

## ***SENTENCING in DEATH PENALTY CASES***

*4<sup>th</sup> October 2015, National Judicial Academy, Bhopal*

### **FACT SCENARIOS**

Participants are requested to first read the document prepared on factors to be considered in death penalty sentencing. The document on death penalty sentencing has been prepared using excerpts from landmark judgments of the Supreme Court on the issue. After reading that document, participants are requested to attempt applying those sentencing principles to the fact scenarios below and reflect on whether the convicts in each of the cases below should be sentenced to death.

All fact scenarios have been prepared from actual cases but the names of persons and places have been changed. While it is difficult to capture all the nuances of a cases in such little space, the attempt has been to give you as full a picture as possible.

### **SET - 1**

#### **Case 1 – Mayur Kumar v. State of Maharashtra**

Mayur Kumar, aged 43, was working as a carpenter at the house of Md. Rashid for about 7 days while it was being renovated. On 28th of September, 2004, Mayur gave Rs.5/- to the niece of the informant, namely, aged about 8 years to bring betel from a shop at Ambedkar Chowk. After some time, Mayur left work, went to the Ambedkar Chowk and got seated the girl on the carrier of his bicycle. She was not seen thereafter and during search made by her father and some villagers, it was found that she was seen going on a bicycle with a man.

Villagers reached the house of Mayur Kumar which is around 5 kms away but he was not found there. He was found in an inebriated condition near Ambedkar Chowk and was apprehended after he tried to escape. He was brought to residence of Md. Rashid and was identified by Manorama Devi. Thereafter, he was handed over to the police and a case was registered and investigation commenced. During investigation, Mayur gave a confessional statement in presence of 2 panch witnesses who were the father and uncle of the girl and he disclosed the place he had raped and killed the girl. In this he disclosed that after committing the rape and murder he drank alcohol and he disclosed 5 previous incidents where he had raped minor girls and one instance where he had committed bestiality. The deceased girl's body was recovered from a wheat field at the instance of Mayur Kumar in the presence of the same witnesses and some villagers. The body of the deceased which was of slim build, was identified by her father and some villagers, and only an underwear was found on it. There

were injuries on her private parts, the fingers of her hand were bitten and there were bruise marks all over the body.

PW-1 was a village sarpanch who testified that Mayur was working at Md. Rashid's house as a carpenter. PW-2 who owned a shop at Ambedkar Road across the road from PW-3 said he saw the deceased come to shop of PW-3 and thereafter the accused followed and took her on his bicycle. PW-3 was the betel shop owner who said that the deceased bought betel leaves from him and from the Re. 1 he returned as change, asked for two toffees. PW-4 is Manorama who deposed that she and some other women heard the conversation which the accused was having with the girl. He asked her where her father lives, to which she replied, Mumbai and saw him taking away the girl on a bicycle. PW-6 is the uncle of the deceased and was deposed to being a witness during the confessional statement. PW-7 is a villager who was present when the dead body of the deceased was recovered. PW-8 is the father of the deceased who lodged the complaint and was present during the disclosure statement of the accused. PW-9 was the Investigating Officer who testified that the witness had made this disclosure voluntarily and on inquiry from a "chowkidar" he had found out that the accused was in the habit of picking up and raping young girls.

The Accused was convicted under sections 366, 376, 302, 201 of the IPC. Consider whether the convict should be sentenced to death?

### **Case 2 -- Harilal v. State of Karnataka**

On 17.10.2012 the deceased, a student of 9<sup>th</sup> Standard had gone to her school which was around 3-4 kms from home and did not return back. From 6:30 pm, her uncle and parents along with some villagers searched for her through the night. On 18.10.2012, at 3.00 am a sandal of the deceased was found. At around 8 am, a gent's wrist watch was found along with the deceased's school bag.

The deceased's uncle filed a complaint on 18.10.2012 at 8.30 a.m. stating that the girl was last seen by a tractor driver at around 5:30 pm. Around the same time as the complaint was being filed, some villagers spoke to one Ajay Parab who said that on the morning of 17.10.2012, while grazing cattle, he had been asked by a man from the Pardhi<sup>1</sup> community in a red T-shirt, the directions to Hosadurga. Around 6:00 pm, he saw the same person running in the direction opposite to Hosadurga and his trousers were piled with mud. The tractor driver also informed the villagers that after speaking to the girl on 17.10.2012 around 5:30 pm, he saw a man in a red T-shirt following her. The villagers then proceeded to the Pardhi settlement near the riverbank and found Harilal who was wearing a red shirt. Harilal, aged 23, had no prior criminal record and was a travelling vendor of rudraksha beads and has two children aged 2 and 3 years respectively. The villagers were taking him along the road when the police, accompanied by the girl's uncle in a jeep met them. He was taken to the police station, wherein he disclosed to the police that he had raped and killed the girl and would take them to the spot where he had hidden the body. Thereafter he took them in the direction of

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<sup>1</sup>The Pardhi community was considered to be a criminal tribe under the now repealed Criminal Tribes Act.)

Hosadurga and pointed out the naked body buried in the mud and grass. This was identified by Ajay Parab. A photo-journalist accompanied the police to the area as requested by the police and took pictures of the crime scene. Earrings, two gents wrist watches, school bag were found in the area. The body was sent for post-mortem and various ante-mortem injuries were found and cause of death was asphyxia and possible sexual assault and the hymen had fresh tears and labia majora was swollen. The accused was formally arrested in the evening and his clothing seized. The next day, the Accused was sent for medical examination and it was found that he had contusion over his left eye and scratch marks on both cheeks and neck. On 23.10.2012, the Accused disclosed the location of the school uniform of the girl which was recovered from under a stone in a mud pit.

PW-1 was the photo-journalist. PW-2 was the uncle of the deceased who had filed the missing complaint and the subsequent report. It was not mentioned in the missing complaint however, that there was a person in the red T-shirt although the tractor driver's last seeing and speaking to the girl is mentioned. He also stated that one of the watches found at the scene belonged to him as he had given it to the deceased to wear but the other gents watch he did not recognise. PW-3 is the tractor driver who states that he spoke to the girl around 5:30 pm and then saw the Accused wearing a red T-shirt following the girl. PW-4 is Ajay Parab. PW-5 is the doctor who conducted post-mortem. PW-6 and PW-7 were witnesses to the disclosure statement and recovery of the dead body and articles. PW-8 and 9 are witnesses to the seizure of the clothes of the Accused and his arrest. PW-10 is the doctor who examined the Accused. PW-11 is the Investigating Officer of the case. He sent the samples to the Chemical Analyst, no semen or blood was found on the clothes and undergarments of the Accused or on the clothes of the deceased. No semen was found from the vaginal swab of the deceased, but lots of mud was found when the swab was being taken. No blood was found under the fingernails of the deceased. The blood group of the accused was indeterminate. The IO in his cross examination stated that they did not investigate as to who the second wrist watch belonged to and admitted that the sandal of the deceased was not seized.

The Accused was convicted under 302, 366, 201 IPC and sections 10 and 4 of POCSO. You are requested to reflect on whether the convict should be sentenced to death.

### **Case 3 – Deepak Kumar v. State of Jharkhand**

On 22.1.2013, a 5 year old girl went missing from her house in a suburb of Mumbai. Her mother worked as a maid and father as a labourer and both were out of the house. After searching for the girl till late at night, the parents filed a complaint with the police and returned home at 2.30 am. On returning home, they found the motionless naked body of the girl lying outside the house and they saw that she was bleeding from her private parts. She was taken to a hospital but pronounced dead on arrival. The post mortem revealed that she had been raped, sodomised and strangled and each, the asphyxiation as well as the injuries to her vagina and anus were sufficient in the ordinary course to cause death by themselves.

On 24.1.2013 a neighbour of the deceased girl informed the police that he suspected his father of having committed the crime. The police picked up the Accused who was about 53

years of age at the time. On investigation it was revealed that he had in 2004 been thrown out of his village with his family for trying to molest a young married woman in her 20s when she had gone to answer the call of nature. On 25.1.2013, the house of the deceased was examined by forensic experts and it was found that there were blood stains on the sofa, the cloth used for wiping the floor and bed-sheet as well as dried blood from between the tiles. On 26.1.2013 the Accused made a disclosure to the police whereby a white plastic sack was found in the garbage dump of the building which contained blood stained clothes of the deceased. On 27.1.2013, two persons approached the police stating that they had seen an old balding man walking down the stairs carrying a white plastic sack and throwing it in the garbage dump on 22.1.2013 while they were in the locality to meet a local political party member. These witnesses identified the Accused in a TI Parade conducted. It was further revealed by the Accused's wife that on the night of 22.1.2013, the Accused left the house at around 2 am and on 23.1.2013 suddenly went to his brother's house in a nearby area and came back in the evening. On his return, he was under tension and had gone to the family doctor on her advice. Investigation further revealed that the Accused was not working anywhere for the last 4 years and his wife, 2 sons and daughter who lived in the same one room house with the Accused were working. Medical examination revealed that the Accused was of sound mind and was potent. Samples were collected for DNA analysis and the reports found that the DNA collected from the Accused's blood and semen matched the DNA found in the vaginal and anal swabs obtained from the deceased. The DNA sample taken from the deceased matched the DNA sample from the blood found at the Accused's house as well as at on her clothing found in the white sack.

PW-1 was the father of the deceased, PW-2 was the mother of the deceased, PW-3 was the wife of the Accused who said that he had confessed the crime to her and used to forcibly have sex with her 2-4 times a week, PW-4 was the son of the Accused, PW-5 was the daughter of the Accused, PW-6 was the woman the Accused had tried to molest in 2004, PW-7 was a neighbour who said the accused had an evil eye on women and would peek at her whenever she opened the door, but she had not complained considering his age. PW-8 & 9 were the witnesses who saw the accused throw the white sack into the garbage. PW-10 was the IO.

The Accused was convicted under section 302, 363, 364, 367, 376, 376(2)(f), 377, 201 IPC and section 3 punishable under section 4 and 5(h), (i), (k), (l) (m) punishable under section 6 POCSO. Should the convict be sentenced to death?

## **SET 2**

### **Mohan & Girish v. State of Rajasthan**

Ghanshyam Das (aged 60) is the owner of a sweet shop in a small town. He is married to Sitadevi (aged 55), and has one son Suraj, and two daughters—Shreya (aged 25) and Kamala (aged 21). Suraj is married to Manasi (aged 28) and they have one son, Pranav (aged 2). Shreya is married to Atul and they have one son, Nishant (aged 1 year and 6 months). Kamala

is unmarried. Ghanshyam Das lives with his wife, son, daughter-in-law, grandson and unmarried daughter.

To help with the daily running of his sweet shop, Ghanshyam Das has two helpers, Dushyant (aged 25) and Mohan (aged 18 years and 2 months). Dushyant has been working in the shop for three months, and recently recommended his friend Mohan to work as the second helper in the shop. Dushyant and Mohan have a friend, Girish(aged 24) who works as a cook in a nearby restaurant. The three of them live together in the same chawl.

On 23.5.2000, Dushyant, Mohan and Girish break into Ghanshyam's house with the motive to loot them of jewelry and other valuables. They enter the house at 3 pm and leave around 4 pm as testified by PW-9, a passerby. When PW 1, Suraj, comes to his house at 645 pm he sees that Sitadevi, Shreya, Kamala, Manasi, Pranav, Nishant and the maid of the house have all been killed, and jewelry and valuables are missing.

The three accused are arrested by the investigating authorities 3 weeks later from Gujarat to where they had escaped. Valuables, money and jewelry are recovered from their person by the police, and statements as to the veracity of items recovered are made before the panch witnesses. On 11.10.2000, Dushyant writes to his father, who is a police officer, saying "I have not committed murder of anyone. I was only involved in the conspiracy of robbery and murder with my friends Mohan and Girish. I only assisted them in committing those seven murders. I had not assaulted anyone but committing murder and helping to commit the same are both sins. I have repentance of my act and I am thinking of committing suicide." On 26.10.2000, the prosecution presents an application u/s 307 of the CrPC before the Magistrate to tender a pardon to Dushyant, on his promise to make a true and full disclosure of the events that transpired.

Dushyant, now PW 2, testifies before Court that he was forced into buying a knife by Mohan and Girish to carry out the murders. He also says that Mohan threatened to kill him if he was not part of the plan. According to PW-2, on the day of the incident, all three of them entered the house at which point Mohan shouted for all the members of the house to assemble in the hall. Mohan and Girish then proceeded with Sitadevi to the bedroom where they forced her to hand over jewelry. Mohan then assaulted her with the knife and left her on the bed. Mohan then demanded that Shreya take them to the other bedroom in order to loot them of additional valuables. As per PW -2, Mohan then assaulted Shreya and her son Nishant who was sleeping in the bedroom. Their next target was Kamala, who, according to PW 2 was strangled with an electrical cord by Mohan. PW 2 maintains that he was only asked to watch over the proceedings, and he did not assault or kill any member of the family. PW-2 then testifies that the maid, Sugandha, was given blows on the head by Mohan while being held by Girish. As for Manasi, she was holding her child Nishant, and begging for his life to be saved. According to PW 2, Mohan grabbed the child, handed him to Girish, and then proceeded to assault her with the knife. Girish, in order to stop the child from crying, strangled him with his hands.

PW-2 has, in his testimony maintained that he was an eyewitness to all the events. His only role was that of conspiring to steal jewelry and valuables since he was the only one with easy access to the house. He maintains that Mohan was in charge of the plan, including pawning off some of PW-2's belongings to purchase a knife. Mohan was also the person in charge of apportioning the loot and the manner in which they would evade arrest from the authorities.

The prosecution's case was thus set out with the testimony of the approver, and the judge proceeded to convict Mohan (aged 18 years and 2 months) u/s 302 of the IPC for the murder of Sitadevi (aged 55), Shreya (aged 25), Kamala (aged 21), Sughanda(aged 49), Manasi (aged 28) and Nishant (aged 1 year and 6 months). Girish was convicted u/s 302 for the murder of Pranav (aged 2) u/s 302 read with 120 B for the murders of the other members of the family. Mohan and Girish have also been convicted under sections 342, 392, 397 and 449 read with S.120-B and S. 34. Consider whether convicts should be sentenced to death?

### **SET 3**

#### **Chirag Mehta v. State of Madhya Pradesh**

Chirag Mehta, currently 40 years of age, was a bus driver with the Madhya Pradesh State Road Transport Corporation since August 1999 and has always worked out of the Sagar Bus Depot. On 25.1.2012, Chirag Mehta requested his supervisor, Ms. Swetali Kumar, the Assistant Traffic Controller of Sagar Depot, to change his duty from night out duty into single day duty. This request was declined and Chirag Mehta walked out quietly. After walking out, he got into a bus parked in the depot, hijacked it with the keys he had and went on a rampage. He initially drove rashly within the depot during which he knocked down and crushed 3 people to death. When personnel of the depot chased after him to stop the bus, Chirag Mehta took the bus out of the depot. In the next 45 minutes he drove 16 kms around Sagar in an extremely dangerous and reckless manner. During that time, he killed another 6 persons, grievously injured 36 more, many of whom were permanently disabled. There was also large-scale destruction of private and public property. The bus was finally stopped when a policeman got on to the ladder of the bus at the back, climbed on top of the bus, entered through one of the windows and managed to stop Chirag Mehta.

During the 45 minutes, several attempts were made to stop Chirag Mehta including firing of several rounds at the tyres. When barricades were placed in his path, Chirag Mehta drove through them and caused further damage. It was established on record that Chirag Mehta carefully avoided heavy vehicles by having the presence of mind to swerve away and also attacked a person who tried entering the bus by kicking him on his chest. After he was stopped, the people gathered were enraged and started attacking Chirag Mehta. He had to then be escorted away quickly to prevent him from being killed.

After being produced before the Magistrate, he was kept under observation by a team of expert doctors till 6.6.2012 and they concluded that he was not of unsound mind on the day of the incident and thereafter as well. The chargesheet was filed against the accused for

offences punishable under Ss. 302, 307, 324, 381, 427 of the IPC. The accused pleaded not guilty and took the plea of insanity under S. 84 of the IPC and examined Dr. Kamal Srivastava as defence witness. When Dr. Srivastava treated Chirag Mehta in 2010 he found him to be suffering from mania and had put him on medication for a certain period then.

It was established that while Dr. Srivastava did treat Mr. Chirag Mehta for a few months in 2010, there was no evidence from the repeated examinations after the incident to demonstrate that Chirag Mehta was of unsound mind on the day of the incident or immediately preceding it or in the days thereafter. Examining doctors noted that there was a history of psychiatric treatment and therefore the possibility of psychiatric illness of some kind is a possibility. However, they were clear that Chirag Mehta was not of unsound mind during the period surrounding the incident and on the day of the incident. During the observation period, Chirag Mehta noted a couple of times that the State Road Transport Corporation had ruined his entire life. The doctors also noted that during the observation period, Chirag Mehta showed no remorse for what he had done.

The service book of Chirag Mehta also showed that he had been involved in several accidents in the pasts as a result of which he was fined and his increments were also denied. Also, given the nature of the crime, there was tremendous outrage amongst large sections of the population in Sagar over this

Chirag Mehta comes from a rather humble background and lived with his wife and two children.

The Additional Sessions Judge, Sagar has found Chirag Mehta guilty of the offences he has been charged with and you are requested to reflect on whether Chirag Mehta should be sentenced to death.

#### **Set 4**

##### **Adam Ali & Amaan Ali v. State of Bihar**

On 24.6.2012 at about 8:30pm, Asgar Ali, about 50 years old, was offering namaz in a mosque in his village Gadua, Uttar Pradesh. Asgar's brothers, Adam and Amaan Ali (about 45 and 42 years old respectively), along with their two sons and five others, entered the mosque and began assaulting Asgar with various sharp-edged weapons such as swords and spades. Asgar immediately succumbed to his injuries.

On hearing their father's cries for help, Imran (aged 22 years) and Mufti Ali (aged 20 years) came out of their house onto the street, by which time the assailants had left the mosque and proceeded towards them. While the others assaulted Imran and Mufti, Adam and Amaan Ali entered Asgar's house in search of his wife and younger children. Imran and Mufti Ali, who were completely unarmed, died on the spot in front of their house. Thereafter, the other assailants also entered Asgar's house and along with Adam and Amaan Ali, attacked Asgar's wife Fatima and her children, Fateh Ali (aged 5 years), Anees Ali (aged 8 years), Junaib (aged about 12 years) and Mehboob, who was physically disabled and aged about 18 years.

Gaffran Ali, father of deceased Asgar Ali, who was attending a wedding along with several other villagers, returned to his village the next morning at 6 am, to find his son Asgar and his entire family killed. Along with his wife Shabnam, Gaffran lived with his son Asgar as there was a land dispute between them and his other sons, Adam and Amaan Ali.

During the trial, prosecution witnesses Hakeel Ahmed (PW 3), Nassirudin Khan (PW 4) and Salman Khan (PW 5) deposed they saw Adam and Amaan Ali enter the mosque, with five others behind them and started assaulting Asgar Ali with sharp weapons. They threatened Hakeel, Nassirudin and Salman with their life in case they reported anything to the police or sought any help. While Hakeel and Nassirudin in their testimonies state that there was no light inside the mosque, Salman Khan stated that he had switched on the light inside the mosque before offering namaz.

Apart from them, Amir Siddiqui (PW 6), neighbor to Asgar Ali, testified that he came outside his house when he heard a struggle on the street. On coming out, he saw the Adam Ali assaulting Imram Ali while Amaan Ali assaulted Mufti Ali, right outside Asgar Ali's house. Before he could raise an alarm, Adam Ali threatened him because of which he ran away and returned in the morning to see the dead bodies of Imram and Mufti Ali lying outside their house. In his cross-examination he explained that while there was no streetlight, one of the co-accused along with Adam and Amaan Ali had a torch with him, which allowed him to recognize the assailants, Adam and Amaan.

Shabnam (PW 2), mother of the deceased Asgar Ali and accused Adam and Amaan Ali, was the main witness produced by the prosecution. She testified that her husband, Gaffran Ali (informant and PW1) lived with their deceased son Asgar Ali and his family. There was a land dispute between her sons and it was worsened when about 20-25 days before the incident, her son Asgar Ali bought a house for his parents and family. She deposed that she saw her sons, Adam and Amaan Ali, along with their sons and some other people entering the house swords and spades in their hands. Out of fear, she locked herself in one of the rooms and was threatened by the accused not to step out of the room. When she left the room after the accused had left, she saw the dead bodies of Fatima, Fateh, Anees, Junaib and Mehboob lying in the three rooms of the house. The prosecution does not prove the presence of a source of light inside the house.

As per the post mortem report, all the deceased had suffered multiple sharp cut injuries on their heads consistent with swords and spades. On the basis of this evidence, the Trial Court found Adam and Amaan Ali guilty under section 302, 449 read with section 34 of the IPC. The other five accused were acquitted by the Trial Court for lack of sufficient evidence against them. Consider whether you would sentence Adam Ali and Amaan Ali to death.