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Inclination of Judges to Sentence Death Penalty in Cases of Murder Involving Sexual Offence

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ABSTRACT

The topic may not be justified, but based on data from the last few years, the statement appears to be correct. The article is based on the observation of a shift in the pattern of judgment pronouncement. In 2018, trial courts imposed the death penalty on 162 people, which is higher than the 102 people sentenced to death in 2019. However, the proportion of death penalties imposed for sexual offenses increased in 2019. In 2016, trial courts imposed the death penalty on 150 people, 27 of whom were convicted of murder or sexual offenses. In 2017, the trial court imposed 108 death sentences, 43 of which were for murder and sexual offenses. In 2018 it was 67 out of 162, and in 2019 it was 54 out of 102.

Keywords: capital punishment, sexual offences, rarest of rare.

I. INTRODUCTION

The said increase in the number of capital punishment sentences in cases of murder involving sexual offenses has been observed in both High Courts and the Supreme Court. In 2019, the Supreme Court commuted 56 cases and confirmed 26 others. Murder and sexual offense cases accounted for 65.38 percent of those commuted. In contrast, the Supreme Court commuted 17 cases and confirmed 6 others. In 2019, the Supreme Court upheld the highest number of death penalty cases in the previous four years. In contrast, 64.71% of death sentences commuted by the Supreme Court were for murder with sexual charges. 57.14% of the confirmed cases were murders involving sexual offenses².

What could be the cause of such an increase in the number of death sentences, particularly in murder cases involving sexual offenses? Whether the Supreme Court is more concerned with the outcry of society for the offense that endangers the soul's peace. As the topic itself suggest the cases are rarest of rare but the animal lust of an accused made him so blind that he failed to resist himself from rapping a 2-year-old girl. In many cases, the victim was raped and did not see a single summer of her life. Children cry, but no one ever imagined that such heinous crimes

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² <https://www.project39a.com/annual-statistics>

would be the cause of their last cry, and that they would then be silent forever. In the previous line, the researcher mentioned an expression of emotion in relation to such an incident. However, knowing the law, one cannot decide cases based on one side's story. Judges must follow all of the procedures outlined in the law. A person's personal opinion may lead to the gallows of an innocent person. The data presented above clearly shows that the number of cases involving murder and sexual offenses has increased, which could explain the rise in the number of confirmed such cases.

II. POSSIBLE REASONS

Act to Protect Children from Sexual Offenses (Amendment), 2019. The above-mentioned act was passed by the parliament on August 5, 2019. Section 6 of the POCSO 2012 increased the minimum sentence from ten to twenty years. Prior to the amendment, there was no capital punishment for aggravated penetrative sexual assault, but it has now been introduced. It is easily demonstrated that the Supreme Court may have leaned toward such cases for death penalty sentencing as a result of such amendment, but all of the cases that have been either commuted or confirmed by the Supreme Court for death penalty were those when this amended act was not enacted. The majority of the cases involved incidents that occurred in 2012 or earlier.

Did new amendment of 2019 make Judges inclined for sentencing death penalty?

This can be answered by reviewing the most recent Supreme Court decision of 2019, in which the death penalty was upheld by three judge benches in a 2:1 majority. On October 3, 2019, the Supreme Court confirmed the death penalty in *Ravi v. State of Maharashtra*³. In this case, the accused enticed a 2-year-old girl from his neighbor by offering her candies. He then took the deceased victim to his home and sexually assaulted her. He even had unnatural sexual relations with the victim. The victim suffered multiple injuries and died as a result of throttling, according to the post-mortem report.

Majority Justices Rohinton Fali Nariman and Surya Kant held this case as one of the rarest of rare case and fit for death penalty. Supreme court while referring *Manoharan v. State by Inspector of Police, Variety Hall Police Station, Coimbatore*⁴ observed The minimum sentence for an aggravated penetrative sexual assault has been thus increased from 10 years to 20 years and imprisonment for life has now been expressly stated to be imprisonment for natural life of the person. Significantly, 'death sentence' has also been introduced as a penalty for the offence of aggravated penetrative sexual assault on a child below 12 years. The Legislature has

³ Criminal Appeal Nos. 1489 of 2018

⁴ (2019) SCC Online 951,

impliedly distanced itself from the propounders of “No-Death Sentence” in “No Circumstances” theory and has re-stated the will of the people that in the cases of brutal rape of minor children below the age of 12 years without murder of the victim, ‘death penalty’ can also be imposed. In the Statement of Objects and Reasons of amendment, Parliament has shown its concern of the fact that “in recent past incidents of child sexual abuse cases administering the inhuman mindset of the accused, who have been barbaric in their approach to young victim, is rising in the country.” If the Parliament, armed with adequate facts and figures, has decided to introduce capital punishment for the offence of sexual abuse of a child, the Court hitherto will bear in mind the latest Legislative Policy even though it has no applicability in a case where the offence was committed prior thereto. The judicial precedents rendered before the recent amendment came into force, therefore, ought to be viewed with a purposive approach so that the legislative and judicial approaches are well harmonized.

While on the other hand Justice R. Subhash Reddy Dissenting with view taken by majority, commuted the Death penalty into life imprisonment by observing that the present case does not fall under the rarest of rare case. Although the offence was very brutal and heinous, but it cannot be ignored that at the time of commission of offence the accused was under the influence of alcohol. Justice R. Subhash Reddy Dissenting further observed that “I am conscious of recent amendments carried out to the Protection of Children from Sexual Offences Act, 2012 (for short ‘POCSO Act’), by way of Protection of Children from Sexual Offences Amendment Act, 2019. By virtue of the said amendments, taking note of increasing trend of crimes against the children, minimum sentence is increased for various offences and for offence under Section 6 of the Act i.e. aggravated penetrative sexual assault, minimum imprisonment, which shall not be less than 20 years, which may extend to natural life or penalty of death. Prior to the amendments made by recent amending Act of 2019, for offence under POCSO, death penalty was not provided. By virtue of the amendments made in appropriate cases, for offences falling under provisions of the POCSO Act alone, a penalty of death sentence can be imposed. In the case on hand, the offence was committed prior to coming into force, of the Act”⁵. Similarly, in *Manoharan v. State of Tamil Nadu* 2019 Supreme Court three Judge bench with majority of 2 mentioned the amended Act of 2019 In these two cases of murder involving sexual offences (Ravi and Manoharan), the Court, while deciding appropriate punishment, relied on the amendment to POCSO Act 2012, which introduced the death penalty for penetrative sexual assault on children. This Amendment does not have retrospective application and did not govern the adjudication of either case. However, the majority relied on the public policy reflected through this legislative

⁵ Criminal Appeal Nos. 1489 of 2018 SC page 74 para 32.

trend to confirm the death sentence. The dissenting opinion in both these cases, by Reddy J. and Khanna J., observed that these cases were not adjudicated under the POCSO Amendment and that individualized sentencing should take priority over inapplicable legislative policy⁶. Above mentioned case very much clears that there is some possibility that such inclination may be because of the recent amendment of 2019 in POCSO Act.

Before 2018 there was no death penalty for rape accused, irrespective of the age of victim. Neither the brutality nor the gruesomeness could have lead capital punishment in case of Rape. Either it was committed by an accused or by gang no option for capital punishment was there. Now society has lost its peace because of repetition of such crime. In fact, out of 102 capital punishment imposed by the trial court 54 were of those including sexual offence with murder and out of these 54, the age of victim was below 12 years in 40 cases. Mentality of few people who declares girl with short clothes guilty for the incident in which she is victim have been slapped by the data presented. In 2018 Criminal law amendment took place and various provisions added in Indian penal Code 1860 few of them are as follows.

Section 376AB Punishment for rape on woman under twelve years of age - Whoever, commits rape on woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death. Section 376DB Punishment for gang rape on woman under twelve year of age- where a woman under twelve year of age is raped by one or more person constituting a group or acting in furtherance of a common intention, each of those persons shall be deemed to have committed the offence of rape and shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine, or with death. So above two sections now have option of death penalty in the case of rape with minor of below 12 years of age. Else of this, last year POCSO Act was also amended. The Parliament enacted the Protection of Children from Sexual Offences (Amendment) Act on 5 August 2019. This amendment provides death penalty as the maximum and 20 year as the minimum punishment in cases of aggravated penetrative sexual assault under Section 6 of the said Act. It is not that only above-mentioned provisions made Judges to sentence death penalty in particular type of case. In 2013 when no such amendment was there even at that time also court had imposed death sentence in cases of murder involving rape. In 2019 supreme court remitted two case one of them was Anokilal v. State of Madhya Pradesh⁷. In this case a 9-year-old girl was kidnapped

⁶ Project 39a Annual Statistics Report 2019.

⁷ Criminal Appeal Nos. 609-610 of 2019.

on 30-01-2013 after two days later she was found dead and further medical examination revealed sexual assault. Body was found on 01-02-2013 and accused was arrested on 04-02-2013. Police filed charge sheet on 13-02-2013 and case was committed to session court on 19.02.2013 for framing of charges. No advocate appeared for appellant. On 18-02-2013 advocate was appointed by legal services authority to represent appellant on 19-02-2013. On 19-02-2013 that advocate did not appear due to which another advocate was appointed on the same day and on that day only charges were framed against appellant for offence committed. In next seven days that is by 26-02-2013 all 13 prosecution witnesses were examined. On 04-03-2013 court pronounced the Judgement and imposed death penalty. High court affirmed the view taken by the trial court and upheld death sentence.

3 Judge bench of Supreme Court observed that “The approach adopted by the Trial Court, in our view, may have expedited the conduct of trial, but did not further the cause of justice. Not only were the charges framed the same day as stated above, but the trial itself was concluded within a fortnight thereafter. In the process, the assistance that the appellant was entitled to in the form of legal aid, could not be real and meaningful”⁸. Further observed “The concluding paragraphs of the judgment of the Trial Court show that the entire trial was completed in less than one month with the assistance of the prosecution as well as the defense, but, such expeditious disposal definitely left glaring gaps”. Court held that de novo trial will take place and set aside the judgment of trial court and of High Court. One interesting fact about the above discussed case is that this case was initiated within 2 month of Nirbhaya Rape case. That was the time when whole country was under anger and sorrow. Public hue and cry were such that each media covered this incident and subsequently many protests were going on. No doubt parliament was under pressure of such hue and cry of the people. But this case shows that Judge was also affected by such outcry and this was visible in his Judgement too. Speedy trial is need of fair trial but speedy trial without following required procedure with their purposive interpretation does not secure the ends of justice.

Instead of such amendments and Judgements pronounced crimes in such offences are increasing day by day. In 2019 only when supreme court confirmed 6 capital punishment, the heinous crime was continuously increasing. In Hyderabad a 25 year of woman was raped, killed and later burnt. This incident took place almost 8 years after of Nirbhaya Rape case. People were still demanding the death penalty of those accused and this incident happened. Again, the whole nation was protesting the incident. On 06-12-2019, police took all the four accused at crime site

⁸ Criminal Appeal Nos. 609-610 of 2019 para 15 page 24.

for investigation and alleged that accused tried to run in furtherance of which they attacked police. In their defense police fired and all accused were killed. Public at large appreciated the encounter without knowing the legality of the same. They said on social media that this is what police of all the state should do with the accused of such crime. If encounter could be the only measure for justice, then courts would have not been established. On that very day after few hours later when people of nearby places came to know about the incident, they did shower of roses on the cops standing there. They were appreciating their conduct. This picture was stating various facts of the present society that people are happy to see accused of such offence dead irrespective of legality of any action. They still believe in the theory of an eye for an eye, they are not ready to wait for justice from judiciary because of various reasons and delay is one of those. There have been various cases in which an alleged accused of murder and rape has been acquitted due to false acquisition. There could be a little possibility that any of those may not be death sentenced by court, but this encounter closed all the doors of hope for their family member too. On the very same day that is 06-12-2019 when this encounter took place, a rape victim died in Uttar Pradesh. This is the Unnao Rape Case in which a 20-year-old girl was gang raped in March of the same year. The accused were free on bail and on 05-12-2019 they put her on fire, so which resulted in 90% burning and later she succumbed to that. In the morning people were celebrating the encounter and by the evening they were demanding the same encounter from the Uttar Pradesh Government. This is quite unfortunate for Indian judiciary system that people are happy with such action of police without going through the serious consequences. Somehow if public blames judiciary, then it is not the only body to be blamed the state is equally responsible for working of law system. It is police who came in connection of the criminal incident from the very first stage. Police conduct investigation and gathers all the evidence and witness related to the case. A judiciary place rule only to apply its judicial mind on the matter presented before him. Best a Judge can do is that he can ensure fair trial and proceed on the values of rule of law by keeping constitutional rights of society at large and of an individual at a same time.

Recently Supreme Court acquitted alleged accused in case of murder involving sexual offence. Supreme court on 05-03-2019 in case *Ambadas Laxman Shinde and Ors. v. State of Maharashtra*⁹. In this case 5 people were killed and a woman was gang raped by 6 accused. Trial court sentence death penalty to all the 6 accused and high court held capital punishment only for 3 accused and alter the sentence of remaining 3 accused to life imprisonment. Supreme court acquitted all the accused related to the offence while observing: "From the above facts and

⁹ Criminal Appeal Nos. 1008-1009 of 2007 with Criminal Appeal Nos. 881- 882 of 2009 with Criminal Appeal Nos. 268-269 of 2019

circumstances of the case, it has emerged that there was no fair investigation and fair trial and the fundamental rights of the accused guaranteed under Articles 20 and 21 of the Constitution of India have been infringed. The investigation is not fair and honest. There is no investigation at all qua the four persons who were identified by PW8 on 7.6.2003". Further observed that "On the contrary, the accused in the present case were nomadic tribes and falsely implicated and are roped in. Except one, all of them are in jail since last 16 years. All were facing the hanging sword of death penalty". All of the alleged accused who were between age of 25-30 years (and one of the accused was a juvenile) have lost their valuable years of their life in jail. Their family members have also suffered. In the fifteenth para of the said Judgement court further mention that:

"Before parting with the present order, we strongly deprecate the conduct on the part of the investigating agency and the prosecution. Because of such lapses, and more particularly in not conducting the investigation insofar as those four persons who were identified by PW8 on 7.6.2003, the real culprits have gone out of the clutches of the law and got scot free". So, this is one of the classic Judgements for the lack on the part of investigating agencies and also on the prosecution. One cannot expect application of rarest of rare doctrine in a case where complete investigation was under doubt.

III. CONCLUSION

In light of legislative developments and the Supreme Court's observations in the aforementioned cases, it can be stated that the death penalty can be imposed in cases of murder involving sexual offenses. Both murder and sexual offenses now carry the death penalty, which has resulted in a sudden shift in the pattern of capital punishment pronouncement. Respected courts, on the other hand, must adhere to the guidelines outlined in *Bachan Singh vs. State of Punjab* in the rarest of rare cases.
