JUDICIAL ACADEMY JHARKHAND

SNIPPETS

OF

SUPREME COURT JUDGMENTS

(September 30-October 06, 2019)

(Volume – I)

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1. *State of Arunachal Pradesh v. Ramchandra Rabidas and Another, (2019 SCC OnLine SC 1317)*

Decided on : -04.10.2019

Bench :- 1. Hon'ble Ms. Justice Indu Malhotra
2. Hon'ble Mr. Justice Sanjiv Khanna

(The principle that the special law should prevail over the general law, has no application in cases of prosecution of offenders in road accidents under the IPC and M.V. Act.)

Issue

Whether the Gauhati High Court was justified in issuing directions that road traffic offences shall be dealt with only under the provisions of the Motor Vehicles Act, 1988 ("M.V. Act"), and in holding that in cases of road traffic or motor vehicle offences, prosecution under the provisions of Indian Penal Code, 1860 ("IPC") is without sanction of law, and recourse to the provisions of the IPC would be unsustainable in law?

Decision and observations

The Apex Court observed that there is no conflict between the provisions of the IPC and the MV Act as both the statutes operate in entirely different spheres. The offences provided under both the statutes are separate and distinct from each other. The ingredients of offences under both the statutes are different as well as the penal consequences under both the statutes are also independent and distinct from each other. Thus, the offender can be tried and punished independently under both statutes. The Apex Court was of the view that the principle that the special law should prevail over the general law, has no application in cases of prosecution of offenders in road accidents under the IPC and M.V. Act.

The Apex Court mentioned Section 26 of the General Clauses Act, 1897 and held that:

> **26.** It is well settled that an act or an omission can constitute an offence under the IPC and at the same time, be an offence under any other law. The finding of the High Court that the prosecution of offenders under two statutes i.e. the M.V. Act and the IPC, is unsustainable and contrary to law, is therefore, set aside.

The Apex Court then referred to *T.S. Baliah* **v.** *T.S. Rangachari*,[1] wherein the appellant was prosecuted both under Section 177 of the IPC, and Section 52 of the Income Tax Act, 1922, it was held as follows:

> *"6. Section 26 of the General clauses Act states:*

[1] (1969) 3 SCR 65

"26. Provision as to offences punishable under two or more enactments.—Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

A plain reading of the section shows that there is no bar to the trial or conviction of the offender under both enactments but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence. We accordingly reject the argument of the appellant on this aspect of the case."

The Apex Court also referred to ***State of Maharashtra* v. *Sayyed Hassan***,[2] wherein the accused was prosecuted under Sections 26 and 30 of the Food and Safety Standards Act, 2006 as well as Sections 188, 272, 273 and 328 of the IPC for transportation and sale of prohibited gutka/pan masala. The High Court held that Section 55 of the Food and Safety Standards Act, 2006 being a specific provision made in a special enactment, Section 188 of the IPC was inapplicable. However, the Apex Court in the case remanded the matter to the High Court, and held that:

"8. *.....The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time, an offence under any other law. The High Court ought to have taken note of Section 26 of the General Clauses Act, 1897 .....*

9. In Hat Singh's case *this Court discussed the doctrine of double jeopardy and Section 26 of the General Clauses Act to observe that prosecution under two different Acts is permissible if the ingredients of the provisions are satisfied on the same facts. While considering a dispute about the prosecution of the Respondent therein for offences under the Mines and Minerals (Development and Regulation) Act 1957 and Indian Penal Code, this Court in* State (NCT of Delhi) *v.* Sanjay *held that there is no bar in prosecuting persons under the Penal Code where the offences committed by persons are penal and cognizable offences. A perusal of the provisions of the FSS Act would make it clear that there is no bar for prosecution under the IPC merely because the provisions in the FSS Act prescribe penalties. We, therefore, set aside the finding of the High Court on the first point."*

[2] Criminal Appeal No. 1195-1207 of 2018, Decided on September 20, 2018

The Apex court emphasized on the fact that the Offences under Chapter XIII of the MV Act, cannot abrogate the applicability of the provisions under Sections 297, 304, 304A, 337 and 338 of the IPC. The offences do not overlap, and therefore, the maxim of "generalia specialibus non derogant" is inapplicable, and could not have been invoked. The offences prescribed under the IPC are independent of the offences prescribed under the M.V. Act.

The Apex Court also mentioned the principle of proportionality and stated that the punishment of offenders of motor vehicle accidents under the IPC is stricter and proportionate to the offence committed, as compared with the M.V. Act. The Apex court held:

> **35.** We thus hold that a prosecution, if otherwise maintainable, would lie both under the IPC and the MV Act, since both the statutes operate with full vigour, in their own independent spheres. Even assuming that some of the provisions of the MV Act and IPC are overlapping, it cannot be said that the offences under both the statutes are incompatible.
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> **37.** In our considered view the position of law is well-settled. This Court has consistently held that the M.V. Act, 1988 is a complete code in itself in so far as motor vehicles are concerned.However, there is no bar under the M.V. Act or otherwise, to try and prosecute offences under the IPC for an offence relating to motor vehicle accidents. On this ground as well, the impugned judgment is liable to be set aside.

The Apex Court set aside the directions issued by the Gauhati High Court to the States of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh to issue appropriate instructions to their subordinate officers to prosecute offenders in motor vehicle accidents only under the provisions of the Motor Vehicles Act, 1988 and not the IPC.

2. *Ravishankar v. State of Madhya Pradesh , (2019 SCC OnLine SC 1290)*

Decided on : -03.10.2019

Bench :- 1. Hon'ble Mr. Justice Rohinton Fali Nariman
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice Surya Kant

('residual doubt' creates a higher standard of proof over and above the 'beyond reasonable doubt' standard used at the stage of conviction, as a safeguard against routine capital sentencing, keeping in mind the irreversibility of death.)

Facts

The appellant was tried for having committed offences under Sections 363, 366, 376(2)(i), 376(2)(n), 376(2)(j), 376(2)(m), 376-A, 302 and 201 of the Indian Penal Code (for short IPC) and alternatively under the corresponding provisions of the Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act'). Through judgment and order dated 19th July 2016, the Trial Court held the appellant guilty of kidnapping a 13 year-old girl, committing rape on her, killing her by throttling and thereafter destroying the evidence by throwing her half naked body in a dry well. These crimes were held as being 'rarest of the rare' and the appellant was sentenced to death under Section 376-A of the Indian Penal Code, 1860 (I.P.C.). In terms of Section 366 of the Code of Criminal Procedure, 1973 (Cr.P.C.), the Trial Court made a reference to the High Court for confirmation of the death sentence. The appellant also filed criminal appeal challenging this judgment and order passed by the Trial Court. The High Court on 6th December 2016, through a common order, both dismissed his appeal and confirmed the Trial Court's death reference giving rise to this special leave petition. Whether or not the appellant deserved to be imposed with the extreme sentence of death penalty, the Apex Court had to decide.

Decision and Observations

On the issue as to why and in what circumstances should the extreme sentence of death be awarded, the Apex Court referred to ***Bachan Singh* v. *State of Punjab***[3] which evolved the principle of life imprisonment as the 'rule' and death penalty as an 'exception'. It further mandated consideration of the probability of reform or rehabilitation of the criminal. It, thus, formed the genesis of the 'rarest of the rare' doctrine for awarding the sentence of death.

This was further developed in ***Machhi Singh* v. *State of Punjab***[4] , the Apex Court stated, wherein it was held that as part of the 'rarest of rare' test, the Court should address itself as to whether; (i) there is something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence; (ii) the circumstances are

[3] (1980) 2 SCC 684
[4] (1983) 3 SCC 470

such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender.

Further, the Apex court also referred to ***Swamy Shraddananda @ Murali Manohar Mishra* v. *State of Karnataka***[5], wherein the Apex Court evolved a hybrid special category of sentence and ruled that the Court could commute the death sentence and substitue it with life imprisonment with the direction that the convict would not be released from prison for the rest of his life. The special sentencing theory evolved in *Swamy Shraddananda* has got the seal of approval of the Constitution Bench in ***Union of India* v. *Sriharan alias Murugan***.[6]
The Apex Court also referred to cases wherein the death sentences were confirmed in many horrendous, barbaric and superlative crimes especially which involved kidnapping, rape and cold blooded murder of tender age children. *(See* ***Mukesh* v. *State (NCT of Delhi)***[7], ***Vasanta Sampat Dupare* v. *State of Maharashtra***[8], ***Khushwinder Singh* v. *State of Punjab***,[9] ***Manoharan* v. *Inspector of Police***[10])

Then the Apex court discussed the nascent theory of "residual doubt" which has evolved in the death penalty jurisprudence. The relevant paragraphs of the judgment are:

> **56.** Further, another nascent evolution in the theory of death sentencing can be distilled. This Court has increasingly become cognizant of 'residual doubt' in many recent cases which effectively create a higher standard of proof over and above the 'beyond reasonable doubt' standard used at the stage of conviction, as a safeguard against routine capital sentencing, keeping in mind the irreversibility of death.
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> **57.** In ***Rameshbhai Chandubhai Rathod* v. *State of Gujarat***,[11] this Court noted that reliance on merely 'plausible' evidences to prove a circumstantial chain and award death penalty would be "*in defiance of any reasoning which brings a case within the category of the "rarest of rare cases".*" Further, various discrepancies in other important links in the circumstantial chain as well as lack of any cogent reason by the High Court for not accepting the retraction of the confession statement of the accused was noted. Acting upon such various gaps in the prosecution evidence as well as in light of other mitigating circumstances, like the possibility that there were others involved in the crime, this Court refused to confirm the sentence of death despite upholding conviction.
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> **58.** Such imposition of a higher standard of proof for purposes of death sentencing over and above 'beyond reasonable doubt' necessary for criminal

[5] (2008) 13 SCC 767
[6] (2016) 7 SCC 1
[7] (2017) 6 SCC 1
[8] (2017) 6 SCC 631
[9] (2019) 4 SCC 415
[10] (2019) SCC OnLine SC 951
[11] (2011) 2 SCC 764

conviction is similar to the "residual doubt" metric adopted by this Court in ***Ashok Debbarma* v. *State of Tripura***[12] wherein it was noted that:

> *"in our criminal justice system, for recording guilt of the accused, it is not necessary that the prosecution should prove the case with absolute or mathematical certainty, but only beyond reasonable doubt. Criminal Courts, while examining whether any doubt is beyond reasonable doubt, may carry in their mind, some "residual doubt", even though the Courts are convinced of the accused persons' guilt beyond reasonable doubt."*

59. *Ashok Debbarma* (supra) drew a distinction between a 'residual doubt', which is any remaining or lingering doubt about the defendant's guilt which might remain at the sentencing stage despite satisfaction of the 'beyond a reasonable doubt' standard during conviction, and reasonable doubts which as defined in ***Krishan* v. *State***[13] are "actual and substantive, and not merely imaginary, trivial or merely possible". These 'residual doubts' although not relevant for conviction, would tilt towards mitigating circumstance to be taken note of whilst considering whether the case falls under the 'rarest of rare' category.

The Apex Court was cognizant of the fact that use of such 'residual doubt' as a mitigating factor would effectively raise the standard of proof for imposing the death sentence, the benefit of which would be availed of not by the innocent only. However, the Apex Court was quick to add that it would be a misconception to make a cost-benefit comparison between costs to society owing to acquittal of one guilty versus loss of life of a perceived innocent. This is because the alternative to death does not necessarily imply setting the convict free. Also, the Apex court stated that qualitatively, the penalty imposed by awarding death is much different than in incarceration, both for the convict and for the state. Hence, a corresponding distinction in requisite standards of proof by taking note of 'residual doubt' during sentencing would not be unwarranted.

The Court concluded:

> **66.** For the reasons aforesaid, the appeals are allowed in part to the extent that the death penalty as awarded by the courts below is set aside and is substituted with the imprisonment for life with a direction that no remission shall be granted to the appellant and he shall remain in prison for the rest of his life.

[12] (2014) 4 SCC 747
[13] (2003) 7 SCC 56

3. *Sudam @ Rahul Kaniram Jadhav v. State of Maharashtra and Others, (2019 SCC OnLine SC 1277)*

Decided on : -01.10.2019

Bench :- 1. Hon'ble Mr. Justice N.V. Ramana
2. Hon'ble Mr. Justice Mohan M. Shantanagoudar
3. Hon'ble Ms. Justice Indira Banerjee

(Quality of evidence is a relevant circumstance in the sentencing analysis, in cases resting on circumstantial evidence, the doctrine of prudence should be invoked)

Facts

It is alleged that due to the strained relationships the petitioner killed his wife, Anita and her four children by strangulating them. The present Review Petition sought to review the final judgment and order dated 04.07.2011 passed by the Apex Court in Criminal Appeal Nos. 185-86 of 2011 dismissing the appeal filed by the Review Petitioner (in short "the Petitioner") and confirming his conviction under Sections 201 and 302 of the Indian Penal Code (in short, "IPC"). Vide the impugned judgment, the Apex Court upheld the sentence under Section 201, IPC and the death sentence under Section 302, IPC imposed upon the Petitioner.

Decision and Observations

The Apex Court noted that though it may be a relevant consideration in sentencing that the evidence in a given case is circumstantial in nature, there is no bar on the award of the death sentence in cases based upon such evidence (see *Swamy Shraddananda* **v.** *State of Karnataka*,[14] *Ramesh* **v.** *State of Rajasthan*[15]). Emphasising on the fact that it is for the Court to determine whether the accused may be sentenced to death upon the strength of circumstantial evidence, given the peculiar facts and circumstances of each case, the Apex Court stated that the all the relevant aggravating circumstances of the crime, such as its brutality, enormity and premeditated nature, and mitigating circumstances of the accused, such as his socio-economic background, age, extreme emotional disturbance at the time of commission of the offence, and so on, are to be assessed.

The Apex Court then referred to *Ashok Debbarma* **v.** *State of Tripura*,[16] wherein the concept of "residual doubt" has been elaborated —which simply means that in spite of being convinced of the guilt of the accused beyond reasonable doubt, the Court may harbour lingering or residual doubts in its mind regarding such guilt. The relevant paragraphs from that judgment are:

[14] (2007) 12 SCC 288
[15] (2011) 3 SCC 685
[16] (2014) 4 SCC 747

> "**33.** In *California* v. *Brown* [93 L Ed 2d 934 : 479 US 538 (1987)] and other cases, the US courts took the view, "residual doubt" is not a fact about the defendant or the circumstances of the crime, but a lingering uncertainty about facts, a state of mind that exists somewhere between "beyond a reasonable doubt" and "absolute certainty". The petitioner's "residual doubt" claim is that the States must permit capital sentencing bodies to demand proof of guilt to "an absolute certainty" before imposing the death sentence. Nothing in our cases mandates the imposition of this heightened burden of proof at capital sentencing.
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> 34. We also, in this country, as already indicated, expect the prosecution to prove its case beyond reasonable doubt, but not with "absolute certainty". But, in between "reasonable doubt" and "absolute certainty", a decision-maker's mind may wander, possibly in a given case he may go for "absolute certainty" so as to award death sentence, short of that he may go for "beyond reasonable doubt". Suffice it to say, so far as the present case is concerned, we entertained a lingering doubt as to whether the appellant alone could have executed the crime single-handedly, especially when the prosecution itself says that it was the handiwork of a large group of people. If that be so, in our view, the crime perpetrated by a group of people in an extremely brutal, grotesque and dastardly manner, could not have been thrown upon the appellant alone without charge-sheeting other group of persons numbering around 35. All the element test as well as the residual doubt test, in a given case, may favour the accused, as a mitigating factor."

The Apex Court in the present case further elaborated the concept of "residual doubt" in the following words:

> **37.** While the concept of "residual doubt" has undoubtedly not been given much attention in Indian capital sentencing jurisprudence, the fact remains that this Court has on several occasions held the quality of evidence to a higher standard for passing the irrevocable sentence of death than that which governs conviction, that is to say, it has found it unsafe to award the death penalty for convictions based on the nature of the circumstantial evidence on record. In fact, this question was given some attention in a recent decision by this Bench, in ***Md. Mannan @ Abdul Mannan v. State of Bihar***, R.P. (Crl.) No. 308/2011 in Crl. A. No. 379/2009 (decision dated February 14, 2019), where we found it unsafe to affirm the death penalty awarded to the accused in light of the nature of the evidence on record, though the conviction had been affirmed on the basis of circumstantial evidence.

The Apex Court further stated that in ***Md. Mannan***, the proposition that the quality of evidence is a relevant circumstance in the sentencing analysis was affirmed , referring to the

observations of the Court in ***Santosh Kumar Satishbhushan Bariyar* v. *State of Maharashtra***.[17]

The Apex Court then mentioned the "doctrine of prudence" which has been enunciated in ***Bachan Singh* v. *State of Punjab*** and was also referred to in the case of ***Bariyar*** wherein it was also asserted that in cases resting on circumstantial evidence, the doctrine of prudence should be invoked. In ***Bariyar***, the following was stated:

> "**149.** Principle of prudence, enunciated by *Bachan Singh* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] is sound counsel on this count which shall stand us in good stead—whenever in the given circumstances, there is difference of opinion with respect to any sentencing prop (sic)/rationale, or subjectivity involved in the determining factors, or lack of thoroughness in complying with the sentencing procedure, it would be advisable to fall in favour of the "rule" of life imprisonment rather than invoking the "exception" of death punishment."
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> 168. We must, however, add that in a case of this nature where the entire prosecution case revolves round the statement of an approver or is dependent upon the circumstantial evidence, the prudence doctrine should be invoked. For the aforementioned purpose, at the stage of sentencing evaluation of evidence would not be permissible, the courts not only have to solely depend upon the findings arrived at for the purpose of recording a judgment of conviction, but also consider the matter keeping in view the evidences which have been brought on record on behalf of the parties and in particular the accused for imposition of a lesser punishment..."

The Apex Court then stated :

> **44.** Evidently, even the fact that the evidence was circumstantial in nature did not weigh very heavily on the Court's mind, let alone the strength and nature of the circumstantial evidence. Be that as it may, we find that the material on record is sufficient to convince the Court of the Petitioner's guilt beyond reasonable doubt; however, the nature of the circumstantial evidence in this case amounts to a mitigating circumstance significant enough to tilt the balance of aggravating and mitigating circumstances in the Petitioner's favour,

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[17] (2009) 6 SCC 498

"**56.** At this stage, Bachan Singh [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] informs the content of the sentencing hearing. The court must play a proactive role to record all relevant information at this stage. Some of the information relating to crime can be culled out from the phase prior to sentencing hearing. This information would include aspects relating to the nature, motive and impact of crime, culpability of convict, etc. Quality of evidence adduced is also a relevant factor. For instance, extent of reliance on circumstantial evidence or child witness plays an important role in the sentencing analysis. But what is sorely lacking, in most capital sentencing cases, is information relating to characteristics and socio-economic background of the offender. This issue was also raised in the 48th Report of the Law Commission."

keeping in mind the doctrine of prudence. Moreover, it is also possible that the incorrect observations pertaining to Anita's facial injuries further led the Court to conclude in favour of imposing the death sentence on the Petitioner. Thus, we are of the considered opinion that there was a reasonable probability that this Court would have set aside the sentence of death in appeal, since the only surviving evidence against the Petitioner herein pertains to his motive to commit the crime, the circumstance of "last seen" and a solitary extra-judicial confession. In other words, it cannot be said that the punishment of life imprisonment is unquestionably foreclosed in the instant case, in spite of the gravity and barbarity of the offence.

45. We are thus compelled to conclude that the award of the death penalty in the instant case, based on the evidence on record, cannot be upheld.

However, given the gruesome nature of the offence, and the menace posed to society at large by the Petitioner, as evinced by the conduct of the Petitioner in jail , the review petitions were allowed to the extent that the sentence of death awarded to the Petitioner was commuted to imprisonment for the remainder of his life sans any right to remission.

4. *Ravi v. State of Maharashtra,(2019 SCC OnLine SC 1288)*

Decided on : -03.10.2019

Bench :- 1. Hon'ble Mr. Justice Rohinton Fali Nariman
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice Surya Kant

(The Sentencing Policy needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society.)

Facts

The appeals assailed the judgment dated 20th January, 2016 passed by the High Court of Judicature at Bombay, Bench at Aurangabad, confirming the death reference in the Sessions Case decided by the Additional Sessions Judge, in which the appellant having been found guilty of committing offences punishable under Sections 302, 363, 376 and 377 of the Indian Penal Code (for short, "the IPC"), has been awarded the sentence of death under Section 302, IPC along with the sentence of rigorous imprisonment(s) of different durations with fine for the rest of offences. The Trial Court as well as the High Court has concurrently held that the case falls within the exceptional category of 'rarest of the rare' cases where all other alternative options but to award death sentence, are foreclosed.

Decision and Observations

The Apex Court while upholding the conviction of the appellant stated that the overwhelming eye-witness account, circumstantial evidence, medical evidence and DNA analysis on record conclusively proves that it is the appellant and he alone, who is guilty of committing the horrendous crime in the case. The Apex Court also opined that unshakable evidence with dense support of DNA test does not require the definite determination of the motive of the appellant behind the gruesome crime.

The Apex court considered whether the instant case satisfied the test of 'rarest of the rare cases' and whether the Court should explore the award of actual life imprisonment as prescribed in *Swamy Shraddananda @ Murli Manohar Mishra* **v.** *State of Karnataka*,[18] which has got seal of approval of the Constitution Bench in *Union of India* **v.** *V. Sriharan @ Murugan*.[19]

The Apex court referred to *Bachan Singh* **v.** *State of Punjab*,[20] wherein it has been held that the death sentence be not awarded "save in the rarest of the rare cases" when the alternative option is foreclosed.

[18] (2008) 13 SCC 767
[19] (2016) 7 SCC 1
[20] (1980) 2 SCC 684

The Apex Court also mentioned ***Machhi Singh* v. *State of Punjab***,[21]wherein the Court formulated the following two questions to be considered as a test to determine the rarest of the rare cases in which the death sentence can be inflicted:

"(a) Is there something uncommon, which renders sentence for imprisonment for life inadequate calls for death sentence?

(b) Rather the circumstances of the crime such that there is no alternative, but to impose the death sentence even after according maximum weightage to the mitigating circumstances which speaks in favour of the offender?"

The Apex court relied on ***Machhi Singh*** wherein it has been stated that extreme penalty of death sentence need not be inflicted except in gravest cases of extreme culpability and where the victim of a murder is "… (a) an innocent child who could not have or has not provided even an excuse, much less a provocation for murder…", such abhorrent nature of the crime will certainly fall in the exceptional category of gravest cases of extreme culpability.

The Apex court opined that:

> **49.** *Bachan Singh* and *Machhi Singh*, the Constitution Bench and the Three-Judge Bench decisions respectively, continue to serve as the foundation-stone of contemporary sentencing jurisprudence though they have been expounded or distinguished for the purpose of commuting death sentence, mostly in the cases of (i) conviction based on circumstantial evidence alone; (ii) failure of the prosecution to discharge its onus re: reformation; (iii) a case of residual doubts; and (iv) where the other peculiar 'mitigating' circumstances outweighed the 'aggravating' circumstances.
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> **52.** The Sentencing Policy, therefore, needs to strike a balance between the two sides and count upon the twin test of (i) deterrent effect, or (ii) complete reformation for integration of the offender in civil society. Where the Court is satisfied that there is no possibility of reforming the offender, the punishments before all things, must be befitting the nature of crime and deterrent with an explicit aim to make an example out of the evil-doer and a warning to those who are still innocent. There is no gainsaying that the punishment is a reflection of societal morals. The subsistence of capital punishment proves that there are certain acts which the society so essentially abhors that they justify the taking of most crucial of the rights - the right to life.

The Apex Court mentioned ***Vasanta Sampat Dupare* v. *State of Maharashtra***,[22] ***Khushwinder Singh* v. *State of Punjab***,[23] ***Manoharan* v. *State by Inspector of Police, Variety Hall Police Station, Coimbatore***[24].

[21] (1983) 3 SCC 470
[22] (2017) 6 SCC 631
[23] (2019) 4 SCC 415

The Apex Court also mentioned the Protection of Children from Sexual Offences (Amendment) Act, 2019 whereby the minimum sentence for an aggravated penetrative sexual assault has been increased from 10 years to 20 years and imprisonment for life has now been expressly stated to be imprisonment for natural life of the person. Significantly, 'death sentence' has also been introduced as a penalty for the offence of aggravated penetrative sexual assault on a child below 12 years. The Apex Court stated that if the Parliament, armed with adequate facts and figures, has decided to introduce capital punishment for the offence of sexual abuse of a child, the Court hitherto will bear in mind the latest Legislative Policy even though it has no applicability in a case where the offence was committed prior thereto. The judicial precedents rendered before the recent amendment came into force, therefore, ought to be viewed with a purposive approach so that the legislative and judicial approaches are well harmonised.

The Apex court held:

> **61.** In the light of above discussion, we are of the considered opinion that sentencing in this case has to be judged keeping in view the parameters originating from *Bachan Singh* and *Machhi Singh* cases and which have since been strengthened, explained, distinguished or followed in a catena of subsequent decisions, some of which have been cited above. Having said that, it may be seen that the victim was barely a two-year old baby whom the appellant kidnapped and apparently kept on assaulting over 4-5 hours till she breathed her last. The appellant who had no control over his carnal desires surpassed all natural, social and legal limits just to satiate his sexual hunger. He ruthlessly finished a life which was yet to bloom. The appellant instead of showing fatherly love, affection and protection to the child against the evils of the society, rather made her the victim of lust. It's a case where trust has been betrayed and social values are impaired. The unnatural sex with a two-year old toddler exhibits a dirty and perverted mind, showcasing a horrifying tale of brutality. The appellant meticulously executed his nefarious design by locking one door of his house from the outside and bolting the other one from the inside so as to deceive people into believing that nobody was inside. The appellant was thus in his full senses while he indulged in this senseless act. Appellant has not shown any remorse or repentance for the gory crime, rather he opted to remain silent in his 313 Cr.P.C. statement. His deliberate, well-designed silence with a standard defence of 'false' accusation reveals his lack of kindness or compassion and leads to believe that he can never be reformed. That being so, this Court cannot write off the capital punishment so long as it is inscribed in the statute book.

The Apex Court also observed that in order to ensure that the death penalty is not meted out arbitrarily or capriciously, the Court's principal concern has to be with the procedure by

[24] 2019 SCC OnLine SC 951

which the death sentence is imposed than with the substantive factors laid before it. The death sentence in this case was affirmed.

5. *Ishwari Lal Yadav v. State of Chhattisgarh, (2019 SCC OnLine SC 1289)*

Decided on : -03.10.2019

Bench :- 1. Hon'ble Mr. Justice Rohinton Fali Nariman
2. Hon'ble Mr. Justice R. Subhash Reddy
3. Hon'ble Mr. Justice Surya Kant

(There cannot be any hard and fast rule for balancing the aggravating and mitigating circumstances. Each case has to be decided on its own merits. In a "rarest of rare case" capital punishment is to be imposed. To come to conclusion in each case aggravating and mitigating circumstances are to be considered. Further factors like, age of the accused, possibility of reformation, gravity of the offence etc. are also to be kept in mind.)

Facts

It is alleged that for the purpose of sacrifice to God, the child Chirag was kidnapped and murdered in a gruesome manner, inside the house of main accused Kiran Bai and Ishwari Lal Yadav. Thereafter he was buried in the precincts of the house. To avoid sound of cries, music system was played loudly. All the appellants were charged for offence under Sections 364/34 read with 120B; 302/34 read with 120B and 201, Indian Penal Code (IPC). Vide judgment dated 27.03.2014 passed in Sessions Trial No. 61 of 2011, the learned Sessions Judge, Durg, has convicted and sentenced the appellants. For the offence under Sections 364/34 read with 120B, IPC they were convicted and sentenced for imprisonment for life and fine of Rs. 5000/- each, in default of payment of fine, to undergo further rigorous imprisonment for four months. For the offence under Sections 302/34 read with 120B, IPC death penalty was imposed with a fine of Rs. 5000/- each, in default of which, they were sentenced to undergo further rigorous imprisonment for four months. For the offence under Section 201, IPC, rigorous imprisonment for five years and a fine of Rs. 2000/- each was imposed, in default of payment of fine, they were sentenced to undergo further rigorous imprisonment for two months.

In view of death penalty imposed on the appellants, a reference was made to the High Court, as required under Section 366 of Cr.P.C. and further appellants-accused had filed Criminal Appeal No. 511 of 2014 before the High Court. By a common judgment dated 01.12.2016, the High Court had confirmed death sentence on the two main accused, namely, Ishwari Lal Yadav and Smt. Kiran Bai and modified the sentence of other appellants to one of imprisonment for life without any entitlement of remission or parole.

All these appeals are directed against the common judgment of the High Court of Chhattisgarh at Bilaspur dated 01.12.2016 passed in Criminal Reference No. 1 of 2014 and Criminal Appeal No. 511 of 2014

Decision and Observations

The Apex Court stated that it is well **s**ettled that only special facts and circumstances will warrant passing of death sentence and a just balance has to be struck between aggravating and mitigating circumstances, before the option is exercised. In the case of ***Bachan Singh* v. *State of Punjab***[25] and ***Machhi Singh* v. *State of Punjab***[26] further guidelines are laid down which have been summarised in the case of ***Sushil Murmu* v. *State of Jharkhand.***[27] Paragraphs 15 and 16 of the judgment read as under:

> "15. The following guidelines which emerge from *Bachan Singh case* [(1980) 2 SCC 684 : 1980 SCC (Cri) 580] will have to be applied to the facts of each individual case where the question of imposition of death sentence arises: (*Machhi Singh case* [(1983) 3 SCC 470 : 1983 SCC (Cri) 681] SCC p. 489, para 38)
>
> (*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. 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.
>
> 16. In rarest of rare cases when the collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:
>
> (1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community.

[25] (1980) 2 SCC 684
[26] (1983) 3 SCC 470
[27] (2004) 2 SCC 338

(2) When the murder is committed for a motive which evinces total depravity and meanness e.g. murder by a hired assassin for money or reward or a cold-blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust, or murder is committed in the course of betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc. is committed not for personal reasons but in circumstances which arouse social wrath, or in cases of "bride-burning" or "dowry deaths" or when murder is committed in order to remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of the murder is an innocent child, or a helpless woman or an old or infirm person or a person vis-à-vis whom the murderer is in a dominating position or a public figure generally loved and respected by the community."

The Apex Court opined that there cannot be any hard and fast rule for balancing the aggravating and mitigating circumstances. Each case has to be decided on its own merits. In a "rarest of rare case" capital punishment is to be imposed. To come to conclusion in each case aggravating and mitigating circumstances are to be considered. Further factors like, age of the accused, possibility of reformation, gravity of the offence etc. are also to be kept in mind.

Affirming the conviction of Ishwari Lal Yadav and Kiran Bai under Section 302/34 and 201, IPC , the Apex Court confirmed the death sentence imposed on them for the offence under Section 302/34 IPC by following the guidelines as mentioned in the case of *Sushil Murmu* and holding it to be a "rarest of rare case". The Apex Court concluded:

23. In this case it clear from the evidence on record, the main accused, namely, Ishwari Lal Yadav and Kiran Bai have committed the murder of the two year old child Chirag as a sacrifice to the God. It is to be noticed, they were having three minor children at that time. Inspite of the same, they committed the murder of the deceased, a child of two years of age brutally. The head of the helpless child was severed, his tongue and cheeks were also cut. Having regard to age of the accused, they were not possessed of the basic humanness, they completely lacked the psyche or mindset which can be amenable for any reformation. It is a planned murder committed by the aforesaid two appellants. The appellants herein who are the main accused, namely, Ishwari Lal Yadav and Kiran Bai were also convicted on an earlier occasion for the offence under Section 302/34 and Section 201 of IPC in Sessions Trial No. 98/2011 by the learned Sessions Judge, Durg, for similar murder of a 6 year old girl for which they were convicted and sentenced to death, but such sentence was modified on

appeal in Criminal Appeal No. 1068 of 2014 by the High Court of Chhattisgarh at Bilaspur and they were sentenced to undergo life imprisonment without any remission or parole. On appeal to this Court, the order of the High Court is. Such conviction for similar offence can be considered as aggravating factor. By following the guidelines as mentioned in the case of *Sushil Murmu* we are of the view that this is a case of "rarest of rare cases" where death sentence imposed by the trial court is rightly confirmed by the High Court. As the case is proved beyond any reasonable doubt so far as the main accused are concerned, the judgment relied on by the learned counsel for the appellants in the case of *Ronny* also is not helpful to them.

6. *Fainul Khan v. State of Jharkhand and Another,(2019 SCC OnLine SC 1306)*

Decided on : -04.10.2019

Bench :- 1. Hon'ble Mr. Justice Navin Sinha
2. Hon'ble Mr. Justice B. R. Gavai

(There cannot be a generalised presumption of prejudice to an accused merely by reason of any omission or inadequate questions put to an accused thereunder. While the rights of an accused to a fair trial are undoubtedly important, the rights of the victim and the society at large for correction of deviant behaviour cannot be made subservient to the rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial.)

Facts

The appellants were aggrieved by their conviction under Section 302/149 of the Indian Penal Code (IPC) sentencing them to rigorous imprisonment for life, along with conviction under Sections 323/149 and 147 IPC, sentencing them to varied terms of imprisonment under the same. The sentences have been directed to run concurrently. Argument on behalf of the appellants submitted that charge was framed under Sections 302/149 and 323/149 IPC against six persons. But the charge framed under Section 147 was defective being against four persons only and without the aid of Sections 141 and 146. It was next submitted that the appellants have been seriously prejudiced in their defence because proper opportunity to defend was denied under Section 313 of the Code of Criminal Procedure, 1973 (Cr.P.C.) as the incriminating questions put to them were extremely casual and perfunctory in barely two pages. All relevant questions with regard to the accusations were not put to the appellants, denying them the opportunity to present their defence.

Decision and Observations

The Apex Court stated that the appellants were well aware that six of them were charged together for a common assault under Sections 302/149 and 323/149 because of their sharing a common object. The appellants were also aware that two of the accused were carrying a deadly weapon, spears, and which were used for assault. Therefore, the Apex Court was of the considered opinion that no prejudice had been caused to the appellants and the omission by the court in framing charge under Section 147 alone against four persons only was a mere inadvertent omission. Also, the objection about a defective charge, without any evidence of the prejudice caused, had been raised for the first time in the present appeal and therefore was not considered.

The Apex Court opined:

> **13.** But equally there cannot be a generalised presumption of prejudice to an accused merely by reason of any omission or inadequate questions put to an accused thereunder. Ultimately it will be a question to be considered in the facts and circumstances of each case including the nature of other evidence available, the kind of questions put to an accused, considered with anything further that the accused may state in his defence. In other words, there will have to be a cumulative balancing of several factors. While the rights of an accused to a fair trial are undoubtedly important, the rights of the victim and the society at large for correction of deviant behaviour cannot be made subservient to the rights of an accused by placing the latter at a pedestal higher than necessary for a fair trial.

The Apex Court held that no prejudice has been caused to the appellants. A specific question was put to the appellants that they participated in an unlawful assembly with the common object of murdering the deceased. Further, it was also put to them that they had caused injuries to P.W. 7 and 8. ***Merely because no questions were put to the appellants with regard to the individual assault made by each of them, it cannot be said in the facts of the case that any prejudice has been caused to them.*** The appellants did not offer any explanation or desire to lead evidence except for stating that they had been falsely implicated.[28]

The Apex Court referred **to** ***Suresh Chandra Bahri* v. *State of Bihar***,[29] wherein it was observed that the provisions in Section 313 make it obligatory on the court to question the accused on the evidence and circumstance appearing against him so as to apprise him the exact case which he is required to meet. But it would not be enough for the accused to show that he has not been questioned or examined on a particular circumstance but he must also show that such non-examination has actually and materially prejudiced him and has resulted in failure of justice. In other words in the event of any inadvertent omission on the part of the court to question the accused on any incriminating circumstance appearing against him the same cannot ipso facto vitiate the trial unless it is shown that some prejudice was caused to him. The Apex Court also referred to ***Shobhit Chamar* v. *State of Bihar***.[30]

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[28]Questions asked to Fainul Khan are extracted hereunder:

"Question: As has been stated by the prosecution witnesses, on 1st November, 1983 you along with other accused participated in an unlawful assembly and took part in fighting. It that true?

Answer: No. It is wrong.

Question: It has also been said that you participated in the common object of the unlawful assembly of murdering Rabbani Khan. Is that true?

Answer: It is wrong.

Question: It has also been said the during the said incident, you had also caused injuries upon Nabiul hasan Khan, Eshanul Khan, Mir Tarabul and Mir Sanif. Is this true?

Answer: No. It is wrong.

Question: Do you want to say anything in your defence?

Answer: We have been falsely implicated."

[29] 1995 Supp (1) SCC 80

[30] (1998) 3 SCC 455

The Apex Court dealt with the issue whether the appellants could at this stage raise objections with regard to the prejudice caused to the appellants. On this point the Apex Court referred to ***Sukha* v. *State of Rajasthan***,[31] wherein it was observed as follows:—

> "35. .....We have recently decided that we will be slow to entertain question of prejudice when details are not furnished; also the fact that the objection is not taken at an early stage will be taken into account. There is not a hint of prejudice in the petition filed by the appellants here in the High Court for leave to appeal to this Court; nor was this considered a ground for complaint in the very lengthy and argumentative petition for special leave filed in this Court. The only complaint about prejudice was on the score that there was no proper examination under Section 342 of the Criminal Procedure Code. We decline to allow this matter to be raised."

The Apex Court upheld the conviction.

[31] 1956 SCR 288

7. *Union of India v. State of Maharashtra and Others,(2019 SCC OnLine SC 1279)*

Decided on : - 01.10.2019

Bench :- 1. Hon'ble Mr. Justice Arun Mishra
2. Hon'ble Mr. Justice B. R. Gavai
3. Hon'ble Mr. Justice M. R. Shah

Review of the order dated 20.03.2018 passed in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra and Anr.* wherein some directions had been passed in relation to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

Issue

Review of the order dated 20.03.2018 passed in *Dr. Subhash Kashinath Mahajan v. The State of Maharashtra and Anr.* wherein the following directions had been passed in relation to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989:-

> "83. Our conclusions are as follows:
>
> i) Proceedings in the present case are clear abuse of process of court and are quashed.
>
> ii) There is no absolute bar against grant of anticipatory bail in cases under the Atrocities Act if no *prima facie* case is made out or where on judicial scrutiny the complaint is found to be *prima facie mala fide*. We approve the view taken and approach of the Gujarat High Court in *Pankaj D Suthar* (supra) and *Dr. N.T. Desai* (supra) and clarify the judgments of this Court in *Balothia* (supra) and *Manju Devi* (supra);
>
> iii) In view of acknowledged abuse of law of arrest in cases under the Atrocities Act, arrest of a public servant can only be after approval of the appointing authority and of a non-public servant after approval by the S.S.P. which may be granted in appropriate cases if considered necessary for reasons recorded. Such reasons must be scrutinized by the Magistrate for permitting further detention.
>
> iv) To avoid false implication of an innocent, a preliminary enquiry may be conducted by the DSP concerned to find out whether the allegations make out a case under the Atrocities Act and that the allegations are not frivolous or motivated.
>
> v) Any violation of direction (iii) and (iv) will be actionable by way of disciplinary action as well as contempt.
>
> The above directions are prospective."

Observations and Decision

The Hon'ble Court referred to the following decisions of the Supreme Court :-

(i) *National Campaign on Dalit Human Rights* **v.** *Union of India*[32] – The Court had directed the strict implementation of the provisions of the Act of 1989 and the compulsory registration of FIR.

(ii) *Lalita Kumari v. Government of U.P.*[33]– FIR has to be registered forthwith in case it relates to the commission of the cognizable offence. There is no discretion on the

[32] (2017) 2 SCC 432

Officer In-charge of the Police Station for embarking upon a preliminary inquiry before registration of FIR. Preliminary inquiry can only be held in a case where it has to be ascertained whether a cognizable offence has been committed or not. If the information discloses the commission of a cognizable offence, it is mandatory to register the FIR under Section 154 of Cr.PC, and no preliminary inquiry is permissible in such a situation.

(iii) ***Kartar Singh v. State of Punjab***[34] – denial of the right of anticipatory bail under section 438 would not amount to a violation of Article 21 of the Constitution of India. Thus, the provision of section 18 (SC/ST Act) cannot be said to be violative of Article 21. Article 17 of the Constitution abolishes untouchability.

(iv) ***Subramanian Swamy v. Raju***[35] – where statutory provisions are clear and unambiguous, it cannot be read down and has observed that the statistics are to be considered by a legislature. The Court must take care not to express any opinions on sufficiency or adequacy of such figures and should confine their scrutiny to legality not a necessity of law. *A power to classify being extremely broad and based on diverse considerations of executive pragmatism, the judicature cannot rush in where even the legislature warily treads.*

Power under Article 142

(v) ***Supreme Court Bar Association v. Union of India***[36] – It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorise the Court to *ignore* the substantive rights of a litigant while dealing with a cause pending before it. This power cannot be used to "supplant" substantive law applicable to the case or cause under consideration of the Court. Article 142, even with the width of its amplitude, cannot be used to build a new edifice where none existed earlier, by ignoring express statutory provisions dealing with a subject and thereby to achieve something indirectly which cannot be achieved directly.

The law concerning field reserved for the legislature and extant of judicial interference in the field reserved for the legislature.

(vi) ***Bachan Singh v. the State of Punjab***[37] – The primary function of the courts is to interpret and apply the laws according to the will of those who made them and not to transgress into the legislative domain of policy-making. "The job of a Judge is

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[33] (2014) 2 SCC 1. *See* also, *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335.
[34] (1994) 3 SCC 569.
[35] (2014) 8 SCC 390.
[36] (1998) 4 SCC 409. *See* also, *Prem Chand Garg* v. *Excise Commr.*, AIR 1963 SC 996; *E.S.P. Rajaram* v. *Union of India*, (2001) 2 SCC 186; *A.R. Antulay* v. *R.S. Nayak*, (1988) 2 SCC 602; *Bonkya* v. *State of Maharashtra*, (1995) 6 SCC 447; *M.C. Mehta* v. *Kamal Nath*, (2000) 6 SCC 213; *State of Punjab* v. *Rajesh Syal*, (2002) 8 SCC 158; *Textile Labour Association* v. *Official Liquidator*, (2004) 9 SCC 741; *Laxmidas Morarji* v. *Behrose Darab Madan*, (2009) 10 SCC 425; *Manish Goel* v. *Rohini Goel*, (2010) 4 SCC 393 *A.B. Bhaskara Rao* v. *CBI*, (2011) 10 SCC 259; *tate of Punjab* v. *Rafiq Masih*, (2014) 8 SCC 883.
[37] (1980) 2 SCC 684.

judging and not law-making." In Lord Devlin's words: "Judges are the keepers of the law, and the keepers of these boundaries cannot, also, be among outriders."

(vii) ***Asif Hameed v. State of Jammu and Kashmir***[38] – it is not for the Court to pronounce policy. It cannot lay down what is wise or politic. Self-restraint is the essence of the judicial oath.

After referring to the aforementioned cases, the Hon'ble Court analysed the directions issued by the Court in ***Dr. Subhash Kashinath Mahajan v. The State of Maharashtra and Anr.*** vide order dated 20.03.2018 and made the following observations :-

(i) It cannot be disputed that as the members of the Scheduled Castes and Scheduled Tribes have suffered for long; the protective discrimination has been envisaged under Article 15 of the Constitution of India and the provisions of the Act of 1989 to make them equals.

(ii) All the offences under the Atrocities Act are cognizable. The impugned directions put the riders on the right to arrest. An accused cannot be arrested in atrocities cases without the concurrence of the higher Authorities or appointing authority as the case may be. As per the existing provisions, the appointing authority has no power to grant or withhold sanction to arrest concerning a public servant.

(iii) The National Commission for Scheduled Castes Annual Report 2015-16, has recommended for prompt registration of FIRs.

(iv) The learned Attorney General pointed out that the statistics considered by the Court in the judgment under review indicate that 9 to 10 percent cases under the Act were found to be false. The percentage of false cases concerning other general crimes such as forgery is comparable, namely 11.51 percent and for kidnapping and abduction, it is 8.85 percent as per NCRB data for the year 2016. The same can be taken care of by the Courts under Section 482, and in case no *prima facie* case is made out, the Court can always consider grant of anticipatory bail and power of quashing in appropriate cases. For the low conviction rate, he submitted that same is the reflection of the failure of the criminal justice system and not an abuse of law. The witnesses seldom come to support down-trodden class, biased mindset continues, and they are pressurised in several manners, and the complainant also hardly muster the courage.

(v) As to prevailing conditions in various areas of the country, the Hon'ble Court referred to the mandates of Article 17 of the Constitution and observed that SCs/STs are still making the struggle for equality and for exercising civil rights in various areas of the country. The members of the Scheduled Castes and Scheduled Tribes are still discriminated against in various parts of the country. In spite of

[38] 1989 Supp (2) SCC 364. *See* also, *S.C. Chandra* v. *State of Jharkhand*, (2007) 8 SCC 279; *Indian Drugs & Pharmaceuticals Ltd.* v. *Workmen, Indian Drugs & Pharmaceuticals Ltd.*, (2007) 1 SCC 408; *Divisional Manager, Aravali Golf Club* v. *Chander Hass*, (2008) 1 SCC 683, *Kuchchh Jal Sankat Nivaran Samili* v. *State of Gujarat*, (2013) 12 SCC 226; *Kesavananda Bharati* v. *State of Kerala*, (1973) 4 SCC 225; *I.R. Coelho* v. *State of T.N.*, (2007) 2 SCC 1; *Bhim Singh* v. *Union of India*, (2010) 5 SCC 538; *State of T.N.* v. *State of Kerala*, (2014) 12 SCC 696;

reservation, the fruits of development have not reached to them, by and large, they remain unequal and vulnerable section of the society. The classes of Scheduled Castes and Scheduled Tribes have been suffering ignominy and abuse, and they have been outcast socially for the centuries. The efforts for their upliftment should have been percolated down to eradicate their sufferings.

(vi) In ***Khadak Singh* v. *State of Himachal Pradesh***[39], the Supreme Court had observed that the right to life is not merely an animal's existence. Under Article 21, the right to life includes the right to live with dignity. Basic human dignity implies that all the persons are treated as equal human in all respects and not treated as an untouchable, downtrodden, and object for exploitation. It also implies that they are not meant to be born for serving the elite class based upon the caste. The caste discrimination had been deep-rooted, so the consistent effort is on to remove it, but still, we have to achieve the real goal. No doubt we have succeeded partially due to individual and collective efforts.

(vii) Gender injustice, pollution, environmental degradation, malnutrition, social ostracism of Dalits are instances of human rights violations as observed by the Supreme Court in ***People's Union for Civil Liberties* v. *Union of India***[40].

After making the aforementioned observations, the Hon'ble Court held as follows :-

> **61.** To treat such incumbents with a rider that a report lodged by an SCs/STs category, would be registered only after a preliminary investigation by Dy. S.P., whereas under Cr.PC a complaint lodged relating to cognizable offence has to be registered forthwith. It would mean a report by upper-caste has to be registered immediately and arrest can be made forthwith, whereas, in case of an offence under the Act of 1989, it would be conditioned one. It would be opposed to the protective discrimination meted out to the members of the Scheduled Castes and Scheduled Tribes as envisaged under the Constitution in Articles 15, 17 and 21 and would tantamount to treating them as unequal, somewhat supportive action as per the mandate of Constitution is required to make them equals. It does not prima facie appear permissible to look them down in any manner. It would also be contrary to the procedure prescribed under the Cr.PC and contrary to the law laid down by this Court in *Lalita Kumari* (supra).
>
> **62.** The guidelines in (iii) and (iv) appear to have been issued in view of the provisions contained in Section 18 of the Act of 1989; whereas adequate safeguards have been provided by a purposive interpretation by this Court in the case of *State of M.P.* v. *R.K. Balothia*, (1995) 3 SCC 221. The consistent view of this Court that if *prima facie* case has not been made out attracting the provisions of SC/ST Act of 1989, in that case, the bar created under section 18 on the grant of anticipatory bail is not attracted. Thus, misuse of the provisions of the Act is intended to be taken care of by the decision above. In *Kartar Singh* (supra), a Constitution Bench of this Court has laid down that taking away the said right of anticipatory bail would not amount to a violation of Article 21 of the Constitution

[39] AIR 1963 SC 1295. *See* also, *Hinch Lal Tiwari* v. *Kamla Devi*, (2001) 6 SCC 496; *Francis Coralie Mullin* v. *Union Territory Delhi, Administrator*, (1981) 1 SCC 608 : AIR 1981 SC 746; *Olga Tellis* v. *Bombay Corporation*, (1985) 3 SCC 545; *Umesh Kumar* v. *State of Andhra Pradesh*, (2013) 10 SCC 591; *Kishore Samrite* v. *State of Uttar Pradesh*, (2013) 2 SCC 398; *Subramanian Swamy* v. *Union of India*, (2016) 7 SCC 221.

[40] (2005) 2 SCC 436.

of India. Thus, *prima facie* it appears that in the case of misuse of provisions, adequate safeguards are provided in the decision mentioned above.

63. That apart directions (iii) and (iv) issued may delay the investigation of cases. As per the amendment made in the Rules in the year 2016, a charge sheet has to be filed to enable timely commencement of the prosecution. The directions issued are likely to delay the timely scheme framed under the Act/Rules.

In re: sanction of the appointing authority:

70. Assuming it is permissible to obtain the permission of appointing authority to arrest accused, would be further worsening the position of the members of the Scheduled Castes and Scheduled Tribes. If they are not to be given special protection, they are not to be further put in a disadvantageous position. The implementation of the condition may discourage and desist them even to approach the Police and would cast a shadow of doubt on all members of the Scheduled Castes and Scheduled Tribes which cannot be said to be constitutionally envisaged. Other castes can misuse the provisions of law; also, it cannot be said that misuse of law takes place by the provisions of Act of 1989. In case the direction is permitted to prevail, days are not far away when writ petition may have to be filed to direct the appointing authority to consider whether accused can be arrested or not and as to the reasons recorded by the appointing authority to permit or deny the arrest. It is not the function of the appointing authority to intermeddle with a criminal investigation. If at the threshold, approval of appointing authority is made necessary for arrest, the very purpose of the Act is likely to be frustrated. Various complications may arise. Investigation cannot be completed within the specified time, nor trial can be completed as envisaged. Act of 1989 delay would be adding to the further plight of the downtrodden class.

In ref: approval of arrest by the SSP in the case of a non-public servant:

71. *Inter alia* for the reasons as mentioned earlier, we are of the considered opinion that requiring the approval of SSP before an arrest is not warranted in such a case as that would be discriminatory and against the protective discrimination envisaged under the Act. Apart from that, no such guidelines can prevail, which are legislative. When there is no provision for anticipatory bail, obviously arrest has to be made. Without doubting bona fides of any officer, it cannot be left at the sweet discretion of the incumbent howsoever high. The approval would mean that it can also be ordered that the person is not to be arrested then how the investigation can be completed when the arrest of an incumbent, is necessary, is not understandable. For an arrest of accused such a condition of approval of SSP could not have been made a sine qua non, it may delay the matter in the cases under the Act of 1989.

Requiring the Magistrate to scrutinise the reasons for permitting further detention:

72. As per guidelines issued by this Court, the public servant can be arrested after approval by appointing authority and that of a non-public servant after the approval of SSP. The reasons so recorded have to be considered by the Magistrate for permitting further detention. In case of approval has not been granted, this exercise has not been undertaken. When the offence is registered under the Act of 1989, the law should take its course no additional fetter sare called for on arrest whether in case of a public servant or non-public servant. Even otherwise, as we have not approved the approval of arrest by

appointing authority/S.S.P., the direction to record reasons and scrutiny by Magistrate consequently stands nullified.

73. The direction has also been issued that the Dy. S.P. should conduct a preliminary inquiry to find out whether allegations make out a case under the Atrocities Act, and that the allegations are not frivolous or motivated. In case a cognisable offence is made out, the FIR has to be outrightly registered, and no preliminary inquiry has to be made as held in *Lalita Kumari* (supra) by a Constitution Bench. There is no such provision in the Code of Criminal Procedure for preliminary inquiry or under the SC/ST Act, as such direction is impermissible. Moreover, it is ordered to be conducted by the person of the rank of Dy. S.P. The number of Dy. S.P. as per stand of Union of India required for such an exercise of preliminary inquiry is not available. The direction would mean that even if a complaint made out a cognizable offence, an FIR would not be registered until the preliminary inquiry is held. In case a preliminary inquiry concludes that allegations are false or motivated, FIR is not to be registered in such a case how a final report has to be filed in the Court. The direction (iv) cannot survive for the other reasons as it puts the members of the Scheduled Castes and Scheduled Tribes in a disadvantageous position in the matter of procedure vis-a-vis to the complaints lodged by members of upper caste, for later no such preliminary investigation is necessary, in that view of matter it should not be necessary to hold preliminary inquiry for registering an offence under the Atrocities Act of 1989.

The Hon'ble Court ended the judgment with the following hopeful remarks :-

74. The creation of a casteless society is the ultimate aim. We conclude with a pious hope that a day would come, as expected by the framers of the Constitution, when we do not require any such legislation like Act of 1989, and there is no need to provide for any reservation to SCs/STs/OBCs, and only one class of human exist equal in all respects and no caste system or class of SCs/STs or OBCs exist, all citizens are emancipated and become equal as per Constitutional goal.

75. We do not doubt that directions encroach upon the field reserved for the legislature and against the concept of protective discrimination in favour of down-trodden classes under Article 15(4) of the Constitution and also impermissible within the parameters laid down by this Court for exercise of powers under Article 142 of Constitution of India. Resultantly, we are of the considered opinion that direction Nos. (iii) and (iv) issued by this Court deserve to be and are hereby recalled and consequently we hold that direction No. (v), also vanishes. The review petitions are allowed to the extent mentioned above.