



Rape, Murder, Conviction and Mercy: A Living Example of Executive Insensitivity

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ABSTRACT

The concept of State has been developed with an intention that the State will take care of individuals as a welfare state. It is the duty of the State to adhere to the justified feelings of citizens. It is expected from the State that if a crime is committed, the offender shall be punished accordingly. The State shall be sensitive to the natural or obvious expectations of the society.

KEYWORDS

Mercy, Pardon, Clemency

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Rape in India is considered as one of the heinous crime because it attaches a stigma and it becomes quite difficult for the victim to live in the society. It is an offence against the body as well as the souls of victim and her family. Recently a nationwide outrage has been witnessed in our country over the brutal gang rape and subsequent death of the physiotherapy intern in the National Capital, New Delhi. It in-fact was the driving force behind the passing of the Criminal Law (Amendment) Act, 2013.

Therefore, it is a general, obvious and natural expectation of the society that when such an offence is committed, the offender should be penalised accordingly and it becomes necessary if the same is followed by murder of the victim especially when she is a minor. It is indeed a duty of the executives to prove that justice will be done with the victim and her family and a message will be given to the society that our country is safe and if anybody commits such offence of rape and murder, he will definitely be hanged by neck till death, so that none else will even think to do such a heinous crime. Here the researcher is scrutinising a similar case to find out whether the executives are sensitive to the natural expectations of society?

In the instant case, the accused Molai Ram was working as a guard in the Central Jail, Rewa and the other accused, Santosh Yadav was a prisoner, undergoing a sentence for an offence under Section 376, 366 and 363 of the Indian Penal Code, 1860, and was kept in this jail. Mr. R.S. Somvanshi, the father of the deceased a minor girl, Naveen was posted as an Assistant Jailor in this jail. His residence was inside the jail compound itself. He was staying in this residence along with his entire family including his wife, two minor daughter and two sons. There were some other jail officers who were also staying along with their family members inside this jail compound.

On 20th February, 1996, Somvanshi left the house at 9:00 a.m. for his official duty. His wife had gone to her parent's house along with her two sons. His younger daughter had left to school at 7:30 a.m. Naveen was alone as she was preparing for annual examinations of X Standard. On this 20.02.1996, the accused Molai Ram was sent by Somvanshi to look after his house and also to do the house job. The other accused i.e. Santosh Yadav, was also sent to work in the garden attached to the house of the deceased.

At about 10:00 a.m., a shriek was heard by two female neighbours i.e. Ruchi Mishra and Shobha Mishra, from the side of the house of Naveen. They also heard barking of dogs. They

came out of their house to find out the reason of the same, but, they found nothing suspicious outside. There was none outside the house of Naveen and the door of her house was also closed. At about 11:00 a.m. Ruchi Mishra went to return a cassette to Naveen and when she gave a call to her there was no reply. She then noticed that both of the accused persons were standing outside the house and they told her that Naveen was not in the house and she had gone along with her friends. During this period of time between 10:00 a.m. to 11:00 a.m. Shailendra son of one of the jail officer was playing cricket along with his friends near the house of Naveen. While searching the ball he went near the house of Naveen and he noticed that both of the accused persons were standing outside the house of Naveen. After some time Ruchi Mishra came out of her house and noticed that Santosh Yadav was taking away the cycle of Naveen towards the backside of the house.

At about 12:00 p.m. Pratibha, sister of Naveen returned home from school and found that Naveen was not there. On inquiry she was told by Molai Ram that she had gone on her cycle to the house of some girl friend. Molai Ram told Pratibha that some snacks were kept for her and she may eat the same. At 1:00 p.m. Molai Ram left the house. Somvanshi, the father of the deceased returned to his house after his duty at 1:30 p.m. and he came to know that Naveen was not at home. Pratibha told him that Molai Ram told her that she had gone to her friend's house on her cycle. Then he went back to his duty at 3:00 p.m. and returned home at 6:00 p.m. Once again he found that Naveen was not there in his house. At that time both of the accused persons had come back for afternoon work and they also told him that Naveen had gone to her girl friend. Thereafter he started searching his daughter along with neighbours and interestingly Molai Ram also joined the search. On next day when Somvanshi went to the cattle shed, which was outside the house and near the septic tank, he noticed that the cover of the said tank was slightly displaced. He became suspicious. He removed the cover and peeped in. He saw that a blue coloured frock of Naveen was found floating in the tank. He immediately rushed to the police station and lodged the FIR. The police party reached the spot and the dead body of Naveen was taken out of the septic tank.

During investigation, the police suspected Santosh Kumar and Molai Ram and both of them were taken into custody. In the custody of police they made a disclosure statement that led to recovery of several items used for committing rape and murder of Naveen. Thereafter both of them were tried for offences punishable under Section 376, 302/34 and 201 of the Indian Penal Code, 1860. The trial court found them guilty on the basis of circumstantial evidence i.e. the statements of the

witnesses, inquest proceedings, disclosure statements of the accused persons and various recoveries. The entire case was based on circumstantial evidence as there was no eye-witness. The trial court after going through the entire record of the case held that the only inference possible in this case is that these accused persons were the joint perpetrators of the crime and both of them raped and murdered Naveen. Therefore, on 18.02.1997 the trial court awarded death sentence to both of the accused persons under Section 302 of the Indian Penal Code, 1860.

On appeal the MP High Court examined the legality and propriety of the evidence given by the witnesses. The court also considered the medical report and autopsy report and went into the details of disclosure statements of the accused persons. After scrutiny the Court came to the conclusion that the evidence was reliable. The court also rejected the contention of the accused persons that they were not present on the spot on the concerned day. The court confirmed the observation of the trial court that the accused persons used to work at the house of the deceased and they were present in the house on the date of occurrence. The court observed that the offence committed by the accused was extremely abhorring and shocking to the conscience and to the society. It was held to be a cold blooded act of the accused persons. The Court also quoted various judgments of the Supreme Court wherein the Apex Court fixed certain guidelines for confirmation of death sentence. While referring the judgment in *Kamta Tiwari v. State of MP, 1996 (6) SCC 250*, the Court connected this case of rape and murder of seven year old girl with this case of Molai Ram and Santosh Yadav. In *Kamta Tiwari* case the Apex Court held that in the circumstances of the case, the accused deserved death sentence. It was held to be a rarest of rare case, in order not only to deter other from committing such atrocious crimes but also to give emphatical impressions to the society abhorring such crime. The High Court was of the view that the present case was a 'para materia' to the case of *Kamta Tiwari*. The Court also compared the present case with the rape and murder case of the accused named Ranga and Billa. Finally, on 9.12.1998, after taking into consideration all facts and circumstances of the case the Division Bench of High Court of Madhya Pradesh held that the case of Molai Ram and Santosh Kumar squarely falls in the category of rarest of rare case therefore the ends of justice in this case calls for extreme penalty of death to both of the accused persons and nothing short.

Thereafter, both of the accused persons filled appeal against the judgment and orders of the High Court and challenged the legality and correctness of the judgement and order. The Supreme Court considered more cautiously the pivotal issue as to whether Santosh Yadav and Molai Ram were working in the house of the deceased on 20-12-1996, during the period from 9 a.m. to till 12:00 noon when Pratibha returned from school. This issue was pivotal because both of the accused took the plea of alibi. Beside this issue the court also considered the other circumstantial evidences enumerated and considered at the trial court and the High Court. Finally the three Judges Bench of the Supreme Court observed that "after taking into consideration oral and documentary evidences of the case said that they were satisfied that the courts below had committed no error in convicting both of the accused persons under Sections 302, 376 and 201 read with Section 34 of the Indian Penal Code, 1860".²

While dealing with the issue of quantum of sentence, the Apex Court observed that as a guard at the house of the father of the deceased Molai Ram was 'supposed to protect the person and property' and that he had committed 'the breach of confidence'. As for Santosh Yadav, the Court observed that he was already undergoing a sentence for the offence of rape. Both of the accused took 'the undue advantage of the situation' and the accused had every opportunity to commit the crime and they had done 'a most brutal, heinous and shameful act'. The court was also of the opinion that it was a rarest of rare case. The court said that "we have very carefully

considered the contentions raised on behalf of the parties. We have also gone through various decisions of this court relied upon by the parties in the court below as well as before us and in our opinion the present case squarely falls in the category of one of the rarest of rare case, and if this be so, the courts below have committed no error in awarding capital punishment to each of the accused. It cannot be overlooked Naveen, a 16 years old girl was preparing of her X examination at her house and suddenly both the accused took advantage of she being alone in the house and committed a most shameful act of rape. The accused did not stop there but they strangled her by using her under-garment and thereafter took her to the septic tank along with the cycle and caused injuries with a sharp edged weapon. The accused did not even stop there but they exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead body. Learned counsel for the accused (appellants) could not point any mitigation circumstances from the record of the case to justify the reduction of sentence of the either of the accused. In a case of this nature, in our considered view, the capital punishment to both the accused is the only proper punishment and we see no reason to take a different view to one taken by the courts below."³

Therefore the Apex Court dismissed the appeal and upheld the conviction of appellants on all counts. The accused thereafter filed review petition before the Apex Court but the same was dismissed on 21.12.1999.

Thereafter both of the accused persons filed mercy petitions before the President under Article 72 of the Constitution of India.⁴ They alleged that they have been implicated falsely. Molai Ram contended that he was working as guard in the cloth godown of the jail and at the time of incident he was not present in the house of the deceased. He pleaded that he was falsely implicated by another Assistant Jailor Mr. R.K. Mishra in the case because he denied to undertake the household job of the said jailor. He also said that the Assistant Jailor also threatened him that he would see him at an appropriate time. The whole incident according to Molai Ram's Petition was the creation of Mr. R.K. Mishra, Assistant Jailor. He also alleged that the daughter of Mr. R.K. Mishra i.e. Richa Mishra and the deceased had friendship with some bad elements of the area with whom they were found to be loitering in the town. He said that the Session Judge did not consider the aforesaid facts. Therefore he prayed that a discreet inquiry may be held based on the record, gate register of the jail and it would be found that his name has been replaced with that of one Mohan Kairwar, in the Register to prove his innocence in the incident. It was alleged that being a poor tribal, he could not defend himself.

On the other hand Santosh Yadav also stated in his mercy petition that on 20.02.1996, four to five other prisoners had accompanied the guard, Mohan Kairwar at 7:30 a.m. for undertaking gardening work and returned to the barrack at 11:55 a.m. They again worked in the garden from 2 p.m. He stated that if he had committed the offence, the other co-prisoners who were with him, should have been brought as witness in the trial. He further stated that he was already undergoing punishment for offence under Section 376 of the Indian Penal Code, 1860. He argued, how could he think of committing another offence of same nature. Therefore he also demanded for a fresh inquiry in the case.

Besides these petitions some more mercy petitions on behalf of these two prisoners were filed before the President of India. The wife of Molai Ram contended in her mercy petition that her husband was falsely implicated in this case by Mr. R.K. Mishra, a colleague of the father of deceased. She demanded a CBI inquiry in the matter and prayed for the commutation of the death sentence of Molai Ram. The other petitions that were filed on behalf of Molai Ram and Santosh Kumar, by foreigners, Members of Amnesty International, People Watch – Tamil Nadu attempted to convince the President that the

death sentence violates the right to life and this death sentence has never been shown to have a special deterrence effect and, therefore, the death sentence of both of the accused persons may be commuted to life imprisonment.

In the month of May, 2001, the Ministry of Home Affairs to the Government of India after going into the depth of the entire record of the case recommended that the mercy petitions filed in this case may be rejected, but, the file was returned in July 2004 from the office of the Hon'ble President of India. Once again, 28.4.2005, it was recommended that the mercy petitions be rejected and the Hon'ble President of India, on 30.09.2005 rejected the mercy petitions. However, the Ministry of Home Affairs called back the file before hence the decision could be conveyed to the Government of Madhya Pradesh but later the file was again sent to the President's office. Thereafter on 15.07.2010 the file was called back by the Ministry of Home Affairs and the same was returned on 23.10.2010. Finally in the year 2011 the Ministry of Home Affairs recommended that the death sentence of both of the accused persons may be commuted to life imprisonment with a condition that they will remain in jail for the rest of their life and on 04.02.2011, the recommendation was accordingly accepted by the Hon'ble President of India. The recommendation was based on the following grounds²:

- A) Not all opportunistic crimes would fall within the category of "rarest of rare cases".
- B) The conviction was based solely on circumstantial evidence.
- C) Both of the convicts have been in custody for nearly 15 years.
- D) Both of the accused persons were 35 years of age at the time of commission of the offence and now they are 50 years old.

The executive action in this case is quite unfortunate. Moreover the grounds taken for commutation of death penalty are not justified at all. The Ministry of Home Affairs was of the opinion that this case does not fall within the category of "rarest of rare cases", whereas the Trial Court, High Court and the Supreme Court, were of the opinion that this case "squarely falls" within the category of "rarest of rare cases". There was no difference of opinion among any of the Judges at any level while putting this case in this category. It was a cold blooded rape and murder, executed against a helpless minor girl who was all alone in her house and after commission of offence they put the dead body in septic tank. The circumstances itself prove it be an opportunistic crimes that in all cases shall fall within the category of "rarest of rare cases". Secondly the Ministry took cognizance of the fact that the case was based on circumstantial evidence. Here it will be pertinent to mention that in our country the conviction rate in criminal offence is very low. The reason behind the same is that the prosecution has to prove its case beyond reasonable doubt and the Court is bound to take special care if the offence is serious one. In case there is slightest doubt then the courts always give benefit of the same to the accused. In this case all circumstances proved beyond reasonable doubt that the offence was committed by both of the accused persons. All the three courts were of the same view and none of them gave dissenting view.

The third ground on which the Ministry commuted the sentence was the period of time during which the accused remained in jail. It is clear from the record of the case that the Supreme Court dismissed the review petition on 21.12.1999 and thereafter both of the accused filed the mercy petition and the same was disposed off on 04.02.2011 i.e. after a period of 11 years. It is quite unfortunate that in such a sensitive issue the executives took more than 11 years to decide a mercy petition. The Ministry should have taken into consideration the fact that the offence was committed on 20.02.1996 and till 04.02.2011 i.e. for a period of 15 years they were able to avoid the death sentence. In a rape and murder case the sentence of death is the only appropriate sentence. How mercy

can be exercised against such offenders. Moreover the offences were committed by such persons who in all cases deserve death sentence. Santosh Kumar who was bound to protect the person and property committed breach of duty. If a guard himself commits such offence he deserves death sentence only. The other accused who was already in jail for rape and he took advantage of the situation to commit the same offence inside the jail itself is a dangerous person even inside the jail. The last ground for commutation of sentence was the age of the accused. The question arises that if a person of 50 years will commit such offence then on the basis of his age he will never get death sentence. The ground of age is not a justification at all. Moreover they touched this age of 50 years because of inefficiency of the executives. The mercy petition was decided after a period of 11 years, hence they were able to reach the age of 50 years.

On the basis of the facts and circumstances of the case discussed above the researcher is of the view that it is a clear case of insensitivity of the executives. They should have hanged both of the accused persons as soon as possible in order to give a message to the entire nation that if somebody will commit such an offence he will be dealt with in the same manner. Although the only thing that has been done rightly by the executives is that the accused persons will remain in jail for the rest of their life, but at the same time it is not sufficient at all.

Therefore the time has come to look into the powers of the executives to grant pardon. There shall be a speedy disposal of mercy petitions. The ground for exercise of mercy petition shall be framed justifiably so that justice would be done. There is definitely need to relook the guidelines framed for exercise pardoning power. It is also suggested that before exercising pardoning power the view of the victim or his family shall also be taken into consideration.

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5. Id; at p. 12.
6. Paramjeet Singh v. State of Uttarkhand, AIR 2011 SC 200.
7. Raj Kumar Singh v. State of Rajasthan, AIR 2013 SC 3150.