

---

## ANALYSIS OF MUKESH V. STATE OF NCT DELHI (NIRBHAYA CASE)

---

Shivansh Bansal, Teerthaker Mahavir University

### INTRODUCTION

Rape is the most heinous crime against women, as it impact the entire life of the victim. As per the provision of article 21 of Indian Constitution every person have a right to live its life with full dignity but the offences like rape infringe this right and many more legal provisions. Rape define under sec. 375 of IPC as:-

“ **Rape.**—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:—

(First) — Against her will.

(Secondly) —Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

(Fourthly) —With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age.”

One of the most important case of rape and of IPC is **Mukesh V. State of NCT Delhi** or we can say that Nirbhaya gang rap 2012.

### Facts of the case

In the case the victim was a 23 years old para-medical student, on 16<sup>th</sup> Dec. she went to PVR select city walk mall, saket Delhi, to watch a movie with her friend, while they are returning back they were waiting on Munirka bus stand. Then suddenly an empty bus stop, she was convinced and enter the empty bus. Only 6 boys were there including the driver and one 17 year old young boy were there. Both of them were attacked by the 6 person who were already present there.

The victim had become playful thing for all sex person including the minor to the savage lust of the gang of six, face was brutally assaulted and she was tossed around the empty bus and got gang rape with multiple injuries. The friend of the girl try to protect her but was beaten up by those six members. Later on they both were thrown out of the bus, the accused person try to crush them with the bus and the accused left them as they think they were no more alive. The victim and his friend lying naked on the road, a patrolling vehicle came and then they both were admitted in the hospital but sadly on 29<sup>th</sup> Dec. 2012, the victim died due to several medical injuries.

On 17/12/2012, 5:40 Am the FIR has been filed against the accused was charged with under Section 120B IPC and Sections 365/366/376(2)(g)/377/307/302 IPC and/or Sections 396/395 IPC read with Sections 397/201/412 IPC

On 17/12/2012, the investing officer were recovered the bus and one accused too, latter on all other accused persons were also found at different different places, after the arrest they all w persons were undergo with the medical examination. And the positive result were found.

Session court found all accused guilty and sentence them hand till death which was confirm by the High Court. The learn council on the behalf of the respondent file a review petition in the Supreme Court under Article 137 of the Indian Constitution and take the plea of Alibi but the documents and other proof submitted by the state, which made the court to reject the petition, then the learn council filed an curative petition for requesting any relief for the aggrieved persons, but it was also got rejected. Then finally the learn council files his last resort i.e. Mercy petition to the President of Indian, but the president also for the social welfare upheld the decision of the supreme court then finally on 20<sup>th</sup> March 2021, all four accused were hand till death at Tihar jail.

## **ISSUES RAISED**

- Whether the conviction of crime should be given the death penalty?
- Whether a juvenile committing such heinous crimes should be given punishment equivalent to an adult?

## **ARGUMENTS**

### **Arguments from appellant**

- The learn council on the behalf of the respondent plea that the judges shouldn't be rely on the blood report, DNA of the victim as she lost lot of blood during the transfusion that might vary the profiling of DNA.
- The defence plea that the blood stain in the iron rod shouldn't be taken into the consideration as neither the victim nor her friend had talked about it in the first proclamation.
- As the victim condition was miserable and she was not in a condition to give her dying declaration.
- The council plea that one of the accused person is a student who applied for the air force, he shoulder be involved in this case.
- The council also pleaded that the god is the one who give life, only he can take it back. Thus death should always give in a special case and life imprisonment should be prefer for the rest of the cases.
- The learn council also plea that the iron rod was not used to insert in the virginal of the victim, as there were no injury in the uterus of the victim. If it happen then it first injury the uterus then intestine, so iron rod wasn't use for the penetration.

### **Argument from the respondent**

- The council pleaded that the case come under the rarest of the rarest case, thus capital punishment is the best option for this case.
- The council said that there are enough evidence to penalize for the accused person.
- The minor accused person should also be tried with the other 4 accused as the offence was serious in nature, no leniency should be given to the minor.

## **Judgement**

A very critical observation had been taken by the bench of the Chief Justice Deepak Mishra, Justice R Banumathi, and Justice Ashok Bhushan delivered the landmark judgement the court observe that:-

- The informant, PW-1, has also deposed as to the clarity of the entire incident. He has identified all the accused to be present in the bus when he had boarded the same with the prosecutrix. He has maintained that he saw three persons sitting in the driver's cabin who were moving in and out of the cabin. Both the informant and the prosecutrix had sensed some sort of hostility and strangeness in the behaviour of the accused. But, as they had paid for the ticket, they quietly kept sitting. Soon they found that the lights in the bus were put off and the accused Ram Singh (since deceased) and accused Akshay came near them to ask where PW1 was heading with the prosecutrix at that odd time of the evening. PW-1, on objecting to such a query, was beaten and pinned down by the accused. Thereafter, all the accused, one after the other, committed rape and unnatural sex on the prosecutrix using iron rods which has been explicitly described by the prosecutrix herself in her dying declarations recorded by PW-27, Sub- Divisional Magistrate, and PW-30, Metropolitan Magistrate.
- The chain of events described by the prosecutrix in her dying declarations coupled with the testimonies of the other witnesses clearly establish that as soon as the informant and the prosecutrix boarded the bus, the accused persons formed an agreement to commit heinous offences against the victim. Forcefully having sexual intercourse with the prosecutrix, one after the other, inserting iron rod in her private parts, dragging her by her hair and then throwing her out of the bus all establish the common intent of the accused to rape and murder the prosecutrix. Thus all the accused was also charges with the criminal conspiracy under sec. 120B of IPC and common intention under Sec. 34 of IPC.
- The accused persons along with the juvenile in conflict with law were present in the bus when the prosecutrix and her friend got into the bus.
- The court also held that this case comes under the rarest of rear category suggested by the ***Bachan Singh v. State of Punjab***, court punishable all the 4 accused with the death sentence to all the remaining 4 accused person out of 6 as 1 was the minor at the time of the offence so he was send to the Juvenile court where he was punished with the imprisonment of 3 years and the remaining one accused had committed suicide in the jail.