

SUPREME COURT DIVIDED ON AWARDING QUANTUM OF SENTENCE TO RAPIST AND MURDERER OF 10YEAR OLD GIRL CHILD [Dated : 09-05-09]

The Supreme Court has expressed serious concern over the increasing number of cases of sexual assault, involving rape and murder of minor girls. Two judges of the apex court, however, differed on the quantum of sentence while upholding the conviction of a person in a rape and murder of a 10-year-old girl, who was a student of class four, in Surat district of Gujarat in 1999. Presiding judge Justice Arijit Pasayat, upheld the death sentence awarded to Ramesh Bhai Chandi Bhai Rathod, a watchman, however, the other judge on the bench, Justice Asok Kumar Ganguly said that the case did not fall in the rarest of rare category and therefore commuted the death sentence to life imprisonment.

The two judges finally referred the matter to a larger bench on the point of quantum of the sentence. The bench directed the registry to place the matter before Chief Justice KG Balakrishnan for marking to a larger bench.

Justice Pasyat, in his 33-page separate judgment noted, 'Before analyzing factual aspects it may be stated that for a crime to be proved it is not necessary that the crime must be seen to have been committed and must, in all circumstances be proved by direct ocular evidence by examining before the Court those persons who had seen its commission. The offence can be proved by circumstantial evidence also. The principal fact or factum probandum may be proved indirectly by means of certain inferences drawn from factum probans, that is, the evidentiary facts. What is culled out from the decisions noted above is that while deciding the question as to whether the extreme penalty of death sentence is to be awarded, a balance sheet of aggravating and mitigating circumstances has to be drawn up'.

Justice Pasayat further held in the facts of the present case 'The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. In fact in most of the

cases where death sentence are awarded for rape and murder and the like, there is practically no scope for having an eye witness. They are not committed in the public view. But very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect. The plea of learned counsel for the appellant (Accused) that the conviction is based on circumstantial evidence and, therefore, the death sentence should not be awarded is clearly unsustainable'. Justice Pasayat further added that 'The case at hand falls in the rarest of rare category. The circumstances highlighted establish the depraved acts of the accused and they call for only one sentence i.e. death sentence'.

Justice Ganguly, however, in his separate 56-page judgment while agreeing with Justice Pasayat said that the appellant was guilty of rape and murder of the minor girl, differed on the point of sentence and noted that instead of death sentence, a sentence of rigorous life imprisonment will serve the ends of justice.

Justice Ganguly held that 'It does not come under the `rarest of rare cases'. Apart from that in the case of the Appellant proper sentencing procedure was not followed by the trial Court and the Hon'ble High Court erred by approving the same. I find that in the instant case the appellant is a young man and his age was 28 years old as per the version in the charge-sheet. He is married and has two daughters. He has no criminal antecedents; at least none has been brought on record. His behavior in general was not objectionable and certainly not with the deceased girl prior to the incident. The unfortunate incident is possibly the first crime committed by the appellant. He is not otherwise a criminal. Such a person is not a threat to the society. His entire life is ahead of him'.

The convict was awarded death sentence by a fast track court in Surat and it was confirmed by the Gujarat High Court.