

IN THE SUPREME COURT OF INDIA

[SCR 2013 Order XLVIII]

Curative Petition (Crl.) No_____ of 2020

IN REVIEW PETITION NO D NO. 44603 OF 2019

IN CRIMINAL APPEAL NO 609-610 OF 2017

(ARISING OUT OF COMMON ORDER DATED 05.05.2017 PASSED BY
THE SUPREME COURT OF INDIA IN CRIMINAL APPEAL NO 609-610 OF
2017)

IN THE MATTER OF:

Akshay Kumar Singh



... Petitioner

State (NCT of Delhi)

... Respondent



Synopsis and List of Dates

The Petitioner is filing the present curative petition challenging the final common judgment dated 05.05.2017 of this Hon'ble Court passed in Criminal Appeal No. 609-610 of 2017, which was confirmed by order dated 18.12.2019 in Review Petition (Crl) D No. 44603 of 2019 in the case of the Petitioner.

The Petitioner was convicted for offences under sections 120-B, 365, 366 r/w 120-B, 307 r/w 120-B, 376(2)(g), 377 r/w 120-B, 302 r/w 120-B, 395, 397 r/w 120-B, 201 r/w 120-B and 412 IPC by the Additional Sessions Judge, Special - Fast Track Court, Saket through judgment dated 10.09.2013 in SC No.114 of 2013. The Petitioner was sentenced to death under section 302 IPC vide order on sentence dated 13.09.2013. Against this judgment, the Criminal Appeal No. 1414 of 2013 and Death Reference No. 6 of 2013 were decided by the Hon'ble High Court of Delhi on 13.03.2014, wherein the conviction and sentence imposed upon the Petitioner was upheld.

The Petitioner files current curative petition to challenge the sentence imposed upon him, and raise relevant issues which have rendered the death penalty in the instant case as useless and regressive. Reliance on the precedents of *Dhananjoy Chatterjee v. State of W.B.* (1994) 2 SCC 220, *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2012) 4 SCC 37, *Mohd. Mannan v. State of Bihar*, (2011) 5 SCC 317, *Ankush Maruti Shinde v. State of Maharashtra*, (2009) 6 SCC 667 puts the impugned

judgement on a shaky ground as these precedents have subsequently been overruled by decisions of this Hon'ble Court. The placement of the "collective conscience of the society" and public opinion within the judicial matrix of the determination of the case has prejudiced the Petitioner and his co-accused and amounted to a back-door entry of the media frenzy which has followed this case from the beginning. The present curative petition is also filed in recognition of the increasingly unsustainable judicial demand for the death penalty in light of the severely inconsistent application of its imposition by this Hon'ble Court. It is public information that there have been as many as 17 cases involving rape and murder in which various three judge benches of this Hon'ble Court have commuted the sentence of death. Many of these cases have involved rape and murder of minors. One such case (RP(CrI.) No. 324 of 2015, Order dated 01.11.2018) even involved the gang-rape and murder of a minor where death penalty was commuted to life imprisonment of 20 years RI in review jurisdiction by this Hon'ble Court on the basis that the convict did not have a prior criminal history and could still have the possibility of reformation. To this Court which routinely hails the rights all participants of the criminal justice system uninfluenced by majoritarian and media driven narratives, this inconsistency should cause an appropriate judicial answer.

Further, the idea that a curative petition cannot be an appropriate forum/opportunity for a reconsideration of sentence is unsustainable, as shown by the precedent of *Navneet Kaur v. State NCT Delhi* (2014) 15 SCC 155 where not only did the Court reconsider the sentence in a

curative petition, but a curative petition after exhaustion of all remedies on merits and further a writ and review remedy after challenging the rejection of mercy petition. To merely not consider the impact of such inconsistencies and not consider the case of the Petitioner on merits expose the court to the risk of adopting a procedure which pre-declares the nature of moral culpability of the Petitioner at the SLP stage despite further available remedies.

The impugned judgment does not provide any reasons for imposing the sentence of death and rejecting the alternative of imposing a fixed term sentence as provided in Union of India v. V. Sriharan [Union of India v. V. Sriharan, (2016) 7 SCC 1. Why such a remedy of a 'full life term' is available for those such as Swami Shraddhananda who was proven to plan out an elaborate crime across days showing extensive pre-meditation against a woman, for an ulterior motive, in a plan which involved unspeakable planned brutality existent both moments before and days after the crime, but not available for poor people like the Petitioner whose actions in four hours have made the Petitioner deserving of being killed by the state is beyond understanding to the Petitioner and beyond explanation by this Hon'ble Court.

The impugned judgment does not have any explanation why the alternative of life imprisonment without the possibility of parole until the exhaustion of natural life is unquestionably foreclosed in case of the Petitioner. Additionally, the fact that the Petitioner has a wife and children in Aurangabad Bihar who he was supporting through a menial existence

in New Delhi has been erroneously rejected as a mitigating circumstance. It is a gross miscarriage of justice that the Petitioner is going to bear the burden of the country proving to itself that it is safe for women by carrying out an act of brutality, despite the extent of torture already imposed upon the Petitioner in jail or even his impending death having no connection or impact to other instances of rape or murder which this country aims to tackle.

Date	Event
16.12.2012	The deceased complainant and her friend were assaulted and robbed, and the deceased complainant was also raped, due to which she later succumbed to her injuries.
10.09.2013	The Petitioner was convicted for offences under sections 120-B, 365, 366 r/w 120-B, 307 r/w 120-B, 376(2)(g), 377 r/w 120-B, 302 r/w 120-B, 395, 397 r/w 120-B, 201 r/w 120-B and 412 IPC by the Additional Sessions Judge, Special - Fast Track Court, Saket in SC No.114 of 2013
13.09.2013	The Petitioner was sentenced to death under section 302 IPC by the Additional Sessions Judge.
13.03.2014	The conviction and sentence imposed on the Petitioner were upheld by the Hon'ble High Court of Delhi in

	Criminal Appeal No. 1414 of 2013 and Death Reference No. 6 of 2013.
05.05.2017	This Hon'ble Court in Crl.A. 609-610 of 2017 upheld the conviction and sentence of death imposed on the Petitioner.
09.07.2018	This Hon'ble Court in R.P. Crl. No.671-673/2017 dismissed the review petition filed by co-convict Vinay and others against the dismissal of the Criminal Appeals of the Petitioner and his co-convicts.
18.12.2019	This Hon'ble Court in R.P. (Crl.) D. No. 44603 of 2019 dismissed the Review Petition filed by the Petitioner.
__.01.2020	Hence the present curative petition.

IN THE SUPREME COURT OF INDIA
CURATIVE PETITION (Crl) No_____ of 2020
IN REVIEW PETITION NO D NO. 44603 OF 2019
IN CRIMINAL APPEAL NO. 609-610 OF 2017
(ARISING OUT OF COMMON ORDER DATED 05.05.2017 IN CRIMINAL
APPEAL NO 609-610 OF 2017)

IN THE MATTER OF:

Akshay Kumar Singh	...	Petitioner
State (NCT of Delhi)	...	Respondent

Live Law.in
Versus
ALL ABOUT LAW

**A Curative Petition under Article 142 of the Constitution of
India**

To:

The Hon'ble the Chief Justice of India and His Companion Justices of the
Hon'ble Supreme Court of India

The humble application of the applicant above named

MOST RESPECTFULLY SHOWETH

1. That the accompanying curative petition has been filed under Article 142 of the Constitution. The Petitioner is filing the present petition for setting aside the judgment dated 05.05.2017 passed in Criminal Appeal No. 609 of 2017. The present Petitioner had also

filed a review petition, Review Petition (Crl) D No. 44603 of 2019, which was dismissed vide order dated 18.12.2019 of this Hon'ble Court. The judgment dated 05.05.2017, titled Mukesh & Ors. v. State of NCT of Delhi is reported as (2017) 6 SCC 1. Copy of the judgment dated 18.12.2019 of this Hon'ble Court in dismissing the Review Petition (Crl.) D no. 44603 of 2019 is annexed to this petition as **Annexure P_____**.

2. That the Petitioner was convicted by the Additional Sessions Judge, through judgment dated 10.09.2013 in SC No.114/2013. Vide order dated 13.09.2013, the Petitioner was sentenced to death for the offence under section 302 of the Indian Penal Code. A copy of the judgment dated 10/13.09.2013 is contained in the SLP paperbook provided alongwith the Petition.
3. That the appeal preferred by the Petitioner and the confirmation proceedings before the Delhi High Court came to be decided vide judgment dated 13.03.2014 and the conviction and sentence of death were confirmed.
4. The Petitioner is seeking to invoke the curative jurisdiction of this Court on the following grounds:

GROUND:

- A. The impugned judgement, in its confidence of handing out the death penalty as 'proportional' punishment on the basis of how brutal the crime is, exposes the inconsistency of this Hon'ble Courts and all other criminal courts in this country that have handed out

the death penalty as panacea for public pressure and public opinion on violence against women, despite no evidentiary link between its selective application and reduction in crime. The hollow claim that the death penalty creates a special kind of deterrence which is not caused by life imprisonment and that and life imprisonment amounts to 'forgiving' the criminal is backed by nothing more than a barely masked need to justify vengeance and retribution.

- B. Because the impugned judgment has been occasioned by reliance on overruled law and that new and changed circumstances would mean that non-interference with the impugned judgement would result in gross miscarriage of justice.
- C. Because the impugned judgment is bad in law as subsequent judgments of this Hon'ble Court cannot co-exist with the impugned judgement, as several convicts similarly placed as the Petitioner have been commuted to life imprisonment. That this Hon'ble Court has commuted a death sentence previously in curative proceedings on grounds of change in law subsequent to the main appeal being dismissed [*Navneet Kaur v. State [NCT of Delhi]* (2014) 15 SCC 155].

Reliance on cases subsequently overruled

- D. This Hon'ble Court has in paras 354 and 503 has relied on *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, (2012) 4 SCC 37 to impose the sentence of death. However, *Wasnik's* case has been subsequently overruled by this Hon'ble Court in *Rajendra*

Pralhadrao Wasnik v. State of Maharashtra (Review Petition (Criminal) Nos. 306-307 of 2013 in Criminal Appeal Nos. 145-146 of 2011) through judgment dated December 12, 2018 and the sentence of death imposed was commuted to one of life imprisonment. These inconsistencies have not received the appropriate attention of this Hon'ble Court during review proceedings.

- E. Similarly, the impugned judgment at paras 503 places reliance on the case of *Mohd. Mannan v. State of Bihar*, (2011) 5 SCC 317 to come to the conclusion that the death sentence had to be imposed on the Petitioner. However, this Hon'ble Court has overruled *Mannan's* case was overruled in *Mohd. Mannan v. State of Bihar* (Review Petition (Criminal) No. 308 OF 2011 in Criminal Appeal No. 379 of 2009, judgment dated February 14, 2019) and the sentence of death imposed was commuted to one of life imprisonment.
- F. That the Petitioner was sentenced to death by this Hon'ble Court through judgment dated 05.05.2017. However, after the pronouncement of the impugned judgment there have been as many as 17 cases involving sexual violence and murder in which various three judge benches of this Hon'ble Court have commuted the sentence of death. The Petitioner's family members have followed the news of these commutations regularly in the past two years and perceive the court's stance in this case as 'retributive' and not based on its own jurisprudence which has stayed away from hanging first time offenders and hanging persons who did not

deviously plot the crime across a long period of time. While the list of these seventeen cases is also available with the Petitioner, only the following cases are highlighted to raise relevant issues before this Hon'ble Court:

G. Jitendra @ Jitu v State of Madhya Pradesh (Criminal Appeal No. 1441 of 2018, judgment dated November 01, 2018) [Gang rape and murder of a four year old girl by three convicts.]

H. A four year old child was gangraped by three adults and the court opined in its short judgement on the review petition which commuted the death sentence for the convict that the possibility of reformation of the convict cannot be stated to be closed as the convict did not have any criminal antecedent.

I. Does the Hon'ble Court have any answer why the same principle would not apply to the Petitioner? In both cases, the case is one of gang-rape, in both cases the case speaks of unspeakable brutality. In fact the victim is much younger and defenseless in the cited case. In both cases, the convicts do not have prior criminal antecedents. What makes the present case deserving of "death by law" except the fact that the country's people expect the Petitioner to suffer torture and death as catharsis for systemic issues with criminal justice and sexual violence.

J. Rajendra Pralhadrao Wasnik versus State of Maharashtra (Review Petition (Crl.) No. 306-307 OF 2013) Judgment dated 12 December,

2018) [Rape and murder of a three year old girl by a convict with prior convictions of rape]

K. The cited judgement starts with the note:

“‘Sentenced to death’ – these few words would have a chilling effect on anyone, including a hardened criminal. Our society demands such a sentence on grounds of its deterrent effect, although there is no conclusive study on its deterrent impact. Our society also demands death sentence as retribution for a ghastly crime having been committed, although again there is no conclusive study whether retribution by itself satisfies society.”

L. At Para 58 of the cited judgement, his criminal antecedents are cited which include other similar offences, including one for which he has been given life imprisonment, while this Hon’ble Court expresses its ‘shock and anguish’ that the accused was out on bail and committed other crime, at the same time in para 79 this Hon’ble Court states that “this Court did not take into consideration the probability of reformation, rehabilitation and social re-integration of the appellant into society.”

M. Therefore, in review jurisdiction, the death penalty has been committed to life imprisonment without release for the rest of natural life.

N. Is the present Petitioner worse than a criminal who has committed rape and murder upon a minor and also has four other distinct

criminal cases against him, one of which has led to life imprisonment? This Hon'ble Court may choose to ignore the severe discord between the two cases but there is no real rationale available for hanging the Petitioner and sparing the life of a repeat offender who has committed capital eligible crimes multiple times and commuted to life imprisonment in this Hon'ble Court's review jurisdiction.

O. Raju Jagdish Paswan v State of Maharashtra (Criminal Appeal Nos 88-89 of 2019, judgement dated 17th January, 2019) [Rape and murder of a 9 year old girl, where she was thrown in a well and drowned to death.] This Hon'ble Court in the present case, while dismissing the review petition has held that mitigating circumstances such as the Petitioner's lack of criminal record, and his family ties including his wife and child 'fade into insignificance' when compared to the brutality of the crime. The arbitrariness of that conclusion, similarly to other judicial verdicts upholding the death penalty is clear when compared to the above-cited case. In the above-mentioned case, a 9 year old child was drowned to death by being thrown into a well. There is no doubt that there was a much clearer intention to end a child's life and the manner of death is also more brutal, containing a wanton act of brutality, and with only one person being culpable for it. In the present instance, while the Petitioner from the evidence can be deduced to have intention to rape, if a clear intention to finish off the life of the deceased female or the surviving eye-witness existed, the Petitioner or any

of the co-accused were (as per the prosecution's version) well in control to execute any such plans. Unlike this cited precedent, in the present case, there was no clear intention to end the life of the deceased female or the surviving man (complainant Avnindra Pandey). This inconsistency is at the root of why the Petitioner's life should be spared by exercise of this Hon'ble Court's curative jurisdiction.

P. Dattatraya Rokade v State of Maharashtra (Criminal Appeal 1110/2015, judgment dated 21 February 2019) [Rape and murder of a 5 year old girl by a convict with previous criminal antecedents and bad conduct] This Hon'ble Court held that "There can be no doubt that the rape and murder of a five years old child is absolutely heinous and barbaric, but as observed above, it cannot be said to be in the category of rarest of rare cases." If the rape and murder of a minor is not rarest of rare, then why have the mitigating circumstances in favour of the Petitioner such as having a child and a wife and not having any criminal antecedents 'fade into insignificance' in this case? The Petitioner fears that it is because this Hon'ble Court is aware of the public opinion and mobilization in the present case, that stops it from appreciating the present case in the same manner as the other cases which have been decided by this Hon'ble Court in the name of 'collective conscience' which is an arbitrary term used to indicate public opinion, which should have never entered the judicial imagination.

Q. Dileep Bankar v State of Madhya Pradesh (Criminal Appeal 1059/2019, judgment dated 10 July, 2019) [Rape and murder of a minor girl by a convict with two previous convictions for rape of minors] In this cited case, this Hon'ble Court in a short opinion set aside the death penalty in a case of rape and murder of a minor aged 5 years. The entire discussion on sentencing is captured below:

"The trial Court also took note of the fact that earlier also on two occasions the appellant was found guilty of committing rape on minor girls and was sentenced to 10 years and 2 years rigorous imprisonment, respectively. The trial Court again sentenced the appellant to death penalty. The High Court vide its final judgment and order dated 04.07.2013 answered the reference made by the trial Court in affirmative by confirming the death sentence awarded to the appellant. The conviction and sentence awarded to the appellant for offences under Sections 363, 366 and 376(2)(f) of the Indian Penal Code were affirmed and the Criminal Appeal preferred by the appellant was dismissed. We have heard learned counsel for the parties at length. We are not inclined to interfere with the conviction part. However, with respect to sentence, in the facts and circumstances of the case, we are inclined to set aside the capital sentence. It was stated by learned counsel for the appellant that the appellant has become the victim of his own past and there is only circumstantial evidence against him. We deem it proper to

impose the sentence of total 25 years of imprisonment. However, death sentence is set aside. The appeals are partly allowed.”

R. These ‘facts and circumstances’ of the case do not form a part of the judgement and the Petitioner fears that perhaps the most crucial circumstance is that there is no wide public mobilization calling the convict in the cited case a monster whose life must be seen only in context of the crime he has committed unlike the present case. In the present case, the Petitioner is ‘diabolic’ and ‘beastly’ as per the impugned judgement, leaving no scope for an appreciation of the criminal outside the purview of the facts of the crime, which is why his wife and child who he had supported like many other people in poverty ridden Aurangabad by coming to Delhi, has ‘faded into insignificance’ and his life is reduced to one night, making the death penalty justified for him.

S. In *Chhannulal v. State of Chattisgarh (Criminal Appeal No. 1482-1483/2018, judgment dated 28 November 2018)*, this Hon’ble Court held: “also a matter of anguishing concern as to how public discourse on crimes have an impact on the trial, conviction and sentence in a case. The Court’s duty to be constitutionally correct even when its view is counter-majoritarian is also a factor which should weigh with the Court when it deals with the collective conscience of the people or public opinion. After all, the society’s perspective is generally formed by the emotionally charged narratives. Such narratives need not necessarily be legally correct,

properly informed or procedurally proper. As stated in Report No. 262 of the Law Commission“the Court plays a counter-majoritarian role in protecting individual rights against majoritarian impulses. Public opinion in a given case may go against the values of rule of law and constitutionalism by which the Court is nonetheless bound” and as held by this Court in Santosh Bariyar (supra) public opinion or people's perception of a crime is“neither an objective circumstance relating to crime nor to the criminal”. In this context, we may also express our concern on the legality and propriety of the people engaging in a “trial” prior to the process of trial by the court. It has almost become a trend for the investigating agency to present their version and create a cloud in the collective conscience of the society regarding the crime and the criminal. This undoubtedly puts mounting pressure on the courts at all the stages of the trial and certainly they have a tendency to interfere with the due course of justice.”

Reliance on doubted Case-law

T. The impugned judgment has relied on the judgment of *Dhananjay Chatterjee v. State of W.B.* (1994) 2 SCC 220, to impose the sentence of death on the Petitioner. (See *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 paras 349, 505)

This Hon'ble Court in the case of *Shankar Kisanrao Khade Vs. State of Maharashtra* (2013) 5 SCC 546, while discussing the case of *Dhananjay Chatterjee* at para 31, observed, “Prima facie, it is seen

that criminal test has not been satisfied, since there was not much discussion on the mitigating circumstances to satisfy the "criminal test".

U. Unfortunately, the convict Dhananjay Chatterjee was hanged before this observation by this Hon'ble Court, leaving the doubting of this judgement useless for his family and loves ones. The Petitioner fears that the extreme focus on the crime which has been exhibited in the present case will also be doubted in some case in the future which rejects retribution and blood thirst and chooses a reformatory framework instead. However, the Petitioner may not survive to re-agitate his claim and hence this Hon'ble Court's curative jurisdiction is invoked to prevent such miscarriages of justice.

Death penalty in the name of 'Collective Conscience'

V. That the impugned judgment places erroneous reliance on the collective conscience of society. At para 486, it is held: "It is expected of the courts to operate the sentencing system as to impose such sentence which reflects the social conscience of the society. While determining sentence in heinous crimes, Judges ought to weigh its impact on the society and impose adequate sentence considering the collective conscience or society's cry for justice."

W. However, clear case law before and after the pronouncement of the impugned judgment exists which finds such reliance erroneous. Factoring of public opinion into the consideration of sentencing was criticized by this Hon'ble Court in *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498 (para 80-89) where it was held that public opinion cannot be gauged, and further that the courts were not to act according to the wish of the public but in accordance with the constitutional guarantees granted to the convict.

X. In *Rameshbhai Rathod v. State of Gujarat* (2009) 5 SCC 740 this Hon'ble Court held that "rarest of rare", the term coined in Bachan Singh's case had set a high threshold for imposing the death sentence and that could not be altered on a subjective notion such as 'cry for justice'. (para 110)

Y. Recently, in 2018 that is after the impugned judgments were passed, this Hon'ble Court has noted problems with imposing punishment based on collective conscience. In *MA Antony @Antappan v. State of Kerala* (Review Petition (Crl.) No.245 of 2010 in Criminal Appeal No. 811 of 2009, judgment dated December 12, 2019) this Hon'ble Court held:

"In our opinion therefore, the learned Trial Judge was in error in coming to the conclusion that the collective conscience of the society was disturbed and felt repulsed by the gravity of the crime committed by the appellant. In view of the Constitution Bench decision of this Court in Bachan Singh and in Bariyar it would be

wise if impressions gathered on what is perceived to be public opinion or collective conscience of the society are eschewed while sentencing a convict found guilty of a grave or brutal crime.”

Non-consideration of Constitution bench judgment in Sriharan

Z. The Petitioner wishes to put to this Hon’ble Court what danger could the Petitioner pose to society if he is kept alive within the four corners of his cell and allowed to earn a meagre income for his family within the prison. The Petitioner has seen many life convicts who were ridden with poverty but at least could send little amounts home to their poverty ridden families. The Petitioner puts to this Hon’ble Court why an imprisonment to the end of his life will not satisfy “the collective conscience” despite the only difference between such a sentence as opposed to the death penalty is the celebration of violence that will soon follow after the death of the Petitioner in the hands of the state’s machinery. Such a celebration would not make the populace less averse to violence, but in fact more keen to engage in violence in the name of justice. In confirming the judicial opinion in favour of such a popular celebration of a hanging, this Hon’ble Court feeds into the public opinion, and abdicates its duties to inform the public of a constitutionally mandated form of justice.

AA. That this Hon'ble Court has not provided any reasons for imposing the sentence of death and rejecting the alternative of imposing a fixed term sentence as provided in *Sriharan's* case. It is submitted that during the hearing of the special leave petition, the bench hearing the matter was specifically made aware of the developments in law as regards the advent of a third category of punishment between life imprisonment and the death penalty. The judgement reported as *Mukesh v. State (NCT of Delhi)*, (2017) 6 SCC 1 records the arguments advanced as:

"Mr Ramachandran has also submitted that the present case should be treated as a special category as has been held in *Swamy Shraddananda (2) v. State of Karnataka* [*Swamy Shraddananda (2) v. State of Karnataka*, (2008) 13 SCC 767 : (2009) 3 SCC (Cri) 113] and the recent Constitution Bench decision in *Union of India v. V. Sriharan* [*Union of India v. V. Sriharan*, (2016) 7 SCC 1 : (2016) 2 SCC (Cri) 695] . It is urged by him that in many a case, this Court has exercised the said discretion."

BB. In what amounts to a violation of the principles of stare decisis, the impugned judgments have refused to engage with the decision of this Hon'ble Court in *Bachan Singh v State of Punjab* (1980) 2 SCC 684 when at para 209 the court held that death penalty may be imposed only after all alternatives have been foreclosed. The Court held:

"A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed."

CC. There has been no judicial response to explain as to why the alternative of life imprisonment without the possibility of parole until the exhaustion of natural life is unquestionably foreclosed. This abdication of judicial duty to give reasons for the decision and to address the arguments advanced before the court has caused a breach of the principles of natural justice and grave prejudice to the Petitioner since this is a question of life or death.

DD. It is most respectfully submitted that failure to consider the contentions of the review petitioners is a violation of the principles of natural justice and a patent error of law that has resulted in a serious miscarriage of justice. [Indian charge chrome vs. Union of India (2005) 4 SCC 67 @ Pr. 13 & 16]

EE. That the Justice Verma Committee Report has advocated against giving the death penalty for offences of rape and murder. Similarly, the Law Commission's 262nd Report on the Death Penalty advocated for doing away with the death penalty for all offences except terror related offences. However, this Hon'ble Court in its judgment upholding the death sentence on the Petitioner has not engaged with the recommendations of both the reports, as it has been swayed by the facts of the offence.

FF. The impugned judgment is in patent error of law for affirming the death sentence on the Petitioner in such circumstances, and in ignorance of the various mitigating circumstances that are in favour of the Petitioner.

Socio economic circumstances

GG. The poor socio-economic condition of the accused is an important mitigating circumstance which needs to be taken into consideration by the Court while sentencing, but in the case of the petitioner, his socio-economic condition was completely ignored by the Courts below. The Petitioner outlined these socio-economic circumstances in the mitigating circumstances brought before this Hon'ble Court during the pendency of the criminal appeal by way of an affidavit. The Petitioner has spoken at length about his life in poverty and his move to Delhi to support his family. The Petitioner has experienced first-hand the dehumanization that is caused by living on the margins and having to earn for one's families and the social pressures which cause persons like the Petitioner to err, to commit crime, to fall outside of society's moral expectations and expects a consideration of this factor in legal institutions such as this Hon'ble Court where no one has seen such poverty, no one has seen dehumanization first-hand. The Petitioner is not demanding to be absolved, but requesting for empathy from persons who have not lived the life the Petitioner has lived.

HH. In *Santosh Kumar Satishbhushan Bariyar vs. State of Maharashtra* (2009) 6 SCC 498, the appellant was convicted and sentenced to death for the kidnapping and murder of a man. While upholding the appellant's conviction, this Hon'ble Court commuted the death sentence to life imprisonment. The Court considered that the offence was committed for want of money as the accused were unemployed and were looking for jobs.

"The accused persons were not criminals. They were friends. The deceased was said to have been selected because his father was rich. The motive, if any, was to collect some money. They were not professional killers. They have no criminal history. All were unemployed and were searching for jobs. Further if age of the accused was a relevant factor for the High Court for not imposing death penalty on accused No. 2 and 3, the same standard should have been applied to the case of the appellant also who was only two years older and still a young man in age. Accused Nos. 2 and 3 were as much a part of the crime as the appellant. Though it is true, that it was he who allegedly proposed the idea of kidnapping, but at the same time it must not be forgotten that the said plan was only executed when all the persons involved gave their consent thereto." (Para 169)

II. In *Mulla & Anr v. State of U.P* (2010) 3 SCC 508 the appellants were convicted and sentenced to death for the kidnapping and murder of 5 persons. The Supreme Court held that the appellants

did not deserve the death penalty as economic depravity may lead a person to crime, and that socio- economic factors could amount to mitigating circumstances.

“Another factor which unfortunately has been left out in much judicial decision-making in sentencing is the socio-economic factors leading to crime. We at no stage suggest that economic depravity justify moral depravity, but we certainly recognize that in the real world, such factors may lead a person to crime. The 48th report of the Law Commission also reflected this concern. Therefore, we believe, socio-economic factors might not dilute guilt, but they may amount to mitigating circumstances. Socio- economic factors lead us to another related mitigating factor, i.e. the ability of the guilty to reform. It may not be misplaced to note that a criminal who commits crimes due to his economic backwardness is most likely to reform. This Court on many previous occasions has held that this ability to reform amount to a mitigating factor in cases of death penalty. In the present case, the convicts belong to an extremely poor background. With lack of knowledge on the background of the appellants, we may not be certain as to their past, but one thing which is clear to us is that they have committed these heinous crimes for want of money. Though we are shocked by their deeds, we find no reason why they cannot be reformed over a period of time.”(Paras 80-81)

JJ. That none of these cases have been considered by the impugned judgment, thereby causing grave prejudice to the Petitioner.

Probability of reformation

KK. That Reformation is a necessary part of the rarest of rare test and has been expressly read so by this Hon'ble Court in holding that, "life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the rarest of rare doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformation and rehabilitation scheme. This analysis can only be one with rigour when the court focuses on the circumstances relating to the criminal along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh sets the bar very high by introduction of the rarest of rare doctrine" [*Santoshkumar Satishbhushan Bariyar v. State of Maharashtra, (2009) 6 SCC 498, para 66*].

LL. This position of the law has been consistently followed in a number of Supreme Court judgments. [*Mahesh Dhanaji Shinde & Ors v. State of Maharashtra (2014) 4 SCC 292; Sushil Sharma v. State of NCT of Delhi (2014) 4 SCC 317; Maheboobkhan Azamkhan Pathan v. State of Maharashtra, (2013) 14 SCC 214; Gudda @ Dwarikendra v. State of Madhya Pradesh (2013) 16 SCC 596; Mohinder Singh v. State of Punjab (2013) 3 SCC 294*]

MM. In the case of *Rajesh Kumar v. State (NCT of Delhi) (2011) 13 SCC 706* it was held that absence of any material shown by State to rule out possibility of reformation is not a neutral circumstance, but is in fact a mitigating factor as the possibility of reform and rehabilitation are not ruled out. In this case no evidence was led by State to show that the Appellant is beyond reformation. As per the ruling in *Rajesh Kumar* this itself becomes a mitigating circumstance.

NN. This Hon'ble Court has emphasised the need for psychological evidence in *Chhannulal v. State of Chattisgarh* (Criminal Appeal No. 1482-1483/2018, judgment dated 28 November 2018) this Hon'ble Court held:

"Without the assistance of such a psychological/psychiatric assessment and evaluation it would not be proper to hold that there is no possibility or probability of reform."

The Court did not "find that a proper psychological/psychiatric evaluation is done", and this was one of the factors considered while commuting the sentence of the death to life imprisonment. This aspect of the duty of the state to lead evidence in the form of psychological assessments was introduced after the dismissal of the criminal appeal and review petitions filed by the Petitioner. However, this requirement would equally apply in the Petitioner's case as it flows from the decision of the constitution bench in the

case of *Bachan Singh v. State of Punjab* (1980) 2 SCC 684 para 206).

Lack of criminal antecedents

OO. That the lack of criminal antecedents has been considered to be a mitigating factor warranting the commutation of death sentence by this Hon'ble Court in a catena of judgments. A lack of priors is a strong indication that the convict isn't a habitual offender and is unlikely to repeat the offence in the future. [*Viran Gyanlal Rajput v. State of Maharashtra* (2019) 2 SCC 311, *Shankar Kishanrao Khade v. State of Maharashtra* (2013) 5 SCC 546, *Birju v. State of Madhya Pradesh* (2014) 3 SCC 421].

PP. That since the Hon'ble Supreme Court has commuted several death sentences in similar offences for lack of criminal antecedents, it is imperative, *ex debito justitiae* that the death sentence of the Petitioner is also commuted to life imprisonment.

Erroneous reliance on deterrence

QQ. That the last prisoner to be hanged for a homicidal sexual offence was Dhananjoy Chatterjee. He was charged with rape and murder of an 18 years old girl who stayed in the building compound where he was a security guard in Kolkata. The crime occurred on 5th March 1990 and within four years the Hon'ble Supreme Court had confirmed the death sentence (*Dhananjoy Chatterjee v State of WB* 1994 SCC (2) 220) on 11 January 1994). Thereafter multiple mercy petitions filed by him and his relatives were dismissed and

Dhananjoy was executed on 14 August 2004. However, during the history of the case which received wide public attention, crimes of both rape and murder saw an increase completely unaffected by the conviction, rejection of appeals and also the execution. NCRB data of the reported incidence of rapes and murders for this period for the State of West Bengal indicates as follows:

	Reported Rape incidents in India	Reported Rape incidents in West Bengal
1990 *Incident in Dhananjoy Chatterjee's case	10068	561
1994 *Supreme Court judgement in Dhanonjoy Chatterjee's case	13208	743
1995	13754	787
1996	14846	855
Reported incidents of rape in India and West Bengal		
2002	16373	759
2003	15847	1002
2004* Execution of Dhananjoy Chatterjee	18233	1475
2005	18359	1686
2006	19348	1731

2007	20737	2106
------	-------	------

RR. That the above data, sourced from official NCRB Crime in India statistics shows that despite a visible execution which was carried out in 2004, incidents of rape increased from 1475 to 1686 from 2004 to 2005 in West Bengal and from 18233 to 18359 in India. Further, this number continued to increase even thereafter. Before Dhananjoy's execution, the media as well as several high political functionaries had steered the public discourse to demand hanging and punitive justice.

SS. That in 1983, there were as many as ten executions all over India. However, contrary to this having any deterrent effect that would reflect in a reduction in crime rate, NCRB data reflects that crime continued to increase nevertheless. From 25,112 murders reported in 1983, the number of murders increased to 25,786 in 1984. Similarly, the incidence of rape also increased from 6019 to 6740 over a year. This trend of increasing crime rates is also unaffected by introducing the death sentence for newer offences. In 2013, when the Criminal Law Amendment Act of 2013 was passed, despite extensive media coverage and debates in Parliament, the incidents of rape in the country increased from 24,923 to 33,706 from 2012 to 2013 according to the data of the NCRB. This indicates that executions as well as introducing death penalty for newer offences have no impact on prevention of crime

and in these circumstances, imposing the death penalty on the the Petitioner would serve no penological purpose.

TT. **Impact on family:** That the Petitioner is not the only person being punished, his entire family has suffered greatly as a result of the criminal proceedings. The family faced societal wrath and humiliation for no fault of theirs. It is submitted that the Petitioner's wife and young child are innocent, and this Court must factor the effect the execution of the Petitioner will have on them.

UU. One of the many leading voices for a more evolved understanding of justice in this country, Late Advocate KG Kannabiran was once asked why those who engage in unspeakable crimes should be allowed to seek protection under the Constitution. Advocate Kannabiran replied, "when such issues come before this court, it is our values which are on trial and not theirs" In the same spirit as the quote, this Hon'ble Court is requested to uphold the value of reformation by not equating justice with blood thirst.

VV. That this Hon'ble Court in *Rupa Ashok Hurra v. Ashok Hurra (2002) 4 SCC 388*, while framing the grounds on which an curative petition would lie, held that "it is neither advisable nor possible to enumerate all the grounds on which such a petition may be entertained.". This Hon'ble Court has broad and plenary powers under Article 142 of the Constitution to do complete justice in the facts of the case. It is submitted that preventing the Petitioner's life from being extinguished for an imaginary 'effect' of torture based punishment like the death penalty.

WW. The present petitioner submits that no other curative petition has been filed by the present petitioner against the order and decision of this Hon'ble Court on 05.05.2017 in Criminal Appeal No. 609 of 2017 and connected matters and the review petition dismissed by this Hon'ble Court on 18.12.2019 vide order in Review Petition Nos. D 44603 of 2017.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Allow the present curative petition and set aside final common judgment and order of this Hon'ble Court dated 05.05.2017 in Criminal Appeal No. 609 of 2017, confirmed by order dated 18.12.2019 in Review Petition (Crl.) D No. 44603 of 2019;
- b. Modify the sentence of the Petitioner to life imprisonment as it serves all the purposes that the death penalty claims to serve and protects society from the impending reality in the near-future in which torture and murder is equated with justice as a panacea for all social ills.
- c. Pass any other or further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the present case and in the interest of justice and equity.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY



IN THE SUPREME COURT OF INDIA

Crl M.P. No _____ of 2020

in

CURATIVE PETITION(Crl) No _____ of 2020

IN REVIEW PETITION NO D NO. 44603 OF 2019

IN CRIMINAL APPEAL NO. 609-610 OF 2017

(ARISING OUT OF COMMON ORDER DATED 05.05.2017 IN CRIMINAL
APPEAL NO 609-610 OF 2017)

IN THE MATTER OF:

Akshay Kumar Singh



... Petitioner

State (NCT of Delhi)

... Respondent

AN APPLICATION FOR ORAL HEARING

MOST RESPECTFULLY SHOWETH:

1. That the accompanying curative petition has been filed under Article 142 of the Constitution. The Petitioner is filing the present petition for setting aside the judgment dated 05.05.2017 passed in Criminal Appeal No. 609 of 2017.
2. The present Petitioner had also filed a review petition, Review Petition (Crl) D No. 44603 of 2019, which was dismissed vide order dated 18.12.2019 of this Hon'ble Court.

3. That the contents of the accompanying Curative Petition are not being repeated for the sake of brevity, however, the same may be read as part of the present application.
4. It is submitted that the Court has been occasioned by reliance on overruled law and non-interference with the impugned judgment would result in gross miscarriage of justice. The Petitioner was sentenced to death by this Hon'ble Court through judgment dated 05.05.2017. However, post the pronouncement of the impugned judgment, various three-judge benches of this Hon'ble Court have commuted death sentence in as many as 17 cases involving sexual violence and murder. Moreover, this Hon'ble Court on previous occasions has commuted death sentences in curative petitions on the grounds of change in law subsequent to the main appeal. [Navneet Kaur v. State NCT Delhi (2014) 15 SCC 155]. These contentions and submissions are made to inform this court regarding a definite change in the sentencing jurisprudence. The impugned judgment has relied on cases subsequently overruled. It is thereby submitted that the Petitioner's case be heard and the law laid down in the subsequent cases be applied.
5. It is also submitted that the impugned judgment places erroneous reliance on the collective conscience of the society. However, this Hon'ble Court has, in its previous decisions, criticized the reliance on public opinion in the consideration of sentencing. [Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra (2009) 6 SCC 498 (para 80-89)]. Most importantly, it is submitted that this

Hon'ble Court has failed to provide any reason for imposing the sentence of death and rejecting the alternative of imposing a fixed term sentence as provided in *Sriharan'* case. It is undoubted that sentencing of death in this case has welcomed immense public and political dialog, thereby creating an atmosphere of prejudice against the Petitioner.

6. It is further submitted that this Hon'ble Court has erroneously rejected mitigating factors such as the socio-economic circumstances of the accused and the lack of criminal antecedents of the accused. These factors have been recognized as mitigating factors in various judgments. Since the submission of the Petitioner was not considered in the final judgment dated 05.05.2017, permission is sought to assist this court in appreciating empirical scientific evidence which must be applied in the present case.
7. The present curative petition is being filed to prevent the erroneous reliance being placed on deterrence and to emphasize the probability of reform and rehabilitation. The state has led no evidence regarding the conduct of the Petitioner in prison and the opportunities provided for the Petitioner's adjustment and rehabilitation. As no consideration was placed by this Hon'ble Court in the probability of reformation of the accused, it is submitted that this Hon'ble Court hear the oral arguments in this regard.
8. That the requirements for a curative petition under *Rupa Hurra v. Ashok Hurra* – that of abuse of process of the court and gross miscarriage of justice – have been satisfied. The

Petitioners/Applicants have a good prima facie case for reconsideration of judgment dated. 05.05.2017 in Criminal Appeal No. 609 of 2017, as confirmed in Review Petition (Crl) No. 671-673 of 2017.

9. That this Hon'ble Court in the case of Md. Arif v Registrar, Supreme Court (2014) 9 SCC 737 has held that death penalty being an irreversible punishment, even a remote chance of deviating from such a prior decision should lead to the grant or oral hearing.

10. It is submitted that new grounds have been raised in the Curative Petition that have not already been raised in the Review Petition, which was dismissed vide judgment dated 18.12.2019.

11. That the present Application is being made bona fide and in the interest of justice.

PRAYER

The Applicants/ Petitioners respectfully pray that this Hon'ble Court may graciously be pleased to:

- i. Direct that the above Curative Petition be listed in open court for hearing of oral arguments prior to disposing off the accompanying Curative Petition; and
- ii. Pass such further or other orders as this Hon'ble Court may deem fit and proper.

FILED BY



IN THE SUPREME COURT OF INDIA

Crl M.P. No _____ of 2020

in

CURATIVE PETITION(Crl) No_____ of 2020

IN REVIEW PETITION NO D NO. 44603 OF 2019

IN CRIMINAL APPEAL NO. 609-610 OF 2017
(ARISING OUT OF COMMON ORDER DATED 05.05.2017 IN CRIMINAL
APPEAL NO 609-610 OF 2017)

IN THE MATTER OF:

Akshay Kumar Singh ... Petitioner

Versus

State (NCT of Delhi) ... Respondent

APPLICATION FOR STAY OF IMPUGNED JUDGEMENT AND THE
EXECUTION OF THE PETITIONER

MOST RESPECTFULLY SHOWETH:

1. That the accompanying curative petition has been filed by the Petitioner for setting aside the judgment dated 05.05.2017 passed in Criminal Appeal No. 609-610 of 2017 and the judgment dated 18.12.2019 in Review Petition (Crl) D No. 44603 of 2019, through which this Hon'ble Court upheld the conviction and the sentence of death imposed on the Petitioner under inter alia section 302 IPC.
2. That the contents of the accompanying Curative Petition are not being repeated for the sake of brevity, however, the same may be read as part of the present application.
3. That the present Curative Petitioner has established a good prima facie case on merits. The Petitioner is facing execution of death warrants and hence the balance of convenience tilts overwhelmingly in his favour and against the respondents. No

prejudice would be caused to the respondents if the interim reliefs as prayed for are granted. On the other hand grave prejudice would be caused to the Petitioner and his family if the reliefs as prayed for are not granted. That it is in the interests of justice that the judgment dated 05.05.2017 rendered by this Court in Crl A. 609-610/2017 and other connected matters, as confirmed in Review Petition (Crl.) No. D 44603 of 2019 vide order dated 18.12.2019, are stayed by this Court.

4. The requirements for a curative petition under Rupa Hurra v. Ashok Hurra – that of violation of principles of natural justice and gross miscarriage of justice – have been satisfied. The Petitioner has a good prima facie case for the reconsideration of the judgment dated 05.05.2017 in Criminal Appeal No. 609 of 2017, as confirmed in Review Petition (Crl.) D No. 44603 of 2019 vide order dated 18.12.2019.
5. That this application is bona fide and in the interests of justice.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court be pleased to:

- a) Stay the common judgment and final order dated 05.05.2017 passed by this court in Crl.A. No. 609/2017, and as confirmed by order dated 18.12.2019 in Review Petition (Crl.) D No. 44603 of

2019; and stay the execution of the death sentence imposed on the Petitioner; and

b) and pass any further orders as this Hon'ble Court may deem fit and proper in the interests of justice

FILED BY



IN THE SUPREME COURT OF INDIA

Crl M.P. No _____ of 2020

in

CURATIVE PETITION(Crl) No _____ of 2020

IN REVIEW PETITION NO D NO. 44603 OF 2019

IN CRIMINAL APPEAL NO. 609-610 OF 2017

(ARISING OUT OF COMMON ORDER DATED 05.05.2017 IN CRIMINAL
APPEAL NO 609-610 OF 2017)

IN THE MATTER OF:

Akshay Kumar Singh



... Petitioner

State (NCT of Delhi)

... Respondent

AN APPLICATION FOR EXEMPTION FROM FILING CERTIFIED COPY OF
JUDGMENT DATED 18.12.2019.

MOST RESPECTFULLY SHOWETH:

1. That the accompanying curative petition has been filed under Article 142 of the Constitution. The Petitioner is filing the present petition for setting aside the judgment dated 05.05.2017 passed in Criminal Appeal No. 609 of 2017.
2. The present Petitioner had also filed a review petition, Review Petition (Crl) D No. 44603 of 2019, which was dismissed vide order dated 18.12.2019 of this Hon'ble Court.

3. That the contents of the accompanying Curative Petition are not being repeated for the sake of brevity, however, the same may be read as part of the present application.
4. That the present Petitioner/Applicant have approached this Court under Article 142 of the Constitution to address abuse of process of court and gross miscarriage of justice.
5. That the present Petitioner/Applicant has furnished an uncertified copy of the judgement dated 18.12.2019 and undertake to file a certified copy of the same as and when called upon to do so.
6. That the Petitioner/Applicant have not furnished a certified copy of the order since the matter is of some urgency and they have not had the time to procure a certified copy. Additionally, this Hon'ble Court was shut for a short period of time in the duration between the review being dismissed and the current curative petition being filed.
7. That grave and irreparable harm and injury will be caused to the Petitioner/Applicant if not allowed to rely upon the uncertified copy of the judgment dated 18.12.2019 during the course of the hearing of this curative petition.
8. That no prejudice will be caused to the Respondents if the Petitioners/Applicants are allowed to rely on the uncertified copy of the judgment dated 18.12.2019.
9. The requirements for a curative petition under Rupa Hurra v. Ashok Hurra – that of abuse of process of the court and gross miscarriage of justice – have been satisfied. The Applicant has a good prima

facie case for the reconsideration of the judgment dated 05.05.2017 in Criminal Appeal No. 609 of 2017, as confirmed in Review Petition (Crl) D No. 44603 of 2019 vide order dated 18.12.2019.

10. It is submitted that new grounds have been raised in the Curative Petition that have not already been raised in the Review Petition, which was dismissed vide judgment dated 18.12.2019.
11. That this application is bona fide and in the interest of justice.



It is therefore most respectfully prayed that this Court be pleased to:

- a) Exempt the Petitioner from filing a certified copy of the judgment in Review Petition (Crl) D No. 44603 of 2019.
- b) And pass any other orders that this Hon'ble Court may deem fit and proper in the interests of justice.

FILED