|LAW AUDIENCE JOURNAL™|

|VOLUME 1 & ISSUE 2|

|DECEMBER 2018|

|ISSN (O): 2581-6705|

EDITED BY:

LAW AUDIENCE JOURNAL'S

EDITORIAL BOARD

COPYRIGHT © 2018 BY LAW AUDIENCE JOURNAL (ISSN (O): 2581-6705)

All Copyrights are reserved with the Authors. But, however, the Authors have granted to the Journal (Law Audience Journal), an irrevocable, non-exclusive, royalty-free and transferable license to publish, reproduce, store, transmit, display and distribute it in the Journal or books or in any form and all other media, retrieval systems and other formats now or hereafter known.

No part of this publication may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher, except in the case of brief quotations embodied in critical reviews and certain other non-commercial uses permitted by copyright law.

For permission requests, write to the publisher, subject of the email or letter must be "Permission Required," at the email or postal address given below.

Law Audience Journal,

Mr. Varun Kumar, V.P.O. Gagret, Ward No.5, Tehsil. Ghanari, District. Una, Himachal Pradesh, Pincode: 177201,

Phone: +91-8351033361,

Email: lawjournal@lawaudience.com, info@lawaudience.com,

Website: www.lawaudience.com,

Contact Timings: 10:00 AM to 9:00 PM.

DISCLAIMER:

Law Audience Journal (ISSN (O): 2581-6705) and Its Editorial Board Members do not guarantee that the material published in it is 100 percent reliable. You can rely upon it at your own risk. But, however the Journal and Its Editorial Board Members have taken the proper steps to provide the readers with relevant material. Proper footnotes & references have been given to avoid any copyright or plagiarism issue. Articles published in Volume 1 & Issue 2 are the original work of the authors.

Views or Opinions or Suggestions, expressed or published in the Journal are the personal point of views of the Author(s) or Contributor(s) and the Journal & Its Editorial Board Members are not liable for the same.

While every effort has been made to avoid any mistake or omission, this publication is published online on the condition and understanding that the publisher shall not be liable in any manner to any person by reason of any mistake or omission in this publication or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this work. All disputes subject to the exclusive jurisdiction of Courts, Tribunals and Forums at Himachal Pradesh only.

|LAW AUDIENCE JOURNAL|

|VOLUME 1|ISSUE 2|DECEMBER 2018|ISSN (O): 2581-6705|

DHANANJOY CHATTERJEE ALIAS DHANA VS. STATE OF WEST BENGAL[1]: CHANGING PARADIGM OF DEATH PENALTY

AUTHORED BY: MS. BHAVYA CHOUDHARY & CO-AUTHORED BY: MR. NITISH CHANDRA, DAMODARAM SANJIVAYYA NATIONAL LAW UNIVERSITY.

INTRODUCTION:

The present case, i.e, Dhananjoy Chatterjee Alias Dhana v. State of West Bengal is a historic case related to the aspect of Death Penalty or Capital Punishment in India. It is an evident fact that Dhananjoy Chatterjee was the first person who was lawfully executed in India in the 21st century for a crime which was not related to terrorism. The execution by hanging took place in Alipore Central Correctional Home, Kolkata, on 14 August 2004. He was charged with the crimes of rape and murder of Hetal Parekh, a 14-year-old school-girl. The execution encouraged public discussions and fascinated huge attention from media houses. Dhananjoy was imprisoned and hanged. This was the first hanging in West Bengal since 21 August 1991 at Alipore Jail.

FACTS OF THE CASE:

Hetal Parekh, a young 18 years old school going girl was raped and murdered on 05/03/1990 between 5:30 and 5:45 in her flat while her father, brother and mother were not at home. The accused was the watchman of the apartment where the deceased used to live. The accused had been teasing the deceased when she used to go to school and also had proposed her to come with him to watch a movie. She told her mother about this and her mother told this to her father and his father after consulting the head of the Security department got him transferred.

On the day of occurrence, as the normal routine, her father and brother were not at home and her mother had gone to the temple where she used to go daily and Hetal, the deceased was alone in the flat. The accused even after being transferred continued his duty as a watchman in the same apartment between 6:00 AM to 2:00 PM. Just after the deceased's mother left for

[1]Dhananjoy Chatterjee Alias Dhana v. State Of West Bengal, 1994 (1) ALT Cri 388 (India).

the temple, the accused met the present security guard and told him that he is going to the deceased's flat for contacting his office over the telephone. He used the lift to go to the flat.

At about 6:05 PM, deceased's mother returned from the temple and while going to her flat, the liftman told him that the accused had gone to his flat. She was annoyed by this as of his previous records. On reaching her flat, she rang the bell repeatedly but no one answered. Several neighbours came there and eventually broke the lock. Hetal, the deceased was lying on the floor and her skirt and blouse had been pulled up and her private parts were visible. There were patches of blood near her head as well as on the floor and there were blood stains on her hand and her private parts which clearly showed that she had been raped. The deceased seemed unconscious at that time.

Her mother lifted her in her arms and rushed down through the lift to see a doctor but a neighbour had already called a doctor. The doctor, in the lift itself, declared her dead and this information was sent to her father and brother and her father filed an F.I.R.

ISSUES IN THIS CASE:

When there is no direct evidence, the court goes into circumstantial evidence and so in this case to prove the MOTIVE of the accused, the court went into circumstantial evidence.

The deceased, Hetal Parekh was being teased by the accused when she used to go to or come back from school. He even proposed her to accompany him to see a movie to which she complained to her mother and her mother told her father and her father got the accused transferred. But even after being transferred, the accused continued to be the security guard in the same apartment and on being asked by his colleague he said that because of some personal reason he could not go on that date.

So, it was clearly established that the accused had improperly behaved with the girl and often used to tease her. It proves that the accused had some improper designs in relating to the girl and after being rejected by the deceased for the movie, the accused, to teach a lesson, must have raped and murdered her.

The Judges were of the opinion that the prosecution had proved the Motive[2] of the accused beyond reasonable doubt.

The accused visited the flat 3A where the deceased, Hetal used to live when there was no one at the house. When the mother of the deceased left for the temple at 5:20 PM on the day of the incident, and as the accused was aware of the fact that no one was in the house, he entered the house. On being asked by the liftman and his co security guard, he said that he was going to flat 3A in order to contact the office over the phone. In the meanwhile, the supervisor of the security guard came to the apartment in order to inquire about as to why the accused was not transferred. The supervisor asked the co-security guard as to where he was and in reply, the co-security guard said that he was in the flat 3A. At the direction of the Supervisor, the guard, on duty contacted the accused through the intercom but there was no response so he called the name of the accused, who appeared in the balcony and told that he was coming down. On coming down, he side-tracked both of them and went.

After that, he was not seen until he got arrested. These evidences when corroborated, it could be said that he had done the crime. The cream colour button recovered from the place of the occurrence and the shirt seized from the house of the accused were sent to a laboratory and it was proved that the button belonged to the same shirt. A broken chain was also recovered from the place of occurrence and it was confirmed by one of the witnesses that it was of the accused as the witness himself gifted him that chain.

The wristwatch which originally belonged to the mother of the deceased was also stolen on the day of commission of the crime. The prosecution proved that he had sold that watch to one of the watch companies and the salesmen produced the guarantee card of the watch which went against the accused.

JUDGEMENT:

The trial court awarded him with the sentence of death which was confirmed by High Court for the offence under section 302 of IPC for the murder of Hatel Parekh. The Supreme court dismissed the appeal stating that this case comes within the parameters of 'rarest of rare'

[2]Bhavya Choudhary and Prajwal chauhan, Is Death Penalty a terror deterrent: An overview of Death Penalty in India, available at http://ajas.asia/ajas.asia/Journal.aspx, last visited 13/02/2018; **Motive for Commission of the Crime:** When the crime is committed in furtherance to betray the nation, or assassins are hired to kill the victim, or any deliberate design is made to kill the victim in a cold-blooded manner, it'll also fall under the said category of rarest of the rare.

doctrine as the accused was a security guard who is actually supposed to ensure the protection and welfare of inhabitants of the flats in the apartment and to gratify his lust and her murder in retaliation for his transfer, makes this crime more heinous. The Supreme Court, after having known the condition of the body of the deceased, came to the conclusion that a most ruthless and barbaric rape and murder was committed on a helpless and hapless school going girl of 18 years. The Supreme Court, in its profound reasoning, concluded that the cold-blooded murder was an affront to the human dignity of the society and also added that it shocked its judicial conscience. The Apex Court also saw no mitigating circumstances in the case concerned and held that the case was **"rarest of the rare"**[3] and no punishment less than the capital punishment could have been awarded. The death penalty was confirmed and the appeal failed.

CRITICAL ANALYSIS OF THE CASE:

The judgment in the given case has been criticized many times owing to certain allegations and for many a number of people, it was an occasion to reflect upon the wisdom of the death penalty. Many newspaper and other reports have questioned the confirmation of the capital punishment by the Hon'ble Supreme Court. The question which arose was whether the victim was actually raped or not. The forensic doctors, in their reports, confirmed that there was Sexual Intercourse with the victim just before the death but did not say that the intercourse was a forceful one. Most of the injuries were in the face and the neck area and no injury was found in the genital or the breast area.

[3]Rarest of rare doctrine available at https://www.lawctopus.com/academike/rarest-rare-doctrine-death-penalty/, last visited 13/02/2018; The Doctrine of Rarest of Rare was established after the judgement was delivered in the case of Bacchan Singh v State of Punjab [(1980) 2 SCC 684] where life sentence was regarded as the rule and death sentence as an exception. Even though this doctrine has no statutory definition, it basically provides that death should be awarded to a person as a form of punishment only in cases wherein the functioning of the society in an orderly fashion demands the extinction of life of the wrong doer. While determining whether the doctrine of rarest of rare applies to a particular case the court must take into account various aspects of the crime such as manner of commission of crime, motive behind commission of crime, nature of crime and the criminal and the magnitude of the crime. Only after considering all of these points should a death penalty be awarded. Article 21 of the Constitution provides that 'no person shall be deprived of his life or personal liberty except according to procedure established by law.' Thus in a case where the law demands capital punishment then this shall not be in violation of the Constitution. In Jagmohan Singh v. State of U.P Capital punishment was challenged to be constitutionally invalid and violating Articles 14, 19 and 21 of the constitution. In this case, the Supreme Court held that in certain exceptional circumstances capital punishment should be awarded keeping public interest, social defence and public order in mind. However they also stated that such an award must be given only in exceptional circumstances thereby making it 'Rarest of Rare' doctrine.

The doubt also crops us when the credibility of the two eye-witnesses who claimed to have seen the accused on that day at that time comes into question. Some media reports have said that the spot from which Dhananjay was claimed to have been seen on a fateful day was not even visible from the third floor. The time window of Dhananjay's entry into the flat and his exit from the flat, also, according to the witnesses, was not sufficient enough for a murder and rape to take place. According to the witnesses, the clothes of the accused were not soiled and he was not even looking exhausted and his body language also did not give any hint as to he must have committed the brutal rape and murder. The victim's body had as many as 21 injuries and the same doubt intensifies when we think about the situation as to how could the accused have committed everything alleged in such a short span of time.

The behaviour of the kith and kins of the deceased was also mysterious. The police was not informed about the crime immediately. They were informed about it after three hours. The police also took it as true that the mother was not there at the time of the incident. The family also shifted to Mumbai (from Kolkata) leaving behind an established business and sprawling 3 bedroom flat.

We as researchers have especially highlighted the case of ***Dhananjay Chatterjee v. state of West Bengal***[4] because we consider this case as an inflection point in the jurisprudence of death penalty. With due respect to the Supreme Court of India and its profound judicial sense, we as students of law have come to the conclusion that the accused did not deserve the apex punishment in this case. In our view, the mitigating circumstances, in this case, were more than the aggravating ones and moreover, the punishment was executed after a decade of conviction. The time gap between these two is also a very important deciding factor as far as the execution is concerned.

To quote Lord Denning who appeared before the Royal Commission on 'Capital Punishment':

"*The punishment inflicted for grave crimes should adequately reflect the revulsion felt by the great majority of citizen for them. It is a mistake to consider the object of punishment as being deterrent or reformative or preventive and nothing else … The ultimate justification of any punishment is not that it is a deterrent, but that it is the emphatic denunciation by the community of a crime: and from this point of view, there are some murders which, in the*

[4] *supra* note 1.

present state of public opinion, demand the most emphatic denunciation of all namely the death penalty."[5]

Bentham treats the committed offences as an act of past, that should be used as an opportunity of punishing the offenders in such a way that the future offences could be prevented[6].

The researchers have found that strikingly similar cases have different findings. Taking the example of the present case at hand, we find that the accused has met the gallows but in State of ***Maharashtra v. Mansingh***[7], wherein the accused raped and murdered an 8 year innocent girl was not awarded death penalty but life imprisonment although the crime was in no way less grave than the case at hand. Yet again in another similar case[8], the Supreme Court awarded life imprisonment only. So, there is a haphazard geometry with respect to the execution of the death penalty in India which is very evident and lucid from the cases mentioned above.

***"State should not punish with vengeance."*- Emperor Ashoka**

The death penalty has been a mode of punishment since times immemorial. With the advancement of society, the mode of death punishment has changed significantly.

It is an accepted fact Death punishment is qualitatively a different punishment from any other punishment in as much as it is irreversible in nature and the life ends then and there.

Human rights are moral and principled rights with legal content that ensue to a person for simply being a person. Can we calculate human rights mathematically? They guarantee that all the people will be protected all the time. Human rights are not redeemable or negotiable. They can't be seen through the lens of cost-benefit analysis. The 'balance sheet test'[9] is such an instrument that constructs a table to compare the aggravating and mitigating state of affairs around the case and the criminal in order to find out whether it falls under 'rarest of rare'

[5]Friedman, W., Law in a Changing Society, (2nd Ed.) (Delhi: Universal Law Publishing Co. Pvt. Ltd. (2008).p.225.
[6]Jeremy Bentham, op. cit., p. 209.
[7]Maharashtra v. Mansingh, (2005) 3 S.C.C. 131 (India).
[8]Surendra Pal Shivbalakpal v. State of Gujarat, (2005) 3 S.C.C. 127 (India).
[9]A **balancing test** is any judicial **test** in which the judge weighs the importance of many factors in a legal case. The proponents of such tests have a view that this allows a deeper insight into the case at hand. Especially in a case where the apex punishment has to be awarded, mitigating and aggravating circumstances have to be evaluated and thereafter the judgement has to be announced.

category or not. The test was applied in ***Macchi Singh v. State Of Punjab***[10] despite the cynicism expressed by the Constitutional Bench in *Bacchan Singh*[11]. As Justice Madan Lokur in *Sangeet vs State of Haryana*[12] stated- "this court in Macchi Singh revived "balancing" of aggravating and mitigating circumstances through a balance sheet theory. In doing so, it sought to compare aggravating circumstances pertaining to a crime with the mitigating circumstances pertaining to a crime with the mitigating circumstances pertaining to a criminal. They are different elements and cannot be compared with one another. A balance sheet cannot be drawn up of two completely different components of an incident. Nevertheless, the balance sheet theory held the ground, post Macchi Singh.

Hitherto, a three-judge bench in ***Vasant Sampat Dupare v. State Of Maharastra***[13] devotedly and precisely does the math, accounting in columned balance sheets of aggravations and mitigating, turning a canopy eye to Sangeet's warnings. *Gurvail Singh*[14] and *Shankar KishanRao Khade*[15] introduced calculation practices and formulas such as the 100% and 0% tests to advance this. But as Justice Lokur suggested- how does one draw up balance sheets equating two incommensurable categories?

Like reading Lord Denning's judgments call to mind reminiscence of the countryside and its "pastoral beauty", similarly, several recent death punishment judgments in India seem to stir up a priestly tone as their literary style.

[10]Macchi Singh v. State Of Punjab, (1983) 3 S.C.C. 470 (India); Macchi Singh killed 17 people including women and children for which he was given death penalty.

[11]Bacchan Singh v. State of Punjab, (1980) S.C. 898 (India); The facts of the case are that he had suffered life imprisonment and when he came out of remission, his cousin called him to live with him to which his son and wife objected. Bacchan Singh killed both his wife and son. Bachan Singh, therefore, made two very significant departures from Jagmohan Singh. The departures were: (i) in the award of punishment by deleting any reference to the aggravating and mitigating circumstances of a crime and (ii) in introducing the circumstances of the criminal. These departures are really the crux of the matter, as far as we are concerned in this case.

[12]Sangeet v. State of Haryana, (2013) 2 S.C.C. 452 (India); Narender had blown off the upper portion of the head of three-year-old Rahul, son of Amardeep by the use of a firearm and Sandeep even after giving a gunshot injury on the head of Seema, he poured kerosene oil on her and set her ablaze. Taking note of the fact that the entire family of Ranbir (except Amardeep) was wiped out by the accused in a brutal and merciless manner, the Trial Judge held that the crime committed by them fell in the category of the *rarest of rare* cases, inviting the death penalty.

[13]Vasant Sampat Dupare v. State Of Maharastra, (2015) 1 S.C.C. 253 (India); The accused lured the victim by giving her chocolates, kidnapped her and after satisfying his lust caused crushing injuries to her with the help of stones weighing about 8.5 kg and 7.5 kg.

[14]*Gurvail Singh*, (2013) 2 S.C.C. 713 (India); The accused were tried for an offence under Section 302 read with Section 34 IPC for murder of one Kulwant Singh, his two sons – Gurwinder Singh and Davinder Singh and his wife – Sarabjit Kaur.

[15]Shankar KishanRao Khade v. state of Maharashtra (India), CRIMINAL APPEAL NOs. 362-363 OF 2010; There were two accused who took the 11 year old girl from her grandmother's place and raped her and later strangled her to death while raping.

The bench comprising Honourable Justices Dipak Misra, Rohinton Nariman and U.U. Lalit "in *Vasant Sampat Dupare*[16] is an illustration of this style:

"*In these two appeals, we are required to deal with a sordid and despicable act of a married man whom at the time of incident was in wedlock for more than two scores having a criminal background, has yielded not only to inferior endowments of nature but also has exhibited the gratification of pervert lust and brutish carnality."*

Notice the strong theological undertones especially in the use of words such "carnality", "lust", and the "inferior endowments of nature." The judges repeatedly refer to the victim as "holy" and the crime having injured the "soul" of the society:

The language repeatedly invokes the nature of the crime as being "diabolical", a word which Biblically refers to the wicked nature of the Devil. As a mitigating factor, the judges look for "repentance" and "remorse", both terms feature of a Judaeo-Christian language. The judges claim that commutation, mercy, and forgiveness are undeserved because: "As is noticeable, there has been no remorse on the part of the appellant".

QUESTION OF GENDER WITH RESPECT TO DEATH PENALTY:

The question that comes into mind is that can a woman be sentenced to death in India?

The answer is yes. A woman can be sentenced to death. Then why a woman has never been sentenced to death in India? What can be the reason behind this? Is woman still considered to so pure that she cannot commit such grievous crime? Is this really possible?

A proper analysis of the trend is required to be studied to understand this.

Seema Gavit and Renuka Shinde are the only two women in India on death row, whose mercy pleas were rejected by the President after the Supreme Court of India confirmed their death sentence. In 2001, the Kolhapur sessions court awarded them the death penalty for abducting and killing a dozen children aged between one and four years. In the next 14 years, their appeals against the sentence were turned down by all subsequent authorities including the

[16]Ibid.

Bombay High Court and the Supreme Court[17]. In April 2014 came the final blow for the sisters, when their mercy petition was rejected by the President of India. But still, there hasn't been the execution of their death sentence till date.

The Supreme Court stated "*Going by the details of the case, we find no mitigating circumstances in favour of the appellant, except for the fact that they are women. Further, the nature of the crime and the systematic way in which each child was kidnapped and killed amply demonstrates the depravity of the mind of the appellants. The appellants had been a menace to the society and the people in the locality were completely horrified and they could not send their children even to schools. The appellants had not been committing these crimes under any compulsion but they took it very casually and killed all these children, least bothering about their lives or the agony of their parents*"[18].

One more unique case comes from Indore; Madhya Pradesh where for the first time a 27-year-old woman, Neha Verma, might be hanged for killing three women of a family after looting them. Verma is presently lodged in the Indore Jail after the Supreme Court had stayed the session's court decision of hanging the woman along with 3 other convicts. The convicts had been sentenced to death by a lower court which was upheld by the sessions and state high court[19].

But in both the cases, the execution of death sentence has not been done.

262ND LAW COMMISSION REPORT

"*Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.*"[20]

CONCLUSION:

[17]Onkar Singh, Kalam Rejects Dhananjoy's mercy petition, at rediff.com, August 4, 2004 http://www.dnaindia.com/mumbai/report-will-the-gavit-sisters-serial-killers-of-children-be-the-first-women-to-be-hanged-2102974, last visited 31/01/2018.
[18]Renuka Bai Alias Rinku Alias Ratan v. State Of Maharashtra, Appeal (CrL.) 722 of 2005 (India).
[19]Will the Gavit sisters, serial killer of children, be the first women to be hanged?, at DNA http://www.catchnews.com/national-news/accused-of-triple-murder-neha-verma-likely-be-the-first-woman-to-be-hanged-in-india-1438500610.html, last visited 31/01/2018.
[20]262nd law commission report, The Death Penalty(2015), Para 3 available at http://lawcommissionofindia.nic.in/reports/report262.pdf, last visited 31/01/2018.

"*Aami nirdosh*" (I am innocent); these were the last words uttered by Dhananjoy Chatterjee to the jail officials before he was executed. The sum total of this research work boils down to the bottom line that the pattern of the death punishment in the country is not symmetrical. There have been cases where rich, influential people have escaped the gallows while others could not. There is no denying the fact that the gruesome act inflicted upon Hatel Pareekh (age being disputed), was not at all condonable but the evidence and other circumstances against the accused was, in our view, not at all hefty enough to grant him the death penalty. We should not forget the basic underlying theory of criminal law that it is fine that hundreds of offenders get acquitted but it would be a grave miscarriage of justice if an innocent person is punished.

While the mercy petition was rejected by the President on June 23, 1994, the state government did not take any step to vacate the stay by the high court, till it came to the notice of a Judicial Department officer in October 2003[21]. Such procedural lapse in a case wherein the question of life and death of an individual is under consideration does show the gloomy side of the system. A person who has been given the apex punishment undergoes an unexplainable amount of mental agony that death is nearing him anytime. A delay of almost a decade must have taken a toll on the man and the Courts in India have said in many cases that delay in execution is also a ground to commute the death sentence.

The research paper also focuses on the issue of execution of death penalty gender-wise. The case[22] which has been referred above is no less serious and gory than the case of Dhananjay Chatterjee[23]. The two sisters who have been convicted had murdered around a dozen of children aged between one to five years and the Supreme Court has also observed that there were no such mitigating circumstances in the favour of the accused except for the fact that they were women. The conviction ratio with respect to death penalty vis-à-vis gender is tilted heavily towards masculine. If we look into history, we find that there are only two cases in which women are given the death penalty and that too remains unexecuted. Why this is so?

After reading the case and analysing the judgement, we as researchers have come to a significant conclusion with respect to the legal assistance which was there for Dhananjay. In

[21]Onkar Singh, Kalam Rejects Dhananjoy's mercy petition, at rediff.com, August 4, 2004 available at http://www.rediff.com/news/2004/aug/04dhan.htm, last visited 14/02/2018.
[22]*Ibid.*
[23]*supra* note 1.

our opinion, many of the points, for example, the instance of the 'Richo' wristwatch was not rebutted properly which should have been because there was nothing as such which was proving the instance beyond a reasonable doubt. In our opinion, the death penalty is required in the country but it should be given uniformly and considering every factor which may raise a question in the mind of the Judge as it is revengeful and the destruction of life is not a wish of God or nature, it is immoral. Society has no right to take life that is incompatible with modern morality and human rights. India believes in non-violence philosophy. The death sentence is unjust for the family of the offender[24].

[24]S.G.Goudappanavar, Critical analysis of theories of punishment available at file:///C:/Users/hp/Downloads/CRITICAL-ANALYSIS-OF-THEORIES-OF-PUNISHMENT1%20 (1).pdf, last visited 14/02/2018.