

NAFR

HIGH COURT OF CHHATTISGARH, BILASPURCRA No. 1069 of 2019

1. Gautram Sahu S/o Buddhram Aged About 43 Years R/o Village- Kheltukri, Police Station- Kunda, Tahsil- Pandariya, District- Kabirdham, Chhattisgarh.

---- Appellant

Versus

1. State Of Chhattisgarh Through Station House Officer, Police Station- Bodla, District- Kabirdham, Chhattisgarh.
2. Uttam Sahu S/o Mansharam Sahu Aged About 25 Years R/o Village- Rehuntakala, Police Station- Kunda, Tahsil- Pandariya, District- Kabirdham, Chhattisgarh.

---- Respondent

For Appellant Shri Dharmesh Shrivastava, Advocate

For Respondent/State Shri Pawan Kesharwani, Panel Lawyer

Hon'ble Shri Prashant Kumar Mishra, J.

Hon'ble Shri Gautam Chourdiya, J.

Judgment on Board

By

Prashant Kumar Mishra, J.

2-9-2019

1. In this appeal under Section 372 of the Cr.P.C. the appellant has prayed that upon convicting the accused for commission of offence under Sections 363, 366, 376 (फ) and 302 of the Indian Penal Code the trial Court should have awarded death

penalty instead of awarding lesser sentence of rigorous imprisonment for life.

2. The respondent No.2/accused kidnapped minor girl aged about 11 years when she was attending the marriage party (*barat*); took her with him on his motorcycle by offering cold drink; and thereafter committed forcible sexual intercourse near Baiharsari. When she resisted the respondent No.2 committed her murder by dashing her head on the ground.
3. Since the trial Court has held him guilty and the present is not a case challenging the conviction, we are not discussing in detail evidence adduced by the prosecution against the respondent No.2/accused.
4. In the present appeal the only issue to be decided is whether in the given set of facts and evidence sentence of life imprisonment would be the adequate sentence or the accused should have been awarded death penalty.
5. Shri Dharmesh Shrivastava, learned counsel appearing for the appellant, has referred to the decision rendered by the Supreme Court in *Manoharan v State by Inspector of Police, Variety Hall Police Station, Coimbatore*¹ and the decision rendered by the Division Bench of the High Court of Madhya

¹ 2019 CJ (SC) 788 : MANU/SCOR/22632/2019

Pradesh in *Mahendra Singh Gond v State of Madhya Pradesh*².

6. It is the settled law that the death penalty should be awarded in rarest of rare cases. To decide as to when a particular case fits in as rarest of rare case, the Supreme Court has referred to the 'aggravating circumstances' and 'mitigating circumstances', which should be considered by the Court while awarding death penalty in paras 202 & 206 of the decision rendered in *Bachan Singh v State of Punjab*³. The said paras are reproduced hereunder :

202. Drawing upon the penal statutes of the States in U.S.A. framed after *Furman v, Georgia*, in general, and Clauses 2(a), (b), (c), and (d) of the Indian Penal Code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

Aggravating circumstances : A Court may, however, in the following cases impose the penalty of death in its discretion:

- (a) if the murder has been committed after previous planning and involves extreme brutality; or
- (b) if the murder involves exceptional depravity; or
- (c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed -

² 2019 CJ (MP) 62

³ (1980) 2 SCC 684

(i) while such member or public servant was on duty; or

(ii) in consequence of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973, or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

206. Dr. Chitale has suggested these mitigating factors:

Mitigating circumstances:- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.

7. The Supreme Court thereafter referred to other circumstances justifying the passing of the lighter sentence in 209 in the following manner :

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India, show that in the past Courts have inflicted the extreme penalty with extreme infrequency - a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons

convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed.

8. In the case at hand, the accused is a young boy, aged about 25 years. Immediately after the incident he shown remorse and made extra judicial confession in presence of witnesses namely; PW-2 Gautram, PW-4 Dhaniram, PW-10 Bhagwat, PW-11 Babulal, PW-14 Tekram Sahu & PW-15 Bhuwneshwar. He did not make any effort to abscond or flee from the village nor attributed the offence to any one else to raise false plea of innocence. The accused has also suffered injuries as has been mentioned in para 49 of the judgment. As against these mitigating circumstances, the aggravating circumstances is only to the effect that he has committed rape & murder of a minor girl.
9. At this stage, it would be appropriate to refer the judgment rendered in *Bishnu Prasad Sinha and another v State of Assam*⁴ wherein the Supreme Court held that ordinarily in a case based on circumstantial evidence, death penalty should not be imposed.

4 (2007) 11 SCC 467

10. In view of the above, we are not inclined to entertain this appeal seeking awarding of death penalty to the respondent No.2/accused.
11. As a sequel, the instant appeal deserves to be and is hereby dismissed at the admission stage itself.

Sd/-

(Prashant Kumar Mishra)
Judge

Sd/-

(Gautam Chourdiya)
Judge

Gowri