RAPE AND MURDER OF GIRL CHILD: APPLICATION OF RAREST OF RARE CASES

By Dr. S.N. Sharma*

Cite as: (2007) 1 SCC (Cri) In the face of stiff opposition to death penalty, the Supreme Court of India evolved the doctrine of rarest of rare cases in order to uphold the constitutionality of death penalty, which engrosses the "special reasons" dicta. Since 1980, the application of the doctrine of rarest of rare cases has narrowed down the scope of the application of the death penalty. In the beginning, the courts awarded death penalty without referring directly to the doctrine of rarest of rare cases. Nowadays, the court while confirming death penalty specifically shows that the case falls within the domain of the rarest of rare cases. It may be noticed that the vagueness of the doctrine was removed by the Supreme Court in Machhi Singh v. State of Punjab.

Although, the Court has categorically stated that the application of the doctrine depends upon the facts and circumstances of each case a point, which generally has been pressed against the infliction of death penalty under the spell of doctrine of rarest of rare cases is that there is no uniformity and consistency in the judicial approach on the subject. The judicial dilemma may be well projected by three cases decided in 2005. This article examines the issue whether an essentially uniform proposition

* BSc, LLM, PhD (BHU), Reader, Deptt. of Laws, HPU, Shimla 5.

- State of Maharashtra v. Mansingh, (2005) 3 SCC 131 : 2005 SCC (Cri) 657 can be identified for the applicability of the doctrine of rarest of rare cases or the area chosen for study sentencing discretion suffers from uncertainty.

General judicial approach The courts generally have to evaluate the facts in order to identify whether the case presents situation calling for death penalty or life imprisonment. For example, the child victim of rape aged about 1A¾ years died as a result of pain and haemorrhage. The High Court reduced death penalty to life imprisonment in State of Punjab v. Harchet Singh on the ground that the offence was committed out of lust and not because of any enmity. Commenting on the case, an eminent author observes:

â€œIt is difficult to concur with the lenient view based on a distinction drawn between enmity and lust-based rapes. Further, if death results due to rape on a child, it is murder and there seems to be no legal or moral justification in distinguishing it from murders committed as a sequel to rape. A more drastic approach in any case is required to deal with the escalating rate of child rapes in the country.â€•

One of the areas as suggested in Machhi Singh for imposition of death penalty relates to personality of the victim of murder. In Kamta Tiwari v. State of M.P.12, the children of Parmeshwar used to address the appellant as Tiwari uncle. The child victim of rape aged about 7 years had gone to a hairdressing salon. After some time, Pinky went to the appellant's shop and requested him to give some toffees and biscuits. He purchased a packet of biscuits and gave it to her. Parmeshwar did not find her at the shop nor at the residence. After some time the appellant was coming towards his house completely drenched and was wearing only an underwear with some clothes pressed under his armpit. He expressed his ignorance about Pinky and on 2-5-1995 the dead body of Pinky was recovered from a well and autopsy revealed a lacerated wound on the right side of the mouth, abrasions on both arms, contusion on the left knee, laceration on the labia majora with clotted blood and bloodstained clothes of the accused led the Court to impose death penalty. The Court observed that dilution of sentence would be a case of misplaced sympathy and gross miscarriage of justice.

11. One of the guidelines laid down by the Supreme Court of the country in Machhi Singh5 for the application of rarest of rare cases relates to personality of the victim of murder and it says that â€œwhen the victim of murder is (a) an innocent child who could not have or has not provided even an excuse much less a provocation for murderâ€œ; â€œ (Machhi Singh v. State of Punjab5, AIR at 966). The guidelines also permit to treat case as â€œrarest of rare casesâ€œ if murder is committed in extremely brutal, grotesque, diabolical, revolting or dastardly manner. Anti-social or socially abhorrent nature of crime brings the case within â€œrarest of rare casesâ€œ.

12. (1996) 6 SCC 250 : 1996 SCC (Cri) 1298. The Bench consisted of M.K. Mukherjee and S.P. Kurdakar, JJ. and the judgment of the Court was delivered by Mukherjee, J.

blood, laceration on the posterior vaginal wall, hymen ruptured, blood around the orifice of vagina, etc. The medical opinion was that the deceased had been raped and death was due to asphyxia owing to throttling. Similarly, medical examination of the appellant revealed one abrasion on his right knee and another on glans penis. The trial court and the High Court analysed the evidence and held that each circumstance stood conclusively proved and circumstances unerringly pointed to the guilt of the accused.

The Supreme Court also held that the appellant kidnapped Pinky, raped her and strangled her to death. The conviction of the appellant for offences under Sections 363, 376, 302 and 201 IPC must therefore be upheld. The Court referred to the guidelines of Bachan Singh1 and propositions of Machhi Singh5 and held that in view of all the facts and circumstances of the case, death penalty should be maintained. There were aggravating circumstances but no mitigating circumstance. The Court observed:

â€œ[T]he motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a â€œrarest of rare casesâ€œ where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to societyâ€œs abhorrence of such crimes.â€œ (emphasis supplied)

Thus, in order to bring a case within â€œrarest of rare casesâ€œ the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime and purposes of punishment are relevant factors.

Again Dhananjoy Chatterjee v. State of W.B.14 involved rape cum murder and the trial court, the High Court and the Supreme Court agreed it to be a fit case for imposition of death penalty. Dhananjoy Chatterjee, a security guard deputed to the building, Anand Apartment used to tease a young girl aged about 18 years, who had made complaint to her mother about her teasing by him on her way to and back from the school. On 5-3-1990, the appellant met the security guard posted in his place and used lift to reach her flat. When the deceasedâ€™s mother entered the flat with neighbours she found her daughter lying on the floor. Her skirt and blouse had been pulled up; her private parts and breasts were visible. There were patches of blood near her head as well as on the floor. There were bloodstains on her hands and vagina. The deceased was unconscious at that time and when she was being taken to hospital, she died. The Supreme Court dismissed the appeal and confirmed death sentence awarded by the trial court and confirmed by the High Court. The barbaric act of the accused shaking the faith of society, the savage nature of the crime, shocking judicial conscience, absence of extenuating or mitigating circumstance led the Court

13. Ibid., at p. 255, para 8.


Â to bring the case within the â€œrarest of rare casesâ€œ. The Court pointed out that in recent years, rising crime rate, particularly against woman had made judicial sentencing a subject of concern. The object of sentencing should be to see that crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done, the Court propounded. Dr. Anand, J. speaking for the Court observed:

Â â€œImpostion of appropriate punishment is the manner in which the courts respond to the societyâ€™s cry for justice against 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.â€œ

Â In Laxman Naik v. State of Orissa16 on the day of occurrence, the appellant, his niece and his mother had gone to a neighbouring village to attend a funeral ceremony. In the afternoon when all relatives were busy in the observance of the ceremony, the appellant commanded the deceased, his seven-year-old niece to accompany him back to their village and the deceased followed her. The appellant reached alone to his house and on being asked by elder brother, the father of the deceased, he told that the mother and the deceased were in neighbouring village. The next day the deceased was found lying in a lonely place in a jungle in revealing circumstances. As it was a rape and murder, the trial court found the case as falling within the category of rarest of rare cases and held him to be guilty under Sections 376 and 302 IPC. The punishment inflicted was death penalty, which was also confirmed by the High Court. The Supreme Court held that
The extreme penalty could be inflicted only in the gravest cases of extreme culpability. Dismissing the appeal and confirming death sentence, the Court emphasised that the facts of the case disclosed only aggravating circumstances and absolutely no mitigating circumstance.

The sentence of death appears more appropriate where rape and murder is committed by an accused having criminal record. In Molai v. State of M.P. Molai was working as guard in Central Jail, Reeva and Santosh was a prisoner in the jail undergoing a sentence for an offence under Section 376 IPC. On the day of incident, Somvanshi, the Central Jailor asked Molai to go to his quarter to look after it and to do the house job and Santosh was sent to do the work in the garden attached to the said quarter. At the relevant time, his daughter Naveen was alone. When Somvanshi came back, he did not find her. Next day, he went to the cattleshed and saw the frock of Naveen in septic tank. The autopsy of the dead body revealed that rape on and murder of Naveen aged about sixteen years had been committed. The death was due to strangulation. Seeing the extent of cruelty in committing the offences, the Court confirmed death penalty.

Judicial dilemma

It becomes clear that confusion persists in the infliction of death penalty or life imprisonment in rape and murder of girl child. The judicial dilemma in the exercise of sentencing discretion becomes more pronounced in three cases decided in 2005.

In State of Maharashtra v. Mansingh the respondent was convicted by the trial court under Sections 302, 376 and 201 IPC. Apart from other sentences, he was also sentenced to death. As the High Court acquitted him of the charges, the appeal was preferred to the Supreme Court. The Supreme Court held that as all the circumstances had been proved beyond reasonable doubt, the order of the High Court suffered from perversity. However, it also disagreed with the death sentence passed by the trial court. The Supreme Court held that the case did not come within the ambit of rarest of rare cases and the ends of justice would be met by life imprisonment. However, it may safely be submitted that death penalty should be ruled in rape-cum-murder case.

The Supreme Court of India came across with the issue of rape and murder of minor girls in Satish and Surendra Pal also. Both decided in 2005 further brought forward the judicial dilemma in picking up death penalty or life imprisonment. Satish was finally sentenced to death but Surendra Pal was lucky for being spared with life imprisonment only.

In State of U.P. v. Satish one Vishakha aged about six years was raped and murdered by the bestial acts of Satish, the accused. On 16-8-2001, the victim who was studying in Sarvodaya Public School had gone to school but did not return at the usual time. On the next morning her dead body was found in sugarcane field. She was lying in a dead condition and blood was oozing from her private parts. The trial court found that circumstances were sufficient to hold the accused guilty and convicted him under Sections 363, 366, 376(2), 302 and 201 of the Penal Code, 1860. Since, the crime fell in the category of the rarest of rare cases, death sentence was imposed. However, the High Court found prosecution story porous and acquitted the accused. The Supreme Court reversed the order of the High Court and restored the order of the trial court. The Court says that where a case is based on circumstantial evidence, the inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with the innocence of the accused or any other person. The Court referred to the guidelines laid down in Bachan Singh and Machhi Singh to judge whether case belongs to the rarest of rare category for award of death penalty. It pointed out the test for determining the rarest of rare cases, which is as follows:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(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.

Hence, the Supreme Court held that the case falls in the rarest of rare category and death sentence awarded by the trial court was restored and the judgment of the High Court was set aside. In this connection, Arijit Pasayat, J. observed:

The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation for the rarest of rare category.

15. Ibid., at p. 239, para 15.


http://www.supremecourtcases.com  Eastern Book Company  Generated: Friday, January 18, 2019
of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just deserts, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.\[\text{\textcopyright}\]

In Surendra Pal Shivbalakpal v. State of Gujarat\[\text{\textcopyright}\] the appellant, Shivbalakpal was staying in one of the rooms of a building owned by complainant, Kavalpati, a widow having three children. On 11-9-2002 at about 10 p.m. he came to her and offered Rs 150 for sexual favours. She got angry and asked him to go away. During the night, she along with her two minor daughters was sleeping on a cot lying outside the room. During the night for some time, he went inside and at 1 a.m. she came back and found daughter Savitri missing. The dead body of Savitri was found floating on the water and was recovered from the pond. The clothes were stained with blood and some mud particles. The post-mortem revealed a number of injuries on the body of the deceased and hymen was completely ruptured. The trial court found the appellant guilty of the offences punishable under Sections 363, 376 and 302 IPC. He was sentenced to death and it was confirmed by the High Court. The Supreme Court also agreed about the finding of guilt but the sentence of death was commuted to life imprisonment on the ground that the case did not belong to the rarest of rare cases. The Court observed:

\[\text{\textcopyright}\]The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had been involved in any other criminal case previously and the appellant was a migrant labourer from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to society in future and\[\text{\textcopyright}\]. We do not think that the death penalty was warranted in this case.\[\text{\textcopyright}\]

The Court relied upon the previous conduct of the appellant i.e. rejection of sexual favours by mother of the deceased and admonition and scolding therefor by mother, uncle and brother of the deceased, earlier in the night, in confirming the finding of guilt arrived at by the Sessions Judge and the High Court.

Inferences and findings
The judicial approach in cases involving rape and murder of infant or minor girl is laudable and praiseworthy. Subject to few exceptions, the judicial approach is clear and consistent. The emerging inference is that if a girl child is raped and murdered, the probability of death sentence is highest.

Generally in such cases, conviction rests on circumstantial evidence and there is nothing wrong to rely upon this kind of evidence. The facts so established must be consistent only with the hypothesis of the guilt of the accused and the guilt must not be explainable on the basis of any other hypothesis. The circumstances should be conclusive in nature and there must be chain of evidence so complete as not leaving any reasonable ground for conclusion consistent with the innocence of the accused.

There can be no cut and dry formula for the exercise of judicial discretion in such murder cases. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and society at large in awarding appropriate punishment. The guidelines laid down in Bachan Singh\[\text{\textcopyright}\] and Machhi Singh\[\text{\textcopyright}\] have invariably been followed in bringing the case within \[\text{\textcopyright}\] of rarest of rare cases\[\text{\textcopyright}\].

The courts have generally used epithets and strong expressions for the application of the doctrine of rarest of rare cases. For example, \[\text{\textcopyright}\] diabolical planning\[\text{\textcopyright}\], \[\text{\textcopyright}\] brutal execution\[\text{\textcopyright}\], \[\text{\textcopyright}\] calculated and brutal murder/rape\[\text{\textcopyright}\], \[\text{\textcopyright}\] the faith of society\[\text{\textcopyright}\], \[\text{\textcopyright}\] shocking to judicial conscience\[\text{\textcopyright}\], \[\text{\textcopyright}\] savage nature of crime\[\text{\textcopyright}\], etc. Where the trial court and the High Court are not unanimous in the award of death penalty, the Supreme Court is inclined to favour life imprisonment, which also appears to be a sound approach. The application of \[\text{\textcopyright}\] of rarest of rare cases\[\text{\textcopyright}\] also depends upon the existence of aggravating circumstances and absence of mitigating circumstances. However, Satish\[\text{\textcopyright}\] and Surendra Pal\[\text{\textcopyright}\] if taken together make the application of the doctrine of rarest of rare cases a little uncertain.\[\text{\textcopyright}\]