

A YOGENDRA @ JOGENDRA SINGH

v.

THE STATE OF MADHYA PRADESH

(Criminal Appeal Nos. 84-85 of 2019)

B JANUARY 17, 2019

**[S. A. BOBDE, L. NAGESWARA RAO AND
R. SUBHASH REDDY, JJ.]**

- Penal Code, 1860 – ss.302, 326(A) and 460 – Murder – Conviction and death sentence – High Court affirmed conviction and sentence – Prosecution case was that the appellant threw acid on the victim-deceased which resulted in her death – In the incident, grandmother, nephew and brother of the deceased also received acid burn injuries – Dying declaration was recorded by the Tehsildar – Deceased in her dying declaration stated that the appellant had burnt her by pouring acid on her and that he used to harass her and abuse her on phone – Trial court held appellant guilty for murder and disfiguring and injuring these people by throwing acid – High Court confirmed the conviction and sentence – On appeal, held: Appellant was rightly convicted for causing the death of deceased – All the circumstances of the case and particularly the dying declaration of victim unerringly pointed to the appellant as the one who caused her death beyond any reasonable doubt – The Dying Declaration of the deceased can be given highest probative value and offered a strong foundation for the conviction of the appellant – Crime against women.*
- F Sentence/Sentencing – Death sentence – Appellant threw acid on the victim-deceased which resulted in her death – Whether there were special reasons to award death sentence to the appellant – Held: The term ‘special reasons’ undoubtedly means reasons that are one of a special kind and not general reasons – In the instant case, appellant committed this crime when he was out on bail in another case in which he was convicted for murder and his sentence was upheld – The earlier incident was totally unrelated to the circumstance of this case and took place almost ten years before this incident – This case was related to the appellant being disappointed in his relation with the deceased who he believed*
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deserted him – The circumstance of the case and particularly the choice of acid did not disclose a cold-blooded plan to murder the deceased – It is possible that what was premeditated was an injury and not death – There was no particular depravity or brutality in the acts of the appellant that warranted a classification of this case as ‘rarest of the rare’ – Therefore, the sentence of death imposed by the High Court is set aside and instead the appellant is awarded life imprisonment – Penal Code, 1860 – ss.302, 326(A) and 460.

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Allowing the appeals, the Court

HELD: 1. All the witnesses deposed that the appellant threw acid on them as well. In fact the acid disfigured the face of PW-4. PW 8, the father of the deceased deposed that as soon as he came out from his room on hearing the cries of the deceased he saw the appellant running away from the place. The said evidence amply justified the conviction of the accused beyond any reasonable doubt. The rest of the evidence is consistent, cogent and reliable. The appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. The earlier incident was totally unrelated to the circumstance of this case. The said incident took place almost ten years before the present incident. In the instant case, the incident is related to the appellant being disappointed in his relation with the deceased who he believed deserted him. The circumstance of the case and particularly the choice of acid did not disclose a cold-blooded plan to murder the deceased. Like in many cases the intention seems to have been to severely injure or disfigure the deceased; in this case the intention resulted into an attack more severe than planned which then resulted in the death of the deceased. There was no particular depravity or brutality in the acts of the Appellant that warrants a classification of this case as ‘rarest of the rare’. Therefore, the sentence of death imposed by the High Court is set aside and instead the appellant is directed undergo imprisonment for life. [Paras 7, 8, 9, 11 and 12][252-F-G; 253-A, C-E; 254-G-H; 255-A]

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*Bachan Singh v. State of Punjab (1980) 2 SCC 684;
Machhi Singh v. State of Punjab (1983) 3 SCC 470 :
[1983] 3 SCR 413 – followed.*

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Case Law Reference

(1980) 2 SCC 684	followed	Para 10
[1983] 3 SCR 413	followed	Para 10

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal

B Nos. 84-85 of 2019.

From the Judgment and Order dated 12.12.2014 of the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Ref. Capital No. 1 of 2014 and Criminal Appeal No. 883 of 2014.

C A. Sirajudeen, Sr. Adv., Ms. Minakshi Vij, Ms. Sudesh Kumari, Advs. for the Appellant.

Ms. Vanshaja Shukla, Arjun Garg, Advs. for the Respondent.

The Judgment of the Court was delivered by

S. A. BOBDE, J. 1. Leave granted.

D 2. These appeals are filed against the Judgment of the High Court of Madhya Pradesh, Gwalior Bench, dated 12.12.2014 confirming the death sentence awarded to the appellant by the Sessions Court, Ambah, District Morena (M.P.) vide its judgment in Sessions Trial No.388/2013 dated 24.07.2014. The Appellant has been convicted under sections

E 302,326(A) and 460 of IPC and awarded capital punishment of death sentence, life sentence on three counts and fine of Rs.25,000/-each, and ten years' R.I. and fine of Rs.5000/- with default stipulations, respectively. This death sentence has been confirmed by the High Court on a reference under Section 366 of Cr.P.C.

F The brief facts of the case are as follows: the Appellant has been convicted for the murder of one Smt. Ruby by pouring acid on her. The Sessions Court awarded a death sentence under Section 302 of the IPC. In the incident the grandmother of the deceased Smt. Chandrakala (PW 3) and one Raju - nephew (PW 7) of the deceased and Janu (PW 4)

G brother of the deceased were also injured. The Appellant has been convicted for disfiguring and injuring these people by throwing acid under Section 326(A) of IPC.

H 3. The Sessions Court imposed a fine on the Appellant payable to Smt. Chandrakala, Raju and Janu in the sum of Rs.10,000/- each. The High Court has enhanced the compensation and held that Janu was

entitled to be compensated a sum of Rs. 3 lac and Smt. Chandrakala and Raju who were not so disfigured were held entitled to compensation of Rs. 1.5 lac each. A

4. The deceased Ruby was married to one Mr. Sanjay Gupta and had two issues from the wedlock. The Appellant coveted her and the husband suspected an affair between his wife-the deceased and the Appellant and harassed her accusing her of the same. The deceased thereafter came to live with her maternal uncle. The Appellant pressurized the deceased's father (PW 8) for summoning her to Porsa and threatened him with dire consequences if his demand was not fulfilled. B

On that ominous night in summer, the deceased and her family members went to their respective rooms and retired for the night. The doors were kept open since it was summer. There was light in the rooms and the courtyard from some bulbs. The Appellant snuck into the room of the deceased and warned her "though she doesn't want to live with him he is not going to let her live with anybody else". The father of the deceased, C

Dataram (PW 8) woke up on hearing this and saw the Appellant running away after throwing acid on his daughter. The deceased started screaming, whereupon other family members tried to save her, the Appellant then, threw acid on the other members of the family, burning and injuring all of them. In the attack, the deceased sustained burn injuries to the extent of 90% all over her body while others also sustained burn injuries. D E

5. At this juncture, we would like to note that though we have examined the entire record in detail, we do not consider it necessary to deal with all the aspects of the evidence in this judgment. We are satisfied that the Appellant has been rightly convicted for causing the death of the deceased Smt. Ruby. All the circumstances of the case and particularly the dying declaration of Smt. Ruby, unerringly point, to the Appellant as the one who caused her death. There is no conjecture, surmise or inference in the narration of the witnesses who saw the Appellant in the act and were themselves the victim of his acid attack. F G

6. The evidence, which commends itself as unimpeachable, is as follows: the Appellant fled from the scene of the crime after committing the crime at Porsa on 21.07.2013. He was arrested from Munchkund Dholapur on 11.09.2013. The Investigating Officer has deposed that the H

- A Appellant lead to the recovery of a beer bottle which is said to have been used for carrying the acid used in the attack. The Investigating Officer further deposed that the fingerprints of the Appellant and the fingerprints found on the beer bottle matched. The expert reported that the fingerprints found on the bottle and the fingerprints of the Appellant are of one and the same person.
- B 7. Mansingh Pawak (PW 10) was functioning as a Tehsildar / Executive Magistrate at Porsa. He was called by the Station House Officer, Porsa for recording the Dying Declaration of the deceased and the injured Janu. He clearly stated that the deceased was in a conscious state of mind while giving her statement and also provided her thumb impression on the dying declaration. The deceased in her dying declaration stated that the appellant Jogendra Singh had burnt her by pouring acid on her, she further stated that the Appellant would harass her and abuse her on the phone. The statement of the injured Janu was recorded as a Dying Declaration believing that Janu might not survive. Nonetheless, D the statement is on record and has been duly proved.

We are satisfied that the Dying Declaration of the deceased can be given highest probative value and offers a strong foundation for the conviction of the Appellant. It is not necessary to decide whether Janu's Dying Declaration is admissible because he did not die. Since Janu has E deposed as PW4; we find that the evidence of Janu (PW4), Smt. Chandrakala (PW3) who is the grandmother of the deceased and who also has suffered injuries is consistent and reliable.

All the three witnesses have deposed that the appellant threw acid on them as well. In fact the acid disfigured the face of Janu.

- F PW8, Dataram the father of the deceased deposed that as soon as he came out from his room on hearing the cries of the deceased he saw the appellant running away from the place. We find that the above evidence amply justifies the conviction of the accused beyond any reasonable doubt. The rest of the evidence is consistent, cogent and G reliable.

8. However, the question that remains to be considered is whether there are special reasons as to why the appellant should be sentenced to death. The term 'special reasons' undoubtedly means reasons that are one of a special kind and not general reasons. In the present case there H is one factor, which might warrant the imposition of the death sentence,

as vehemently, urged by the learned counsel for the State. That reason is that the Appellant committed this crime when he was out on bail in another case wherein he has been convicted for murder and his sentence has been upheld. A

It is undoubtedly difficult to ignore this fact but we find that it is safer to consider the imposition of sentence based on the facts of this particular case. Unquestionably, if there is a pattern discernible across both the cases then a second conviction for murder would warrant the imposition of a death sentence. But that does not appear to be so in the present case. The earlier incident is totally unrelated to the circumstance of this case. The appellant was charged along with co-accused one Kiran Nurse for committing the murder of one Laxminarayan alias Laxman Singh in the intervening night of 27.07.1994 and 28.07.1994. The present incident took place on 21.07.2013 and the last one almost ten years before the present incident. B

9. In the case before us, the incident is related to the appellant being disappointed in his relation with the deceased who he believed deserted him. The circumstance of the case and particularly the choice of acid do not disclose a cold-blooded plan to murder the deceased. Like in many cases the intention seems to have been to severely injure or disfigure the deceased; in this case we think the intention resulted into an attack more severe than planned which then resulted in the death of the deceased. It is possible that what was premeditated was an injury and not death. C

10. We have not made the above observation in any way to condone the acts of the appellant but merely to hold that there appear to be no special reasons in the present case that warrants an imposition of a death sentence on the Appellant. In *Bachan Singh v. State of Punjab*¹ this Court held as follows: - F

“209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. “We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society.” Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death G

¹(1980) 2 SCC 684 H

- A *penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."*
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E Following which, this Court in *Machhi Singh v. State of Punjab*² classified instances of rarest of rare cases where death sentence can be justifiably imposed. In para 39, this Court laid down the following tests: -

- F *(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?*
- G *(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?"*

11. We find that there is no particular depravity or brutality in the acts of the Appellant that warrants a classification of this case as 'rarest of the rare'.

H ²(1983) 3 SCC 470

12. Therefore, the sentence of death imposed by the High Court A is set aside and instead the appellant shall undergo imprisonment for life.

13. The Appeals are accordingly allowed.

Devika Gujral

Appeals allowed.