# INDIA

## DEATH IN THE NAME OF CONSCIENCE


ASIAN CENTRE FOR HUMAN RIGHTS

# India: Death in the name of conscience


Asian Centre For Human Rights

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**Abbreviations**

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| ACHR | Asian Centre for Human Rights |
| CBI | Central Bureau of Investigation |
| CrPC | Code of Criminal Procedure |
| FIR | First Information Report |
| IPC | Indian Penal Code |
| MHA | Ministry of Home Affairs |
| MWCD | Ministry of Women and Child Development |
| NHRC | National Human Rights Commission |
| POTA | Prevention of Terrorist Act |
| PW | Prosecution witness |
| SLP | Special Leave Petitions |
| TADA | Terrorist and Disruptive Activities (Prevention) Act |

# 1. EXECUTIVE SUMMARY

As per Section 367(5) of the Code of Criminal Procedure (CrPC) of 1898 (old code) usual sentence for an offence punishable with death was death penalty and lesser sentence was an exception. The courts had to give reasons for not awarding death penalty for an offence punishable with death.[1] After the amendment of Section 367(5) of the CrPC in 1955, the courts were no longer required to state the reasons for not awarding death sentence and were given the discretion in deciding whether to impose a sentence of death or imprisonment for life.[2] Further amendment of the CrPC in 1973 required the Courts to state the reason for imposing death penalty under Section 354(3).[3] The Supreme Court in *Bachan Singh v. State of Punjab*[4] in 1980 further held that death penalty is an exception to be awarded only in the "rarest of rare" cases after weighing both the aggravating and mitigating circumstances of a particular case.

The "rarest of rare" doctrine has become a misnomer as the sessions judges, the first court empowered to impose death penalty[5], sentenced 5,054 convicts to death during 2004 to 2013 out of which death sentence on 1,303 convicts were confirmed and death sentence on 3,751 convicts were commuted to life imprisonment by the higher courts.[6] Whether an accused shall live or die has become essentially a matter of luck "*by the subjective philosophy of the judge called upon to pass the sentence and on his value system and social philosophy which is often termed as judicial conscience which varies from judge to judge depending upon his attitudes and approaches, his predilections and prejudices, his habits of mind and thought and in short all that goes with the expression social philosophy. ……..There*

1. Section 367(5) of the Criminal Procedure Code of 1898, "(5)If the accused is convicted of an offence punishable with death, and the Court sentences him to any punishment other than death, the Court shall in its judgment state the reason why sentence of death was not passed."
2. After the amendment of Section 367(5) of old Code by Act XXVI of 1955, it is not correct to hold that the normal penalty of imprisonment for life cannot be awarded in the absence of extenuating circumstances which reduce the gravity of the offence. The matter is left, after the amendment, to the discretion of the Court.
3. Section 354(% of the CrPc 1973, "(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded and, in the case of sentence of death, the special reasons for such sentence."
4. AIR 1980 SC 898
5. In India, the death penalty is first imposed by the Sessions Courts and thereafter mandatorily must be confirmed by the High Courts.
6. NCRB, "Prison Statistics India" report series from 2004 to 2013 available at: http://ncrb.gov.in/

*is nothing like complete objectivity in the decision making process and especially so, when this process involves making of decision in the exercise of judicial discretion*"[7] as lucidly stated in the *Bachan Singh* judgement.

No other case exposes the arbitrariness in the imposition of death penalty than judgement of the Supreme Court in *Harbans Singh v. Union of India*.[8] In this particular case, the petitioner Harbans Singh and three other persons, Mohinder Singh, Kashmira Singh and Jeeta Singh had identical role in the murder of Jindi Singh, Surjeet Singh, Bira Singh and Gurmeet Singh. One of them, Mohinder Singh, died in an "encounter" with the police. Harbans Singh, Kashmira Singh and Jeeta Singh were tried and sentenced to death vide order dated 1st May 1975 by the Additional Sessions Judge, Pilibhit, Uttar Pradesh. On 20th October 1975, the High Court of Allahabad confirmed their conviction and the death sentence. Thereafter, each of them preferred separate Special Leave Petitions (SLP) before the Supreme Court. Each SLP was heard by a separate bench and each bench pronounced different judgement despite the same facts and circumstances and identical role of each convict. Jeeta Singh's SLP was dismissed on 15 April 1976 and he was executed on 6th October 1981. Kashmira Singh's SLP was allowed and his death sentence was commuted into life imprisonment by an order dated 10th April 1977. Harbans Singh's SLP and Review Petition (No. 140/79) were dismissed on 9th May 1980. He also filed a mercy petition but the President of India refused him clemency. Harbans Singh then moved a Writ Petition before the Supreme Court bringing into light the arbitrariness of the Supreme Court itself. By judgement dated 12th February 1982, the Supreme Court recommended to the President of India to commute Harbans Singh's death sentence into life imprisonment. In the said judgement, Chief Justice Y. V. Chandrachud, while lamenting the execution of Jeeta Singh stated: "*The fate of Jeeta Singh has a posthumous moral to tell. He cannot profit by the direction which we propose to give because he is now beyond the process of human tribunals*."

Yet, these mistakes continue to be repeated. The Supreme Court vide judgement dated 13 May 2009 in *Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra*[9] held the decision in *Ravji v. State of Rajasthan* as *per*

7. Bachan Singh v. State of Punjab, [AIR 1980 SC 898]
8. AIR 1982 SC 849
9. Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra, (2009) 6 SCC 498

*incuriam* because it only considered the aggravating circumstances of the crime without conforming to the *Bachan Singh* judgment which directed to impose death penalty after considering both aggravating and mitigating circumstances of a particular case. In the same judgement i.e. *Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra*, the Supreme Court also declared six other judgements as *per-incuriam* as reasoning propounded in *Ravji v. State of Rajasthan* was followed in awarding death penalty. These six judgments are *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*[10], *Mohan Anna Chavan v. State of Maharashtra*[11], *Bantu v. State of U.P.*[12], *Surja Ram v. State of Rajasthan*[13], *Dayanidhi Bisoi v. State of Orissa*[14], and *State of U.P. v. Sattan @ Satyendra and Ors.*[15] Apart from these six judgements, in the same judgement the Supreme Court also declared the judgement in *Saibanna v. State of Karnataka* as *per incuriam* for being *"inconsistent with Mithu (supra) and Bachan Singh (supra)*.[16]

In a judgement on 12 April 2013, one of the benches of the Supreme Court dismissed the writ petition of death row convict Devender Pal Singh Bhullar who sought commutation of his death sentence to life imprisonment given the explained delay to consider his mercy plea by the President of India. The Supreme Court ruled that terror convicts cannot seek mercy. [17] However, the Supreme Court in another judgement in January 2014 declared the judgement dated 12 April 2014 as *per incuriam.*[18]

In February 2014, the Supreme Court also stayed execution of three death row convicts sentenced in *Ankush Maruti Shinde and Ors. v. State of Maharashtra* following the logic laid down in *Ravji v. State of Rajasthan* which had already been declared as *per incuriam.*[19] The Supreme Court is yet to pronounce its final judgement on this petition.

10. Shivaji @ Dadya Shankar Alhat v. State of Maharashtra, [AIR2009SC56]
11. Mohan Anna Chavan v. State of Maharashtra, [(2008)11SCC113]
12. Bantu v. State of U.P., [(2008)11SCC113]
13. Surja Ram v. State of Rajasthan, [(1996)6SCC271]
14. Dayanidhi Bisoi v. State of Orissa, [(2003)9SCC310]
15. State of U.P. v. Sattan @ Satyendra and Ors [2009(3)SCALE394]
16. Mithu v. State of Punjab 1983 AIR 473
17. Devender Pal Singh Bhullar & Anr v. State of NCT of Delhi on 12 April, 2013 WRIT PETITION (CRIMINAL) D.NO. 16039 OF 2011
18. Shatrughan Chauhan v. Union of India [(2014)35SCC1]
19. Times of India, "SC revisiting death penalties, stays three more" 6 February 2014, http://timesofindia.indiatimes.com/india/SC-revisiting-death-penalties-stays-three-more/articleshow/29920086.cms

These mistakes are repeated as imposition of death penalty by definition is judge centric. The Supreme Court in *Sangeet & Anr v. State of Haryana* on 20 November 2012 admitted "*even though Bachan Singh intended a "principled sentencing", sentencing has now really become judge centric."*[20]

In the post *Bachan Singh* period, there has not been a single case of death penalty which has not been justified in the name of the 'collective conscience' of the society and/or 'judicial conscience'. The reliance on 'conscience' for imposition of death penalty is deeply flawed, fraught with malafides at every stage, and is often manufactured through scapegoating of the dispensable i.e. the poor, socially disadvantaged and those accused of terror offences. They are often unable to defend themselves in all stages, most notably at the stage of the trial held under intense local social pressure, media trial and hostile environment. For terror-related offences, it will not be an understatement to assert that in India a clear precedent has been set wherein justice system is tweaked by the desire for retribution in order to satisfy the socalled 'collective conscience' rather than meeting the basic requirements of justice. In addition, some crimes such as the ones against women and children are so gruesome and become politically significant in the light of massive public outrage that it almost becomes indispensable for the State/prosecution to find the guilty, even if it means tweaking justice, to assuage public anger. That the public anger is equally directed against the failure of the State and the system as much against the crimes and the criminals is often forgotten.

As the 'conscience' of individual judges is the most important factor to decide whether a convict shall die or live, Asian Centre for Human Rights (ACHR) examined the judgements on death penalty pronounced by two distinguished former judges of the Supreme Court viz. Justice M B Shah and Justice Arijit Pasayat, who are currently serving respectively as Chairperson and Vice-Chairperson of the Special Investigation Team on Black Money[21] appointed by the Supreme Court of India, to illustrate how 'conscience' of individual judges play out the 'collective conscience' and/or 'judicial conscience'. ACHR found that at least 48 death penalty cases were adjudicated by them.

20. Sangeet v. State of Haryana, (2013) 2 SCC 452
21. Writ Petition (Civil) No. 176 of 2009 pending before the Supreme Court of India

Out of the 33 death penalty cases adjudicated by Justice Arijit Pasayat, Justice Pasayat (i) confirmed death sentence in 15 cases[22] including 4 cases[23] in which lesser sentences were turned into death sentence and two cases[24] in which acquittal by the High Courts were enhanced to death sentence, (ii) upheld acquittal in 8 cases[25], (iii) commuted death sentence in 7 cases[26] and (iv) remitted 3 cases[27] back to the High Courts to once again decide on quantum of sentence as death penalty had not been imposed by the High Courts. It is pertinent to mention that out of the 16 cases in which death penalty were confirmed by Justice Pasayat, 5 cases[28] have since been declared as *per incuriam* by the Supreme Court.

On the other hand, Justice M B Shah did not confirm death penalty in any of the 15 cases of death penalty adjudicated by him. He rather commuted death sentence in 12 cases,[29] did not enhance life imprisonment into death penalty in any case, did not alter acquittal by the High Courts into death penalty in

22. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); Bantu v. State of U.P. [(2008)11SCC113]; Devender Pal Singh Bhullar v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661); Krishna Mochi and Ors. v. State of Bihar etc. (Criminal Appeal No. 761 of 2001); Mohan Anna Chavan v. State of Maharashtra [2008(2) ALT (Cri) 329]; Rameshbhai Chandubhai Rathod v. State of Gujarat [2009(3)ALT(Cri)1]; Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra (AIR2009SC56); Shivu and Anr. v. R.G. High Court of Karnataka and Anr. (2007CriLJ1806); State of Rajasthan v. Kheraj Ram (AIR2004SC3432); State of U.P. v. Sattan @ Satyendra and Ors. [2009(1)ALD(Cri)602]; State of U.P. v. Satish (AIR2005SC1000); Sushil Murmu v. State of Jharkhand (AIR2004SC394); Bablu @ Mubarik Hussain v. State Of Rajasthan [Appeal (crl.) 1302 of 2006]; Bani Kanta Das & Anr v. State of Assam & Ors (Writ Petition (C) No. 457 of 2005); and M.A. Antony @ Antappan v. State of Kerala (AIR2009SC2549)

23. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); State of Rajasthan v. Kheraj Ram (AIR2004SC3432); State of U.P. v. Sattan @ Satyendra and Ors. [2009(1) ALD (Cri) 602]; and State of U.P. v. Satish (AIR2005SC1000)

24. State of Rajasthan v. Kheraj Ram (AIR2004SC3432) and State of U.P. v. Satish (AIR2005SC1000)

25. State of Rajasthan v. Raja Ram (AIR2003SC3601); State of Haryana v. Jagbir Singh and Anr. (AIR2003SC4377); State of Rajasthan v. Khuma [2004(3) ACR 2698(SC)]; State of Madhya Pradesh v. Chamru @ Bhagwandas etc. etc. (AIR2007SC2400); State of U.P. v. Ram Balak and Anr. ((2008)15SCC551); State of Maharashtra v. Mangilal [(2009)15SCC418]; State of Punjab v. Kulwant Singh @ Kanta (AIR2008SC3279); and State of U.P. v. Raja @ Jalil (2008CriLJ4693)

26. Lehna v. State of Haryana (2002(1) SCALE273); Nazir Khan and Ors. v. State of Delhi (AIR2003SC4427); Gopal v. State Of Maharashtra (Appeal (crl.) 1428 of 2007); Anil Sharma & Ors v. State of Jharkhand (Appeal (crl) 622-624 of 2003); Prem Sagar v. Dharambir and Ors. (AIR2004SC21); Aqeel Ahmad v. State of U.P. (AIR2009SC1271); and Liyakat v. State of Uttaranchal (2008CriLJ1931)

27. Union of India (UOI) and Ors. v. Devendra Nath Rai (2006CriLJ967); State of U.P. v. Govind Das @ Gudda and Anr. (2007CriLJ4289); and Gobind Singh v. Krishna Singh and Ors. [2009(1)PLJR200]

28. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); Bantu v. State of U.P. [(2008)11SCC113]; Mohan Anna Chavan v. State of Maharashtra [2008(2)ALT(Cri)329]; Shivaji @ Dadya Shankar Alhat v. State of Maharashtra (AIR2009SC56); and State of U.P. v. Sattan @ Satyendra and Ors. [2009(1)ALD(Cri)602]

29. Ashok Kumar Pandey v. State Of Delhi (Appeal (crl.) 874 of 2001); Bantu @ Naresh Giri v. State of M.P. (AIR2002SC70); Farooq @ Karatta Farooq and Ors. v. State of Kerala (AIR2002SC1826); Jayawant Dattatray Suryarao v. State Of Maharashtra (AIR 2002 SC 143); Lehna v. State of Haryana [(2002)3SCC76]; Nirmal Singh & Anr. v. State of Haryana (AIR1999SC1221); Om Prakash v. State of Haryana [1999(1)ALD(Cri)576]; Prakash Dhawal Khairnar (Patil) v. State of Maharashtra (AIR2002SC340); Raju v. State of Haryana [2001(1)ALD(Cri)854]; Ram Anup Singh and Ors. v. State of Bihar (2002CriLJ3927); Shri Bhagwan v. State of Rajasthan; and Surendra Singh Rautela @ Surendra Singh Bengali v. State of Bihar (Now State of Jharkhand)[ 2002(1)ALD(Cri)270]

any case, did not remit back any case to the High Courts on the quantum of sentence and did not deliver a single judgement which was declared as *per incuriam*. He acquitted convicts in 3 cases[30] out of which 2 cases[31] were dissenting judgement against imposition of death penalty.

Out of these 48 cases, three cases i.e. *Devender Pal Singh Bhullar v. State of National Capital Territory of Delhi and Anr*, *Krishna Mochi and Ors. v. State of Bihar etc*, and *Lehna v. State of Haryana,* the Supreme Court benches comprised Justice A Pasayat and Justice M B Shah along with Justice B N Agrawal. In *Devender Pal Singh Bhullar* and *Krishna Mochi & Ors*, the majority view comprising Justice Pasayat and Justice Agrawal confirmed death sentence on all the accused in both the cases. Justice Shah, on the other hand, acquitted Bhullar and altered the death sentence on Krishna Mochi, Nanhe Lal Mochi and Bir Kuer Paswan to life imprisonment and further acquitted Dharmendra Singh. However, there was no disagreement between Justice Shah and Justice Pasayat in commutation of death sentence in *Lehna v. State of Haryana*.

Though consideration of the aggravating circumstances relating to the crime and mitigating circumstances relating to the criminal as enunciated by *Bachan Singh* judgement cannot be deduced to a zero sum game, the inconsistency in consideration of these circumstances by the judiciary is all pervasive. It is troubling as it makes the life and death of a person dependent on sophisticated judicial lottery "*by the subjective philosophy of the judge called upon to pass the sentence and on his value system and social philosophy which is often termed as judicial conscience*". These inconsistencies stand exposed on perusal and analysis of various judgements of the Supreme Court as given below.

*First*, convict's young age was given importance for commutation of death penalty in *Amit v. State of Maharashtra*[32]*; Surendrapal Shivbalakpal v. State of Gujarat*[33]*; Rameshbhai Chandubhai Rathod v. State of Gujarat*[34] and *Amit v. State of Uttar Pradesh*[35]. However, convict's young age was not considered as a mitigating factor in *Dhananjoy Chatterjee v. State of West Bengal*[36]*; Jai Kumar v.*

30. Devender Pal Singh Bhullar v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661); Krishna Mochi and Ors. v. State of Bihar etc. (Criminal Appeal No. 761 of 2001) and K.V. Chacko @ Kunju v. State Of Kerala on 7 December, 2000 (Appeal (crl.) 5-76 2000)
31. Devender Pal Singh Bhullar v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661) and Krishna Mochi and Ors. v. State of Bihar (2002) 6 SCC 81
32. Amit @ Ammu v. State of Maharashtra., [2003 Supp(2) SCR 285]
33. Surendrapal Shivbalakpal v. State of Gujarat., 2004 Supp(4) SCR 464
34. Rameshbhai Chandubhai Rathod v. State of Gujarat., CRIMINAL APPEAL NO. 575 OF 2007
35. Amit v. State of Uttar Pradesh., (2012) 4 SCC 107
36. Dhananjoy Chatterjee v. State of West Bengal., (1994) 2 SCC 220

*State of M.P.*[37] and in *Shivu and Anr. v. Registrar, High Court of Karnataka and Anr.*[38]

*Second*, the benefit of possible reformation or rehabilitation as a ground for commutation of death penalty was considered in *Raju v. State of Haryana*[39], *Bantu @ Naresh Giri v. State of Madhya Pradesh*[40], *Surendra Pal Shivbalakpal v. State Gujarat*[41], *Amit v. State of Uttar Pradesh*[42] and *Rajesh Kumar v. State through Govt. of NCT of Delhi*[43]. However the benefit of the same was not provided in *B.A. Umesh v. Registrar General, High Court of Karnataka*[44] and *Mohd. Mannan Alias Abdul Mannan v. State of Bihar.*[45]

*Third*, acquittal or life sentence awarded by the High Courts was considered good enough by the Supreme Court to commute death sentences in *State of Tamil Nadu v. Suresh*[46] and *State of Maharashtra v. Suresh*.[47] However, the same was considered not good enough reason by the Supreme Court to commute the death sentence in *State of U.P. v. Satish*[48] and *B.A. Umesh v. Registrar General, High Court of Karnataka*[49].

*Fourth*, circumstantial evidence was held not to be a mitigating factor in *Jumman Khan v. State of Uttar Pradesh*[50], *Kamta Tewari v. State of M.P.*[51], *Molai and Another v. State of M.P.*[52] *and Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*[53] but it was so held in *Bishnu Prasad Sinha v. State of Assam*[54].

37. Jai Kumar v. State of M.P., AIR1999SC1860
38. Shivu and Anr. v. Registrar, High Court of Karnataka and Anr., 2007CriLJ1806
39. (MANU/SC/0324/2001., (2001) 9 SCC 50)
40. Bantu @ Naresh Giri v. State of Madhya Pradesh., AIR 2002 SC 70
41. Surendra Pal Shivbalakpal v. State Gujarat., [2004 Supp(4) SCR 464]
42. Amit v. State of Uttar Pradesh., (2012) 4 SCC 107
43. Rajesh Kumar v. State through Govt. of NCT of Delhi[(2011)13SCC706]
44. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85
45. Mohd. Mannan Alias Abdul Mannan v. State of Bihar., (2011) 5 SCC 317
46. State of Tamil Nadu v. Suresh., (1998) 2 SCC 372
47. State of Maharashtra v. Suresh., [(2000) 1 SCC 471
48. State of U.P. v. Satish., (2005) 3 SCC 114
49. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85
50. Jumman Khan v. State of Uttar Pradesh., [(1991) 1 SCC 752]
51. Kamta Tiwari v. State of M.P., [(1996) 6 SCC 250]
52. Molai and another v. State of M.P., [(1999) 9 SCC 581]
53. Shivaji @ Dadya Shankar Alhat v. State of Maharashtra., [(2008) 15 SCC 269]
54. Bishnu Prasad Sinha v. State of Assam., (2007) 11 SCC 467

Arbitrariness has been one of the grounds for declaring many laws as unconstitutional across the world. The Constitutional Court of South Africa in the case of *State v. Makwanyano & Anr*[55] declared death penalty provided under Section 277 of the Criminal Procedure Act of South Africa as unconstitutional, among others, on the ground of arbitrariness. President of the Constitutional Court stated that "*arbitrariness inherent in the application of section 277 in practice. Of the thousands of persons put on trial for murder, only a very small percentage are sentenced to death by a trial court, and of those, a large number escape the ultimate penalty on appeal. At every stage of the process there is an element of chance. The outcome may be dependent upon factors such as the way the case is investigated by the police, the way the case is presented by the prosecutor, how effectively the accused is defended, the personality and particular attitude to capital punishment of the trial judge and, if the matter goes on appeal, the particular judges who are selected to hear the case. Race and poverty are also alleged to be factors*." President of the Constitutional Court further stated "*Most accused facing a possible death sentence are unable to afford legal assistance, and are defended under the pro deo system. The defending counsel is more often than not young and inexperienced, frequently of a different race to his or her client, and if this is the case, usually has to consult through an interpreter. Pro deo counsel are paid only a nominal fee for the defence, and generally lack the financial resources and the infrastructural support to undertake the necessary investigations and research, to employ expert witnesses to give advice, including advice on matters relevant to sentence, to assemble witnesses, to bargain with the prosecution, and generally to conduct an effective defence. Accused persons who have the money to do so, are able to retain experienced attorneys and counsel, who are paid to undertake the necessary investigations and research, and as a result they are less likely to be sentenced to death than persons similarly placed who are unable to pay for such services*."

The situation described above by the South African Constitutional Court is not dissimilar to India – the mirror reflection is possibly worse in India. If death penalty can be declared unconstitutional on the ground of arbitrariness in South Africa, there is no reason why it should be constitutional in India.

55. State v Makwanyane and Another (CCT3/94) [1995] ZACC 3; 1995 (6) BCLR 665; 1995 (3) SA 391; [1996] 2 CHRLD 164; 1995 (2) SACR 1 (6 June 1995) available at http://www.saflii.org/za/cases/ZACC/1995/3.html

## 2. Manufacturing 'conscience' to justify death

The Government of India and the retentionists of death penalty in India often rely on the *Bachan Singh* judgement that laid down the "rarest of rare" doctrine to justify continuation of death penalty in India. Yet, more than the *Bachan Singh* judgement delivered by five member constitutional bench which directed to consider aggravating and mitigating circumstances relating to the crime and the criminal of a particular case while imposing death penalty, it is the judgement of the three-judge Bench of the Supreme Court in *Machhi Singh v. State of Punjab*[56] which prevails for sentencing death in the country. *The Machhi Singh* case illustrated the circumstances of the "*rarest of rare cases when collective conscience of the community is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty*".[57]

In the post *Bachan Singh* period, there has not been a single case of death penalty which has not been justified in the name of the 'collective conscience' of the society. The notion of 'collective conscience' is deeply flawed and is often manufactured through scapegoating of the dispensable i.e. the poor and

56. 1983(3) SCC 470

57. The circumstances illustrated by Machhi Singh case for imposition of death penalty are:
"I. 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, when the house of the victim is set aflame with the end in view to roast him alive in the house when the victim is subjected to inhuman acts of torture or cruelty in order to bring about his or her death; and when the body of the victim is cut into pieces or his body is dismembered in a fiendish manner.
II. When the murder is committed for a motive which evinces total depravity and meanness. For instance when a hired assassin commits murder for the sake of money or reward or 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, or a murder is committed in the course for betrayal of the motherland.
III. When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in circumstances, etc., which arouse social wrath. For instance when such a crime is committed in order to terrorise such persons and frighten them into fleeing from a place or in order to deprive them of, or make them surrender, lands or benefits conferred on them with a view to reverse past injustices and in order to restore the social balance. 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 man on account of infatuation.
IV. When the crime is enormous in proportion. For instance when multiple murders say of all or almost all the members of a family or a large number of persons of a particular caste, community, or locality, are committed.
V. When the victim is (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-avis 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."

socially disadvantaged who are unable to defend themselves in all stages, most notably at the stage of the trial under intense local social pressure, media trial, hostile environment including those accused of terror offences etc. In addition, some crimes are so gruesome and become politically significant that it almost becomes indispensable for the State to find the guilty, even if it means tweaking justice, to assuage public anger, which is equally directed against the failure of the State and the system as much against the crimes and the criminals.

In terror cases, manufacturing of the 'collective conscience' is most evident. Judges "*take upon themselves the responsibility of becoming oracles or spokesmen of public opinion*"[58].

There is no doubt that the attack on the Indian parliament on 13 December 2001 was atrocious but it also reflected failure of the intelligence agencies of the country to prevent the attacks. While sentencing Afzal Guru[59] to death for the parliament attack, the judges declared that *"the collective conscience of the society* ***will only be satisfied*** *if capital punishment is awarded to the offender".*

For convicting Devender Pal Singh Bhullar[60], accused of conspiracy for triggering a bomb blast in New Delhi in September 1993 killing nine persons and injuring 25 others, the Supreme Court stated in 2002, "*When the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty*." The Supreme Court while dismissing the petition filed by Bhullar seeking commutation of the death sentence to life imprisonment on the ground of the delay in considering his mercy plea by the President of India further held on 12 April 2013 that "*long delay may be one of the grounds for commutation of the sentence of death into life imprisonment cannot be invoked in cases where a person is convicted for offence under TADA or similar statutes…. as it is paradoxical that the people who do not show any mercy or compassion for others plead for mercy and project delay in disposal of the petition filed under Article 72 or 161 of the Constitution as a ground for commutation of the sentence of death*".[61] Fortunately, the Supreme Court

58. Bachan Singh v. State Of Punjab [AIR 1980 SC 898]
59. (2005)11 SCC 600
60. (2002)5 SCC 234
61. Devender Pal Singh Bhullar & Anr v. State of NCT of Delhi on 12 April, 2013 WRIT PETITION (CRIMINAL) D.NO. 16039 OF 2011

in *Shatrughan Chauhan v. Union of India*[62] declared the *Devender Pal Singh Bhullar* judgment of 12 April 2013 as *per incuriam* as there is no provision in law which states that terror convicts cannot be given mercy as per law! This exposes judge centric character in awarding death sentence in the name of 'collective conscience'.

The fact remains that Bhullar was arrested under the Terrorist and Disruptive Activities (Prevention) Act (TADA) and the Indian Penal Code and was sentenced to death solely based on his confessional statement recorded by Deputy Commissioner of Police B.S. Bhola under Section 15 of the TADA. While two judges of the Supreme Court confirmed the conviction and death sentence on Bhullar on 22 March 2002, Justice M. B. Shah, Presiding Judge, delivered a dissenting judgement, and pronounced Bhullar as "innocent". Justice Shah held that there was nothing on record to corroborate the confessional statement of Bhullar and police did not verify the confessional statement including the hospital record to find out whether D. S. Lahoria, one of the main accused went to the hospital and registered himself under the name of V. K. Sood on the date of incident and left the hospital after getting first aid. Neither of the main accused i.e. Harnek or Lahoria was convicted[63] but Bhullar, the alleged conspirator, was sentenced to death. In April 2013, Anoop G Chaudhari, the Special Public Prosecutor who had appeared against Devender Pal Singh Bhullar in the Supreme Court in 2002 stated that though two of the three judges on the Supreme Court bench upheld his arguments, he found himself agreeing with the dissenting verdict delivered by the presiding judge, M B Shah, who had acquitted Bhullar. Chaudhari had stated "*Surprising as it may sound, I believe that Shah was right in not accepting my submissions in support of the trial court's decision to convict Bhullar in a terror case, entirely on the basis of his confessional statement to the police*".[64]

Similarly in the case of the assassination of Rajiv Gandhi, former Prime Minister of India, the Central Bureau of Investigation (CBI) charge-sheeted 26 accused for various offences under the TADA and the IPC.[65] The Special Judge of the

62. (2014) 3 SCC 1
63. ACHR "Death Penalty Through Self Incrimination in India", October 2014, http://www.achrweb.org/reports/india/Incrimination.pdf
64. Public prosecutor turns surprise ally for Bhullar, The Times of India, 18 April 2013, http://timesofindia.indiatimes.com/india/Public-prosecutor-turns-surprise-ally-for-Bhullar/articleshow/19606737.cms
65. They were charged under Section 302 read with Section 120-B of the Indian Penal Code and Section 3 & 4 of the TADA.

TADA Court sentenced all 26 main accused to death.[66] On 11 May 1999, the Supreme Court set aside convictions under the TADA but confirmed the death sentence passed by the TADA Court on Nalini, Santhan, Murugan and Perarivalan @Arivu.[67] Arivu was sentenced to death based on his confessional statement. Interestingly, in a documentary released in November 2013 on Arivu, the former Superintendent of Police of the CBI Mr P V Thiagarajan admitted that he had manipulated Arivu's confessional statement in order to join the missing links in the narrative of the conspiracy in order to secure convictions. Thiagarajan stated, "*But [Perarivalan] said he did not know the battery he bought would be used to make the bomb. As an investigator, it put me in a dilemma. It wouldn't have qualified as a confession statement without his admission of being part of the conspiracy. There I omitted a part of his statement and added my interpretation. I regret it*."[68]

Indeed, in order to satisfy the socalled 'collective conscience' of the nation, the application of the laws had been tweaked consistently. In the cases of both Arivu and Bhullar, the confessions made to the police officers are in violation of the Indian Evidence Act,[69] which does not allow confessions made to police officers as admissible evidence, and the International Covenant on Civil and Political Rights which prohibits self-incrimination.[70] Had they been tried under the IPC based on the evidence taken under the Indian Evidence Act, both would have certainly been acquitted. Had they been tried only under the TADA, they would not have been sentenced to death as the maximum punishment for abetment under the TADA is five years imprisonment.[71] Since Arivu was discharged under the TADA, the evidence (confession made to police officer) extracted under the TADA should not have been used as evidence to prosecute him under the IPC offences and in that case Arivu should have been

66. They were sentenced under Section 302 read with Section 120-B IPC. One of accused was also sentenced to death under Section 3(1)(ii) of the TADA.
67. The death sentence was under Section-120B read with Section 302 IPC. State through Superintendent of Police, CBI/SIT v. Nalini and Ors.[ AIR1999SC2640]
68. Ex-CBI man altered Rajiv death accused's statement, The Times of India, 24 November 2013, available at:http://timesofindia.indiatimes.com/india/Ex-CBI-man-altered-Rajiv-death-accuseds-statement/articleshow/26283700.cms
69. Section 25. Confession to police officer not to be proved - No confession made to police officer shall be proved as against a person accused of any offence.
70. Article 14 (3). In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality: (g) Not to be compelled to testify against himself or to confess guilt."
71. Under Section 3(3) of the TADA the punishment for abetting terrorism is "imprisonment for a term which shall not be less than five years but which may extend to imprisonment for life and shall also be liable to fine".

released as confession made to a police officer is not admissible under the Indian Evidence Act. Similarly, Devender Pal Singh Bhullar, if tried under the IPC without relying on the evidence obtained under the TADA (confession made to a police officer), once again would have certainly been acquitted.

In the trial and conviction of terror-related offences in India, justice system has developed a clear precedent whereby the investigating agencies and prosecutors present evidence gathered under special laws like TADA in trials conducted under the IPC to extract maximum punishment and the Courts embolden by 'collective conscience' have accepted the same without any qualm. This is nothing but abuse of the law driven by the desire for retribution in order to satisfy the socalled 'collective conscience' rather than meeting the basic requirements of justice.

In a rare case, the Supreme Court in 2014 explained as to how manufacturing of 'conscience' works. While acquitting the accused sentenced to death by the POTA designated court and the Gujarat High Court for the terror attacks on the Swaminarayan Akshardham temple at Gandhinagar, Gujarat on 24.09.2002, the Supreme Court of India in its judgement on 16.05.2014 stated, "*136. Before parting with the judgment, we intend to express our anguish about the incompetence with which the investigating agencies conducted the investigation of the case of such a grievous nature, involving the integrity and security of the Nation. Instead of booking the real culprits responsible for taking so many precious lives, the police caught innocent people and got imposed the grievous charges against them which resulted in their conviction and subsequent sentencing*."[72]

It is not only in terror cases that 'collective conscience' is manufactured. Crimes against children and women evoke public outrage, and it becomes a necessity to find the culprit by any means.

The case of Surendra Koli, sentenced to death for the Nithari murders, appears to fall in this category. Koli was accused of rape and murder of several children who went missing between 2005 and 2006 from Nithari Village in Gautam Budh Nagar district, Uttar Pradesh. Investigations into these serial murders began in December 2006 by the Uttar Pradesh Police when the skeletal remains of a number of missing children were discovered from a drain near

72. Adambhai Sulemanbhai Ajmeri & Ors. v. State of Gujarat (2014) 7 SCC 716

Maninder Singh Pandher's house at Noida where Koli worked as a domestic servant. At least 19 young women and girls were stated to have been raped and killed.[73] There was immense public outrage and the State obviously had to find the culprit/s.

On 13 February 2009, a special trial court in Ghaziabad awarded death sentence to Surendra Koli and Maninder Singh Pandher for the rape and murder of 14-year-old girl Rimpa Haldar.[74] On appeal, the Allahabad High Court upheld the death sentence of Surendra Koli but acquitted Pandher.[75] The Allahabad High Court confirmed the death sentence on the ground that "*Surendra Koli is a menace to the society… and the crime committed by him "is so gruesome, diabolical and revolting which shocks the collective conscience of the community*".[76] The Supreme Court too confirmed the death penalty on Surendra Koli noting that the *"case clearly falls within the category of rarest of rare case and no mercy can be shown to the appellant Surendra Koli."*[77]

It is pertinent to mention that Koli was pronounced a 'menace to the society' based on only in Rimpa Haldar rape and murder case as the remaining cases were still pending adjudication at the time of the judgement on Rimpa Haldar case. The CBI had filed chargesheets in 16 out of the 19 cases of abduction, rape and murder against Koli.[78] It is clear that the Courts were already inferring to all other pending cases which were yet to be decided. Whether Surendra Koli would have been given the death sentence if the victim was only Rimpa Haldar is a matter of conjecture. But, somebody had to be found guilty for the murder of so many children even if it meant ignoring particularly critical evidence relating to the case.

The particularly critical evidence were the findings of the Committee of the Ministry of Women and Child Development (MWCD) constituted "*to investigate into allegations of large-scale sexual abuse, rape and murder*" in Nithari. The Committee of the MWCD had identified 17 victims from the skulls and

73. Surendra Koli v. State of U.P. Ors, (2011) 4 SCC 80
74. *See* 'Justice still far away in 18 Nithari cases', Rediff.com, 28 December 2009, at: http://news.rediff.com/report/2009/dec/28/noida-justice-still-far-away-for-18-nithari-cases.htm
75. Surendra Koli v. State of U.P. Ors, (2011) 4 SCC 80
76. Criminal (Capital) Appeal No. 1475 of 2009 available at: Law Resource India https://indialawyers.wordpress.com/nithari-high-court-judgement-acquits-pandher/
77. Surendra Koli v. State of U.P. Ors, (2011) 4 SCC 80
78. *See* 'Nithari killings: Koli guilty of seven-year-old's murder', NDTV, 4 May 2010, at: http://www.ndtv.com/article/india/nithari-killings-koli-guilty-of-seven-year-old-s-murder-23049

bones found in the ditches near Pandher's house. As per the report of the MWCD, the doctor, Vinod Kumar who supervised the postmortems of the children "*indicated that it was intriguing to observe that the middle part of all bodies (torsos) was missing…Such missing torsos give rise to a suspicion that wrongful use of bodies for organ sale, etc could be possible. ..The surgical precision with which the bodies were cut also pointed to this fact. .. body organs of small children were also in demand as these were required for transplant for babies/ children. A body generally takes more than 3 months to start decomposing and the entire process continues for nearly 3 years. Since many of the reported cases related to children having been killed less than a year back, it is a matter for investigation as to why only bare bones were discovered. …The theory of cannibalism … could be a ruse to divert attention from the missing parts of the bodies*".[79]

The MWCD recommended the CBI to look into all angles including organ trade, sexual exploitation and other forms of crimes against women and children and the organ transplant records of all hospitals in Noida over the last few years to study the pattern and trend of these operations and tracing the donors and recipients.[80]

These aspects were never investigated by the CBI for reasons best known to it. This is despite the fact that the prosecution witness, Ramesh Prasad Sharma who deposed before the trial court at Ghaziabad, as recorded in the Allahabad High Court's order, stated that his employer namely Dr Naveen Chaudhary was arrested in 1997 in some kidney scam matter. Dr Naveen Chaudhary was the next door neighbor of Pandher and lived in the neighboring bungalow that overlooked the same ditch where the bodies of the missing children were found. Ramesh Prasad Sharma was the cook of Dr Naveen Chaudhary.[81]

The only clinching evidence against Koli was his confession to the magistrate under Section 164 of the CrPC where he repeated what he had told the police in custody. Koli allegedly informed his lawyers that he was tortured before his confession and had been threatened with more if he did not repeat it before the magistrate. In his letter to the Supreme Court, Koli mentioned that the

79. Report of the Committee Investigating into allegations of large scale sexual abuse, rape and murder of children in Nithari village of NOIDA (UP), Ministry of Women and Child Development Government of India Shastri Bhawan, New Delhi available at http://wcd.nic.in/nitharireport.pdf

80. Ibid

81. Why We Should Not Hang Surinder Koli, Yahoo News, 27 October 2014, https://in.news.yahoo.com/why-we-should-not-hang-surinder-koli-071255867.html

magistrate failed to notice the telltale signs of torture on him. His fingernails and toenails were allegedly missing due to torture. Koli's confessional statement was made before a magistrate in Delhi and not in Ghaziabad. Koli alleged that it was done so that the investigators could have a magistrate of their choice. The police on that other hand claimed that the statement was recorded before a magistrate in Delhi given an attack on Koli by the lawyers when he was brought to a Ghaziabad court. However, the police had taken him to the same court in Ghaziabad twice after the said attack before recording the statement in Delhi. It was also alleged that the statement was taken down in English, a language Koli does not understand. Further, the stenographer who jotted the statement of Koli was not examined in court. Koli was allegedly not medically examined before or after the confessional statement.[82]

The massive public outrage seen India is as much against the diabolical nature of the crimes and criminals as against the failure of the system of the State to prevent the crimes.

In the Nithari case, police failed to prevent the crimes and threatened to take action against the parents of the poor families for not taking care of their own children when they went to lodge the complaints about their missing children. This discouraged the families from approaching the police. This had been duly noted by the Committee of the MWCD which stated, "*A number of them complained that when their children were originally found to be missing, the police would not heed their complaints nor even register them*".[83] Yet, in order to satisfy public anger against the failure of the system to prevent the crime, somebody had to be found guilty in the name of 'collective conscience'.

The infamous Nirbhaya gang-rape and murder in Delhi on 16 December 2012 was not an exception either. "Hair raising" and brutal as the crime was,[84] the unprecedented public protest in Delhi for days that drew international attention was as much to express outrage against the brutal crime as it was against the failure of the State to prevent the crime. It is pertinent to mention

82. See 'Hanging Koli May Bury The Truth Of Nithari Killings', Tehelka, 30 August 2014, Issue 35 Volume 11, at: http://www.tehelka.com/nithari-killing-hanging-surinder-kohli-will-bury-the-truth/
83. Report of the Committee Investigating into allegations of large scale sexual abuse, rape and murder of children in Nithari village of NOIDA (UP), Ministry of Women and Child Development Government of India Shastri Bhawan, New Delhi available at http://wcd.nic.in/nitharireport.pdf
84. State of NCT Delhi v. Ram Singh [Death Sentence Reference No.6/2013, CRL. APP. NOS.1398/2013, 1399/2013 and 1414/2013]

that prior to gang-rape of Nirbhaya on 16 December 2012 inside the bus; one Ramadhar Singh had boarded the same bus and was beaten, robbed and dumped by the same convicts a few hours before the gang-rape. Ramadhar Singh approached a Delhi police patrolling team to lodge a complaint but the police patrolling team directed him to go to the Vasant Vihar police station as the crime spot "was not under their purview". Few minutes later, Nirbhaya boarded the same bus along with her male friend wherein she was gang-raped and brutalised leading to her death subsequently by the same convicts who had beaten, robbed and dumped Ramadhar Singh.[85] Had the Delhi Police patrolling team intervened in the complaint of Ramadhar Singh and alerted other police patrolling teams in the area to intercept the bus and arrest the accused, Nirbhaya gang rape incident might not have taken place at all. Justice Verma Committee set up after the 16th December Nirbhaya gang rape observed *"Practically every serious breach of the rule of law can be traced to the failure of performance by the persons responsible for its implementation. The undisputed facts in public knowledge relating to the Delhi gang rape of December 16, 2012 unmistakably disclose the failure of many public functionaries responsible for traffic regulation, maintenance of law and order and, more importantly, their low and skewed priority of dealing with complaints of sexual assault."* The Justice Verma Committee recommended that the non-registration of FIRs be made a punitive offence and no death penalty should be imposed.[86] However, in order to hide its systemic failure, the State went on to include provisions for death penalty under 376A[87] and 376E[88] of the Indian Penal Code introduced under the Criminal Law Amendment Act 2013.

The reliance on 'conscience' of the society, which is often deduced to 'judicial conscience' to impose death penalty, is fraught with malafides at every stage. As former member of the National Human Rights Commission (NHRC),

85. Times of India, "Delhi gang rape: Three cops suspended for duty failure", 23.12.2012, http://timesofindia.indiatimes.com/city/delhi/Delhi-gang-rape-Three-cops-suspended-for-duty-failure/articleshow/17724910.cms

86. Justice Verma Committee Report on Amendments to Criminal Law, http://www.prsindia.org/uploads/media/Justice%20verma%20committee/js%20verma%20committe%20report.pdf

87. Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of Section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall be not less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death

88. Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death

Mr Satyabrata Pal asked, "*What is the community whose conscience the judge must tap into and channel into a pronouncement of death? For a sessions judge, it will presumably be that of the local community. If that judgment is overturned on appeal, it can either mean that the [Sessions] judge had misread that conscience, or that the High Court felt that the conscience of the larger community of the State did not want blood. If the Supreme Court reinstated the death sentence, this would presumably mean that the national conscience was at one with the local, but that of the State concerned was out of step with both. Which is the segment of the community to whose conscience judges must defer? Logically, it should be the one most affected, which would imply that no sentence of death from a sessions court should be overturned. How does a judge in the State or Central capital determine that the local community had not been galvanised into bloodlust?*"[89]

89. Why capital punishment must go, Satyabrata Pal, The Hindu, 3 October 2013 available at http://www.thehindu.com/opinion/lead/why-capital-punishment-must-go/article5193670.ece

## 3. 'Conscience' in per-incuriam cases

In India, whether an accused convicted for an offence punishable with death shall live or die has become essentially a matter of luck depending on which judge/bench his/her case is listed before. This has been lucidly established in *Harbans Singh v. Union of India.*[90]

As per the *Bachan Singh* judgement, death penalty can only be imposed in the "rarest of rare" cases after considering aggravating circumstances relating to the crime and mitigating circumstances relating to the criminal. A balance sheet of these elements is required to be spelt out in the judgement.

The Supreme Court vide judgement dated 13 May 2009 in *Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra* held the decision in *Ravji v. State of Rajasthan* as *per incuriam* because it only considered the aggravating circumstances of the crime without conforming to the *Bachan Singh* judgment.

The Supreme Court held:

> *"A conclusion as to the rarest of rare aspect with respect to a matter shall entail identification of aggravating and mitigating circumstances relating both to the crime and the criminal. It was in this context noted:*
>
> *"The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal"*
>
> *Curiously in Ravji alias Ram Chandra v. State of Rajasthan, [(1996) 2 SCC 175] this court held that it is only characteristics relating to crime, to the exclusion of the ones relating to criminal, which are relevant to sentencing in criminal trial, stating:*
>
> *"...The crimes had been committed with utmost cruelty and brutality without any provocation, in a calculated manner. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the*

90. AIR *1982 SC 849*

*criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal"..."*

*We are not oblivious that this case has been followed in at least 6 decisions of this court in which death punishment has been awarded in last 9 years, but, in our opinion, it was rendered per incuriam. Bachan Singh (supra) specifically noted the following on this point:*

*"...The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302 of the Penal Code, the court should not confine its consideration "principally" or merely to the circumstances connected with the particular crime, but also give due consideration to the circumstances of the criminal."*

*Shivaji @ Dadya Shankar Alhat v. State of Maharashtra, [AIR2009SC56], Mohan Anna Chavan v. State of Maharashtra [(2008)11SCC113], Bantu v. State of U.P.,[(2008)11SCC113], Surja Ram v. State of Rajasthan, [(1996)6SCC271], Dayanidhi Bisoi v. State of Orissa, [(2003)9SCC310], State of U.P. v. Sattan @ Satyendra and Ors., [2009(3)SCALE394] are the decisions where Ravji Rao (supra) has been followed. It does not appear that this court has considered any mitigating circumstance or a circumstance relating to criminal at the sentencing phase in most of these cases. It is apparent that Ravji Rao (supra) has not only been considered but also relied upon as authority on the point that in heinous crimes, circumstances relating to criminal are not pertinent.*"

The scrutiny of the six judgements i.e. *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*[91], *Mohan Anna Chavan v. State of Maharashtra*[92], *Bantu v. State of U.P.*[93], *Surja Ram v. State of Rajasthan*[94], *Dayanidhi Bisoi v. State of Orissa*[95] shows that 'conscience' was one of the factors used for justifying imposition of death penalty.

91. Shivaji @ Dadya Shankar Alhat v. State of Maharashtra, [AIR2009SC56]
92. Mohan Anna Chavan v. State of Maharashtra [(2008)11SCC113]
93. Bantu v. The State of U.P., [(2008)11SCC113]
94. Surja Ram v. State of Rajasthan, [(1996)6SCC271]
95. Dayanidhi Bisoi v. State of Orissa, [(2003)9SCC310]

In *Shivaji @ Dadya Shankar Alhat v. the State of Maharashtra*, the Supreme Court while relying on the *Jashubha Bharatsinh Gohil v. State of Gujarat* (1994 (4) SCC 353), *inter alia*, stated that "*It is expected that the Courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence and life sentence, the logic applies to all cases where appropriate sentence is the issue*". The Court further went to state that "*Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system*." The Supreme Court further relying on the *Dhananjoy Chatterjee v. State of* W.B. (1994 (2) SCC and *Ravji v. State of Rajasthan* (1996 (2) SCC 175) held that "*The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal*".

It is pertinent to mention that offences relating to 'misappropriation of public money' or 'other offences involving moral turpitude or moral delinquency' as 'referred by the Supreme Court in the *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra* are not punishable with death in India.

In *Mohan Anna Chavan v. State of Maharashtra,* the Supreme Court once again held the same ground as that of *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*. Though *Mohan Anna Chavan* case related to rape and murder of a child, the Supreme Court further relied upon the judgment in *Devender Pal Singh Bhullar v. State of NCT of Delhi* [2002 (5)SCC 234 ] which was a terror case under the TADA and wherein sentencing had been pronounced

solely based on confessional statement of the accused. There are no similarities of the facts and circumstances and types of offences between the *Devender Pal Singh Bhullar* and *Mohan Anna Chavan* cases.

In *Bantu v. State of U.P.,* the Supreme Court once again held the same ground as that of *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*. Once again though *Bantu v. State of U.P.* case too related to rape and murder of a child but the Supreme Court further relied upon the judgment in *Devender Pal Singh v. State of NCT of Delhi* [2002 (5)SCC 234 ].

In *Surja Ram v. State of Rajasthan,* the Supreme Court apart from relying on *Jasnupna Bharat Singh and others v. State of Gujarat* (1994(4) SCC 353) and *Ravji @ Ram Chandra v. State of Rajasthan* (JT 1995 (B) SC 520) and further held that "….*Such murders and attempt to commit murders in a cool and calculate manner without provocation cannot but shock the conscience of the society which must abhor such heinous crime committed on helpless innocent persons. Punishment must also respond to the society's cry for justice against the criminal.*"

In *State of U.P. v. Sattan @ Satyendra and Ors*, the Supreme Court in addition to *Jashubha Bharatsinh Gohil v. State of Gujarat* (1994 (4) SCC 353), *Dhananjoy Chatterjee v. State of W.B.* (1994 (2) SCC 220) and *Ravji v. State of Rajasthan*, (1996 (2) SCC 175) further relied upon the judgement in *Devender Pal Singh v. State of NCT of Delhi* [2002 (5) SCC 234 ] to assert that "*the principle culled out is that when the collective conscience of the community is so shocked, that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, the same can be awarded*". In conclusion the Supreme Court also held that "*29. Murder of six members of a family including helpless women and children having been committed in a brutal, diabolic and bristly manner and the crime being one which is enormous in proportion which shocks the conscious of law, the death sentence as awarded in respect of accused Sattan and Guddu was the appropriate sentence and the High Court ought not to have altered it.*"

In the case of *Saibanna Nigappa Natikar v. State of Karnataka*, the Supreme Court in 2005 while sentencing Saibanna to death relied upon *Machhi Singh v. State of Punjab* to hold that "*it was only in rarest of rare cases, when the collective conscience of the community is so shocked that it will expect the holders of the judicial*

*power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty.*"[96] However, in *Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra* [(2009) 6 SCC 498], the Supreme Court also declared *Saibanna v. State of Karnataka* as *per incuriam* for being "*inconsistent with Mithu (supra) and Bachan Singh (supra)*" judgements. Saibanna Nigappa Natikar was initially convicted for life for murder of his first wife in 1992. While on parole in September 1994, Saibanna killed his second wife and his minor daughter and attempted to commit suicide. On conviction, the trial court awarded death sentence to Saibanna on 4 January 2003. A two bench judges of the Karnataka High Court which heard Saibanna's appeal against the death sentence gave a split verdict. His appeal was then referred to a third judge, who confirmed his death sentence. However, Saibanna was sentenced to death under Section 303 of the IPC which was already held as unconstitutional in *Mithu* case.

It is pertinent to mention that two of the two condemned prisoners namely Ravji @ Ram Chander and Surja Ram who were sentenced to death based judgements held *per incuriam* by the Supreme Court had been executed respectively on 4 May 1996 and 7 April 1997.[97] Further, the fact that Saibanna was sentenced to death based on a judgement already declared *per incuriam* by the Supreme Court itself was brought to the attention of the President by 14 former judges of the Supreme Court and High Courts on 1 June 2012. Yet on 4 January 2013, President Pranab Mukherjee rejected Saibanna's mercy petition on the advice of the Ministry of Home Affairs.[98] Saibanna filed a writ petition seeking judicial review of rejection of his mercy petition by the President before the Karnataka High Court which stayed Saibanna's execution.[99] The High Court however is yet to deliver its verdict.

96. Saibanna v. State of Karnataka [2005 (2)ACR 1836(SC)0
97. The Hindu, "Take these men off death row" 6.7.2012, http://www.thehindu.com/opinion/lead/take-these-men-off-death-row/article3606856.ece
98. President Secretariat: Statement of Mercy Petition cases – Rejected as on 01.08.2014; available at: http://rashtrapatisachivalaya.gov.in/pdfs/mercy.pdf
99. Karnataka HC extends stay on murder convict Saibanna's execution till April 6, Times of India, 5 March 2013; available at: http://timesofindia.indiatimes.com/india/Karnataka-HC-extends-stay-on-murder-convict-Saibannas-execution-till-April-6/articleshow/18810209.cms

# 4. JUDGE-CENTRIC DEATH SENTENCES

The Supreme Court in *Sangeet v. State of Haryana* on 20 November 2012 stated "*It appears that even though Bachan Singh intended a "principled sentencing", sentencing has now really become judge-centric as highlighted in Swamy Shraddananda and Bariyar. This aspect of the sentencing policy in Phase II as introduced by the Constitution Bench in Bachan Singh seems to have been lost in transition.*"[100]

## 4.1 Comparison between Justice Arijit Pasayat and Justice M B Shah

In as much as there are retentionists and abolitionists of death penalty, the 'conscience' of individual judges shall matter so long death penalty is provided under the statutes. ACHR has studied 48 cases relating to death penalty adjudicated by two former judges of the Supreme Court viz. Justice M B Shah and Justice Arijit Pasayat, who are serving in the Special Investigation Team on Black Money reflect how 'conscience' of individual judge matter.

Out of the 33 death penalty cases adjudicated, Justice Arijit Pasayat (i) confirmed death sentence in 16 cases[101] including 4 cases[102] in which lesser sentences were enhanced to death sentence and two cases[103] in which acquittal by the High Courts were enhanced to death sentence, (ii) upheld acquittal in 8 cases[104],

100. Sangeet & Anr v. State of Haryana (2013) 2 SCC 452

101. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); Bantu v. State of U.P. [(2008)11SCC113]; Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661); Krishna Mochi and Ors. v. State of Bihar etc. (2002) 6 SCC 81; Mohan Anna Chavan v. State of Maharashtra [2008(2) ALT (Cri) 329]; Rameshbhai Chandubhai Rathod v. State of Gujarat [2009(3)ALT(Cri)1]; Shivaji @ Dadya Shankar Alhat v. State of Maharashtra (AIR2009SC56); Shivu and Anr. v. R.G. High Court of Karnataka and Anr. (2007CriLJ1806); State of Rajasthan v. Kheraj Ram (AIR2004SC3432); State of U.P. v. Sattan @ Satyendra and Ors. [2009(1) ALD(Cri)602]; State of U.P. v. Satish (AIR2005SC1000); Sushil Murmu v. State of Jharkhand (AIR2004SC394); Bablu @ Mubarik Hussain v. State Of Rajasthan [Appeal (crl.) 1302 of 2006]; Bani Kanta Das & Anr v. State of Assam & Ors (2009)15 SCC 206; and M.A. Antony @ Antappan v. State of Kerala (AIR2009SC2549)

102. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); State of Rajasthan v. Kheraj Ram (AIR2004SC3432); State of U.P. v. Sattan @ Satyendra and Ors. [2009(1) ALD (Cri) 602]; and State of U.P. v. Satish (AIR2005SC1000)

103. State of Rajasthan v. Kheraj Ram (AIR2004SC3432) and State of U.P. v. Satish (AIR2005SC1000)

104. State of Rajasthan v. Raja Ram (AIR2003SC3601); State of Haryana v. Jagbir Singh and Anr. (AIR2003SC4377); State of Rajasthan v. Khuma [2004(3) ACR 2698(SC)]; State of Madhya Pradesh v. Chamru @ Bhagwandas etc. etc. (AIR2007SC2400); State of U.P. v. Ram Balak and Anr. ((2008)15SCC551); State of Maharashtra v. Mangilal [(2009)15SCC418]; State of Punjab v. Respondent: Kulwant Singh @ Kanta (AIR2008SC3279); and State of U.P. v. Raja @ Jalil (2008CriLJ4693)

(iii) commuted death sentence in 7 cases[105] and (iv) remitted 3 cases[106] back to the High Courts to once again decide on quantum of sentence as death penalty had not been imposed by the High Courts. It is pertinent to mention that out of the 16 cases in which death penalty were confirmed by Justice Pasayat, 5 cases[107] have since been declared as *per incuriam* by the Supreme Court.

On the other hand, Justice M B Shah did not confirm death penalty in any of 15 cases of death penalty adjudicated by him. He rather commuted death sentence in 12 cases,[108] did not enhance life imprisonment into death penalty in any case, did not alter acquittal by the High Courts into death penalty in any case, did not remit back any case to the High Courts on the quantum of sentence and did not deliver a single judgement which was declared as *per incuriam*. He acquitted convicts in 3 cases[109] out of which 2 cases[110] were dissenting judgement against imposition of death penalty.

Out of these 48 cases, three cases i.e. *Devender Pal Singh v. State of National Capital Territory of Delhi and Anr.*[111], *Krishna Mochi and Ors. v. State of Bihar etc*.[112], and *Lehna v. State of Haryana,* the Supreme Court benches comprised Justice A Pasayat and Justice M B Shah along with Justice B N Agrawal. In *Devender Pal Singh* and *Krishna Mochi & Ors*, the majority view comprising Justice Pasayat and Justice Agrawal confirmed death sentence on all the

105. Lehna v. State of Haryana (2002(1) SCALE273); Nazir Khan and Ors. v. State of Delhi (AIR2003SC4427); Gopal v. State Of Maharashtra (Appeal (crl.) 1428 of 2007); Anil Sharma & Ors v. State of Jharkhand (Appeal (crl) 622-624 of 2003); Prem Sagar v. Dharambir and Ors. (AIR2004SC21); Aqeel Ahmad v. State of U.P. (AIR2009SC1271); and Liyakat V. State of Uttaranchal (2008CriLJ1931)
106. Union of India (UOI) and Ors. v. Devendra Nath Rai (2006CriLJ967); State of U.P. v. Govind Das @ Gudda and Anr. (2007CriLJ4289); and Gobind Singh v. Krishna Singh and Ors. [2009(1)PLJR200]
107. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); Bantu v. State of U.P. [(2008)11SCC113]; Mohan Anna Chavan v. State of Maharashtra [2008(2)ALT(Cri)329]; Shivaji @ Dadya Shankar Alhat v. State of Maharashtra (AIR2009SC56); and State of U.P. v. Sattan @ Satyendra and Ors. [2009(1)ALD(Cri)602]
108. Ashok Kumar Pandey v. State Of Delhi (Appeal (crl.) 874 of 2001); Bantu @ NareshGiri v. State of M.P. (AIR2002SC70); Farooq @ Karatta Farooq and Ors. v. State of Kerala (AIR2002SC1826); Jayawant Dattatray Suryarao v. State Of Maharashtra (AIR 2002 SC 143); Lehna v. State of Haryana [(2002)3SCC76]; Nirmal Singh & Anr. v. State of Haryana (AIR1999SC1221); Om Prakash v. State of Haryana [1999(1)ALD(Cri)576]; Prakash Dhawal Khairnar (Patil) v. State of Maharashtra (AIR2002SC340); Raju v. State of Haryana [2001(1)ALD(Cri)854]; Ram Anup Singh and Ors. v. State of Bihar (2002CriLJ3927); Shri Bhagwan v. State of Rajasthan; and Surendra Singh Rautela @ Surendra Singh Bengali v. State of Bihar (Now State of Jharkhand)[ 2002(1)ALD(Cri)270]
109. Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661); Krishna Mochi and Ors. v. State of Bihar (2002) 6 SCC 81 and K.V. Chacko @ Kunju v. State Of Kerala on 7 December, 2000 (Appeal (crl.) 5-76 2000)
110. Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661) and Krishna Mochi and Ors. v. State of Bihar (2002) 6 SCC 81
111. AIR 2002 SC1661
112. Krishna Mochi and Ors. v. State of Bihar (2002) 6 SCC 81

accused. Justice Shah, on the other hand, acquitted Bhullar and altered the death sentence on Krishna Mochi, Nanhe Lal Mochi and Bir Kuer Paswan to life imprisonment and further acquitted Dharmendra Singh. However, there was no disagreement or dissent between Justice Shah and Justice Pasayat in commutation of death sentence of the convict in *Lehna v. State of Haryana*.

### 4.2 Judicial lottery

Asian Centre for Human Rights (ACHR) has studied a number of judgements of the Supreme Court of India which establishes that judgements awarding the death sentence are judge-centric. An analysis of the cases where the death penalty was "commuted" and cases where the death penalty was "confirmed" suggests that the reasons/factors taken into accounts for commuting the death sentence were based on predilection of individual judges and can be easily described as judicial lottery.

*First*, convict's young age that was given importance for commutation of death penalty in *Amit v. State of Maharashtra*[113]*; Surendrapal Shivbalakpal v. State of Gujarat*[114]*; Rameshbhai Chandubhai Rathod v. State of Gujarat*[115] and *Amit v. State of Uttar Pradesh*[116]. However, convict's young age was not considered as mitigating factor in *Dhananjoy Chatterjee v. State of West Bengal*[117]*; Jai Kumar v. State of M.P.*[118] and *Shivu and Anr. v. Registrar, High Court of Karnataka and Anr.*[119]

*Second*, the benefit of possibility of reformation or rehabilitation as a ground for commutation of death penalty was considered in *Raju v. State of Haryana*[120]*, Bantu @ Naresh Giri v. State of Madhya Pradesh*[121]*, Surendra Pal Shivbalakpal v. State Gujarat*[122]*, Amit v. State of Uttar Pradesh*[123] and *Rajesh Kumar v. State*

113. Amit @ Ammu v. State of Maharashtra., [2003 Supp(2) SCR 285]
114. Surendrapal Shivbalakpal v. State of Gujarat., 2004 Supp(4) SCR 464
115. Rameshbhai Chandubhai Rathod v. State of Gujarat., CRIMINAL APPEAL NO. 575 OF 2007
116. Amit v. State of Uttar Pradesh., (2012) 4 SCC 107
117. Dhananjoy Chatterjee v. State of West Bengal., (1994) 2 SCC 220
118. Jai Kumar v. State of M.P., AIR1999SC1860
119. Shivu and Anr. v. Registrar, High Court of Karnataka and Anr., 2007CriLJ1806
120. (MANU/SC/0324/2001., (2001) 9 SCC 50)
121. Bantu @ Naresh Giri v. State of Madhya Pradesh., AIR 2002 SC 70
122. Surendra Pal Shivbalakpal v. State Gujarat., [2004 Supp(4) SCR 464]
123. Amit v. State of Uttar Pradesh., (2012) 4 SCC 107

*through Govt. of NCT of Delhi*[124]. However the same benefit was not provided in *B.A. Umesh v. Registrar General, High Court of Karnataka*[125] and *Mohd. Mannan Alias Abdul Mannan v. State of Bihar.*[126]

*Third*, acquittal or life sentence awarded by the High Court was considered good enough by the Supreme Court to commute death sentences in the case of *State of Tamil Nadu v. Suresh*[127] and *State of Maharashtra v. Suresh.*[128] However, the same was considered not good enough reason by the Supreme Court to commute the death sentence in *State of U.P. v. Satish*[129] and *B.A. Umesh v. Registrar General, High Court of Karnataka*[130].

*Fourth*, circumstantial evidence was held not to be a mitigating factor in *Jumman Khan v. State of Uttar Pradesh*[131], *Kamta Tewari v. State of M.P.*[132], *Molai and Another v. State of M.P.*[133] and *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*[134] but it was so held in *Bishnu Prasad Sinha v. State of Assam*[135].

124. Rajesh Kumar v. State through Govt. of NCT of Delhi[(2011)13SCC706]
125. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85
126. Mohd. Mannan Alias Abdul Mannan v. State of Bihar., (2011) 5 SCC 317
127. State of Tamil Nadu v. Suresh., (1998) 2 SCC 372
128. State of Maharashtra v. Suresh., [(2000) 1 SCC 471
129. State of U.P. v. Satish., (2005) 3 SCC 114
130. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85
131. Jumman Khan v. State of Uttar Pradesh., [(1991) 1 SCC 752]
132. Kamta Tiwari v. State of M.P., [(1996) 6 SCC 250]
133. Molai and another v. State of M.P., [(1999) 9 SCC 581]
134. Shivaji @ Dadya Shankar Alhat v. State of Maharashtra., [(2008) 15 SCC 269]
135. Bishnu Prasad Sinha v. State of Assam., (2007) 11 SCC 467

# Annexure – I: Details of the cases referred in judicial lottery

A study of the above cases suggests that there are several reasons, cumulatively taken, for converting the death penalty to imprisonment for life. Some of the factors that have had an influence in commutation include:

## I. Young age of the accused vis-à-vis sentencing in murder cases

The convict's young age was given importance for commutation of death penalty in *Amit v. State of Maharashtra; Surendrapal Shivbalakpal v. State of Gujarat; Rameshbhai Chandubhai Rathod v. State of Gujarat* and *Amit v. State of Uttar Pradesh*.

However, convict's young age was not considered as mitigating factor in *Dhananjoy Chatterjee v. State of West Bengal; Jai Kumar v. State of M.P.* and *in Shivu and Anr. v. Registrar, High Court of Karnataka and Anr.*

### A. Cases of commutation of death penalty on the ground of young age of accused

**Case 1: Amit @ Ammu v. State of Maharashtra**

Amit, aged 20 years, was accused of rape and murder of a young girl aged about 11-12 years and student of VI standard. The father of the deceased and the accused worked in same office. Deceased and the accused knew each other. One of the two witnesses, who were buffalo keepers, sighted the dead body of deceased in a dilapidated building at a place known as Gaimukh and informed the police. The two had last seen the accused and the deceased the previous day in the forest near the place of occurrence.[136]

The accused was charged and found guilty of offence under Section 302 of IPC for the murder of the deceased as also for her rape under Section 376 of IPC. The trial court awarded death penalty under Section 302 apart from other sentences. The High Court confirmed the award of death penalty to the accused appellant as also other sentences. On appeal, the Supreme Court

136. Amit @ Ammu v. State of Maharashtra., [2003 Supp(2) SCR 285]

affirmed the conviction but reduced the death sentence into life imprisonment. The apex court held:

> "*10. The next question is of the sentence. Considering that the appellant is a young man, at the time of incident his age was about 20 years; he was a student; there is no record of any previous heinous crime and also there is no evidence that he will be a danger to the society, if the death penalty is not awarded. Though the offence committed by the appellant deserves severe condemnation and is a most heinous crime but on cumulative facts and circumstances of the case, we do not think that the case falls in the category of rarest of the rare case. We hope that the appellant will learn a lesson and have opportunity to ponder over what he did during the period he undergoes the life sentence. Having regard to the totality of the circumstances, we modify the impugned judgment and instead of death penalty, award life imprisonment to the appellant for offence under Section 302, IPC. In all other respect, the impugned judgment is maintained. The appeal is allowed to this limited extent*."[137]

**Case 2: Surendrapal Shivbalakpal v. State of Gujarat**

In this case, accused Surendra Pal Shivbalakpal, a migrant labourer aged 36 years from Uttar Pradesh, was accused of rape and murder of a minor girl apparently to avenge refusal of sexual favour to him by the deceased's mother, a widow. One of the witnesses had seen the accused carrying the girl on his shoulders before her death. The dead body of the girl was recovered from a pond at the behest of the accused. The post-mortem report revealed that there were numerous injuries on the body of deceased and the clothes were stained with blood and some mud particles. There was lacerated wound on the private parts of the deceased. Hymen was completely ruptured. The doctor opined that the victim must have died due to asphyxia.[138]

The trial court found the accused appellant guilty for the offences punishable under Sections 363, 376 and 302 of the IPC and sentenced him to death for the offence of murder. A division bench of the High Court of Gujarat which heard together the appeal of the appellant and the death reference under Section 366 of the CrPC confirmed the conviction of the appellant on all

137. Amit @ Ammu v. State of Maharashtra., [2003 Supp(2) SCR 285]
138. Surendrapal Shivbalakpal v. State of Gujarat., 2004 Supp(4) SCR 464

the counts and the death penalty imposed on the appellant for the offence under Section 302 of the IPC was confirmed. Aggrieved by the conviction and sentence the appellant preferred an appeal before the Supreme Court. The apex Court confirmed the conviction of the appellant but converted the death sentence into one of life imprisonment. The apex court held as under:

> "*The next question that arises for consideration is whether this is a 'rarest of rare case', we do not think that this is a 'rarest of rare case' in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had involved in any other criminal case previously and the appellant was a migrant labour from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to the society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case. We confirm conviction of the appellant on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment.*"[139]

**Case 3: Rameshbhai Chandubhai Rathod v. State of Gujarat**

In this case the victim aged about 10 years, a student of IV standard was raped and murdered by the accused/appellant aged 27 years, employed as watchman in the same apartment where the deceased's family lived. A number of witnesses including one Vishnubhai, an old servant of one of the friends of the deceased's father had seen the appellant and the deceased together. Vishnubhai had even shouted at the appellant but he did not stop. When confronted, the appellant disclosed before several people including the parents of the complainant that he had taken the deceased on his cycle, raped and killed her. The appellant also led the police and the deceased's father to the place where the dead body of the deceased was found lying. From the place of incident, a broken bottle containing Castor oil and a knife were recovered. At the behest of the appellant, the cycle used by him, for carrying the deceased to the place of incident, and school-bag of the deceased, containing gold and silver ornaments, were also recovered. Silver and gold ornaments recovered from the school-bag were identified by mother of the deceased as belonging to the

139. Surendrapal Shivbalakpal v. State of Gujarat., 2004 Supp(4) SCR 464

deceased. The post-mortem examination of the body of the deceased indicated that the deceased was subjected to rape and was, thereafter, murdered. The accused after being arrested was forwarded to Dr. Meghrekhaben Mehta for Medical Examination. Before Dr. Meghrekhaben Mehta, the appellant stated that he had sustained injuries while committing rape and murder. Human blood was found from T-shirt of the accused and no explanation was offered by the appellant as to how human blood was found on his T-shirt.[140]

The Additional Sessions Judge, Fast Track Court No.9, Surat found the appellant guilty for offences punishable under Sections 363, 366, 376, 397 and 302 of the IPC. He was sentenced to 7 years, 10 years, imprisonment for life, 7 years and death sentence for the aforesaid offences. The High Court of Gujarat confirmed the conviction and death penalty of the appellant. The High Court held that several witnesses had seen the accused and the deceased together in close proximity at the time of occurrence and, therefore, the accused was required to explain the circumstances as to how immediately thereafter the deceased was found to be dead.[141]

The appellant preferred an appeal in the Supreme Court. A two judge bench who heard the appeal differed on the sentence to be awarded. One of the judges upheld the death penalty while the other was in favour of commuting the death penalty. Hence, the case was referred to a three judge bench while commuting the death sentence of the appellant to imprisonment for life, among others, noted "*the appellant was a young man, only 27 years of age*". In conclusion, the apex court held:

> *"For the foregoing reasons and taking into account all the aggravating and mitigating circumstances, we confirm the conviction, however, commute the death sentence into that of life imprisonment. The appeal is disposed of accordingly.*
>
> *In arriving at its conclusion, the Court relied on similar observations made in the case of Ramraj (supra). We are, therefore, of the opinion that the appellant herein ought to be awarded a similar sentence. We accordingly commute the death sentence awarded to him to life but direct that the*

140. Rameshbhai Chandubhai Rathod v. State of Gujarat., [CRIMINAL APPEAL NO. 575 OF 2007
141. Ibid.

*life sentence must extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons."*[142]

**Case 4: Amit v. State of Uttar Pradesh**

The appellant in this case viz., Amit aged 20 years was charged with rape followed by murder of 3-year-old girl. As per an FIR lodged by the deceased's father, the appellant, a neighbour took away the deceased on the pretext of giving biscuits but neither the deceased nor the appellant returned. When the deceased's father inquired about the whereabouts of his daughter from the appellant when he returned home in the evening he did not reply and ran away. A case for the offence under Section 364 of the IPC was registered and the appellant was apprehended. The shirt worn by the appellant had blood-stains on its right arm and at his behest, the dead body of the deceased kept in a plastic bag was recovered from the wheat field in the out skirts of village Palhara. A pair of green colour chappals, which were blood-stained, were also recovered from the corner of a room of the house of the appellant on the statement of the appellant. The shirt of the appellant and the chappals, frock, underwear of the deceased and a back thread were sent to the Forensic Science Laboratory Uttar Pradesh, Agra, which confirmed presence of human blood and human sperms on some of these materials.

The trial court found the appellant guilty of the charges under Sections 364, 376, 377, 302 and 201 of the IPC. Other than life imprisonment, the trial court awarded death penalty for murder of the deceased.

The High Court confirmed the conviction and sentences awarded by the trial court.[143]

Aggrieved with the impugned decision of the High Court, the appellant preferred an appeal in the Supreme Court which commuted the death penalty into imprisonment for life. The apex court held thus:

142. Rameshbhai Chandubhai Rathod v. State of Gujarat, judgment delivered by three judge bench of Supreme Court on 24 January 2011

143. Amit v. State of Uttar Pradesh., (2012) 4 SCC 107; (2012) 39 SCD 98

*"In the present case also, we find that when the appellant committed the offence he was a young person aged about 28 years only. There is no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There is nothing on evidence to suggest that he is likely to repeat similar crimes in future……."*

*13. While therefore sustaining the conviction of the appellant for the different offences as well as the sentences of imprisonment awarded by the trial court for the offences, we allow the appeal in part and convert the sentence of death to life imprisonment for the offence under Section 302 IPC and further direct that the life imprisonment shall extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons."*[144]

## B. Cases in which young age of accused not considered and death penalty not commuted

### Case 1: Dhananjoy Chatterjee @ Dhana v. State of West Bengal

In this case, Dhananjoy Chatterjee @ Dhana aged 27 years was accused of rape and murder of an 18 year old school girl namely Hetal Parekh at her flat on the third floor of 'Anand Apartments' on 5.3.1990. The accused, who was posted as a security guard at the Apartment was reportedly transferred to another apartment after the deceased's father complained to the accused employer about harassments to the deceased. The accused had a grudge against the deceased and knew that she was alone at home during the time of offence.[145]

There was no eye-witness. The accused was convicted on circumstantial evidence. The accused' senior colleague (Security Supervisor) found him in the balcony in front of the deceased girl's flat during the relevant time. The accused absconded and could be arrested only after one week from the date of offence. A 'Richo' wrist watch that he stole from the deceased's flat after the crime as well as his shirt and trouser were recovered at the behest of the accused. The forensic report confirmed that the cream colour button seized from the place of occurrence was from the shirt of the accused which was recovered at his instance after his arrest. A broken chain seized from the

144. Ibid
145. Dhananjoy Chatterjee v. State of West Bengal., MANU/SC/0280/2004

place of occurrence was proved to be that of the accused. Forensic report confirmed that semen was detected on the under garment and the pubic hair of the deceased.[146]

The trial court found him guilty and convicted him for rape, murder and theft and respectively sentenced him to death, imprisonment for life and rigorous imprisonment for five years. Reference for confirmation of the death sentence was accordingly made to the High Court while the accused also preferred an appeal against his conviction and sentence. The criminal appeal filed by the accused appellant was dismissed and the sentence of death was confirmed by the High Court. On special leave being granted, the appellant, Dhananjay Chatterjee had filed an appeal in the Supreme Court. The Supreme Court confirmed the conviction and sentences as imposed by the trial court and confirmed by the High Court. The apex court held thus:

> *"16. The sordid episode of the security guard, whose sacred duty was to ensure the protection and welfare of the inhabitants of the flats in the apartments, should have subjected the deceased, a resident of one of the flats, to gratify his lust and murder her in retaliation for his transfer on her complaint, makes the crime even more heinous. Keeping in view the medical evidence and the state in which the body of the deceased was found, it is obvious that a most heinous type of barbaric rape and murder was committed on a helpless and defenceless school-going girl of 18 years. If the security guards behave in this manner, who will guard the guards? The faith of the society by such a barbaric act of the guard, gets totally shaken and its cry for justice becomes loud and clear. The offence was not only inhuman, and barbaric but it was a totally ruthless crime of rape followed by cold blooded murder and an affront to the human dignity of the society. The savage nature of the crime has shocked our judicial conscious. There are no extenuating or mitigating circumstances whatsoever in the case. We agree that a real and abiding concern for the dignity of human life is required to be kept in mind by the courts while considering the confirmation of the sentence of death but a cold blooded pre-planned brutal murder, without any provocation, after committing rape on an innocent and defenceless young girl of 18 years, by the security guard certainly makes this case a 'rare of the rarest'*

146. Ibid

*cases which calls for no punishment other than the capital punishment and we accordingly confirm the sentence of death imposed upon the appellant for the offence under Section 302 IPC, The order of sentence imposed on the appellant by the courts below for offences under Section 376 and 380 IPC are also confirmed alongwith the directions relating thereto as in the event of the execution of the appellant, those sentences would only remain of academic interest. This appeal fails and is hereby dismissed."*[147]

**Case 2: Jai Kumar v. State of M.P.**

Jai Kumar, 22-year-old, was charged under Sections 302 and 201 of the IPC for murder of his brother's wife and her 8-year-old daughter. During the night of 7th January 1997, at village Rakri Tola, Tikuri, District Rewa, Madhya Pradesh, the accused forcibly entered into the room of the deceased with the intention to have sex with his brother's wife who was sleeping with her daughter. The accused tried to rape her but she resisted. This enraged the accused who murdered his sister-in-law and her 8 years-old daughter. The evidence on record depicted that the accused committed the murder of his sister-in-law at about 11.00 p.m. by *Parsul* blows and then *kulhari* (tanga) blows on her neck severing her head from the body and her 8 year old daughter who was taken to a jungle and killed by axe blows said to be for offering sacrifice to *Mahuva Maharaj* and burying her in the sand covered with stones. Thereafter the accused returned home and carried the body of the deceased sister-in-law tied in a cloth to the jungle and hung the head on a branch with the hairs and put the body, on the trunk of a *Mahua* tree.[148]

The trial court convicted the accused for murder and awarded death sentence. His conviction was based on oral and documentary evidence. A Division Bench of the Madhya Pradesh High Court at Jabalpur confirmed the conviction and the death sentence on the accused appellant.[149]

Aggrieved by the High Court decision, the accused-appellant preferred an appeal in the Supreme Court. The Supreme Court dismissed the appeal of the accused appellant and declined to interfere with the judgement and order of the High Court which confirmed the conviction and death sentence awarded

147. Dhananjoy Chatterjee v. State of West Bengal., MANU/SC/0280/2004
148. Jai Kumar v. State of M.P., AIR1999SC1860
149. Ibid

by the Trial court. Dismissing the appeal of the accused-appellant, the Supreme Court made the following observations:

> *"25. The facts establish the depravity and criminality of the accused in no uncertain terms. - No regard being had for precious life of the young child also. The compassionate ground of the accused being of 22 years of age cannot in the facts of the matter be termed to be at all relevant. The reasons put forth by the learned Sessions Judge cannot but be termed to be unassailable. The learned Judge has considered the matter from all its aspects and there is no infirmity under Section 235(2) or under 354(3) of Code ….*
>
> *26. In the present case, the savage nature of the crime has shocked our judicial conscience. The murder was cold-blooded and brutal without any provocation. It certainly makes it a rarest of the rare cases in which there are no extenuating or mitigating circumstances."*[150]

**Case 3: Shivu and Anr. v. Registrar, High Court of Karnataka and Anr.**

The accused – Shivu and Jadeswamy – resided in the same village in Karnataka as the deceased, a young girl of about 18 years. Both the accused respectively aged 20 years and 22 years were sexually obsessed youngsters and attempted to commit rape on village girls on previous occasions. However, as they were never handed over to the police they escaped punishment. This emboldened them and on 15th October 2001, they committed rape on the deceased girl and to avoid detection murdered her.[151]

The trial court convicted both the accused for the offences under Sections 302, 376 read with Section 34 of the IPC and were sentenced to death. Their conviction was based on circumstantial evidence. On 07.11.2005, the Karnataka High Court confirmed the death sentence of the accused. On 13.02.2007, the Supreme Court dismissed their appeal and upheld the death sentence awarded to them. The Supreme held as under:

150. Jai Kumar v. State of M.P., AIR1999SC1860
151. Shivu and Anr. v. Registrar, High Court of Karnataka and Anr., 2007CriLJ1806

*"22. Considering the view expressed by this Court in Bachan Singh's case (supra) and Machhi Singh's case (supra) we have no hesitation in holding that the case at hand falls in rarest of rare category and dead sentence awarded by the trial Court and confirmed by the High Court was appropriate. The appeal is dismissed."*[152]

## II. Possibility of reformation of the accused vis-à-vis death penalty

The benefit of possibility of reformation or rehabilitation as a ground for commutation of death penalty was considered in *Raju v. State of Haryana, Bantu @ Naresh Giri v. State of Madhya Pradesh, Surendra Pal Shivbalakpal v. State Gujarat, Amit v. State of Uttar Pradesh and Rajesh Kumar v. State through Govt. of NCT of Delhi*.

However the benefit of the same was not provided in *B.A. Umesh v. Registrar General, High Court of Karnataka and Mohd. Mannan Alias Abdul Mannan v. State of Bihar.*

### A. Cases where death penalty commuted

#### Case 1: Raju v. State of Haryana

As per prosecution case the deceased aged about 11 years went missing from the evening of 5.01.1997. Her body was found on the next day at about 6.30 a.m. near the bushes. Witnesses had last seen the deceased with the accused, Raju. Blood stained brick and blood was also found lying on the spot near the dead body of the deceased. It was also the case of the prosecution that on 6.1.1997 the accused contacted one Subhash Sharma and made confessional statement to him that he committed rape and murder of the deceased near the boundary wall of college building. The accused stated that he caused injury to the deceased by the brick on her head and mouth as the deceased stated that she would report to her family members with regard to the rape committed by him. The accused also sought his help to save him. After completing the necessary investigation, the accused was charged.[153]

152. Ibid
153. Raju v. State of Haryana., AIR2001SC2043

By order dated 7.9.1999 the Sessions Judge, Gurgaon convicted the accused for the offence punishable under Section 302, 376 and 363 of the IPC and sentenced him to death under Section 302, to 7 years rigorous imprisonment under Section 376 and 3 years rigorous imprisonment under Section 363. The High Court of Punjab and Haryana at Chandigarh by order dated 26.04.2000 in Murder Reference No.3 of 1999 and Criminal Appeal No. 463-DB of 1999 confirmed the conviction and sentence. That judgment and order was challenged in the Supreme Court. The Supreme Court commuted the death sentence of the appellant into one of imprisonment for life. The court held thus:

> *"7. In this view of the matter, in our view, the High Court after appreciating the entire evidence has rightly confirmed the conviction order passed by the Sessions Court. However, the next question is whether this would be a rarest of rare cases where extreme punishment of death is required to be imposed. In the present case, from the confessional statement made by the accused, it would appear that there was no intention on the part of the accused to commit the murder of the deceased child. He caused injury to the deceased by giving two brick blows as she stated that she would disclose the incident at her house. It is true that learned Sessions Judge committed error in recording the evidence of SI Shakuntala, PW 15 with regard to the confessional statement made to her, but in any set or circumstances, evidence on record discloses that accused was not having intention to commit the murder of the girl who accompanied him. On the spur of the moment without there being any premeditation, he gave two brick blows which caused her death. There is nothing on record to indicate that the appellant was having any criminal record nor he can be said to be a grave danger to the society at large. In these circumstances, it would be difficult to hold that the case of the appellant would be rarest of rare case justifying imposition of death penalty."*[154]

**Case 2: Bantu @ Naresh Giri v. State of Madhya Pradesh**

The deceased, aged about 6 years, went missing from her grandfather Mohan Lal Sahu's house in Umariya district of Madhya Pradesh on 25.01.1999. After enquiry, the grandfather found that the deceased went to watch a movie at the

154. Raju v. State of Haryana., AIR2001SC2043

cinema along with the accused. After some time when accused Bantu @ Naresh returned to his residence, on being enquired the whereabouts of the deceased the accused stated that he did not know anything about her and that he had not taken her along with him for going to cinema. Thereafter, he and other family members and residents of the locality started searching for the deceased. During the search, a few people in the *mohalla* told his wife that deceased was seen accompanying the accused at about 4.00 p.m. and his wife informed him accordingly. Thereafter he along with his wife went at the house of accused to know the facts correctly but as the accused became angry on such enquiry, they came back. He lodged an FIR at the police station. Subsequently, dead body of the deceased girl was found lying in the bushes standing across the railway line by a neighbour. It was found that underwear of the deceased was lying near the dead body and that there were blood stains and tooth mark on her cheek. He thereafter informed the police. On the basis of the said information, investigating officer carried out necessary investigation. Thereafter, accused was charge-sheeted along with Balu @ Balram Goswami.[155]

The trial court convicted the accused Bantu under Sections 302 and 376 of the IPC and sentenced him to death but acquitted the other accused. By the impugned judgment and order dated 19.3.2001, the High Court confirmed the judgment and order passed by the trial court. Being aggrieved by the order passed by the High Court of Jabalpur, the accused filed an appeal in the Supreme Court. The Supreme Court confirmed the conviction of the accused but commuted the death penalty of the accused into imprisonment for life. The apex court held thus:

> *"8. However, the learned counsel for the appellant submitted that in any set of circumstances, this is not the rarest of the rare case where accused is to be sentenced to death. He submitted that age of the accused on the relevant day was less than 22 years. It is his submissions that even though the act is heinous, considering the fact that no injuries were found on the deceased, it is probable that death might have occurred because of gagging her mouth and nostril by the accused at the time of incident so that she may not raise hue and cry. The death, according to him, was accidental and unintentional one. In the present case, there is nothing on record to*

155. Bantu @ Naresh Giri v. State of Madhya Pradesh., AIR2002SC70

*indicate that the appellant was having any criminal record nor it can be said that he will be a grave danger to the society at large It is true that his act is a heinous and requires to be condemned but at the same time it cannot be said that it is rarest of the rare case where accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence.*

*9. In the result, we confirm the conviction of the appellant under Section 302 IPC but modify the sentence by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376 IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. The appeal is partly allowed accordingly."*[156]

**Case 3: Rajesh Kumar v. State through Govt. of NCT of Delhi**

It was the case of the prosecution that at around 3:00 PM on 28.7.2003, accused Rajesh Kumar, brother-in-law of father of the two deceased children, murdered the elder child of four and half years by slitting the throat while younger child succumbed to injuries received due to battering him on the floor by the accused. The mother of the deceased children witnessed the brutalities of the deceased but she could not save her children despite trying her best.[157] He was charged under Section 302 of the IPC for committing the murder of two children.

By order dated 12.03.2007, the trial court convicted the appellant under Section of the 302 IPC and vide order dated 24.03.2007 awarded death sentence.[158]

Death Sentence Ref. No. 2/2007 for confirmation was filed before the Delhi High Court while the appellant also preferred a Criminal Appeal No. 635/2007. By judgment dated 06.08.2009, the High Court upheld the conviction of the appellant under section 302 IPC and confirmed the death sentence holding the case in the category of the "*rarest of rare*" case.[159]

156. Bantu @ Naresh Giri v. State of Madhya Pradesh., AIR2002SC70
157. Rajesh Kumar v. State through Govt. of NCT of Delhi[(2011)13SCC706
158. Ibid
159. Ibid

The appellant preferred an appeal in the Supreme Court which commuted the death penalty into imprisonment for life. The following observation of the apex court is relevant:[160]

> *"It is clear from the aforesaid finding of the High Court that there is no evidence to show that the accused is incapable of being reformed or rehabilitated in society and the High Court has considered the same as a neutral circumstance. In our view the High Court was clearly in error. The very fact that the accused can be rehabilitated in society and is capable of being reformed, since the State has not given any evidence to the contrary, is certainly a mitigating circumstance and which the High Court has failed to take into consideration. The High Court has also failed to take into consideration that the Appellant is not a continuing threat to society in the absence of any evidence to the contrary. Therefore, in paragraph 78 of the impugned judgment, the High Court, with respect, has taken a very narrow and a myopic view of the mitigating circumstances about the Appellant. The High Court has only considered that the Appellant is a first time offender and he has a family to look after. We are, therefore, constrained to observe that the High Court's view of mitigating circumstance has been very truncated and narrow in so far as the Appellant is concerned."*

It is pertinent to mention that the grounds for reform were also considered for commutation of death sentence in *Surendra Pal Shivbalakpal v. State Gujarat*[161] and *Amit v. State of Uttar Pradesh*[162].

### B. Cases where death penalty not commuted

#### Case 1: B.A. Umesh v. Registrar General, High Court of Karnataka

B.A. Umesh was accused of committing rape and murder of the deceased, a widowed mother. According to the prosecution case, the accused entered into the premises of the deceased when she was alone at home and committed the crime. Suresh, aged 7 years, found the accused in the hall of their house when he returned from play. The accused introduced himself to Suresh as "Uncle Venkatesh" and told him that his mother, deceased, was possessed by the devil and that he had, therefore, tied her hands and was going to bring a doctor.

160. Ibid
161. Surendrapal Shivbalakpal v. State of Gujarat., 2004 Supp(4) SCR 464
162. Amit v. State of Uttar Pradesh., (2012) 4 SCC 107

The accused then left the house with a bag filled with articles. Two witnesses also saw the accused going out of deceased's house with the bag on the day of offence. The doctor who conducted the post-mortem on the dead body of the deceased opined that death had occurred due to smothering after commission of sexual assault.[163]

Co-incidentally, some days after the incident in question, the accused was caught by public while committing robbery at a house. On arrest the accused volunteered to show where he kept the robbed articles. This led to recovery of 191 articles, including 23 items said to have been robbed by the accused from the house of the deceased. Sister of the deceased identified articles recovered at the behest of the accused. Four witnesses identified the accused in a Test Identification Parade.[164]

On 26.10.2006 the Sessions Judge, Fast Track Court VII, Bangalore City, convicted the accused under Sections 376, 302 and 392 of the IPC and awarded him death sentence. The High Court of Karnataka confirmed the conviction and the death sentence. The High Court observed that there was no possibility of the accused's reformation in view of his earlier convictions in cases of robbery, dacoity and rape.[165]

The accused challenged the impugned judgement of the High Court in the Supreme Court. The Supreme Court also confirmed the death penalty on the accused. The apex court held as under:

> *"56. On the question of sentence we are satisfied that the extreme depravity with which the offences were committed and the merciless manner in which death was inflicted on the victim, brings it within the category of rarest of rare cases which merits the death penalty, as awarded by the Trial Court and confirmed by the High Court. None of the mitigating factors as were indicated by this Court in Bachan Singh's case (supra) or in Machhi Singh's case (supra) are present in the facts of the instant case. The Appellant even made up a story as to his presence in the house on seeing P.W.2 Suresh, who had come there in the meantime. Apart from the above, it is clear from the recoveries made from his house that this was not the first time that he had committed crimes in other premises also, before*

163. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85
164. Ibid
165. Ibid

*he was finally caught by the public two days after the present incident, while trying to escape from the house of one Seeba where he made a similar attempt to rob and assault her and in the process causing injuries to her. As has been indicated by the Courts below, the antecedents of the Appellant and his subsequent conduct indicates that he is a menace to society and is incapable of rehabilitation. The offences committed by the Appellant were neither under duress nor on provocation and an innocent life was snuffed out by him after committing violent rape on the victim. He did not feel any remorse in regard to his actions, inasmuch as, within two days of the incident he was caught by the local public while committing an offence of a similar type in the house of one Seeba.*

*57. In such circumstances, we do not think that this is a fit case which merits any interference. The Appeals are, accordingly, dismissed and the death sentence awarded to the Appellant is also confirmed. Steps may, therefore, be taken to carry out the sentence."*[166]

**Case 2: Mohd. Mannan Alias Abdul Mannan v. State of Bihar.**

The accused Md. Mannan was working as mason and engaged for plaster work at the residence of one Devikant Jha. On 28.9.2004, the accused abducted the deceased, an 8-year-old daughter of neighbour of Mr. Jha, and committed rape and murder of her. Womenfolk saw the accused conversing with the deceased at Hanuman chowk and taking her away on his bicycle. The relatives of the deceased made searches as the deceased did not return and while returning back home from search, they spotted the accused who tried to escape but apprehended. The accused feigned ignorance about the whereabouts of the deceased. However, during the course of investigation, the accused gave a confessional statement in the presence of the witnesses Amar Kishore Jha and Devi Kant Jha and other villagers. The accused confessed his guilt and disclosed the place where he had raped and killed the deceased. The statement given by the accused led to the recovery of the dead body of the deceased from a field which was identified by her relatives and other villagers. The dead body of the deceased had injury on the private parts, her nails were munched and there were marks of bruises all over the body.[167]

166. Ibid
167. Mohd. Mannan Alias Abdul Mannan v. State of Bihar., (2011) 5 SCC 317

By its judgement and order dated 29.05.2007, the trial court convicted the accused for offence under Sections 366, 376, 302 and 201 of the IPC and sentenced him to death apart from imposing other sentences of lesser terms. On 19.08.2008, the Division Bench of the Patna High Court confirmed the conviction and the death sentence on the accused.[168]

The accused preferred a SLP in the Supreme Court against the impugned decision of the High Court. The Supreme Court dismissed the SLP and confirmed the conviction and death sentence of the accused. The Supreme Court held thus:

> *"18. When we test the present case bearing in mind what has been observed, we are of the opinion that the case in hand falls in the category of the rarest of the rare cases. Appellant is a mature man, aged about 43 years. He held a position of trust and misused the same in calculated and preplanned manner. He sent the girl aged about 7 years to buy betel and few minutes thereafter in order to execute his diabolical and grotesque desire proceeded towards the shop where she was sent. The girl was aged about 7 years of thin built and 4 feet of height and such a child was incapable of arousing lust in normal situation. Appellant had won the trust of the child and she did not understand the desire of the Appellant which would be evident from the fact that while she was being taken away by the Appellant no protest was made and innocent child was made prey of the Appellant's lust. The postmortem report shows various injuries on the face, nails and body of the child. These injuries show the gruesome manner in which she was subjected to rape. The victim of crime is an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young child is appalling. The Appellant had stooped so low as to unleash his monstrous self on the innocent, helpless and defenseless child. This act no doubt had invited extreme indignation of the community and shocked the collective conscience of the society. Their expectation from the authority conferred with the power to adjudicate, is to inflict the death sentence which is natural and logical. We are of the opinion that Appellant is a menace to the society and shall continue to be so and he cannot be reformed. We have no manner of doubt that the case in hand falls in the category of the*

168. Ibid

*rarest of the rare cases and the trial court had correctly inflicted the death sentence which had rightly been confirmed by the High Court.*

*19. In the result, we do not find any merit in this appeal and same is dismissed accordingly."*[169]

## III. Response in cases of acquittal or imprisonment for life awarded by High Courts

Acquittal or life sentence awarded by the High Courts was considered good enough by the Supreme Court to commute death sentences in *State of Tamil Nadu v. Suresh* and *State of Maharashtra v. Suresh*.

However, the same was considered not good enough reason by the Supreme Court to commute the death sentence in *State of U.P. v. Satish*[170] and *B.A. Umesh v. Registrar General, High Court of Karnataka*[171].

### A. Cases where death penalty commuted

#### Case 1: State of Tamil Nadu v. Suresh

This case pertains to the rape and murder of the deceased aged 23-years-old at her husband's home in Madras on the night of 9.6.1987. As per the prosecution, as his business expanded Accused No.1 Ramesh Kumar (businessman) started entertaining a feeling that if he had married from a rich family he would have got a handsome dowry. This led to some estrangement between the spouses. Second, Accused No.2 Suresh Kumar, also a businessman and brother of Ramesh did not see eye to eye with the deceased who was his own sister in law, for certain reasons of his own, one among them that he believed that the deceased was injecting hatred in the mind of his brother Ramesh that he was becoming a habitual drunkard.[172]

A couple of days prior to the occurrence, rape and murder of the deceased, her husband Ramesh had gone abroad (Singapore) in connection with his business and before he left India he and the other three accused had entered into a criminal conspiracy to finish the deceased off during his absence. After

169. Mohd. Mannan Alias Abdul Mannan v. State of Bihar., (2011) 5 SCC 317
170. State of U.P. v. Satish., (2005) 3 SCC 114
171. B.A. Umesh v. Registrar General, High Court of Karnataka., MANU/SC/0082/2011 : (2011) 3 SCC 85
172. State of Tamil Nadu v. Suresh., (1998) 2 SCC 372

he left, Suresh informed the remaining culprits that the best way to achieve the target was to drop her down from the top floor of the building so that it would appear to the rest of the world that she had committed suicide. Pursuant to their plan, on the midnight of 9.6.1987 when everybody else was asleep the three culprits (A2-Suresh, A3-Kuman Singh and PW1-Bhoparam) moved from the room on the 4th floor where they were to sleep and entered the room where deceased was sleeping with her 4-year-old son Sandeep. She was over-powered and the third accused pressed her neck and mouth on the direction of the second accused Suresh. Suresh himself raped the deceased as well as prompted one of his accomplices to sexually molest her. The three assailants then dropped the deceased from top floor (4th floor) of the building and the deceased died instantaneously.[173]

Initially the case was mistaken by the neighbours and the police as a case of suicide, but eventually it become a case of murder. The entire prosecution case however revolved on the solitary evidence of Accused No.4 Bhoparam who became an approver.[174]

The Sessions Court acquitted the husband of the deceased, but convicted the other two persons of murder and rape and sentenced both of them to death. A Division Bench of the High Court confirmed the acquittal of the husband of the deceased and also set aside the conviction and sentence passed by the Sessions Court. The State of Tamil Nadu challenged the impugned judgement of the High Court in the Supreme Court. The Supreme Court set aside the impugned judgement of the High Court and restored the conviction of Accused No.2 and 3. The Supreme Court, however, commuted the death penalty awarded by the Trial Court into of one of imprisonment for life. The apex court held thus:

> *"32. The above discussion takes us to the final conclusion that the High Court has seriously erred in upsetting the conviction entered by the Sessions Court as against A-2 and A-3. The erroneous approach has resulted in miscarriage of justice by allowing the two perpetrators of a dastardly crime committed against a helpless young pregnant housewife who was sleeping in her own apartment with her little baby sleeping by her side and during*

173. Ibid
174. Ibid

*the absence of her husband. We strongly feel that the error committed by the High Court must be undone by restoring the conviction passed against A-2 and A-3, though we are not inclined, at this distance of time, to restore the sentence of death passed by the trial court on those two accused.*

*33. In the result, we allow the appeals and set aside the judgment of the High Court of Madras and restore the conviction passed by the trial court under Sections 302 and 376 read with Section 34 of the IPC as against A-2 - Suresh and A-3 - Kuman Singh, and we sentence them each to undergo imprisonment for life on the first count and rigorous imprisonment for a period of 10 years on the second count. Sentences on both counts will run concurrently. We direct the Sessions Judge, Madras (now Chennai) to take immediate steps to put the aforesaid convicted persons in jail for undergoing the sentence."*[175]

**Case 2: State of Maharashtra v. Suresh**

Accused Suresh was already being tried in another case of rape and murder of one eight year old girl. While he was in Jail in connection with that case he came into acquaintance with a prisoner viz. Sanjay, the brother of deceased's father Rameshwar. Both of them were later released from prison.[176]

After release from jail the accused visited Sanjay's house, and subsequently he paid frequent visits to the said house. During such visits he made himself familiar to the deceased. On 22.12.1995 the accused went to that house and when he was told that Sanjay had gone out, he left the house but while going back he took away the deceased with him by alluring the girl. None of the family members of the deceased had seen the deceased after the accused came and left the house in the afternoon.

The accused took the deceased to the shop of PW8 Mahadeo, and later to the shop of PW14 Motiram, and thereafter to a farm whereon pulses and cotton were cultivated. As the deceased was not found in the house or its precincts till night fell the panic-stricken member of her family began to make hectic searches for her. Pursuant to complaint from the father of the deceased, the accused was arrested and during interrogation the police came to know that

175. Ibid
176. State of Maharashtra v. Suresh., [(2000) 1 SCC 471

dead body of the girl was concealed in a farm. The dead body was recovered at the instance of the accused.

The autopsy report, inter alia, revealed that "the vagina was torn down at the perennial region by 1" with irregular lacerations and a fleshy torn portion was found protruding out therefrom. Contusions and abrasions on the labia majora of both sides besides swelling were also noticed by the doctor. There were number of contusions and abrasions on her face also. Dr. Avinash S. Lawhale, Medical Superintendent and Dr. Pathoda, Medical Officer of Rural Hospital, Arvi, District Wardha, after completing the jointly conducted autopsy reported that death of the child was due to asphyxia by rape and smothering."

The Trial Court convicted the accused and sentenced him to death for the offences under Section 302 of the IPC apart from other lesser sentences. The Sessions Judge found that all those circumstances were established and they formed themselves into a complete chain unerringly pointing to the guilt of the respondent. But the Division Bench of the High Court differed from the findings of the Sessions Court regarding some of the circumstances and that resulted in exoneration of the respondent.

The State of Maharashtra challenged the impugned decision of the High Court in the Supreme Court. The Supreme Court set aside the High Court judgment acquitting the accused and restored the conviction as held by the Trial Court but the death penalty was reduced to one of life imprisonment. The apex Court held thus:

> *"28. It is disconcerting that a case like this in which the prosecution has presented such reliable and formidable circumstances forming into a completed chain and pointing unerringly to the irresistible conclusion that the little girl Gangu was raped and killed by none other than the respondent himself, ended in unmerited acquittal from the Division Bench of the High Court. Criminal justice unfortunately became a casualty in this case when the High Curt side- stepped all such circumstances and exonerated the culprit of such a grotesque crime.*
>
> *29. We, therefore, set aside the impugned judgment and restore the conviction passed by the trial court. Regarding sentence we would have concurred with the Sessions Court's view that the extreme penalty of death*

*can be chosen for such a crime, but as the accused was once acquitted by the High Court we refrain from imposing that extreme penalty in spite of the fact that this case is perilously near the region of "rarest of the rare cases" envisaged by the Constitution Bench in Bachan Singh v. State of Punjab . However, the lesser option is not unquestionably foreclosed and so we alter the sentence, in regard to the offence under Section 302 IPC, to imprisonment for life. The sentences imposed by the trial court on all other counts would remain unaltered. The bail bond shall stand cancelled. We direct the respondent to surrender to bail. We also direct the Sessions Judge, Wardha to take immediate and necessary steps to put the accused in jail if he is not already in jail, for undergoing the sentence imposed on him."*[177]

**B. Cases where death penalty not commuted**

**Case 1: State of U.P v. Satish**

On 16.8.2001 the deceased aged about 6 years had gone to school and did not return at the usual time. On the next morning her dead body was found in the sugarcane field of one Moolchand around 6.00 a.m. She was lying in a dead condition and blood was oozing from her private parts and there were marks of pressing on her neck. Report was lodged at the nearly Police Station and the dead body was sent for post mortem examination. Dr. R.K. Gupta conducted the post mortem around 2.00 p.m. on 17.8.2001 and opined that death was within the preceding 24 hours.[178]

Three persons claimed to have seen the accused nearby the place of occurrence between 1.00 p.m. to 2.00 p.m. on the date of occurrence. Two of them, namely, Sanjeev Kumar Tyagi and Kulbhushan claimed to have seen the deceased being carried on a bicycle by the accused. Anil stated that he had seen the accused in perplexed state around 2.00 p.m. near the place from where the dead body of deceased was found. During the investigation, there was recovery of accused's underwear as also the undergarment the deceased was wearing.[179]

The trial Court found that the circumstances highlighted by the prosecution were sufficient to establish guilt on the accused. The Trial Court convicted the accused under Sections 363, 366, 376(2), 302 and 201 of the IPC. The crime

177. Ibid
178. State of U.P. v. Satish., (2005) 3 SCC 114
179. Ibid

was held to be one falling under the "*rarest of rare*" category. Death sentence was imposed for the offence under Section 302 IPC. Various custodial sentences and fines were imposed for other offences.[180]

Both the capital sentence reference and the criminal appeal preferred by the accused were heard together. By the impugned judgment of the High Court set aside the judgment of conviction and held that prosecution had failed to prove its accusations. It was held that the case rested on circumstantial evidence and the circumstances highlighted by the prosecution did not inspire confidence.[181]

The State of U.P. challenged the impugned judgement of the High Court in the Supreme Court. The Supreme Court set aside the High Court judgement and restored the conviction and sentences imposed by the Trial Court. The apex Court held as under:

> *"32. Considering the view expressed by this Court in Bachan Singh's case (supra) and Machhi Singh's case (supra) we have no hesitation in holding that the case at hand falls in rarest of rare category and death sentence awarded by the trial Court was appropriate. The acquittal of the respondent-accused is clearly unsustainable and is set aside. In the ultimate result, the judgment of the High Court is set aside and that of the trial Court is restored. The appeals are allowed."*[182]

**Case 2: Kunal Majumdar v. State of Rajasthan**

On 18.1.2006, a complaint was lodged by one Laltu Manjhi before the Station House Officer of Police Station Shastri Nagar, Jodhpur alleging that his daughter Bharti (deceased) was employed as a housemaid in the residence of the accused and that 25 days prior to the date of complaint, one Sudip De, through whom his daughter came to be employed with the accused, informed him over phone that his daughter wanted to speak to him. The complaint further stated that when he talked to his daughter, he could sense the plight of his daughter in the residence of the accused, that though his daughter wanted to explain her ordeal at the instance of the accused, she was prevented from talking to him in detail and that on the morning of

180. Ibid
181. Ibid
182. Ibid

16.1.2006 at about 5 O' clock, he received an information through Sudip De that the accused informed him over phone that his daughter fell unconscious due to Vertigo and was admitted to hospital. When the father of the deceased reached Jodhpur, the accused informed him through Sudip De that his daughter was dead and that he could only see the body of his daughter in the Mortuary of the M.G. Hospital on 18.01.2006 where he noted injuries all over the dead body. According to him, he received information through the neighbours of the accused that he was constantly torturing the deceased during the preceding two months during which period she was employed at the house of the accused apart from his immoral behaviour towards his daughter. It was his further allegation that his daughter was killed by the accused by strangulation.[183]

On 9 March 2007, the trial court awarded death penalty to Kunal Majumdar for charges under Sections 376 and 302 of the IPC. The trial Court concluded that the crime committed by the accused comes within the purview of the "rarest of rare" case and awarded death sentence. The trial court noticed that deceased Kumari Bharti Manjhi was a minor girl of 14 years and she was working as maid servant with the accused. The accused exploited poverty of Bharti Manjhi and her family and caused her death after making an effort to commit rape when the minor girl was under his custody.[184]

By judgment dated 11 July 2007, the Division Bench of the High Court of Rajasthan at Jodhpur commuted the death penalty to life imprisonment. The High Court judgement stated that the "injuries sustained resulting into death did not suggest use of severe force in order to conclude the same as one of brutal and inhuman." The Division Bench observed "Where the convictions have not been challenged by the accused, the sentence part is the only aspect on which we have to seriously consider. The brutality seen in the act of the accused relates to the violation of the person of the deceased, for satisfaction of evil desires. The injuries sustained resulting into death is not suggestive of a use of force of the severe nature which can take us to the conclusion that it was brutal and in-human".[185]

183. Kunal Majumdar v. State of Rajasthan., (2012) 9 SCC 320
184. Ibid
185. Ibid

By judgment and order dated 12 September 2012 the Supreme Court set aside the High Court judgment and remitted the matter back to the High Court for fresh order on the sentence. The Supreme Court noted that the Division Bench of the High Court of Rajasthan at Jodhpur dealt the case in a "casual and callous manner" and the High Court had "shirked its responsibility while deciding the Reference in the manner it ought to have been otherwise decided under the Code of Criminal Procedure". While remitting the matter the Supreme Court directed the High Court to dispose of the Reference along with the Appeals expeditiously and in any case within three months considering that the conviction and judgment on the convict was imposed by the trial court vide judgment 9 March 2007.[186]

However, vide judgment and order dated 13 February 2013, the Division Bench of the High Court of Rajasthan at Jodhpur reconfirmed the life sentence on the convict, Kunal Majumdar. The High Court observed

> *"In the case in hand the accused appellant was serving in Indian Air Force, he is in his quite young age and he too is having a liability to provide a good life to his own daughter. No material is available to arrive at the conclusion that he is a menace for society. Looking to all these circumstances we are having a little hope of his reformation and just to get that materialised, we are not inclined to confirm the death sentence".*[187]

## IV. The issue of circumstantial evidence for conviction in murder

Circumstantial evidence was held to be a mitigating factor for commutation of death penalty in *Bishnu Prasad Sinha v. State of Assam* but it was not held so in *Jumman Khan v. State of Uttar Pradesh*, *KamtaTiwari V. State of M.P.*, *Molai and Another v. State of M.P.* and *Shivaji @ Dadya Shankar Alhat v. State of Maharashtra*.

### A. Cases where death sentence commuted

#### Case 1: Bishnu Prasad Sinha and Anr. v. State of Assam

The deceased aged about 7-8 years was travelling with her parents Bishnu Deb (father-P.W.23), Anima Deb (mother- P.W.22) and younger brother in a private

186. Ibid
187. Ibid

transport service known as Network Travels from Dharmanagar (Tripura). They were on their way to Dimapur in the State of Nagaland. They reached Network Travels' Complex at Paltan Bazar, Guwahati at around 10.30 p.m. on 12.7.2002. There was no connecting bus to Dimapur at that time. They were advised to stay over for the night at Guwahati. Accused No.1 was a night chawkidar (watchman) of the waiting room of the said Network Travels. He suggested that the family could stay there for the night and therefore should not have any apprehension in regard to their safety. Their luggage was carried by the appellant No.1 to the waiting room.

Accused No.1 insisted on the deceased's mother repeatedly that she should go to sleep stating that as the waiting room would be locked, there was nothing for her to worry about. As she had not been sleeping, the accused No.1, allegedly scolded her to do so. At that time, a bus bearing No.AS-25-C-1476 arrived at the said bus stop. Putul Bora – Accused No.2 was the 'handiman' of the said bus. While the Manager, Driver and the Conductor slept inside the bus, he did not. He was seen talking with the accused No.1[188].

Anima Deb, the deceased's mother slept for a while. As her son had cried out, she woke up at about 3 p.m only to find that her daughter was missing. She raised a hue and cry and her husband, Bishnu Deb also woke up. A search was carried out in the three buses, which were at the bus stop belonging to the travel agency. As the girl could not be found despite vigorous search, Bishnu Deb was advised to inform the police. A missing entry was lodged before the Officer-in- Charge of Paltan Bazar Police Station. At about 8.30 a.m. on 14.7.2002, a complaint was made that the flush in the toilet was not working. P.W.7- Amar Deep Basfore (sweeper) was asked by P.W.2-Shri Kapil Kumar Paul (cashier of the travel agency) to find out the reason therefor. He later on opened the septic tank and saw the head of a small child. He immediately reported the matter to P.W.1-Shri Bidhu Kinkar Goswami as well as P.W.2-Shri Kapil Kumar Paul.[189]

Pursuant to the said FIR, a case under Sections 376(2)(g) and 302 read with Section 34 of the IPC was registered. An inquest of the dead body was made by a Magistrate. The suspects were arrested. During the course of investigation,

188. Bishnu Prasad Sinha v. State of Assam., (2007) 11 SCC 467
189. Ibid

the accused No.1 made a confessional statement before the Magistrate under Section 164 of the CrPC. He gave a vivid description about how the offence was committed by him and the accused No.2.[190]

The accused were charged and convicted for commission of offences under Sections 376(2)(g), 302 and 201 read with Section 34 of the IPC for rape and murder of the deceased, Barnali Deb.[191]

They preferred an appeal before the Gauhati High Court against their conviction and sentence. The Gauhati High Court dismissed the same. Aggrieved with the dismissal, they preferred an appeal before the Supreme Court. The Supreme Court commuted the death penalty of the accused into one of imprisonment for life. The apex court held thus:

> *"There is another aspect of this matter which cannot be overlooked. Appellant No.1 made a confession. He felt repentant not only while making the confessional statement before the Judicial Magistrate, but also before the learned Sessions Judge in his statement under Section 313 of the Code of Criminal Procedure.*
>
> *It is, therefore, in our opinion, not a case where extreme death penalty should be imposed. We, therefore, are of the opinion that imposition of punishment of rigorous imprisonment for life shall meet the ends of justice. It is directed accordingly. Both the appellants, therefore, are, instead of being awarded death penalty, are sentenced to undergo rigorous imprisonment for life, but other part of sentence imposed by the learned Sessions Judge are maintained.*
>
> *Subject to the modification in the sentence mentioned hereinbefore, this appeal is dismissed."*[192]

**B. Cases where death sentence not commuted**

**Case 1: Jumman Khan v. State of Uttar Pradesh**

According to the FIR lodged by Ausaf Khan, father of the deceased, the accused Jumman Khan went to the house of Ausaf Khan while he was away and requested his wife Dulhey Khan Begum to allow their six years old daughter

190. Ibid
191. Ibid
192. Ibid

(name withheld) on the pretext that he wanted her to bring some ice from the market. Dulhey Khan Begum allowed her daughter to accompany the petitioner and fell asleep. When she woke up after about an hour, she found that her daughter had not returned. Though at first, she thought that her daughter might be playing along with other children in the neighbourhood, as time passed-by she became panicky. Finding the child not returned, she made a futile search. When she went to the petitioner's house, it was found locked. After her husband returned from work at 7.00 p.m. an unsuccessful incisive and frantic search for the child was made in the neighbourhood. Hearing the information of the missing of the child, a crowd gathered. When Ausaf Khan again went to the petitioner's house in search of his daughter, he was told by a neighbour that at about 4.30 p.m. when he was passing by the petitioner's house he noticed the deceased entering that house with ice wrapped in a cloth and the petitioner taking her inside holding her hands. One of the persons of the locality further informed Ausaf Khan that while he was passing the petitioner's house, he heard the screaming of a child emanating from the house of the petitioner. The irate crowd went to the petitioner's house and flashed a torch through the crevice in the door and found a dead body lying on a cot wrapped in a veil (burka). Then the public effected entry and found that it was the dead body of the deceased with extensive marks of injuries on her body. Ausaf Khan made a written report on the basis of which a case was registered under Sections 302 and 376 of the IPC. The accused was arrested at Aligarh on 25.6.1983. The post-mortem examination of the deceased's body revealed that she had been brutally raped and strangulated to death. The police after completing the investigation filed the charge sheet.[193]

The accused was charged under Sections 376 (rape) and 302 (murder) of the IPC. The trial court found him guilty under both the charges and sentenced him to life imprisonment under Section 376 of the IPC and awarded death sentence under Section 302 of the IPC.[194]

On appeal, the High Court confirmed the conviction and sentences passed by the trial Court. The High Court held-

193. Jumman Khan v. State of Uttar Pradesh., [(1991) 1 SCC 752]
194. Ibid

> *"Considering the nature and most gruesome and beastly act perpetrated by the appellant, the appellant deserves no leniency. He had committed premeditated rape on a helpless child aged about six years and he had gone to the extent of strangulating her to death."*

Aggrieved with the judgment of the High Court, the accused filed a Special Leave Petition (Criminal) No. 558/86 in the Supreme Court. Vide its Order dated 20th March, 1986 the apex court dismissed the SLP.[195]

Feeling aggrieved by the judgment of the High Court, the accused filed SLP (Criminal) No. 558/86. The Supreme Court by its Order dated 20th March, 1986 dismissed the SLP observing thus:

> *"Although the conviction of the petitioner under Section 302 of the Indian Penal Code, 1860 rests on circumstantial evidence, the circumstantial evidence against the petitioner leads to no other inference except that of his guilt and excludes every hypothesis of his innocence. Apart from the circumstances brought out by the prosecution, each one of which has been proved, there is no extra judicial confession which lends support to the prosecution case that the child had been raped by the petitioner and thereafter strangulated to death.*
>
> *Failure to impose a death sentence in such grave cases where it is a crime against the society - particularly in cases of murders committed with extreme brutality - will bring to naught the sentence of death provided by S. 302 of the Indian Penal Code. It is the duty of the Court to impose a proper punishment depending upon the degree of criminality and desirability to impose such punishment. The only punishment which the appellant deserves for having committed the reprehensible and gruesome murder of the innocent child to satisfy his lust, is nothing but death as a measure of social necessity and also as a means of deterring other potential offenders. The sentence of death is confirmed."*[196]

195. Santosh Kumar Satish Bhusan Bariyar v. State of Maharashtra [(2009) 6 SCC 498]
196. Jumman Khan v. State of Uttar Pradesh., [(1991) 1 SCC 752]

**Case 2: Kamta Tiwari v. State of M.P.**

Parmeshwar Lal Sharma (PW 1) along with his wife and three children used to reside as Bhutari Tolla in the township of Budhar in Madhya Pradesh. Of the three children, the deceased was the youngest and her age at the time of her death was about seven years. Accused Kamta Tiwari who was also a resident of the same locality used to occasionally visit the family of Parmeshwar and his children used to address him as 'Tiwari Uncle'. On 30.04.1995 at or about 6 P.M. Parmeshwar had gone to a hair cutting saloon in the local market along with his son Santosh (P.W. 4) and the deceased. After the deceased and her brother had their hair cut they went out of the saloon to play while their father stayed back for his turn. After some time the deceased went to the television repairing shop of the accused which was by the side of the saloon. The deceased requested the appellant to give her some toffees and biscuits whereupon the accused took her to the nearby grocery shop of Budhsen Gupta (PW 3), purchased a packet of biscuits and gave it to her. Thereafter both of them left the shop. After his hair-cut when Parmeshwar came out of the saloon and enquired of his daughter, the deceased's brother told him that the deceased had gone to the shop of the accused and that he had given biscuits to her. On getting that information Parmeshwar along with his son went to the shop of the accused but found it closed. They then went back to their house only to find that the deceased had not returned. Parmeshwar then went to the house of the appellant but he was not available there. Accompanied by his wife and other two children Parmeshwar then went in search of the deceased and in course of the search they met Hari Krishna Soni (PW 10) and Subhash Chander Soni (PW 2) at or about 10.30 P.M. on a cross road near the shop of the accused. As advised by them he sent back his wife and children home and again went to the house of the accused accompanied by them. While they were waiting there they saw the accused coming towards his house completely drenched. He was then wearing only underwear with some clothes pressed under his armpit. When they enquired about the deceased he told them that after he had given the packet of biscuits to her and she left. All three of them then went to Budhar Police Station at about 1 A.M. and reported that the deceased was missing. [197]

On the following day after the deceased went missing, the accused was arrested and then interrogated in presence of Hari Krishna and Din Dayal. On such interrogation the accused disclosed that he had thrown the dead body of the

197. Kamta Tiwari v. State of M.P., [(1996) 6 SCC 250]

deceased in a well and concealed her frock near a mahua tree. The accused led the police and witnesses to the well where the dead body of the deceased was found floating. At the instance of the accused, police also recovered the blood stained frock of the deceased.[198]

On medical examination on the person of the accused, the doctor found one abrasion on his right knee and another on the glans penis. In the opinion of the doctor the injury found on the glans penis could have been caused while committing rape on a girl of tender age while the injury found on the knee of the appellant could have been caused while committing sexual intercourse with the victim lying on the bare floor of a room.[199]

The appellant was tried for and convicted of offences punishable under Sections 363, 376, 302 and 201 of the IPC by the Additional Sessions Judge, Shahdol. For his conviction under Section 302 of the IPC he was sentenced to death and for the other convictions to different terms of rigorous imprisonment.[200]

The High Court dismissed the appeal preferred by the accused and confirmed the death sentence. Aggrieved with the impugned decision of the High Court, the accused preferred a Special Leave Petition. The Supreme Court also dismissed his SLP. The supreme Court held thus:

> *"7. Taking an overall view of all the facts and circumstances of the instant case in the light of the above propositions we are of the firm opinion that the sentence of death should be maintained. In vain we have searched for mitigating circumstances - but found aggravating circumstances aplenty. The evidence on record clearly establishes that the appellant was close to the family of Parmeshwar and the deceased and her siblings used to call him 'Tiwari uncle'. Obviously her closeness with the appellant encouraged her to go to his shop, which was near the saloon where she had gone for a haircut with her father and brother, and ask for some biscuits. The appellant readily responded to the request by taking her to the nearby grocery shop of Budhsen and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal rape and*

198. Ibid
199. Ibid
200. Ibid

*gruesome murder - as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a 'rarest of rare' cases where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's a abhorrence of such crime."*[201]

**Case 3: Molai and Anr. v. State of Madhya Pradesh**

The incident in question took place on 20.02.1996 between 10 and 11 a.m. Santosh (Accused-1), a prisoner who was undergoing an imprisonment term and Molai Ram (Accused-2) who was posted as a guard in the central jail allegedly committed rape and murder of the deceased (name withheld), 16-year-old daughter of Mr. R.S. Somvanshi (PW 6) who was posted as an Assistant Jailor at Central Jail, Reeva in Madhya Pradesh at his official quarter inside the jail complex. At the time of the crime the deceased was alone at home while other family members went out for their respective work. The Accused-2 was deputed by the deceased's father to do some domestic work at his quarter while Accused-1 was asked to work at the garden near the quarter. It was alleged that finding the deceased alone at home the two accused persons committed rape on her and then killed her.

The Additional Sessions Judge, Reeva convicted the accused-appellants for offences punishable under Sections 376(2)(g), 302/34 and 201 of the IPC and sentenced both to death. Their conviction was based on circumstantial evidence and recovery of dead body and other incriminating articles at the instance of the accused-appellants.

The High Court of Madhya Pradesh by its judgment and order dated 9.12.98 upheld the conviction and confirmed death sentence of both the accused.

The Supreme Court upheld the conviction of the appellants on all counts as well as the death sentence as awarded by the trial court and confirmed by the

201. Ibid

High Court. The Supreme Court judgement stated thus:

> *"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 courts 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 cases, 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 that Naveen, a 16 year old girl, was preparing for her 10th 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 strangulated 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 mitigating circumstances from the record of the case to justify the reduction of sentence of 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 than the one taken by the courts below."*[202]

**Case 4: Shivaji @ Dadya Shankar Alhat v. State of Maharashtra**

The accused holding B.A. B.Ed. degree was serving as teacher at Pune. He was staying with his mother and sister near the house of the deceased, aged about 10 years. The accused is a married man and has three children. His wife and children were not residing with him. [203]

The accused was known to the deceased and her family. The deceased and her family used to sometime serve him bread. The deceased was studying in 5th standard. She had two sisters, namely, Bhagyashree and Jayshree (PW 8). Her mother Sushilabai (PW 2) was working as a maid. All of them were staying with their grandmother Yashodabai (PW 7). The father of the deceased was not staying with them.[204]

202. Molai And Anr v. State Of Madhya Pradesh, Appeal (crl.) 678 of 1999, Supreme Court, 26 October, 1999
203. Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra., [(2008) 15 SCC 269]
204. Ibid

The incident in question occurred on 14th January, 2002. The deceased and her two sisters and their grandmother were present in the house. At about 11.30 a.m., the deceased and her sister had gone to the borewell of one Sangale to fetch water. There they found the accused who told the deceased that he would give her firewood from the hill. After fetching water the deceased went along with the accused towards the hill called Manmodya Dongar. Thereafter the deceased did not return home. The deceased's mother and other family members searched for the deceased but could not find her. Not finding the deceased, grandmother of the deceased lodged a missing complaint in which she stated that the deceased had left the house with the accused and had not come back. In the meanwhile it came to be known that the dead body of the deceased was lying on the Manmodya hill where the accused took the deceased apparently to fetch firewood.[205]

The accused was not traceable for some days after the incident but was found hiding in the sugarcane crop of a farmer. He was arrested and put on trial.

The Second Additional Judge, Pune tried the accused for offences punishable under Sections 302 and Section 376(2)(f) of the IPC. By judgment and order dated 27th June, 2004, the trial court found the accused guilty for the aforesaid offences and he was sentenced to death for the offence of murder and in respect of the other offence sentenced to suffer rigorous imprisonment for ten years.[206]

The accused challenged his conviction and sentence before the Bombay High Court which heard the same along with the death reference case referred to it by the trial court under Section 366 of the CrPC for confirmation of the death sentence. The High Court accepted the reference and confirmed the death sentence but dismissed the appeal filed by the accused.[207]

The accused challenged the impugned judgement of the Bombay High Court before the Supreme Court. The Supreme Court confirmed the conviction and death penalty of the accused and held as under:

> *"40. The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence is found to be of*

205. Ibid
206. Ibid
207. Ibid

*unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death. The mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact that the case rests on circumstantial evidence has no role to play. In fact in most of the cases where death are awarded for rape and murder and the like, there is practically no scope for having an eye witness. They are not committed in the public view. But very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would amount to consideration of an irrelevant aspect. The plea of learned Amicus Curiae that the conviction is based on circumstantial evidence and, therefore, the death sentence should not be awarded is clearly unsustainable.*

*41. The case at hand falls in the rarest of rare category. The circumstances highlighted above, establish the depraved acts of the accused, and they call for only one sentence, that is death sentence.*

*42. Looked at from any angle the judgment of the High Court, confirming the conviction and sentence imposed by the trial Court, do not warrant any interference."*[208]

208. Ibid

# Annexure- II: Comparative analysis of the judgements of Justice Arijit Passayat & Justice MB Shah on death penalty

| Judge | DP Confirmed | DP commuted | Enhanced life imprisonment to DP | Altered Acquittal into DP | Sent back to HC for Retrial where DP was not awarded by HC | Decisions later declared per incuriam | Dissenting judgment | Cases of Acquittal |
|---|---|---|---|---|---|---|---|---|
| Arijit Passayat | Confirmed death penalty in 15 cases[1] | Commuted death penalty in 7 cases[2] | Enhanced sentence of life imprisonment to death penalty in 4 cases[3] | Altered Acquittal by HC into death penalty in 2 cases[4] | Remitted 3 cases back to HC to decide on quantum of sentence[5] | 5 decisions confirming death penalty rendered per incuriam[6] | Not delivered any judgment dissenting against death penalty | Upheld acquittal by HC in 6 cases[7] |

1. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); Bantu v. The State of U.P. [(2008)11SCC113]; Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661); Krishna Mochi and Ors. v. State of Bihar etc. (2002) 6 SCC 81); Mohan Anna Chavan v. State of Maharashtra [2008(2) ALT (Cri) 329]; Rameshbhai Chandubhai Rathod v. State of Gujarat [2009(3)ALT(Cri)1]; Shivaji @ Dadya Shankar Alhat v. State of Maharashtra (AIR2009SC56); Shivu and Anr. v. R.G. High Court of Karnataka and Anr. (2007CriLJ1806); State of Rajasthan v. Kheraj Ram (AIR2004SC3432); State of U.P. v. Sattan @ Satyendra and Ors. [2009(1) ALD(Cri)602]; State of U.P. v. Satish (AIR2005SC1000); Sushil Murmu v. State of Jharkhand (AIR2004SC394); Bablu @ Mubarik Hussain v. State Of Rajasthan [Appeal (crl.) 1302 of 2006]; Bani Kanta Das & Anr v. State of Assam & Ors (Writ Petition (C) No. 457 of 2005); and M.A. Antony @ Antappan v. State of Kerala (AIR2009SC2549)
2. Lehna v. State of Haryana (2002(1) SCALE273); Nazir Khan and Ors. v. State of Delhi (AIR2003SC4427); Gopal v. State Of Maharashtra (Appeal (crl.) 1428 of 2007); Anil Sharma & Ors v. State of Jharkhand (Appeal (crl) 622-624 of 2003); Prem Sagar v. Dharambir and Ors. (AIR2004SC21); Aqeel Ahmad v. State of U.P. (AIR2009SC1271); and Liyakat v. State of Uttaranchal (2008CriLJ1931)
3. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); State of Rajasthan v. Kheraj Ram (AIR2004SC3432); State of U.P. v. Sattan @ Satyendra and Ors. [2009(1) ALD (Cri) 602]; and State of U.P. v. Satish (AIR2005SC1000) . State of Rajasthan v. Kheraj Ram (AIR2004SC3432) and State of U.P. v. Satish (AIR2005SC1000)
4. Union of India (UOI) and Ors. v. Devendra Nath Rai (2006CriLJ967); State of U.P. v. Govind Das @ Gudda and Anr. (2007CriLJ4289); and Gobind Singh v. Krishna Singh and Ors. [2009(1)PLJR200]
5. Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609); Bantu v. The State of U.P. [(2008)11SCC113]; Mohan Anna Chavan v. State of Maharashtra [2008(2)ALT(Cri)329]; Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra (AIR2009SC56); and State of U.P. v. Sattan @ Satyendra and Ors. [2009(1)ALD(Cri)602]
6. State of Rajasthan v. Raja Ram (AIR2003SC3601); State of Haryana v. Jagbir Singh and Anr. (AIR2003SC4377); State of Rajasthan v. Khuma [2004(3) ACR 2698(SC)]; State of Madhya Pradesh v. Chamru @ Bhagwandas etc. etc. (AIR2007SC2400); State of U.P. v. Ram Balak and Anr. ((2008)15SCC551); and State of Maharashtra v. Mangilal [(2009)15SCC418]
7. Ashok Kumar Pandey v. State Of Delhi (AIR2002SC1468); Bantu @ Naresh Giri v. State of M.P. (AIR2002SC70); Farooq @ Karatta Farooq and Ors. v. State of Kerala (2002CriLJ2534); Jayawant Dattatray Suryarao v. State Of Maharashtra (AIR 2002 SC 143); Krishna Mochi and Ors. v. State of Bihar etc. (Criminal Appeal No. 761 of 2001); Lehna v. State of Haryana (2002(1)SCALE273); Nirmal Singh & Anr. v. State of Haryana (AIR1999SC1221); Om Prakash v. State of Haryana (AIR1999SC1332); Prakash Dhawal Khairnar (Patil) v. State of Maharashtra (AIR2002SC340); Raju v. State of Haryana (AIR2001SC2043); Ram Anup Singh and Ors. v. State of Bihar (AIR2002SC3006); Shri Bhagwan v. State of Rajasthan (AIR2001SC2342); and Surendra Singh Rautela @ Surendra Singh Bengali v. State of Bihar (Now State of Jharkhand)[ AIR2002SC260]

| Judge | DP Confirmed | DP commuted | Enhanced life imprisonment to DP | Altered Acquittal into DP | Sent back to HC for Retrial where DP was not awarded by HC | Decisions later declared per incuriam | Dissenting judgment | Cases of Acquittal |
|---|---|---|---|---|---|---|---|---|
| MB Shah | None | Commuted death penalty into imprisonment for life only in 13 cases[8] | None | None | None | None | Delivered dissenting opinion against death penalty in 2 cases[9] | Ruled acquittal in 3 cases[10] |

8. Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661) and Krishna Mochi and Ors. v. State of Bihar etc. (Criminal Appeal No. 761 of 2001)
9. Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661); Krishna Mochi and Ors. v. State of Bihar etc. (Criminal Appeal No. 761 of 2001); and K.V. Chacko @ Kunju v.State of Kerala (AIR88 2001 Supreme Court 537)
10. http://www.frontline.in/static/html/fl2610/stories/20090522261009000.htm

## Judgements of Justice Arijit Passayat

| SL. NO | CASE | BENCH | REMARKS |
|---|---|---|---|
| 01 | Ankush Maruti Shinde and Ors. v. State of Maharashtra (AIR2009SC2609) | Arijit Pasayat [Author (A)] Mukundakam Sharma | Enhanced sentence of life imprisonment to sentence of death in case of three convicts. This judgenent was held *per incuriam* in a decision decided before *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra.* |
| 02 | Bantu v. The State of U.P. [(2008)11SCC113] | Arijit Pasayat (A) Mukundakam Sharma | Confirmed death sentence but the judgement was held *per incuriam* in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra.* |
| 03 | Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661) | M. B. Shah (Minority) B. N. Agrawal & Arijit Pasayat (Majority , Author) | Confirmed death sentence by majority view. The minority view acquitted the accused. |
| 04 | Krishna Mochi and Ors. v. State of Bihar etc. (2002) 6 SCC 81 | B.N. Agrawal (A) and Arijit Pasayat (Majority) M.B. Shah (Minority) | Majority view confirmed death sentence on four convicts. The minority view acquitted one convict and reduced the death sentence of three convicts to imprisonment for life. |
| 05 | Lehna v. State of Haryana (2002(1) SCALE273) | M. B. Shah, B. N. Agrawal and Arijit Pasayat (A) | Commuted death sentence into imprisonment for life. |
| 06 | Mohan Anna Chavan v. State of Maharashtra [2008(2)ALT(Cri)329] | Arijit Pasayat (A), P. Sathasivam Mukundakam Sharma | Confirmed death sentence but the judgement was held *per incuriam* in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra.* |
| 07 | Rameshbhai Chandubhai Rathod v. State of Gujarat [2009(3)ALT(Cri)1] | Arijit Pasayat Asok Kumar Ganguly | Justice Passayat confirmed the death sentence but Justice Ganguly dissented against death sentence. |
| 08 | Shivaji @ Dadya Shankar Alhat v. The State of Maharashtra (AIR2009SC56) | Arijit Pasayat (A) Mukundakam Sharma | Confirmed death sentence but the judgement was held *per incuriam* in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra.* |
| 09 | Shivu and Anr. v. R.G. High Court of Karnataka and Anr. (2007CriLJ1806) | Arijit Pasayat (A) Lokeshwar Singh Panta | Confirmed death sentence. |

| SL. NO | CASE | BENCH | REMARKS |
|---|---|---|---|
| 10 | State of Rajasthan v. Kheraj Ram (AIR2004SC3432) | Doraiswamy Raju<br>Arijit Pasayat (A) | Enhanced acquittal by the High Court to death sentence. |
| 11 | State of U.P. v. Sattan @ Satyendra and Ors. [2009(1) ALD(Cri)602] | Arijit Pasayat (A)<br>Mukundakam Sharma | Enhanced life imprisonment to death sentence but the judgement was held *per incuriam* in *Santosh Kumar Satishbhusan Bariyar v. State of Maharashtra.* |
| 12 | State of U.P. v. Satish (AIR2005SC1000) | Arijit Pasayat (A)<br>S. H. Kapadia | Enhanced acquittal by the High Court to death sentence. |
| 13 | Sushil Murmu v. State of Jharkhand (AIR2004SC394) | Doraiswamy Raju<br>Arijit Pasayat (A) | Confirmed death sentence. |
| 14 | Union of India (UOI) and Ors. v. Devendra Nath Rai (2006CriLJ967) | Arijit Pasayat (A)<br>Tarun Chatterjee | Remitted back to Allahabad HC to decide quantum of sentence. The HC had earlier ruled that the Court Martial should reconsider its decision on awarding death penalty to the convict |
| 15 | Nazir Khan and Ors. v. State of Delhi (AIR2003SC4427) | Doraiswamy Raju<br>Arijit Pasayat (A) | Commuted death penalty of Nazir Khan (A-1), Abdul Rahim (A-3) and Naser Mohmood Sodozey convicted under the TADA. |
| 16 | Bablu @ Mubarik Hussain v. State Of Rajasthan [Appeal (crl.) 1302 of 2006] | Arijit Pasayat (A)<br>S.H. Kapadia | Confirmed death penalty. |
| 17 | State of Rajasthan v. Raja Ram (AIR2003SC3601) | Doraiswamy Raju<br>Arijit Pasayat (A) | Upheld acquittal by HC although the trial court had imposed death penalty. |
| 18 | Bani Kanta Das & Anr v. State of Assam & Ors (2009) 15 SCC 206 | Arijit Pasayat (A)<br>Asok Kumar Ganguly | Confirmed death penalty by setting aside the order of commutation of death penalty by the Governor of Assam. |
| 19 | State of Haryana v. Jagbir Singh and Anr. (AIR2003SC4377) | Doraiswamy Raju<br>Arijit Pasayat (A) | Upheld acquittal by HC on grounds of insufficient evidence although Trial Court had imposed death penalty. |
| 20 | Gopal v. State Of Maharashtra (Appeal (crl.) 1428 of 2007) | Arijit Pasayat (A)<br>Lokeshwar Singh Panta | Commuted death penalty to 10 years imprisonment on the ground that the case is not covered under Sec 302 but covered Sec 304 Part I. |
| 21 | Anil Sharma & Ors v. State Of Jharkhand (Appeal (crl.) 622-624 of 2003) | Doraiswamy Raju<br>Arijit Pasayat (A) | Upheld life imprisonment as commuted by the High Court. |

| SL. NO | CASE | BENCH | REMARKS |
|---|---|---|---|
| 22 | Prem Sagar v. Dharambir and Ors. (AIR2004SC21) | Doraiswamy Raju<br>ArijitPasayat (A) | Upheld life imprisonment as commuted by the High Court. |
| 23 | State of Rajasthan v. Khuma [2004(3) ACR2698(SC)] | ArijitPasayat<br>C. K. Thakker | Upheld acquittal by the High Court on grounds of insufficient evidence although the trial court had imposed death penalty. |
| 24 | State of Madhya Pradesh v. Chamru @ Bhagwandas etc. etc. (AIR2007SC2400) | Arijit Pasayat<br>D. K. Jain | Upheld acquittal by the High Court on the ground that prosecution version is not cogent and credible. |
| 25 | State of U.P. v. Govind Das @ Gudda and Anr. (2007CriLJ4289) | Arijit Pasayat (A)<br>D. K. Jain | Set aside acquittal by the HC and remitted the case back to the HC for fresh consideration on the ground that the HC failed to analyse the evidence to show as to how the conclusions of the trial court as regards acceptability of the evidence of any witness was erroneous. |
| 26 | Aqeel Ahmad v. State of U.P. (AIR2009SC1271) | Arijit Pasayat (A)<br>Mukundakam Sharma | Upheld commutation of death sentence to life imprisonment by HC. |
| 27 | Gobind Singh v. Krishna Singh and Ors. [2009(1)PLJR200] | Arijit Pasayat (A)<br>Mukundakam Sharma | Set aside the HC order and remitted the matter back to HC for fresh consideration on the ground the disposal of appeals by the HC was unsatisfactory. The HC had not upheld death sentence imposed by the trial court. |
| 28 | Liyakat v. State of Uttaranchal (2008CriLJ1931) | Arijit Pasayat (A)<br>P. Sathasivam | Upheld life imprisonment awarded by the HC although the trial court had imposed death sentence. |
| 29 | State of Punjab v. Kulwant Singh @ Kanta (AIR2008SC3279) | Arijit Pasayat (A)<br>P. Sathasivam<br>Mukundakam Sharma | Upheld acquittal by the HC although the trial court had imposed death sentence. |
| 30 | State of U.P. v. Raja @ Jalil (2008CriLJ4693) | Arijit Pasayat (A)<br>P. Sathasivam<br>Aftab Alam | Upheld acquittal by the HC although the trial court had imposed death sentence. |
| 31 | State of U.P. v. Ram Balak and Anr. ((2008)15SCC551) | Arijit Pasayat (A)<br>H. S. Bedi | Upheld acquittal by the HC although the trial court had imposed death sentence. |

| SL. NO | CASE | BENCH | REMARKS |
|---|---|---|---|
| 32 | M.A. Antony @ Antappan v. State of Kerala (AIR2009SC2549) | Arijit Pasayat (A) Lokeshwar Singh Panta | Upheld death penalty as confirmed by the HC. |
| 33 | State of Maharashtra v. Mangilal [(2009)15SCC418] | Arijit Pasayat (A) Mukundakam Sharma | Upheld acquittal by the HC although the trial court had imposed death sentence. |

## Judgements of Justice M.B. Shah

| **SL. NO** | **CASE** | **BENCH** | **REMARKS** |
|---|---|---|---|
| 01 | Ashok Kumar Pandey v. State Of Delhi (AIR2002SC1468) | M.B. Shah B.N. Agrawal **(A)** | Commuted death sentence into rigorous imprisonment for life. |
| 02 | Bantu @ Naresh Giri v. State of M.P. (AIR2002SC70) | M. B. Shah (A) DoraiswamyRaju | Commuted sentence of death into life imprisonment. |
| 03 | Devender Pal Singh v. State of National Capital Territory of Delhi and Anr. (AIR2002SC1661) | M. B. Shah (Minority) B. N. Agrawal & Arijit Pasayat (Majority, Author) | Majority view confirmed death sentence but the minority view acquitted the accused. |
| 04 | Farooq @ Karatta Farooq and Ors. v. State of Kerala (2002CriLJ2534) | M. B. Shah B. N. Agrawal (A) | Commuted sentence of death penalty into imprisonment for life. |
| 05 | Jayawant Dattatray Suryarao v. State Of Maharashtra (AIR 2002 SC 143) | M.B. Shah (A) R. Sethi | Commuted sentence of death into imprisonment for life without commutation or remissions. |
| 06 | Krishna Mochi and Ors. v. State of Bihar etc. (2002) 6 SCC 81 | B.N. Agrawal (A) and Arijit Pasayat (Majority) M.B. Shah (Minority) | Majority view confirmed death sentence on four convicts.<br>The minority view acquitted one convict and reduced the death sentence of three convicts to imprisonment for life. |
| 07 | Lehna v. State of Haryana (2002(1)SCALE273) | M. B. Shah, B. N. Agrawal and Dr. Arijit Pasayat (A) | Commuted death sentence into imprisonment for life. |
| 08 | Nirmal Singh & Anr. v. State of Haryana (AIR1999SC1221) | G. B. Pattanaik (A) M. B. Shah | Commuted sentence of death into imprisonment for life. |

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|---|---|---|---|
| 09 | Om Prakash v. State of Haryana (AIR1999SC1332) | K. T. Thomas<br>M. B. Shah (A) | Commuted sentence of death into imprisonment for life. |
| 10 | Prakash Dhawal Khairnar (Patil) v. State of Maharashtra (AIR2002SC340) | M. B. Shah (A)<br>R. P. Sethi | Commuted sentence of death into 20 years imprisonment. |
| 11 | Raju v. State of Haryana (AIR2001SC2043) | M. B. Shah (A)<br>Brijesh Kumar | Commuted sentence of death into imprisonment for life. |
| 12 | Ram Anup Singh and Ors. v. State of Bihar (AIR2002SC3006) | M. B. Shah<br>B. P. Singh (A)<br>H. K. Sema | Commuted sentence of death into imprisonment for life. |
| 13 | Shri Bhagwan v. State of Rajasthan (AIR2001SC2342) | M. B. Shah<br>K. G. Balakrishnan (A) | Commuted sentence of death into imprisonment for life. |
| 14 | Surendra Singh Rautela @ Surendra Singh Bengali v. State of Bihar (Now State of Jharkhand)[ AIR2002SC260] | M. B. Shah<br>B. N. Agrawal (A) | Commuted sentence of death into imprisonment for life. |
| 15 | K.V. Chacko @ Kunju v.State of Kerala (AIR88 2001 Supreme Court 537) | M. B. Shah<br>N. Santosh Hegde (A) | Acquitted and quashed enhancement of death penalty by the HC and life imprisonment given by the trial court. |

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