

**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NOS. 314-315 OF 2013**

**PARSURAM**

**Appellant**

**Versus**

**STATE OF MADHYA PRADESH**

**Respondent**

**O R D E R**

The appellant, convicted for the offence under Sections 376 and 302 of the Indian Penal Code (for short 'the IPC') by the Trial Court in Sessions Trial No. 79/2011 and confirmed by the High Court of Madhya Pradesh, Bench at Gwalior in Criminal Reference No. 2 of 2011 and Criminal Appeal No. 851 of 2011, has approached this Court questioning the judgment and order of conviction and sentence of death imposed on him by the impugned judgments.

2. The brief facts giving rise to these appeals are that on 06.02.2011, Smt. Maya (mother of the prosecutrix), PW-4, was

fetching water from the village well at about 10.30 am; she allowed the accused to take her daughter (the victim) with him for eating plum-fruits from the tree situated on the outskirts of the agricultural fields of the village; the accused thereafter took the victim towards the outskirts of the village, but neither of them returned; consequently, PW-4 went to search for her daughter but could not find her; she returned back to her house and informed about the aforementioned incident to her mother-in-law; PW-4 and her mother-in-law started searching for the victim again; on the way, they met one Manoj (PW-9) of their village who told them that the accused/appellant Parsuram was seen with the victim at about 1 p.m.; thereafter on the request of PW-4, the villagers went in search of the victim; ultimately, they saw her dead body lying in a naked condition, with her genitals bleeding. After lodging the first information, investigation proceeded.

The accused was a 22-year-old B.Sc. student at the time of the incident, and used to impart tuitions in the town of Lahar and in the village where he used to live. He had no prior criminal history.

3. The Trial Court convicted the accused under Sections

302 and 376 of the IPC and awarded the death sentence. The judgment of the Trial Court was confirmed by the High Court.

4. Mr. Sanjay R. Hegde, learned senior counsel appearing on behalf of the appellant, taking us through the material on record, submitted that the courts were not justified in punishing the accused for the offences for which the appellant was charged. He further submitted that even if the judgments of the Trial Court and the High Court are confirmed, the sentence of death imposed by the courts below is liable to be modified. He drew the attention of the Court to the fact that the appellant had no criminal history and he was just 22 years old at the time of the incident, pursuing a B.Sc. Per contra, Ms. Swarupama Chaturvedi, learned counsel appearing for the State, argued in support of the judgments of the Trial Court and the High Court.

5. We find no ground to interfere with the judgments of the Trial Court and the High Court convicting the accused/appellant for the offences under Sections 302 and 376 of the IPC. The post-mortem report and the evidence of the doctor, PW-2, disclose that when the dead body was brought for post-mortem examination, the mouth of the victim was stuffed

with a brown-coloured underwear, the nostrils were packed with mustard stems and one blue-coloured salwar measuring 22 cm was tied around the entire neck. On dissection of the body, the panel of doctors conducting the post-mortem (including PW-2) observed:-

“Clotted blood on private part is present. III<sup>rd</sup> degree perineal tear present; 2 x 2 cm tear is present over posterior fornix in vagina. Hymen badly torn, and 2 x 2 cm tear present over posterior wall of uterus. 2 x 2 cm tear present over fundus of uterus. Blood stained mud present inside the uterus and some in pelvic cavity.”

6. The panel of doctors opined that the cause of death was due to asphyxia as a result of strangulation. Thus, it is clear that the death was homicidal in nature.

7. Mr. Hegde further tried to convince the Court by arguing that it is not a case of rape, inasmuch as there is no evidence of penetration of genitals of the accused into the vagina of the victim. He relied upon certain observations made in *Modi's Medical Jurisprudence and Toxicology* (23<sup>rd</sup> Edn., 2005), wherein the authors opined that the vagina may be lacerated by forcible thrusting of a foreign body such as a blunt object.

8. He submitted that the foreign object thrust into the vagina of the victim was not male genitalia but a stem of the

mustard plant, since the offence took place in a mustard field. Such argument advanced by the learned senior counsel of the appellant deserves to be rejected inasmuch as a criminal case cannot be decided on presumptions, conjectures and assumptions, more particularly in the light of the clear evidence of the doctor, PW-2, and the post-mortem report against the accused, which indicates that it is a clear case of rape.

9. On the facts and circumstances of the case and on evaluating the material on record, the courts below have rightly convicted the accused for the offences of rape as well as murder.

10. Smt. Maya, PW-4 (mother of the prosecutrix), has specifically deposed about the victim girl going along with the accused in the morning to eat plum-fruits. She was the witness for the circumstance of "last seen". Ram Bahadur, PW-6, is another material witness who has deposed that the accused/appellant told Smt. Maya that he would be taking the victim to eat plum fruits from the plum tree of the vicinity. He also saw the accused with the victim going towards the agricultural field of Shri Ram which is one k.m. away from his house. Laxman, PW-7, has deposed that he saw the accused

giving plum fruits to the victim, and that after some time, the accused took the victim towards the field belonging to Shri Ram. He heard the cries of the victim after some time, and when he rushed to the spot, he saw the accused fleeing away from the spot. Manoj, PW-9, also deposed that he saw the accused along with the victim near the plum tree.

11. All the aforesaid witnesses have consistently and cogently deposed about seeing the victim last with the accused and about the accused running away from the spot immediately after the incident. Absolutely no explanation, much less any plausible explanation, is forthcoming from the accused as to when he parted with the company of the victim. In the absence of any explanation, adverse inference needs to be drawn against the accused. Having regard to the totality of the facts and circumstances of the case, there is no need to interfere with the judgment and order of conviction of the Trial Court as well as the High Court.

12. However, in our considered opinion, in the facts and circumstances of the case, the instant case may not fall under the category of the "rarest of rare" cases. The accused had no criminal history and he was a B.Sc. student at the time of the

incident. The courts below have not considered the aspect of possibility of reform or rehabilitation of the accused. It is the duty of the State to show that there is no possibility of reform or rehabilitation of the accused to seek for capital punishment. We may hasten to add that the aggravating circumstance in this case is that the accused took advantage of his position in the victim's family for committing the offences of rape and murder, inasmuch as the family of the victim had trusted the accused and sent the child along with him. However, the probability that the accused would commit criminal acts of violence in the future is not forthcoming from the record. Undoubtedly, the offence committed by the accused/appellant deserves serious condemnation and is the most heinous crime, but on considering the cumulative facts and circumstances of the case, we do not think that the instant case falls in the category of the "rarest of rare" cases, and we feel somewhat reluctant in endorsing the death sentence. Nevertheless, having regard to the nature of the crime, the Court strongly feels that the sentence of life imprisonment subject to remission which normally works out to 16 years (based on the remission rules framed by Madhya Pradesh) is disproportionate and inadequate

for the instant offence. In our considered opinion, the sentence to be imposed on the accused/appellant should be between 16 years and imprisonment until death. We have kept in mind the mitigating and aggravating circumstances of this case while concluding so.

13. As laid down by this Court in **Swamy Shraddananda (2) v. State of Karnataka**, (2008) 13 SCC 767, and subsequently affirmed by the Constitution Bench of this Court in **Union of India v. V. Sriharan**, (2016) 7 SCC 1, this Court may validly substitute the death penalty by imprisonment for a term exceeding 14 years, and put such sentence beyond remission. Such sentences have been awarded by this Court on several occasions, and we may fruitfully refer to some of these decisions by way of illustrations. In **Sebastian alias Chevithiyan v. State of Kerala**, (2010) 1 SCC 58, a case concerning the rape and murder of a 2-year-old girl, this Court modified the sentence of death to imprisonment for the rest of the appellant's life. In **Raj Kumar v. State of Madhya Pradesh**, (2014) 5 SCC 353, a case concerning the rape and murder of a 14-year-old girl, this Court directed the appellant therein to serve a minimum of 35 years in jail without remission. In



**Selvam v. State**, (2014) 12 SCC 274, this Court imposed a sentence of 30 years in jail without remission, in a case concerning the rape of a 9-year-old girl. In **Tattu Lodhi v. State of Madhya Pradesh**, (2016) 9 SCC 675, where the accused was found guilty of committing the murder of a minor girl aged 7 years, the Court imposed the sentence of imprisonment for life with a direction not to release the accused from prison till he completed the period of 25 years of imprisonment.

14. Having regard to the totality of the facts and circumstances of the case, more particularly when the accused has taken advantage of his relationship with the family of the victim as a tutor, though we find that the instant case does not fall in the category of the “rarest of rare” cases deserving imposition of the death penalty, the interest of justice would be met if the appellant herein is sentenced to undergo imprisonment of 30 years (without any remission). Accordingly, we partly allow the appeals. While confirming the conviction, we modify the sentence imposed on the appellant from death to life

imprisonment of an actual period of 30 years (without any remission).

.....**J.**  
**(N.V. RAMANA)**

.....**J.**  
**(MOHAN M. SHANTANAGODAR)**

.....**J.**  
**(INDIRA BANERJEE)**

**New Delhi,**  
**February 19, 2019**

ITEM NO.103

COURT NO.4

SECTION II-A

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 314-315/2013

PARSURAM

Appellant(s)

VERSUS

THE STATE OF MADHYA PRADESH

Respondent(s)

Date : 19-02-2019 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE N.V. RAMANA  
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR  
HON'BLE MS. JUSTICE INDIRA BANERJEE

For Appellant(s)

Mr. Sanjay R. Hegde, Sr.Adv.  
Mr. Shakeel Ahmed, AOR (SCLSC)  
Ms. Sadiya Shakeel, Adv.

For Respondent(s)

Mrs. Swarupama Chaturvedi, AOR  
Mr. B.N. Dubey, Adv.  
Mr. Mukesh Kumar, Adv.  
Ms. Indira Bhakar, Adv.  
Ms. Aparna Trivedi, Adv.  
Mr. Santanu Singh, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Having regard to the totality of the facts and circumstances of the case, more particularly when the accused has taken advantage of his relationship with the family of the victim as a tutor, though we find that the instant case does not fall in the category of the "rarest of rare" cases deserving imposition of the death penalty, the interest of justice would be met if the appellant herein is sentenced to undergo imprisonment of 30 years (without any remission). Accordingly, we partly allow the appeals. While confirming the conviction, we modify the sentence imposed on the appellant from death to life

imprisonment of an actual period of 30 years (without any remission).

(SUKHBIR PAUL KAUR)  
AR CUM PS

(RAJ RANI NEGI)  
ASSISTANT REGISTRAR

(Signed order is placed on the file)