7

CRIMINAL LAW

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I INTRODUCTION

THE YEAR 2020 will go down in history as it is almost akin to a scene out of a dystopian sci-fi movie. The COVID-19 pandemic unleashed an era of uncertainty, and the crisis was so unique that it left no precedent in the living memory. Although there have been pandemics before, the sheer scale and impact of this crisis has transformed the way we work, live and exist. Its impact has been more devastating and complex than any other crisis the world has ever witnessed. The world, as a whole, normally described as an ever changing and evolving one, came to a complete halt.

In this critical juncture the judicial system also came to a standstill with the national lockdown declared by the government in the last week of March, 2020. But the responsive judiciary rose to the occasion and embraced technology to keep the wheels of justice moving, albeit slowly. The courts started working through video conferencing mode – embracing the 'new normal' and confronting the uncertainty head on. The courts, especially the apex court, apart from listing and deciding important cases, stepped in to give directions with regard to measures to be taken to contain COVID- 19. The court, time and again, exhorted the states and the political parties to implement and observe Standard Operating Procedures (SOPs) and guidelines to manage the pandemic.[1] It also at the same time continued its important function of

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1 For example, see *Proper Treatment of COVID- 19 Patients and Dignified Handling of Dead Bodies in the Hospitals, In re* 2020 SCC OnLine SC 1036.

2 Indian Penal Code, 1860 s. 300 reads: Murder.—Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

(Secondly) —If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

(Thirdly) —If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be in-flicted is sufficient in the ordinary course of nature to cause death, or—

(Fourthly) —If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.

adjudication. The present survey deals with the important pronouncements of the apex court regarding the Indian Penal Code, 1860 (IPC) offences delivered during this unprecedented year.

II OFFENCES AGAINST HUMAN BODY

Murder is a subset of culpable homicide. The way it is defined in the Penal Code is complex (five limbs of section 300[2]) and how a case is decided would depend more on judicial interpretation than on legislative clarity! Culpable homicide not amounting to murder is said to be committed if the case falls within the five exceptions mentioned in section 300 IPC. Furthermore, it can be committed when a case evidences a lower degree of fault element than the one required for murder. The case law provides ample proof of this phenomenon. The adversarial system mandates that the guilt of the accused which includes the fault element has to be established beyond a reasonable doubt. In sync with this requirement, the court in *Shivaji Sahabrao Bobde* v. *State of Maharashtra*,[3] has aptly remarked that "it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

Murder

The woman died in the matrimonial home. The charges were framed under sections 498-A and 302 read with section 34 IPC against the husband and mother-in-law. The trial court acquitted the accused. In between the mother-in-law died. The state filed an appeal and the high court set aside the acquittal and directed the matter to be disposed by continuing proceedings from the stage of examination under section 313 Criminal Procedure Code, 1973(Cr PC). The accused had set it out to be a case of suicide in the 313 statement. The suicide theory failed miserably as throttling marks and other injuries were found on the body in the post mortem report. Since the incident happened in the room of the accused, he was liable to explain the sequence of events. The trial court this time round held the husband liable for murder under section 302 IPC which was confirmed by the high court. The apex court in appeal dealt with the issue of intoxication and section 300 IPC comprehensively. The court was clear that there was no evidence about how drunk the accused was, and if the drunkenness came in the way of forming the requisite intention. The counsel for the appellant then sought to bring the case within section 304. The court took pains to discuss sections 299 and 300 in great detail and distinguished the expression "the act with the intention of causing death" in section 304 part I. It underlined the fact that section 304 only applies when it is clear that the case does not fall within section 300 but falls within the exceptions mentioned therein. The instant case[4] satisfied the requirements of section 299 and 300 and hence conviction under 302 was upheld.

A woman lay dead as a result of a gun-shot injury inside the house.[5] The only person present inside the house was the husband, and so he was liable under section

3 (1973) 2SCC 793.

4 *Paul* v. *State of Kerala* (2020) 3 SCC 115.

5 *Nawab* v. *State of Uttarakhand* (2020) 2 SCC 736.

106 of the Evidence Act, 1872 for explanation as to the circumstances leading to the gun-shot. The husband put up a story of assailants entering his house to abduct him and in the ensuing scuffle shot the wife. The husband, apart from his oral testimony, did not lead any independent defence evidence. No evidence was put forward to vouch for the entry of the intruders. The court held that not only was the appellant-husband unable to furnish any plausible defence rather, he tried to lead false evidence which became an additional aggravating factor against him. He stood convicted of the murder under section 302 IPC and was sentenced to life imprisonment.

Culpable homicide not amounting to murder

In *Ananta Kanilya* v. *State of W.B.,*[6] the accused was held guilty under section 300 and was convicted under 302 IPC. The high court in appeal confirmed the conviction. The death was as a result of a single *lathi* blow on the head -- vital part of the body. It is axiomatic to mention that the accused was not carrying any weapon and it was only after some altercation, that he took the *lathi* lying there and hit the deceased. Hence the apex court rightly held the accused guilty of offence under section 304 part I IPC and punished him for 10 years imprisonment giving him the benefit of exception 4 of section 300 IPC.

It is not a case that death by a single blow will not attract section 302 IPC. The fact situation will have to be scrupulously examined in each case. In *Stalin* v. *State*,[7] a scuffle arose when the deceased offered extra beers to outsiders and the accused took out a knife and stabbed from behind. The trial court and the high court convicted the accused under section 302 IPC. The contention of the defense was that the case fell under section 304 part II. The apex court, on a clear scrutiny of facts and circumstances, altered the conviction to section 304 part I and sentenced the accused to eight years rigorous imprisonment. It is heartening to note that the court in this case engaged in some discussion on part I and part II of section 304 IPC:[8]

> Now, the next question which is posed for consideration of this Court is whether the case would fall under Section 304 Part II IPC? Considering the totality of the facts and circumstances of the case and more particularly that the accused inflicted the blow with a weapon like knife and he inflicted the injury on the deceased on the vital part of the body, it is to be presumed that causing such bodily injury was likely to cause the death. Therefore, the case would fall under Section 304 Part I IPC and not under Section 304 Part II IPC.

Generally, the trend has been to convict in either part without assigning any reason and leaving it to the imagination of the readers.

In a homicide incident of 1981 the accused alone was held liable for offence under section 302 IPC whereas others, who were part of the assailant group were convicted under sections 323, 324/149 of the IPC. The trial court, on perusal of facts,

6 (2020) 5 SCC 511.

7 (2020) 9 SCC 524.

8 *Id*. at 536.

had reached a finding that the accused party were hiding behind the 'kair' bushes and on arrival of the opposite party at the scene of occurrence, came out and assaulted them. The parties had a long standing dispute regarding the property. Ironically, the high court brushing aside the trial court findings converted the section 302 conviction to section 326 read with section148 IPC. The state appealed on the point of nature of offence and the sentence of five months given to the accused in *State of Rajasthan* v. *Mehram*.[9] The apex court on perusal of facts and records deprecated the high court finding and upheld the trial court findings. The court, while upholding that it was a homicidal death held that the accused "at the relevant time, was deprived of the power of self control by grave and sudden provocation due to repeated unauthorised entry on the fields belonging to accused party."[10] Hence, the case would be covered under section 304 part I as the accused had the intention of causing death or bodily injury as is likely to cause death. It is indeed disquieting to read the high court reasoning of exceeding right of private defence where the facts clearly revealed that the accused party were the aggressors. The case dragged on for long and the plea that the accused was 70 plus with old age ailments did not find favour with the court. He was sentenced to ten years rigorous imprisonment and also liable to fine.

A celebratory firing at the marriage party of his son cost dearly to Bhagwan Singh who killed two guests and injured three others. He was convicted under section 302 IPC. In appeal, the apex court in *Bhagwan Singh* v. *State of Uttarkhand*,[11] held that after perusal of facts and records it is clear that "the appellant had the requisite knowledge essential for constituting the offence of "culpable homicide" under section 299 and punishable under section 304 Part II IPC." Sentence of life imprisonment was reduced to 10 years rigorous imprisonment and conviction under section 307 was altered to section 308 IPC.[12]

In another case,[13] there existed a civil dispute between the parties and while the now deceased person was harvesting crops, the appellant assaulted him with a *lathi* on the head and he succumbed to his injuries the next day in the hospital. The trial court and the high court convicted him under section 302 IPC. What is little bizarre is that the high court order mentioned in para 5 states thus:[14]

> The High Court on appreciation of evidence has come to the conclusion that the assault was not premeditated but had taken place in a heat of passion due to a land dispute. If the appellant had the intention, nothing prevented him from further assaulting the deceased. Nonetheless it maintained the sentence of the appellant under section 302 IPC because death had taken place pursuant to the assault by him.

9 2020 SCC OnLine SC 442.

10 *Id*. at 158.

11 (2020) 14 SCC 184.

12 See also *Sankath Prasad* v. *State of U.P.* (2020 12 SCC 564) where 10 years rigorous imprisonment for conviction under 304 part I firearms.

13 *Jugut Ram* v. *State of Chhatisgarh* (2020) 9 SCC 520.

14 *Id*. at 522, para 5.

If that is the case then section 304 becomes redundant! The apex court remedying this anomaly in interpretation altered the conviction to section 304 part II and as the accused was in custody since 2004, he was set at liberty as 18 years of confinement had elapsed!

In a case[15] where bombs were hurled the conviction was altered from section 302 to part II of section 304 on the reasoning that "bombs were charged from the rear of the group... but these were not targeted *at anyone specific*".[16] The court, while discussing unlawful assembly, opined that "In hurling bombs, their target appears to have been random but directed at members of the family of Gurudev".[17] And, it was Gurudev who died. So, it is submitted that the lines between knowledge and intention seems little blurred here. Imprisonment of five years was awarded under section304 part II read with section 149 IPC!

III OFFENCES AGAINST WOMEN

Violence against women is endemic developing societies, and so is the case in India. In spite of a slew of legislation and subsequent amendments, both in terms of increasing offences and punishment, crimes against women continue unabated. Post Nirbhaya,[18] the criminal law was amended and stricter punishments were introduced. However, if one were to analyse the National Crime Records Bureau (NCRB) data[19] the crime graph continues its upward trend. What is perhaps needed is that the state must invest in structural inequalities, educate and sensitize its citizenry – whereby veering them away from patriarchal notions which they have internalised and foster respect for women for changes to happen.

Sexual offences

A girl's IQ was found to be 62 and hence it was a case of mild mental retardation. Her consent for sexual intercourse, if at all there was one, was not a valid consent in terms of section 375 IPC. The girl got pregnant and delivered. The accused was found to be the biological father of the child. But in his 313 Cr PC statement the accused was in total denial of sexual intercourse! He did not even try to make it a case of consensual sex. The apex court, upholding the conviction under section 376 IPC, held that the accused had taken advantage of her mental retardation and the case fell within fifthly of section 375 IPC.

Consent in love-marriages promise cases remains a contested proposition. The facts in *Maheshwar Tigga* v. *State of Jharkhand* [20] reveal a relationship which perhaps could not fructify into marriage due to different religious beliefs. The relationship which involved physical intimacy carried on for a long time and the apex court came

15 *Dilip Shaw* v. *State of W.B*. (2020) 7 SCC 626.

16 *Id*. at 636, Emphasis added.

17 *Id*. at 635, para 19.

18 A young female student was gang raped brutally in Delhi in December, 2012.

19 National Crime Records Bureau, Ministry of Home Affairs, (1) *Crime in India 2019, available at:* https://ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf (last visited on Mar. 25, 2022).

20 (2020) 10 SCC 108.

to the conclusion that "the consent of the prosecutrix was but a conscious and deliberate choice as distinct from any involuntary action or denial and which opportunity was available to her, because of her deep-seated love for the appellant leading her to willingly pursue her liberties with her body, which according to normal human behaviour and permitted only to a person with whom one is deeply in love".[21] It is difficult to say whether this is the correct analysis as the first incident reported by the prosecutrix and believed by the trial court and the high court was that "the appellant had first committed rape upon her at the point of a knife"!.[22] It may be axiomatic to quote from the 2019 survey where Latika had made a very important observation regarding similar cases:[23]

> Little probing into the promise to marry category reveals how the law is enmeshed with social and moral expectations that regulate sexuality. At the heart of all this remains the construct of a "good woman" who resisted but yielded with the promise of marriage, not a carefree lover but a future wife.

Dowry death

Even in the 21st Century in the year 2008 a woman *i.e,.* a daughter-in-law dies of stove bursting. Two dying declarations, which were made in the presence of in-laws, were to the effect that it was an accidental death. In the third dying declaration – which was after the arrival of her parents and given in their presence - the deceased revealed that her mother-in-law had poured kerosene and put her afire. She also gave details as to how her father-in-law came in and tried to douse the flames. The dowry harassment was also an issue in the case. The apex court upheld the conviction of the appellant mother-in-law for dowry death in *Kashmire Devi* v. *State of Uttarakhand.*[24] When the issue came up of sentencing, the court was too magnanimous and altered the life imprisonment awarded to the statutory minimum of seven years on a spurious reasoning of "keeping in view the age of the appellant and also the contribution that would be required by her to the family, while husband is also aged".[25] In the final order the fact of a young life being snuffed out at a young age of 22 years somehow was lost on the court.

Kidnapping

It is clear from the wording of section 366 IPC that what is required in kidnapping or abduction is that it was done in furtherance of an 'intent' to compel the victim to marry against her will. If that is established the ingredients of section 366 stand proved. The section does not contemplate the factum of marriage to be proved.[26]

21 *Id*. at 117, para 20.

22 *Id*. at 112, para 3.

23 Latika Vashist, "Women and Law" LV *ASIL* 671-707(Indian Law Institute 2019).

24 (2020) 11 SCC 343.

25 *Id*. at 355.

26 *Mohammed Yousuff* v. *State of Karnataka,* 2020 SCC Online SC 1118.

IV INCHOATE OFFENCES

Criminal law recognizes the criminality of certain offences at a preliminary stage where the end result is palpably criminal. This is done so as to allow intervention by the law enforcement agencies at an earlier stage so as to arrest the completion of the crime, if possible. The category of offences includes attempt, abetment and conspiracy in the IPC wherein the provisions envisage a situation where in the offender has gone beyond a preparatory stage and has taken a substantial step towards the completion of the crime.

Abetment

In the adversarial system the final outcome of the case is based on evidence placed before the court. The judge sits as a neutral umpire and decides the case based on admissible evidence before him. The cases are never decided on the basis of conjectures and surmises. In a case of suicide by a young lady in her matrimonial home leaving behind two little children, the trial court surmised that she must have "been pushed to do so by the circumstances in the matrimonial home"[27] The husband was assumed to be guilty of abetment within the meaning of section 107 IPC and was convicted under section 306 IPC. The high court upheld the conviction. In appeal, the apex court held that decisions cannot be taken on inferences without material support. And since in the instant case no cogent evidence was placed before the court, the conviction under section 306 IPC was quashed, as "abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing … there has to be clear mens rea to commit the offence." [28]

V JOINT CRIMINAL ENTERPRISE

Group crimes are generally perceived, and rightly so, as being more sinister than individual crimes. This is for the simple reason that members of the group have the potential to fortify and encourage one another and that adds to the dangerousness. Common intention and common purpose are the expressions that are generally being used for conviction for group crimes where the other person maybe constructively held liable for the crime committed by the other.

Common intention

In *Chhota Ahirwar* v. *State of M.P.*,[29] the altercation was between the appellant-accused and the complainant and the main accused had intervened and shot from a pistol. Since the prosecution could not establish common intention, the appellant-accused could not be charged under section 34. Section 34 IPC is a rule of evidence and this section does not "whittle down the liability of the principal offenders committing the principal act but additionally makes all other offenders liable."[30]

Once common intention is established the role of the co-accused may be active or passive. If the mental element or intention is established then actual participation

27 *Gurcharn Singh* v. *State of Punjab* (2020) 10 SCC 200, para 6.

28 *Arnab Manoranjan Goswami* v. *State of Maharashtra* (2021) 2 SCC 427.

29 (2020) 4 SCC 126.

30 *Id*. at 133.

in the assault is not a necessary criteria for conviction.[31] However, the common intention must be for the specific offence which the accused is charged with.[32]

In *Chellappa* v. *State,*[33] the appellant accused was held liable under section 302 IPC along with the main accused read with section 34. However, the apex court, on a perusal of the circumstantial evidence held that there was "no clear indication that the accused-appellant had common intention with the main accused to kill the deceased".[34]The conviction under section 324 was upheld but the appellant was acquitted from punishment under section 302 read with section 34 IPC. It must also be noted that to establish joint liability under section 34, overt act or possession of weapons by all accused persons is not necessary.[35]

Unlawful assembly

If five or more persons are together with deadly weapons at the site of the incident of assault then it is easy to surmise that they come within the definition of unlawful assembly under section 141 IPC. Mere membership of the lawful assembly in an offence under section 143 IPC and if the members use force then they come within the ambit of section 147 or section 148 for the offence of rioting.[36]

VI SENTENCING

Sentencing remains a very contentious issue as lot of discretion vests on the bench deciding the case. However, the discretion has to be used judiciously and "it requires a subtle blend of power and self restraint lest Lord Camden be proved right when he called 'discretion the law of tyrants'"[37]The sentencing pattern has, as in previous years, not been very consistent and has been heavily dependent on the bench deciding the case!

The facts of *Shatrughna Baban Meshram* v. *State of Maharashtra* [38] are gruesome where a two and a half year old child was brutally raped resulting in her death. The 17 injuries mentioned in the medical report send shivers down the spine. Scientific evidence was available and was minutely examined to hold the accused guilty of rape and murder of the toddler. However, what is noteworthy in the case is that the author of the judgement U.U. Lalit J (the dissenting judge in the *Sriharan* case[39]) took pains to save the accused from capital punishment. To that end the judge mentioned the Criminal Law Amendment Act regarding rape. The Criminal Law Amendment Act was effective from February 3, 2013[40] and the gruesome incident happened on February 11, 2013 and perhaps that moved the judge to deal with the

31 See *Subed Ali* v. *State of Assam* (2020) 10 SCC 517.

32 See *Sonu* v. *State of M.P.* 2020 SCC OnLine 473.

33 (2020) 5 SCC 160.

34 *Id*. at 163, para 10.

35 *Dhanpal* v. *State NCT of Delhi*, 2020 SCC OnLine SC 421,para 5.

36 *Duleshwar* v. *State of M.P.* (2020) 11 SCC 440.

37 Jyoti Dogra Sood, "Judicial Discretion" in *Bail: Law and Procedure in India* 110(2019).

38 (2021)1 SCC 596.

39 *Union of India* v. *Sriharan*(2016) 7 SCC 1.

40 *Supra* note 38 at 638.

amendments. The judge also adverted to the ordinance where for the "first time, Death sentence could be imposed if a fatal injury was caused during the commission of offence under section (1) or (2) of Section 376." 41 The court then dealt in detail in a tabular format with sections 299 and 300 IPC and engaged comprehensively with the offence of murder supplemented by precedents. It then held the accused guilty under clause fourthly of section 300 IPC on a reasoning that "the accused must have known the consequence that his sexual assault on a child of 2.5 years would cause death or such bodily injury as is likely to cause death." 42 So aggravated knowledge was attributed to this 21 year old youth that he knew that death would be caused and hence was held guilty of murder. It is submitted that this case squarely falls under thirdly of section 300 if not secondly! And as far as sentencing is concerned section 376 A states that if death is caused while committing the offence of rape then the person may be punished with sentence ranging from 20 years (mandatory minimum) to life imprisonment (till a person's natural life) to death penalty. It defies logic as to why was it brought under fourthly of section 300! The causation principle is very clearly spelt out and the case clearly falls under thirdly of section 300!

Then the reformist judge examined 67 cases of rape and murder where victims were below 16 years in the last 40 years. It becomes clear by now that the judge, unlike the 2019 judgment of Rohington J in *Ravi* v. *State of Maharashtra* [43] and *Manoharan* v. *State,*[44] was engaging with the law and precedents for avoiding a possible death penalty to the accused. One may recall that in the *Ravi* judgment the court alluding to judicial precedents observed that "the judicial precedents referred before the recent amendment came into force, therefore ought to be viewed with a *purposive approach so that the legislative and judicial approaches are well harmonized*".[45]

The court thereafter dealt with jurisprudence of death penalty and ultimately referred to the residual doubt theory enunciated in the United States to reach the conclusion that the accused does not deserve death penalty. The accused was sentenced to life imprisonment for offence under section 302 IPC and rigorous imprisonment for 25 years for the offence punishable under section 376 A IPC "since death penalty was brought to the statute book just few days before the commission of the offence". [46] Since the author judge was the dissenting judge in *Sriharan* the phrase "without remission" obviously was not invoked for life imprisonment. These cases (2019 and instant case) are a fascinating account of the judicial process in India.

In another case the report of a probation officer which highlighted the illness of the mother of the appellant, his impoverished family, sister having problems at in-laws and staying with her parents and other such family problems moved the court to direct the sentence under sections 392, 394 and 397 and 411 IPC to run concurrently and set aside the fine amount. The report of the probation officer is used only in limited cases purely at the discretion of the court - as in the present case - *Vicky* v.

41 *Id.* at 641.

42 *Id*. at 651.

43 (2019) 9 SCC 622.

44 (2019) 7 SCC 716.

45 *Ravi supra* note 20 at 652. Emphasis added.

State (NCT of Delhi). The court observed that this case may not be quoted as precedent in other[47] cases.

As opposed to the humane *Vicky* judgment, the court in *Dalbir Singh* v. *NCT of Delhi,* [48] was dealing with release of compensation pending appeal to the father of a victim of custodial violence who had succumbed to his injuries suffered in the lock up at a very young age of 20. The father, now 76, had doggedly pursued the case for 14 years and his mental and physical health had deteriorated and needed medical care but was too poor to afford it. The plea for release of compensation was rejected by the high court and in appeal the apex court, fearing multiplicity of proceedings, upheld the high court order! The apex court perhaps sought to discharge its moral burden by requesting the high court for expeditious disposal.

Munna v. *State of U.P*.[49] was a writ petition seeking premature release of the petitioner. It may be axiomatic to mention that the petitioner was 79 years old and had undergone 29 years and ten months of imprisonment without remission, and around 36 years imprisonment including remission. His jail conduct throughout the imprisonment was recorded to be good. His earlier application to the state was in 2016 wherein it was noted that "the crime that the petitioner was involved in is heinous and there is no appreciation of the record to suggest whether he is likely to abstain from crime and lead a peaceful life."[50] It leaves one wondering as to who is to lead this evidence – the state must engage with this question with seriousness and some amount of uniformity.[51] Or human lives, especially of persons behind bars, hold no value and the orders are sometimes passed in a mechanical and perfunctory manner without engaging with the particular fact situations.

In a conviction under section 304 part II IPC the punishment awarded was ten years by the trial court which was reduced to five years by the high court. The appellant-accused moved the apex court on the question of sentence and the highest court, considering the fact that the appellant- accused had two daughters of marriageable age, *viz,* 19 and 21 years and there being no male member to take care of the family reduced the sentence to two years.[52]The surveyor has always argued that part II gives lot of leeway to modify sentencing even to the extent of mere fine. However, the apex court seems to have exercised its decision not on the basis of the language of the section but extraneous circumstances as mentioned above, and so have put a bar to use this case as a precedent in any other case, but nevertheless it is a welcome step.

46 *Supra* note 38 at 717. Life imprisonment under s. 376 A IPC would entail "remainder of the person's natural life" and hence the judge gave 25 years imprisonment.

47 (2020) 11 SCC 540.

48 (2020) 8 SCC 125.

49 2020 SCC OnLine SC 813.

50 *Id*., para 9.

51 In *Bharat Singh* v *State (NCT of Delhi)* decided on Oct, 31, 2014, the High Court of Delhi speaking through Muralidhar J., relied on a probation officer report, in the year under survey also the report was there.

52 *Chandra Kumar* v. *State of M.P.,* 2020 SCC OnLine SC 295.

In a death penalty case in *Manoj Suryavanshi* v. *State of Chhattisgarh*,[53] the apex court dealt with the offence of kidnapping and murder in great detail and on reappreciation of facts and evidence upheld the conviction. The counsel for the appellant argued that death penalty was not warranted as it was a case based on circumstantial evidence and pre-sentence hearing was not done properly. The apex court negated both the arguments with adequate reasoning. The court then examined cases of death penalty and commuted the same to life imprisonment. The mitigating factors as per the court were that the offence was committed in an emotionally disturbed state, the accused had no criminal antecedents, the age of the accused was 28 years at the time of offence and his conduct in prison was good, he belongs to a poor family, is the only son of his parents and has two daughters to look after. On the aggravating side the court observed thus: "the only aggravating circumstance pointed out by the state is that the manner in which the incident took place and three minors were brutally killed."[54] It is reiterated that the death penalty is subjective depending on the bench's abolitionist or retentionist views and accordingly the aggravating and the mitigating circumstances are leveraged.

The court reiterated in *Satish* v. *State of U.P.*,[55] that the length of the sentence or gravity of the original crime cannot be the sole basis for refusing premature release. The state owned up that the conduct of the petitioners in the jail had been satisfactory. They had no criminal antecedents and the fact that they had substantial years of life ahead (they being 54 and 43 years at the time of petition) does not mean that they have propensity to commit crime. They had served 16 years in jail (22 years including remission) and were directed to be released on probation subject to their continued good conduct. The court underlined the fact that the order was not irreversible and could be recalled in case of any misconduct or breach of conditions.

Mercy petition

The year saw rejection of curative petitions of *Nirbhaya* case death-row convicts. Vinay Sharma also filed a writ petition challenging the rejection of his mercy petition by the President in *Vinay Sharma* v. *Union of India*,[56] wherein the apex court held that the "case records, judgments of the trial court, the High Court and the Supreme Court, clean copy of records of the case, nominal roll of the petitioner, medical report of the petitioner social investigation report and other relevant documents were forwarded to the Ministry of Home Affairs. The note put up before the President of India was a detailed one and all the relevant materials were placed before the President and upon consideration of the same, mercy petition was rejected."[57] It is submitted that this note is problematic as the apex court mentioned thus:[58]

53 (2020) 4 SCC 451.
54 *Id*. at 482, para 32.6.
55 2020 SCC OnLine SC 791.
56 (2020) 4 SCC 391.
57 *Id*. at 405.
58 *Id*. at 395.

> It is the further argument of the learned counsel for the petitioner that petitioner Vinay Sharma was only 19 years old and is not a habitual offender and hails from lower class of society and these aspects could have been considered only by a thorough social investigation report which was not placed before the President of India.

It is submitted that the Home Ministry may have presented the reports which serve their ends. The government, in order to placate the dominant public sentiment, was perhaps keen on carrying out the death penalty and hence the selective submissions. This, the surveyor's mind defeated the very purpose of this mercy petition.

As was reiterated in *Pyare Lal* v. *State of Haryana*,[59] quoting *Maru Ram*[60] that "the President is symbolic, the Central Government is the reality even as the Governor is the formal head and sole repository of the executive power but incapable of acting except on, and according to, the advice of his Council of Ministers." [61] *Shamsher Singh* v. *State of Punjab,*[62] held that "the two highest dignitaries in our constitutional scheme act and must act not on their own judgment but in accordance with the aid and advice of Ministers".[63]

In the instant case the question that arose was "whether in exercise of power under 161 of the constitution a policy could be laid down setting out certain norms or postulates, on the satisfaction of which the benefit could therefore be conferred upon or granted to the convict by the executive without even placing the individual facts and materials pertaining to the case of the council, before the Governor."[64] The court directed the Registry to place the matter before the Chief Justice of India for constituting a bench of appropriate strength (since *Maru Ram* was a constitutional bench decision) to consider the case.[65]

VII MISCELLANEOUS

Hyper technicality

Rule 7 of the Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Rules, 1995 states that an "offence committed under the Act shall be investigated by a police officer not below the rank of Deputy Superintendent of Police." In a case of

59 (2020) 8 SCC 680.

60 *Maru Ram* v. *Union of India* (1981) 1 SCC 107.

61 *Supra* note 59 at 687.

62 (1974) 2 SCC 83.

63 *Supra* note 59 at 688.

64 *Id*. at 698.

65 See also *State* v. *Nilofer Nisha* (2020) 14SCC 161 also use the case on report of probation officer. The call arose to examine if a writ petition would lit for security release of a convict who is under government sentence in terms of some government order providing for premature release of prisoners. Foot (where applicable) see also *Virender Prasad* v. *Union of India*, 2020 SCC OnLine 339 where appellant had served 16 years and 6 months and revision counted their 20 years plus 5 months.

alleged murder in *State of M.P.* v. *Babbu Rathore*,[66] the respondents were charged under sections 302/34, 404/34 IPC apart from section 3(2) (v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC/ST Act). The investigation was conducted by a police officer below the rank of Deputy Superintendent of Police and the special judge discharged the respondents as it is a "shall" mandate in the Rules. The discharge was confirmed by the high court. In appeal, the apex court on a common sense imbued approach, backed by precedents, held that when the offences are those covered by the IPC and the ST/SC Act then if the IPC offences are investigated as per the provisions of Cr PC, then investigation of IPC offences cannot be quashed on the reasoning that proper investigation as mandated by the Rules of SC/ST Act was not done. The court, allowing the appeal, sent the matter to the trial court to conclude the trial for the IPC offences.

Custodial death

In a case of alleged custodial death an interim stay order was granted in 2007 and after 13 years the apex court in *Sanjay Kumar Gupta* v. *State of U.P.*[67] directed that its order be placed before the Chief Justice of the Allahabad High Court for administrative action as to why such delay happened and why the trial court order remained stayed for 13 years by an *ad interim* order in a case of custodial death.[68] The apex court sought a report from the high court on the administrative side.

Juvenile justice

The Juvenile justice underwent major changes post *Nirbhaya*. The Juvenile Justice Act, 2015 categorized offences into petty, serious and heinous offences whereby the juvenile in conflict with law falling within the category of heinous offences may be tried as an adult. This was a regressive step by the legislature and to add to it, the definition of heinous offences was ambiguous. Section 2(33) of the defined heinous offences to include the "offence for which the minimum punishment under the IPC (45 of 1860) or any other law for the time being in force is imprisonment for seven years or more" whereas serious offence included offence where imprisonment was between three to seven years.[69] There are a host of offences where no minimum sentence is prescribed but the imprisonment that can be awarded *i.e.,* the maximum that can be awarded is more than seven years. The kind and range of offences that fall in this category are not the ones that were in the contemplation of the legislature when they enacted this legislation. This becomes clear from the object and purpose and the background in which this legislation was enacted. In *Shilpa Mittal* v. *State (NCT of Delhi),*[70] the court speaking through Deepak Gupta J., categorically held that "an offence which does not provide a minimum sentence of 7 years cannot be treated to

66 (2020) 2 SCC 577.

67 2020 SCC OnLine SC 1222

68 *Id*., para 7.

69 Juvenile Justice Act, 2015, s. 2 (54).

be an heinous offence"[71] The court also exhorted Parliament to address the issue as early as possible.[72]

VIII CONCLUSION

The apex court tried its level best to adjudicate criminal cases in these unprecedented times and keep the flag of criminal justice administration remain high. The year witnessed the apex court engaging discussion regarding conviction under part I and part II of section 304 IPC. However, like in the preceding years, the duration of imprisonment under these two parts remain enigmatic. In *Bhagwan Singh,*[73] the sentence was for ten years under part II but five years in *Dilip Shaw.*[74] The courts have, no doubt, discretion to do so but must exercise this discretion judiciously ensuring individualization of justice. It is submitted that it would further the cause of justice if the courts engaged in some amount of rationale for this disparity in sentencing.

The *Shatrughan*[75] court commuted the death penalty to life imprisonment simplicitor in a rape and murder case, thereby deviating from the recent "without remission" kind of punishments. The offendor was 21 years of age at the time of the offence and the judge who had written a powerful dissent in the case endorsing remission did not take away that 'ray of hope'[76] from this youthful offender which augurs well for reformatory oriented sentencing. In another significant judgment the court took into account the report of the probation officer and factored in the challenging family circumstances while pronouncing the judgment. These isolated cases are quite heartening but the system would be better served if these good practices are absorbed in the system and everyone benefits from it. As of now it is totally dependent on the discretion of the bench.

The adversarial system largely remains a contest between the state and the accused and in spite of developments in the field of victimology, the victim continues to be sidelined. In *Ankush Shivaji Gaikwad* v. *State of Maharashtra,*[77] the court, recognizing the plight of the victims, had categorically stated that "the power to award compensation is not ancillary to other sentences but it is in addition thereto … intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system … a measure of responding appropriately to crime as well of reconciling

70 (2020) 2SCC 787.

71 *Id*. at 802, para 36.

72 See *Satya Deo* v. *State of U.P.* (2020) 10 SCC 555 wherein juvenile justice was under discussion and the court held that "an accused cannot be denied his right to be treated as a juvenile where he was less than eighteen years of age at the leave of commission of the offence, a right which he acquired and his justified under the 2000 Act, even if the offence was committed prior to enforcement of the 2000 Act on i.e. 2001."

73 *Supra* note 11.

74 *Supra* note 15.

75 *Supra* note 38.

76 UU Lalit in his dissent in Sriharan while critiquing taking away of remission had observed thus: "by doing so the prisoner would be condemned to live in the prison till his last breath without there being a ray of hope" *Supra* note 39, para 284.

77 (2013) 6 SCC 770.

the victim with the offender … a constructive approach … a step forward in our criminal justice system."[78] In spite of such strong exhortation by the court, the *Dalbir Singh*[79] court did not rise to the occasion to ameliorate the suffering of a 76 year old father-victim and left him helpless and remedyless!

An interim order in the case of a custodial death remained operational for 13 years, conjuring images of Kafkaesque law! The courts must ensure that such lapses do not recur and accountability is fixed. It is important that the apex court does not remain as just the Supreme Court of India but positions itself as the Supreme Court for Indians.[80]

78 *Id*., para 31

79 *Supra* note 48.

80 See "Ecosystem of Justice: Court hierarchies, Administration and the Legal Profession"quoting Baxi in *Courts of India* 454(2016)