

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

Murder reference No.02 of 2019
Date of Decision:-February 3, 2020

State of Haryana

.....Prosecutor

Versus

Sunny

.....Respondent

(2)

Criminal Appeal No.D-128 of 2019

Sunny

.....Appellant

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA
HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present : Mr. Vivek Saini, DAG, Haryana.

Ms. Saigeeta Srivastava, Legal Aid Counsel,
for the convict-respondent.

* * * * *

GURVINDER SINGH GILL, J.

1. This judgment shall dispose of the aforesaid “murder reference” made by learned Additional Sessions Judge, Rewari, in terms of Section 366 Cr.P.C. vide judgment dated 19.12.2018 and also the above mentioned appeal filed on behalf of the accused Sunny challenging the said judgment, as common

questions of fact and law are involved therein.

2. The appellant/accused Sunny was tried by the Court of Additional Sessions Judge, Rewari in respect of FIR No. 139 dated 8.6.2018, under Sections 302, 201 IPC and Section 6 of POCSO Act, Police Station Kasola, District Rewari and vide judgment dated 19.12.2018, has been sentenced vide separate order dated 21.12.2018 as under:

S. No	OFFENCE	SENTENCE
1.	Under Section 302 IPC	To undergo death penalty and he shall be hanged till death.
2.	Under Section 376-A IPC	To undergo death penalty and he shall be hanged till death.
3.	Under Section 201 IPC	Rigorous imprisonment for seven years and to pay a fine of ₹ 5,000/-. In default of payment of fine, the convict shall undergo rigorous imprisonment for five months.
4.	Under Section 6 of POCSO Act, 2012	Rigorous imprisonment for life and to pay a fine of ₹ 10,000/-. In default of payment of fine, the convict shall undergo rigorous imprisonment for ten months.

3. The matter pertains to death of complainant Brijender Kumar's daughter aged about 8 years. The FIR (Ex.PAC) in question was lodged at the instance of complainant, the translated gist of which reads as follows:

“I have been working in Caparo company through contractor since the last about 8 years. I along with my wife Gajra Devi,

my elder daughter Kashish aged about 8 years and my son Mohit aged 5 years have been residing in a rented house in Village Rudh for the last 3 years. There are other tenants also residing in the said house. Sunny resides in one room while Akhilesh and Laxman are residing in another room. There are two rooms on the upper portion. In one room Lokpal, his younger brother and his wife are residing while the second room is vacant. I, Laxman and Mukesh are working in Caparo company while others work in some other companies. My son Mohit has been ailing for the last 2 days and his diet had reduced. Today, at about 10 a.m., when I along with my wife went to Bawal to get the medicine for my son, my daughter Kashish remained alone in the room. When I along with my wife returned back home at about 12 noon after getting medicine, our daughter Kashish was not found in the house and Sunny was alone in his room. I along with my wife searched for my daughter Kashish everywhere but she was nowhere to be found. Then I asked Sunny as to whether he had seen Kashish who replied that a girl had come who had taken Kashish along with her. However, he seemed scared while speaking. Thereafter, I and my wife looked for my daughter in the village but she could not be traced. At about 1.30 p.m., I informed the police telephonically at phone No.100 for not being able to find my daughter. Police reached after about 15-20 minutes. Upon being inquired, I told the police that my daughter was missing

from home and could not be found. We again asked Sunny about my daughter Kashish while confronting him that he was alone in the house when we had left home. At that time Sunny looked scared. When we asked Sunny to search for the girl, he initially refused but upon our insistence he first locked the room and then joined us in the search for our daughter Kashish. Although I, Sunny and the police searched for my daughter in the village, railway line, railway station and Bawal City, but she could not be found. During the said process, Sunny seemed scared and was looking perplexed and was uncomfortable to our queries and changing his stand time and again. Upon not being able to trace our daughter, we and Sunny returned back. Upon seeing the scared state of Sunny, we became suspicious and started checking his room by getting it unlocked and thereupon Sunny with folded hands disclosed that after the complainant had left home, he took Kashish to his room and tied her hands and mouth with a cloth and firstly raped her and then fearing getting caught, he killed her. He further stated that he thereafter hid the dead body of Kashish in the wooden almirah in his room. Sunny thereafter got the dead body of Kashish recovered by opening the almirah in our presence. Her hands, mouth and neck were found tied with cloth and blood was oozing out from her private parts and she had also passed stools. Sunny has killed my daughter after committing rape upon her. Stern action be taken against Sunny. I have made my statement which has

been read over to me and the same is correct.

Signed /-
Brijender Kumar.”

4. The matter was investigated by the police during the course of which 'Inquest report' as well as a rough site plan of the place of occurrence was prepared. Post-mortem examination was got conducted on the dead body of Kashish. Statements of witnesses were recorded. Upon conclusion of investigation, a challan was presented in the Court of Additional Sessions Judge, Rewari on 5.7.2018.
5. Learned trial Court upon finding that there were sufficient grounds to presume that the accused had committed offences punishable under Sections 302, 376-A, 201 IPC and Section 6 of POCSO Act, accordingly framed charges against the accused on 9.7.2018 to which the accused pleaded not guilty and claimed trial.
6. The prosecution in order to substantiate its case examined as many as 25 prosecution witnesses. PW-1 Dr. Arvind Adhlakha stated that he had examined Mohit son of the complainant Brijender on 8.6.2018 who had been brought to his hospital and he prescribed medicines as he was found to be malnourished. PW-2 Brijender Kumar (complainant) stated in tune with the allegations levelled in the FIR. PW-3 Gajra Devi is wife of the complainant-Brijender Kumar who stated identically as stated by the complainant (PW-2) as regards the factum of disappearance of her daughter from the house and her dead body being recovered at the instance of the accused. PW-4 Sukhbir @ Sugreev stated that he owns the house where the complainant-Brijender

Kumar is residing as a tenant and that Sunny was also residing in his house in one of the rooms as a tenant.

7. PW-5 Neelam, who is Head Teacher in Vishva Bharti High School, Bawal, produced the record pertaining to admission of Kashish and stated that as per the record maintained in the school, her date of birth was 21.1.2010. PW-6 Satish Kumar, Security Supervisor, Caparo, deposed that while he was working as a security supervisor in the Maruti Ltd., HSIIDC, the accused Sunny was working as a scrap loader in the company and that on 8.6.2018 the accused left the factory premises at about 10.25 a.m. while stating that he had to take his father to hospital.
8. PW-7 SI Kuldeep Kumar stated that a message was received in the Control Room at about 1.25 pm. that Kashish was missing which was recorded in the log book maintained in the Control Room. He proved the relevant entry as Ex.PN. PW-8 EASI Satpal proved the photographs of the place of occurrence which he had taken with his digital camera as Ex.P-1 to P-6. PW-9 Dr. Basant Kumar, SSO (Senior Scientific Officer) "Scene of Crime", stated that he visited the place of occurrence along with his kit and staff and proved his report Ex.PQ in respect of "Scene of Crime" investigation. PW-10 Pooran Chand who had videographed the proceedings of recovery of the victim's dead-body from the house of the accused proved the said video recording in the shape of CD as Ex.P-7. PW-11 Constable Kuldeep deposed regarding delivery of special reports to the Illaqa Magistrate and to the other superior police officials.
9. PW-12 ASI Kabool Singh stated that on 8.6.2018 he was posted as ASI in

Police Station Kasola and upon receipt of information regarding disappearance of Kashish, he along with SHO Vinod Kumar and HC Pawan Kumar went to Village Rudh, and searched for Kashish but she could not be found. He further deposed that accused Sunny was however, in a perplexed state and was changing his stand time and again and upon being quizzed, he disclosed having committed the crime and having kept dead body of victim in an almirah in his room, which he got recovered.

10. PW-13 Dr. Amit Kumar, who had conducted post mortem examination on the dead body of the victim Kashish proved the post mortem report as Ex.PV. PW-14 Dr. Lokesh Yadav, who had medically examined accused Sunny proved the MLR Ex.PX-1 in respect of the same. He also deposed that he had taken the swab and blood sample of the accused for the purpose of DNA examination. He deposed that upon going through the report of FSL and the DNA examination report the same were found to be matching with the anal swabs. PW-15 SI/SHO Vinod Kumar deposed that he was posted as SHO Police Station Kasola on 8.6.2018 and that upon receipt of information regarding disappearance of Kashish, he along with ASI Kabool and HC Pawan went to Village Rudh and conducted the requisite investigation. He stated in detail about the investigation conducted at the spot. He further stated that later the investigation was entrusted to ASI Kusum Lata. He further deposed that upon conclusion of investigation, report under Section 173 Cr.P.C. had been prepared on 26.6.2018 which bears his signatures.
11. PW-16 Constable Rakesh Kumar stated that he had collected the call details in respect of mobile number 9306246686 belonging to Brijender Kumar and also

in respect of mobile phone number 9992976314 belonging to Sunny. PW-17 HC Pawan Kumar who was also comprised in the police party which went to the spot along with SHO Vinod Kumar and ASI Kabool stated in detail in respect of the investigation conducted by the police. PW-18 ASI Rajesh Kumar stated that he had joined investigation with ASI Kusum Lata on 8.6.2018. He stated that on 12.6.2018 MHC Satish had entrusted 4 sealed parcels to him for their onward transmission which he accordingly deposited with FSL on the same day and that as long as the samples remained in his possession, the same were not tampered with. PW-19 HC Charan Singh who had prepared the site plan of the place of occurrence, proved the same as Ex.PAB. PW-20 ASI Gurdayal Singh who had formally recorded the FIR, proved the same as Ex.PAC. PW-21 Sandeep Shamal, Nodal Officer Reliance Jio, proved the call detail record pertaining to mobile number 9306246686.

12. PW-22 Dr. Monika Dhankar, SSO Biology, RFSL, Sunaria, Rohtak, stated regarding the receipt of sealed parcels. She stated that the said parcels except blood samples were examined by her scientifically and proved the report as Ex.PT. She further stated that after examination, the case property was sent to FSL Madhuban, for further examination by the DNA Branch. PW-23 HC Satish Kumar stated that on 9.6.2018 he was posted as MHC at Police Station Kasola and on the said date ASI Kusum Lata had deposited 4 sealed parcels with him. He further stated that he handed over the said parcels to ASI Rajesh Kumar on 12.6.2018 and that as long as the samples remained in his possession, the same were not tampered with. PW-24 ASI Kusum Lata stated that on 8.6.2018 upon receipt of information from MHC of Women Police

Station Rewari, she reached at the spot in Village Rudh, where a dead body had been recovered by SHO Police Station Kasola. She stated that since it was a case of 'crime against women', the investigation was entrusted to her. She stated in detail about the investigation conducted by her and proved various documents prepared during the course of investigation. PW-25 Deepak Kumar, Nodal Officer, Idea Cellular Limited, Panchkula, proved the call detail record pertaining to mobile number 9992976314 and also in respect of phone number 9992515789.

13. The prosecution tendered into evidence report of FSL (DNA) as Ex.PK and gave up PW Mukesh, Dr. Rajiv and Dr. Vandana being unnecessary and closed its evidence on 21.8.2018.
14. After conclusion of evidence of prosecution, statement of accused was recorded in terms of Section 313 Cr.P.C. wherein the entire incriminating evidence appearing against him was put to him to enable him to explain the same but the accused denied the entire prosecution case in toto and pleaded false implication. The accused, however, did not lead any evidence in his defence.
15. The learned trial Court, upon appraisal of the evidence on record held that date of birth of the victim was 21.1.2010 and was, thus, aged less than 18 years. The Trial Court framed the following points for determination:

- (I) Whether the accused has committed murder of the victim as per Section 300 of the I.P.C.-Murder- Except in the cases hereinafter expected, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or

Secondly, it is done with the intention of causing such bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or

Fourthly- if the person committing the act know that is, so imminently dangerous that it must, in all probabilities, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid punishment under Section 302 IPC.

(II) Whether the accused had raped the victim and during the proceeding inflicted injury to her which had caused her death and punishable under Section 376-A IPC.

(III) Whether the accused knowing that an offence of murder of the victim has been committed punishable with death and who with the intention of screen himself from the legal punishment dispose off the dead body by concealing in almirah and committed an offence punishable under Section 201 IPC.

(IV) Whether the accused has committed aggravated penetrative sexual assault on the victim aged about 8 years and committed an offence punishable under Section 6 of POCSO Act.”

16. The trial Court returned its findings on the aforesaid questions in favour of the prosecution and held that the accused had committed rape upon the victim and thereafter had done her to death and made an attempt to conceal her dead body in order to avoid detection and consequently held that the charges framed against the accused for offences under Sections 302, 376-A, 201 of IPC and Section 6 of POCSO Act stood duly established.

17. Learned counsel for the appellant while assailing the impugned judgment has submitted that it is a case of blind murder based totally on circumstantial

evidence and that the appellant has been falsely implicated by the police as it could not trace the real offender. Learned counsel has further submitted that the entire case of the prosecution is based on the alleged disclosure statement of the accused/appellant which, as per settled principles of criminal jurisprudence, cannot be made a sole basis for convicting the accused in the absence of other substantive evidence establishing the guilt of the accused.

18. Opposing the petition, the learned State counsel submitted that in the present case the appellant, pursuant to the disclosure statement made by him, got the dead body of the victim recovered from his own house and which would clearly establish his guilt. It has further been submitted that the recovery of dead body was effected in the presence of the complainant and other police officials and the scene of occurrence was also got examined by an expert i.e. by Senior Scientific Officer and was also got videographed leaving no manner of doubt regarding the factum of recovery of dead body at the instance of the appellant. It has further been submitted that the medical evidence, report of FSL and even the DNA examination report would clearly show that the appellant had raped the victim before killing her. The learned State counsel, thus, submitted that in view of the clinching evidence in the shape of recovery of dead body of the victim at the instance of the appellant from his own house, corroborated by medical evidence regarding rape of victim, no infirmity can be found in the impugned judgment and that the trial court has not committed any error in holding the appellant guilty of having raped and murdered the minor victim and consequently sentencing the appellant to death for the heinous offence.

19. We have considered rival submissions addressed before this Court. It is certainly a case where there is no eyewitness of the offence of rape and killing of the victim as the said offences were committed when nobody else was present in the house. The prosecution, thus, had the onerous task of establishing guilt on the basis of the circumstances which could connect the appellant with the occurrence in hand. In a case, based on circumstantial evidence, the inference of guilt can be drawn only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused. The law with regard to appreciation of circumstantial evidence has been clearly enunciated in the case of Hanumant v. State of Madhya Pradesh, AIR 1952 SC 343 wherein it was held as follows:

"10. It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

20. The aforesaid principles have consistently been followed and have been affirmed in catena of authorities. Recently, Hon'ble Apex Court reiterated the aforesaid position of law in 2019(3) SCALE 280 Chandru @ Chandrasekaran Vs. State rep. by Deputy Superintendent of Police and while explaining the

concept of circumstantial evidence, stated as follows:

“11. The law can be summarised in the following terms:

1. The circumstances relied upon by the prosecution which lead to an inference to the guilt of the accused must be proved beyond doubt;
2. The circumstances should unerringly point towards the guilt of the accused;
3. The circumstances should be linked together in such a manner that the cumulative effect of the chain formed by joining the links is so complete that it leads to only one conclusion i.e. the guilt of the accused;
4. That there should be no probability of the crime having been committed by a person other than the accused.”

21. While proceeding to examine the present case in light of the aforesaid settled of position of law, the following facts and circumstances are extremely relevant which are being discussed in the context of the evidence led by the prosecution.

22. **Presence of accused at the spot :**

The presence of the accused at the spot can be said to be natural inasmuch as he happens to be residing in the same house in a different room as a tenant and thus would be well aware not only about the presence of the victim but would also get to know as to when the victim is alone in the house as in the present case. The prosecution has examined the landlord of the premises i.e. PW-4 Sukhbir alias Sugreev who deposed that he owns the house where complainant Brijender Kumar is residing as a tenant and that the appellant Sunny also

resides in his house in one of the rooms as a tenant. PW-6 Satish Kumar, Security Supervisor, Caparo, deposed that he was working as a security supervisor in Maruti Ltd., HSIIDC, where the accused Sunny was working as a scrap loader and that on 8.6.2018 the accused left the factory premises at about 10.25 a.m. while stating that he had to take his father to hospital. Both the complainant i.e. PW-2 Brijender Kumar as well as his wife i.e PW-3 Gajra Devi have stated that when they returned back home after taking medicine for their son, they found that while their daughter was missing, the appellant sunny was present there. Nothing could be brought about during the cross-examination of the aforesaid witnesses so as to doubt the factum of presence of the appellant at the spot, which accordingly stands affirmed.

23. **Perplexed state of accused :**

The complainant PW-2 Brijender, PW-3 Gajra Devi as well as PW-12 ASI Kabool Singh, PW-15 SI/SHO Vinod Kumar and PW-17 HC Pawan Kumar, who had reached the spot immediately upon receipt of information, have all stated that Sunny appeared to be in a perplexed state and was uncomfortable upon being quizzed and was changing his stand time and again. The aforesaid consistent statements of the witnesses regarding the demeanour of appellant would add to the suspicion against the accused/appellant.

24. **Recovery of dead body from almirah in the tenanted room of the appellant at his instance :**

PW-2 Brijender, PW-3 Gajra Devi as well as police officials i.e PW-12 ASI Kabool Singh, PW-15 SI/SHO Vinod Kumar and PW-17 HC Pawan Kumar have all stated that when the appellant was repeatedly asked about the

whereabouts of the victim, he confessed his guilt and disclosed that he, after having raped the victim had killed her and had hidden her dead body in an almirah lying in his room. It has further been stated by them that upon opening the said almirah, the dead body of victim was found lying whose hands, neck and mouth had been tied with a cloth and blood was oozing out of her private parts. The investigating officer had also called the photographers at the spot and the process of recovery was duly videographed by PW-10 Pooran Chand who has duly proved a CD of video recording as Ex. P7. PW-9 Dr. Basant Kumar, SSO, "Scene of Crime", has stated that he visited the place of occurrence along with his kit and staff and after minutely examining the place of occurrence where the dead body of victim was lying, he prepared his report Ex.PQ in respect of "Scene of Crime" investigation. The appellant could not show anything so as to nurse any kind of doubt about the aforesaid factum of recovery at his instance from an almirah lying in the room of the appellant. It is no doubt correct that the aforesaid witnesses are the complainant and his wife apart from police officials but in the absence of there being any motive for falsely implicating the appellant, this Court does not find any ground for doubting their testimony especially since it is a case where the dead body was recovered soon after the victim was found missing and the police officials are fairly senior ranking officers including SHO.

25. All the aforesaid witnesses have been cross-examined on behalf of the accused/appellant but the witnesses remained firm on the statements which are consistent on all the material aspects. There is nothing on record so as to doubt the credibility of the witnesses in question. The accused, in any case, has not

led any evidence in support of his case and has been absolutely unable to cause any dent in the case of prosecution in any manner. The presence of the accused at the spot stands established and he being a tenant in the same premises, was in a position to know about the movement of the victim and her parents so as to have waited for the moment when she was alone to enable him to commit the offences in question. The factum of his unnatural conduct, as noticed by all witnesses, ultimately leading to his disclosing about the manner of occurrence and also leading to the recovery of the dead body from an almirah in his room is virtually the final nail in his coffin.

26. Section 106 of the Indian Evidence Act stipulates that the burden of proof would be on the person who has special knowledge of relevant facts. Hon'ble Apex Court in a recent judgment reported as 2019(10) JT 580 Rajender @ Rajesh @ Raju Vs. State (NCT of Delhi), held as follows:

“ Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the Court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light

upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the Court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances.”

27. In yet another recent case, 2019(7) SCC 684, Ranjit Kumar Halder Vs. State of Sikkim, wherein also the dead body of victim had been recovered at the instance of the accused, the Supreme Court while upholding the conviction of the accused held as follows:

“21. In respect of the appellant Mamta Mohanta, there is evidence of recovery of dead body concealed in a house on the basis of her disclosure statement, where she was allegedly living with the other appellant along with the deceased and her two children. The recovery of dead body concealed under the wooden planks covered by mud and stones is very strong incriminating circumstance against Mamta Mohanta to maintain her conviction.....”

28. Recovery of dead body of victim from an almirah in his house is one such fact which hardly leaves anything to be explained especially when the appellant himself has also not chosen to render any explanation for the same in his statement recorded under Section 313 Cr.P.C. By virtue of Section 106 of the Indian Evidence Act, the said non-explanation assumes significance and is a factor strongly in favour of prosecution.
29. The prosecution version finds ample corroboration from the medical evidence as well. As per report of FSL(Ex.PT), presence of semen was found not only

on the underwear of the appellant and on the swab taken from his penis but also on the underwear of the victim and on her anal swab. Further, as per DNA examination report (Ex.PK), the blood sample of appellant as well as the anal swab of the victim were found to be matching. PW-13, who had conducted post-mortem examination report upon the dead body of the victim has categorically stated that in his opinion the victim had been subjected to forcible intercourse before her murder. PW-13 in post-mortem report(Ex.PV) has opined about the cause of death as follows:

“Opinion:- Cause of death is asphyxia as a result of antemortem smothering and neck compression by a ligature. Signs of forceful entry of blunt object in the vagina present (suggestive of sexual assault).”

30. The factual position in the present case, when examined in light of the above referred medical evidence leaves more no manner of doubt that it is the accused and only the accused who had committed rape upon the victim and had later killed her. There is no scope for drawing any other inference as all the facts point to one and only one conclusion that it is the appellant who had committed the gruesome offences.
31. We would, therefore, uphold and maintain conviction of the appellant for offences under Sections 302, 376-A and 201 IPC and also under Section 6 of POCSO Act as the victim was a minor aged about 8 years, as has been proved from the testimony of PW-5 Neelam who is Head Teacher in Vishva Bharti High School, Bawal, who produced the record pertaining to admission of Kashish and stated that as per the record maintained in the school, her date of

birth was 21.1.2010. Despite having been given an opportunity, the appellant/accused did not choose to cross examine the said witness.

32. The next question before this Court is as to whether the death sentence as imposed by the trial court is justified or as to whether some other alternate punishment ought to be imposed upon the appellant. The learned counsel for the appellant has vehemently argued that since it is a case based on circumstantial evidence and there is no eyewitness to the occurrence, imposing punishment of death is not justified. The learned counsel has placed reliance upon Bishnu Prasad Sinha v. State of Assam, (2007) 11 SCC 467 and Aloke Nath Dutta v. State of West Bengal, (2007) 12 SCC 230.
33. Learned State Counsel, contrarily, maintained that the instant case satisfies the principle of 'rarest of the rare cases' and the appellant who committed the crime of rape and murder of a barely 8 year old innocent girl in a gruesome manner, does not deserve any leniency. It has been submitted that a person like the appellant is a menace to the society and to deter such like crimes against mankind, this Court should not show any misplaced sympathy.
34. We have considered the aforesaid submission. Though, it is correct that normally the courts refrain from imposing death penalty in a case based totally on circumstantial evidence but there is no such absolute rule to this effect. Recently Hon'ble Apex Court in AIR 2019 (SC) 1, Rajendra Pralhadrao Wasnik Vs. State of Maharashtra held as follows:

“29. The result of the above discussion is that ordinarily, it would not be advisable to award capital punishment in a case of circumstantial evidence. But there is no hard and fast rule that

death sentence should not be awarded in a case of circumstantial evidence. The precautions that must be taken by all the courts in cases of circumstantial evidence is this: if the court has some doubt, on the circumstantial evidence on record, that the accused might not have committed the offence, then a case for acquittal would be made out; if the court has no doubt, on the circumstantial evidence, that the accused is guilty, then of course a conviction must follow. If the court is inclined to award the death penalty then there must be some exceptional circumstances warranting the imposition of the extreme penalty. Even in such cases, the court must follow the dictum laid down in *Bachan Singh* that it is not only the crime, but also the criminal that must be kept in mind and any alternative option of punishment is unquestionably foreclosed. The reason for the second precaution is that the death sentence, upon execution, is irrevocable and irretrievable.”

35. The question which eventually falls for consideration is whether the instant case satisfies the test of 'rarest of the rare cases' and falls in such exceptional category where all other alternative sentence would not be justified. A Constitution Bench of Hon'ble Supreme Court in *Bachan Singh v. State of Punjab, (1980) 2 SCC 684*, while upholding the constitutionality of death penalty under Section 302 I.P.C., struck a note of balance between the protagonists of the deterrent punishment on one hand and the humanity crying against death penalty on the other and elucidated the strict parameters to be adhered to by the Courts for awarding death sentence. While emphasising that for persons convicted of murder, life imprisonment is the 'rule' and death sentence an 'exception', it held that the death sentence be not awarded "save in the rarest of the rare cases" when the alternative option is foreclosed.

36. In Machhi Singh v. State of Punjab, (1983) 3 SCC 470, the Hon'ble Supreme Court while expounding on the tests to determine the "rarest of the rare" cases in which the death sentence can be inflicted held that the manner in which death is caused is one such test. Some illustrations have been given therein as follows:

"33. When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community. For instance,

- (i) when the house of the victim is set aflame with the end in view to roast him alive in the house.
- (ii) when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.
- (iii) when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner."

37. Bachan Singh's case(supra) and Machhi Singh's case(supra), continue to serve as the foundation-stone as far as the question of sentence in murder cases is concerned. The present case would not meet the parameters laid down in the aforesaid two cases justifying imposition of the death sentence. On balancing aggravating and mitigating circumstances, in our opinion, the present case does not fall under the category of 'rarest of rare' case i.e. there being no alternative but to impose death sentence. However, the present case would fall within the special category of cases, where the appellant should be directed to suffer sentence for life i.e. till his natural death, without remission/commutation under Sections 432 and 433 Cr.P.C., 1973.

38. Consequently, while upholding the conviction of the appellant, the appeal bearing No. CRA-D-128 of 2019 filed by Sunny is partly allowed to the extent that the death sentence in respect of offences under Sections 302 and 376-A IPC, as awarded to the appellant is commuted to life imprisonment out of which the appellant would have to mandatorily serve a minimum 20 years of actual imprisonment without being entitled to any remission/commutation. The convictions in respect of remaining offences and the sentences imposed thereupon as awarded by the trial Court are upheld. The murder reference no.2 of 2019 also stands decided accordingly.

(RAJIV SHARMA)
JUDGE

(GURVINDER SINGH GILL)
JUDGE

February 3, 2020
mohan

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No