

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.448 of 2021

Arising Out of PS. Case No.-20 Year-2018 Thana- MAHILA P.S. District- Muzaffarpur

Sujit Kumar, Son of Asharfi Ram, Resident of Village- Harpur Beshi, P.S.-
Aurai, District- Muzaffarpur.

... .. Appellant

Versus

1. The State of Bihar
2. 'X' C/O Tabrej Alam R/O Village- Harpurweshi, P.S- Aurai, Distt.-
Muzaffarpur.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Manoj Kumar, Advocate
For the State	:	Ms. Shashi Bala Verma, Addl.PP
For the Informant	:	Mr. Arun Kumar, Advocate
		Mr. Deepak Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE ASHOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 21-11-2024

Heard learned counsel for the appellant, learned counsel
for the informant as also learned Additional Public Prosecutor for
the State.

2. The appeal has been preferred for setting aside the
judgment of conviction dated 05.03.2021 (hereinafter referred to
as the ‘impugned judgment’) and the order of sentence dated
09.03.2021 (hereinafter referred to as the ‘impugned order’)
passed by learned Additional Sessions Judge, VII-cum-Special
Judge, POCSO Act, Muzaffarpur (hereinafter referred to as the

‘learned trial court’) in Sessions Trial No. 59 of 2018 arising out of Mahilla P.S. Case No. 20 of 2018.

3. By the impugned judgment, the appellant has been convicted for the offences punishable under Section 376 of the Indian Penal Code (in short ‘IPC’) and Section 6 of the Protection of Children from Sexual Offences Act (in short ‘POCSO Act’) and by the impugned order, the appellant has been ordered to undergo rigorous imprisonment for life (which means remainder of his life) with a fine of Rs.50,000/- under Section 6 of the POCSO Act.

Prosecution Case

4. The prosecution story is based on the *fardbeyan* of PW-3 (mother of the victim) recorded by SI Jyoti Kumari, Mahilla Police Station, Muzaffarpur on 02.05.2018 at 18:55 hours at S.K.M.C.H., Muzaffarpur O.P.D. (G.O.P.) Room No. 31. In her *fardbeyan*, she has stated that on 02.05.2018 at about 13:00 hours (in the afternoon), her daughter came to her crying and she saw that her clothes were stained with blood, thereafter, when she asked her as to what happened then she replied while screaming that the son of neighbour Ashrafi mamu, namely, Sujit (this appellant) after alluring her took her to graveyard and after opening her pant, committed wrong with her. When the informant opened the pant of the victim, she saw that private parts were

bleeding heavily. Thereafter, she went to the house of Sarpanch Saheb but he was not at his place. Then, Sarpanch Saheb came and told her and her daughter to go to police station. When the daughter of the informant reached to the police station, then immediately she was taken to Muzaffarpur Hospital in ambulance. The informant alleged that her neighbour Sujit Kumar, son of Ashrafi Ram committed rape on her daughter.

5. On the basis of this *fardbeyan*, Mahila P.S. Case No. 20 of 2018 dated 02.05.2018 was registered under Sections 376 IPC and Section 4/6 of the POCSO Act against this appellant. After investigation, Police submitted chargesheet bearing No. 20 of 2018 dated 25.07.2018 under Section 376 IPC and Section 4/6 of the POCSO Act. On the basis of this chargesheet, learned Special Judge POCSO Act, Muzaffarpur took cognizance on 30.07.2018. On 15.03.2019, charges were framed under Section 376 IPC and Section 6 of the POCSO Act. Charges were read over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried.

6. In course of trial, the prosecution examined as many as nine witnesses and exhibited several documents to prove the prosecution case. The names of the prosecution witnesses and the exhibits are being shown hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Naseem Akhtar
PW-2	Victim
PW-3	Mother of the victim
PW-4	Muntazir Hasan
PW-5	Md. Sakib
PW-6	Md. Taushir Ahmad
PW-7	Dr. Pratima
PW-8	Jyoti Kumari
PW-9	Dr. Sunil Kumar

List of Exhibits on behalf of Prosecution

Exhibit-1	Signature of Nasim Akhtar on seizure list
Exhibit-2	Signature of victim on her statement u/s 164 CrPC
Exhibit-3	<i>Fardbeyan</i>
Exhibit-1/1	Signature of the mother of the informant (PW-3) on seizure list
Exhibit-1/2	Signature of PW-4 on Seizure List
Exhibit-4	Medical Examination report of the victim
Exhibit-5	Endorsement on <i>fardbeyan</i> by the Officer Incharge
Exhibit-6	Formal FIR
Exhibit-7	Seizure List
Exhibit-8	F.S.L. Report
Exhibit-9	Report of F.S.L., Patna

Findings of the Learned Trial Court

7. Learned trial court after analysing the evidences on the record found that the victim (PW-2) has stated in her deposition that when she was alone in her house, this appellant came and after gagging her mouth took her to graveyard where he committed rape on her and when she started bleeding from her

private parts, this appellant left her there and fled away. PW-2 has stated that she came home crying and told about the incident to her mother. Learned trial court found that the mother of the victim (PW-3) and other witnesses namely PW-1, PW-4, PW-5 and PW-6 all have supported the prosecution case. Learned trial court found that on perusal of the medical report (Exhibit '4'), it is evident that the age of the victim at the time of occurrence was 8 years. Learned trial court further found that the medical report (Exhibit '4') shows that hymen was torn, parauarethral tear, fourchette torn, active bleeding from torn edges which supports the prosecution case.

8. Learned trial court after taking into consideration the evidences of the witnesses, registration of the *fardbeyan* immediately after the occurrence, medical report of the victim which corroborates prosecution case, the statement of the victim under Section 164 CrPC which is consistent with that of the statement of the victim under Section 161 CrPC as also the age of the victim, observed that there is no reason for the prosecution to falsely implicate the appellant in this case.

9. Accordingly, learned trial court held that the prosecution has been able to prove the charges for the offences under Section 376 IPC and Section 6 of the POCSO Act against

this appellant beyond all reasonable doubts, hence, he has been convicted under Section 376 IPC and Section 6 of the POCSO Act.

Submissions on behalf of the Appellant

10. Learned counsel for the appellant has assailed the impugned judgment and order on the grounds inter-alia that in this case the learned trial court has miserably failed to appreciate, appraise, evaluate and assess the evidences available on the record. It is submitted that PW-1 is seizure list witness who is a hearsay witness and did not see the occurrence. He is also interested witness being brother of the informant, hence, his evidence would not be reliable.

11. Learned counsel submits that the victim (PW02) has made contradictory statements in her deposition. She failed to explain the place of occurrence and has clearly stated that she was wearing 'Payjama' whereas seizure list shows seizure of a 'Legins' which would not tally with the clothes disclosed by the victim herself.

12. It is stated that the mother of the victim (PW-3) is the informant of the case. She is not an eye witness and her fardbeyan is based on the information furnished to her by the victim. Similarly PW-4 who is another seizure list witness is a

hearsay witness. He had not seen the occurrence because at the time of occurrence he was present in school.

13. Learned counsel submits that PW-5 and PW-6 are also hearsay witnesses. PW-5 was informed over mobile phone when he was at Muzaffarpur. PW-6 heard the sound of noise when he was sleeping.

14. As regards evidence of Dr. Pratima (PW-7), it is submitted that she had examined the victim on 02.05.2018 at 18.33 hours. She did not find any external injury on any part of her body. PW-7 has stated in paragraph '11' of her deposition that on the basis of E.V.A. in OT time of occurrence of incidence appears to be 3-4 hours before whereas the occurrence was committed on 02.05.2018 at between 12.00-13.00 hours.

15. It is further submitted that the I.O. (PW-8) did not investigate the case in professional and scientific manner. She presented the victim before the learned Magistrate for recording of her statement under Section 164 Cr.P.C. on 22.06.2018 whereas the FIR was lodged on 02.05.2018. There is no explanation of unreasonable delay of 51 days. Referring to the evidence of Dr. Sunil Kumar (PW-9) who is Assistant Director of Forensic Science Laboratory (in short 'FSL'), learned counsel submits that PW-9 had examined the clothes i.e. Frock, Leggings and Dupatta. He had

found blood but semen was not found on the aforementioned clothes. He has stated that he could not say as to whose blood was this. Learned counsel submits that the blood report is not comprehensive and blood group is also not described.

16. By way of defence, learned counsel for the appellant submits that the victim went to pluck Green Gram (Moong) from the crop field of the appellant and when he chided her, the victim started running and fall down which resulted in injury. No one had seen the appellant along with the victim and taking her to Kabristan.

17. Learned counsel submits that Kabristan is said to be the place of occurrence but the I.O. had never prepared map of the place of occurrence and no incriminating substances were ever recovered from the said place, therefore, in this case the place of occurrence is also doubtful.

18. Submission is that the appellant has been convicted on the basis of very shaky and weak type of evidence which suffers from serious infirmities and lack of legal credibility to merit acceptance.

Submissions on behalf of the informant and State.

19. On the other hand, learned counsel for the informant as well as learned Addl.P.P. for the State have jointly opposed the appeal. Learned counsel submits that in this case the materials

available on the record by way of evidence would clearly demonstrate that the prosecution has fully established its case beyond all reasonable doubts.

20. It is submitted that in this case the victim girl (PW-2) is a child witness aged about eight years at the time of occurrence. In her statement under Section 164 Cr.P.C. as well as her statement before the police under Section 161 Cr.P.C. the victim girl has made consistent statements that it was this appellant who had left her away from the road side near her house. He took her to Kabristan where he undressed the victim girl and himself and thereafter committed rape on the victim as a result whereof she had started bleeding. The appellant is a neighbour of the victim girl who resides in front of the house of the victim.

21. Learned counsel submits that on the same day i.e. 02.05.2018 at 18.55 hours the fardbeyan of the mother of the victim was recorded by S.I. Jyoti Kumari (PW-8) of Mahila Police Station, Muzaffarpur in room no.31 at S.K.M.C.H., Muzaffarpur where the victim girl was being treated. She has clearly stated in her fardbeyan that on 02.05.2018 at about 1.00 PM in the afternoon her daughter aged about eight years came weeping to her, her clothes were soaked with blood and when she enquired

from her as to what had happened, the victim girl disclosed her about the occurrence.

22. Learned counsel submits that the I.O. (PW-8) prepared the seizure list of the clothes of the victim girl at 18.45 hours in S.K.M.C.H. The description of the seized clothes as mentioned in the seizure list (Exhibit-7) would show that all the three clothes which were seized by the police were having bloodstains. Nasim Akhtar (PW-1) and Muntzir Hasan (PW-4) are the two seizure list witnesses who have supported the prosecution case.

23. Learned counsel further submits that the victim girl was examined by the Dr. Pratima (PW-7) in S.K.M.C.H. The injury report (Exhibit-4) has been proved by the doctor and had clearly showed that the victim was subjected to penetrative sexual assault. Dr. Pratima (PW-7) has stated in her deposition that the victim came to L.R. of S.K.M.C.H., Muzaffarpur two hours after sexual assault at Harpur Beshi Kabristan as stated by mother after being referred from Aurai PHC Reg. No.129 on 02.05.2018 at 4.10 PM. The doctor has recorded on local examination of genitals that the clothes were soaked blood, clots were present on undergarment and she was bleeding actively. Learned counsel submits that the

doctor has clearly opined that the kind of injury may not occur due to any other reason.

24. Learned counsel submits that the Dr. Sunil Kumar (PW-9) who is Assistant Director in FSL has deposed that the blood was found on Frauk (Exhibit-A), Leggings (Exhibit-B) and Dupatta (Exhibit-C). He has stated that on all these three Exhibits semen was not found.

25. Learned counsel submits that the prosecution witnesses have duly supported the prosecution case and the learned trial court has rightly appreciated the entire evidence on the record. The judgment of conviction and order of sentence are not required to be interfered with.

Consideration

26. We have heard learned counsel for the appellant, learned counsel for the informant-respondent no.2 and learned Addl.P.P. for the State as also perused the trial court's records.

27. The prosecution case is based on the fardbeyan of the mother of the victim girl. The said fardbeyan was recorded on 02.05.2018 at 18.55 hours at S.K.M.C.H., Muzaffarpur G.O.P.D. Room No.31 by S.I. Jyoti Kumari, Mahila Police Station, Muzaffarpur. The mother of the victim girl had been examined in

this case as PW-3. In her fardbeyan the informant (PW-3) has alleged as under:-

“On 02.05.2018 at about 13:00 hours (in the afternoon), her daughter came to her crying and she saw that her clothes were stained with blood, thereafter, when she asked her as to what happened then she replied while screaming that the son of neighbour Ashrafi mamu, namely, Sujit (this appellant) after alluring her took her to graveyard and after opening her pant, committed wrong with her. When the informant opened the pant of the victim, she saw that private parts were bleeding heavily. Thereafter, she went to the house of Sarpanch Saheb but he was not at his place. Then, Sarpanch Saheb came and told her and her daughter to go to police station. When the daughter of the informant reached to the police station, then immediately she was taken to Muzaffarpur Hospital in ambulance. The informant alleged that her neighbour Sujit Kumar, son of Ashrafi Ram committed rape on her daughter.”

28. On the basis of the said fardbeyan, Mahila P.S. Case No.20 of 2018 dated 02.05.2018 under Section 376 IPC and 4/6 of the POCSO Act was registered. The prosecution has proved the fardbeyan (Exhibit-3) and endorsement in the margin portion of the fardbeyan by which a case was registered as Exhibit-5.

29. From the fardbeyan of PW-3, it is evident that the occurrence took place at about 13.00 hours when the victim girl informed her mother about the rape committed upon her by the appellant. The informant first went to the house of Sarpanch where he was not found, later on Sarpanch came and told her that she should go with her daughter to the police station. Thereafter the informant along with her daughter went to the police station from where she was immediately sent to the hospital at Muzaffarpur by an ambulance.

30. It appears from the records that while recording the fardbeyan of the mother of the victim girl, the I.O. (PW-8) had seized the clothes of the victim. The seizure list (Exhibit-7) was prepared on 02.05.2018 at 18.45 hours and three clothes of the victim were seized in presence of Nasim Akhtar (PW-1) and Muntzir Hasan (PW-4).

31. The victim girl was examined by Dr. Pratima in the hospital at Muzaffarpur who prepared the injury report (Exhibit-4). In order to understand the kind of injury suffered by the victim (PW-2), it would be appropriate to reproduce the injury report (Exhibit-4) as under:-

“Examined Sadhana Praveen 7 Years, D/o
Ms Tabrej Alam IPD Reg No. 12523D/A 2/5/18 at 18:

33 :39, From Harpur Beshi Thana – Aurai ; Muz . OPD
Req. No- 1119722

On 2/5/18 at 17:38:19

Victim came to L/R of SKMCH 2 hours after sexual assault at Harpur Beshi Kabristan as stated by mother Israt Jahan after being refd. From Aurai PHC Reg. No.- 129 on 2/5/18 at 4:10 PM.

Her Mark of identification were mole below right nostril and Lahsan lower end of Rt Coastal margin

No of teeth – 23(twenty three no.) wt- 24 kg
Ht- 111cm. Color of Hair Brown

Breast – Tanner -0 Pubic hair not present
Axillary hair not present.

No mark of external injury on any part of body.

L/E of genitals cloths are soaked in blood, clots were present on under garment and she was bleeding actively.

Hymen torn, parauarethral tear, fourchette torn. Active bleeding from torn ages.

EUA, done. There was 2nd tear perineal tear repair done under G/A. Haemostasis mounted. foley's catheterisation done.

On the basis of of EVA in OT time of occurrence of incidence appears to be 3-4 hours before.”

32. The fact that the victim girl was bleeding from her private part and her clothes were soaked with blood are getting fully corroborated by the seizure list of the clothes and the injury report. The clothes were sent to the FSL and the FSL reports

(Exhibit-8) and Exhibit-9 clearly show that all the three clothes of the victim were having bloodstains and those were of human origins. Although semen could not be detected in exhibits marked A, B and C which are clothes of the victim that would not have any adverse impact on the prosecution case.

33. This Court further finds that the victim girl was examined by police and she was also produced before the learned Magistrate for her statement under Section 164 Cr.P.C. In both of her statements, she remained consistent with regard to place of occurrence and manner of occurrence. She has repeatedly stated that this appellant had taken her away to Kabristan where he had committed rape on her.

34. This Court finds on perusal of the evidence of Nasim Akhtar (PW-1) that on 02.05.2018 in between 12.00-13.00 PM he was in his house when he heard the hulla in the village. He had gone to the house of the victim where he was told that this appellant had committed wrong with her. He has identified his signature on the seizure list and has stated that Daroga Ji had recorded his statement and he had disclosed everything. This witness has stated that police had recorded his statement on 02.05.2018 itself. He has stated that the I.O. had seized the clothes which the victim was wearing and the doctor had handed over the

clothes to the police. This witness was suggested that he happened to be a relation and belongs to the same caste of the victim, therefore, he was giving false statement but he denied the said suggestion. The victim (x) is PW-2 in this case. The learned trial court has recorded that the victim is able to understand the questions and answer the same. PW-2 has proved her signature on her statement under Section 164 Cr.P.C. as Exhibit-2. She also identified the accused. The identification was not challenged. She has categorically stated that as to how she was taken away by the appellant while she was playing near her house. She was taken to Kabristan where she was subjected to rape and she had started bleeding whereafter the accused had left her and fled away. In her cross-examination, she has stated that the appellant had lifted her away at 12.00 Noon. She has explained that earlier in her statement in court she had stated that when she was subjected to rape, at the said place there was darkness. She has stated that around the Kabristan there were bushes and Jungles and, therefore, she has stated that there was darkness but the fact is that the occurrence had taken place with her in the day time. This witness was suggested by the defence that she had gone to harvest Moong in the plot of the appellant thereafter appellant came and on seeing him she had started fleeing away and in course of that fleeing

away she had fallen down and in the forest she suffered injury by wood. She was suggested that because the family of the appellant had gone to the house of Sarpanch for Panchayati, for this reason the mother of the victim had lodged a false case. This suggestion has been denied by the victim (PW-2).

35. We find on appreciation of the evidence of the victim girl (PW-2) that she has quite consistent in her deposition and the defence is unable to save the credibility of this witness. She is victim of the crime and no part of her deposition indicates any kind of fabrication or concoction of a story. The defence of the appellant would not create any dent in the prosecution story.

36. The mother of the victim (PW-3) has fully supported the prosecution case. She has narrated the entire story which was told to her by the victim. She has proved her fardbeyan made before the police as Exhibit-3. She has also proved her signature on the seizure list as Exhibit 1/1. In her cross-examination, the defence suggested that her daughter had gone to harvest Moong in the evening towards Kabristan and when she was asked not to harvest the Moong, she left the same and was fleeing away, in course of said fleeing away she had suffered injury. Therefore, this Court finds that the defence itself has suggested that the occurrence has taken place when the victim girl had gone towards

Kabristan. The defence has not brought on record any evidence that the appellant had got any land near Kabristan and there were no crops in the said land.

37. Muntizir Hasan (PW-4) is the another seizure list witness who has supported the prosecution case. He is a teacher in a private school. At the time of occurrence, he was in the school but he has stated that the seizure list was prepared in his presence. He has also stated that the clothes of the victim girl were having bloodstains. He has proved his signature on the seizure list as Exhibit 1/2.

38. Md. Sakib (PW-5) and Md. Taushir Ahmad (PW-6) are the hearsay witnesses and their evidences are not of much significance.

39. Dr. Pratima (PW-7) is a material witness who has proved the injury report (Exhibit-4). In her deposition, she has reiterated her findings of the injury report and has clearly stated that this type of injury may not occur due to any other reason.

40. Jyoti Kumari (PW-8) is the I.O. of the case. She has proved endorsement made by her on the left hand margin portion of the fardbeyan. The same has been marked Exhibit-5. She had put her signature on the formal FIR. She has proved the formal FIR as Exhibit-6. She had conducted investigation of the case. In

her deposition, she has proved the seizure list (Exhibit-7) and she has stated that she had recorded the statement of Nasim Akhtar and Muntzir Hasan who had fully supported the prosecution case. She had recorded the statement of the victim girl and had taken her to the court for her statement under Section 164 Cr.P.C. This witness has stated that she had inspected the place of occurrence. She has given the description of the place of occurrence in paragraph '8' of her deposition.

41. Dr.Sunil Kumar (PW-9) is the Assistant Director, FSL, Muzaffarpur who has proved the FSL report (Exhibit-8). He has stated that on all the three exhibits blood was found but he cannot say as to whose blood was there.

42. On appreciation of the entire materials on the record, we find that in this case the evidence of the prosecutrix has remained intact. She is fully corroborated by the medical evidence and there is no iota of doubt that she was subjected to penetrative sexual assault by the appellant. In this case the presumption as envisaged under Section 29 of the POCSO Act would attracted.

43. Section 29 of the POCSO Act reads as under:-

“29. Presumption as to certain offences.—

Where a person is prosecuted for committing or abetting or attempting to commit any offence under sections 3, 5, 7 and section 9 of this Act, the Special Court shall presume, that such person has committed or abetted or

attempted to commit the offence, as the case may be unless the contrary is proved.”

44. We find that the prosecution has not only brought on record the basic foundations which are required to raise presumption of Section 29 but has also gone beyond that in fully establishing its case beyond all reasonable doubts. The defence has not led any evidence in this matter to rebut the presumption.

45. In the circumstances, we find no reason to interfere with the judgment of conviction as recorded by the learned trial court.

46. On the question of sentence, however, we have a different view. The learned trial court has though given a hearing on the point of sentence but has awarded sentence of remainder of life without considering the guidelines of the Hon’ble Supreme Court in the matter of awarding sentence.

47. In catena of decisions, while considering as to how the sentences are to be awarded to a victim of crime, the Hon’ble Supreme Court has held that while it is true that the judges have wide discretion in awarding the sentence within the statutory limits, there is a lack of uniformity in imposing punishments.

48. In the case of **State of Punjab Vs. Prem Sagar and others** reported in **(2008) 7 SCC 550**, the Hon’ble Supreme Court observed interalia in paragraph 7, 8 and 9 as under:-

“7.The Parliament, however, in providing for a hearing on sentence, as would appear from sub-section (2) of Section 235, sub-section (2) of Section 248, Section 325 as also Sections 360 and 361 of the Code of Criminal Procedure, has laid down certain principles. The said provisions lay down the principle that the court in awarding the sentence must take into consideration a large number of relevant factors; sociological backdrop of the accused being one of them.

8. Although a wide discretion has been conferred upon the court, the same must be exercised judiciously. It would depend upon the circumstances in which the crime has been committed and his mental state. Age of the accused is also relevant.

9. What would be the effect of the sentencing on the society is a question which has been left unanswered by the legislature. The superior courts have come across a large number of cases which go to show anomalies as regards the policy of sentencing. Whereas the quantum of punishment for commission of a similar type of offence varies from minimum to maximum, even where same sentence is imposed, the principles applied are found to be different. Similar discrepancies have been noticed in regard to imposition of fine.”

49. In the case of Shiv Prasad Vs. State of Kerala 1969

KLJ 862, the legendary Krishna Iyer J observed as under:

“ Criminal trial in our country is largely devoted only to finding out whether the man in the dock is guilty...It is a major deficiency in the Indian system of criminal trials that the complex but important sentencing factors are not given sufficient

emphasis and materials are not presented before the court to help it for a correct judgment in the proper personalized punitive treatment suited to the offender and the crime.”

50. In the case of Santa Singh Vs. State of Punjab 1976 AIR 2386, the Hon’ble Division Bench of the Supreme Court observed as under:-

“Modern penology as pointed out by this court regards crime and criminal as equally material when the right sentence has to be picked out. It turns the focus not only on the crime, but also on the criminal and seeks to personalize the punishment so that the reformist component is as much operative as the deterrent element. It is necessary for this purpose that facts of a social and personal nature, sometimes altogether irrelevant, if not injurious, at the stage of fixing the guilt, may have to be brought to the notice of the Court when the actual sentence is determined. The material may be placed before the Court by means of affidavits, but if either party disputes the correctness or veracity of the material sought to be produced by the other, an opportunity would have to be given to the party concerned to lead evidence for the purpose of bringing such material on record. The hearing on question of sentencing would be rendered devoid of all meaning and content and it would become an idle formality if it were merely confined to oral submissions without any opportunity being given to the parties and particularly to the accused, to produce material in regard to the various factors bearing on the question of sentence, and if necessary, to lead evidence for the purpose of placing such material before the Court... Of course, care

would have to be taken by the Court to see that this hearing on question of sentence is not abused and turned into an instrument for unduly protracting the trial/proceeding. The claim of due and proper hearing would have to be harmonized with the requirement of expeditious disposal of the proceedings.”

51. In the case of Bachan Singh Vs. State of Punjab

AIR 1980 SC 898, the Hon’ble Supreme Court observed as under:-

“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.”

52. In the case of Gurmukh Singh vs State Of

Haryana (2009) 15 SCC 635, the Hon’ble Supreme Court has laid down various aspects which are required to be considered while awarding the punishment to a convict. Paragraph ‘23’ thereof reads as under:-

“**23.** These are some factors which are required to be taken into consideration before awarding appropriate sentence to the accused. These factors are

only illustrative in character and not exhaustive. Each case has to be seen from its special perspective. The relevant factors are as under:

- (a) Motive or previous enmity;
- (b) Whether the incident had taken place on the spur of the moment;
- (c) The intention/knowledge of the accused while inflicting the blow or injury;
- (d) Whether the death ensued instantaneously or the victim died after several days;
- (e) The gravity, dimension and nature of injury;
- (f) The age and general health condition of the accused;
- (g) Whether the injury was caused without premeditation in a sudden fight;
- (h) The nature and size of weapon used for inflicting the injury and the force with which the blow was inflicted;
- (i) The criminal background and adverse history of the accused;
- (j) Whether the injury inflicted was not sufficient in the ordinary course of nature to cause death but the death was because of shock;
- (k) Number of other criminal cases pending against the accused;
- (l) Incident occurred within the family members or close relations;
- (m) The conduct and behaviour of the accused after the incident. Whether the accused had taken the injured/the deceased to the hospital immediately to ensure that he/she gets proper medical treatment?

These are some of the factors which can be taken into consideration while granting an appropriate sentence to the accused.”

53. Recently in the case of **Mofil Khan and another Vs. State of Jharkhand (2021) 20 SCC 162**, the Hon’ble Supreme Court has observed in paragraph 14, 15 and 16 as under:-

“**14.** One of the mitigating circumstances is the probability of the accused being reformed and rehabilitated. The State is under a duty to procure evidence to establish that there is no possibility of reformation and rehabilitation of the accused. Death sentence ought not to be imposed, save in the rarest of the rare cases when the alternative option of a lesser punishment is unquestionably foreclosed (see : *Bachan Singh v. State of Punjab*¹¹). To satisfy that the sentencing aim of reformation is unachievable, rendering life imprisonment completely futile, the Court will have to highlight clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigour when the Court focuses on the circumstances relating to the criminal, along with other circumstances (see : *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*¹²). In *Rajendra Pralhadrao Wasnik v. State of Maharashtra*¹³,

11. (1980) 2 SCC 684: 1980 SCC (Cri) 580

12. (2009) 6 SCC 498: (2009) 2 SCC (Cri) 1150

13. (2019) 12 SCC 460: (2019) 4 SCC (Cri) 420

this Court dealt with the review of a judgment¹⁴ of this Court confirming death sentence and observed as under : (*Rajendra Pralhadrao Wasnik case*¹³, SCC p. 483, para 45)

“45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the “special reasons” requirement of Section 354(3)CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.”

15. It would be profitable to refer to a judgment of this Court in *Mohd. Mannan v. State of Bihar*¹⁵ in which it was held that before imposing the extreme penalty of death sentence, the Court should satisfy itself that death sentence is imperative, as otherwise the convict would be a threat to the society,

14. *Rajendra Pralhadrao Wasnik Vs. State of Maharashtra* (2012)4 SCC 37: (2012) 2 SCC (Cri) 30

15. (2019) 16 SCC 584: (2020) 2 SCC (Cri) 382

and that there is no possibility of reform or rehabilitation of the convict, after giving the convict an effective, meaningful, real opportunity of hearing on the question of sentence, by producing material. The hearing of sentence should be effective and even if the accused remains silent, the Court would be obliged and duty-bound to elicit relevant factors.

16. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death. There is a bounden duty cast on the courts to elicit information of all the relevant factors and consider those regarding the possibility of reformation, even if the accused remains silent. A scrutiny of the judgments of the trial court, the High Court and this Court would indicate that the sentence of death is imposed by taking into account the brutality of the crime. There is no reference to the possibility of reformation of the petitioners, nor has the State procured any evidence to prove that there is no such possibility with respect to the petitioners.”

54. Keeping in view the aforementioned judgments of the Hon’ble Supreme Court when we consider the question of sentence which should be awarded to the appellant, we are of the view that the learned trial court could not appreciate in this case that the appellant is hardly 22 years of age at the time of judgment of the learned trial court delivered on 05.03.2021. The occurrence

took place on 02.05.2018, therefore, at the time of occurrence the appellant was aged about 19 years. There are chances of reformation of the appellant. The learned trial court has awarded a sentence of life imprisonment and has specifically stated that it would mean the remainder of his natural life. We are of the view that the special sentencing of 20 years rigorous imprisonment to the appellant without remission with a fine of Rs.50,000/- would meet the ends of justice. Accordingly, we modify the sentence. The appellant shall undergo rigorous imprisonment for a period of 20 years for the offences committed under Section 376 IPC and Section 6 of the POCSO Act. He would also be liable to pay a fine of Rs.50,000/-. The sentences shall run concurrently.

(Rajeev Ranjan Prasad, J)

(Ashok Kumar Pandey, J)

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