identified his handwriting as Ext. 1/1. He stated that all the three accused persons committed unnatural offence with his son Aditya Raj and thereafter, killed him by pressing his neck. There was complete hollowness in one of the eyes of his son and eye-ball was missing. There were injuries on the back of his head as well as both of his legs were tied and the dead body laid naked. The appellant called him at Mandal Nala to deliver the ransom amount.



12. P.W. 5 Dr. Yogendra Kumar Diwakar, is one of the members of the medical board, who conducted post-mortem on the dead body of the deceased on 11.04.2012 at about 12.30 am in the night. He has proved the post-mortem report as Ext.4.

13. P.W. 6 Mukesh Kumar is the investigating officer of the case and on the relevant date he was officiating as officer-in-charge of Jamalpur police station. He stated that on 09.04.2012, informant Raj Kamal has submitted his written report, on the basis of which, Jamalpur P.S. case no. 36 of 2012 was instituted. He proved the formal FIR, which was in the hand-writing of Raj Kamal, on which he had also signed, as Ext.-7. After taking charge of investigation, he took restatement of the informant. He has further stated that he visited the place from where the victim was kidnapped by the three accused persons and in that process, he also took statements of Chandan Kumar and Akash Raj Kamal and reached the house of Nepali Mandal, who was absconding. He succeeded in arresting Nepali Mandal on 10.04.2012, at about 4.45 pm, and on search of his person, one silver colour mobile was recovered which was seized and a seizure list was duly prepared. On the confessional statement of Nepali Mandal, he recovered the dead body of Aditya Raj from the place of occurrence.

14. The investigating officer stated that Nepali Mandal in



his confessional statement confessed that he along with Manoj Kumar and Amit Jha had committed unnatural offence on the victim. Nepali Mandal, in his confession, has further stated that he along with others have killed the victim by pressing his neck and concealed the dead body in a bush near the pond. They also put some grass and leaves on the dead body to hide the same from public notice. He prepared inquest report and also sent the dead body for post-mortem. In the light of disclosure made in the confessional statement of accused Nepali Mandal, he raided the house of Manoj Kumar and Amit Jha. He recovered the blood-stained blue shirt from the house of Manoj Kumar and blood-stained blue half pant from the house of Amit Jha. He submitted charge-sheet against Nepali Mandal and the investigation is still pending against two other accused persons, namely, Manoj Kumar and Amit Jha, who are absconding.

15. P.W. 7 is Anil Kumar. On 11.04.2012, he was posted in the rangdari cell of S. P. office. On the order of Superintendent of Police, he took out the call details of mobile number 9572588101 and 9308894813, from which ransom was demanded, from the computer installed in the S. P. office, the connected link of which are provided by service providers. From the call details, it appears that on 09.04.2012, call was made from the caller's mobile number on the informant's mobile number. On further enquiry, it transpires that the



mobile no. 9572588101 stood in the name of Rekha Devi.

16. P.Ws. 8 and 9, are also sub-Inspectors of Police, who are members of the raiding party and also witness to the recovery of dead body and recovery of shirt and pant of the deceased from the house of Manoj Kumar and Amit Jha.

17. On the basis of these evidences, the prosecution has tried to bring home the charges against the accused persons under Section 364A and 302 of the Indian Penal Code.

18. On the other hand, counsel for the appellant has assailed the impugned judgment of conviction on a number of grounds:

He submits that there is no eye witness either to the commission of unnatural offence or murder of the victim Aditya Raj. All the witnesses are interested witness, being own relative of the informant. There is no authentic material to establish that the appellant either kidnapped the victim or killed him for ransom. There is no legal evidence to prove that a call was made from Mobile No. 9572588101 on the informant's mobile no. 9308894813. The call detail report has not been legally proved. P.W.7, who has got the C.D.R. from the office of Superintendent of Police, has only proved his signature on it, as Ext.12, and not the entire call detail. The trial Court vide order, dated 25.02.2013, has also rejected the application of Additional Public Prosecutor to mark the entire call detail report as



Ext.12. The trial Court also committed error by not holding the appellant to be a juvenile on the date of occurrence, in spite of overwhelming evidence on record. The investigating officer hurriedly submitted charge-sheet within four days on the pressure of Superintendent of Police, Munger. The post-mortem report too was prepared hurriedly on 10.04.2012, at 11.55 P.M.

19. On the other hand, Mr. Ashwini Kumar Sinha, learned counsel for the State submits that the JJB had rejected the plea of the juvenility of the appellant after making proper enquiry. He submits that there are sufficient circumstances to show that it is the appellant and his two associates, who had committed the unnatural offence and thereafter committed his murder, as the victim threatened to disclose the incident to his family members.

20. In view of the rival submissions, we will now examine one by one, the point raised by learned counsel for the appellant. Learned counsel has firstly submitted that there is no eye witness of the occurrence and there are no tangible evidence to establish that it is the appellant who has committed the crime along with his associates.

21. It is well settled that even in case where there is no direct evidence, conviction can be sustained if the prosecution is able to establish a chain of circumstances complete in itself, to



indisputably point to the guilt of the accused. In the light of settled principles we would now examine whether prosecution has been able to establish a chain of circumstances, to rule out any hypothesis which may point to the innocence of the appellant.

22. The informant PW-4, Raj Kamal @ Raju Mandal is the father of the victim and the informant of the case. He stated that his son had gone to play at about 1:00 pm after taking his lunch. At about 2:46 pm, he received a call from Mobile No. 9572588101 on his Mobile No. 9308894813, stating that his son is under his captivity and if the demand for ransom of Rs. 50,000/- is not fulfilled his son would be killed. The informant identified the voice of the caller to be that of Nepali Mandal, who lived in the same locality. Later on mobile SIM of the said number was recovered from the appellant, Nepali Mandal, which was registered in the name of his mother, Rekha Devi.

23. Chandan Kumar PW-1, who is the Brother-in-Law of the informant, stated that in the afternoon of 09.04.2012, while he was coming to the house of his Brother-in-Law (informant) he saw his nephew (Bhagina) Aditya Raj Kamal @ Chotu sitting alongwith Nepali Mandal, Manoj Kumar and Amit Jha at Kali Asthan in the village-Keshopur.

24. PW-2 Akash Raj Kamal, has stated that he saw his younger brother Aditya Raj Kamal, going with Nepali Mandal, Manoj



Kumar and Amit Jha towards Kali Asthan, while he was returning from bazaar at about 2:00 pm.

25. PW-3 Kamla Verma, also stated that at the relevant date and time she was in the market and at about 3:00 pm, she received a call from her husband that their son was kidnapped.

26. The appellant-Nepali Mandal, who was hiding himself after the occurrence was arrested from his house on 10.04.2012. The police recorded his confessional statement at about 5:15 pm on the same date. In his confession, appellant-Nepali Mandal admitted that he along with Manoj Kumar and Amit Jha, first abducted the victim boy and committed unnatural offence with him. As the victim threatened to disclose the incident to his family members they assaulted and killed him and threw his dead body near the pond and covered it with some leaves and bushes to hide the evidence. On the confession of Nepali Mandal, the Investigating Officer recovered the dead body of the victim Aditya Raj covered with some grass and leaves from the bushes near the mosmataia talab. The police prepared inquest report of the deceased. As per inquest report the victim had sustained injuries on his head and one of his eyeballs was missing. The Investigating Officer recovered blue shirt and blue half pant of the victim boy from the house of co-accused Manoj Kumar and Amit Jha.



27. From the evidence of the prosecution witnesses, the following circumstances emerge in this case.

(i) The victim boy after taking his food went out of his house to play in the field.

(ii) Soon thereafter Chandan Kumar (PW-1) the Brother-in-Law of the victim saw the victim having ice-cream with Nepali Mandal, Manoj Kumar and Amit Jha at Kali Asthan.

(iii)PW-2 Akash Raj Kamal, elder brother of the deceased also saw the victim going along with Nepali Mandal, Manoj Kumar and Amit Jha at about 2:00 pm on 09.04.2012 towards Kali Asthan.

(iv) On the confession of accused-Nepali Mandal, the dead body of the deceased was recovered near the village pond covered with bushes and grasses and one of his eyeballs was also missing.

(v) Again on confession of Nepali Mandal, the houses of co-accused Manoj Kumar and Amit Jha were searched from where blue half shirt and blue half pant were recovered.

(vi) The Mobile No. 9572588101 from which the call for ransom was made was recovered from



the house of accused Nepali Mandal which was registered in the name of his mother, Rekha Devi.

(vii) PW-7 Anil Kumar, on the order of Superintendent of Police, Munger, obtained the call detail of Mobile No. 9572588101 from the computer installed in the Office of the Superintendent of Police, Munger, which was linked to all cellular service providers. From the call detail report, it appeared that on 09.04.2012 as many as three calls were made on the mobile of the informant in the afternoon of 09.04.2012.

28. Learned counsel had argued that there is no legal evidence to establish that the call on informant's mobile no. 9308894813 was made from Mobile No. 9572588101.

29. PW-6 Mukesh Kumar, the investigating officer has stated in para-14 that he approached the S.P. Office, Munger to obtain the call detail report of Mobile No. 9572588101, from which the call was made on informant's mobile for ransom. On the order of the Superintendent of Police, Munger, PW-7 Anil Kumar, Incharge of Rangdari Cell in S.P. Office, Munger, obtained the call detail report of the Mobile No. 9572588101 from which the call for ransom was made. He also traced the ownership of Mobile No. 9572588101. On inquiry, he has found that the Mobile No. 9572588101 belonged to



Rekha Devi, the mother of accused Nepali Mandal. The Mobile No. 9572588101 was seized from the possession of the appellant Nepali Mandal. PW-7 in his evidence stated that he has obtained the call detail report from the computer installed in the S.P. Office, Munger which is linked to all cellular service providers. From the details of the call report, it appears that in the afternoon of 09.04.2012, three calls were made from Mobile No. 9572588101 to the Mobile No. 9308894813, which belonged to the informant. He has also stated that Mobile No. 9572588101 belonged to Rekha Devi, who happens to be the mother of the appellant. The witness has also certified the call detail report obtained from the computer installed in S.P. Office, Munger by putting his signature on it. Thus, in our view, the entire details would go in evidence as per Section 65B of the Indian Evidence Act as well as Section 4 and 5 of the Information Technology Act, 2008

Section 65-B of the evidence act reads as follows:-

"Section 65B - Admissibility of electronic records (1)
Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as



evidence or any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) 'throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether--

(a) by a combination of computers operating over that period; or

(b) by different computers operating in



succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in subsection (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a maker to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without



human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those 38 activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment."

Sections 4 and 5 of the Information Technology Act, 2008 also reads as follows:-

"4 Legal Recognition of Electronic Records

Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference

5 Legal recognition of Electronic Signature

Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document should be signed or bear the signature of any person then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of digital signature affixed in such manner as may



be prescribed by the Central Government."

30. Furthermore, it is not in dispute that the computer installed in the S.P. Office, Munger was linked to all the cellular service providers. On the order of the Superintendent of Police, Munger the printed form was obtained by PW-7 Anil Kumar, who has put his signature on the same. As such the entire call detail report would stand admissible. The IMEI number of the mobile recovered from the appellant-Nepali Mandal is also matching with the mobile from which the call for ransom was made. The informant came to identify the voice of the caller as Nepali Mandal, who demanded ransom for release of the victim boy. Thus, we have no hesitation in holding that prosecution has established that the calls were made at 2:46 pm on 09.04.2012 and subsequently from Mobile No. 9572588101 on the informant's Mobile No. 9308894813, which fully corroborates the prosecution case of the informant stated in the FIR.

31. Learned counsel has further argued that since the father of victim was a small time worker in a local mobile shop, as such seeking ransom from him, does not appear to make sense. On the other hand, we find that the evidence of informant is consistent on the point of ransom and involvement of Nepali Mandal, is duly corroborated by other witnesses namely, PW-1, PW-2 and PW-4. The



defence has not been able to extract any material contradictions which may render the testimony of the witnesses doubtful. Situated thus, we find that the prosecution has been able to bring home the charge under Section 364A/377 and 201 of the Indian Penal Code against the appellant.

32. The appellant has lastly argued that the appellant was juvenile and the trial court erred in law in trying him as an adult. In support of his case, learned counsel submits that the date of birth of the appellant mentioned in the School Leaving Certificate of Class-8 dated 31.12.2008 is as 25.12.1996, as per which the appellant would be of 16 years of age on the date of occurrence. As such he would be a juvenile on the date of occurrence. He submits that the trial court erred in not taking into consideration the School Leaving Certificate as the School Leaving Certificate is an important document and the Hon'ble Apex Court relying on the School Leaving Certificate in the case of *Shah Nawaz vs State of U.P & Anr*, reported in *(2011) 13 S.C.C 751*, held the appellant to be juvenile. We find that the trial court has given reasons for disbelieving the School Leaving Certificate dated 31.12.2008. The trial court observed that the appellant in his statement before the police stated that he has studied up to Class-VI. In fact the appellant has filed two certificates. On 04.08.2008, he has also filed a petition in the trial court stating that at



the time of occurrence, he was studying in Class-VI. The school register produced from the school was also not certified by any appropriate authority. The trial court thus had found discrepancies in the petition filed by the appellant and the medical board was constituted which assessed the age of the appellant as 19 to 20 years on the date of occurrence. Thus, we find that the trial court had given reasons for holding, that the appellant was not a Juvenile. Furthermore, the order of the trial court holding him to be not a juvenile has not been challenged in any superior court. Thus the plea of the appellant that he was juvenile on the date of occurrence is not sustainable and is, accordingly, rejected.

33. The trial court has awarded death sentence to the appellant holding it to be rare of the rarest case as the victim was murdered after committing sodomy.

34. Mr. Rajiv Kumar Verma, learned senior counsel appearing on behalf of the appellant submits that this is not a case in which the trial court should have awarded the capital punishment. The appellant even as per the prosecution case was about 19 to 20 years of age, on the date of occurrence, having just entered into adulthood. There is no eye witness to the commission of sodomy or assault and the case is based on circumstances. Furthermore, Section 354(3) of Cr.P.C. warrants that there should be special reasons for awarding



death sentence, but in the instant case, there is no such reason for awarding the capital punishment. Per contra, counsel for the State has defended the judgment of conviction.

35. We have heard the counsel for the parties on the issue of quantum of punishment of sentence. The Hon'ble Apex Court after considering the constitutional scheme and the mandate of Section 354(3) of the Cr.P.C has ruled that the death sentence should be awarded in the rare of rarest cases and there should be special reason for awarding death sentence.

36. In the case of ***Bachan Singh vs. State of Punjab*** reported in (1980) 2 S.C.C 684, the Hon'ble Apex Court has held as follows:-

"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."

37. Laying down the principles on the issue, the Hon'ble Apex court further observed that after enactment of Section 354(3) of the Cr.P.C, making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the Court must pay due regard both to the crime and the criminal. What relative weight is to be given to the aggravating and mitigating factors,



depends on the fact and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them.

38. In the case of ***Machhi Singh vs. State of Punjab*** reported in ***1983 Cri LJ 1457***, the hon'ble Apex Court has held as follows:-

"The extreme penalty of death can be inflicted only in gravest cases of extreme culpability. Thus, the rule limiting the death penalty to "the murder most foul" is, now, christened 'in the rarest of rare cases'.

39. In the light of the principles laid down by the Hon'ble Apex court, we would now examine whether the present case falls into the category of rare of the rarest case, so as to impose death sentence to the appellant. It is not in dispute that even as per the prosecution case, the appellant was aged about 19 to 20 years having just emerged from childhood to adulthood. There is no past criminal history attached to the appellant. No one had actually seen the occurrence, though the circumstances point to the guilt of the appellant Nepali Mandal and his two associates, who are absconding, still there is no eye witness to the commission of the crime. In such circumstance, it is difficult to hold that the case of the appellant would fall in the category of rarest of the rare case and we accordingly convert the death sentence under Section 302 of the Indian penal Code



to life imprisonment. The sentence of life imprisonment passed by the trial Court under Section 364A and 377 of the Indian Penal Code are maintained, whereas the sentence passed under Section 201 of the Indian Penal Code is reduced to 4 years from 7 years. The fine amount is also reduced to a composite sum of Rs. 5000, and in default of payment of fine, the appellant would undergo additional imprisonment for one month. However, all the sentences are directed to run concurrently.

40. With the aforesaid modification in sentence, the judgment of conviction of the appellant is maintained. The death reference is answered in negative.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

Ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	11.07.2017
Transmission Date	11.07.2017

