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CASE COMMENT
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Analysis of the Shakti Mill Gang Rape Case: Understanding the Concept of Repeat Offender and Rarest of Rare Doctrine

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Abstract

Rape is considered one of the gravest of all offences, even more than that of murder. Various amendments are continuously being bought to the criminal laws with the hope of lowering the number of rape cases. Stricter punishments are being implemented; however, it is certainly not proven enough to check the increasing rate of rape cases each year. Shakti Mill Gangrape case is one of such infamous cases that shook the conscience of our nation. In this case, the Trial Court, with high hopes of spreading effective deterrence, convicted the accused and punished them with death. However, the Bombay High Court was of a different opinion, stating that life imprisonment can cause the same level of deterrence as Capital Punishment and considering all the softening factors commuted the death penalty. In this article, the researcher will critically analyze the facts, judgement and obiter dicta in the Shakti Mills Rape case and finally conclude as to whether it was a sound decision to have commuted punishment of such repeat offenders.

Keywords: *Gang Rape, Rape, Repeat Offenders, Shakti Mill*

1.0 Introduction

How much a nation has developed can easily be measured by the standard of safety and freedom enjoyed by the women in that country. It is a very sad state of affairs to see how women in India are, on the one hand, seen as a sign of courage and devotion and worshipped as deities; on the other hand, they are subjected to such inhuman degradation on a day-to-day basis. Everyday we hear about n number of rape and also gang rape cases. Since the Nirbhaya Incident, the number of reported cases, to our surprise, has been on the rise, let alone the number of unreported cases. The gangrape culture in India, too, shows similar stats. The instant case is regarding the same, as to how an innocent girl of 22 years of age became victim to a brutal gangrape in the city of Mumbai. When the case was reported, another case came forward where a similar incident was faced by another victim by the very same accused. This further shows how many cases go unreported. The Second case, in all probability, would not have been reported if the first victim had not come forward.

2.0 State of Maharashtra v. Vijay Mohan Jadhav @ Nanu and Ors

Bench: S.S. Jadhav, P. K. Chavan

2.1 Facts of the Case

The incident occurred on 22nd August 2013. On that fateful evening, a 22-year-old photojournalist interning for an English-language Magazine named Time Out went to the Shakti Mill with one of her male colleagues, Anurag Banerjee. (Trivedi, 2022) She was doing a project

to capture photographs of old ruined places in Mumbai. They left their office at about 5 p.m. and headed toward Shakti Mill, located in South Mumbai. Upon their arrival, they met two of the accused, who initially helped them enter the mill. Upon entering the mill, the Victim started taking photos of the building for a few minutes. As they were getting ready to leave, the two accused called the other three accused. All of the accused after that tied the colleague and forcefully took the victim to a separate area where she was repeatedly raped by all the accused. She was also made to watch some pornographic videos and was forced to imitate those. (Trivedi, 2022) After that, the accused took some photographs of her in their mobile phone in that condition and threatened to circulate those if she tried to take any action. She was even told by the accused shamelessly that she was not the first victim for satisfying their lust and that they had previously done many such acts for several other victims. After they were done, they took her and the colleague to a railway track at around 7.30 pm and left them there.

2.2 Criminological Theories Applicable

Various criminological theories can best describe the facts of the alleged gang rape. One of those is Routine Activity Theory. Lawrence E. Cohen and Marcus Felson developed the theory. This theory talks about the presence of three components in the same vicinity to increase the likelihood of the commission of a crime. First is a motivated offender who is ready to commit a crime, which, in this case, involves all five of the accused. Secondly, it talks about a suitable target, which in this case was the poor victim. Lastly, the absence of a guardian may be any police officer, passerby, etc., anyone who could have prevented the crime's commission. In the instant case, as the victim's colleague was tied and kept away from her, there was no other person who could have prevented the accused. As all the components aligned themselves, this led to the commission of the gang rape.

The crime can also be explained through the aid of Lifestyle Theory. This theory talks about how the lifestyle choices of the victim ultimately lead to an increased chance of victimization. For example, a woman who travels alone at night in a sketchy neighbourhood or goes for a drink at night has a much higher probability of getting victimized in comparison to a woman who stays at home. Similarly, in the instant case, the victim went to an abandoned mill after sunset, thereby increasing the chances of her victimization. If it had been anywhere else near the main locality with passersby or if she had gone there with a group in the daytime, such a crime could have been avoided.

Differential Association Theory can also apply to some extent in this case. This theory discusses how a person learns criminal activity through their close friend circle. In this case, all the accused were indeed close friends. They supported each other and also learnt from each other. This is supplemented by the fact that this was not their first time committing the crime, as they stated that they had committed similar offences together numerous times in the past.

2.3 Judgement

Among the five accused, one was a juvenile at the time of committing the crime, and as such, he was tried by the Juvenile Justice Board. He was given a sentence of three years. The punishment was given keeping in mind the young age of the accused and the possibilities of reformation. Another accused, who was an adult at the time of the commission of the offence, was given life imprisonment. The other three accused, who too were adults, were stated to be repeat offenders, as they were also convicted of gang rape of an 18-year-old telephone operator on 13th July 2013. Initially, the girl did not file any case due to fear, but when these cases came to the limelight, she got the courage to come forward. The trial court sentenced them to death by hanging.

The accused were found guilty of committing gang rape upon the victim under section 376D of IPC. The Indian Penal Code, 1860 (Act no. 45 of Year 1860), s. 376D In this case, a total of five accused were involved who took turns raping the victim and even forcefully having unnatural sex with the victim. This was also one of the first cases of conviction of the accused under Section 376E of IPC. It stated punishment for repeat offenders. By repeat offenders, it meant those who are already convicted for an offence of rape or similar offence. Under this provision, they were sentenced to be hanged to death. (The Indian Penal Code, 1860 (Act no. 45 of Year 1860), s. 376E). However, the Bombay High Court commuted the sentence to life imprisonment for the remainder of their life with no chance of parole in November 2021.

2.4 Obiter Dicta

The Bombay High Court observed that this is not the rarest of rare cases. They believed that retribution is one of the most essential elements of punishment. However, it

should not be reduced to vengeance or revenge. The court further stated that modern criminal law has no place for the "eye for an eye" or "tooth for a tooth" notion.

But the Bombay High Court remarked while commuting the sentence, "The accused do not deserve any leniency, empathy or sympathy. Hence, they deserve Imprisonment for life, i.e. for the remainder of their natural life. Every day the rising sun would remind them of the barbaric acts committed by them, and the night would lay them with a heavy heart filled with guilt and remorse". (Hakim, 2021)

Bombay High Court also observed that a rape victim doesn't only suffer physical harm but mental and psychological harm as well. This trauma stays with her for the rest of her life. Court thus regarded rape as a severe blow to the honour and dignity of a woman and a grave offence against the society as a whole.

2.5 Analysis of Section 376D (Anatomy, Impact and Societal Response to Gang Rape)

The provision for Gang rape was included under Section 376D of the Indian Penal Code following the incident of Nirbhaya. This section defined gang rape as an aggravated form of rape, which includes the commission of rape upon a victim by two or more persons who are acting as a group or under common intention. (Parliament of India, 1860) Gang Rape is considered to be far graver and more devoid of humanity when compared to an individual sexual assault. There are no straightjacket reasons as to what are the causes of gang rape. It has to do with perpetrators' mentality toward showing dominance, old societal attitudes, toxic masculinity, gender-biased norms, etc. One of the major factors for the increasing trend of gang rape is the perpetrators' will to assert power and dominance over the victim by way of such brutal acts, which in turn gives them some kind of superiority feeling. There is a regressive norm, especially among the people belonging to lower economic, that women are subordinate to men. This ultimately leads to the objectification of women. Other common factors can be a revengeful attitude or a lack of education.

The impact of gang rape is far more detrimental to the survivors. Survivors of such crimes often face physical pains such as injuries, cuts, bruises, broken bones, etc., and it also affects their psychological balance. Symptoms include Post-Traumatic Stress Disorder (PTSD), flashbacks of those events, anxiety, lack of sleep, and depression. The survivors lose their self-esteem and often find it difficult to face society and go back to their normal lives, leading to further self-isolation. Also, there is a high chance of acquiring Sexually Transmitted Diseases (STDs) from the perpetrators. Unwanted Pregnancy can further add to the complexities.

Section 376D provides a minimum punishment for such accused to be at least imprisonment, which shall not be less than twenty years. Still, it can be increased to life imprisonment, meaning the remainder of the person's natural life and fine. The fine shall be evaluated and be sufficient to cover the medical charge of the victims. Thus, enforcement of this section becomes foremost for combatting sexual offences and delivering justice to the victims of such crimes. ("Gang Rape Under IPC/BNS," 2024)

Currently, in the present context under the Bharatiya Nyaya Sanhita, 2023, provision for gang rape is given under Section 70(1) (Parliament of India, 2023) Which provides for the same punishment as that of its predecessor.

2.6 Analysis of Section 376E (Repeat Offenders and their Appropriate Punishment)

Soon after the Nirbhaya Incident, the Verma Committee was formed and headed by Justice J.S. Verma. This committee also included Justice Leila Seith and Mr. Gopal Subramaniam. This committee thoroughly examined the existing legislation related to sexual offences and highlighted the gap in the legislature. The Indian Penal Code was amended, and various suggestions of the Verma Committee were incorporated. Some of the key elements were a more expansive definition of rape and stricter punishment for sexual offences. Section 376E was also added to this amendment. This section gave punishment for repeat offenders. (*Retribution, Deterrence and Women's Safety*, 2014) Repeat offender here refers to any offender who has already been convicted in any previous case for a similar offence. In other words, this section would apply to persons who have committed rape or any other such heinous crime on more than one occasion. The reason for introducing this section is multi-dimensional. It came to notice that many persons who were previously convicted for any sexual offence, when

released from imprisonment, again commit the same offence. Thus, harsher punishment, i.e. imprisonment for life without chance of parole or the death penalty, might act as a deterrence and might prevent such offenders from again committing such crimes. Parliament also considered the fact that certain groups of convicts are beyond reformation and would not stop committing such crimes. As such, sending them back to society will only welcome danger and threat to innocent citizens. Thus, keeping such criminals incapable of any changes behind bars will play a dual role of deterrence and public safety. ("Understanding IPC Section 376E Enhanced Punishment for Repeat Offenders of Rape - Vanta Legal - Advocate," 2024) Although the intent of the legislature to introduce this section was bona fide for curbing further sexual offences against women, this section has been a matter of controversy. It has been criticized for being violative of the proportionality principle—especially the death penalty. Many argue that the death penalty would be violative of human rights and would not prove to be an effective deterrent. ("Understanding IPC Section 376E Enhanced Punishment for Repeat Offenders of Rape - Vanta Legal - Advocate," 2024) Even in the present case, the Bombay High Court opined that the accused here was beyond the scope of reformation. This was evident when the accused bragged to the victim that she was not the first one to have satisfied their lust. As such, there was no possibility of sending them back to society. However, the High Court stated that in the current case, the accused could not be convicted under Section 376E, as in this case, they were tried for different cases at the same time in the same court, and the convictions for both cases were given on the same day and as such this present case does not attract requirements of Section 376E.

Under Bharatiya Nyaya Sanhita, 2023, the provision for punishment of repeat offenders has been provided under Section 71. It states punishment for individuals convicted more than once for similar offences as mentioned under Sections 64, 65, 66 or 70 of the BNS. The punishment here is the same as that of Section 376E, i.e. life imprisonment for the remainder of the offender's natural life or the death penalty. (Parliament of India, 2023)

2.7 Rarest of Rare Doctrine

The rarest of rare doctrines is one of the most prominent ones the court considers when choosing between capital punishment and life imprisonment. For capital punishment to be given, the case should pass the test of this doctrine first. The Bombay High Court has mentioned that the present case is not the one where the rarest of rare doctrines would be applicable. The Court also referred to the 262nd report of the Law Commission of India on the death penalty issue. The Bombay High Court opined that capital punishment serves no more deterrence than life imprisonment.

Regarding capital punishment, it has been subjected to baffling debate throughout the decades. As of now, 104 countries have banned capital punishment, and 29 have abolished it de facto. (Vaishya, n.d.) De facto abolition means that capital punishment has not occurred in the following countries in the last ten years. However, in India, capital punishment is still applicable in grave offences such as terrorism, rape, murder etc., but it is to be implemented only in the rarest of rare cases. This doctrine was recognized in the case of *Bacchan v. State of Punjab*. (Supreme Court Cases, 1980) The Supreme Court, in this case by a 4:1 majority, upheld the constitutional validity of capital sentences in India. (Supreme Court Cases, 1980) The Supreme Court stated that a person should be bestowed the death penalty only in certain exceptional and extraordinary situations where the crime is so monstrous that even life imprisonment seems to be inadequate. (Mohapatra, 2024) However, the apex court did not give any clear-cut explanation as to what establishes the rarest of rare cases.

In the case of *Macchi Singh v. State of Punjab* (All India Reporter, 1983), the apex court put certain criteria for when any crime committed would come under the ambit of the rarest of rare cases. Firstly, whenever any murder is committed, and the method in which it is committed is extremely horrific, cruel and horrible, it might fall under the rarest of rare doctrines. Some instances were also provided; for example, if a house is burnt so that any person inside the house is burnt to death or if any person is killed and chopped to pieces, these kinds of acts would certainly attract the application of this doctrine. Secondly, motive plays an essential role, i.e., the reason for such murder. If a murder is committed only for monetary and pecuniary gain, such crime would fall under the ambit of this doctrine. The best example of this would be hired killers. Thirdly, the magnitude of crime also plays a crucial role. If a person is convicted of the murder of several persons, automatically, it becomes the rarest of rare cases. Lastly, focus should also be showered upon the person

murdered. When the person murdered is any innocent lady or any child of tender age, the accused deserves to be punished with nothing less than death.

The Supreme Court again held the death penalty to be constitutionally valid in the case of *Jagmohan Singh v. State of U.P.* (All India Reporter, 1973) The court said that capital punishment effectively creates a deterrence effect and symbolizes disapproval of society. ("Understanding IPC Section 376E Enhanced Punishment for Repeat Offenders of Rape - Vanta Legal - Advocate," 2024)

The apex court provided certain extra guidelines in Bacchan Singh's case. ("Understanding IPC Section 376E Enhanced Punishment for Repeat Offenders of Rape - Vanta Legal - Advocate," 2024) First, it was stated that the death penalty, being an extreme form of punishment, should not be given except in extreme cases. Second, the Court suggested that before imposing capital punishment, all stimulating and mitigating factors should be accounted for. Lastly, the court laid down that life imprisonment is the rule and capital punishment is the exemption.

However, it is pertinent to mention that just like any other doctrine, this doctrine, too, is not free from criticism. Many criticized this doctrine for being arbitrary. Justice Bhagwati was also of the same belief. He rightfully pointed out that if this doctrine is to be allowed, it would give too much power to the hands of the judges. The life of a person would depend upon the judge's mind. Whether a convict should be given the death penalty or not would depend on how the bench handling the particular case interprets the doctrine. Also, there is no single definition of crime that can be called heinous, gruesome, or cold-blooded. What might be gruesome to one judge might not be so to another. Life is the most precious thing for any person, and if a person's life hangs upon the mind of the bench that is trying the accused, it is nothing but a violation of Article 21 of the Indian Constitution.

In construing the following case, it can be stated that whenever a person is convicted of any offence punishable with life imprisonment or death, life imprisonment should be given as a rule. Capital punishment should only be given after considering multiple issues such as the nature in which the crime is committed, the magnitude of the crime, who the victim of such crime is, etc. Judges have to be extremely careful while imposing capital punishment and should come up with an extremely fair and reasonable judgment for their decision. Judges should give due consideration to all the mitigating factors. In the current case, the trial court should have considered the fact that all the accused came from a very low socio-economic background and were young.

3.0 Conclusion

Considering the facts of the case, it becomes clear that the accused here has lost touch with being human and, as such, beyond any reformation. The accused showed no regret of having committed such a heinous crime, and that too on multiple occasions. They dared to brag about having committed such a crime on multiple victims. Meanwhile, the victim suffered in silence. However, it is as important to remember the mitigating factor as it is to remember the stimulating factors. Keeping in mind their economic condition and age, the trial court should have given them life imprisonment. We must also keep in mind that even though the crime was no doubt very heinous, they spared the victims. After considering everything, the Bombay High Court has taken the appropriate decision by commuting the punishment from death to life imprisonment. At the same time, life imprisonment, being imprisonment for the natural remainder of life without a chance of parole, also symbolizes that such an act would not be seen in a lenient manner. Additionally, although the present doesn't fall under the purview of Section 376E, this section is becoming crucial in protecting all the innocent women in society. The Legislature has done a fine job by increasing the minimum punishment for repeat offenders to life imprisonment. This ensures that all such offenders incapable of reformation do not get a chance to assimilate into society. At the same time, life imprisonment and capital punishment will deter such offenders.

4.0 References

Bacchan v. State of Punjab 1980 (2) SCC 684.

Bharatiya Nyaya Sanhita (BNS), 2023(Act No. 45 of 2023), s. 70.

Bharatiya Nyaya Sanhita (BNS), 2023(Act No. 45 of 2023), s. 71.

Gang rape under IPC/BNS. (2024, July 28). De Facto Law. https://www.defactolaw.in/post/gang-rape-under-ipc-bns

Hakim, S. (2021, November 25). Not death, but every day the Rising Sun would remind them of the barbaric acts committed by them": Bombay High Court on commuting

death sentence in Shakti Mills gang rape. Live Law. https://www.livelaw.in/top-stories/bombay-high-court-set-aside-death-penalty-shakti-mills-gang-rape-186297?fromIpLogin=55988.85248885559

Jagmohan Singh v. State of U.P. AIR 1973 SC 947.

Macchi Singh v. State of Punjab AIR 1983 S 1957.

Mohapatra, R. (2024, October 10). Macchi Singh v. State of Punjab: Rarest of Rare Doctrine. CLATalogue. https://lawctopus.com/clatalogue/clat-pg/macchi-singh-v-state-of-punjab/

Retribution, deterrence and women's safety. (2014, April 11). Economic and Political Weekly. https://www.epw.in/journal/2014/16/editorials/retribution-deterrence-and-womens-safety.html

The Indian Penal Code, 1860 (Act no. 45 of Year 1860), s. 376D.

The Indian Penal Code, 1860 (Act no. 45 of Year 1860), s. 376E.

Trivedi, N. (2022). Case Comment: State of Maharashtra v Vijay Mohan Jadhav & Ors. Jus Corpus Law Journal, 181.

Understanding IPC Section 376E Enhanced punishment for repeat offenders of rape - Vanta Legal - advocate. (2024, October 8). Vanta Legal. https://www.vantalegal.com/law-services/understanding-ipc-section-376e-enhanced-punishment-for-repeat-offenders-of-rape/

Vaishya, R. (n.d.). The Doctrine of rarest of the rare | Legal Service India - Law articles - Legal resources. https://www.legalserviceindia.com/legal/article-726-the-doctrine-of-rarest-of-the-rare.html