

2024:PHHC:097623-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(1)

MRC-1-2022

State of Punjab

....Appellant(s)

Versus

Mukesh Kumar

.... Respondent(s)

(2)

CRA-D-262-2022

Mukesh Kumar

....Appellant(s)

Versus

State of Punjab

.... Respondent(s)

Decided on: 02.07.2024

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE VIKAS BAHL**

Present: Mr.SalilSabhlok, Sr.Deputy Advocate General, Punjab
for the appellant in MRC-1-2022
and for the respondent in CRA-D-262-2022.
Mr.Ashish Bansal, Legal Aid Counsel
for the appellant in CRA-D-262-2022
and for the respondent in MRC-1-2022.

G.S. Sandhawalia, J. :-

1. The present judgment shall dispose of MRC-1-2022 and CRA-D-262-2022 filed against the judgment of conviction dated 10.02.2022 passed by the Special Judge, Kapurthala whereby the sole appellant was held guilty under Section 376-AB IPC and under Sections 4 & 6 of the Protection of Children from Sexual Offence, Act, 2012 (for short, the 'POCSO Act') along with Section 307 IPC and accordingly sentenced to death. He was directed to pay fine of Rs.1 lakh under Section 4 of the POCSO Act and Rs.1 lakh under Section 307 IPC and in default, to undergo sentence of 2 years each under Section 4 of the POCSO Act and Section 307 IPC which were to run concurrently. Out of

the fine of Rs.2 lakhs, Rs.1 lakh was to be given to the victim as envisaged under Section 357B Cr.P.C. A sum of Rs.8 lakhs was also awarded as compensation and recommendation was made to the District Legal Services Authority, Kapurthala for the payment of the same and to release the same, which the victim was entitled to when she attained the age of 18 years. The interest of the fixed deposit was also to be given to the father of the victim from time to time for her maintenance and education. The sentence of death had been imposed on the same day when the appeal was taken up in the afternoon session and was subject to confirmation by this Court in MRC-1-2022, keeping in view the provisions of Sections 28 & 366 Cr.P.C.

2. The Trial Court vide judgment dated 10.02.2022, keeping in view the principles laid down by the Apex Court in plethora of judgments starting from **Bachan Singh Vs. State of Punjab, (1980) 2 SCC 684** examined both the aggravating and mitigating circumstances and resultantly came to the conclusion that it is a barbaric and horrific act which had completely incapacitated the victim to enjoy her womanhood and physically destroyed her character leaving her to be also handicapped for life while violating her both physically and also by external means, by using a stick. It, thus, came to the conclusion that it was the rarest of rare cases and therefore, the punishment of death was liable to be awarded.

Reasons for recording conviction by the Trial Court :

3. The Trial Court, after examination of the evidence on record, framed the following 3 issues:

“A) Whether on 15.03.2021 at about 01.30 p.m. in the area of RCF, Kapurthala, accused Mukesh Kumar committed aggravated penetrative sexual assault and thereafter inserted wooden stick into private part of victim a minor girl aged about 07 years, thus committed an offence under section 376-AB read with section 6, 7 of POCSO Act?

B) Whether on 15.03.2021 at about 1.30 p.m. in the area of RFC Kapurthala, accused Mukesh Kumar caused injuries to victim XXXXX (name withheld) with intention to kill her and thus committed an offence under section 307 of IPC ?

C) Whether the prosecution has successfully been able to prove the guilt of accused ?”

4. The medical evidence of the victim proved by PW-6, Dr.Parminder Kaur, Medical Officer, Civil Hospital, Kapurthala was duly reproduced. Reference was made to Dr.Amrit Pal Kaur, PW-23, Professor, Department of Obstetrics and Gynecology at BNMCC Centre, Government Medical College, Amritsar wherein the patient had been referred for further treatment. Similarly, the statement of PW-20, Dr.Kulwinder Kaur, Associate Professor of the BNMCC Centre, Government Medical College, Amritsar was referred to who was a member of the team of doctors constituted for the treatment of the victim apart from the statement of PW-16, Dr.Manreet Kaur, Junior Resident of the Department of Radiodiagnosis at GMC/GND Hospital, Amritsar who had done the Ossification Test and held that the victim was between 5-8 years old. The statement of the father, PW-1, Okeel Mandal, the owner of the jhuggi, PW-2, Faken Bind, PW-3, Arvind Mahato, shopkeeper from whose shop the packet of biscuits was purchased to lure the girl along with, PW-4, Salinder Kumar, the son-in-law and PW-7, Mohinder Pal, shopkeeper who was part of the search party, was referred to.

5. The victim's statement, who was examined as PW-22 and the fact that she identified the accused when produced in Court was kept in mind and the Investigating Officer, Sonamdeep Kaur, PW-24, who had arrested the accused the very next day and recovered the blood-stained wooden stick (danda) on the disclosure statement along with the photographs of the site and the statement recorded under Section 164 Cr.P.C. after taking due permission from the concerned Court and the recovery of blood-stained clothes and soil and jute mat where the rape took place, were all kept in mind. The medical examination of the accused that he was not having apparent psychotropic symptoms after being examined by PW-5, Dr.SandeepBholla, Psychiatrist and the fact that there was nothing to show that he was not able to perform sexual intercourse on the examination of Dr.Harpreet Singh, PW-11 and also that his blood sample was taken for DNA testing, were the reasons to record the findings, keeping in view the victim's statement, duly corroborated by the other witnesses. The DNA report showing the genetic profile and the human semen present on the exhibits and the frock, sweater and the clothes of the victim and matching with the accused and from the swabs of the private parts and also the blood-stains on the wooden stick (danda) matching with the victim which further correlated to the physical injuries on the person of the victim and the fact that the opinion of the doctor (Ex.PW-6/K) showed that the injuries were dangerous to life, were the reasons for recording the conviction and to reject the case that it was injuries caused by way of a fall.

6. Resultantly, finding was that the appellant had committed the aggravated penetrative sexual assault and thereafter, caused serious

injuries to the vital parts of the body of the victim who was only 7 years of age and therefore, conviction under Section 376-AB read with Sections 4 & 6 of the POCSO Act and the act done with intention to kill under Section 307 IPC were recorded. The factum of provision for death sentence under Section 376-AB and also under the provisions of Sections 4 & 6 of the POCSO Act, for the injuries on the person of the victim, led to the conviction.

Quantum of sentence :

7. The Trial Court, though on the very same day, in the afternoon session, recorded detailed 11 pages discussion on the quantum of sentence while awarding the extreme sentence of death, keeping in mind the injuries which had been inflicted upon the person of the minor who had undergone 3 major surgeries i.e. hysterectomy, colostomy and laparotomy and the fact that the appellant was 27 years old and married. The judgments in Bachan Singh (supra), **Machhi Singh & others Vs. State of Punjab, 1983 SCC (Crl.) 681**, **Jashubha Bharatsinh Gohil & others Vs. State of Gujarat (1994) 4 SCC 353** and **State of M.P. Vs. Munna Choubey & another, (2005) 2 SCC 710**, were kept in mind to impose the said punishment.

Arguments of the Legal-Aid-Counsel for the appellant :

8. Counsel for the appellant has solely argued on the ground that the appellant was falsely implicated in the case on the ground that he was residing in the neighbourhood and as per the stand, attempted to refer to the cross-examination of the complainant and the suggestions put that appellant was having strained relationship with the father of the victim and

the chances of tutoring the victim cannot be ruled out and thus pleaded that the appellant had been falsely implicated. A similar suggestion had also been put to Arvind Mahato from whom biscuits were purchased and the brother-in-law of the victim, Salinder Kumar wherein also similar suggestion was put that he had deposed being the brother-in-law and on account of enmity of his father-in-law with the appellant, he had been falsely implicated.

9. The second submission of the Legal-Aid-Counsel was that the recording of the guilt was done on 10.02.2022 and the conviction being recorded in the morning session and the sentencing imposed in the afternoon session of the same day and the evidence being closed on 09.02.2022. The appellant has been put to grave prejudice by not giving him sufficient time while recording the statement also on the same day that he was the only breadwinner of the family and was looking after his parents and there was no-one to take care of his family. He had no previous criminal record and prayed that a lenient view be taken.

10. Reliance was accordingly placed upon the judgments of the Apex Court in **Allauddin Mian & others Vs. State of Bihar, AIR 1989 (SC) 1456** to contend that Section 235 (2) Cr.P.C. provides that a hearing has to be given on the question of sentence and the fact that it was salutary provision and not to be treated as a mere formality especially when the case of life and death was concerned and the Presiding Officer had to show a high degree of involvement. Similarly, reliance was placed upon another judgment authored by the same Judges six days later in **Anguswamy & another Vs. State of Tamil Nadu, (1989) 3 SCC 33** wherein the death

sentence awarded was converted into sentence of life imprisonment which was of a Constable's murder in broad daylight. Reliance has also been placed upon the judgment of a Three Judge Bench of Supreme Court in **Malkiat Singh Vs. State of Punjab 1991 (2) SCR 256** wherein keeping in mind the provisions of Section 235(2) Cr.P.C., also sentence of death was modified to undergo rigorous imprisonment for life for committing death of 4 persons.

11. State Counsel, on the other hand, points out from the judgment dated 10.05.2001 passed in Review Petition (Crl.) No.1105 of 2000 in *Ram Deo Chauhan @ Raj Nath Vs. State of Assam*, that the Three Judge Bench had dismissed the review petition whereby death sentence had been awarded to the petitioner who had caused death of 4 persons including ladies and a child of 2 ½ years of age and thus there was a dissent, as such. It had also been noticed that no adjournment was to be granted for the purposes only of accepting the accused person to show cause against the sentence proposed to be imposed upon him. State Counsel has painstakingly taken us through the record and statements of witnesses to submit that it is an open and shut case and the offence could only have been committed by the appellant and there was no such occasion for the family to falsely implicate the appellant in the peculiar facts and circumstances as the appellant had only started living in the close vicinity 2 weeks earlier.

Reasons for upholding the conviction :

12. On the factual matrix, counsel for the appellant could not make much of attempt to punch holes in the findings recorded by the Trial

Court though an argument was made that the appellant was falsely implicated. The criminal proceedings had been set into motion on the statement of father of the victim who is a labourer and had taken the victim to hospital after having found that she had been violated in the worst manner possible. The FIR which was lodged at 23.41 hours on 15.03.2021 by the SHO, Police Station Fattudhinga, District Kapurthala would go on to show that the victim, who was 7 years old, was befriended by the appellant who was 26 years old and married and was living in the adjoining jhuggy. At around 1.30 PM on 15.03.2021, having not come back for 2 hours and having been taken by the appellant, search had been conducted along with the son-in-law, Salinder Kumar who was working as labourer at gate no.3 of the Railway Coach Factory (RCF), Shanties who had informed him that she was seen at the market near gate no.3 of the RCF. While looking for her, they had met Mohinder Pal son of Darshan Lal who was seller of firewood and he joined them and reached at gate no.3 of RCF where appellant-Mukesh Kumar met them and on repeated asking after being offensive, he confessed that he had taken the victim to the shanty of Faken which was lying empty as Faken along with his family were away for labour work. There was no one present in the shanty where he committed rape upon the victim and thereafter, inserted a wooden stick in her private parts and she had started screaming. After the blood started oozing profusely, the appellant got scared and left the shanty towards the market. When the appellant took them to the shanty of Faken, they saw that the victim was lying in pool of blood and they started screaming and in the melee, the appellant had managed to flee away. The victim was

wherein Sub-Inspector, Sonamdeep Kaur had arrived and recorded the statement of the father, Okeel Mandal.

13. A perusal of the FIR would go on to show that the incident took-place at 1.30 P.M. on 15.03.2021 nearby Railway Station, HussainpurJhugian (Shanties) and the victim and her family belong to Bihar. The information had been received from the SHO, Police Station Sultanpur Lodhi, Kapurthala by the lady Investigating Officer who was present in the office of the DSP and who had proceeded to the Civil Hospital, Kapurthala where the child had been taken. Resultantly, the statement of the father was recorded and request was sent to lodge an FIR through Head-Constable, Harjinder Pal Singh at 9.45 P.M. The FIR was accordingly lodged at 23.41 hours. The Investigating Officer had also gone to the place of occurrence on the same day late at night but had to return back due to darkness though police officials had been put to guard the spot which would be clear from her statement. This fact is further confirmed from the statement of PW-2, Fekan Bind which has come out from his cross-examination that he had not seen the jhuggy from inside on the day of occurrence as the same had been sealed by the police. Immediately thereafter, on the next day, the investigator visited the spot in the morning between 8-9 A.M. and conducted the investigation and prepared the 2 site-plans and lifted blood-stained earth and the bag in the blood-stained parna and got photographs clicked. The recovery memo of the blood-stained earth and the simple soil was witnessed by Salinder Kumar, brother-in-law of the victim and ASI Gurdeep Singh as Ex.PW4/D.

14. The accused was arrested on 16.03.2021 vide arrest memo (Ex.PW19/A) and his father was informed through telephone since he also belongs to Bihar and no valuable article or money was recovered from him on his personal search. Immediately the disclosure statement (Ex.PW19/C) was got recorded in the presence of ASI Gurdeep Singh and Constable Jasbir Singh. The recovery of wooden stick (danda) which was about 2 feet long and 2.5 inch in width used for violating the minor was done from the bushes next to the Railway line in the presence of the two police officials and the location of which was only known to the appellant and the recovery memo of the wooden stick and recovery memo of clothes were exhibited as Exs.PW19/E & PW19/F. The appellant was wearing the same clothes which he wore at the time of committing the crime and the clothes were taken into custody including the underwear and vest on the same day which would be clear from Ex.PW19/F and he was given some other clothes to wear and the blood-stained clothes were converted into parcels and sealed. The rough site-plan of the place of occurrence (Ex.P2/PW24) and the site-plan from where the victim was taken (Ex.P3/PW24), was duly prepared by the Investigating Officer along with the site-plan where the recovery of the blood-stained wooden stick had been done (Ex.P4/PW24). The necessary recovery memo of the AADHAR card of Mukesh Kumar was prepared on 18.03.2021 (Ex.PW9/A). The medical examination of the accused was done on 16.03.2021 by moving necessary application (Ex.PW11/A) to the Medical Officer, Civil Hospital, Sultanpur Lodhi. The offence under Section 6 of the POCSO Act was added vide DDR No.30 (Ex.P9/PW24) on 24.03.2021. The AADHAR card of the victim had also been taken into

possession on the same day through the sister and got verified from the computer of the Police Station Sultanpur Lodhi. The photographs taken by ASI Bakhtawar were handed over on 19.03.2021.

15. On 15.03.2021 itself, the Senior Medical Officer, Kapurthala had been requested for setting up of the Board of Doctors for conducting the medical examination of the victim. A perusal of Ex.PW6/E would go on to show that her arrival time was recorded as 16.45 hours on 15.03.2021 and the examination started immediately as it was a case of emergency. The above facts would go on to show that expeditious action was taken on the information being received by the police officials and they proceeded to the hospital and thereafter, to the site at night also and in the morning, the necessary action was taken. The name of the accused surfaces at the first instance and thus, there is no reason to falsely implicate him. The corroboration had further been done by the victim herself who was examined as PW22, who had closely known in certain terms about where the incident had taken place and how she had been lured with the packet of biscuits in front of her parents and she had been taken to the shop to buy biscuits and then taken to the vacant hut where he had violated her in the most brutal manner by committing rape upon her and the accused gagged her with a piece of cloth and thereafter, had broken her legs by inflicting the injuries with the stick and thereafter, inserted the wooden stick into her vagina. He was stated to be hurling filthy abuses and uttering obscene words due to which she was screaming and blood started oozing profusely.

16. Initial attempt to identify the accused through video-conferencing was rejected by the Court due to blurred vision and poor connectivity and thereafter, the accused was shown through video-calling and thereafter, his photographs on the index page of the police file was shown to the victim and she correlated it to the one shown through video-conferencing. In cross-examination, she remembered that one Judge had also come to her for recording her statement under Section 164 Cr.P.C. which was done on 24.03.2021 at Amritsar. The defence counsel himself had requested that for proper identification, he be produced in the Court on 08.08.2021 since he could not be produced at that time due to the Covid-19 pandemic. The observations were also recorded by the Court that at the time of arrest, the accused was having small beard and short haircut but when he was produced in Court, he was clean shaven and having medium size haircut. The suggestion that she had named the accused at the asking of her father was denied and the fact that she had deposed falsely, on 13.07.2021.

17. It is also appropriate to notice that the Trial Court took into account the manner in which the statement of child witness is to be recorded and put appropriate questions to her to make the assessment of the witness whether she was competent and whether her evidence could be recorded. The following assessment questions were put to her:

“Court questions:-

Q. What is your name?

A. My name is xxxx (name withheld)

Q. What is your father's name?

A. The name of my father is Okil Mandal.

Q. What is your mother's name?

A. The name of my mother is Sunita.

Q. Why you have come to court?

A. I have come to court in order to depose in above noted case.

Q. Do you know that after taking oath, one should speak truth or lie?

A. One should speak truth only.

Q. What do you want to say?

Court Observations

By putting the above said questions to the witness to check the veracity and rational capability of answering the questions put to her, I am of the opinion that she understands the purpose for her appearance in court, thus, she is competent witness to depose.”

18. It was only, thereafter, the Court proceeded to examine the child witness. The issue of tutoring the child witness which is based on the rule of prudence and the fact that it has to be corroborated with the other evidence before the conviction is recorded solely on the basis of statement of the child witness, was deliberated by the Apex Court in **Mangoo and another Vs. State of Madhya Pradesh, 1995 (2) RCR (Crl.) 481**. Similarly, while examining the issue of circumstantial evidence and as the child witness had seen the deceased and the accused playing badminton together before her father had come and took the witness home, the principles were laid down in **Rameshbhai Chandubhai Rathod Vs. State of Gujarat, 2009 (5) SCC 740**. The conviction on the strength of statement of eye-witness was upheld while reversing the view of the High

Ramesh & another, 2011 (2) RCR (CrL) 582 by holding that only where there is a evidence that the child witness has been tutored, the statement is to be rejected by the Court and there was no principle of law that it is inconceivable that a child witness would not be able to recapitulate the facts in her memory. In **Yogesh Singh Vs. Mahabeer Singh & others, 2017 (11) SCC 195**, it was held that minor improvements and embellishments were liable to be ignored and the evidence was to be considered from the point of view of trustworthiness.

19. A perusal of the statement recorded of the child witness would go on to show that she had categorically narrated the manner in which she was lured, in the presence of her parents, and how the appellant had taken her inside the vacant hut and how she had been violated and had also narrated the fact that her statement was also recorded by a Judicial Officer and a police official. She had identified the accused from his photographs on the index page of the police file not being able to identify him through the video-conferencing due to blurred vision and poor connectivity, as recorded by the Court. Similar was the case through the video-call on the mobile phone of the Court official. Thereafter, she had identified through video-conferencing also after the photograph was shown from the police file. She categorically denied naming of the accused on the asking of her father and therefore, keeping in view the law discussed above, there is no plausible reason why her statement which is corroborated by the other eye-witnesses including that of the complainant, should be discarded.

20. The statement under Section 164 Cr.P.C. (Ex.PW8/F) was recorded by Satvir Kaur, Judicial Magistrate at Amritsar after getting the requisite evidence certificate which would go on to show that the necessary questions regarding her father's name, her name and her mother's name and where she belonged to, had been put to her by the Magistrate who was examined as PW8. The statement was recorded in Hindi where she had corroborated what her father had stated before the police. In her statement under Section 164, she stated that the accused was drunk with whiskey and she had been taken by him on the pretext to give her biscuits. The Magistrate also stated that at the time of recording the statement, victim was alone in the ward and the parents were present earlier but had been sent out at the time of making the statement. The father corroborated her statement as PW1 and mentioned the initial statement when the FIR was lodged. The fact that the accused was living in the close vicinity at a distance of 2 ½ yards to his shanty and were familiar to each other, has also come forth in the cross-examination. Similarly, PW3, Arvind Mahato who was running the grocery store from where the biscuits were purchased stated about the purchase of the said items by the appellant in the presence of the minor girl and later when he came to know in the evening about the incident, he identified that the victim had come to his shop along with the accused who had purchased a packet of biscuits and she opened the packet and started eating it after the purchase.

21. Similar is the statement of PW4, Salinder Kumar, the son-in-law of the complainant and brother-in-law of the victim and who was part

to the hut after some time and who had come across the appellant and had been taken to the hut of Faken Bind. The fact that he was residing close to his father-in-law and he also stated that the accused came to live in the near vicinity about 15 days prior to the occurrence and the hut of Faken was about 2 ½ yards from their hut. The factum of the distance between the victim's hut and that of appellant has also come on record as per the statement recorded by Faken under Section 161 Cr.P.C. The hut from where the biscuits were purchased was only 2 minutes from the hut of Faken as per the statement of the shopkeeper and Salinder Kumar also confirmed that the hut of Faken was at a distance of 1 km from their hut. Apparently the child was only traced with the help of the appellant himself and it was not possible for the complainant and the family members to have traced her without the help of the appellant who was at that time apprehended in the vicinity of the shanties and there is no plausible reason to disbelieve the witnesses who had deposed in the common tone in the manner they had stated.

22. The medical report and the DNA report were also reproduced by the Trial Court to show the physical damage which had been done to the child. The relevant part of the conclusion of the DNA report given by Dr.Sanjiv Kumar, Assistant Director, Serology, Forensic Science Laboratory, Punjab, SAS Nagar would go on to show that human semen was found on exhibits i.e. the frock, sweater and cloth piece which were stated to be of the victim (Exs.A1 to A3). The swabs (Exs.B1 to B3 and B5) taken from the private parts of the victim correlated to the piece of sac and parna collected from the scene of crime (Exs.E1 & E2). The wooden

blood stains of the victim (Ex.1-1) matched with Ex.H which were found present in Exs.G1 to G4 which were the clothes worn by the appellant which were in the form of jean pant, banyan, underwear and T-shirt, which were recovered from him at the time of his arrest. The conclusion of Ex.PW-6/F reads as under:

“CONCLUSION :

From the above observations, it is concluded that:

1. Human semen present on the Exhibits A-1 to A-3 (Source: Frock, Sweater and Cloth piece stated to be of the victim), Exhibits B-1, B-2, B-3 and B-5 (Source: Labia periphery swab, Lateral vaginal wall swab, Anal swab and Posterior fornix swab stated to be of the victim), Exhibits E-1, E-2 (Source: Piece of sac and Parna stated to be collected from the scene of crime), Exhibit F (Source: Danda) and Exhibit G-3 (Source: Underwear stated to be of Mukesh Kumar) belongs to Mukesh Kumar (Source: Exhibit H).
2. Human blood present on the Exhibits A-1 to A-3 (Source: Frock, Sweater and Cloth piece stated to be of the victim), Exhibits B-1 to B-5 (Source: Labia periphery swab, Lateral vaginal wall swab, Anal swab, Nail clippings and Posterior fornix swab stated to be of the victim), Exhibit C (Source: Soil alleged to be stained with human blood), Exhibits E-1, E-2 (Source: Piece of sac and Parna stated to be collected from the scene of crime), Exhibit F (Source: Danda) belongs to the victim (Source: Exhibit I-I).
3. Blood of the victim (Source: Exhibit I-I) and the accused Mukesh Kumar (Source: Exhibit H) are found present on the Exhibits G-1 to G-4 (Source: Clothes stated to be of Mukesh Kumar).”

23. The said report, thus, conclusively nails the appellant as violator of the victim beyond a shadow of doubt and therefore, the conviction which has been recorded on the basis of the oral evidence and the expert evidence and the medical evidence in the form of injuries on the victim as duly reproduced by the Trial Court, form a complete chain that it is no one else but the appellant who had committed the gruesome crime and therefore, the findings which had been recorded by the Trial Court do not suffer from any infirmity and resultantly, we uphold the conviction.

Quantum of sentence :

24. The issue of quantum of sentence; whether the death sentence is liable to be confirmed, is a debatable one, as argued by counsel for the appellant, while referring to the judgments noted above. The said debate is still to be finally adjudicated by the Apex Court as the necessary Reference is pending in a Three Judge Bench in Suo Motu Writ Petition (Crl.) No.1 of 2022 Re: *Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences*, on 19.09.2022 (Law Finder Doc Id. # 2037064), dealt the case law whereby there is a division as to whether the sentencing done on the same day in capital offences violate the principles of natural justice. As the matter has been referred to a Five Judge Bench as per the above-said order, therefore, we do not find it prudent to hold either way as apparently, there is a sharp cleavage of opinion. The relevant portion of the Reference dated 19.09.2022 reads as under:

23. In light of the above, there exists a clear conflict of opinions by two sets of three judge bench decisions on the subject. As noticed before, this court in Bachan Singh had taken into consideration the fairness afforded

to a convict by a separate hearing, as an important safeguard to uphold imposition of death sentence in the rarest of rare cases, by relying upon the recommendations of the 48th Law Commission Report. It is also a fact that in all cases where imposition of capital punishment is a choice of sentence, aggravating circumstances would always be on record, and would be part of the prosecution's evidence, leading to conviction, whereas the accused can scarcely be expected to place mitigating circumstances on the record, for the reason that the stage for doing so is after conviction. This places the convict at a hopeless disadvantage, tilting the scales heavily against him. This court is of the opinion that it is necessary to have clarity in the matter to ensure a uniform approach on the question of granting real and meaningful opportunity, as opposed to a formal hearing, to the accused/convict, on the issue of sentence.

24. Consequently, this court is of the view that a reference to a larger bench of five Hon'ble Judges is necessary for this purpose. Let this matter be placed before the Hon'ble Chief Justice of India for appropriate orders in this regard.

25. In **State of Haryana Vs. Jaspal Singh @ Kala, 2024 (2) RCR (Criminal) 179**, authored by one of us (G.S.Sandhawalia J.), the death sentence of a father who was involved in violating his own daughter who was 12 years old was converted to sentence without remissions for the remainder of the life. The fact that the appellant belong to the marginalized part of the society, doing labour work and was away from his family and under the influence of liquor when the incident took place are factors to be kept in mind while relying upon the judgment of the Apex Court passed in **Mohd. Mannan @ Abdul Mannon Vs. State of Bihar, (2019) 16 SCC 584** that snuffing out of the life of a person under Section 354 (3) Cr.P.C. is not to be taken lightly. The fact that the appellant who is a young man of around 26 years at the time when his statement was recorded under Section 313 Cr.P.C. and just short of a year when the

criminal antecedents, he cannot be stated to be a hardcore criminal. Fall back can be done in **Lochan Shrivastava Vs. State of Chhattisgarh, 2022 (1) RCR (Criminal) 328** wherein a Three Judge Bench commuted the death penalty to life imprisonment wherein the victim was 3 years old and the appellant was a neighbour and resident of the same building.

26. Similarly, the appellants who had been convicted and sentenced to death for physically abusing two children of age 7 & 10 years who had lost their life were given a lifeline by not confirming the death sentence awarded by the High Court and modified by the Three Judge Bench of the Apex Court in **Manoharan Vs. Inspector of Police, (2019) 7 SCC 716**.

27. In **Pappu Vs. State of Uttar Pradesh, (2022) 10 SCC 321** another Three Judge Bench of the Apex Court converted the death sentence into imprisonment for life with the condition that he would not be entitled for premature release or remission before the actual imprisonment of 30 years, while keeping in mind the fact that the appellant was known to the child whom she used to address as uncle.

28. In **Manoj & others Vs. State of Madhya Pradesh, 2022 (3) RCR (Cr.) 447**, while dealing with three appellants who had been imposed death penalty by the Trial Court which was confirmed by the Division Bench in spite of the fact that the deceased were three ladies from three different generations, killed in the safety and comfort of their own home by the appellants by being stabbed repeatedly to death and one of them being shot point blank on the face, a three Judge Bench of the Apex Court, converted the death sentence to life imprisonment for a minimum

period of 25 years. Resultantly, it was held that the aggravating circumstances were far more compelling and overwhelming, rendering the sentencing Court prone to impose the death penalty on the basis of an incomplete and incorrect application of the law laid down in Bachan Singh (supra). It was held that the mitigating circumstances were considered at the trial stage to avoid slipping into a retributive response to the brutality of the crime which was being done in majority of the cases reaching the appellate stage. Resultantly, the benefit was given to the three appellants.

29. Resultantly, keeping in view the above, we are of the view that the second option; under Section 6 of the POCSO Act and Section 376-AB Cr.P.C., imprisonment for life for the remainder of natural life would be the appropriate sentence.

30. In such circumstances, we decline the Murder Reference regarding the sentence of death and modify the same and partly allow the criminal appeal bearing CRA-D-262-2022 by converting the death sentence of the appellant, to sentence without remission for the remainder of his natural life as provided under Section 376-AB Cr.P.C. and Section 6 of the POCSO Act. We also uphold the conviction under Section 307 IPC for the sentence of life. All sentences shall run concurrently.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(VIKAS BAHL)
JUDGE

July 2nd, 2024
Sailesh

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	