

IN THE HIGH COURT OF JUDICATURE AT PATNA
Death Reference No. 4 of 2017

Arising Out of PS. Case No.-106 Year-2015 Thana- Sabaur District- Bhagalpur

The State of Bihar

... .. Petitioner

Versus

Munna Pandey, S/o Late Bir Bahadur Pandey, R/o Village – Thatheri Tola,
Sabour, P.S. - Sabour, District – Bhagalpur.

... .. Respondent

with

Criminal Appeal (DB) No. 358 of 2017

Arising Out of PS. Case No.-106 Year-2015 Thana- Sabaur District- Bhagalpur

Munna Pandey Son of late Bir Bahadur Pandey, Resident of Village-
Thatheri Tola, Sabour, P.S. Sabour, District- Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Death Reference No. 4 of 2017)

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

(In Criminal Appeal (DB) No. 358 of 2017)

For the Appellant : Mr. Sharda Nand Mishra, Adv.

Mr. Dhananjay Kumar Gupta, Adv.

Mr. Deepak Kumar, Adv.

For the Respondent/State: Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 10-04-2018

The appellant was sentenced to death by judgment
passed in Sessions Trial No. 581 of 2015 by Sri Janardan
Tripathi, learned Additional Sessions Judge – I, Bhagalpur



(hereinafter referred to as 'Trial Judge'). Since the appellant was imposed death sentence, in view of Section 366 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'), it was referred to this Court for its confirmation and thereafter, it was numbered as Death Reference Case No. 4 of 2017. Simultaneously, the appellant, after his conviction and sentence, preferred the present appeal i.e. Cr.Appeal (DB) No. 358 of 2017 under Section 374 (2) read with Section 389(1) of the Cr.P.C.

2. By judgment dated 02-02-2017, the sole appellant was convicted for commission of offence under Sections 302 & 376 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (hereinafter referred to as 'POCSO Act'). The appellant by order dated 23-02-2017 under Section 302 of the I.P.C. was sentenced to death and imposed a fine of Rs. 10,000/- (ten thousand) and in default of payment of fine, he was directed to further undergo imprisonment for six months. Under Section 376 of the I.P.C., he was sentenced to undergo imprisonment for 10 years and to pay a fine of Rs. 5,000/- (five thousand). In default of payment of fine, he was directed to undergo further imprisonment for three months. However, no



sentence was passed under Section 4 of the POCSO Act, whereas, he was already held guilty for the same offence. He has been directed to be hanged till death.

3. Short fact of the case is that on 01-06-2015 at about 12:45 PM, *fardbeyan* of Kiran Devi (P.W.2) wife of Arvind Sah and mother of the victim was recorded by Sub-Inspector of Police-cum-S.H.O. Smt. Rita Kumari of Sabour Police Station. The *fardbeyan* was recorded in the house of Nawal Kishore Ojha @ Fuchan Pandey. Nawal Kishore Ojha @ Fuchan Pandey is the own brother of the appellant and in the said house, there were two rooms and one room, from where dead body was recovered, was in possession of the appellant. In the *fardbeyan*, the informant/P.W.2 stated that on preceding date i.e. 31-05-2015, she was in the house of her late sister Shakila Devi in the village Jamunia Parbatta. On the same date at about 12:00 noon, her elder daughter namely Priya Kumari (P.W.3) telephonically informed her that her younger sister (victim) was missing. Thereafter, she immediately moved for Sabour. After arrival in her house in village Sabour, her elder daughter Priya informed her that the victim had gone to watch television in the house of Munna Pandey (appellant). When she did not return till 11:00 AM, only thereafter, she (Priya) informed the informant.



While the informant went to the house of Munna Pandey (appellant) in search of her daughter, she found that the house of Munna Pandey (appellant) was locked. Thereafter, with some villagers, the informant vigorously searched her daughter, but she (victim) could not be traced. When Munna Pandey (appellant) was asked to open the lock, he told that key was not with him. Thereafter, she telephoned Fuchan Pandey (brother of appellant Munna Pandey), who at the relevant time was staying in his in-laws' house. On 01-06-2015, Nawal Kishore Ojha @ Fuchan Pandey at about 12:00 noon came to his house and opened the lock of his room. In the said room, Pritam Tiwary son of Dilip Tiwary, resident of village Shobhapur, P.S. Rajmahal, District – Sahebganj had concealed himself. The lock of the room was opened from the outside. When lock of the room of Munna Pandey (appellant) was opened, dead body of the daughter of the informant was found beneath the bed (पलंग). The informant claimed that Pritam Tiwary and Munna Pandey (appellant) both after committing rape with her 11 years old daughter by way of throttling had killed her and the dead body was concealed in his room. The *fardebayan* was read over to the informant and after finding it correct, she, in presence of Babloo



Sao (P.W.1), son of informan's sister of village Jamunia, P.S. Parbatta, Naugachia, put her signature.

4. On the basis of said *fardbeyan*, on the same date i.e. 01-06-2015 at 3:00 PM, a formal F.I.R., vide Sabour P.S. Case No. 106 of 2015, was registered under Section 376(D), 302, 201, 34 of the I.P.C. and Section 4 of POCSO Act against 1. Munna Pandey (appellant) and 2. Pritam Tiwary (brother-in-law of elder brother of the appellant namely Nawal Kishore Ojha @ Fuchan Pandey). During investigation, accusation against both the accused was found true and as such, on 06-06-2015, chargesheet was submitted against both F.I.R. named accused, which includes the appellant. On 18-06-2015, the learned Magistrate took cognizance of the offence and thereafter, on 24-09-2015, the case was committed to the court of sessions and it was numbered as Sessions Trial No. 581 of 2015. In the case, on 04-11-2015, joint charges were framed against both the accused under Sections 376(2)(g), 302/34, 120(B) of the I.P.C. and Section 4 of the POCSO Act. After framing of the charge, since one of the accused namely Pritam Tiwary claimed juvenility, his case was separated on 03-02-2016 to the Juvenile Justice Board (hereinafter referred to as 'J.J.Board'). The present trial proceeded only against the appellant.



5. To prove the case from the prosecution side, altogether following six witnesses were examined:-

“P.W.1 Babloo Saw is the cousin brother of the deceased and son of sister of the informant to which place, on 31-05-2015, the informant had gone. This witness had proved his signature on *fardbeyan*, which was marked as **Ext. 1** and he also proved signature of Kiran Devi/P.W.2 (informant) of the case, which was marked as **Ext. 1/1**.

P.W.2 Kiran Devi is the informant and mother of the deceased.

P.W.3 Priyanka Kumari is the elder daughter of the informant as well as elder sister of the deceased.

P.W.4 Dr. Sandeep Lal, who at the relevant time, was posted in the Jawaharlal Nehru Medical College and Hospital, Bhagalpur and he had conducted *post-mortem* examination on the dead body of the deceased.

P.W.5 Rita Kumari is the investigating officer and she has also recorded *fardbeyan* of he informant.

P.W.6 Vijay Prasad Sah is the co-villager and he deposed that in his presence, dead body was found in the room of the appellant.”

6. After examination of the prosecution witnesses and closure of the prosecution case, on 07-12-2016, evidence and



circumstances, brought against the appellant, were explained to him and his statement under Section 313 of the Cr.P.C. was recorded, in which, he denied the evidences and claimed regarding his false implication. Ofcourse, no defence witness was examined on behalf of the accused, however; some documents, which were certified copy of the court proceeding, were got exhibited on behalf of the defence.

7. Sri Sharda Nand Mishra, learned counsel assisted by Sri Dhananjay Kumar Gupta, learned counsel for the appellant/Munna Pandey, after referring to all the evidences, has argued that the appellant was neighbour and he was falsely implicated in the present case. According to learned counsel for the appellant, in the crime, main culprit was one Pritam Tiwary, who was none else but brother-in-law (साला) of elder brother of the appellant. Learned counsel for the appellant has heavily placed reliance on **Ext.B** i.e. certified copy of statement/deposition of Pritam Tiwary, which was recorded during preliminary enquiry by the J.J.Board. He submits that Pritam Tiwary before the J.J.Board has categorically accepted that the victim was in the habit of witnessing serials on television in the house of his sister and on the date of occurrence, while he was preparing food, the victim was



watching serial on television and he noticed golden tops, which was worn by the deceased and thereafter, he persuaded to take the same and in that event, he had murdered the victim. Sri Mishra, learned counsel for the appellant, while referring to **Ext. B**, has further argued that in his confession, Pritam Tiwary had categorically confessed that in the occurrence, he was solely involved and none had participated. Sri Mishra, learned counsel for the appellant, on the basis of such statement/confession, tried to persuade the Court that the said confession is sacrosanct and this was enough to prove false implication of the appellant. He has also argued that during evidence, this fact has come that the appellant was not residing in the room, from where dead body was recovered, rather the said portion of house was already given to his elder brother namely Fuchan Pandey @ Nawal Kishore Ojha. In any event, it has been argued by Sri Mishra, learned counsel for the appellant that it was not a case, in which, the learned Trial Judge was required to impose death sentence, since the offence was not in the category of rarest of the rare case.

8. Sri Ajay Mishra, learned Addl. Public Prosecutor submits that there is consistent evidence, which suggests that the appellant alongwith one another accused, who subsequently



claimed juvenility and his case was separated, jointly had firstly barbaricly committed rape on 11 years old victim and thereafter, she was done to death in brutal manner. By way of referring to the evidence of P.W.4 Dr. Sandeep Lal, who conducted *post-mortem* examination on the dead body of the deceased as well as referring to **Ext. 2** i.e. *post-mortem* report, he submits that the injury, found on the person of deceased, categorically suggests as to how brutally the accused persons firstly committed rape and thereafter, killed the minor daughter of the informant. He submits that in *post-mortem* examination, both lips of the victim were found swollen, besides injury on both lips, the private part of the victim was ruptured. Sri Mishra has also placed reliance on inquest report i.e. **Ext. 5**. He submits that inquest report was prepared in the room of the appellant and in column no. 5 of the inquest report, the investigating officer had noticed ruptured injuries on the private part of the victim and she (investigating officer) noticed that anus was also having swollen injury. Besides this, her lips were swollen. By highlighting those injuries, Sri Mishra has argued that one can imagine after noticing those injuries as to how at the time of commission of rape, the accused persons had brutally behaved. He submits that considering the nature of evidence and accusation, the learned



Trial Judge has rightly sentenced the appellant to death. He submits that at least, such offences must be considered as rarest of the rare cases. According to Sri Mishra, neither there is any reason to interfere with the judgment of conviction nor with order of sentence. He submits that this Court, in view of entire evidence, while dismissing the appeal may confirm the sentence of death, which has been imposed by the learned Trial Judge, and has referred to this Court for its confirmation.

9. Besides hearing learned counsel for the parties, we have minutely examined the entire evidence and after going through the same, we are, *prima facie*, satisfied that the learned Trial Judge has committed no error either in passing the judgment of conviction or sentence warranting any interference. However, before proceeding, it would be necessary to examine the evidences, which have been brought on record. To start with, it would be firstly necessary to examine the first hand information, which has come from the mouth of elder daughter of the informant i.e. P.W.3 namely Priya Kumari. She was the main witness, who had seen that appellant had persuaded and enticed the victim to go with him on the pretext of witnessing T.V. serial.



10. P.W.3 Priya Kumari, elder sister of the deceased and daughter of the informant, in her evidence has stated that occurrence had taken place on 31-05-2015 and at that very time, she was at her residence. She with victim and her aunt Khushbu Devi was present. Her mother had gone to her own sister's house. She was preparing food on the *verandah*, at that very time, Munna Pandey (appellant) came to call the victim for witnessing television. The victim was her younger sister. This witness, after being asked by the appellant, said that victim will go after taking meal. Thereafter, Munna Pandey (appellant) said that there is no haste, after watching T.V. programme for short while, she can come back and take meal. Munna Pandey (appellant) carried the victim, at that time, it was about 9:00 AM (morning). After preparing food, she went to call the victim to the house of Munna Pandey (appellant), then she saw that Munna Pandey (appellant) was putting lock on his door. She saw that Munna Pandey (appellant), after putting lock on his room, was coming out. When she reached near the gate, till that time, Munna Pandey (appellant), after putting lock on gate also, was trying to move, then she asked Munna Pandey as to where is the victim. Munna Pandey (appellant) replied that she, after witnessing T.V., had already gone. P.W.3 thereafter returned



back to her house and tried to search nearby. When she did not find the victim then she made telephone call to her mother (P.W.2, Kiran Devi) and informed her. Her mother on the same date came back with her (Priya) cousin brother Babloo (P.W.1). Again, this witness narrated everything to her mother. Thereafter, she, her mother, aunt and cousin brother Babloo, all jointly started to search, but the victim was not traced, then they went to the house of Munna Pandey (appellant), where it was noticed that there was lock on the room of Munna Pandey (appellant). Outer gate was also locked. Thereafter, she inquired from other villagers, on which, villagers called Munna Pandey, then he came. The appellant was inquired by villagers and her mother (P.W.2) also regarding the victim. The appellant said that he was not having the key of the room. After noticing this fact, the villagers said that if he was not having key, they will break the lock. On which, the appellant threatened them for implicating in *dacoity* case, if lock is broken. Munna Pandey (appellant) also stated that Pritam (co-accused) was also not being located and he said that it appears that he had gone somewhere with the victim. On the strength of such statement of Munna Pandey (appellant), they started to search Pritam also, however; he could not be traced and thereafter, they returned



back to their house and again they went to the house of Munna Pandey (appellant), where she noticed that some light was coming from inside the house of Fuchan Pandey. Thereafter, the villagers raised some suspicion, as if, in the room, there was someone. Munna Pandey (appellant) was again asked to break the lock, then he said that key was lying with Fuchan Pandey. Villagers thereafter telephoned Fuchan, at that very time, he was in his in-laws' house. Fuchan over telephone informed that in the morning, he would come. Since by 8:00 AM, Fuchan did not arrive, P.W.3 with her mother went to Sabour Police Station, however; in the meanwhile, Fuchan reached to his house. Villagers by using force also pushed Munna and carried him to the said place. Thereafter, police also arrived there. Lock of outer gate was broken. Thereafter, the key of the room was provided by Munna Pandey (appellant). From the room of Fuchan, Pritam Tiwary came out. In presence of the Police and villagers, Pritam was inquired as to where was the victim, then he explained that victim was in the room of Munna Pandey (appellant). Pritam also said that he and Munna Pandey both had jointly raped the victim and thereafter, killed her. Dead body of the victim was found beneath the bed (पलंग) of Munna Pandey (appellant). Her body was undressed. Her urinal portion was



swollen and blood had come out. She had also dispersed her waste (*potty*) and it was also swollen. Police carried the dead body. She claimed to identify both accused persons, which includes appellant. In cross-examination in paragraph – 2, she stated that her father was living in Gujarat. She further stated that Fuchan Pandey is also known as Nawal Kishore Ojha. In paragraph – 7 of her cross-examination, she claimed that she had seen television in the room, where there was a bed, almirah including fan. In paragraph – 8, she further stated that she was visiting the said room and stated that Munna Pandey (appellant) was her neighbour. In paragraph – 9, she explained that in search of the victim, they had gone to several places including block, chowk, station Sabour etc. In paragraph 12, she stated that Fuchan Pandey and Munna Pandey (appellant) were the full brothers and both brothers were having one room each in their share. She stated in paragraph 12 that Munna Pandey (appellant) was virtually residing somewhere else and usually he was visiting to his room (place of occurrence). She further stated that she was not knowing about the rented house of Munna Pandey (appellant). Again, in paragraph 12 itself, she deposed that earlier there was no complaint against Munna Pandey (appellant). It is necessary to indicate that there was no



complaint against the appellant prior to the occurrence, which suggests that it was not a case of false implication due to any old animosity. Ofcourse, her attention to her previous statement was drawn in paragraph 13 of her cross-examination, but while the investigating officer was being examined, no contradiction was drawn and as such, there is no need to take note of such so called minor inconsistencies. She denied the suggestion that she had given false evidence and falsely implicated the appellant. On examination of entire evidence of P.W.3, it is evident that though this witness was cross-examined at length, nothing could be extracted to create any doubt on her evidence.

11. The mother of the victim namely Kiran Devi was examined as P.W.2. In her evidence, she stated that on the date and time of occurrence, she was in the house of her late sister Shakila Devi. Thereafter, her daughter Priya Kumar (P.W.3) gave a telephone call to her and said that the victim girl was missing. This witness further stated that her daughter Priya Kumari disclosed that the victim was called by Munna Pandey (appellant) for witnessing television and he had carried her. This witness further stated that Priya told that when she went to call the victim to the house of Munna Pandey (appellant), she noticed that Munna Pandey (appellant), after locking the house,



was coming out. The P.W.2 further stated that she was told by Priya (P.W.3) that she, when inquired from Munna Pandey (appellant) regarding the victim, he replied that she after witnessing T.V. had already gone. The daughter of the informant (P.W.3) thereafter tried to search for the victim and after finding no clue, she had telephoned the informant. After picking-up telephone, the informant was perturbed. She on a motorcycle with son of her late sister Shakila Devi namely Babloo (P.W.1) came to her house and inquired everything regarding the conversation over the telephone. Thereafter, she went to the house of Munna Pandey (appellant) and saw that the house was locked. On outer gate also, there was lock and in room of Munna also, lock was there. She also started to search for the victim with Babloo (P.W.1), her daughter (P.W.3) and her गोटनी (wife of brother of her husband) Khushbu Devi. Number of villagers also started to search. Villagers called Munna Pandey (appellant). Thereafter, he came and from him, it was inquired regarding whereabouts of the victim, then he replied that after witnessing television where she had gone, he was not having any information. The informant thereafter again started searching, but she could not find her daughter (victim). She raised suspicion that the daughter was in the said house. Munna



Pandey (appellant) was asked to open the door, then he replied that he was not having the key of the house. Then the informant said that if he was not having key, then break the lock. This witness further stated that she also told that her daughter Priya (P.W.3) had seen him while he was locking the door. When Munna Pandey (appellant) did not break the lock, the informant with others tried to search for her daughter in orchard etc., but no trace could be found. Pritam also could not be located. This witness further stated that she thought her daughter was taken away somewhere else by Pritam, then she started searching Pritam also till the late evening. Again, they went to the house of Munna and noticed that electric bulb was ON. Bulb was ON in the room of Fuchan (brother of the appellant). Thereafter, she raised suspicion that someone was inside. Thereafter, villagers gave telephone call to Fuchan, then he said that Pritam was not there. At that very time, Fuchan was in his in-laws house. Fuchan was brother-in-law (जीजा) of Pritam. On being telephoned, Fuchan told that he was coming in the morning. Thereafter, in the morning at about 10-11 hrs., he reached the house. He was returning, then villagers also came there. At that very time, she was in police station and at police station, she got information that Fuchan had already come back to his house.



Thereafter, she returned back. Munna Pandey (appellant) was also called by villagers. When the villagers asked Fuchan to open lock, Fuchan replied that he was not having key. Villagers thereafter started to assault Munna Pandey and asked him to break the lock. When villagers broke one of the lock, then Munna Pandey (appellant) took out the key and from that key, lock of Fuchan's door was opened, however; the room was closed from inside. When the door was pushed, it was opened by Pritam and he concealed himself. All villagers entered into the house. Police also arrived. Pritam was apprehended. When Pritam was being assaulted, police had arrived there. Lock of room of Munna was also opened by the villagers. From the room of Munna Pandey (appellant), dead body of the victim was recovered. Age of victim was 11 years old and dead body was kept beneath the bed (पलंग) and police took out the dead body from beneath the bed. The informant started crying. She further stated that the cloth of her daughter from lower portion was removed. She noticed that urinal portion of her daughter was ruptured and she also noticed potty there. She stated that the anus was also ruptured. The face was swollen and on cheek also, there was sign of injury. Villagers thereafter started to assault Munna, Pritam and Fuchan. Pritam, in presence of the Police,



stated that he and Munna Pandey both jointly had committed the crime. This witness stated that her *fardbeyan* was recorded by the police at the place of occurrence itself and she identified her signature as well as signature of Babloo (P.W.1) on the *fardbeyan*. Signature was identified as Ext. 1/1. she claimed to identify Pritam and Munna Pandey (appellant). At the time of cross-examination, it was noticed by the Trial Judge that this witness was very much nervous and also she was repeatedly weeping and this was the reason that cross-examination on the date i.e. 21-06-2016 was deferred. This reflects regarding the agony suffered by the mother of the victim. In paragraph 8 of her cross-examination, she stated that Priya (P.W.3) had informed on telephone that the victim was traceless. She further deposed in paragraph - 8 of her cross-examination that family members of the informant were in visiting term with Munna Pandey and he was also visiting to the house of the informant. In paragraph -10 of her cross-examination, she stated that she was not knowing anything about the criminal nature of the appellant. She stated that the appellant was her neighbour and this was the reason regarding their conversance. In paragraph - 11 of her cross-examination, she stated that the room, in which, Pritam was present was opened. The lock of room of Munna Pandey



(appellant) was opened. Munna Pandey (appellant) and Fuchan Pandey were residing separately. One room was of Fuchan and one room was of Munna Pandey (appellant). She clarified in paragraph - 12 that 10-15 days prior to the occurrence, Fuchan had already gone to his in-laws' house situated at village Shobhapur. In paragraph – 17 of her cross-examination, she reiterated that dead body of her victim daughter was found in the room of Munna Pandey, whereas, Pritam Tiwary had concealed himself in the room of Fuchan. In paragraph 19 and 20 of her cross-examination, P.W.2 denied the suggestion that lock of two rooms were opened by Fuchan Pandey and denied the suggestion that lock of the room of the Munna Pandey (appellant) was also opened by Fuchan Pandey. In paragraph - 23 of her cross-examination, she said that she may not say exact date of recording *fardbeyan*, however; she said that she can say the day on which it was recorded. She stated that Rita Madam i.e. P.W.5 had recorded *fardbeyan* and it was read over to her, however; she was not recollecting exactly what was the time. In paragraph 26 and 27 of her cross-examination, she stated that after arrival of Fuchan, when he denied regarding possession of the key, then the villagers started assaulting Munna Pandey (appellant). She stated that Pritam was apprehended by Vijay



(P.W.6) Babloo (P.W.1) and other villagers and they also slapped Pritam. Again in paragraph - 28 of her cross-examination, she stated that the dead body of her daughter was found in the house of Munna Pandey (appellant). On examination of her entire evidence, including cross-examination, it is evident that every fact relating to the occurrence was reiterated in the cross-examination, but nothing could be doubted on her evidence.

12. P.W.1 Babloo Sao was the cousin brother of the deceased (मौसेरा भाई) and he stated that date of occurrence was 31-05-2015, on which date, he was at his own residence. On the said date, his mother's sister (मौसी) Kiran Devi (P.W.2) had come and on the said date, P.W.2 had received a telephone call. After picking up the telephone, she started weeping, then he asked as to what had happened, only then, his मौसी Kiran Devi (P.W.2) told that Priya (P.W.3) had telephoned and informed that victim was missing. Thereafter, this witness (P.W.1) alongwith his मौसी Kiran Devi (P.W.2) both went to Sabour and started searching, but they could not get any information. Subsequently, Priya (P.W.3) disclosed that Munna (appellant) had come to call the victim and victim had gone with him. Munna (appellant) had called the victim for witnessing television. After knowing this fact, P.W.1 with his मौसी Kiran Devi (P.W.2) and villagers went



to the house of Munna (appellant), where they saw that house was locked and in the house, there was none. Munna Pandey (appellant) was called by the villagers and thereafter, they and villagers asked in respect of whereabouts of the victim, then Munna Pandey (appellant) replied that he was not knowing anything. Then he asked Munna Pandey (appellant) to open the lock of house, which was denied by him and he said that when Fuchan will come, it will be opened. Villagers telephonically called Fuchan. Fuchan Pandey was the brother of Munna Pandey (appellant), however; after receiving telephone, Fuchan did not come. On the said date, Fuchan was in his in-laws house. On the next date, Fuchan came, even thereafter, lock of the house was not opened. Thereafter, villagers broken the lock of *verandah*. Thereafter, Munna Pandey (appellant) took out the key, only then, lock of the room was opened. One room was closed from inside. Even after it was pushed, the door was not opened. However, Pritam, who was inside the room, opened the door. Pritam was frightened. On inquiry, Pritam told that he alongwith Munna (appellant) had kept the victim inside room, which was locked. After snatching key from Munna, villagers opened the lock and inside room, dead body of deceased was found. At that very time, Munna Pandey (appellant) started to



fleeing away, however; he was apprehended by the villagers. From the dead body, some bad smell was coming. Cheek of the victim was swollen, there was cut on the lip and she was undressed from the lower part. In the urinal part, there was blood mark. When villagers asked as to how they had committed the crime, then Munna Pandey (appellant) and Pritam said that they have done the thing jointly. Thereafter, police arrived and took away the dead body. He stated that as witness, he had put his signature on *fardebayan* and it was also signed by Kiran Devi. This witness proved his signature as well as signature of Kiran Devi on *fardebayan*, which were marked as **Ext. 1** and **1/1**. He also claimed that on the seizure list, there was signature and he identified the appellant in the dock. In paragraph 2 of his cross-examination, he said that his village name is Jamunia, which was 22 km. away from Sabaur. He further deposed in paragraph 2 that at about 12:00 noon, they left for Sabour from his house. In paragraph - 5 of his cross-examination, he stated that *fardebayan* of Kiran Devi was recorded on 01-06-2015 and he said that Daroga Ji had not come with him. She arrived subsequently. In paragraph 6, he gave name of some of the witnesses, who had forcibly taken keys from Munna Pandey (appellant). He further stated that there were about four keys. In



paragraph 8 of his cross-examination, he further clarified that the house, from where, dead body was recovered, was having two rooms, one *verandah*, which were opened. He denied the suggestion that on being told by Kiran Devi (P.W.2), he had deposed falsely and falsely implicated the appellant.

13. P.W.6 Vijay Prasad Sah is the co-villager and he was a cable operator. He stated that on the date and time of occurrence, he was inside his house and after hearing an alarm (हल्ला), he went to the house of Kiran Devi, where he noticed that there were Priya Devi (P.W.3) and Kiran Devi (P.W.2) and number of villagers. Priya (P.W.3) and Kiran (P.W.2) both were weeping and they were talking with Munna Pandey (appellant). In the said conversation, Munna Pandey (appellant) explained that victim was taken somewhere else by Pritam Tiwary. He alongwith others also went in search of the victim. Subsequently, dead body of victim was recovered from inside room of Munna Pandey (appellant). He also claimed to identify the appellant. In paragraph - 5 of his cross-examination, he denied the suggestion that at about 9:00 AM, Pritam had persuaded the victim to go with him and subsequently, he had murdered. He also denied that he had falsely implicated the appellant. On examination of evidence of this witness also, this



fact has come that he too had noticed that dead body was found inside the house of the appellant and in his cross-examination, nothing more could be extracted to raise any suspicion on his evidence.

14. P.W.4 Dr. Sandip Lal on the date of occurrence was posted in Jawaharlal Nehru Medical College and Hospital, Bhagalpur and on the same date i.e. 01-06-2015 at 3:45 PM, he conducted *post-mortem* examination on the dead body of deceased and he proved the *post-mortem* examination report, which was marked as **Ext. 2**. This witness in his evidence had stated that in *post-mortem* examination on the dead body, he noticed following facts:-

“1. Both upper and lower lips swollen. Abrasion present over inner aspect of both upper and lower lips. Lower lip found lacerated at margin. Nose found compressed (depressed). Blood clot found in size nasal cavity. On doing dissection, nasal bones found dislocated. There was presence of blood and blood clots over bone of tongue and trachea linear. Inner mucose of trachea was deeply congested.

2. Genital Hymen found ruptured with presence of blood clot. Right side labia was swollen and bruised. Vagnial swab taken and sent



to the department of Pathology, J.L.N.M.C.H. Bhagalpur, for needful. Report awaited.

Inner garment handed over to concerned Constable under sealed cover for needful.

Opinion – Above noted injuries were ante-mortem. Injury no. 1 was caused due to pressure applied by some soft and blunt object dangerous and grievous in nature. Injury no. 2, injury over genitalia was also ante-mortem and caused by some blunt object.

Cause of death – Asphyxia and shock due to pressure exerted over mouth and nose i.e. smothering.

Time since death – 12 to 36 hours.”

Besides his evidence, the *post-mortem* examination report (**Ext. 2**) also reflects regarding brutal and barbaric act of the appellant with the minor girl, who was aged about 11 years.

15. Rita Kumari, who at the relevant time posted as S.H.O. of Sabour Police Station, was examined as P.W.5. This witness had recorded *fardebayan* of the informant, which was marked as **Ext. 3**. She further approved formal F.I.R. marked as **Ext.4**, inquest report, which was prepared in the room of the appellant, was marked as **Ext.5**. She also proved the seizure list in relation to recovery of cloth of victim marked as **Ext.6**, signature in relation to seizure list in relation to recovery of cloth of Pritam Tiwary marked as **Ext. 6/1** and seizure list in



relation to cloth (under-garment of appellant Munna) as **Ext. 6/2**. This witness deposed that on 01-06-2015, she was officer incharge of Sabour Police Station and on the said date, she got an information that in Sabour Thatheri tola, a girl had gone somewhere and parents of the said girl had surrounded the house of the accused. To verify this information, P.W.5 alongwith armed forces rushed to the place of occurrence and thereafter, she recorded *fardbeyan* of the informant. She also inspected the place of occurrence. She deposed that the place of occurrence of the case was concrete house of the Munna Pandey (appellant) and from the room of this appellant (Munna Pandey) from beneath the bed (पलंग), dead body of victim was found. She prepared inquest report and thereafter, on the strength of dead body *challan*, the dead body was sent for *post-mortem* examination. She also prepared sketch map of the place of occurrence and she stated that she arrested accused Pritam Tiwary and Munna Pandey (appellant). She also recorded re-statement of the informant and recorded statement of other witnesses. She also seized cloth, which has already been indicated hereinabove. In paragraph 3 of her cross-examination, she stated that when she reached the place of occurrence, there 100-150 persons had already assembled. After her arrival, public



broke the lock of house of accused. On examination of her evidence, it is established that the dead body of the deceased was found inside room of the appellant and she has also proved place of occurrence. Though she too was cross-examined, but nothing could be extracted to raise any doubt on her evidence.

16. On examination of entire evidence, it is established that the learned Trial Judge has rightly held the appellant guilty for commission of offence under Sections 302 and 376 of the Indian Penal Code. The learned Trial Judge, after convicting the appellant by its judgment dated 02-02-2017, deferred the date of sentence and after reasonable time, on 23-02-2017, the learned Trial Judge, after hearing both the parties and balancing the aggravating and mitigating circumstances, had come to the conclusion that it was a fit case for imposing death sentence and thereafter, death sentence was imposed and it was referred to this Court under Section 366 of the Cr.P.C. for its confirmation.

17. The evidence of P.W.3 is very much specific that on the date of occurrence in the morning, this appellant had reached the house of the informant, whereas, at that very time, P.W.3 was preparing food. In her presence, this appellant asked, rather lured the victim to accompany him for witnessing T.V. programme inside his house. At first instance, P.W.3, elder sister



of the victim, asked that she can go only after taking meal, but that too was prevented by the appellant and he (appellant) insisted and only thereafter, the victim, who was aged about 11 years, had gone with the appellant in the garb of witnessing T.V. programme in his house. In the evidence of P.W.2 informant/mother of the victim, this fact has come that appellant was neighbour of the informant and they were on visiting term. Meaning thereby that at the time, when the appellant had called the victim, there was nothing in the mind of the elder sister that her younger sister aged about 11 years will be raped by the appellant, who obviously on the date of occurrence was neither young nor very old. From the judgment of conviction and sentence, it appears that his (appellant) age was assessed as 50 years. Meaning thereby that beyond stretch of imagination, the elder sister was not having any apprehension that her minor sister can be raped by a person, who was neighbour and aged about approaching 50 years. This was the reason that victim was allowed to move with the appellant. The victim, who was aged about 11 years, was also oblivious of the fact that as to what was occurring in the mind of the appellant. After she was carried to the room and within few hours, when P.W.3 (elder sister of the victim) went to the house of the appellant, she noticed that this



appellant after locking the door was coming out. This was not the end, even on inquiry, this appellant gave false declaration that victim had already left after witnessing T.V. programme. Again the criminal mind of the appellant was operating and this was the reason that even though, he had already committed rape and murder of 11 years old girl and concealed the dead body inside his room, he gave false information to the elder sister of the victim (P.W.3). Since the victim could not be traced by P.W.3 (Priya), the P.W.3 who was aged about 15-16 years old, and this was the reason that she was not in a position to take any further decision and she immediately ranged her mother (informant), who had gone to village Jamunia, which was about 22 km. away from the village Sabour. She informed her mother regarding missing of the victim and she also explained regarding other circumstances, which were sufficient to raise suspicion on the appellant. Thereafter, the informant from Jamunia came on a motorcycle with son of her late sister P.W.1 (Babloo Saw) and all of them again went to the house of the appellant and this time they noticed that house as well as outer gate of the appellant was locked and there was none, then the search was made for the victim. Subsequently, villagers called the appellant, who disclosed that he was not having the key and he pretended, as if,



key was left with his brother Fuchan Pandey, who was away and staying in his in-laws house. This time again this appellant gave false information. By way of searching, day time had come to end of the day and in the evening, informant side and villagers noticed some light coming from the house of the appellant, then suspicion got strengthened. Thereafter, again the villagers called the appellant for opening the door. On his denial, the villagers told that they will break the lock of the door, in that event, this appellant threatened the villagers that if lock is broken, he will file a case of *dacoity* against them. All those things depict about the criminal mind of the appellant. Only in the next morning, when his brother Fuchan arrived, who was telephonically asked to come, and he disclosed that he was not having the key, the villagers started to assault the appellant and one lock was broken and only thereafter, this appellant took out the key. Ofcourse subsequently, the room, which was said to be in possession of the appellant, was opened and beneath the bed (पलंग) of the appellant, dead body in ruptured condition of the victim was found. Everything has already been discussed hereinabove, as was explained by the informant/P.W.2, P.W.3/Priya and P.W.1/Babloo.



18. We have also examined the inquest report, which was marked as **Ext. 5**. In column no. 5 of the inquest report, the exact picture has been explained regarding injury, condition and situation, on which, dead body was found. In column no. 5, it has been indicated that private part of the victim was swollen & injured and there was mark of blood. The anus of the victim was also swollen. Face and both lips were swollen having blood mark, right cheek was also swollen. On examination of the inquest report (**Ext. 5**), *post-mortem* report (**Ext. 2**) and oral evidence of the witnesses, who have stated as to what they had noticed immediately after finding the dead body in the room of the appellant, depict as to how in cruel and barbaric manner, the victim was firstly raped and thereafter she was done to death brutally knowing the fact that the victim was only aged about 11 years and she was not having any idea that the person, who was as her father, could have committed such crime with her. This depicts regarding barbaric and cruel approach of the appellant.

19. On examination of the entire evidence, there is no reason to raise any doubt on the prosecution case and as such, there is no reason to interfere with the judgment of conviction.

20. So far as sentence of death is concerned, certainly in view of provision contained in Section 354 (3) of the Cr.P.C.,



in a case of death sentence, special reason is required to be assigned. At this juncture, it would be necessary to quote Section 354 (3) of the Cr.P.C., which is as follows:-

“Section 354(3) – When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.”

21. In respect of death sentence, repeatedly it has been held that death sentence can be imposed in rarest of the rare case, however; we may not be oblivious of the fact that despite the fact that repeatedly death sentence in respect of a crime against women has been approved by this Court as well as Hon’ble Apex Court, there is no end in repetition of such type of crime. The Court can take judicial notice of the fact that despite the fact that in some of the cases death sentence was imposed, there is abrupt increase in case of rape against women, particularly; against children. Besides this, in the present appeal, this is a fact that the victim was lured by the appellant for witnessing television programme and she was taken to his house, the victim was raped and thereafter, brutally murdered. In a case, in the custody of the accused, where the victim was



tortured and murdered, death sentence was approved by the Supreme Court. The said case is **(1997) 1 Supreme Court Cases 416 (D. K. Basu vs. State of W.B.)**. It was observed that custodial torture and consequential death is an offence, which falls in the category of rarest of the rare cases. In the said case, while specifying the reason, the Court awarded death penalty. The present case stands on much serious and brutal footing than the case of D. K. Basu (*supra*). Death sentence was considered in detail by a Constitution Bench of the Supreme Court in a case, reported in **(1980) 2 Supreme Court Cases 684 (Bachan Singh vs. State of Punjab)**. The proposition of law laid down in Bachan Singh's case (*supra*) was again reiterated in **(1983) 3 Supreme Court Cases 470 (Machhi Singh vs. State of Punjab)** and in Machhi Singh's case (*supra*), the Hon'ble Supreme Court in such circumstances summarised the death sentence in following manner:-

“38.The following propositions emerge from *Bachan Singh* case:

‘(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the “*offender*” also require to be taken into consideration along with the circumstances of the “*crime*”.



(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.”

22. Yet, there is one another case, which is reported in **(2015) 1 Supreme Court Cases 253 (Vasanta Sampat Dupare vs. State of Maharashtra)**. This Court may not do better than to quote paragraph 58 and 59 of the said judgment, which are as follows:-

“58. Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that the appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father of the deceased and the children used to call him “uncle”. He had lured the deceased to



go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had an insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitly designed biological desires of this nature, went with the uncle who extinguished her life-spark. The barbaric act of the appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous.

59. In this context, we may fruitfully refer to a passage from *Shyam Narain v. State (NCT of Delhi)*, wherein it has been observed as follows: (SCC p. 81, para 1)



“1. The wanton lust, vicious appetite, depravity of senses, mortgage of mind to the inferior endowments of nature, the servility to the loathsome beast of passion and absolutely unchained carnal desire have driven the appellant to commit a crime which can bring in a ‘tsunami’ of shock in the mind of the collective, sent a chill down the spine of the society, destroy the civilised stems of the milieu and comatose the marrows of sensitive polity.”

In the said case, while describing the rape on an eight-year-old girl, the Court observed: (*Shyam Narain case*, SCC p. 88, para 26)

“26.Almost for the last three decades, this Court has been expressing its agony and distress pertaining to the increased rate of crimes against women. The eight-year-old girl, who was supposed to spend time in cheerfulness, was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shock suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age-old wise saying that ‘child is a gift of the providence’ enters into the realm of absurdity. The young girl, with efflux of time, would grow with a traumatic experience, an unforgettable shame. She shall always be haunted by the memory replete with heavy crush of disaster constantly echoing the chill air of the past forcing her to a state of nightmarish melancholia. She may not be able



to assert the honour of a woman for no fault of hers.”

23. On examination of the judgment of the Apex Court in *Vasanta Sampat Dupare (supra)*, it is evident that the said case was also almost on the similar footing, rather in the present case, much brutality was committed by the appellant.

24. Considering the fact that the appellant, who was in the age of 50 years and was having in visiting term with the family of the appellant, in a situation where he lured the victim, who was aged about 11 years and carried her to his house, committed rape and brutally murdered her, certainly, may not get weightage of mitigating circumstances, rather the entire circumstances suggest that the entire act was aggravating and as such, while balancing, this Court may prefer to approve the sentence of death instead of preferring to take lenient view. Death sentence in such situation has elaborately been dealt recently by the Hon'ble Supreme Court in a case known as '**NIRVAYA CASE**', reported in **(2017) 6 Supreme Court Cases 1 {MUKESH AND ANOTHER VS. STATE (NCT OF DELHI) AND OTHERS}**.

25. In view of glaring barbaric act of the appellant, the Court is left with no option but to confirm the death



sentence, which has been imposed by the learned Trial Judge. If in such barbaric act, Court takes lenient view, certainly this may prick conscious of the society besides pricking conscious of this Court. In such cases, some deterrent approach is required to be taken by the Court, otherwise, there will be no end of recurrence of such type of offences.

26. Accordingly, the death sentence is approved and appeal filed by the appellant against his conviction and sentence i.e. Cr.Appeal (DB) No. 358 of 2017 stands dismissed.

27. The judgment of conviction of the appellant dated 2.2.2017 for offence under Sections 302 and 376 of the I.P.C. passed by Sri Janardan Tripathi, learned Additional Sessions Judge I, Bhagalpur in Sessions Trial No. 581 of 2015 and death sentence of the appellant dated 23.2.2017 is hereby approved and confirmed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.04.2018
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