[2011] 5 S.C.R. 518

A MD. MANNAN @ ABDUL MANNAN

v.

STATE OF BIHAR

(Criminal Appeal No. 379 of 2009)

B APRIL 20, 2011

[HARJIT SINGH BEDI AND CHANDRAMAULI KR. PRASAD, JJ.]

Penal Code, 1860: ss. 366, 376, 302, 201 – Rape and C *murder of a seven year old girl – Conviction based on circumstantial evidence –Allegation that the accused was working as a mason in the house of victim's grandfather – Accused sent victim to the betel shop to get betel for him – Few minutes after the victim left, accused proceeded towards* D *the betel shop and got the victim seated on his bicycle – Victim was last seen with the accused – Confession by accused that he raped the victim and thereafter killed her – The dead body of the victim found pursuant to the statement given by the accused – Courts below convicted the accused* E *and ordered death sentence – Held: The circumstances unerringly pointed towards the guilt of the accused and the chain was so complete that there was no escape from the conclusion that the crime was committed by the accused and none else – Conviction upheld – As regards the sentence,* F *accused was a matured man aged about 43 years and held a position of trust and misused the same in a calculated and preplanned manner – The postmortem report showed various injuries on the face, nails and body of the child – These injuries showed the gruesome manner in which she was* G *subjected to rape – Victim was an innocent child who did not provide even an excuse, much less a provocation for murder – This act no doubt invited extreme indignation of the community and shocked the collective conscience of the society – The case in hand fell in the category of the rarest*

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of the rare cases and the courts below had correctly imposed the death sentence – Sentence/Sentencing.

Evidence: Circumstantial evidence – Held: In a case based on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established – The circumstances so proved must unerringly point towards the guilt of the accused – It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else – It has to be considered within all human probability and not in fanciful manner – Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence.

Sentence/Sentencing: Broad guidelines for imposition of death sentence – Discussed.

The prosecution case was that the victim was 7 years old girl. The appellant was working as mason in the house PW-8 who was grandfather of the victim. On the fateful day, the appellant sent the victim to the betel-shop to get betel and after few minutes he proceeded towards the betel-shop and got the victim seated on the carrier of his bicycle. PW-5 and other women saw the victim going with the appellant on his bicycle. The victim did not return home. The uncle of the victim along with other family members went in search of the victim and saw the appellant. The appellant tried to escape but was caught. The appellant gave confessional statement that he raped the victim and then killed her. The statement given by him led to the recovery of the dead body of the victim.

The trial court held that all the circumstances pointed towards the guilt of the appellant and convicted him under sections 366, 376, 302, 201 IPC and passed the death sentence. The High Court affirmed the conviction

A and the death sentence. The instant appeal was filed challenging the order of conviction and sentence.

Dismissing the appeal, the Court

HELD: 1.1. In a case based on circumstantial
B evidence, the circumstances from which an inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape
C from the conclusion that the crime was committed by the accused and none else. It has to be considered within all human probability and not in fanciful manner. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. No hard
D and fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case. [Para 11] [528-A-D]

E 1.2. From the evidence of the witnesses it is evident that the appellant was working as a mason in the house of the grandfather of the deceased, PW.8 and the deceased was sent by him to the betel shop to get betel. Evidence of the prosecution witnesses further proved
F beyond all reasonable doubt that appellant proceeded towards the betel shop few minutes after the deceased left and it was the appellant who was last seen with the deceased going together on a bicycle. There was overwhelming evidence which proved beyond any
G shadow of doubt that the statement given by the appellant led to the recovery of the dead body of the deceased from the field. The circumstances so proved unerringly pointed towards the guilt of the appellant and the chain was so complete that there is no escape from
H the conclusion that the crime was committed by the

appellant and none else. Accordingly, the conviction of the appellant is upheld. [Paras 15] [530-B-D]

2.1. It is trite that death sentence can be inflicted only in a case which comes within the category of rarest of the rare cases but there is no hard and fast rule and the parameter to decide this vexed issue. Nevertheless it is widely accepted that in deciding this question the number of persons killed is not decisive. Further crime being brutal and heinous itself do not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and continue to be so, threatening its peaceful and harmonious co-existence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance-sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and just balance is to be struck. So long the death sentence is provided in the statute and when collective conscience of the community is petrified, it is expected that the holders of judicial power do not stammer, de hors their personal opinion and inflict death penalty. [Para 17] [530-F-H; 531-A-E]

2.2. The case in hand fell in the category of the rarest of the rare cases. Appellant was a matured man aged about 43 years. He held a position of trust and misused the same in calculated and preplanned manner. He sent the girl aged about 7 years to buy betel and few minutes

A **thereafter in order to execute his diabolical and grotesque desire proceeded towards the shop where she was sent. The girl was aged about 7 years of thin built and 4 feet of height and such a child was incapable of arousing lust in normal situation. The appellant had won the trust of the** B **child and she did not understand the desire of the appellant which would be evident from the fact that while she was being taken away by the appellant no protest was made and innocent child was made prey of the appellant's lust. The postmortem report showed various** C **injuries on the face, nails and body of the child. These injuries showed the gruesome manner in which she was subjected to rape. The victim of crime was an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young** D **child is appalling. The appellant had stooped so low as to unleash his monstrous self on the innocent, helpless and defenceless child. This act no doubt had invited extreme indignation of the community and shocked the collective conscience of the society. Their expectation from the authority conferred with the power to adjudicate,** E **is to inflict the death sentence which is natural and logical. The appellant is a menace to the society and shall continue to be so and he can not be reformed. The case in hand fell in the category of the rarest of the rare cases and the trial court had correctly inflicted the death** F **sentence which had rightly been confirmed by the High Court. [Para 18] [531-E-H; 532-A-D]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 379 of 2009.

G From the Judgment & Order dated 19.08.2008 of the High Court of Patna in CRADB No. 963 of 2007.

Aftab Ali Khan, M.Z. Chaudhary for the Appellant.

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Gopal Singh for the Respondent. A

The Judgment of the Court was delivered by

CHANDRAMAULI KR. PRASAD, J. 1. Appellant was put on trial for offence under Sections 366, 376, 302 and 201 of the Indian Penal Code, 1860 (hereinafter referred to as the 'Penal Code'). The Trial Court by its judgment and order dated 29th of May, 2007 passed in Sessions Trial No.220 of 2004 arising out of the Manigachi P.S. Case No.13 of 2004 held the appellant guilty of all the charges and sentenced him to undergo rigorous imprisonment for 10 years for offence under Section 366 of the Penal Code, life imprisonment under Section 376 of the Penal Code, rigorous imprisonment for 7 years for offence under Section 201 of the Penal Code and death penalty for offence under Section 302 of the Penal Code. The trial court made Reference to the High Court for confirmation of the death sentence which led to registration of Death Reference No. 6 of 2007. Appellant aggrieved by his conviction and sentence also preferred appeal which was registered as Criminal Appeal (DB) No. 963 of 2007. Both, the reference and appeal were heard together and by a common judgment dated 19th of August, 2008, the Division Bench of the Patna High Court accepted the reference and dismissed the appeal. B C D E

2. This is how the appellant is before us with the leave of the Court. F

3. According to the prosecution, the appellant Md. Mannan was working as mason and engaged for the plaster work at the residence of informant's uncle PW-8 Devikant Jha. On 28th of September, 2004, the appellant gave Rs.2/- to the niece of the informant, namely, Kalyani Kumari aged about 8 years to bring betel from a shop at Hanuman Chowk. After some time, appellant left the work, went to the Hanuman Chowk and got seated Kalyani Kumari on the carrier of his bicycle. PW-5 Maya Devi and other women heard the conversation which the G H

A appellant was having with Kalyani Kumari. Appellant, according to women folk, asked Kalyani Kumari as to where her father lives to which she replied that he stays at Bombay. A search was made when Kalyani Kumari did not return home for sometime and in the course thereof, it surfaced that she was B seen going on a bicycle with a man. The informant Sharwan Kumar Jha (PW-10) and his family members set out in search of the girl and while they were returning from Bahera saw the appellant going towards Bahera. Appellant tried to escape but was apprehended and on enquiry he showed ignorance about C the girl. Appellant was brought to the residence of the informant where PW-5 Maya Devi disclosed that she had seen the appellant who had taken away Kalyani Kumari on his bicycle. Thereafter, the appellant was brought to the Police Station and handed over to the officer-in-charge with a written report, for D taking suitable action, alleging that the appellant had kidnapped Kalyani Kumari. On the basis of the aforesaid information, a case was registered and PW-11 Hari Ram, the officer-in-charge took up the investigation.

4. During the course of investigation, the appellant gave a E confessional statement in the presence of the witnessess Amar Kishore Jha (PW-2) and Devi Kant Jha (PW-8) and other villagers. The appellant confessed his guilt and disclosed the place where he had raped and killed Kalyani Kumari. The statement given by the appellant led to the recovery of the dead F body of Kalyani Kumari from a field. She was identified by the informant and other villagers. The dead body of Kalyani Kumari had injury on the private parts, her nails were munched and there were marks of bruises all over the body. The Inquest Report was prepared and the dead body was sent for post-G mortem examination which was conducted by PW-4 Dr. Prafulla Kumar Das, a Tutor in the department of Forensic Medicine and Toxicology at Darbhanga Medical College and Hospital. Police, after usual investigation, submitted charge-sheet against the appellant for kidnapping, raping and killing a minor H girl and causing disappearance of evidence of offence.

Appellant was ultimately committed to the Court of Sessions to face the trial, where charges under Sections 366, 376, 302 and 201 of the IPC were framed against him. Appellant denied to have committed any offence and claimed to be tried.

5. The prosecution in order to bring home the charge has examined altogether 11 witnesses besides a large number of documentary evidence, including the First Information Report, the Post-mortem Report and the Inquest Report, were exhibited. The plea of the appellant in the statement under Section 313 of the Code of Criminal Procedure is denial simplicitor and false implication. However, no defence witness has been examined.

6. There is no eye-witness to the occurrence and the prosecution sought to bring home the charge on the basis of the circumstantial evidence.

Those are:

(i) Appellant was working as Mason in the House of Devi Kant Jha (PW-8);

(ii) Appellant sent the deceased to the betel-shop to get betel;

(iii) Appellant proceeded towards the betel-shop few minutes after the deceased left;

(iv) Appellant was last seen with the deceased going together on a bicycle and

(v) Appellant's confession leading to the recovery of dead body from a field.

7. All these circumstances led the trial Court to hold that the chain is complete which points towards the guilt of the appellant and accordingly convicted him as above. In the opinion of the trial court, the case fell in category of the rarest of the rare cases and accordingly it inflicted the death penalty.

A The High Court concurred with the finding of the trial court and affirmed the conviction and while doing so, it observed as follows:

> ".....as per disclosure made by the appellant and on his disclosure the dead body was recovered from a lonely place surrounded and concealed by standing crops of wheat and rahar. Hence the part of the confession made by appellant which is disclosure regarding the place where the dead body could be found, is clearly admissible as evidence under Section 27 of the Indian Evidence Act. Since the rape and murder on the victim girl has been proved by medical evidence and since such offences were committed against the victim soon after her kidnapping by the appellant, a presumption arises against the appellant that he committed rape and murder of the victim and tried to conceal the evidence of such offence by hiding the body at a lonely place concealed by standing crops. No doubt such presumption can be rebutted if reasonable explanation could be given by the appellant. But in this case no such explanation has been brought on record. There is neither any defence witness nor any reasonable suggestion to the witnesses nor any explanation by the appellant under Section 313 of the Code of Criminal Procedure. Hence, the presumption remains un-rebutted. The evidence on record and the entire facts and circumstances coupled with disclosure made by the appellant which is admissible under Section 27 of the Indian Evidence Act prove beyond any doubt that after kidnapping the victim, the appellant committed the offence of rape followed by murder upon the deceased and also committed offence of destroying evidence by concealing the dead body."

8. While accepting the reference and upholding the death sentence, High Court observed as follows :

"I have considered the entire facts and the aforesaid submissions for deciding whether the death penalty awarded to the appellant should be confirmed or not. In this regard, it is noticed that appellant is a matured man aged about 42-43 years. He has committed the heinous and barbarous crime of rape and murder of a girl aged about 7 years who was thin built and of 4' height. Such a child was incapable of arousing lust in normal situation. She was kidnapped in a planned manner because she was innocent and could not understand the design of the appellant. She became helpless victim of a diabolic middle aged man whom the child could trust as an elder person. The medical evidence shows the cruel manner of causing injuries on the face, nails and body of the child at the time of committing rape which was followed by murder. This was all pre-planned as is apparent from the manner of kidnapping and selection of a lonely place where crime was committed and body concealed. Crime of this nature against the child girl is definitely a crime against the society. The facts of the case, the offences taken together along with the age of the victim and the age of the appellant clearly bring the case in the category of "rarest of the rare cases" in which interest of justice requires award of maximum penalty."

9. The deceased had met homicidal death and was subjected to rape have not been questioned before us. However, learned Counsel for the appellant has contended that the circumstances brought on record do not lead to one and the only conclusion towards the guilt of the appellant and therefore the appellant deserves to be given the benefit of doubt.

10. Mr. Gopal Singh, learned Counsel representing the State, however, supports the judgment of conviction and sentence.

11. We have bestowed our consideration to the rival

A submissions. In our opinion to bring home the guilt on the basis of the circumstantial evidence the prosecution has to establish that the circumstances proved lead to one and the only conclusion towards the guilt of the accused. In a case based on circumstantial evidence the circumstances from which an B inference of guilt is sought to be drawn are to be cogently and firmly established. The circumstances so proved must unerringly point towards the guilt of the accused. It should form a chain so complete that there is no escape from the conclusion that the crime was committed by the accused and none else. It C has to be considered within all human probability and not in fanciful manner. In order to sustain conviction circumstantial evidence must be complete and must point towards the guilt of the accused. Such evidence should not only be consistent with the guilt of the accused but inconsistent with his innocence. D No hard and fast rule can be laid to say that particular circumstances are conclusive to establish guilt. It is basically a question of appreciation of evidence which exercise is to be done in the facts and circumstances of each case.

12. Bearing in mind the principles aforesaid, we now E proceed to consider the circumstantial evidence available on the record. PW-1 Rajkumar Jha claimed to be Mukhia of the Gram Panchayat having shop at Hanuman Chowk and has stated in his evidence that appellant was doing work of a mason in the house of Devi Kant Jha (PW-8) who was grand-F father of deceased Kalyani. He has claimed to have seen the appellant coming to Hanuman chowk and getting seated Kalyani on his bicycle and taking her towards village Igharata. Thereafter Kalyani never returned nor the appellant came back till evening when the search started. He has further stated that G appellant led the witnesses to the wheat field and showed the dead body of deceased Kalyani. There was only a panty on the person of the dead body and no other clothes.

13. PW.2, Amar Kishore Jha, owned a shop at Hanuman Chauk and has stated in his evidence that he had seen the H

appellant getting Kalyani seated on his bicycle at the Chauk. He has further stated that Kalyani did not return till evening and then he along with PW.1, Raj Kumar Jha had gone to search her. He is further a witness to the statement given by the appellant which led to the recovery of the dead body of Kalyani with marks of bruises at different places of her body. According to this witness her nails were munched.

14. PW.3, Phul Jha, is the owner of the betel shop from where Kalyani had bought the betel. According to his evidence Kalyani purchased betel from his shop and when he was returning 50 paise she asked for the toffee for the said amount. According to his evidence when Kalyani got down from the shop, appellant came on a bicycle, took betel from her, got her seated on the carrier of the bicycle and took her towards the southern direction. He is also a witness to the confession of the appellant leading to the recovery of the dead body at the place pointed by the appellant. PW.5, Maya Devi, is another witness who had seen the appellant along with the deceased in his bicycle and even the conversation she had with the appellant. She has deposed that the appellant asked Kalyani as to where her father resides to which she replied that her father lives in Bombay. PW.6, Radhey Shyam Jha, is another witness who had seen the appellant and the deceased together on a bicycle. He is further witness to the disclosure statement made by the appellant leading to recovery of the dead body of the Kalyani. PW.8, Debikant Jha, is the grandfather of the deceased and is a witness to the recovery of the dead body of the Kalyani on the basis of the confessional statement of the appellant. PW.9, Tapeshwar Prasad, is another witness who owned the shop at Hanuman Chauk and supported the case of the prosecution. He has stated that after Kalyani purchased the betel, the appellant reached there on bicycle, got her seated on the carrier of the bicycle and went towards the southern direction. He is also a witness to the recovery of the dead body of Kalyani on the basis of the statement given by the appellant.

A PW.10, Sharwan Kumar Jha, is the informant of the case and also supported the case of the prosecution.

15. From the evidence of the aforesaid witness it is evident that the appellant was working as a mason in the house of the
B grandfather of the deceased, PW.8 Debi Kant Jha and the deceased was sent by him to the betel shop to get betel. Evidence of the prosecution witnesses further prove beyond all reasonable doubt that appellant proceeded towards the betel shop few minutes after the deceased left and it was the appellant who was last seen with the deceased going together
C on a bicycle. There is overwhelming evidence which proves beyond any shadow of doubt that the statement given by the appellant led to the recovery of the dead body of Kalyani from the field. In our opinion, the circumstances so proved unerringly point towards the guilt of the appellant and the chain is so
D complete that there is no escape from the conclusion that the crime was committed by the appellant and none else. Accordingly we uphold the conviction of the appellant.

16. As observed earlier the trial court as also the High
E court had found the case in hand to be one of the rarest of the rare cases and accordingly inflicted the death sentence. It is contended by the learned counsel for the appellant that the case in hand does not fall within such category and as such the extreme penalty of death is not called for.

F 17. It is trite that death sentence can be inflicted only in a case which comes within the category of rarest of the rare cases but there is no hard and fast rule and the parameter to decide this vexed issue. This Court had the occasion to consider the cases which can be termed as rarest of the rare cases and
G although certain comprehensive guidelines have been laid to adjudge this issue but no hard and fast formula of universal application has been laid down in this regard. Crimes are committed in so different and distinct circumstances that it is impossible to lay down comprehensive guidelines to decide
H this issue. Nevertheless it is widely accepted that in deciding

this question the number of persons killed is not decisive. Further crime being brutal and heinous itself do not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and continue to be so, threatening its peaceful and harmonious co-existence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance-sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and just balance is to be struck. So long the death sentence is provided in the statute and when collective conscience of the community is petrified, it is expected that the holders of judicial power do not stammer, de hors their personal opinion and inflict death penalty. These are the broad guidelines with this Court has laid down for imposition of the death penalty.

18. When we test the present case bearing in mind what has been observed, we are of the opinion that the case in hand falls in the category of the rarest of the rare cases. Appellant is a matured man aged about 43 years. He held a position of trust and misused the same in calculated and preplanned manner. He sent the girl aged about 7 years to buy betel and few minutes thereafter in order to execute his diabolical and grotesque desire proceeded towards the shop where she was sent. The girl was aged about 7 years of thin built and 4 feet of height and such a child was incapable of arousing lust in normal situation. Appellant had won the trust of the child and she did not understand the desire of the appellant which would be evident from the fact that while she was being taken away by the appellant no protest was made and innocent child was made prey of the appellant's lust. The postmortem report shows

various injuries on the face, nails and body of the child. These injuries show the gruesome manner in which she was subjected to rape. The victim of crime is an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young child is appalling. The appellant had stooped so low as to unleash his monstrous self on the innocent, helpless and defenceless child. This act no doubt had invited extreme indignation of the community and shocked the collective conscience of the society. Their expectation from the authority conferred with the power to adjudicate, is to inflict the death sentence which is natural and logical. We are of the opinion that appellant is a menace to the society and shall continue to be so and he can not be reformed. We have no manner of doubt that the case in hand falls in the category of the rarest of the rare cases and the trial court had correctly inflicted the death sentence which had rightly been confirmed by the High Court.

19. In the result, we do not find any merit in this appeal and same is dismissed accordingly.

D.G. Appeal dismissed.