

HIGH COURT OF CHHATTISGARH, BILASPUR

CRA No. 1801 of 2019

- Applicant

- Uttam Sahu S/o Mansaram Sahu Aged About 25 Years R/o Village Rehuntakala, Thana Kunda, Tahsil Pandariya District Kabirdham Chhattisgarh.

---- Respondent

For Appellant-State :- Shri K.K. Singh, G.A.

Hon'ble Shri Prashant Kumar Mishra

Hon'ble Shri Gautam Chourdiya, JJ.

Order on Board

By

Prashant Kumar Mishra, J

03/12/2019

1. Heard.
2. On due consideration, delay of 132 days in filing the appeal is condoned. Accordingly, I.A. No.1 is allowed.
3. In this appeal under Section 372 of Cr.P.C. the prosecution/State has prayed that upon convicting the accused under Sections 363, 366, 376 क and 302 of the IPC

the trial Court should have awarded death penalty instead of awarding lesser sentence of life imprisonment.

4. The case of the prosecution, in nutshell, is that the respondent/accused abducted the prosecutrix, aged about 12 years on the date of incident i.e. 18/19.04.2018, and committed forcible sexual intercourse with her and thereafter committed her murder.
5. Since the trial Court has held the accused guilty and present is not a case challenging the conviction, we are not discussing the evidence adduced by the prosecution against the respondent/accused.
6. 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 appropriate sentence or the accused should have been awarded death penalty..
7. Shri K.K. Singh, learned State counsel, would argue that looking to the facts and circumstances of the case and particularly looking to the seriousness of the crime committed by the accused the trial Court ought to have imposed the capital punishment upon the accused instead of sentencing him to undergo the imprisonment for life.

8. Learned State counsel would refer to the judgments rendered by the Supreme Court in **Purushottam Dashrath Borate and Another vs. State of Maharashtra (2015) 6 SCC 652**, **Satya Narayan Tiwari @ Jolly and Another vs. State of Uttar Pradesh (2010) 13 SCC 689**, **Sukhdev Singh and Another vs. State of Punjab (2010) 13 SCC 656**, **Deepak Rai and Others vs. State of Bihar (2013) 10 SCC 421**.

9. 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**¹.

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

¹ (1980) 2 SCC 684

- (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 -
 - (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. Chitaley 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.

10. 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.

11. In view of the above settled legal position, we are not inclined to entertain this appeal seeking awarding of death penalty to the respondent/accused.

12. 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

Ankit