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Manoj Pratap Singh Vs. State

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Court : Rajasthan Jodhpur

Decided On : May-29-2015

Appellant : Manoj Pratap Singh

Respondent : State

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

JUDGMENT
(1) D.B. Criminal Murder Reference No.3/2013 The State of Raj. vs. Manoj Pratap Singh (2) D.B. Criminal Jail Appeal No.854/2013 Manoj Pratap Singh vs. The State of Raj. Against the order dated 28.9.2013 passed by the Special Judge, Protection of Children from Sexual Offences Act Cases, Rajsamand in Sessions Case No.12/2013. Date of Judgment :

29. 5.2015. PRESENT HON'BLE MR. JUSTICE GOVIND MATHUR HON'BLE MISS JUSTICE JAISHREE THAKUR. Mr. J.

P. Bhardwaj, Public Prosecutor for the State. Mr. Kalu Ram Bhati, Counsel for the accused-appellant Manoj Pratap Singh. BY THE COURT:(Per Hon'ble Miss Jaishree Thakur,J.) 1. The learned Special Judge, Protection of Children from Sexual Offences Act Cases, Rajsamand vide order dated 28.9.2013 has convicted accused-appellant Manoj Pratap Singh under Sections 363, 365, 376(2)(f) and Section 302, Indian Penal Code read with Section 6 of the Protection of Children

from Sexual Offenses Act, 2012 (for short 'the POCSO Act,2012') and has imposed punishment of capital punishment.

2. The D.B. Criminal Appeal No.854/2013 has been preferred by the accused against the capital sentence awarded by the learned Special Judge,Protection of Children from Sexual Offenses Act 2 Cases, Rajsamand and D.B. Murder Reference No.3/2013, as per Section 366(1) of the Code of Criminal Procedure, has been filed by the State of Rajasthan for confirmation of the capital punishment awarded by the Special Judge, Protection of Children from Sexual Offenses Act Cases, Rajsamand.

3. The brief facts of the case are that an F.I.R. was lodged on 17.1.2013 at 8.15 p. m. by Smt. Kamla w/o Dharm Das at Police Station, Kankroli, District Rajsamand to the effect that at 6.30 p.m. she was at her fruit and vegetable cart near R.K. Hospital. Her husband Dharm Das along with her father Madan Lal were also present, when Manoj Pratap Singh, who used to reside at Housing Board, came on a motor cycle to buy fruit . Present at the site was also her young 8 year old daughter who was mentally challenged having an IQ of 50% with a permanent physical disability of 70% . The accused Manoj Pratap Singh gave her a chocolate and after a period of ten minutes came back to the stall and took the young daughter away on his motor cycle and went towards Somnath Chauraha. Smt. Kamla, mother of the young girl child called the neighbors and pursued Manoj Pratap Singh but was not able to find him. After lodging of the F.I.R., the police started looking for Manoj Pratap Singh, the accused and he was found at the bus stand at 2 a.m. He was arrested at the Buss stand and an arrest memo was also prepared. Thereafter the accused was 3 brought to the police Station at Kankroli and interrogated. On interrogation, he informed about the death of the young girl Heena Bhatia@Kashish. Based on the information given by the accused,the police along with the father of the deceased Dharm Das and the maternal grandfather Madan lal and others were able to locate the dead body of the young girl Heena Bhatia @ Kashish from Kamla Talai around 3.15 a.m in the morning of 18.1.2013. On finding the dead body, the police prepared a report . On 18.1.2013 at 7.15 a.m., in presence of Shri Madan Lal, Shri Maniraj Singh, Khem Chand, Narandra Singh and Dharm Das , Panchayatnama Ex.P.8 of the dead body was prepared.

As per the report, the deceased had head injuries , injuries on her left eye, injuries on her face ,neck, chest ,hands, stomach, back as well as injuries on her private parts. This report was duly signed in presence of the above noted persons. On 19 .1.2013 , the accused made a disclosure about the the whereabouts of the motorcycle used to abduct the young girl. The police went with a search party including Ajay Singh and Kuldeep Singh to locate the motorcycle. The motorcycle was located which had blood stains on it . Sample of the blood sample was taken and put in a plastic bottle. Thereafter on a disclosure made by the accused the stone was also recovered which had been used to hit the young girl with. The police following due procedure prepared various recovery 4 memos . The police after collecting evidence of various articles, namely, coat, pant, shirt, underwear, blood sample of Manoj Pratap Singh ,and Pajami, Blood from motor cycle, control swab, frock, blood smeared soil, control soil, vaginal swab, vaginal smear and the blood sample of Kumari Kashish sent the same for a D.N.A. examination to the State Forensic Science Laboratory, Jaipur on 21.1.2013 .The police also sent the body of deceased Kashish for post mortem to District Hospital, Rajsamand and the Medical Board .

4. After completing necessary investigation, a charge-sheet was filed by the police before the competent court and the case was committed to the court for trial for commission of offenses under Sections 363, 365, 376(2)(f) and Section 302, Indian Penal Code as well as under Section 6 of the Protection of Children from Sexual Offence Act,2012. The accused claimed he was innocent and claimed trial.

5. The prosecution led its evidence and examined 25 witnesses in all, including the doctors who conducted the postmortem and the Investigating Officer, Arresting Officer. After recording the evidence of the witnesses and exhibition of documents, an opportunity was given to the accused to defend himself. His statement under Section 313 of the Code of Criminal Procedure was recorded on 25.6.2013 and the accused refuted all questions put to him and claimed that all allegations were 5 untrue and that he was being falsely implicated. On 13.9.2013, a specific question was put to him as to whether he want to adduce any evidence in self defence, but he stated that he did not want to lead any evidence.

6. The learned Special Judge,Protection of Children from Sexual Offences Act Cases, Rajsamand, after hearing the counsel for the parties and going through the evidence, came to the conclusion that the appellant Manoj Pratap Singh was guilty of committing offences under Sections 363, 365, 376(f) and Section 320, Indian Penal Code read with Section 6 of the Protection of Children from Sexual Offence Act, 2012 and awarded capital punishment to the accused. Being aggrieved by the judgment and order dated 28.9.2013, the accused Manoj Pratap Singh preferred the instant D.B. Cr. Appeal No.854/2013, whereas the State filed the present D.B. Murder Reference No.3/2013 seeking confirmation of the death sentence awarded.

7. Mr. Kalu Ram Bhati, counsel appearing for the accused- appellant Manoj Pratap Singh has argued that the accused- appellant has been falsely implicated in the case and that there was no motive forthcoming. He has also argued that the death sentence awarded is severest punishment and the same should be set aside.

8. Per contra, Mr. J.P. Bhardwaj, learned Public Prosecutor 6 appearing for the State has argued that there is an ample evidence on record to show and connect the accused has committed a heinous crime of a brutal rape and subsequent murder of a young girl aged 8 years old , who was not mentally sound with a diminished capacity of understanding but was also physically handicapped with a permanent disability of 70% and as such it is a crime against the society at large. It has further been argued that there are no mitigating circumstances forthcoming to show any leniency to the accused and, therefore, the learned Public Prosecutor appearing for the State has urged and prayed for the confirmation of the death sentence awarded to the accused under the judgment dated 28.9.2013.

9. We have heard the learned counsel for the appellant as well as the learned Public Prosecutor for the State and gone through the evidence on the record with their able assistance.

10. On 17.1.2013, accused-appellant Manoj Pratap Singh took the young girl Kashish on his motor cycle and sped away towards Somnath Chauraha. The mother of the young girl Smt. Kamla raised an alarm and went to look for her but was unable to find either Manoj Pratap Singh or her young daughter. She

immediately went and lodged a complaint at the Police Station, Kankroli, District Rajsamand. An F.I.R. No.16/2013 came to be lodged at the Police Station, Kankroli, District Rajsamand 7 on a statement made by the mother of the deceased Kashish. Based on the F.I.R., the police and the Investigating Office started looking for accused Manoj Pratap Singh and he was ultimately found at the Bus-stand Kankroli at about 2 am. An arrest warrant was duly prepared which is Ex. P. 5 on the record. Pursuant to arrest of Manoj Pratap Singh and subsequent interrogation, the appellant made a disclosure to the police that the body of the young girl would be found at Kamal Talai and that he would be able to take the police to the said location. Based on this information, the Investigating Officer along with the father and maternal grand-father of Kumari Kashish went with the Investigating Officer and found the dead body of Kashish. A report was prepared and ultimately the body was sent for postmortem.

11. PW-1 Smt. Kamla has stepped into the witness-box and stated that her eight years' old girl Kashish@Heena was abducted by Manoj Pratap Singh and taken away on his motor cycle. She thereafter went to look for her daughter but could not locate her and went to lodge a report at the Police Station. Similar is the statement of PW-2 Dharm Das, father of the deceased Kashish and PW-3 Madan Lal, maternal grand-father of the deceased Kashish. PW-5 Maniraj Singh has corroborated the statements made by PW-1 Smt. Kamla, PW-2 Dharm Das and PW-3 Madan Lal to the effect that accused Manoj Pratap Singh 8 came on his motor cycle and put Kashish on the same and took her towards Somnath Chauraha. He also corroborated the fact that the parents of Kashish collected people in the locality and went after the motor cycle looking for the young girl but could not locate them. He also stated that he went along with Dharm Das and Madan Lal to look for the body of Kashish and identified his signatures on the Panchayatnama (Ex.P.8). He also identified his signatures on Ex.P.9 which is the memo of recovery of blood stained clothes of the deceased.

12. PW-6 Khem Chand has stated that the police made a map of site in question which is Ex.P. 3 on the record on which he identified his signatures and also identified his signatures on Ex.P. 8 Panchayatnama prepared by the police. PW-7 Kuldeep Singh accompanied the police on 19.1.2013 along with PW-8 Ajay Singh

and Manoj Pratap Singh who guided the police to where the motor cycle was parked. As stated by PW-7 Kuldeep Singh, the indicator of the motor cycle was broken. It is is also stated that there was blood on tank, panel, silencer of the motor cycle. The motor cycle was seized thereafter and the sample of the blood was taken and sealed in a plastic bottle. Seizure Memo Ex.P.16 was prepared and he identified his signatures on the memo. The witness PW-7 Kuldeep Singh has also stated that on 21.1.2013, on a disclosure made by the accused, he along with Ajay Singh accompanied police and the accused to 9 the area where he had hidden stone used to smash the head of the deceased . He also identified his signatures on Ex.P.23. PW-10 Laxman Singh and PW-11 Mukesh Kumar have deposed to the effect for sending the blood samples and blood stained clothes to the State Forensic Science Laboratory.

13. PW-14 Dr. Manju Purohit, who has stepped into the witness box, proved the postmortem report Ex.P. 35 which shows that there was an ante mortem rape done. and cause of death is head injuries. PW-15 Dr. Kailash Chand has stepped into the witness box and stated that the deceased had been subjected to great cruelty at the time of committing rape and the subsequent murder thereafter.

14. PW-20 Ganesh Nath is the Investigating Officer, who has stated that he along with father and maternal grand-father of the deceased looked for the accused Manoj Pratap Singh and arrested the accused from the Bus-stand, Kankroli. After arrest, the accused was brought to the Police Station. It was found that Manoj Kumar Singh's clothes had blood stains on it. A report Ex.P. 6 was prepared and coat, underwear jeans which had the blood stains, were taken and put in a sealed bag and seizure memo Ex.P. 6 was prepared which had signatures of the accused on it. Accused Manoj Pratap Singh also disclosed whereabouts of the dead body of deceased. The witness PW-20 Ganesh Nath has deposed about the preparation of the various 10 seizure memos.

15. PW-21 Dr. Chetna Vaishnav is another doctor who has proved the postmortem report Ex.P. 35 and also gave a statement that before the death of the deceased, she was brutally raped and died on account of head injury. PW-22 Dr. Satish Singhal is a doctor who took the blood sample of the accused.

16. The accused was questioned under Section 313 of the Code of Criminal Procedure and he refused to lead any evidence in support of his defence. He only claimed that he had been wrongly framed and that he was not guilty.

17. The statements recorded and the evidence, clearly show and indicate that Manoj Pratap Singh took young Kashish on his motor cycle and headed towards Somnath Chauraha. It was only his disclosure that the body of the deceased Kashish was found at Kamal Talai. Again it was on his disclosure that the motor cycle used for abducting the deceased was located as well as the stone used to hit her on the head. The postmortem report conducted narrates the physical condition of the victim. As per the statement of doctors who conducted the postmortem and were part of the Medical Board, the deceased was subjected to great cruelty at the time of committing rape. As per the evidence of Dr. Chetna Vaishnav (PW-21), member of the Medical Board, the following injuries were found on the body of the deceased:- 11 1. Multiple abrasions and bruises on the head of deceased, 2. Lacerated wound of 5x1 cm in between both eyebrows. There was fracture of frontal bone below the wound 3. Haematoma in preauricular area of 10x8 of right ear.

4. Bruises all around the left ear and on pinna.

5. Bruise of 5 x 3 cm below left maudible and below corner lip of 2 x 1 cm.

6. Multiple abrasions on both cheeks.

7. Multiple abrasions on both sides and front of neck.

8. Multiple abrasions and bruises on front, back top of shoulders of both sides.

9. Multiple abrasions on front and back chest, specially on prominent bony areas.

10. Multiple abrasions on suprapubic region extending upto both iliac fossa.

11. Multiple abrasion on upper anterior and lateral parts of both thighs.

12. Abrasion of 7x5 cm on lateral side of right knee joint.

13. Multiple abrasions on and around left knee joint.

14. Haematoma on occipital region of 5x5 cm 15. On examination of vagina, her hymen was found to be having recent signs of ruptures.

16. 2/3rd part of lower side of vagina of the deceased and posterior and lateral side were found completely torn.

17. Second degree perineal tear, i.e., the outer skin in between vagina and anus of the deceased was found completely torn.

18. Blood was found all around the upper and interior portion of thigh and all around the vagina.

18. The D.N.A. Report which is Ex.P. 51 on the record, shows that the same D.N.A. of female profile, namely of the deceased was obtained from Ex.1 coat, Ex.2 pant, Ex.3 shirt, Ex.4 underwear. Also to be noted is the statement of the investigating officer that when the accused was apprehended he had blood stains on his clothing and the same were sent for DNA examination. The matching of the blood group gains 12 signification in such a circumstance. The incriminating articles, namely, the clothes and the blood group matching is an important circumstance showing complicity of the appellant in the crime in question. The conclusion of the DNA report, Ex.P. 51 reads as under:- The DNA test performed on the exhibits is sufficient to conclude that the DNA profile obtained from Exhibit No.1(Coat), 2(pant), 3(shirt), 5(pajami), 6 (Blood from Motor Cycle), 8(Frock), 12(Vaginal Swab), 13(Vaginal Smear) is matching with the DNA profile of Exhibit No.14(Blood sample of Ku. Kashish).. 19. In C. Chenga Reddy v. State of A.P(1996) 10 SCC193it has been held that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature, moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. That apart, the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence.

20. In the present case we find that there is enough circumstantial evidence to link and prove that accused Manoj Pratap Singh had committed a brutal and heinous crime of rape upon young girl of who was only 8 years old .The mother of deceased saw him taking the young girl away on his motorcycle and she immediately raised a hue and cry about it. She along with other 13 tried to locate the accused and on failing to find her young daughter she went and lodged an FIR at the Police station. The police arrested the accused from the bus station at Kankroli and brought him to the police station and interrogated him. It was on the disclosure made by the accused himself that the body of the deceased was found. The subsequent disclosure made by the accused led to the recovery of the motor cycle which was used to take the deceased away. Again it as on the disclosure made by the accused that the stone was recovered which he had used to hit the deceased on the head with. The recovery took place in consequence of the information supplied by the accused and the seizure reports were duly witnessed . The witnesses have supported the seizure reports and there is nothing on the record to discredit their testimony.

21. Taking all the evidence into account, we are of the opinion that the circumstances which have been clearly established are : that the appellant was seen taking the deceased on his motorcycle ; that the appellant had led to discovery of the dead body of the deceased , the place where he kept his motorcycle which had blood stains of the deceased on it ; at his instance the stone smeared with blood was recovered; that the medical report clearly indicates about the injuries sustained by the deceased on her body; that the injuries sustained on the private parts have been stated by the doctor to have been caused by 14 forcible sexual intercourse; that the chemical analysis report links the accused with the crime ; that the appellant has not offered any explanation with regard to the recovery made at his instance; other than a bald statement that he was not guilty, the accused has not any evidence either to discredit the prosecution witness or to establish his innocence: and that nothing has been stated in his examination under Section 313 Cr.P.C that there was any justifiable reason to implicate him in the crime in question. Thus, we find that each of the incriminating circumstances has been clearly established and the chain of events are conclusive in nature to exclude any other kind of hypothesis, but the one proposed to be proved, and lead

to a definite conclusion that the crime was committed by the accused.

22. Therefore, finding no infirmity in the judgment under challenge , we affirm the judgment given by the learned trial Judge and dismiss the appeal filed by the accused Manoj Pratap Singh.

23. The question for consideration is whether the capital punishment should be confirmed or not in the given circumstances?. The counsel for the appellant would argue that the case does not fall with the purview of the rarest of rare cases and in the absence of any criminal record he should be shown leniency especially when he was married and had a young family of his own. It was 15 argued that the appellant could be rehabilitated and that the punishment of a life sentence would suffice. Per contra the counsel for thje State has pressed for upholding the order passed by the sessions Court.

24. We have given our careful submission to the arguments advanced and also to the evidence on the record . In Bachan Singh v. State of Punjab, AIR 1980 SC898 the Apex Court held that the normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. But the court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence. It was also held that if the court finds that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.

25. In the case of Machhi Singh and Others v. State of Punjab, (1983) 3 SCC470a three-Judge Bench explained the concept of rarest of the rare cases by stating that:- ".The reasons why the community as a whole does not endorse the humanistic approach reflected in 'death sentence-in-no-case' doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of 'reverence for life' principle. When a member of the community violates this very principle by 16 killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realised that every member of the community is able to live with safety without his or her own

life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent for those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection."

26. In the case of Ramnaresh Vs State of Chattisgarh (2012) 4 SCC257the Apex Court referred to the two judgments as rendered in Bachan Singh (Supra) and Macchi Singh (Supra) and culled out what would be deemed as aggravating circumstances and mitigating circumstances: 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. (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. 17 (4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits. (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 Cr.P.C. (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 18 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. (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 behavior 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 behavior 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 pre-ordained 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 eye-witness though prosecution has brought home the guilt of the accused.. 40. While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence. 19 Principles : (1) The Court has to apply the test to determine, if it was the rarest of rare case for imposition of a death sentence. (2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice. (3) Life imprisonment is the rule and death sentence is an exception. (4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations. (5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

41. Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting

to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties. 20 42. The Court then would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. In other words, the doctrine of proportionality has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.. 27. In Rajendra Pralhadrao Wasnik v. State of Maharashtra (2012) 4 SCC37 the appellant was awarded sentence of death by the learned trial Judge which was confirmed by the High Court, for offenses punishable under Sections 376(2)(f), 377 and 302 IPC. The accused had lured a three year old minor girl child on the pretext of buying her biscuits and then raped her and eventually being apprehensive of being identified, killed her. The Apex Court ruled thus: ".When the Court draws a balance sheet of the aggravating and mitigating circumstances, for the purposes of determining whether the extreme sentence of death should be imposed upon the accused or not, the scale of justice only tilts against the accused as there is nothing but aggravating circumstances evident from the 21 record of the Court. In fact, one has to really struggle to find out if there were any mitigating circumstances favouring the accused. Another aspect of the matter is that the minor child was helpless in the cruel hands of the accused. The accused was holding the child in a relationship of trust-belief".and confidence",in which capacity he took the child from the house of PW2 In other words, the accused, by his conduct, has belied the human relationship of trust and worthiness. The accused left the deceased in a badly injured condition in the open

fields without even clothes. This reflects the most unfortunate and abusive facet of human conduct, for which the accused has to blame no one else than his own self."

28. Mr. Kalu Ram Bhati, counsel appearing for the appellant has relied upon a case which is reported as Devi Lal vs. State of Rajasthan, D.B. Criminal Murder Reference No.01/2012 decided by Division Bench of this Court on 30.1.2013 to contend that there are mitigating circumstances and the death penalty should be commuted to life imprisonment.

29. In another case reported as State of T.N. V. Suresh and Another,(1998) 2 SCC372 the Court unsettled the judgment of acquittal recorded by the High Court and found that the accused was guilty of rape of a pregnant woman and also murder. While awarding the sentence of life imprisonment, the Court expressed the view:- " The above discussion takes us to the final conclusion that the High Court has seriously erred in upsetting the 22 conviction entered by the Sessions Court as against A-2 and A-3. The erroneous approach has resulted in miscarriage of justice by allowing the two perpetrators of a dastardly crime committed against a helpless young pregnant housewife who was sleeping in her own apartment with her little baby sleeping by her side and during the absence of her husband. We strongly feel that the error committed by the High Court must be undone by restoring the conviction passed against A-2 and A-3, though we are not inclined, at this distance of time, to restore the sentence of death passed by the trial court on those two accused". From the aforesaid authority, it is seen that the Court did not think it appropriate to restore the death sentence passed by the trial court regard being had to the passage of time. After perusal of the judgments, we find that these cases are not applicable to the facts and circumstances of the present case.

30. In a recent case reported as Vasant Sampat Dupara v. State of Maharashtra, (2015) 1 SCC253 the Hon'ble Apex Court confirmed the death sentence awarded to the accused. The accused took the deceased after luring the young girl on the pretext of giving her a chocolate. He took the deceased from the place to place on a bicycle and eventually raped her in brutal manner. The injuries caused on the

minor girl showed that he had battered her to death by assaulting her with two heavy stones. The injured minor girl who was aged four years, was not in a position to any kind of resistance. Holding the act 23 as barbaric in nature, the Hon'ble the Apex Court held that the criminality of the accused was not only depraved and degraded, but would effect of the society. Confirming the death sentence, the Hon'ble Supreme Court held that :

58. In the case at hand, as we find, not only the rape was committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a girl child and the soul of the society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner. Indubitably, these go a long way to establish the aggravating circumstances.

59. We are absolutely conscious that mitigating circumstances are to be taken into consideration. Learned counsel for the appellant pointing out the mitigating circumstances would submit that the appellant is in his mid fifties and there is possibility of his reformation. Be it noted, the appellant was aged about forty-seven years at the time of commission of the crime. As is noticeable, there has been no remorse on the part of the appellant. There are cases when this Court has commuted the death sentence to life finding that the accused has expressed remorse or the crime was not pre-meditated. But the obtaining factual matrix when unfolded stage by stage would show the premeditation, 24 the proclivity and the rapacious desire. Learned counsel would submit that the appellant had no criminal antecedents but we find that he was a history-sheeter and had number of cases are pending against him. That alone may not be sufficient. The appalling cruelty shown by him to the minor girl child is extremely shocking and it gets accentuated, when his age is taken into consideration. It was not committed under 6 4 any mental stress or emotional disturbance and it is difficult to comprehend that he would not commit such acts and would be reformed or rehabilitated. As the circumstances would graphically depict, he would remain a menace to the society,

for a defenceless child has become his prey. In our considered opinion, there are no mitigating circumstances.

60. As we perceive, this case deserves to fall in the category of rarest of the rare cases. It is inconceivable from the perspective of the society that a married man aged about two scores and seven make a four year minor innocent girl child the prey of his lust and deliberately cause her death. A helpless and defenceless child gets raped and murdered because of the acquaintance of the appellant with the people of the society. This is not only betrayal of an individual trust but destruction and devastation of social trust. It is perversity in its enormity. It in variably invites the extreme abhorrence and indignation of the collective. It is an anathema to the social 6 5 balance. In our view, it meets the test of rarest of the rare case and we unhesitatingly so hold.. 31. In Criminal Appeal No.1439 of 2013-Purushottam Dashrath Borate and anr. v. State of Maharashtra decided 25 on 8.5.2015, the Hon'ble Supreme Court upheld the death sentence awarded. In this case, the deceased was working in a Company in Pune, where she used to work in the night-shift from 11.00 p.m. to 9.00 a.m. The Company arranged for a private cab service to transport its employees from their residence to the workplace and back. 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, in case a female employee was being transported. On the fateful day, the deceased was picked up from her residence. The accused being a cab driver hatched a conspiracy with another to abduct her and take her to a secluded spot where they committed heinous offence of gang rape and thereafter murdered her by means of strangulation with her own 'odhani', slashing her wrist with a blade and smashing her head with a stone. After stripping the deceased of her possessions and money, they left the body of the deceased in the field. The trial court after going into the evidence, awarded a death sentence which was confirmed by the High Court. In appeal, the counsel appearing for the accused-appellants led stress on the age of the accused- persons, their family background and lack of criminal antecedents and, pleaded that that the accused-appellants are capable of reformation and, therefore, they should be awarded 26 the lesser punishment of life imprisonment. The Hon'ble Supreme Court held that age alone cannot be a paramount consideration as a mitigating circumstances. It

was held by the Hon'ble Apex Court that:-

34. 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 39 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.. 36. 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 27 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 a helpless and defenceless young woman.. 32. In the case in hand, there are no aggravating circumstances or mitigating circumstances put forth to award a lesser punishment than what has been awarded by the Sessions Court. The accused after giving a chocolate to a young girl aged 8 years, who not only was having permanent disability of 70% but also having I.Q. of 50% , abducted her and took her away on a motor cycle. Thereafter, he committed a heinous crime of not only brutally raping her , but also hit her head against the silencer of the motorcycle as well as with her stone causing her daeth. It is evident from the statement made by the doctor who had conducted the postmortem that the young deceased tried to resist the rape but there was no compassion shown at all. The plea raised by the learned counsel

appearing for the accused that leniency should be shown since the accused was a young man with a family, cannot be said to be a mitigating circumstance at all. The accused after brutally raping her, hit her head against the motorcycle and then used a stone to smash her head and tried to flee that very night itself. The heinous offence of brutal rape on a helpless young girl followed by a 28 cold-blooded murder and calculated attempt to cover-up the said incident shocks and repulses the conscience of this Court and the community. Placing reliance upon the settled principles as enumerated by the Apex Court in several judgments, this Court has no hesitation in holding that this case falls within the category of rarest of rare cases and upholds the judgment passed by the Sessions Court. In our opinion, the judgment passed by the Sessions Court suffers from no error.

33. Therefore, the D.B.Criminal Murder Reference No.3/2013 preferred by the State of Rajasthan is allowed affirming the judgment and order passed by the learned Sessions Judge dated 28.9.2013. The death sentence awarded is confirmed. D.B.Criminal Jail Appeal No.854/2013 filed by the accused- appellant Manoj Pratap Singh is hereby dismissed. (JAISHREE THAKUR),J (GOVIND MATHUR),J.

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