[2025] 8 S.C.R. 243 : 2025 INSC 861

Jai Prakash
v.
State of Uttarakhand

(Criminal Appeal No(s). 331-332 of 2022)

16 July 2025

[Vikram Nath, Sanjay Karol* and Sandeep Mehta JJ.]

Issue for Consideration

Allegation against the appellant herein that he committed a forceful rape and strangulated a 10 year old girl child. The punishment handed down to the appellant by the Courts below was of death penalty. Whether the conviction and sentence imposed by the Trial Court, as affirmed by the High Court, are sustainable in law or not.

Headnotes†

Penal Code, 1860 – ss.376, 377, 302 – Protection of Children from Sexual Offences Act, 2012 – ss.5, 6 – Allegation against the appellant that he lured innocent children to his dwelling, took his pick from them and let others go – He allegedly exploited a girl child and killed her – The punishment handed down to the appellant by the Courts below was of death penalty – Correctness:

Held: 1. There are no grounds for interference as far as conviction is concerned and the sentence of appellant is reduced to life imprisonment without remission extending to the natural life. [Paras 13 and 22]

2. There is no dispute about the identity or the cause of death of X – PW4-doctor, conducted the post-mortem of X – In his deposition, he stated that the injuries on the body indicate sexual assault – All injuries were caused prior to the death – The causation of death was ascertained as strangulation by hand, after the commission of forceful rape – Body of X was discovered from the hut of appellant – It was proven beyond doubt that the appellant was last seen with X inside his hut on the date of incident, and this was immediately prior to the occurrence of the incident – Furthermore, the DNA obtained from Ext.9 (underwear of the appellant) matches with samples of both X and the appellant – Taking a cumulative

* Author

view of all the above circumstances, the prosecution has proven its case against the appellant, beyond reasonable doubt. [Paras 9-12]

3. Examining the death sentence handed down to the appellant, the Courts below have failed to make any detailed reference to the aggravating and mitigating circumstances surrounding the appellant – Moreover, the High Court, which was the Reference Court for confirmation of death sentence, though expounded on the requirement of law to consider aggravating and mitigating circumstances, failed to consider any of these circumstances – only dealt with the brutality of the incident – Coming to the mitigating circumstances relating to the appellant, the condition of the family of the appellant is "very pathetic" and they earned their livelihood by doing labor work – The appellant could not attend school due to the socio-economic condition of the family and started working at an early age – He does not suffer from any psychiatric disturbance – Taking into account the above mitigating circumstances and the threshold of "rarest of rare" category, this Court deems it appropriate to award life imprisonment without remission extending to the natural life of the appellant instead of the punishment of the death penalty. [Paras 14, 18, 20, 21, 22]

Case Law Cited

Mohd. Farooq Abdul Gafur v. State of Maharashtra **[2009] 12 SCR 1093 : (2010) 14 SCC 641;** *Gudda v. State of M.P.* **[2013] 11 SCR 293 : (2013) 16 SCC 596;** *Manoj v. State of M.P.* **[2022] 9 SCR 452 : (2023) 2 SCC 353;** *Sundar @ Sundarrajan v. State by Inspector of Police* **[2023] 5 SCR 1016 : 2023 SCC Online SC 310 – relied on.**

Nipun Saxena v. Union of India **[2018] 14 SCR 755 : (2019) 2 SCC 703 – referred.**

List of Acts

Penal Code, 1860; Protection of Children from Sexual Offences Act, 2012.

List of Keywords

Rape; Strangulation; Minor child; Recovery of body; Last seen theory; DNA evidence; Death penalty; Aggravating and mitigating circumstances; Rarest of rare; Confirmation of death sentence.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No(s). 331-332 of 2022

From the Judgment and Order dated 07.01.2020 of the High Court of Uttarakhand at Nainital in CRLJA No. 64 and CRLR No. 02 of 2019

Appearances for Parties

Advs. for the Appellant:
Ranji Thomas, Sr. Adv., Ms. Minakshi Vij.

Advs. for the Respondents:
Sudarshan Singh Rawat, Ms. Saakshi Singh Rawat, Ms. Rachna Gandhi.

Judgment / Order of the Supreme Court

Judgment

Sanjay Karol, J.

1. A simple afternoon of play and frolic with family members yielded catastrophic results for a 10-year-old female child. The most innocent desire of either a candy or a toy was exploited in the worst manner possible by the appellant. He lured innocent children to his dwelling, took his pick from among them and let the others go. He allegedly assaulted and exploited her, killed her and then, if the prosecution is to be believed, lied to the parents of the victim saying that he was not aware of her whereabouts. The Courts below have concurrently found the appellant to be guilty of offences against the victim and also of taking her life. This Court is now called upon to examine the correctness of these conclusions.

2. The present Appeals arise from the final judgment and order dated 7th January 2020, passed by the High Court of Uttarakhand at Nainital in Criminal Jail Appeal No.64 of 2019 & Criminal Reference No.02 of 2019, whereby the Judgment and sentencing Order dated 26th/28th August 2019 passed by Fast Track Court, Special Judge (POCSO)/Additional District and Sessions Judge, Dehradun, in Special Sessions Trial Number 119/2018, convicting the appellant

under Sections 376, 377, 302 of the Indian Penal Code, 1860[1] and Section 5/6 of the Protection of Children from Sexual Offences Act, 2012[2] came to be affirmed. The punishment handed down to the appellant by the Courts below was of death penalty, for the murder of the victim, whose name[3] stands redacted in view of the judgment of this Court in ***Nipun Saxena v. Union of India***[4].

Prosecution Case

3. The case set out by the prosecution against the appellant, as emerging from the record and also as set out by the Courts below, is as under :

3.1 On 28th July 2018, at around 12:30 p.m., while playing outside her house, with cousins and friends, X the child of PW1 went missing. Concerned, PW1 - Sant Pratap (*father of the victim*) started looking for his daughter. On enquiry, from other children present, he got to know that the appellant took all the children to his hut and gave them Rs.10/- each to go to the shop. Somwati - PW13, his sister-in-law also corroborated the version of the children. When he asked the appellant regarding the whereabouts of her daughter, he was apparently told that she had taken the gift of 10 rupees note and left the place. Eventually, after a few hours of exasperated searching, which included Kulbhushan - PW2 sending one Mohd. Alam - PW3, to search the hut of the appellant, the victim was found dead underneath empty cement bags. PW1, therefore, lodged an FIR at P.S. Sahaspur, District – Dehradun. It was stated therein that he resided with his family in a hut, in the under-construction premises of Shivalik Engineering College, narrating the facts as above, asking for action to be taken against the appellant.

3.2 After registration of the abovementioned FIR, the Investigating Officer commenced the investigation. The inquest report was prepared, and the body of X was sent for post-mortem to Dr. Chirag Bahugana - PW4. The cause of death came to be determined as '*manual throttling by hand causes asphyxia*.' After

1 hereinafter referred to as 'IPC'

2 hereinafter referred to as 'POCSO'

3 hereinafter referred to as 'X'

4 (2019) 2 SCC 703

completion of the investigation, charges were framed against the appellant under Sections 302, 201, 376 and 377 IPC and Section 6 of the POCSO Act.

Reasoning of the Courts below

4. The Trial Court, after careful consideration of the evidence-on-record, *vide* judgment and order dated 26th/28th August 2019, convicted the appellant under **Sections 376(AB), 377, 302 of the IPC and Section 5/6 of POCSO.** The Court arrived at the following findings :

   4.1 Master Rakesh - PW11, Rani @ Radha Rani - PW12, and PW13 - Somwati have proven that X was last seen with the appellant;

   4.2 PW1, PW2, PW3, SI Lakshmi Joshi - PW5, Rani W/o Sant Partap - PW8 and PW12 have proven the recovery of the body of X from the hut of the appellant. Their testimonies have withstood cross-examination;

   4.3 The DNA evidence obtained from X, matches with the samples of the appellant. Dr. Manoj Kumar Aggarwal, Scientific Officer, Forensic Science Laboratory, Dehradun - PW17, has proven the report, Ex.Ka-43, to that effect;

   4.4 In view of the above circumstances, the prosecution has proven its case beyond reasonable doubt;

   4.5 The cruelty of the crime is displayed by strangulation by hand of a defenseless child. The case at hand is '*rarest of rare*' and, therefore, the punishment of death penalty is just and proper;

   4.6 The order of sentencing highlighted the grave nature of the crime. It was observed that the rarest of the rare test comes into play when a person, by way of his crime which is heinous or brutal, challenges the harmonious and peaceful co-existence of the society, with reference to ***Sunderajan v. State***[5]***.*** It was held that the accused was in his 30s and himself is the father of two children with one of these children being similar in age to X. Since, as per his age, he was mature enough to understand the implications of his acts, no benefit could be given on this count. In the sum total of facts and circumstances of this case, the extreme penalty of death by hanging was found to be justified.

5 (2013) 3 SCC 215

5. The appellant preferred an Appeal before the High Court of Uttarakhand at Nainital, which came to be numbered as Criminal Jail Appeal No.64 of 2019. A reference for confirmation of the death sentence was also submitted to the High Court, which came to be numbered as Criminal Reference No.02 of 2019, in consonance with Section 366 of the Code of Criminal Procedure, 1973. *Vide* the impugned Judgment, the High Court confirmed the conviction and death sentence awarded to the appellant, *inter alia*, recording that the appellant himself admitted to being in his room on the date of the offence and since the body of X was also found in his room, later point to his having committed the crime. That apart, the DNA of the appellant matched with the DNA which was found on the undergarments of X, thereby directly pointing to his involvement and guilt. The argument that PW-11 and PW12, who are child witnesses, have been tutored, was rejected on account of the fact that there is other evidence corroborating their statements against the appellant. Regarding DNA, evidence reference has been made to the report prepared by PW17, the relevant extract whereof is as under:

> "Conclusion:-
>
> The DNA test performed on the exhibits provided as sufficient to conclude that,
>
> 1. The DNA obtained from Exhibits-4 and 5 (hair recovered from deceased and underwear of accused) are from a single male human source and matching with the DNA obtained from the Exhibit-24 (blood sample of accused).
>
> 2. The DNA obtained from the Exhibit-9 (underwear of deceased) is matching with the DNA obtained from the Exhibits – 23 and 24 (blood sample of deceased and blood sample of accused).
>
> 3. The DNA obtained from the Exhibits – 13,14,15,16,17,18,19,20 and 22 (throat swab, throat slide, internal vaginal swab, internal vaginal slide, internal vaginal swab, internal vaginal slide and nails clipping of victim) are from a single female human source and matching with the DNA obtained from Exhibit-23 (blood sample of deceased)."

On the aspect of sentencing, the concurring judgment makes reference to a judgment of this Court ***Ram Naresh v. State of Chattisgarh***[6] which has attempted to list out aggravating and mitigating circumstances. In the end, it was observed that there was no doubt as to the culpability of the appellant and in actuality, the conclusion reached by the Court was from a point of absolute certainty that this case qualified as the rarest of rare.

Issue for consideration

6. The question that arises for consideration before this Court is whether the conviction and sentence imposed by the Trial Court, as affirmed by the High Court, are sustainable in law or not.

Our View

7. We have heard the learned Senior counsel for the appellant and counsel for the Respondent-State. The case of the prosecution, relies on the following circumstances against the appellant:

   (a) Recovery of the body of X from the appellant's hut.

   (b) Last seen theory.

   (c) DNA evidence, linking the appellant to X.

8. 17 witnesses came to be examined by the prosecution. A tabular chart capturing their role in the investigation and their relationship with X is as below:

PW	Name	Role	Relation to X
1.	**Sant Pratap**	Complainant / Spot witness	Father of X
2.	**Kulbhushan**	Spot witness	Employer
3.	**Mohd. Naiyar**	Spot witness / Recovered dead body	-
4.	**Dr. Chirag Bahugana**	Conducted post-mortem	Doctor

6 (2012) 4 SCC 257

5.	**S.I. Lakshmi Joshi**	Initiated panchanama of deceased / Recovery of dead body	-
6.	**Yogesh**	Resided with the appellant	-
7.	**Constable Harishankar**	Recorded GD entry of the crime in question	-
8.	**Rani**	Spot witness	Mother of X
9.	**Prasun Shukla**	Verified age of X	Principal of School
10.	**SI Raj Vikram Singh Panwar**	Sent items for FSL	-
11.	**Master Rakesh**	Child witness (last seen)	Cousin
12.	**Rani**	Child witness (last seen)	Cousin
13.	**Somwati**	Spot witness	Aunt of X
14.	**Constable Rajeev Kumar**	Sent case property for FSL testing	-
15.	**Dr. R.C. Arya**	Conducted medical examination of the appellant	-
16.	**SI N.S. Rathore**	Investigating officer	-
17.	**Dr. Manoj Kumar Aggarwal**	FSL examination of recovered articles	-

9. There is no dispute about the identity or the cause of death of X. Dr. Chirag Bahugana - PW4, conducted the post-mortem of X. In his deposition, he stated that the injuries on the body indicate sexual assault. All injuries were caused prior to the death. The causation of death was ascertained as strangulation by hand, after the commission of forceful rape. The age of X also cannot be doubted, on the basis of the evidence of PW9, the Headmaster of the School, in which X was enrolled for studies. He verified that the date of birth of X was 20th October 2008, which makes her 10 years old on the date of the incident.

10. Coming to the recovery of the body, Mohd. Naiyar - PW-3, had, at the first instance, searched the hut of the appellant. In his deposition, he stated that the Contractor of the site (PW-2), told him to go and search the hut of the appellant for X. Upon his search, he discovered the dead body of X concealed under empty cement bags in the corner of the hut. He identified his signatures on the *panchnama* and the appellant in Court. His testimony stood the test of cross-examination and nothing was brought about to impeach his credit or doubt his testimony. PWs 1 and 2, who support his testimony, do state that PW3 informed them about the discovery of X's body, after which, the police report came to be lodged. They identified their signatures on the recovery memos. SI Raj Vikram Singh, PW10, deposed on similar lines, stating that the dead body of X was lying in the hut of the appellant. Given the testimonies of these witnesses, this circumstance has been rightly held by the Courts below, as against the appellant.

11. The next circumstance against the appellant is that of last seen theory. Somwati - PW13, deposed that she saw X and her children being taken by the appellant, however only her children (*two in number*) had left the hut. She also identified the appellant in Court. This witness also stood the test of cross-examination. The children who had accompanied X, also lend support to the last-seen theory. Master Rakesh - PW10, deposed that the appellant handed them Rs.10/- each, but stopped X in his hut, while he left with Rani. Rani - PW11, supports this chain of events. Despite being minors, there is nothing on record to disbelieve their testimonies, for we find the witnesses to be inspiring in confidence and the children's deposition to be in a natural form. It cannot be doubted, therefore, in fact, proven beyond doubt that the appellant was last seen with X inside his hut on the date of the incident, and this was immediately prior to the occurrence of the incident. In fact, they clearly established the presence of the appellant inside the hut where no one else other than him was present. It is nobody's case that the other two roommates residing with the appellant in the very same hut were also present there. None has deposed about their presence either inside or outside the hut or anywhere near the scene of occurrence of the incident.

12. Coming to the DNA evidence of the case at hand, we must advert to the testimony of, Dr. Manoj Kumar Aggarwal - PW17, who

conducted the FSL examination. Upon such examination, Ext.4 (*hair found on the dead body of X*) matched with Ext.5 (*underwear of the appellant*), both of which matched with the DNA sample of the appellant. Furthermore, the DNA obtained from Ext.9 (*underwear of the appellant*) matches with samples of both X and the appellant. There is no infirmity which has been brought about in the chain of the seizure of these articles and their consequent examination by the appellant. Taking a cumulative view of all the above circumstances, in our view, the prosecution has proven its case against the appellant, beyond reasonable doubt.

13. In view of the above, we are not inclined to interfere with the findings of conviction concurrent in nature against the appellant. The Courts below have correctly placed reliance on the last-seen theory and DNA evidence against the appellant. In our view, no ground for interference, pointing out any infirmity in the findings of the Courts below has been made out by the appellant, warranting interference as far as conviction is concerned.

14. We now proceed to examine the sentence that has been handed down to the appellant, i.e., death penalty. The case at hand is one, based on admittedly circumstantial evidence. This Court in ***Mohd. Farooq Abdul Gafur v. State of Maharashtra***[7]**,** expounded:

> **"164.** Capital sentencing is not a normal penalty discharging the social function of punishment. In this particular punishment, there is a heavy burden on the Court to meet the procedural justice requirements, both emerging from the black letter law as also conventions. In terms of rule of prudence and from the point of view of principle, a Court may choose to give primacy to life imprisonment over death penalty in cases which are solely based on circumstantial evidence or where the High Court has given a life imprisonment or acquittal.
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> **165.** At this juncture, it will be pertinent to assess the nature of the rarest of rare expression. In the light of serious objections to disparity in sentencing by this Court flowing out of varied interpretations to the rarest of rare

7 (2010) 14 SCC 641

> expression, it is clear that the test has to be more than what a particular Judge locates as rarest of rare in his personal consideration. There has to be an objective value to the term "rarest of rare", otherwise it will fall foul of Article 14. In such a scenario, a robust approach to arrive at the rarest of rare situations will give primacy to what can be called the consensus approach to the test. In our tiered court system, an attempt towards deciphering a common view as to what can be called to be the rarest of rare, vertically across the trial court, the High Court and Apex Court and horizontally across a Bench at any particular level, will introduce some objectivity to the precedent on death penalty which is crumbling down under the weight of disparate interpretations. This is only a rule of prudence and as such there is no statutory provision to this effect."
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> (Emphasis supplied)

15. Keeping the above exposition of law in mind, we are also conscious of the brutality of the crime in question. A helpless child was at first, mercilessly raped after being lured into the appellant's hut on the pretext of buying sweets with the offered money. Thereafter, to hide the evidence of his crime, the child was strangulated by hand, in a defenseless condition. That being said, this Court in ***Gudda v. State of M.P.***[8], while commuting the sentence of the appellant therein from death penalty to life imprisonment, where the victims of the crime were a pregnant lady and a five-year old child, had reiterated that the brutality of a crime cannot be the only criterion for determining whether a case falls under the "*rarest of the rare*" category. The Courts below have only commented on the brutality of the crime in question, to hand down the death penalty to the appellant. No other circumstance came to be discussed by the Courts in reaching the conclusion that the case forms part of the "*rarest of the rare*" category. Such an approach in our view cannot be sustained.

8 (2013) 16 SCC 596

16. In ***Gudda*** (supra), it was further observed:

> **"32.** In a civilised society — a tooth for a tooth and an eye for an eye ought not to be the criterion to clothe a case with "the rarest of the rare" jacket and the courts must not be propelled by such notions in a haste resorting to capital punishment. Our criminal jurisprudence cautions the courts of law to act with utmost responsibility by analysing the finest strands of the matter and it is in that perspective that a reasonable proportion has to be maintained between the brutality of the crime and the punishment. It falls squarely upon the court to award the sentence having due regard to the nature of offence such that neither is the punishment disproportionately severe nor is it manifestly inadequate, as either case would not subserve the cause of justice to the society. In jurisprudential terms, an individual›s right of not to be subjected to cruel, arbitrary or excessive punishment cannot be outweighed by the utilitarian value of that punishment."

17. More recently, in ***Manoj v. State of M.P.***[9], this Court had recognized the disparity in the application of the "*rarest of rare*" test for imposition of the death penalty and re-emphasized the two-step process to determine whether a case belongs to the rarest of rare category:

> **"224.** This aspect was dealt with extensively in Santosh Bariyar [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, para 112 : (2009) 2 SCC (Cri) 1150] where the Court articulated the test to be a two-step process to determine whether a case deserves the death sentence — firstly, that the case belongs to the "rarest of rare" category, and secondly, that the option of life imprisonment would simply not suffice. For the first step, the aggravating and mitigating circumstances would have to be identified and considered equally. For the second test, the court had to consider whether the alternative of life imprisonment was unquestionably foreclosed as the

9 (2023) 2 SCC 353

> sentencing aim of reformation was unachievable, for which the State must provide material."
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> (Emphasis supplied)

18. The Courts below have failed to make any detailed reference to the aggravating and mitigating circumstances surrounding the appellant. Moreover, the High Court, which was the Reference Court for confirmation of death sentence, though expounded on the requirement of law to consider aggravating and mitigating circumstances, failed to consider any of these circumstances – only dealing with the brutality of the incident.

19. In similar circumstances in ***Sundar @ Sundarrajan v. State by Inspector of Police***[10], this Court commuted the death sentence awarded to the appellant therein, for murder of a seven-year-old child while observing:

> **"81.** No such inquiry has been conducted for enabling a consideration of the factors mentioned above in case of the petitioner. Neither the trial court, nor the appellate courts have looked into any factors to conclusively state that the petitioner cannot be reformed or rehabilitated. In the present case, the Courts have reiterated the gruesome nature of crime to award the death penalty.
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> **....**
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> **83.** The duty of the court to enquire into mitigating circumstances as well as to foreclose the possibility of reformation and rehabilitation before imposing the death penalty has been highlighted in multiple judgments of this Court. Despite this, in the present case, no such enquiry was conducted and the grievous nature of the crime was the only factor that was considered while awarding the death penalty."

20. Coming to the mitigating circumstances relating to the appellant, this Court *vide* 2nd March 2022, had called for the reports of the probation officer, jail administration and psychological evaluation

10 2023 SCC Online SC 310

of the appellant. It is borne from the report of the District Probation Officer, Ayodhya, dated 12th April 2022, that the condition of the family of the appellant is "*very pathetic*" and they earned their livelihood by doing labor work.

21. The psychological report of the appellant was prepared on 19th April 2022. It is stated therein that the appellant could not attend school due to the socio-economic condition of the family and had started working at the age of twelve. He has good relations with other inmates. He does not suffer from any psychiatric disturbance.

22. In light of the above discussion, taking into account the above mitigating circumstances and the threshold of "*rarest of rare*" category, we deem it appropriate to award life imprisonment without remission extending to the natural life of the appellant instead of the punishment of the death penalty.

23. Therefore, the present Appeals are partly allowed. The impugned order dated 7th January 2020 passed by the High Court of Uttarakhand at Nainital in Criminal Jail Appeal No.64 of 2019 & Criminal Reference No.02 of 2019, is modified to the above extent.

Pending application(s), if any, shall stand disposed of.

Result of the case: Appeals partly allowed.

†*Headnotes prepared by:* Ankit Gyan