Purushottam Dashrath Borate & Anr vs State Of Maharashtra on 8 May, 2015

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Bench: Arun Mishra, S.A. Bobde, H.L. Dattu

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL No. 1439 OF 2013

PURUSHOTTAM DASHRATH BORATE & ANR. …Appellant(s)

VERSUS

STATE OF MAHARASHTRA …Respondent(s)

J U D G M E N T

H.L. DATTU, CJI.

This appeal is directed against the judgment and order, passed by the High Court of Judicature for Maharashtra at Bombay in Confirmation Case No.1 of 2012 and Criminal Appeal No.632 of 2012, dated 12.09.2012, 13.09.2012, 24.09.2012 and 25.09.2012. By the impugned judgment and order, the High Court has confirmed the judgment of conviction and order of sentence passed by the Court of Sessions Judge, Pune in Sessions Case No.284 of 2008, dated 20.03.2012, whereby the learned Sessions Judge has convicted the accused- appellants for the offence under Sections 302, 376(2)(g), 364 and 404 read with Section 120-B of the Indian Penal Code, 1860 (for short, "the IPC") and consequently awarded death sentence.

The Prosecution case in a nutshell is:

> The deceased was residing with her brother-in-law and sister, namely PW-12 and PW-13 respectively, along with their minor son, in a flat in Pune City. She was serving as an Associate in the BPO Branch of Wipro Company in Pune (for short, "the Company") for about a year, where she used to work in the night-shift, i.e. from 11:00 p.m. to 09:00 a.m. The fateful day was to be her last day since she had tendered her resignation one month prior. The Company had arranged for and hired a private cab service to transport its employees from their residence to the workplace and back at the conclusion of their respective work-shifts. Further, to ensure the safety and

security of its female employees the Company imposed a mandatory condition, upon the owner of the cab, that a security guard be present in the said vehicle, if a female employee was being transported.

On the fateful day, being 01.11.2007, the cab was deputed to pick up the deceased from her residence at 10:30 p.m., following which the cab would collect three other employees of the Company. As per the usual practice, at about 10:15 p.m., the deceased received a missed call from the driver of the cab, Purushottam Borate, namely Accused No.1, informing her of the pick- up. The deceased called back the Accused No.1 to pick her up in 10 minutes to take her to the workplace, upon which PW-12 and his son went down from their flat to drop her to the cab. At the time of the pick-up, Pradeep Kokade, namely Accused No.2, was sitting in the rear seat behind the driver. The next employee to be collected by the cab was one Sagar Bidkar, i.e. PW-11, and the expected time of the said pick up was at about 10:45 p.m. During the journey, between 10:30 p.m. and 11:00 p.m., the deceased received calls on her mobile phone by one Jeevan Baral, a friend of the deceased residing in Bangalore, namely PW-14, who heard the former questioning the Accused No.1 as to where he was taking the cab, why he had stopped in a jungle and what he was doing. Thereafter, the phone call between the deceased and PW-14 was abruptly disconnected and subsequent attempts by the latter to call the deceased were rendered futile as her mobile phone was found to be switched off. Further, PW-14 was unable to contact either the Pune Police or the relatives of the deceased in Pune till the following day.

It is the case of the prosecution that the Accused No.1 and 2, being aware of the fact that the deceased would be travelling to her workplace that night and that she would be the first to be collected, under the guise of taking the deceased to the said workplace, hatched a conspiracy to abduct her and take her to a secluded spot. The prosecution has alleged that, in the time period between the abrupt end to the aforementioned phone call with PW-14 and the pick-up of PW-11 at about 12:45 a.m., the Accused No.1 and 2 committed the heinous offence of gang-rape and thereafter murdered her by means of strangulating her with her own Odhani, slashing her wrist with a blade and smashing her head with a stone. Further, that the accused-appellants stripped the deceased of her possessions and money and then left her body in the field of one Kisan Bodke.

Thereafter, the cab in question, containing the Accused No.1 and 2, arrived at about 12:45 a.m., i.e. delayed by nearly two hours, to pick up PW-11 from his residence. At the time, the deceased was no longer present in the cab. The Accused No.1 informed the PW-11 that neither the deceased nor the other employees had come for work that day and the cause of the delay was on account of a punctured tyre. The Accused No.2 vacated the cab shortly before the Accused No.1 brought the PW-11 to the workplace.

On the following morning, being 02.11.2007, one Pankaj Laxman Bodke, i.e. PW-8, noticed the dead body of a female on the boundary of the field of Kisan Bodke and therefore informed one Hiraman Bodke, i.e. PW-1, of the same. PW-1, after verifying the information, informed the Police Station, Talegaon Dabhade, where an FIR was promptly lodged. Therefore, an offence under Section 302 of the IPC was registered and the spot panchanama was prepared in the presence of PW-3. Inquest report and panchanama was also prepared in the presence of PW-2 and thereafter the body of the deceased was sent for post-mortem examination. Furthermore, bloodstained stone, a pair of ladies sandal, bloodstained blade, soil mixed with blood and sample soil was seized from the spot of the incident. The clothes found on the body of the deceased, after the post-mortem examination, were also duly seized. Dr. Waghmare, i.e. PW-16, who performed the post-mortem examination, gave the opinion that the cause of death was due to shock and hemorrhage due to grievous injuries to vital organs with skull fracture involving frontal, left temporal, parietal bone with laceration to brain with fractured ribs, right lung ruptured with strangulation. Further, on the basis of the report of the Chemical Analyzer, PW-16 gave the opinion that the deceased was a victim of the offence of rape prior to her death.

In the meanwhile, on 02.11.2007 itself, due to the fact that the deceased had not returned home the next day, her sister, i.e. PW-13, started to make enquiries as to her whereabouts. PW-13 was informed by the Company that the deceased had not reported to the workplace on the previous night. Further, PW-13 received information, from PW-14, about the events pertaining to the telephonic conversation with the deceased between 10:30 p.m. and 11:00 p.m. on that fateful night. Therefore, a missing persons report was immediately filed that evening itself in the Chatushringi Police Station.

On 03.11.2007, PW-12 and PW-13 were informed that a dead body has been recovered within the jurisdiction of the Talegaon Dabhade Police Station. Consequently, the said PW-12 and PW-13 reached the Police Station and on the basis of a photograph of the body of the deceased and the clothes that were seized, they confirmed the identity of the deceased. Furthermore, the PW-12 and PW-13 also confirmed that the body at the morgue was that of the deceased.

After the aforesaid FIR, dated 02.11.2007, was registered, the Police duly initiated an investigation and made inquires with the Company. Consequently, the Accused No.1 and 2 were taken into custody, at about 05:30 a.m., on 03.11.2007. Thereafter, based on confessional statements of the accused-appellants, the police were able to recover the stolen items belonging to the deceased, from their respective houses, namely sim card, mobile phone, ear ring, watch, gold ring. The vehicle in which the deceased was taken by the accused-appellants was also seized and the panchanama was prepared. Further, the Test Identification Parade was conducted, on 14.01.2008, wherein the PW-12 identified the Accused No. 1 and 2 as the persons in the cab with the deceased.

Pursuant to the investigations, a charge-sheet was duly filed by the police. On 05.03.2009, the charges were framed under Sections 364, 376(2)(g) and 302 read with 34 and 404 read with 34 of the IPC. On 03.04.2010, the charge was altered and the independent charge of conspiracy under Section 120-B of the IPC was added. Additionally, the charge under Section 120-B of the IPC was added with the charge under Sections 302, 376(2)(g), 364 and 404 of the IPC. The accused-appellants pleaded not guilty to the aforesaid charges and thus, the case was committed to trial. During the course of the Trial, the prosecution examined 29 witnesses of which 11 were examined on the aspect of circumstantial evidence and 2 were doctors to establish the factum of rape and murder. PW-1, the Police Patil who registered the complaint personally, maintained his version as stated in the FIR, dated 02.11.2007, that PW-8 was the person who found the body of the deceased and informed the complainant of the same. PW-12, the brother-in-law of the deceased, deposed that he was the last person to see the latter alive and that too in the company of the accused-appellants. The statement of PW-14, that he was the last person to talk to the deceased between 10:30 p.m. and 11:00 p.m., was supported by documentary evidence, i.e. call records. The evidence of PW-12, PW-13 and PW-14, in respect of the whereabouts of the deceased on the fateful night, and with regard to the identity of the accused-appellants was found to be consistent and trustworthy. Furthermore, based on the confessional statements of the accused-appellants, the police were able to recover the vehicle, the items stolen from the body of the deceased as well as the Odhani of the deceased, which was found to be one of the tools used to commit murder, i.e. by way of strangulation. The Odhani and clothes of the deceased that was recovered, after chemical analysis, was found to contain semen stains of both the accused-appellants. Further that, on the basis of the vaginal swab taken during the post-mortem examination and the report of the Chemical Analyzer, it has been shown that semen of both the accused-appellants was found in the said swab as well.

The Sessions Court, upon meticulous consideration of the material on record and the submissions made by the parties, observed that the evidence of the prosecution formed a chain so complete that it excluded any hypothesis other than the guilt of the accused-appellants. It concluded that the testimonies of PW-12, PW-13, PW-14, PW-1 and PW-11 are true and reliable and that the same along with the evidence of PW-16, the post-mortem report and the report of the Chemical Analyzer support the case of the prosecution. The Sessions Court has noticed that the evidence of PW-12, which states that the deceased was last seen in the company of accused- appellants, coupled with the lack of explanation for the same by the accused-appellants in their statements under Section 313 of the Code, provides a firm link in the chain of circumstances. The Sessions Court observed that the accused-appellants have failed miserably in discharging their burden of proving that the deceased was not in their company or that their cab suffered a punctured tyre. Further, that the recoveries made at the instance of the accused-appellants, including the vehicle in question, the belongings of the deceased in the respective houses of the accused- appellants, the Odhani of the deceased which was used as a weapon of murder along with the medical evidence and testimony of PW-16 establish the factum of commission of the crime by the accused-appellants. The subsequent conduct of the accused-appellants, where they continued to pick-up PW-11 and lied to him about the cause of the delay and the whereabouts of the deceased, has been found to be compatible with their guilt and in consonance with their meticulously chalked out plan for the commission of the offence of gang-rape and murder. Therefore, in light of the aforesaid, the Sessions Court concluded that the chain of

circumstances evince beyond any reasonable doubt that the accused-appellants have committed the heinous offence of rape and murder of the deceased.

With regard to the quantum of sentence, the Sessions Court noticed the well- settled principles laid down by this Court in Bachan Singh v. State of Punjab, (1980) 2 SCC 684; Macchi Singh and Ors. v. State of Punjab, (1983) 3 SCC 470; Dhananjoy Chatterjee v. State of West Bengal, (1994) 2 SCC 220; Devender Pal Singh v. State of NCT of Delhi, (2002) 5 SCC 234; Aqeel Ahmed v. State of UP, (2008) 16 SCC 372 and Atbir Singh v. Govt. of NCT of Delhi, (2010) 9 SCC 1. Further, on due consideration to the aggravating and mitigating circumstances present in the facts of the case, the Sessions Court observed that the balance was clearly tilting against the accused- appellants. After affording an opportunity of hearing to the accused- appellants on the question of sentence, the Sessions Court has awarded them death sentence and fine of Rs.5,000/- each for the offence punishable under Section 120-B of the IPC, death sentence and fine of Rs.5,000/- each for the offence punishable under Section 302 read with Section 120-B of the IPC; imprisonment for life and fine of Rs.5,000/- for the offence punishable under Section 376(2)(g) read with Section 120-B of the IPC; imprisonment for life and fine of Rs.5,000/- each for the offence punishable under Section 364 read with Section 120-B of the IPC; and rigorous imprisonment for two years and a fine of Rs.10,000/- each for the offence punishable under Section 404 read with Section 120-B of the IPC. The Sessions Court, in its order of sentence, has noticed that the accused- appellants committed and executed the heinous offences in a pre-planned and meticulous manner which showed the determination of both the accused to complete the crime and take away the life of the accused. The Sessions Court observed that the extreme depravity with which the offences were committed and the merciless manner in which the deceased was raped and done to death, coupled with the gross abuse of the position of trust held by the Accused No.1 and the lack of remorse or repentance for any of their actions, would clearly indicate that the given case was fit to be placed within the category of "rarest of rare" and the only punishment proportionate to the brutality exhibited by the accused-appellants would be the death penalty.

Aggrieved by the aforesaid judgment and order, the accused-appellants filed an appeal before the High Court which was heard along with the Reference for confirmation of death sentence under Section 366 Code of Criminal Procedure, 1973 (for short, "the Code") and disposed of by a common judgment and order, dated 12.09.2012, 13.09.2012, 24.09.2012 and 25.09.2012.

The High Court has, vide the impugned judgment and order, elaborately dealt with the entire evidence on record and extensively discussed the judgment and order of the Sessions Court in order to ascertain the correctness or otherwise of the conviction and sentence awarded to the accused-appellants. The High Court has carefully examined the evidence on record including testimonies of the Prosecution Witnesses and recorded the finding that the said statements do not reflect any discrepancy or inconsistency of facts and therefore must be considered as cogent, reliable and incontrovertible evidence. Further, that the medical evidence and the deposition by PW-16, i.e. the doctor who conducted the post-mortem examination, clearly indicates the commission of the offence of rape and the brutal murder of the deceased. The High Court has taken note of the statement of the PW-16 that the probable cause of death was shock and hemorrhage due to grievous injury to vital organs with skull fracture involving frontal, left temporal, parietal bone with

laceration to brain, fracture to the ribs and right lung rupture with strangulation, and further that the strangulation was committed by overpowering the deceased suddenly from behind. On the basis of the medical report as well as the Chemical Analyzer's report, the High Court has observed that the factum of commission of the offence of rape by the Accused No.1 and 2 has been conclusively proved. The High Court has recorded that the recovery of weapons of murder from the place where the body of the deceased was located as well as from the house of the Accused No.1, the latter being at the instance of a confession by the said accused, has also been established beyond any shadow of doubt. In light of the chain of circumstantial evidence having been established beyond any reasonable doubt, the High Court has concluded towards the guilt of accused- appellants and confirmed the judgment of conviction passed by the Sessions Court.

With respect of the quantum of sentence, the High Court has noticed the well-settled law laid down by this Court and concluded that the present case falls under the category of "rarest of rare". The High Court has observed that the heinous acts have been committed by the accused- appellants in a diabolical and cold-blooded manner without any hesitation and undeterred by its consequences. Further, that the manner of commission of the offence coupled with their subsequent conduct obliterates any chance of reformation and that there is no guarantee that the accused-appellants would not commit the same or similar offence if they were released. Therefore, the High Court confirmed the death sentence awarded by the Sessions Court.

The accused-appellants, aggrieved by the aforesaid confirmation of death sentence awarded to them, are before us in this appeal. At the outset, it would be pertinent to note that this Court has issued notice on the limited issue of the sentence, by order dated 04.07.2013. Therefore, the learned counsel would limit her case only to the question of determination of quantum of sentence awarded by the Courts below and seek for commutation of the said sentence.

Learned counsel for the accused-appellants would vehemently argue in favour of commutation of the death sentence awarded to the appellants as the case did not fall within the purview of "rarest of rare" cases. Further, she would submit that, in the present case, the mitigating circumstances outweighed the aggravating circumstances, namely that the age of the accused-appellants, the absence of any criminal antecedents and the possibility that they could be reformed and rehabilitated would reflect that a sentence of life imprisonment would suffice the ends of justice. Per contra, the learned counsel for the respondent-State would seek to support the judgment and order passed by the High Court and Sessions Court.

We have given our anxious consideration to the arguments advanced by learned counsel for the parties to the appeal and also carefully scrutinized the evidence on record as well as the judgment(s) and order(s) passed by the Courts below.

We do not intend to saddle the judgment with the settled position of law in respect of the sentencing policy and the principles evolved by this Court for weighing the aggravating and mitigating factors in specific facts of the case. However, it would be apposite to notice the decision of this Court in the case of Bachan Singh (supra), wherein the constitutional validity of the provisions that authorize the Trial Court to award death sentence for the offence punishable under Section 302 of the IPC and

other offences was upheld. However, this Court observed that there can be no strait jacket formula which can be applied in each case and that while considering the sentence to be awarded, the Court must look into the aggravating and mitigating circumstances. The ratio of the decision in Bachan Singh (supra) has been followed in the case of Machhi Singh (supra) wherein this Court held that the manner of commission, motive for commission, anti-social nature of crime, magnitude of crime and personality of victim ought to be kept in mind while awarding an appropriate sentence. It was held that a balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a balance has to be struck.

It is an established position that law regulates social interests and arbitrates conflicting claims and demands. Security of persons is a fundamental function of the State which can be achieved through instrumentality of criminal law. The society today has been infected with a lawlessness that has gravely undermined social order. Protection of society and stamping out criminal proclivity must be the object of law which may be achieved by imposing appropriate sentence. Therefore, in this context, the vital function that this Court is required to discharge is to mould the sentencing system to meet this challenge. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused and all other attending circumstances are relevant facts which would enter into the area of consideration. Based on the facts of the case, this Court is required to be stern where it should be and tempered with mercy where warranted.

In this context, it would be profitable to notice the manner in which this Court has considered the sentencing policy vis-à-vis certain aggravating and mitigating circumstances.

In the case of Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257, this Court referred to the Bachan Singh case (supra) and Machhi Singh case (supra) to cull out certain principles governing aggravating and mitigating circumstances. It would be beneficial to refer to the same hereinbelow:

> “Aggravating circumstances (1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping, etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions. (2) The offence was committed while the offender was engaged in the commission of another serious offence.
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> (3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.
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> (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.
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> (5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody. (8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 CrPC. (9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community. (10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold-blooded murder without provocation. (13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating circumstances (1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course. (2) The age of the accused is a relevant consideration but not a determinative factor by itself.

[pic] (3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behaviour possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behaviour that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the court upon proper appreciation of evidence is of the view that the crime was not committed in a preordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eyewitness though the prosecution has brought home the guilt of the accused." Further, it has been held by this Court that undue sympathy to impose inadequate sentence would do more harm to the justice system by undermining the public [pic]confidence in the efficacy of law [See Mahesh v. State of M.P., (1987) 3 SCC 80; Sevaka Perumal v. State of T.N., (1991) 3 SCC 471 and Mofil Khan v. State of Jharkhand, (2015) 1 SCC 67]. To give the lesser punishment for the accused would be to render the judicial system of the country suspect. If the courts do not protect the injured, the injured would then resort to private vengeance. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed etc. In the case of B.A. Umesh v. High Court of Karnataka, (2011) 3 SCC 85, the appellant was accused of a brutal rape and murder of a lady. It was found, by medical evidence, that the deceased therein was a victim of a violent rape prior to death and the death was caused due to as asphyxiation. Further, the medical report found that the body of the deceased has several abrasions and lacerations. This Court, noticing the brutal and violent manner of commission of the offences confirmed the death sentence to the accused therein. It was held that:

> "84. As has been indicated by the courts below, the antecedents of the appellant and his subsequent conduct indicates that he is a menace to the society and is incapable of rehabilitation. The offences committed by the appellant were neither under duress nor on provocation and an innocent life was snuffed out by him after committing violent rape on the victim. ..." In the Sevaka Perumal case (supra), the counsel for the appellants therein contended that considering the young age of the accused, the same would be a strong mitigating factor in favour of commutation of death sentence. It was contended therein that the accused were the breadwinners of their family which consisted of a young wife, minor child and aged parents. However, this Court, finding no force in the said contention, observed that such compassionate grounds are present in most cases and are not relevant for interference in awarding death sentence. The principle that when the offence is gruesome and was committed in a calculated and diabolical manner, the age of the accused may not be a relevant factor, was further affirmed by a three-Judge Bench of this Court in Mofil Khan case (supra).
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> In view of the aforesaid decisions highlighting the approach of this Court, we would now consider the decision of the Courts below, in the present case. The Sessions Court has noticed a similarity with the present case and the decision of this Court in the case of Dhananjoy Chatterjee (supra). Therefore, in light of the same, the Sessions Court has held that the present case would merit a sentence of death penalty and no less. The Session Court has observed:
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> "... In present case, accused driver alongwith co-accused committed rape and murder of helpless and defenceless young girl who was reposing complete faith and trust on them by carefully planning the crime and executing it in barbaric manner. Taking the verdict in the matter of Dhananjoy Chatterjee (supra) as yardstick, there is no hesitation to put on record that the case at hand is the rarest of rare case warranting nothing else but the death penalty to the accused persons. ..." The High Court, by the

> impugned judgment and order, has concurred with the findings recorded by the Sessions Court in respect of the chain of circumstances being clearly and incontrovertibly established by the prosecution. With regard to the balance sheet of aggravating and mitigating circumstances, the High Court has, in addition to the finding and observations of the Sessions Court, held that the aggravating circumstances far outweigh the mitigating circumstances. Therefore, the High Court has recorded that there is no alternative but to confirm the death sentence as awarded by the Sessions Courts.

At this juncture, it would be pertinent to notice the Dhananjoy Chatterjee case (supra). As noticed above, the said case has been noticed by the Sessions Court, in the present case, as bearing great similarity to the facts herein. In the Dhananjoy Chatterjee case (supra), the accused was convicted for the brutal rape and murder of a young girl aged about 18 years. The accused-therein was employed as a security guard of the building where the deceased resided and therefore was entrusted with the noble task of ensuring her safety and security. The reasoning therein has been instrumental in moulding the sentencing policy of this Court and therefore it would be gainful to reproduce the relevant paragraphs from the said case below:

> "15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.
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> 16. The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartment, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature [pic]of the crime has shocked our judicial conscience. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded preplanned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18

> years, by the security guard certainly makes this case a "rarest of the rare" cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302 IPC. The order of sentence imposed on the appellant by the courts below for offences under Sections 376 and 380 IPC are also confirmed along with the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dismissed." It would now be necessary for this Court to consider the balance sheet of aggravating and mitigating circumstances. In the instant case, the learned counsel for the accused-appellants has laid stress upon the age of the accused persons, their family background and lack of criminal antecedents.

Further, the learned counsel has fervently contended that the accused- appellants are capable of reformation and therefore should be awarded the lighter punishment of life imprisonment.

In our considered view, in the facts of the present case, age alone cannot be a paramount consideration as a mitigating circumstance. Similarly, family background of the accused also could not be said to be a mitigating circumstance. Insofar as Accused No.1 is concerned, it has been contended that he was happily married and his wife was pregnant at the relevant time. However, the Accused No.1 did not take into consideration the condition of his wife or his mother while committing the said offence and, as a result, his wife deserted him and his widowed mother is being looked after by his nephew and niece. Insofar as Accused No.2 is concerned, he has two sisters who are looking after his widowed mother. Lack of criminal antecedents also cannot be considered as mitigating circumstance, particularly taking into consideration, the nature of heinous offence and cold and calculated manner in which it was committed by the accused persons.

In our considered view, the "rarest of the rare" case exists when an accused would be a menace or, threat to and incompatible with harmony in the society. In a case where the accused does not act on provocation or on the spur of the moment, but meticulously executes a deliberate, cold- blooded and pre-planned crime, giving scant regard to the consequences of the same, the precarious balance in the sentencing policy evolved by our criminal jurisprudence would tilt heavily towards the death sentence. This Court is mindful of the settled principle that criminal law requires strict adherence to the rule of proportionality in awarding punishment, and the same must be in accordance with the culpability of the criminal act. Furthermore, this Court is also conscious to the effect, of not awarding just punishment, on the society.

In the present factual matrix, Accused No.1 abducted the deceased with help of Accused No.2, and subsequently they raped and murdered her. They did not show any regret, sorrow or repentance at any point of time during the commission of the heinous offence, nor thereafter, rather they acted in a disturbingly normal manner after commission of crime. It has been established by strong and cogent evidence that after the commission of the gruesome crime, Accused No.2 accompanied Accused No.1 for the second pick up and exited the cab only prior to reaching the gate of the Company. Further, it has been brought on record that the Accused No.1 attempted to create false record of the whereabouts of the cab and the cause of the delay in arriving at the workplace. In

addition, it has been noticed that even though the accused-appellants were seen by PW-12, that the deceased repeatedly questioned them of the unusual route, or that the deceased was talking to a friend on the phone during the journey, nothing deterred them from committing the heinous offences. In fact the Sessions Court has noticed that during the commission of the offences, the accused-appellants were contacted by PW-11 seeking an explanation for the delay in picking him up, however even this did not deter them.

Thus, the manner in which the commission of the offence was so meticulously and carefully planned coupled with the sheer brutality and apathy for humanity in the execution of the offence, in every probability they have potency to commit similar offence in future. It is clear that both the accused persons have been proved to be a menace to society which strongly negates the probability that they can be reformed or rehabilitated. In our considered opinion, the mitigating circumstances are wholly absent in the present factual matrix. This appeal is not a case where the offence was committed by the accused persons under influence of extreme mental or emotional disorder, nor is it a case where the offence may be argued to be a crime of passion or one committed at the spur of the moment. There is no question of accused persons believing that they were morally justified in committing the offence on helpless and defenceless young woman. Therefore, in view of the above and keeping the aforesaid principle of proportionality of sentence in mind, this Court is in agreement with the reasoning of the Courts below that the extreme depravity with which the deceased was done to death coupled with the other factors including the position of trust held by the Accused No.1, would tilt the balance between the aggravating and mitigating circumstances greatly against the accused- appellants. The gruesome act of raping a victim who had reposed her trust in the accused followed by a cold-blooded and brutal murder of the said victim coupled with the calculated and remorseless conduct of the accused persons after the commission of the offence, we cannot resist from concluding that the depravity of the appellants' offence would attract no lesser sentence than the death penalty.

In addition to the above, it would be necessary for this Court to notice the impact of the crime on the community and particularly women working in the night shifts at Pune, which is considered as a hub of Information Technology Centre. In recent years, the rising crime rate, particularly violent crimes against women has made the criminal sentencing by the Courts a subject of concern. The sentencing policy adopted by the Courts, in such cases, ought to have a stricter yardstick so as to act as a deterrent. There are a shockingly large number of cases where the sentence of punishment awarded to the accused is not in proportion to the gravity and magnitude of the offence thereby encouraging the criminal and in the ultimate making justice suffer by weakening the system's credibility. The object of sentencing policy should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In the case of Machhi Singh (supra), this Court observed that the extreme punishment of death would be justified and necessary in cases where the collective conscience of society is so shocked that it will expect the holders of judicial power to inflict death penalty irrespective of their personal opinion.

It is true that any case of rape and murder would cause a shock to the society but all such offences may not cause revulsion in society. Certain offences shock the collective conscience of the court and community. The heinous offence of gang-rape of an innocent and helpless young woman by those in

whom she had reposed trust, followed by a cold-blooded murder and calculated attempt of cover-up is one such instance of a crime which shocks and repulses the collective conscience of the community and the court. Therefore, in light of the aforesaid settled principle, this Court has no hesitation in holding that this case falls within the category of "rarest of rare", which merits death penalty and none else. The collective conscience of the community is so shocked by this crime that imposing alternate sentence, i.e. a sentence of life imprisonment on the accused persons would not meet the ends of justice. Rather, it would tempt other potential offenders to commit such crime and get away with the lesser/lighter punishment of life imprisonment.

In the result, after having critically appreciated the entire evidence on record as well as the judgments of the Courts below in great detail, we are in agreement with the reasons recorded by the trial court and approved by the High Court while awarding and confirming the death sentence of the accused-appellants. In our considered view, the judgment and order passed by the Courts below does not suffer from any error whatsoever.

Therefore, this appeal is rejected and the sentence of death awarded to the accused-appellants is confirmed. The judgment and order passed by the High Court is accordingly affirmed.

The appeal is disposed of in the aforesaid terms.

Ordered accordingly.

.....CJI.

(H.L. DATTU) .....J. (S.A. BOBDE) .....J. (ARUN MISHRA) NEW DELHI May 08, 2015.