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Case Comment: State v Naresh Dhankar

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INTRODUCTION

The case belongs to the category of "rarest of rare cases." In a criminal matter, the trial consists of two main essentials, i.e., the nature and gravity of the crime. Based on these, the magnitude of the punishment can be carved out. In India, the "rarest of rare" legislation is the yardstick for imposing the death penalty. The Indian laws do not hold a constant point of view of capital punishment, yet neither do they deter it. Capital punishment in India has been limited to the rarest of rare cases- like Section 121 (taking up arms against the state), Section 302[1] (murder), Section 364A[2] (kidnapping with ransom), and so on of the Indian Penal Code 1860, recommend offenses culpable with the death penalty.[3] The rarest of rare doctrines can be divided into two sub-parts that are: -

- Aggravating Circumstances;

[1] Indian Penal Code 1860, s 302
[2] Indian Penal Code 1860, s 364 A
[3] Pubali Chatterjee and Sayani Das, 'Analysis of the 'rarest of rare doctrine' in awarding death penalty' (*iPleaders*, 09 August 2020) <https://blog.ipleaders.in/analysis-rarest-rare-doctrine-awarding-death-penalty/> accessed 10 April 2023

- Mitigating Circumstances.

While considering aggravating circumstances, the presiding judge or judges may, at his discretion, force capital punishment yet for mitigating circumstances, the bench will not grant capital punishment even under the rarest of rare cases. The principal inception of this doctrine is believed to be in the case of Nathuram Godse v Crown.[4] (Assassination of Mahatma Gandhi). Alike the current case involving Naresh Dhankar[5] bears some resemblance. Hon'ble district court of Palwal has decided the case and, after duly considering all the connected issues in the present case, awarded a death sentence to former army man Naresh Dhankar in the view that 'he was trained to defend the country, not mercilessly butcher citizens.'

FACTS OF THE CASE

The case of the prosecution is that the accused, Naresh committed six murders on the intervening night of 01.01.2018/02.01.2018 by assaulting the victims on their heads with an iron rod. Taslim, who filed the complaint, is thus an eye-witness to the first murder. Zakir and Virender were the other two eyewitnesses who were present. The three eyewitnesses stated that around 2:38 AM on the intervening night of 01.01.2018/02.01.2018, they were present on the ground floor of the hospital when they heard something falling on the ground. They rushed to the first floor and saw Anjum lying on the floor in a blood pool. Accused Naresh, who was hiding in the bathroom, suddenly came out and attacked them with an iron rod. They ran and saved themselves, and the accused ran away. All three eyewitnesses have corroborated material aspects of this incident, and their version is further corroborated by the CCTV footage.

On the other hand, a two-fold defense has been taken by the accused. The first defense is that the six murders were blind murders, and the same has been falsely planted upon the accused since the Police could not trace the actual murderer(s). The second defense raised by the accused is that he was suffering from insanity at the time of the incidents, and he must be given the

[4] *Nathu Ram v Godse v Crown* (1949) CriLJ 834
[5] *State v Naresh Dhankar* Crl Case No 4714/2015

benefit of insanity under Section 84 of IPC[6], in case the Court comes to the conclusion that the accused committed the offenses.

OBSERVATIONS OF THE COURT

Hon'ble Sessions Court demonstrated comprehensive insights while appropriately considering arguments of defense counsel wherein it is proved, beyond a reasonable doubt, that the accused was present in the Palwal Hospital, Palwal, when the murder of Anjum (the very first murder) took place. ASJ Prashant Rana stipulated the Last Seen Theory: According to this theory, if a person was last seen with the deceased right before his death or within a reasonable period before his death during which no other person could have intervened, the assumption might be made that he (the last seen) is the perpetrator of the crime. As a result, the burden of proof shifts to him to disprove this reality, and if he is unable to provide a clear and sufficient justification for his innocence, the presumption becomes even stronger.

The evidence led by the prosecution is not only circumstantial evidence that the accused was present with a blood-stained iron rod near the deceased Anjum immediately after the murder, but this evidence was also corroborated by direct and scientific evidence of CCTV footage and eye-witnesses' accounts of 3 eye-witnesses when the accused tried to kill them, immediately after the murder of Anjum and absconded. As held by the Honorable Supreme Court in the case of Ramanand v State of Himachal Pradesh[7] that '*Perfect proof is seldom to be had in this imperfect world and absolute certainty is a myth*.' The concept of circumstantial evidence arises because direct evidence could not be found in each case, so the Court has to rely on circumstantial evidence to decide upon the matter.

Thus, only the Accused was found present near the Victim, Anjum, within 15-20 seconds of the murder, along with the weapon of murder, which was blood-stained, and his clothes were blood-stained. The Court then formulated a conclusion after evaluating the subsequent conduct of the accused of attacking the three eyewitnesses with the iron pipe, which is captured in the

[6] Indian Penal Code 1860, s 84
[7] *Ramanand v State of Himachal Pradesh* (1981) AIR 738

CCTV footage of Palwal Hospital, duly proved as detailed above, is inculpating conduct, among other circumstances. The asking of the accused for water from PW Kamlesh, at around 7 AM, to wash his blood-stained hand and feet are an inculpating circumstance, which shows his guilty mind and attempt to hide the genesis. The asking of the accused to PW Devi Ram, at around 7 AM, to leave him at Ballabhgarh, Faridabad, after the murders, is yet another inculpating circumstance against him. Also, the conduct of the accused of assaulting the Police Officers, as detailed above, is an inculpating circumstance.

DECISION

As a result, the Court has rejected the aversion of defense by stating that the Police Officers have corroborated the case of the prosecution that the accused was arrested at 7:00 AM with blood-stained clothes and a weapon, and he tried to escape the apprehension. Their credibility has not been impeached by the defense in any manner. And thus, the Court believes that they are public servants and are presumed to be performing their duties sincerely and not under a motive of false implication of an allegedly insane person, leaving an actual serial killer. In the present case how the murder of the first victim Anjum is proved to have been committed by the repeated assaults of the iron pipe on the skull, the next five murders committed in the same vicinity were committed with the same modus operandi and would give rise to a strong presumption against the accused that all the murders were committed by him, with the same intention and same modus operendi and the similarity was not a coincidence or accident, rather the same was intentional.

The Circumstances are proved by cogent evidence, which unfailingly point to the guilt of accused Naresh Dhankar[8], and no one else but the accused. The Court stated that all the incriminating evidence including the presence of the accused at Palwal Hospital, Palwal, and all the scenes of six murders proved by CCTV footage and his mobile phone's location chart, as well as the recovery of a blood-stained weapon from him, including his blood-stained clothes at the time of apprehension, were put to him. The accused did not offer any explanation in this

[8] *State v Naresh Dhankar* Case No 4714/2015

regard. The same complete the circumstantial chain against him. Given the above discussions and analysis, the ld. Sessions court regarded this case as 'rarest of rare cases' and thereby awarded the death sentence to the former army man by successfully proving that the accused, Naresh Dhankar, committed the murders of Anjum, Subhash, Sita Ram, Munshi Ram, Khemchand, and Surender, and is hereby convicted for commission of offenses punishable under Sections 302[9], 307[10], 332[11], 353[12], 186 of IPC.[13]

ANALYSIS

After the prosecution proved its case by leading the best ocular, scientific, medical, forensic evidence that the accused came out of his house with an iron pipe and went to Palwal Hospital and, murdered Anjum, and then went to the other five spots of murder, and was subsequently apprehended with blood-smeared iron-rod and blood smeared clothes, and his location was that of the scenes of occurrence as per the telephonic calls made by him, it was for the accused to explain what he was doing in these places at the dead of night between 1:00 AM to 5:00 AM, when the murders took place. The accused must explain the circumstances as envisaged under Section 106 of The Indian Evidence Act, of 1872[14]. The defense of false implication on account of blind murder proves to be baseless given the eyewitnesses' accounts of Taslim, Zakir, Virender, Kapil, Kamlesh, and Gopi Chand. All of whom are public persons and not Police Officers. It is not believable that the above-said six citizens, who admittedly had no enmity with the accused, would make false depositions to implicate the accused as the blind murders were not solved by the Police.

The plea of insanity has been taken in a very shady manner and as a last resort because the accused knows that there is sufficient evidence to connect him with the offenses. He has not stated that he committed the murders under insanity. He has stated that somebody else committed the murders and he has been falsely booked as he was an insane person. However,

[9] Indian Penal Code 1860, s 302
[10] Indian Penal Code 1860, s 307
[11] Indian Penal Code 1860, s 332
[12] Indian Penal Code 1860, s 353
[13] Indian Penal Code 1860, s 186
[14] Indian Evidence Act 1872, s 106

if the Court finds him guilty, he may be given the defense of insanity and acquitted. A crime is not excusable under the law, whether done under an insane impulse or not unless it satisfies the grounds on which alone it can be excused. Those grounds are optimized in Section 84 of, the Penal Code.[15] Keeping given the precedents mentioned by ASJ Prashant Rana, the accused was not proved to be of insane mind at the time of the incident. It is only proved that before the present incident on 01.01.2018/02.01.2018, the accused suffered from psychosis in 2001, as reflected in his discharge report from Army. Subsequently, he was medico-legally fit, and his medical fitness certificate at the time of his joining the second service in 2006. He continued working as a Government Officer till the date of the incident. He regularly attended his job for the next 12 years, and there is no record of any ailment in the said period.

The accused in the present case may be frustrated on account of matrimonial discord, as disclosed by him in his disclosure statements. Admittedly he was separated from his wife. Alternatively, maybe he wanted to take revenge on his wife and father-in-law whose house he visited in the end, or create an atmosphere of terror and wanted revenge from society as a whole for not giving him what he had expected in life. Motive is relevant but the Court of Law is not preoccupied with motive. It is mens rea i.e., guilty mind, and actus reus, i.e., a consequent illegal act that matters in law. If a man deliberates and intends to commit a crime and commits it, the same is sufficient to inculpate him, irrespective of the absence of proof of any motive or enmity against the victim. In the present case, the accused assaulted all six victims in the dead of night and when no one was around. Such sort of calculated offenses and attempt to escape are not done by insane persons, as opined in '*A Textbook of Medical Jurisprudence And Toxicology*'[16] which is duly cited by the Hon'ble trial court.

The accused in the present case has been feigning insanity, if seen from the parameters laid by Modi's Jurisprudence. It is also specifically mentioned by the great Author Modi that insanity is often feigned by a soldier or policeman to seek discharge from service when he is unable to perform his duties, as in the present case when the accused sought discharge from his duties,

[15] Indian Penal Code 1860, s 84
[16] Rai Bahadur Jaising P. Modi, *A Textbook of Medical Jurisprudence And Toxicology* (6th edn, Butterworth Heinemann 1940)

which was a hard training in Ghatak Platoon, where the Officers are to live with soldiers under challenging circumstances. The accused sought such discharge from Army in 2001-2002 and then joined Government service in 2006 and regularly performed it for the next 12 years.

The Court has stated it is pertinent to mention that the handwriting of the accused while marking his presence in Court has always been clear and without any smudging or mis-spelling. Whereas, handwriting will show mental confusion, misspelling, the omission of letters or phrases, and muscular tremor if an educated insane person is asked to write. One Among many astonishing facts herein, which Hon'ble ASJ Prashant Rana brilliantly evaluated to negate the insanity, is that he wrote the dates below his signatures, as reflected in the case file, a large number of times. Thus, he is not proven to be insane as there is no missing or wrong date recorded by the accused while signing his presence in the Court. In addition to that, as per the reports of the Jail Superintendent, the accused remained normal in jail. Also, he has always remained neat unlike the insane persons, which is a case of feigning insanity.

CONCLUSION

Hanging by the neck to execute the death sentence can be declared unconstitutional if there is scientific material favoring a different method of execution as less painful and "more consistent with human dignity."[17], the Supreme Court said lately, but the author keeps dissenting opinion herein. Litigators generally relied on Article 21 (right to life)[18] and some previous Supreme Court judgments to argue that a condemned prisoner has the right to be executed in a dignified manner so that death is less painful. The author wants to emphasize that the death penalty is given to only those convicts who have acted with extreme brutality, and depravity or carried out premeditated or socially abhorrent acts, which are definitely in the present case. Many will argue why capital punishment when we have life imprisonment as the alternative, this debate is endless, and the author believes that "Making the entire death penalty process outwardly peaceful, serene, and painless may significantly impair its effectiveness as a deterrence against

[17] Utkarsh Anand, 'Death penalty to be unconstitutional? What Supreme Court said' (*Hindustan Times*, 22 March 2023) <https://www.hindustantimes.com/india-news/explore-less-painful-ways-to-give-death-penalty-sc-101679423213569.html> accessed 11 April 2023

[18] Constitution of India 1950, art 21

heinous criminal acts, as intended by the legislature, and may not be able to achieve its social purpose."

As per the Press Release of GBD India Mental Disorders Paper, issued by the Indian Council of Medical Research, Ministry of Health and Family Welfare, Government of India, on 23.12.2019, "197.3 million Indians are suffering from mental issues on account of frustration, depression, anxiety, stress, sleeplessness, over-eating, psychosis and aggression, etc. Out of the same, 77 lacs people are suffering from psychosis, as the accused is told to be suffering. Exculpating the accused in the present case, on account of the said psychiatric treatment, 77 lacs people in India would be given a license to kill on account of insanity and a much large number on account of depression, etc., disorder. These are common disorders and they cannot be termed as insanity."[19]

In conclusion, Hon'ble ASJ Prashant Rana rightly decided the case by following procedures that are quintessential in such cases; he brilliantly evaluated the defense's side and dismissed the averments that are false and held no applicability in the eyes of the law. The author believes the judgment pronounced in an open court is the best example for criminals. However, because the matter is before the Sessions Court, it may appeal to the appellate courts. The decision may vary between life imprisonment or capital punishment, but it will be exceedingly significant.

[19] *State v Naresh Dhankar* Case No 4714/2015