

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

REFERRED TRIAL No. 1 OF 2023
AND
CRIMINAL APPEAL No. 191 OF 2023

Between:

Dudekula Siddaiah,
S/o Peeraiah, 32 years, C/o Dudekula,
R/o Ambavaram Village, Giddalur Mandal,
Prakasam District, Andhra Pradesh ... Appellant

AND

The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P.,
Amaravati. ... Respondent

Date of Judgment Pronounced : 23-10-2024

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SURESH REDDY
AND
THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

1. Whether Reporters of Local newspapers may be allowed to see the judgment? Yes/No
2. Whether the copy of judgment may be marked to Law Reporters/Journals? Yes/No
3. Whether Their Lordships wish to see the fair copy of the judgment? Yes/No

K.SURESH REDDY, J.

K.SREENIVASA REDDY, J.

***THE HON'BLE SRI JUSTICE K.SURESH REDDY**

AND

THE HON'BLE SRI JUSTICE K.SREENIVASA REDDY

+ REFERRED TRIAL No. 1 OF 2023

AND

CRIMINAL APPEAL No. 191 OF 2023

%Dated: 23-10-2024

#Dudekula Siddaiah, S/o Peeraiah,
32 years, C/o Dudekula,
R/o Ambavaram Village, Giddalur Mandal,
Prakasam District, Andhra Pradesh ... Appellant

VERSUS

\$The State of Andhra Pradesh,
Rep. by its Public Prosecutor,
High Court of A.P.,
Amaravati ... Respondent

!Counsel for the appellant : Sri I.V.N.Raju

**^Counsel for the respondent: Sri M.Lakshmi Narayana,
Learned Public Prosecutor**

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>HEAD NOTE:

? Cases referred:

1. AIR 1980 SC 898
2. (2023) 2 SCC 353
3. 2023 LiveLaw (SC) 217

HON'BLE SRI JUSTICE K.SURESH REDDY

AND

HON'BLE SRI JUSTICE K.SREENIVASA REDDY

REFERRED TRIAL No. 1 OF 2023

AND

CRIMINAL APPEAL No. 191 OF 2023

COMMON JUDGMENT: *(per Hon'ble Sri Justice K.Suresh Reddy)*

By judgment dated 25-01-2023 in S.C.No. 78 of 2021 on the file of the Court of learned Special Judge for Trial of Offences under Protection of Children from Sexual Offences Act, 2012, Prakasam District at Ongole (for short, 'the trial Court'), the sole accused was found guilty of the offences under Sections 201, 342, 366, 376-AB and 302 of Indian Penal Code (for short, 'IPC') and Section 6 read with Section 5 (l) (m) (r) of the Protection of Children from Sexual Offences Act, 2012 (for short, '2012 Act').

2. The sole accused was tried by the trial Court under the following charges:

I charge was under Section 366 IPC;

II charge was under Section 342 IPC;

III charge was under Section 376-AB IPC;

IV charge was under Section 302 IPC;

V charge was under Section 201 IPC;

VI charge was under Section 6 of 2012 Act; and

Last charge was under Section 5 (l) (m) (r) of 2012 Act.

3. The trial Court sentenced the accused to suffer rigorous imprisonment for seven years and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, for the offence under Section 201 IPC; to suffer rigorous imprisonment for one year and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, for the offence under Section 342 IPC; to suffer rigorous imprisonment for ten years and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, for the offence under Section 366 IPC; to suffer rigorous imprisonment for not less than twenty years which may extend to imprisonment for life which shall mean imprisonment for the remainder of natural life and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, for the offence under Section 376-AB IPC; to suffer death penalty and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, for the offence under

Section 302 IPC and to suffer death penalty and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, for the offence under Section 6 read with Section 5 (l) (m) (r) of 2012 Act. All the substantive sentences were directed to run concurrently.

4. Since the accused was sentenced to suffer death penalty on two counts, the trial Court by letter dated 25-01-2023 submitted the proceedings to this Court in terms of Section 366 of the Code of Criminal Procedure (for short, 'Cr.P.C.') for confirmation of death penalty. The Registry numbered the said letter as R.T.No. 1 of 2023. Questioning the conviction and sentence recorded by the trial Court, the accused preferred Criminal Appeal No. 191 of 2023.

5. The substance of the charges is that on 08-07-2021 at about 3 p.m., the accused kidnapped the deceased, who was aged about 7 years, at Ambavaram Village, Giddalur Mandal, wrongfully confined her, committed rape on her and banged her head to a wooden cot causing her death and in the said process, he wiped blood with a quilt and packed the dead body in a plastic bag and threw it in a canal, thereby committed the offences punishable under Sections 201, 342, 366, 376-AB and 302 IPC

and Section 6 read with Section 5 (l) (m) (r) of 2012 Act. After completion of trial, the trial Court convicted the accused as stated *supra*.

6. Case of the prosecution in brief is thus:

The accused as well as the material prosecution witnesses are residents of Ambavaram Village, Giddalur Mandal, Prakasam District. P.W.2 is mother of the deceased. The deceased was aged about 7 years and was studying II Class in M.P.U.P. School, Ambavaram Village. Due to corona pandemic, schools were not functioning and at the time of incident, the deceased was playing with other children. While so, on 08-07-2021, the deceased went for playing and returned back home. At about 3 p.m., P.W.2 saw the accused taking the deceased by putting his hand on her shoulders. As the accused is uncle by courtesy, P.W.2 was under the impression that she will come back again. Till evening 5 p.m., the deceased did not return home. P.W.2 and her husband searched for the deceased and they found the accused and the deceased were missing. While so, on the next day *i.e.* on 09-07-2021 at about 3 p.m., Shaik Khammam Khasim Peera, Village Revenue Assistant, Ambavaram Village-L.W.5 came to P.W.1-Village Revenue Officer, Ambavaram Village, and informed

the latter that there was a plastic bag with packing in the canal which is near to the road that leads to fields from the village. Immediately, P.W.1 along with L.W.5 rushed to the said place and noticed a hand visible in the said bag. He came to the conclusion that dead body of a child was packed in the said plastic bag. P.W.1 kept L.W.5 at that place and went to Giddalur Police Station for lodging report. P.W.14-the then in-charge Sub Inspector of Police, Giddalur Police Station, received Ex.P1-Report from P.W.1 and registered a case in crime No. 379 of 2021 under Sections 302 and 201 IPC and submitted copies of FIR to all the concerned. Ex.P25 is copy of FIR. Immediately, P.W.14 went to P.W.15-Inspector of Police, Giddalur, who took up investigation. P.W.15 sent intimation to Additional Superintendent of Police, Prakasam District, for sending dog squad to Ambavaram Village. P.W.15 recorded statement of P.W.1 at police station. Then, P.W.15 secured the presence of P.W.8 and one Yandala Pedda Rangaiah (L.W.16)-Mediators and rushed to the scene of offence which is situated towards western side of Ambavaram Village. P.W.15 found dead body of the deceased in dry canal by the side of road covered in a plastic bag. P.W.15 got lifted the bag from the canal with the help of one

Amaravathi Gurumurthi-L.W.7 and Amaravathi Sivarao-L.W.8 and got it opened with them and found one female child dead body with injuries on head and also on private parts. P.W.15 also noticed one bite injury on right cheek. L.W.5 identified the dead body as that of daughter of P.W.2. Immediately, P.W.2 along with her relatives came to the canal and found the dead body of her daughter in the said plastic bag. P.W.15 seized one yellow colour plastic bag, one white colour plastic bag with bloodstains, one colour Photostat copy of aadhar card belonging to the accused, Chandranna Ramzan Tohfa bag, white colour thermocol pieces, one yellow colour plastic bag with Thums Up symbol, one Annapurna Gold brawn rice bag and V-guard symbol plastic fan cover under Ex.P9-Panchanama and they were marked as M.Os.1 to 8. P.W.15 also prepared Ex.P26-Rough Sketch at the scene of offence. P.W.15 also got photographed the scene and the photographs were marked as Ex.P27. P.W.15 secured the presence of P.Ws.2, 5 and others and recorded their statements. On the same day at about 8.30 p.m., Dog Squad came from Ongole. PW.9-Armed Reserve Police Constable in Dog Squad took the dog squad to the dead body of the deceased and after smelling, the dog led to the house of the accused and pulled the

quilted cloth kept under a napa stone by its legs. The dog also went near the cycle kept under Neem tree which belonged to the accused. The panchanama was marked as Ex.P9. P.W.15 also prepared route map from canal to the house of the accused and returning again to the canal. Ex.P28 is route map. Then, P.W.15 recorded statement of P.W.9. P.W.15 rushed to the house of the accused along with P.W.8 and L.W.16 and minutely observed his house. P.W.15 seized quilted cloth, red colour sandal slippers and one atlas cycle under Ex.P11-Panchanama in the presence of P.W.8 and L.W.16 and they were marked as M.Os.9 to 11. P.W.15 prepared Ex.P29-Rough Sketch at the house of the accused. On the same day, P.W.15 examined some of the witnesses. On 10-07-2021, P.W.15 held inquest over the dead body of the deceased in the presence of P.W.8 and others. Inquest report was marked as Ex.P2. In the inquest report, it was opined by the mediators that the accused committed rape on the deceased and killed her and to screen away the evidence, the accused threw the dead body into canal by packing in a plastic bag. P.W.15 added Sections 366, 342 and 376-AB IPC and Section 6 of 2012 Act by filing Ex.P3-Memo before learned Judicial I Class Magistrate, Giddalur. Thereafter, P.W.15 sent the

dead body for conducting *post mortem* examination. P.W.13-Civil Assistant Surgeon, Community Health Centre, Giddalur, conducted autopsy over the dead body of the deceased on 10-07-2021. P.W.13 preserved some items for expert opinion and the preserved items were sent to Regional Forensic Science Laboratory, Guntur, for expert opinion. R.F.S.L. Report was marked as Ex.P23. After receipt of R.F.S.L. Report, P.W.13 gave his final opinion under Ex.P24.

On 10-07-2021, P.W.16-the then Deputy Superintendent of Police, Disha Women Police Station, having received instructions from the Superintendent of Police, Prakasam District, took up further investigation. P.W.16 received C.D. file from P.W.14. On the same day, P.W.16 visited Ambavaram Village and examined the scene of offence in the presence of P.W.8 and L.W.16. P.W.16 once again examined P.Ws.1 to 4 and others and recorded their statements. On 11-07-2021, on the requisition of P.W.16, P.W.7-Headmaster, M.P.U.P. School, Ambavaram Village, issued Ex.P7-Certificate which mentions the date of birth of the deceased as 19-09-2014 and also issued Ex.P8-Certificate certifying that the deceased was a *bona fide* student at the institution studying III Class as on the date of offence. P.W.16

also recorded the statement of P.W.7. On the same day at about 2.30 p.m., on credible information, P.W.16 arrested the accused near RTC Bus Stand, Giddalur, in the presence of P.W.8 and L.W.16. The accused confessed about the commission of offence. Panchanama for arrest and confession was marked as Ex.P13. P.W.16 seized clothes worn by the accused under a cover of panchanama and they were marked as M.Os.15 to 17. The clothes were stained with blood and semen. The accused led P.W.16 and mediators to his house where he committed rape on the deceased and caused her death. The accused also led the police and mediators to the place where he threw the dead body into the canal. Once again, P.W.16 prepared Ex.P15-Observation Report in the presence of P.W.8 and L.W.16. P.W.16 produced the accused before concerned Court and the accused was remanded to judicial custody. On 13-07-2021, P.W.16 filed a memo before the Court concerned seeking to send the accused for conducting potency test on him. P.W.12-the then Assistant Professor, Department of Forensic Medicine, Guntur Medical College, Guntur, conducted potency test on the accused and issued Ex.P20-Potency Certificate opining that there is nothing to suggest that the accused is not capable of performing

sexual intercourse. P.W.16 also forwarded the material objects to Forensic Science Laboratory, Mangalagiri, for DNA analysis. On 14-07-2021, P.W.16 filed a memo-Ex.P41 before concerned Court for collecting blood samples of the accused for developing DNA profile. As per the orders of learned magistrate, P.W.16 forwarded the accused to Forensic Science Laboratory, Mangalagiri, along with a requisition under Ex.P42. DNA report was marked as Ex.P23. After receipt of RFSL Report and *post mortem* report and after completion of investigation, P.W.16 filed charge sheet.

7. In support of its case, the prosecution examined P.Ws.1 to 16 and got marked Exs.P1 to P44 apart from exhibiting M.Os.1 to 17.

8. When the accused was examined under Section 313 Cr.P.C., he denied the incriminating evidence appearing against him and reported no defence evidence.

9. Accepting the evidence of prosecution witnesses, the trial Court convicted the accused as aforesaid.

10. Heard Sri I.V.N.Raju, learned counsel appearing for the appellant-accused, and Sri M.Lakshmi Narayana, learned Public Prosecutor appearing for the respondent-State.

11. We have carefully analyzed the entire evidence available on record. There are no eyewitnesses to the incident and the prosecution rests its case on circumstantial evidence. The first circumstance relied upon by the prosecution is last seen theory; the second circumstance relied upon by the prosecution is the accused carrying the dead body in a plastic bag on his cycle on the fateful day at the relevant point of time; the third circumstance relied upon by the prosecution is the accused throwing the plastic bag containing the dead body of the deceased in a dry canal and the last circumstance relied upon by the prosecution is medical evidence adduced by P.Ws.10 to 13 coupled with Exs.P18 to P21 and R.F.S.L. Reports-Exs.P22 and P23.

12. To substantiate the first circumstance *i.e.* last seen theory, the prosecution examined mother and grandmother of the deceased as P.Ws.2 and 5 respectively. P.W.2 in her evidence stated that on 08-07-2021, the deceased was playing with other children as schools were closed during corona pandemic. After playing with children, the deceased returned back and asked her father for one rupee and thereafter, the deceased went and purchased some snacks and returned back home. The deceased asked P.W.2 for drinking water. P.W.2 went inside and brought

drinking water and she noticed the accused taking the deceased by putting his hand on her shoulders. P.W.2 further stated that she was under the impression that the deceased would return back along with the accused as he is uncle by courtesy to the deceased. P.W.2 waited till 5 p.m. in the evening but the deceased did not return. P.W.5 in her evidence also stated that when she questioned the deceased, the latter replied that she went to bring Raja Khaini for the accused and as the same was not available, she was going to the accused for returning the money. P.Ws.2, 5 and other relatives searched for the deceased and they found that the accused and the deceased were missing. Though P.Ws.2 and 5 were cross-examined at length, the defence could not elicit anything adverse to the prosecution version. The evidence of P.Ws.2 and 5 further disclosed that on the next day at about 3 p.m., on information, they went to the canal and found the dead body of the deceased in a plastic bag. As such, the evidence of P.Ws.2 and 5 clinchingly established that the deceased was last seen in the company of the accused.

13. Coming to the second circumstance *i.e.* the accused carrying the dead body of the deceased by packing in a plastic bag on his cycle and going towards the canal, the evidence of

P.Ws.3 and 4, who are husband and wife residing in the same line where the accused and P.W.2 were residing, is available on record. P.W.3 in his evidence stated that he is eking out his livelihood by running auto rickshaw; that on the fateful day at about 8 a.m., he left the house and returned back at about 3 p.m. for taking lunch and that at that time, he noticed the accused carrying a plastic bag on his cycle and going towards western side of the village. P.W.4 also deposed in the same lines stating that she found the accused carrying a plastic bag on his cycle and going towards western side of the village. Both P.Ws.3 and 4 were under the impression that the accused was carrying some articles on his cycle for selling the same for the purpose of consuming alcohol. They also found the accused coming back and keeping his cycle under a tree in front of his house and went to bazaar. It is the further evidence of P.Ws.3 and 4 that at about 5 p.m., they came to know that the daughter of P.W.2 was missing. They further stated that the accused also found missing in the village thereafter; that on the next day, they went to the canal and found the dead body of the deceased and that they informed about the accused carrying a plastic bag on his cycle to P.Ws.1 and 2. From the evidence of P.Ws.3 and 4, the

prosecution is also able to prove that the accused carried the dead body of the deceased by packing it in a plastic bag towards western side of the village and returned back after sometime and thereafter absconded from the village.

14. To substantiate the third circumstance, *i.e.* the accused throwing the dead body in dry canal, relied upon by the prosecution, the prosecution examined P.W.6 who is also resident of the same village. P.W.6 in her evidence stated that on the fateful day at the relevant point of time, while she was returning from fields after attending coolie work and when she reached near Sudda Bavi, she found the accused removing the plastic bag from his cycle and throwing the same in dry canal and she thought that the accused might have thrown some unused vessels into the canal. P.W.6 further stated that on the same day, she came to know that the daughter of P.W.2 was missing and she also went along with P.W.2 in search of the deceased; that on the next day at about 3 p.m., she also went to dry canal and found the dead body of the deceased in a plastic bag and that she immediately informed P.Ws.1, 2 and others that she saw the accused while throwing the plastic bag into the canal on the fateful day. As such, the evidence adduced through P.W.6

establishes the factum of throwing the dead body of the deceased by the accused into dry canal. The prosecution is therefore able to prove the last seen theory, the accused carrying the dead body of the deceased in a plastic bag and throwing the same in dry canal.

15. Admittedly, on the information given by L.W.5, P.W.1 went to the canal and found the dead body of the deceased in a plastic bag. P.W.1 immediately rushed to police station and lodged Ex.P1-Report to P.W.14 on 09-07-2021. The above evidence adduced by the prosecution clearly established the link of chain of events to connect that the accused committed the offences against the deceased. The prosecution also established the age of the deceased by examining P.W.7 who issued Exs.P7 and P8.

16. Coming to the medical evidence, P.W.12-the then Assistant Professor, Department of Forensic Medicine, Guntur Medical College, Guntur, issued Ex.P20-Potency Certificate opining that there is nothing to suggest that the accused is not capable of performing sexual intercourse. P.W.13-Civil Assistant Surgeon, Specialist at Community Health Centre, Giddalur, conducted autopsy over the dead body of the deceased and found the following injuries:

“Laceration of 2.5 centimetres x 2 centimetres x Bone Deep
2 centimetres above the left eyebrow-forehead;

Laceration of 3.5 centimetres x 2.5 centimetres x Bone
Deep 32 centimetres above the left eyebrow;

Lateral cantus of left eye;

Excoriation of skin 4 centimetres x 3 centimetres on the left
collar bone-insect eaten (Ant bite);

Excoriation of skin 6 centimetres x 2 centimetres o the neck
anterior aspect-insect eaten (Ant bite);

Contusion of 2x1 centimetres below left clavicle;

Linear contusion of 3 centimetre on the left angle of mouth;
and

Eccentric contusion of 3 centimetres radius with clear area
in the centre on right cheek – bite marks.”

P.W.13 preserved the following items for expert opinion:

“Swabs are collected from

1. Labia Majora,
2. Perennial Region and
3. Vaginal Swab;

Sides-Smear collected from 1. Smear from vaginal cavity – 3 in number, 2. Smear from anus – 1 in number and 3. Smear from stains of undergarments – 1 in number."

P.W.13 gave his final report opining that the cause of death of the deceased is due to multiple injuries associated with sexual assault and that as per DNA analysis report, the DNA extracted from vaginal douching is matching with the blood sample collected from the accused at Andhra Pradesh Forensic Science Laboratory, Mangalagiri. P.W.13 issued *post mortem* report-Ex.P21 and final report-Ex.P24. The evidence adduced through P.WS.12 and 13 coupled with Exs.P20 to P24 clinchingly established that it is the accused who killed the deceased after committing rape on her. As such, the prosecution is able to prove the guilt of the accused beyond reasonable doubt.

17. Insofar as sentence is concerned, the trial Court imposed death penalty on two counts. It is settled law that unless a case falls under rarest of rare cases, capital punishment cannot be imposed. In ***Bachan Singh Vs. State of Punjab***¹, the Hon'ble Apex Court held at paragraph Nos. 206 and 209 as under:

"206. Dr Chitale has suggested these mitigating factors:

¹ AIR 1980 SC 898

Mitigating circumstances—

In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

- (1) That the offence was committed under the influence of extreme mental or emotional disturbance.*
- (2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.*
- (3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.*
- (4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions (3) and (4) above.*
- (5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.*
- (6) That the accused acted under the duress or domination of another person.*
- (7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.*

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We

cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society." Nonetheless, it cannot be over-emphasized that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354(3). Judges should never be bloodthirsty. Hanging of murderers has never been too good for them. Facts and Figures, albeit incomplete, furnished by the Union of India, show that in the past, courts have inflicted the extreme penalty with extreme infrequency — a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3) viz. that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

18. Learned counsel appearing for the appellant-accused places reliance on ***Manoj and others Vs. State of Madhya Pradesh***², wherein the Hon'ble Apex Court held at paragraph Nos. 214 to 218 as follows:

"214. Capital punishment is prescribed in numerous IPC offences, including murder, kidnapping for ransom, rape and injury causing death or leaving a woman in a vegetative state, rape or gang rape of a child below 12 years' old, dacoity with murder, among other offences. In Bachan Singh v. State of Punjab [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] (hereafter "Bachan Singh"), this Court had upheld the imposition of death penalty as an alternate punishment under Section 302IPC on the strength of the 35th Report of the Law Commission of India (1967), the judgment in Jagmohan Singh v. State of U.P. [Jagmohan Singh v. State of U.P., (1973) 1 SCC 20 : 1973 SCC (Cri) 169] (which had also noted that the 35th Report advocated for retention) and in several subsequent cases decided by this Court, in which the death penalty was recognized to be a deterrent. It laid emphasis on the then recently added Sections 253(2) and 354(3) Cr.P.C. which provide for bifurcated pre-sentence hearing and sentencing

² (2023) 2 SCC 353

procedure on conviction of capital offences, to conclude that this form of punishment continued to have legislative backing and thereby, represented the will of the people.

215. *It is undeniable that there have been shifts in how It is undeniable that there have been shifts in how punishment in capital offences are dealt with. This is apparent when developments are looked at holistically, or at a macro level: the amendments to the Cr.P.C. by Parliament, the 35th and 262nd Law Commission Reports which stand over 30 years apart, and the precedents of this Court, across the decades. Initially, the law imposed a requirement of written reasons for not imposing death penalty, which was removed in 1955. In 1973, through further amendment to the CrPC and insertion of Section 354(3) — life imprisonment became the norm and imposition of death penalty required “special reasons”; and through Section 253(2) — sentencing required separate consideration from the question of conviction. In both phases i.e. post-1955 and post-1973, capital punishment was upheld to be constitutional by five-Judge Benches of this Court in Jagmohan Singh [Jagmohan Singh v. State of U.P., (1973) 1 SCC 20 : 1973 SCC (Cri) 169] and Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , respectively.*

216. *The 262nd Law Commission Report on Death Penalty (2015) (hereafter “the 262nd Report”), is a result of this Court's references in primarily two cases. Firstly, in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, para 112 : (2009) 2 SCC (Cri) 1150] (hereafter “Santosh Bariyar”) where, after taking note of the UN General Assembly Resolution 62/149 [Adopted on 18-12-2007.] it was pointed out that credible research was required to shape an informed discussion and debate, on the contentious issue of death sentence. Secondly, the judgment in Shankar Kisanrao Khade v. State of Maharashtra [Shankar Kisanrao Khade v. State of Maharashtra, (2013) 5 SCC 546, paras 148-149 : (2013) 3 SCC (Cri) 402] tasked the Law Commission to resolve the issue of whether death penalty is a deterrent punishment, is retributive justice, or serves an incapacitative goal; and to study the difference in approach adopted by the judiciary (rarest of rare) and the executive (what was termed as unknown) while granting commutation. In attempting to fulfil this mandate, the Commission discerned an urgent need for re-examination of its own earlier recommendations on the death penalty (in its 35th Report, 1967), given the drastic change in social, economic, and cultural contexts of the country since*

the 35th Report, and arbitrariness which has remained a major concern in the adjudication of death penalty cases since Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] laid down the foundational principle of “rarest of rare”.

217. *Reflective of changed circumstances and evolving discourse, the Report marks a shift in the approach towards the death penalty in India, going so far as to recommend abolition in all offences, except those relating to terrorism. A large part of the Report focusses on courts' discretion and judicial reasoning when it comes to sentencing. It concludes that death penalty sentencing in India has been based on an arbitrary application of the Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] principle, and has become Judge-centric, based on the personal predilection of Judges — a concern which was alluded to even by this Court in Swamy Shraddananda (2) v. State of Karnataka [Swamy Shraddananda (2) v. State of Karnataka, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] and analysed extensively again in Santosh Bariyar [Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, para 112 : (2009) 2 SCC (Cri) 1150] , followed by Sangeet v. State of Haryana [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] , Mohd. Farooq Abdul*

Gafur v. State of Maharashtra [Mohd. Farooq Abdul Gafur v. State of Maharashtra, (2010) 14 SCC 641: (2011) 3 SCC (Cri) 867], and more recently in Chhannu Lal Verma v. State of Chhattisgarh [Chhannu Lal Verma v. State of Chhattisgarh, (2019) 12 SCC 438 : (2019) 4 SCC (Cri) 402] (hereafter “Chhannu Lal Verma”).

The death penalty framework and how to apply it for “principled sentencing”

218. *This Court in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] while upholding the constitutionality of capital punishment, categorically ruled that the new CrPC of 1973 marked a shift as it bifurcated the criminal trial to include a pre-sentence hearing [under Section 235(2)], and further mandated the sentencing court to outline the “special reasons” [under Section 354(3)] or absence of them, by considering circumstances both of the crime and the criminal. The Court also noted that while broad guidelines or indicators may be given, they cannot be put into water-tight compartments that curb discretion of any Judge to do justice in a given individual case: (SCC pp. 739 & 748, paras 163 & 201)*

“163. ... Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of the Penal Code, the court should not confine its consideration “principally” or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal.

201. ... As we read Sections 354(3) and 235(2) and other related provisions of the 1973 Code, it is quite clear to us that for making the choice of punishment or for ascertaining the existence or absence of “special reasons” in that context, the court must pay due regard both to the crime and the criminal. What is the relative weight to be given to the aggravating and mitigating factors,

depends on the facts and circumstances of the particular case. More often than not, these two aspects are so intertwined that it is difficult to give a separate treatment to each of them. This is so because “style is the man”. In many cases, the extremely cruel or beastly manner of the commission of murder is itself a demonstrated index of the depraved character of the perpetrator. That is why, it is not desirable to consider the circumstances of the crime and the circumstances of the criminal in two separate watertight compartments. In a sense, to kill is to be cruel and therefore all murders are cruel. But such cruelty may vary in its degree of culpability. And it is only when the culpability assumes the proportion of extreme depravity that “special reasons” can legitimately be said to exist.”

(Emphasis in original)”

Placing reliance on the aforesaid judgment, learned counsel appearing for the appellant-accused submitted that the trial Court has not even considered the possibility of reformation of the accused and that the case on hand does not fall under rarest of rare cases to impose capital punishment and the mitigating circumstances submitted by the authorities would suffice that capital punishment is not warranted in the case on hand.

19. By order dated 12-07-2023, this Court directed the District Collector, Prakasam District, the Superintendent of Police, Prakasam District, and the Superintendent, Central Prison, Rajamahendravaram, to submit their reports in terms of the judgment of the Hon'ble Supreme Court in ***Manoj and others*** (2nd *supra*). Accordingly, reports are submitted by the authorities concerned. A perusal of the reports submitted by the authorities would go to show that wife of the accused discarded him and she has been residing elsewhere along with her minor daughter; that there is no previous involvement of the accused in criminal cases and that parents of the accused are eking out their livelihood by doing coolie works and they are residing with their elder daughter.

20. The Hon'ble Apex Court in ***Manoj and others*** (2nd *supra*) held at paragraph Nos. 234 to 236 as follows:

"Theories of punishment

234. *The 262nd Report speaks extensively to the penological justification of the death penalty. It finds that there is inconclusive evidence that this form of punishment has more of a deterrent effect, in comparison to life imprisonment. Dismissing the retributive theory of punishment on the ground that it suffers from lack of guidance on quantifying the punishment that would be appropriate to impose, it categorically states that:*

“7.1.2. Capital punishment fails to achieve any constitutionally valid penological goals.

7.1.3. Focusing on death penalty as the ultimate measure of justice to victims, the restorative and rehabilitative aspects of justice are lost sight of. Reliance on the death penalty diverts attention from other problems ailing the criminal justice system such as poor investigation, crime prevention and rights of victims of crime.”

235. *While the 262nd Report recommends abolition of the death penalty on this ground, in addition to sentencing having become Judge-centric or arbitrary, it has not prompted parliamentary intervention. Whether the death penalty deserves a relook [as recommended by Kurian Joseph, J. (dissenting) in Chhannu Lal Verma [Chhannu Lal Verma v. State of Chhattisgarh, (2019) 12 SCC 438 : (2019) 4 SCC (Cri) 402]], in light of the 262nd Law Commission Report, evolving jurisprudence, public discourse and international standards of human rights, is outside the purview of this Court's jurisdiction given the Constitution Bench decision in Bachan Singh [Bachan Singh v. State of Punjab, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , and a question best left for the legislature to critically consider. In this backdrop, what this Court can do, is try and bolster the existing sentencing framework. This is possible only by giving true meaning to the existing guidelines (without falling into the trap of “categorizing” crimes that automatically*

warrant death penalty). To do so, this Court finds it necessary to lay out certain practical guidelines (elaborated below) that can facilitate consideration of mitigating circumstances as recognized in *Bachan Singh* [*Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 : 1980 SCC (Cri) 580] , and consequently ensure uniform application of this framework.

236. The 262nd Report recognized the paradigm shift, in policy and discourse, towards a reformatory and rehabilitative response to crime, and the development of jurisprudence such that adjudging a case to be “rarest of rare” was not sufficient, and special emphasis had to be placed in considering whether the offender is amenable to reform. Implicit in this shift is the understanding that the criminal is not a product of only their own decisions, but also a product of the State and society's failing, which is what entitles the accused to a chance of reformation. Thus, making life imprisonment the norm, and death penalty the exception. In *Lehna v. State of Haryana* [*Lehna v. State of Haryana*, (2002) 3 SCC 76 : 2002 SCC (Cri) 526] while deciding whether the facts in that case were appropriate for death penalty, traced this shift in approach : (SCC pp. 83-84, para 14)

“14. ... Section 302IPC prescribes death or life imprisonment as the penalty for murder. While doing so, the Code instructs the court as to its application. The changes which the Code has undergone in the last

three decades clearly indicate that Parliament is taking note of contemporary criminological thought and movement. It is not difficult to discern that in the Code, there is a definite swing towards life imprisonment. Death sentence is ordinarily ruled out and can only be imposed for "special reasons", as provided in Section 354(3). There is another provision in the Code which also uses the significant expression "special reason". It is Section 361. Section 360 of the 1973 Code re-enacts, in substance, Section 562 of the Criminal Procedure Code, 1898 (in short "the old Code"). Section 361 which is a new provision in the Code makes it mandatory for the court to record "special reasons" for not applying the provisions of Section 360. Section 361 thus casts a duty upon the court to apply the provisions of Section 360 wherever it is possible to do so and to state "special reasons" if it does not do so. In the context of Section 360, the "special reasons" contemplated by Section 361 must be such as to compel the court to hold that it is impossible to reform and rehabilitate the offender after examining the matter with due regard to the age, character and antecedents of the offender and the circumstances in which the offence was committed. This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. Section 361 and Section 354(3) have both entered the statute

book at the same time and they are part of the emerging picture of acceptance by the legislature of the new trends in criminology. It would not, therefore, be wrong to assume that the personality of the offender as revealed by his age, character, antecedents and other circumstances and the tractability of the offender to reform must necessarily play the most prominent role in determining the sentence to be awarded. Special reasons must have some relation to these factors. Criminal justice deals with complex human problems and diverse human beings. A Judge has to balance the personality of the offender with the circumstances, situations and the reactions and choose the appropriate sentence to be imposed."

(Emphasis supplied)"

In view of the principle laid down in the aforesaid judgment, with an advent of goal of reformation in the recent past, the society must stride towards reformation and rehabilitation.

21. In **Sundar @ Sundarrajan Vs. State by Inspector of Police**^{3,4} the Hon'ble Apex Court held thus: (paragraphs 63, 64 & 76)

"63. In *Santa Singh v State of Punjab* (1976) 4 SCC 190, a two judge Bench of this Court highlighted the requirement of having a separate sentencing hearing

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in view of Section 235(2) of the CrPC and noted that the stage of sentencing was as important a stage in the process of administering criminal justice as the adjudication of guilt.

64. *The judgment of the majority in the Constitution Bench decision in Bachan Singh v State of Punjab (1980) 2 SCC 684 reiterated the importance of a sentencing hearing. The Court noted that:*

“151. Section 354(3) of the CrPC, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before April 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.

[...]

152. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in Jagmohan's case was implicit in the scheme of the Code, but also bifurcates the trial by providing

for two hearings, one at the pre-conviction stage and another at the pre-sentence stage.

[...]

163. [...] Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3) a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration “principally” or merely to the circumstances connected with particular crime, but also give due consideration to the circumstances of the criminal.”

(Emphasis supplied).

...

76. In Rajendra Pralhadrao Wasnik v State of Maharashtra (2019) 12 SCC 460, a three judge bench of this Court took note of the line of cases of this Court which underline the importance of considering the probability of reform and rehabilitation of the convicted

accused before sentencing him to death. The court observed:

“43. At this stage, we must hark back to Bachan Singh and differentiate between possibility, probability and impossibility of reform and rehabilitation. Bachan Singh requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility. [...]

45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the “special reasons” requirement of Section 354(3) Cr.P.C. and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the

convict can produce evidence on these issues as well.

46. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the trial court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.

47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasized. Until Bachan Singh, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar and in Sangeet v. State of Haryana where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet "In the

sentencing process, both the crime and the criminal are equally important.” Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyze this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.

(Emphasis supplied)”

The Hon'ble Apex Court observed that the process of rehabilitation is not a simple one since it involves social reintegration of the convict into society.

22. Criminal Justice System is more punitive than intended. The system is touted to be reformable and rehabilitative. The objectives of the Indian Criminal Justice System include penalizing, reforming and rehabilitating the offender. Reformation

is its final goal as the system asserts to be more rehabilitative than retributive.

23. When such is the view taken by the Hon'ble Apex Court in the recent past and having regard to the mitigating circumstances stated *supra*, this Court is of the view that death sentence imposed on the accused is harsh in the facts and circumstances of the present case.

24. For the aforementioned reasons, the death sentence imposed on the accused under two counts *i.e.* for the offence under Section 302 IPC and Section 6 read with Section 5 (l) (m) (r) of 2012 Act is modified, instead the accused is sentenced to suffer rigorous imprisonment for a period of 20 years without any reprieve or remission and also to pay a fine of Rs.500/-, in default to suffer simple imprisonment for a period of three months, under each count *i.e.* under Section 302 IPC and Section 6 read with Section 5 (l) (m) (r) of 2012 Act. The conviction and sentence recorded for the offences under Sections 201, 342, 366 and 376-AB IPC shall remain unaltered. All the substantive sentences are directed to run concurrently. Sentence of imprisonment already undergone by the appellant-accused shall be given set off under Section 428 Cr.P.C.

HON'BLE SRI JUSTICE K.SURESH REDDY

AND

HON'BLE SRI JUSTICE K.SREENIVASA REDDY

REFERRED TRIAL No. 1 OF 2023

AND

CRIMINAL APPEAL No. 191 OF 2023

*(Common judgment of the Division Bench delivered by
Hon'ble Sri Justice K.Suresh Reddy)*

DATE: 23RD OCTOBER, 2024

JSK