
SENTENCING POLICY OF MURDER TRIAL IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

Law and society are interlinked with the essence of life, in which they depend and evolve with each other. Crime being an unfortunate instance of human nature, it always has a significant and disruptive effect towards society. Its adverse effect not only affects the individual(s) involved, but also the larger societal structure. Generally laws are drafted to counter the evil effect or the harmfulness of the crime by means of punishment. In the modern day, these punishments are the response by the state, through its arm of judiciary. Judiciary is responsible for the interpretation and administration of justice. It's duty to ensure that the perpetrators are met with the appropriate punishment and also to confirm that the victims are redressed rightly. In the matters of dealing with crimes of murder, the judiciary's approach varies from case to case, which in certain instances undermines the gravity of the offence.

The aim of this paper is to evaluate whether the judicial approach in murder cases in India is adequate in addressing the demand for justice or not. This paper tries to explain the complicated procedures which are followed in the sentencing process, with the help of reviewing the decided cases and carrying out a critical analysis of the current-day judicial practices while sentencing the crime of murder.

Keywords: Sentencing Policy, Capital Punishment, Murder, Death Penalty, Acquittal, Society.

INTRODUCTION

Sentences are the declarations made in judgments of a Court that outline the prescribed legal penalty for a specific offence. Once implemented and put into effect, this declaration becomes known as 'punishment'. A sentence serves as a precursor to the actual imposition of punishment, if applicable. Sentencing laws exist to serve as a deterrent against crime and to administer punishment to offenders. These sentencing guidelines reflect society's perspective and rationale regarding a particular offence. They provide a framework for determining the suitable punishment for a given offence. The sentencing process in India is intricately tied to a comprehensive set of statutory provisions that guide the judiciary in determining the appropriate punishment for criminal offences. These provisions form the backbone of the Indian criminal justice delivery system, influencing the exercise of judicial discretion and shaping the broader policies which govern sentencing.

HISTORICAL DEVELOPMENT OF THE LEGAL FRAMEWORK OF SENTENCING IN INDIA

Indian criminal law has predominantly relied on British criminal law, since its introduction to India in the mid-19th century. Before the introduction of New Criminal Laws, amendments were brought and numerous "localisation" efforts were made over the years, it is important to recognize that Indian criminal law, despite its modifications, was fundamentally rooted in British legal principles. India's first systematic penal code was drafted in the 1830s by the First Law Commission, chaired by Lord Macaulay. The draft code was later revised by Sir Barnes Peacock, Chief Justice of the Calcutta Supreme Court, and passed into law on October 6, 1860, as The Indian Penal Code 1860. The Regulating Act 1773 established various Supreme Courts in India to adjudicate British citizens' cases using British procedure. The Indian Criminal Procedure Code 1861 along with the Indian Evidence Act, 1872 was the accompanying statutes to the Indian Penal Code 1860 and was the bedrock of Indian criminal procedure for over 100 years before being replaced by the Criminal Procedure Code 1973.

In India, at present the substantive law “The Bharatiya Nyaya Sanhita, 2023”¹, the procedural law “The Bharatiya Nagarik Suraksha Sanhita, 2023”², and combined with “The Bharatiya

¹ ACT NO. 45 OF 2023

² ACT NO. 46 OF 2023

Sakshya Adhiniyam, 2023”³ constitute the major components of the criminal justice system. The Constitution of India, being the supreme legal document of the country, has granted the authority to both the Union and State governments to create legislation pertaining to the management of criminal activities, the establishment of criminal procedures, and the implementation of laws related to preventive detention. Penal statutes ought to exhibit clarity and certainty, in addition to satisfying criteria of reasonableness, justice, and equity. Sentencing, in particular, is widely regarded as among the most critical components of criminal law, constituting what is often described as the state's most potent and intrusive mechanism of social control.⁴ This is because sentencing is not only significant for the accused before the Court but also for his family, friends, the victims of the crime, and the society or community as a whole.

ANALYSIS OF STATUTORY PROVISIONS

B.N.S 2023

In accordance with the Bharatiya Nyaya Sanhita of 2023, the prescribed punishments are categorised based on the severity of the offence.⁵ These categories include: 1) Capital punishment (Death); (2) Life imprisonment; (3) Imprisonment, either rigorous with hard labour or simple; (4) Forfeiture of property; (5) Monetary fines and 6)) Community Service.⁶ The death penalty can be enforced for various crimes, including but not limited to: (1) committing murder⁷ (2) Terrorism Act⁸, (3) Waging, or attempting to wage war⁹, (4) Rape causind death or vegetative state¹⁰, (5) Providing or creating false evidence that leads to the wrongful execution of an innocent individual¹¹, (6) Assisting in the suicide of a minor, an insane person, or an intoxicated individual.¹² The death penalty can only be possible in the rarest of the rarest cases.¹³

³ ACT NO. 47 OF 2023

⁴ Mirko Bageric, *Punishment and Sentencing: A Rational Approach*, p.3 (Cavendish Publishing, London, 2001),

⁵ The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S.4

⁶ Ibid.,

⁷ The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S.103

⁸ The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S.113 (2)(a)

⁹ The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S.147

¹⁰ The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S. 66

¹¹ The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S. 230(2)

¹² The Bharatiya Nyaya Sanhita, 2023 (Act No: 45 of 2023), S.107

¹³ *Bachan Singh vs State Of Punjab* (1982) 3 SCC 24

B.N.S.S 2023

The BNSS outlines specific provisions related to sentencing, ensuring a fair and just process. The law stipulates that once the Court has listened to the arguments and concluded the trial, it is obligated to deliver a verdict, which can either be an acquittal or a conviction of the accused individual¹⁴. Following a conviction, the code offers a chance for both the prosecution and the defense to present evidence and arguments regarding the sentencing matter¹⁵. This particular stage enables the Court to take into account various factors that could potentially impact the decision-making process in determining a suitable sentence. Following the hearing on the question of sentence, the Court will pronounce the sentence. The Court is required to state the reasons for the sentence awarded.

In cases where an individual is found guilty of multiple crimes during a single trial, the Court has the authority to impose distinct sentences for each offence. Subsequently, the Court is required to indicate whether these sentences will be served concurrently or consecutively. The Court must consider the nature of the offence and the ability of the offender to pay. The Court has the authority to order the offender to pay compensation to the victim as part of the sentence. This provision aims to provide restitution to the victim for losses suffered¹⁶.

THE FACTORS INFLUENCING THE JUDICIAL DISCRETION

Discretion is the power or right to make official decisions using reason and judgment to choose from among acceptable alternatives.¹⁷ Judicial discretion is notably a broad postulation, because of the capacity of the judges to make various kinds of decisions for given similar circumstances. Due to the existence of the unpredictability and unforeseen circumstances in the judicial proceedings, discretionary authority has been vested in the hands of judges to adjudicate equitable in accordance with particular facts and circumstances. In the criminal cases, in particular to the murder trials the extra care and caution need to be exercised due to the impact of the crime on the society as well as the effect of the punishment to the crime. The sentencing Court has to base its discretion on the principle of “*proportionality in prescribing liability according to the culpability of each kind of criminal conduct*” as laid down by Hon’ble

¹⁴ *The Bharatiya Nagarik Suraksha Sanhita (Act No: 46 of 2023), S.258*

¹⁵ *The Bharatiya Nagarik Suraksha Sanhita (Act No: 46 of 2023), S.258 (2)*

¹⁶ *The Bharatiya Nagarik Suraksha Sanhita (Act No: 46 of 2023), S.395*

¹⁷ *Legal- dictionary. The freedictionary.com/judicial+ discretion*

Supreme Court in the case of State of M.P. v. Munna Chaubey¹⁸

Judicial discretion in sentencing of murder trials is influenced by a myriad of factors that may be classified as aggravating and mitigating factors. Aggravating factors are legal circumstances or conditions that increase the severity or culpability of a criminal offence, often leading to harsher penalties, on the other hand Mitigating factors are circumstances or elements that, while not excusing an offence, rather reduces the severity of the culpability of the accused and may lead to a lesser sentence. The foremost consideration while awarding punishment is the severity and nature of the crime. The judiciary assesses whether the offence falls under the category of petty or heinous crimes, the degree of harm inflicted upon the victim and on the society, and the potential threat posed by the offender and also the offender's criminal history. The presence or absence of prior convictions plays a significant role. First-time offenders may be granted a lesser sentence or given an opportunity for rehabilitation, whereas individuals with a history of repeated offences are likely to receive more severe punishments as a deterrent against recidivism. Next is the personal circumstances of the offender. Courts take into account various aspects such as the offender's age, mental and physical health, socio-economic background, and familial obligations. Juveniles and elderly individuals, for instance, may receive more lenient treatment due to their diminished culpability. Similarly, Courts may consider whether the offender was under duress, coercion, or undue influence while committing the crime, which could serve as a mitigating factor in sentencing.

The impact of the crime on the victim is also a fundamental consideration. Judges evaluate the physical, psychological, and financial harm suffered by the victim and their family. Additionally, victim compensation and restitution are often considered essential components of justice. Courts may direct the offender to compensate the victim for medical expenses, loss of livelihood, or emotional distress as part of the sentencing process.

THE NOVEL PRINCIPLES

There are two novel principles related to punishments that form the foundation of sentencing in any modern society. One is '*Just deserts*' and the other one is '*Individualization*'. Both the principles are quite comprehensive in the Indian judicial context. The Just deserts is derived and formulated from the retributive punishment theory. The theory reflects the concept of "*eye*

¹⁸ AIR 2005 SC 682

for an eye".¹⁹ According to the just principle, the punishment should be severe and no discretion should be shown in awarding punishment for identical crimes. The principle of "just deserts", a cornerstone of retributive justice, asserts that punishment should be commensurate with the gravity of the offence. It upholds the notion of proportionality, ensuring that the severity of the penalty corresponds to the seriousness of the crime committed. However, a blindfold application of this principle can lead to disparities. Two individuals convicted of the same offence may receive markedly different sentences due to extralegal factors, such as judicial discretion, personal interpretations, or case-specific circumstances. On the other hand, the Individualization principle sharply contradicts the just principle. This principle explains that factors like gravity of the offence, the nature of the offence, the circumstances in which the offence was committed, the intention of the offender and mode or how the offence was committed needs to be carefully considered and taken into account before awarding the punishment. This principle provides the judge discretion over the sentencing. Sentencing is one of the most important facets of the administration of the criminal justice system. Apart from the statutory restrictions, an appropriate sentence is a matter for the discretion of the sentencing judge.²⁰ This principle considers the offender's unique circumstances along with the specific details surrounding the crime.

Both the theories often clash in each case, especially on the matters of larger public sentiments or offences in colour of sexual violence and crimes against children. The common ethos of the people demands for a stringent punishment while the rule of law demands just and fair treatment. In the Indian Criminal Justice System, a delicate balance between both the principles has been adopted. Under Section 258 of the B.N.S.S, 2023 the accused is convicted, the judge is obligated to give an opportunity to the accused to hear his side on the question of sentencing before his sentence is passed on to him according to law.

THE TRIAL OF MURDER CASES

The trial Courts deal with any crime unmediatedly and when it comes to murder trials prudence and attention is expected and vitals. For the purpose of discussion, murder is described as "*the intentional act of causing someone's death or inflicting harm so severe that death is likely,*

¹⁹ Government of India, Law Commission of India. 2014. Consultation Paper on Capital Punishment. May 2014. Retrieved 29 January 2025 (https://www.livelaw.in/pdf_upload/pdf_upload-378921.pdf).

²⁰ Senaul S/O. Afsar Shaikh vs State Of Gujarat on 15 June, 2018, Retrieved on 31 Jan 2025 (Available at: <https://indiankanoon.org/doc/163394371/>)

knowing the danger involved and acting without a valid excuse. It includes actions done with the intention to kill or cause fatal injury, or recklessly performing a deadly act". The B.N.S, B.N.S.S & B.S.A works in an integral way to deal with the murder trial. The authority to try the murder cases vests with the Sessions Court²¹ and the punishment is different from life imprisonment either simple or rigorous (or) with death along with fine.²² Murder is generally considered as the most grievous and heinous offence against the human body being deliberate and unlawfully taking another person's life. The brutality of murder lies not only in the act of killing itself but also in the suffering, fear, and trauma it inflicts upon the victim, their family, and society as a whole.

As discussed earlier, the law prescribes only two forms of punishment for murder: life imprisonment with a fine or the death penalty with a fine. However, in practice, Courts predominantly impose life imprisonment rather than the death penalty. The preference for life imprisonment stems from various factors. Now, the readers are requested to bear both, ethical as well as judicial considerations upon them. In order to understand why life imprisonment is a more commonly preferred punishment in comparison with the death penalty, it is important to understand the doctrine of "Rarest of Rare" case.

It evolved from the infamous and landmark judicial pronouncement of Bachan Singh v. State of Punjab²³. The case regards the conviction of Bachan Singh for murdering three members of his adoptive family. The conviction was challenged on the ground of constitutional validity of capital punishment in reference to the violation of right to life.²⁴ The Supreme Court in 4:1 majority upheld the constitutional validity of the death penalty and articulated a new doctrine to deal with the death penalty, famously known as RAREST OF RARE doctrine. There is no statutory definition of 'rarest of rare'.

RAREST OF RARE DOCTRINE

In 1980, the Supreme Court of India, in the landmark case of *Bachan Singh v. State of Punjab*,²⁵ established the "rarest of rare" doctrine, thereby affirming that life imprisonment shall be the rule and the death penalty an exception, to be imposed only in the gravest and most exceptional

²¹ *The First Schedule, THE BHARATIYA NAGARIK SURAKSHA SANHITA (Act No: 46 of 2023)*

²² *THE BHARATIYA NYAYA SANHITA (Act No: 45 of 2023) S. 103*

²³ (1982) 3 SCC 24

²⁴ *Constitution of India, 1950 A.21*

²⁵ (1982) 3 SCC 24

circumstances. Later in the case of *Machhi Singh v. State of Punjab* case,²⁶ The Supreme Court established specific criteria to determine the circumstances under which a case may be classified as falling within the ambit of the "rarest of the rare" category. The court pointed out as:

1. *"Manner of Commission of Murder 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. For instance,*
 - a) *When the house of the victim is set aflame with the end in view to roast him alive in the house.*
 - b) *When the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death.*
 - c) *When the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.*
2. *Motive for Commission of murder When the murder is committed for a motive which evince total depravity and meanness.*
 - a) *A hired assassin commits murder for the sake of money or reward.*
 - b) *A cold blooded murder is committed with a deliberate design in order to inherit property or to gain control over property of a ward or a person under the control of the murderer or vis-a-vis whom the murderer is in a dominating position or in a position of trust.*
 - c) *A murder is committed in the course for betrayal of the motherland.*
3. *Anti Social or Socially abhorrent nature of the crime.*
 - a) *When murder of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances which arouse*

²⁶ 1983 AIR 957

social wrath.

- b) In cases of 'bride burning' and what are known as '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. Magnitude of Crime When the crime is enormous in proportion.

- a) When there are multiple murders.*
- b) Large number of persons of a particular caste, community, or locality, are committed.*

5. Personality of Victim of murder.

- a) An innocent child who could not have or has not provided even an excuse, much less a provocation, for murder.*
- b) A helpless woman or a person rendered helpless by old age or infirmity.*
- c) When the victim is a person vis-a vis whom the murderer is in a position of domination or trust.*
- d) When the victim is a public figure generally loved and respected by the community for the services rendered by him and the murder is committed for political or similar reasons other than personal reasons”²⁷.*

It depends upon the facts and circumstances of a particular case. For a simple understanding, death sentences can only be awarded when the two tests are satisfied. One is the crime test which means the nature, manner, mode and the brutality of the commission of the crime need to be examined and satisfaction needs to be attained that the crime committed has made an irrecoverable and adverse affect on the society. Second is the criminal test which expects that no mitigating factors like age, mental capacity, necessity or any other factors are existing to consider in favor of the convict for a lower punishment other than the death penalty. By

²⁷ *Ibid.*, Pg.9

applying and analyzing the case in accordance with the above mentioned tests, the Court must be satisfied to end up in a conclusion that the unique nature of the crime committed falls within the purview of the rarest of rare or not.

THE PANCHSHEEL TEST

Circumstantial evidence refers to indirect evidence that implies a fact but does not directly prove it. Unlike direct evidence i.e, eyewitness testimony or confessions, circumstantial evidence relies on inference to establish guilt or innocence. In criminal law, where direct evidence may be absent, circumstantial evidence plays a critical role. However, its indirect nature necessitates strict scrutiny to prevent miscarriages of justice. The Indian judiciary, drawing from common law traditions, has established five golden principles to guide the use of circumstantial evidence in criminal trials. These principles ensure that convictions based on such evidence are reliable and just.

The Supreme Court in the case of *Sharad Birdhichand Sarda v. State of Maharashtra*²⁸ articulated the five golden principles which are widely applied in criminal jurisprudence. They are designed to ensure that circumstantial evidence forms a complete and unbroken chain leading to the guilt of the accused, leaving no reasonable doubt. "That the following conditions must be fulfilled before a case against an accused can be said to be fully established.

1. The circumstances from which the conclusion of guilt is to be drawn should be fully established. It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved'.

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

2. The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

²⁸ (1984) 4 SCC 116

3. The circumstances should be of a conclusive nature and tendency.
4. They should exclude every possible hypothesis except the one to be proved, and
5. There must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.”²⁹ These five golden principles of circumstantial evidence are a cornerstone of criminal jurisprudence in India, ensuring that convictions based on indirect evidence are just and reliable. By requiring that circumstances be fully established, conclusive, consistent with guilt, part of a complete chain, and exclusive of alternative hypotheses, these principles uphold the highest standards of fairness and justice.

NIRBHAYA CASE³⁰

The fact of the case pertains to the brutal gang rape and murder of a 23-year-old physiotherapy intern in Delhi on December 16, 2012. The victim and her male friend boarded a private bus, where six individuals, including the driver, sexually assaulted them. The assailants beat the friend and took turns raping, torturing and forced her to undergo unnatural sex and she was thrown naked into the streets which, leading to her death due to severe injuries. Later she was rushed to hospital and medical assistance was provided, meanwhile the Delhi police initiated their investigation subsequently the victim made her dying declaration and specified the identities of the suspects. The Delhi police arrested all the accused and seized the bus. Further investigation revealed that the victim was brutally raped one by one and her private parts were purposefully damaged using an iron rod. F.I.R was filled and trial was carried out.

Decision of the Trial Court

The Special - Fast Track Courts after careful evaluation of the materials on record, examining the evidence and the charges³¹ awarded the death sentence to all the four accused. The Court

²⁹ *Ibid.*,

³⁰ *State vs . Ram Singh And Another, SC No: 114/2013*

³¹ *Section 120B, 365/366/376(2)(g)/377/307/302,396/395 of IPC read with Sections 397/201/412 IPC.*

on murder charges was convinced itself on the facts that:

1. *“She was hit by iron rods on the abdomen.*
2. *she was gang raped by 6 persons one by one.*
3. *The iron rods and hands were inserted into the abdominal cavity through vagina and anus repeatedly in a forceful manner.*
4. *Major part of her intestines was pulled out from the body.*

The act of insertion of rods and pulling the internal organs after committing the gang rape can in no manner be seen rather than intentional act to kill the victim”³².

The Court concluded that *“murder was proved that the victim died due to injuries inflicted by the accused while committing various offences. Hence, the facts do make all the accused liable for the cold blooded murder of the defenceless victim and thus the offence under section 302 IPC read with section 120-B IPC was proved and the accused persons were thus convicted.”³³*

Decision of the High Court (Delhi)

The Delhi High Court after considering the appeals filed by the convicts, examined the 5 test parameter that was laid down by the SC in the Machhi Singh case³⁴ and also considering the aggravated and mitigating factors the Court expressed that *“without a shadow of doubt falls in the category of the rarest of rare cases where culpability has assumed the proportion of extreme depravity.”³⁵* The Court believed that *“it is the duty of the Court to award appropriate sentences proportionate to the nature of the crime and the pre-planned manner in which atrocities were committed. It also expressed its confident satisfaction that its stand established beyond reasonable doubt that it is a case of gravest crime death sentence awarded by the trial Court is accepted. The death sentences awarded to the accused were confirmed”³⁶.*

³² *Supra 15, Para 217*

³³ *Mukesh & Anr vs State For Nct Of Delhi & Ors AIR 2017 SC 2161, Para 102*

³⁴ *1983 AIR 957*

³⁵ *State Through Reference vs Ram Singh & Ors, Cr.I App No: 1398/2013 Para 398*

³⁶ *Ibid, Para 400*

Decision of the Supreme Court³⁷

Upon aggrieved by the decision of the High Court, the convicts filed an appeal to the SC challenging the death sentence imposed upon them. The Court carefully analyzed and held that the victim's dying declaration was deemed credible, voluntary, and reliable. The Court identified multiple aggravating factors: the act was inhuman, barbaric, and diabolic also specified that the victim was subjected to torture, humiliation, and sexual assault with extreme cruelty.

The SC bench headed by Justice. R. Banumathi in the present case, stated that *"there is not even a hint of hesitation in my mind with respect to the aggravating circumstances outweighing the mitigating circumstances and I do not find any justification to convert the death sentence imposed by the Courts below to life imprisonment for the rest of the life"*.³⁸

CHANDRABHAN SUDAM SANAP CASE³⁹

The case concerns the rape and murder of a 23 year old woman. The deceased, a resident of Vijayawada, boarded the Visakhapatnam–Lokmanya Tilak Terminus (LTT) Express on 4 January 2014 to returned to Mumbai after visiting her parents. She was last heard from that evening when she called her father from Solapur Station. Thereafter, all attempts to contact her failed.

On 16 January 2014, a partly burnt and decomposed female body was recovered near the Eastern Express Highway, Kanjur Marg, Mumbai. Identification was made based on a ring worn by the deceased and later confirmed through DNA profiling, matching samples taken from her father.

The post-mortem examination revealed evidence of blunt head injury, smothering, and genital trauma, establishing homicidal death. The prosecution alleged that the accused, Chandrabhan Sudam Sanap, lured the deceased from LTT station under the pretext of arranging transport to Andheri, subsequently raped and murdered. Following investigation, the police filed a charge-sheet under Sections 302 (murder), 376(2)(m) and 376A (rape), 364 (kidnapping), 366

³⁷ *Mukesh & Anr vs State For Nct Of Delhi & Ors AIR 2017 SC 2161*

³⁸ *Mukesh & Anr vs State For Nct Of Delhi & Ors AIR 2017 SC 2161, Para 146*

³⁹ *Chandrabhan Sudam Sanap Vs State Of Maharashtra, S.C, Cr.App No: 879/2019*

(abduction), 392 read with 397 (robbery), and 201 (causing disappearance of evidence) of the Indian Penal Code, 1860.

Decision of the Trial Court

The Session Court after careful evaluation of the materials on the record and the charges, awarded death sentences to the accused. The Court on murder charges was convinced on the facts that:

1. Post-mortem confirmed homicidal death by means of head injury, smothering, and genital injuries consistent with forcible entry, establishing rape followed by murder⁴⁰.
2. The Court relied on the five golden principles of circumstantial evidence⁴¹ and held that the prosecution had established a complete chain of circumstances leading only to the guilt of the accused.
3. CCTV footage placed the accused at LTT station, last seen leaving with the victim and he made an extra-judicial confession admitting rape, murder, and burning of the body.
4. The Court found inconsistencies and lack of proper Panchnama and corroboration in the recovery procedure. It questioned the naturalness of the accused preserving the victim's ID card for two months.⁴²

Decision of the High Court (Bombay)

The Bombay High Court, after considering the appeal filed by the convict, examined the settled legal positions and upheld the conviction and confirmed the sentence of death awarded. The High Court's reasoning rested upon a chain of circumstantial evidence, which it found to be complete and pointing unerringly to the guilt of the accused. The High Court carefully analyzed the admissibility and reliability of the CCTV evidence, noting defects due to missing Section 65-B(4) certificate under the Indian Evidence Act. However, after weighing all circumstances and witness testimonies, it found the prosecution had established guilt beyond reasonable doubt except for some infirmities in certain evidence like the recovery of a trolley bag from Nasik

⁴⁰ *Ibid*, Para 6

⁴¹ *Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116.*

⁴² *Supra*, note 37, para 120

and some witness accounts. The Courts convicted the appellant based on the completeness and consistency of the circumstantial evidence excluding any reasonable hypothesis other than guilt, per the standards.⁴³

The sheer brutality of the offence involving the abduction of a young woman, her rape, subsequent murder, and the attempt to obliterate evidence by burning her body was considered by the Trial Court to fall within the ambit of the "rarest of rare" category and the punishment of death was awarded.

Decision of the Supreme Court

The accused made an appeal to the S.C upon aggrieved by the decision of the H.C. Upon careful consideration and examination of the case in hand, the Supreme Court allowed the appeal, set aside the conviction and death sentence confirmed by the Bombay High Court, and acquitted the appellant of all charges.⁴⁴

The Supreme Court's acquittal was based on serious evidentiary, procedural, and legal deficiencies. Some of which, inter-alia, are:

1. The Court reiterated the five golden principles of circumstantial evidence, found that the chain of evidence was incomplete, inconsistent, and not conclusively pointing to the accused. The expressed "The circumstances relied upon when stitched together do not lead to the sole hypothesis of the guilt of the accused and we do not find that the chain is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused."⁴⁵
2. The Court held this evidence of CCTV footage is inadmissible due to non-compliance with Section 65-B(4), "we are not able to place any reliance on the CCTV footage, we eschew the same from consideration."⁴⁶
3. The Court found contradictions in witness testimonies (PW-9, PW-18–21) about the accused being last seen with the victim. The alleged extra-judicial confession was

⁴³ *Supra note, 37*

⁴⁴ *Chandrabhan Sudam Sanap Vs State Of Maharashtra, S.C, Cr.App No: 879/2019, para 124.*

⁴⁵ *Supra, note 37, para 121*

⁴⁶ *Supra, note 37, para 51*

deemed unreliable and uncorroborated. “we do not feel it prudent to sustain the conviction based on the purported extra judicial Confession there is no corroboration in material particulars and hence we are inclined to reject the extra judicial confession”⁴⁷

THE SENTENCING POLICY

The absence of a structured sentencing policy in India has resulted in judges exercising broad discretion when determining punishments for offences such as murder. This judicial latitude has led to significant variations in sentencing outcomes for similar offences, as evidenced by the divergent verdicts in cases like the Nirbhaya incident and the Sudham Sanap trial. While the Supreme Court in the Nirbhaya case adopted a stringent approach, imposing the death penalty to reflect both the severity and heinous nature of the crime, the decision in Sudham Sanap's case illustrates a more technical interpretation of judicial discretion, ultimately resulting in acquittal on all charges. A critical review of these cases reveals that, despite comparable factual backgrounds, the final judicial outcomes differ significantly. This disparity highlights the complexities and subjectivities involved in sentencing practices. It is acknowledged that each criminal case is unique, with varying factual and contextual circumstances. Therefore, a completely uniform sentencing mechanism, while ideal in theory, is difficult to achieve in practice.

However, judicial discretion without clearly outlined standards or accountability mechanisms can undermine consistency and fairness in the criminal justice process and may erode public trust in judicial decision-making. In simple terms, some degree of judicial flexibility in sentencing is necessary to accommodate the individual nuances of each case, there is a compelling need to balance this discretion with guiding principles and oversight, to prevent arbitrary or inconsistent outcomes and foster a more equitable justice system. In India whether there exists a standard procedure and protocol to ascertain whether an offence is a “rarest of rare” case or not. The answer is no. Then two questions arise, whether the absence is useful or not. On one hand, it is beneficial that the judges are in a position to exercise their discretion, on the other hand it is futile because many times justice fails, because desired standard of strict punishment is not awarded and if sometimes awarded, still reverted back by the apex Court. Second, should India have a standard procedural protocol to determine whether some murder

⁴⁷ *Supra*, note 37, para 110

falls into the rarest of rare cases or not? In general terms, we can agree as yes, there must be parameters for example honor killings, caste-based killings, child sex abuse, dowry abuse, rape and murder. It is to be highlighted that there is an exception of grave and sudden provocation, that is why the lawmakers were of the intention that these circumstances may be such in which severest punishment should not be given, although it must be acknowledged that a human being has been killed, but it should not be equated with murder, so that to expose the person to the threat of death as a sentence. It could be interpreted on an individual basis, which means that the loss of life of the victim loses its sanctity, when the scales of justice are trying to only figure out how the killer is to be treated. The authors feel that there should be some guidelines as to cover certain types of offences in which death must be considered as the only punishment, and then there should be a method to examine whether death should not be considered despite falling within these circumstances.

So it is like an if-loop, because there is an argument of social theorem, social sanctity, social status, the idea of group belonging, which is the basis of sociology. Here, these types of arguments cause a dilemma in the mind of the judges. But now it is high time, because India is 75 years old, the laws have also been revised, but even the revised law also, is totally silent on this. It is our humble opinion that when a murder is committed in conjunction with certain aggravated offences like honor killings, caste-based killings, child sex abuse, dowry abuse, rape and murder, as discussed hereinabove, such cases ought to fall within the standard category warranting the imposition of the death penalty. However, in instances where the presiding judge deems it appropriate to award life imprisonment instead of capital punishment, it is imperative that the judgment expressly records cogent and convincing reasons justifying the deviation, in particular clarifying why the case does not merit the extreme penalty of death. Standard, straightforward principles must be followed for subjecting to death.

CONCLUSION

The contemporary justice delivery system emphasizes the rehabilitation of offenders, reflecting a progressive philosophy that seeks to restore individuals to productive roles in society, thereby valuing the collective good. While this rehabilitative approach is commendable and essential for long-term social harmony, it necessarily raises a critical question: at what cost should rehabilitation be prioritized? Whether the fact of victimisation is minimised only because the accused still has many years to live. Whether the fact of victimisation does not necessitate

justice to ensure an end to the heinous criminal who does not deserve the leniency of rehabilitation because he conveniently compromised the right of the victim to live and die with dignity. This question becomes particularly pertinent in cases involving grave offences such as murder, where the offender has taken away the life of another individual, thereby inflicting irreversible harm on a family and society at large. In specific contexts—such as murders arising from sexual violence, dowry-related offences, domestic violence, honour killings, or caste-based animosities, there is a compelling argument for Indian lawmakers to adopt a zero tolerance policy. Such a stance aims to unequivocally condemn and deter acts that constitute inhuman treatment and gross violations of fundamental human rights. Here, the rehabilitation agenda must not undermine the gravity of the offence nor the victim's right to justice.

This discourse rudimentary transcends the oft-invoked "rarest of rare" doctrine and touches upon the jurisprudential tension between the deterrent theory and rehabilitative theory of punishment. The deterrent perspective emphasizes punishment as a necessary tool to prevent future crimes by instilling accountability and fear of consequences, especially in heinous crimes. Conversely, the rehabilitative theory prioritizes the offender's transformation and reintegration, seeking societal restoration. In navigating this complex interplay, Courts and judges bear the solemn responsibility of balancing these competing theories, ensuring that justice is both restorative and commensurate with the crime committed. Ultimately, the question of who shoulders the responsibility to deliver justice to the victims particularly in grave offences, remains a critical consideration for judicial adjudication, demanding rigorous and context-sensitive reasoning in sentencing decisions.