VINAY SHARMA & ANR. A

v.

STATE OF NCT OF DELHI

(Review Petition (Crl.) Nos. 671-673 of 2017)

In B

(Criminal Appeal Nos. 608 & 609-610 of 2017)

JULY 09, 2018

**[DIPAK MISRA, CJI, R. BANUMATHI AND ASHOK BHUSHAN, JJ.]** C

*Review – Nirbhaya Case – Gang rape and murder of a young woman – All four accused convicted and sentenced to death by the Trial Court – Death penalty confirmed by the High Court – Appeals dismissed by the Supreme Court – Review petitions filed by the two petitioners-accused – Held: In review petitions, petitioners cannot ask the Court to re-hear the appeals on merits which submissions had already been noted, considered and rejected – Criminal appeals filed by the petitioners against the judgment of the High Court were heard by the Supreme Court giving them sufficient time for raising all possible submissions and same were duly considered in the main judgment – In instant case, no ground has been made out which may furnish any ground to review the judgment – Supreme Court Rules, 2013 – Or.XLVII, r.1 – Constitution of India – Art.137.* D E

**Dismissing the Review Petitions, the Court**

**HELD: 1. An application to review a judgment is not to be lightly entertained and this Court could exercise its review jurisdiction only when those grounds are made out as provided in Order XLVII Rule 1 of the Supreme Court Rules, 2013 framed under Article 145 of the Constitution of India. As per rule, review in a criminal proceeding is permissible only on the ground of error apparent on the face of the record. [Paras 20, 21][927-C-D, F]** F G

**2. The submission made by petitioners attacking the evidence of PW-1 sole eye-witness, who was also injured in the incident need not to be considered in these review petitions. All submissions impeaching evidence of PW-1 were made when the** H

**appeals were heard on merit. This Court had considered all submissions attacking the evidence of PW-1 and after examining the relevant evidences had relied on evidence of PW-1. In the review petitions, petitioners cannot ask the Court to re-hear the appeals on merits which submissions had already been noted, considered and rejected. [Para 28][933-E-G]**

**3. The submission of Petitioners that Bus Ex.P-1, has been falsely implicated is also stated to be rejected. All these submissions were considered by this Court while delivering the judgment in paragraphs 98-107. This Court has rejected the submission of the petitioners that it was a case of plantation of Bus, the Bus was found to be involved in the incident from the evidence on record. [Para 29][933-G-H]**

**4. All the contentions raised regarding the three dying declarations of the victim have been considered in detail. Considering all the three dying declarations, in the light of well-settled principles, this Court held that all the three dying declarations are true, voluntary and consistent. [Para 35][935-E-F]**

**5. The plea of *alibi* put forth by petitioner no.1 that he was present in the musical programme organised by the SCC Unit of the Church in the DDA Park in his locality has been elaborately considered by this Court which has also referred to the evidence of PW-84 and PW-85 who have deposed that their church(es) never organised any musical programme/event in the DDA park. While considering the plea of *alibi* raised by petitioner no.1 referring to the evidence of DW-5 mother of petitioner no.1, DW-7 and DW-9 this Court held that the plea of *alibi* raised by petitioner no.1 was not acceptable. [Para 39][936-G-H; 937-A-C]**

**6. Plea of alibi raised by petitioner no.1 was also considered in the light of the footprints lifted from the bus (Ext.P/1). PW-46 Senior Scientific Officer (Fingerprints), CFSL, CBI examined the chance prints lifted from the bus marked as "Q.1" and "Q.4" was found identical with the left palmprint and right thumb impression of petitioner no.1. After referring to the evidence of PW-46 and the expert report (Ext. PW-46/D), this Court held that the evidence clearly establishes the presence of petitioner**

**no.1 in the bus. There is no merit in the contention that the plea of *alibi* was not considered by this Court. [Para 40][937-C-E]**

**7. Likewise, video clippings relied upon by petitioner no.1 (Ext.DW-10/1) was considered in the judgment wherein this Court held that petitioners were not in the DDA District Park at 08:16 pm on 16.12.2012. [Para 41][937-F]**

**8. The issue of juvenility of petitioner no.1 was considered by the trial court and trial court on the basis of the materials on record held that petitioner No.1 was not a juvenile. The trial court on being fully satisfied that petitioner is not a juvenile has rightly rejected the application for ossification test submitted by petitioner No.1. [Para 42][937-G-H]**

**9. The submission of the petitioner No.2 that he was juvenile at the time of occurrence was also considered by the trial court and rejected. The trial court on the basis of the material placed before it had rightly concluded that petitioner No.2 was not a juvenile. The respondent has rightly referred to the proceedings of trial court dated 10.09.2013. In this respect this submission also does not furnish any ground for review of the judgment. [Para 43][938-A-B]**

**10. The criminal appeals filed by the appellants (petitioners herein) against the judgment of the High Court were heard by this Court giving them sufficient time for raising all possible submissions. The hearing in criminal appeals continued about 38 days. The appellants/petitioners had made elaborate submissions which were all duly considered in main judgment. In these review petitions no ground has been made out which may furnish any ground to review the judgment. [Para 44][938-B-D]**

*Kamlesh Verma v. Mayawati and others* **(2013) 8 SCC 320: [2013] 11 SCR 25;** *Vikram Singh alias Vicky Walia and another v. State of Punjab and another* **(2017) 8 SCC 518 – relied on.**

*Bachan Singh v. State of Punjab* **(1980) 2 SCC 684;** *Sow Chandra Kante and another v. Sheikh Habib* **(1975) 1 SCC 674** *P.N. Eswara Iyer and others v. Registrar, Supreme Court of India* **(1980) 4 SCC 680: [1980] 2 SCR 889 – referred to.**

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**Case Law Reference**

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|---|---|---|
| **(1980) 2 SCC 684** | **referred to** | **Para 13** |
| **(1975) 1 SCC 674** | **referred to** | **Para 20** |
| **[1980] 2 SCR 889** | **referred to** | **Para 21** |
| **[2013] 11 SCR 25** | **relied on** | **Para 22** |
| **(2017) 8 SCC 518** | **relied on** | **Para 23** |

B

CRIMINAL APPELLATE JURISDICTION: Review Petition (Criminal) Nos. 671 - 673 of 2017 in Criminal Appeal No. 608 & 609-610 of 2017.

C From the Judgment and Order dated 13.03.2014 of the High Court of Delhi at New Delhi in Criminal Appeal No. 1399 & 1414 of 2013 & Death Reference No. 6 of 2013.

A. P. Singh, V. P. Singh, Ms. Geeta Chauhan, Ms. Pratima Rani, Pawan Trivedi, Ms. Surekha Srivastava, S. P. Singh, C. M. Sharma, Harshit Bhadauria for M. M. Kashyap, Advs. for the petitioners.

D Sidharth Luthra, Sr. Adv., Ms. Supriya Juneja, Ms. Drishti Harpalani, Kumar Vaibhav, Mrinal Srivastava, Karan Khaitan, Sameer Chaudhary, Advs. for the respondent.

The Judgment of the Court was delivered by

E **ASHOK BHUSHAN, J.** 1. These review petitions have been filed by two applicants Vinay Sharma-accused No.1 and Pawan Kumar Gupta-accused No.2 to review the judgment of this Court dated 05.05.2017 by which judgment this Court had dismissed the criminal appeals filed by the petitioners challenging the order of the High Court confirming the death reference and dismissing the criminal appeals filed

F by the petitioners against the order of conviction and award of death sentence.

2. Both the petitioners were tried for rape and murder of a 23 years' age lady -Nirbhaya (changed name). The trial court convicted the petitioners along with three others and awarded death sentence to

G all the four accused. Death reference No.6 of 2013 Was sent by the trial court to the High Court. Separate criminal appeals were also filed by the petitioners challenging the judgment of the trial court. Delhi High Court vide its judgment dated 13.03.2014 confirmed the death penalty to all the four convicts including petitioners, Vinay Sharma, appellant No.1 in Criminal Appeal No. 609 of 2017, Pawan Kumar Gupta, appellant

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No.1 in Criminal Appeal Nos.608 of 2017. The appeals were dismissed by the judgment of this Court dated 05.05.2017. The petitioners aggrieved by the said judgment dated 05.05.2017 by which all the appeals were dismissed have filed these review petitions praying for reviewing the judgment dated 05.05.2017.

3. We have heard the learned counsel, Shri A.P. Singh appearing for the petitioners and Shri Sidharth Luthra, learned senior counsel for the State.

4. Shri A.P. Singh learned counsel for the peititoners in support of the review petitions has urged several grounds. Shri Singh submits that death penalty in India needs to be abolished. He submits that there are several reasons for opposing death penalty which broadly speaking, they fall under two categories, moral and practical. This also goes against the principle of non-violence that India has advocated for decades. In the year 1966, the Bill introducing death penalty abolition was passed by the House of Parliament in England. He further submitted that in a large number of countries death penalty has been abolished. In his submission he has referred the names of several Latin American countries and several Australian States.

5. Apart from above, several other contentions have been advanced by Shri A.P. Singh which we proceed to note in seriatim. Shri Singh submits that investigation and trial has been carried out with the sole purpose of survival of the prosecuting agency. The investigation is engaged in maladroit effort to book the vulnerable and the innocent so as to disguise and cover there inefficiency to catch the real culprits. The political class is using investigating agencies as tools for partisan political objective.

6. PW.1, during his cross-examination was confronted with his statement Ex.PW-1/A qua the factum of not disclosing the use of iron rod, the description of Bus, the name of assailants either in MLC Ex.PW-51/A or in his complaint Ex.PW-1/A. The Bus, Ex.P-1 has been falsely implicated in the present case. CCTV footage was not properly examined to check all possible Buses plying on the said route. The Bus was taken to Tyagraj Stadium instead of the Police Station to avoid the media and to facilitate the planting of evidence.

7. That the three dying declarations have been contrived and deserved to be kept out of consideration and the dying declarations do

not inspire confidence for variations in them relating to the number of assailants, the description of Bus, the identity of accused etc. If at all any dying declaration is to be relied on, it is first dying declaration made on 16.12.2012 and recorded by PW-49, Dr. Rashmi Ahuja, which dying declaration only states that there were 4 to 5 persons in the Bus.

8. In the statement recorded in MLC Ex.PW-49/A prosecutrix has neither named any of the accused nor mentioned the factum of iron rod being used by the accused persons. The prosecutrix could not have given such a lengthy dying declaration on 21.12.2012 when she was continuously on morphine. Third dying declaration recorded by the Metropolitan Magistrate, PW-30, on 25.12.2012, through gesture and writings is controverted by allegations of false medical fitness certificate and absence of videography. The use of iron rod was not mentioned by PW-1 in his statement. Had the iron rod been really inserted through the vagina, it would have first destroyed the uterus before the intestines were pulled out. There were no rod related injuries in her uterus and medical science too does not assist the prosecution in their claim.

9. The DNA test can not be treated as accurate, since there was blood transfusion as the prosecutrix required blood and when there is mixing of blood, the DNA profile is likely to differ.

10. The High Court has failed to appreciate that petitioner No.1, Vinay Sharma on the date of incident and time was in a musical programme arranged by S.C.C. unit of Church in his locality and he was there from 8.15 p.m. to 11/12 p.m. on 16.12.2012. The presence of petitioner No.1 in musical show has been witnessed by defence witnesses who had deposed before the Court. Ram Babu,DW-10 had also videographed the show from the mobile phone of petitioner No.1 which was produced before the trial court.

11. The application for ossification test submitted by petitioner No.1 was wrongly turned down by the trial court. The petitioner was actually born on 01.03.1995 but his date of birth given by his father was 01.03.1994 which was only for the purpose of getting him admitted in the MCD School. The petitioner was only 17 years 8 months and 15 days old at the time of incident.

12. The real date of birth of petitioner No.2 is 08.10.1996 and he was also minor on the date of incident. The petitioners were not habitual

offenders. Number of dacoits have surrendered for the last several decades and have reformed themselves. A

13. Shri Sidharth Luthra, learned senior counsel appearing for the State refuting the submissions of the petitioners submitted that the petitioners already in a long hearing of the appeals before this Court have made all possible submissions which have been considered by this B Court while deciding the appeals on 05.05.2017, the review petition is nothing but an effort by the petitioners to re-argue the appeals on merits which is not permissible under the law. No grounds have been made out to consider the review petitions. In so far as the submission of the learned counsel for the petitioners that the death penalty be abolished in India, C Shri Luthra submits that the said submission need not to be gone into in these review petitions. It is submitted that death penalty has already been upheld by this Court by the Constitution Bench of this Court in ***Bachan Singh vs. State of Punjab, (1980) 2 SCC 684.*** He submits that death penalty being still in the statute book it is not open for the petitioners to argue that the death penalty be abolished in this country. D The abolition of the death penalty is a legislative function and unless the Parliament passes an amending Act it is not for the Courts to consider the said submission.

14. With regard to the submissions of the petitioners that investigation was faulty and prosecuting agencies had roped in the E petitioners, it is submitted that prosecution was scientifically carried out in efficient manner which has also been noted by this Court and any person against the prosecution are unjustified and have to be ignored.

15. The evidence of PW-1 and all infirmities which are sought to be pointed out in these review petitions have already been considered F and gone into by this Court. Learned counsel has referred to in paragraphs 65 to 97 and 425 to 434 of the judgment where this Court has thoroughly considered all submissions regarding evidence of PW-1 and this Court has rejected the inconsistencies, shortcomings and omissions as being pointed by the petitioners. Coming to the submission that the Bus, P-1 has been falsely implicated, Shri Luthra submits that apart from CCTV G footage where Bus was noticed twice passing in front of the hotel, there were other evidences, namely finger prints, wound stains and other objects obtained from the Bus which proved that the Bus was involved in the incident. Shri Luthra has referred to paragraphs 104 and 105 where this argument has been noted and rejected by this Court. H

A 16. On the submissions raised by the learned counsel for the petitioners regarding dying declarations, Shri Luthra submits that all arguments pertaining to dying declarations have been considered and dealt with by this Court in paragraphs 148 to 192 of the judgment dated 05.05.2017 and petitioners cannot be allowed to reagitate the same which have already been considered and rejected by this Court. With regard to B first dying declaration which was the case history recorded by Dr. Rashmi Ahuja, this Court has considered all aspects and had already held that there was no infirmity in noticing the facts as could be disclosed by the prosecutrix at that time when she had undergone traumatic experience immediately before.

C 17. The non-mention of use of iron rod in the MLC or PW-1's statement has also been considered by this Court and this Court had held and found use of iron rod from the evidence. The statement of PW-1 pertaining to use of iron rod to injure the prosecutrix has also been considered and noticed by this Court. The DNA reports have been D examined in detail by this Court including blood transfusion which has also been considered in paragraphs 233-234. With regard to alibi of Vinay Sharma that he, at the relevant time, was in a musical programme, this Court in its judgment dated 05.05.2017 has considered and rejected the plea of alibi after consideration of Defence evidence. The same argument cannot be allowed to be raised in the review petition. In so far as the E argument that petitioner No.1, Vinay Sharma was a juvenile at the time of the commission of the offence, Shri Luthra mentioned order of the trial court dated 10.01.2013 which mentioned that age verification report of Vinay and Pawan have been received and they do not dispute the age verification report filed by the IO. The prosecuiton has placed the certified F copy of the admission register of the first attended school along with the certified copy of the admission form of the first class of accused-Vinay Sharma and trial court after considering all evidences had held that Vinay Sharma was more than 18 years of age at the time of commission of offence. On the claim that Pawan was a juvenile, Shri Luthra referred to the order dated 10.01.2013 where age verification report of Pawan G has been received and also certified copies had been filed on record. The report had referred to the written statement of the parents of both these accused where they have confirmed the age of their wards. There was no infirmity in the trial court taking decision that both were major and the trial court proceeded accordingly. There is no substance in the H submission raised by the learned counsel for the petitioners.

18. We have considered the submissions of the parties and perused the records. A

19. Before we enter into the submissions raised in these review petitions, it is useful to recapitulate the scope and grounds available for exercise of jurisdiction by this Court under Article 137. Order XLVII Rule 1 of the Supreme Court Rules, 2013 dealing with review is as follows: B

> "i. The Court may review its judgment or order, but no application for review will be entertained in a civil proceeding except on the ground mentioned in Order XLVII, rule 1 of the Code, and in a criminal proceeding except on the ground of an error apparent on the face of the record." C

20. An application to review a judgment is not to be lightly entertained and this Court could exercise its review jurisdiction only when those grounds are made out as provided in Order XLVII Rule 1 of the Supreme Court Rules, 2013 framed under Article 145 of the Constitution of India. This Court in ***Sow Chandra Kante and another v. Sheikh Habib, (1975) 1 SCC 674*** speaking through Justice V.R. Krishna Iyer on review has stated the following in para 10: D

> "10. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient." E

21. As per rule, review in a criminal proceeding is permissible only on the ground of error apparent on the face of the record. This Court in ***P.N. Eswara Iyer and others v. Registrar, Supreme Court of India,(1980) 4 SCC 680*** while examining the review jurisdiction of this Court *vis a vis* criminal and civil proceedings had made the following observations in paras 34 and 35: F G

> "34. The rule, on its face, affords a wider set of grounds for review for orders in *civil proceedings*, but limits the ground vis-a-vis *criminal proceedings* to "errors apparent *on the face* of the record". If at all, the concern of the law to avoid judicial error H

A should be heightened when life or liberty is in peril since civil penalties are often less traumatic. So, it is reasonable to assume that the framers of the rules could not have intended a restrictive review over criminal orders or judgments. It is likely to be the other way about. Supposing an accused is sentenced to death by the Supreme Court and the "deceased" shows up in court and the court discovers the tragic treachery of the recorded testimony. Is the court helpless to review and set aside the sentence of hanging? We think not. The power to review is in Article 137 and it is equally wide in all proceedings. The rule merely canalises the flow from the reservoir of power. The stream cannot stifle the source. Moreover, the dynamics of interpretation depend on the demand of the context and the lexical limits of the test. Here "record" means any material which is already on record or may, with the permission of the court, be brought on record. If justice summons the Judges to allow a vital material in, it becomes part of the record; and if apparent error is there, correction becomes necessitous.

35. The purpose is plain, the language is elastic and interpretation of a necessary power must naturally be expansive. The substantive power is derived from Article 137 and is as wide for criminal as for civil proceedings. Even the difference in phraseology in the rule (Order 40 Rule 2) must, therefore, be read to encompass the same area and not to engraft an artificial divergence productive of anomaly. If the expression "record" is read to mean, in its semantic sweep, any material even later brought on record, with the leave of the court, it will embrace subsequent events, new light and other grounds which we find in Order 47 Rule 1, CPC. We see no insuperable difficulty in equating the area in civil and criminal proceedings when review power is invoked from the same source."

22. The scope of review jurisdiction has been considered by this Court in a number of cases where well settled principles have been reiterated time and again. It is sufficient to refer to judgment of this Court in ***Kamlesh Verma vs. Mayawati and others (2013) 8 SCC 320***, where this Court has elaborately considered the scope of review. In paras 17, 18, 20.1 and 20.2 following has been laid down:

**"17.** In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in *Kerala SEB* v. *Hitech Electrothermics & Hydropower Ltd.* held as under: (SCC p. 656, para 10)

"*10.* … In a review petition it is not open to this Court to reappreciate the evidence and reach a different conclusion, even if that is possible. The learned counsel for the Board at best sought to impress us that the correspondence exchanged between the parties did not support the conclusion reached by this Court. We are afraid such a submission cannot be permitted to be advanced in a review petition. The appreciation of evidence on record is fully within the domain of the appellate court. If on appreciation of the evidence produced, the court records a finding of fact and reaches a conclusion, that conclusion cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. It has not been contended before us that there is any error apparent on the face of the record. To permit the review petitioner to argue on a question of appreciation of evidence would amount to converting a review petition into an appeal in disguise."

**18.** Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications. This Court in *Jain Studios Ltd.* v. *Shin Satellite Public Co. Ltd.*, held as under: (SCC pp. 504-505, paras 11-12)

"*11.* So far as the grievance of the applicant on merits is concerned, the learned counsel for the opponent is right in submitting that virtually the applicant seeks the same relief which had been sought at the time of arguing the main matter and had been negatived. Once such a prayer had been refused, no review petition would lie which would convert rehearing of the original matter. It is settled law that the power of review cannot be

A confused with appellate power which enables a superior court to correct all errors committed by a subordinate court. It is not rehearing of an original matter. A repetition of old and overruled argument is not enough to reopen concluded adjudications. The power of review can be exercised with extreme care, caution and circumspection and only in exceptional cases.

B *12.* When a prayer to appoint an arbitrator by the applicant herein had been made at the time when the arbitration petition was heard and was rejected, the same relief cannot be sought by an indirect method by filing a review petition. Such petition, in my opinion, is in the nature of 'second innings' which is impermissible and unwarranted and cannot be granted.""

C **20.1.** When the review will be maintainable:

(*i*) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

D (*ii*) Mistake or error apparent on the face of the record;

(*iii*) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in

E *Chhajju Ram* v. *Neki* and approved by this Court in *Moran Mar Basselios Catholicos* v. *Most Rev. Mar Poulose Athanasius* to mean "a reason sufficient on grounds at least analogous to those specified in the rule". The same principles have been reiterated in *Union of India* v. *Sandur Manganese & Iron Ores Ltd.*

F **20.2.** When the review will not be maintainable:

(*i*) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(*ii*) Minor mistakes of inconsequential import.

G (*iii*) Review proceedings cannot be equated with the original hearing of the case.

(*iv*) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

H (*v*) A review is by no means an appeal in disguise whereby an

erroneous decision is reheard and corrected but lies only for patent error. A

(*vi*) The mere possibility of two views on the subject cannot be a ground for review.

(*vii*) The error apparent on the face of the record should not be an error which has to be fished out and searched. B

(*viii*) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition.

(*ix*) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived." C

23. This very Bench speaking through one of us (Justice Ashok Bhushan) had occasion to consider the ambit and scope of the review Jurisdiction in a criminal proceeding in ***Vikram Singh alias Vicky Walia and another vs. State of Punjab and another (2017) 8 SCC 518***. In D para 23 of the judgement following has been stated:

"23. In view of the above, it is clear that scope, ambit and parameters of review jurisdiction are well defined. Normally in a criminal proceeding, review applications cannot be entertained except on the ground of error apparent on the face of the record. E Further, the power given to this Court under Article 137 is wider and in an appropriate case can be exercised to mitigate a manifest injustice. By review application an applicant cannot be allowed to reargue the appeal on the grounds which were urged at the time of the hearing of the criminal appeal. Even if the applicant succeeds in establishing that there may be another view possible on the F conviction or sentence of the accused that is not a sufficient ground for review. This Court shall exercise its jurisdiction to review only when a glaring omission or patent mistake has crept in the earlier decision due to judicial fallibility. There has to be an error apparent on the face of the record leading to miscarriage of justice to G exercise the review jurisdiction under Article 137 read with Order 40 Rule 1. There has to be a material error manifest on the face of the record with results in the miscarriage of justice."

24. We first take up the submission of Shri A.P. Singh regarding the abolition of death penalty in this counrty. The Constitution Bench of H

A this Court in ***Bachan Singh (supra)*** examined the constitutional validity of death penalty as provided under Section 302 of IPC. After elaborately considering the existence of death penalty in the Penal Code, constitutional provisions of Articles 19 and 21, and international covenant on civil and criminal rights, this court held that death penalty as contained in Penal Code is constitutionally valid. In paragraph 132 following was held:

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"132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302, Penal Code on the ground of

C reasonableness in the light Of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning

D and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioner's argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of

E people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three

F decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the! framers of the Indian Constitution were fully aware as we

G shall presently show they were of the existence of death penalty as punishment for murder, under the Indian Penal Code, if the 35th Report and subsequent Reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-

H sentence hearing and sentencing procedure on conviction for

murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the CrPC, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter or the ethos of Article 19."

25. The submission of Mr. Singh that death penalty has been abolished by the Parliament of U.K. in the year 1966 and several Latin American countries and Australian States have also abolished death penalty is no ground to efface the death penalty from the statute book of our country. So far the death penalty remains in the Penal Code the Courts cannot be held to commit any illegality in awarding death penalty in appropriate cases.

26. In view of the above, no ground to review judgment is made out on the strength of the above submissions.

27. Now, coming to the submissions made by Shri Singh attacking the investigation and prosecution agencies, suffice it to say that submissions and arguments are general in nature and not based on any substantial ground so as to point out any such error in the trial so as to furnish any ground to review any judgment.

28. The submission made by Shri Singh attacking the evidence of PW-1 sole eye-witness, who was also injured in the incident need not to be considered in these review petitions. All submissions impeaching evidence of PW-1 were made when the appeals were heard on merit. This Court had considered all submissions attacking the evidence of PW-1 in paragraphs 65-97 and 425 to 434. This Court after examining the relevant evidences had relied on evidence of PW-1. In the review petitions, petitioners cannot ask the Court to re-hear the appeals on merits which submissions had already been noted, considered and rejected.

29. The submission of Shri Singh that Bus Ex.P-1, has been falsely implicated is also stated to be rejected. All these submissions were considered by this Court while delivering the judgment in paragraphs 98-107. This Court has rejected the submission of the petitioners that it was a case of plantation of Bus, the Bus was found to be involved in the incident from the evidence on record.

30. Contention of Mr. V.K. Singh is that the bus No. DL 1 PC 0149 (Ext. P/1) has been falsely implicated and the CCTV Footage cannot be relied upon and this aspect is not properly considered by this Court. The exact points now raised by Mr. Singh in para (M) of the review petition were considered by this Court in paras (98) to (113) and paras (435) to (439). In para (101), this Court has referred to the evidence of PW-76 Gautam Roy, HoD, Computer Cell, Forensic Division who has examined the CCTV Footage received by him in a Pen Drive in two sealed parcels. In paras (98) to (113), this Court has referred to the evidence regarding retrieval of CCTV Footage in the presence of PW-67 Pramod Kumar Jha, owner of the hotel at Delhi Airport and the photographs taken thereon to prove the involvement of the bus No. DL 1 PC 0149 (Ext. P/1).

31. To show the involvement of the bus No. DL 1 PC 0149 (Ext. P/1), in paras (108) to (113), this Court has also elaborately considered the evidence of PW-81, Dinesh Yadav, owner of the bus and PW-16 Rajeev Jakhmola, Manager (Admn.) of Birla Vidya Niketan School, Pushp Vihar who have stated that the bus No. DL 1 PC 0149 (Ext. P/1) was routinely driven by Ram Singh (deceased accused) and he was the driver of the bus.

32. Involvement of the bus No. DL 1 PC 0149 (Ext. P/1) was also held to be substantiated by matching of DNA profile of the material objects lifted from the bus No. DL 1 PC 0149 (Ext. P/1) which were found consistent with that of the victim and the complainant. In paras (431) and (438), the same has been well-considered. Matching of DNA profile developed from the articles seized from the bus like 'hair' recovered from the third left row of the bus and the blood-stained seat cover of the bus and the bunch of hair recovered from the floor of the bus with the DNA profile of the victim was held to be unimpeachable evidence establishing the involvement of the bus in the commission of the offence. The oral and scientific evidence has been elaborately considered by this Court in upholding the findings of the High Court as to the involvement of the bus. The petitioner/accused cannot reagitate the same point again.

33. Mr. Singh has *inter alia* made various submissions regarding reliability of the three dying declarations:- (i) failure to disclose the names of any of the accused in the first dying declaration (Ext.PW-49/A) and

therefore, the second and third dying declarations are tutored; (ii) the three dying declarations cannot be relied upon due to variations and improvements; and (iii) sudden appearance of the name of 'Vipin' (in the third dying declaration) makes it doubtful and no explanation is offered.

34. The victim made three dying declarations:- (i) statement recorded by PW-49 Dr. Rashmi Ahuja immediately after the victim was admitted to the hospital; (ii) Dying declaration (Ex.PW-27/A) recorded by PW-27 SDM Usha Chaturvedi on 21.12.2012; and (iii) dying declaration (Ex.PW-30/D) recorded by PW-30 Pawan Kumar, Metropolitan Magistrate on 25.12.2012 at 1:00 p.m. by multiple choice questions and recording answers by gestures and writing. In the first dying declaration (Ex.PW-49/A), the prosecutrix has stated that more than two men committed rape on her, bit her on lips, cheeks and breast and also subjected her to unnatural sex. In the second dying declaration (Ex.PW-27/A) recorded by PW-27, the victim has narrated the entire incident in great detail, specifying the role of each accused, rape committed by number of persons, insertion of iron rod in her private parts, description of the bus, robbery committed and throwing of both the victims out of the moving bus in naked condition. On 25.12.2012 at 1:00 p.m., PW-30 Pawan Kumar, Metropolitan Magistrate recorded the statement by putting multiple choice questions to the victim and by getting answers through gestures and writing. While making the third declaration, the victim also tried to reveal the names of the accused by writing in her own handwriting viz. "*Ram Singh, Mukesh, Vinay, Akshay, Vipin, Raju*".

35. All the contentions raised regarding the three dying declarations have been considered in detail in paras (148) to (192) and paras (395) to (417). Considering all the three dying declarations, in the light of well-settled principles, this Court held that all the three dying declarations are true, voluntary and consistent. Insofar as third dying declaration, this Court, in paras (408) to (412) held that the dying declaration made through signs, gestures or by nods are admissible as evidence and that proper care was taken by PW-30 Pawan Kumar, Metropolitan Magistrate and the third dying declaration recorded by in response to the multiple-choice questions by signs, gestures made by the victim are admissible as evidence. In the third dying declaration, the victim also wrote the names of the accused persons "*Ram Singh, Mukesh, Vinay, Akshay, Vipin, Raju*". So far as the name of accused Vipin written by the prosecutrix

A in the third dying declaration has been elaborately considered by this Court in paras (150) and (188) of the judgment.

36. Non-mention of use of iron rod in MLC, Ex.PW-49/A has also been noticed by this Court in its judgment and this Court has given reasons for not finding any fault in the MLC, Ex.PW-49/A. The B submissions of Shri Singh that on 21.12.2012 the prosecutrix was not fit to record her dying declaration has also been rejected. With regard to the morphine injection which was given to prosecutrix, the statement of Doctor, the time of injection and the effect of morphine was categorically noted and considered and no fault was found with the second dying declaration. The submission having been noted, considered and dealt C with by this Court in the judgment, the petitioners cannot be allowed to reagitate the same issue again and again. Non-mention of use of iron rod in the statement of PW-1 has also been noted in detail by this Court. That in second dying declaration on 21.12.2012 the prosecutrix has mentioned the use of iron rod by which she was injured which is also D noted by the Court. This Court noted the injuries and medical evidence and has concluded that accused had used iron rod. Those submissions having been raised, dealt with by this Court in the main judgment, the petitioners cannot be allowed to raise the same again.

37. With regard to reports regarding DNA, this Court elaborately E considered the whole concept of DNA and reports received. The attack of the petitioners on the ground of blood transfusion and other submissions on DNA report having been considered and has rightly been relied on by this Court, the submissions pertaining to DNA are nothing but repitition of submissions which have been noted and rejected by this Court in the main judgment.

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38. Contention of Mr. V.K. Singh is that accused Vinay Sharma raised the plea of *alibi* that he had attended a musical programme arranged by SCC Unit of the Church in his locality and he was there from 08:15 pm to 11.00/12.00 pm on 16.12.2012 and he has produced the video clipping to prove his presence there in the programme and the G same has not been considered by this Court.

39. The plea of *alibi* put forth by accused Vinay Sharma that he was present in the musical programme organised by the SCC Unit of the Church in the DDA Park in his locality has been elaborately considered in paras (258) to (269). In para (267) of the judgment, this Court referred

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to the evidence of PW-83 Shri Angad Singh, Deputy Director (Horticulture), DDA who has deposed that no permission was granted by any authority to organise any function in the evening of 16.12.2012 in the DDA District Park, Hauz Khas, New Delhi. This Court has also referred to the evidence of PW-84 Father George Manimala of St. Thomas Church and PW-85 Brother R.P. Samuel, Secretary, Ebenezer Assembly Church who have deposed that their church(es) never organised any musical programme/event in the DDA District Park, Hauz Khas in the evening of Sunday i.e. on 16.12.2012. While considering the plea of *alibi* raised by Vinay Sharma in paras (258) to (269) referring to the evidence of DW-5 Smt. Chamba Devi, mother of accused Vinay Sharma, DW-7 Kishore Kumar Bhat and DW-9 Manu Sharma, this Court held that the plea of *alibi* raised by accused Vinay Sharma was not acceptable. Petitioner/accused Vinay Sharma now cannot reagitate the same point.

40. Plea of alibi raised by accused Vinay Sharma was also considered in the light of the footprints lifted from the bus (Ext.P/1). PW-46 A.D. Shah, Senior Scientific Officer (Fingerprints), CFSL, CBI examined the chance prints lifted from the bus marked as "Q.1" and "Q.4" was found identical with the left palmprint and right thumb impression of accused Vinay Sharma. After referring to the evidence of PW-46 and the expert report (Ext. PW-46/D), this Court held that the evidence clearly establishes the presence of accused Vinay Sharma in the bus. There is no merit in the contention that the plea of *alibi* was not considered by this Court.

41. Likewise, video clippings relied upon by accused Vinay Sharma (Ext.DW-10/1) was considered in para (263) of the judgment wherein this Court held that accused Vinay Sharma and accused Pawan Gupta were not in the DDA District Park at 08:16 pm on 16.12.2012.

42. Now, coming to the submission regarding juvenility of petitioner, Vinay Sharma. The issue of juvenile was considered by the trial court and trial court on the basis of the materials on record held that petitioner No.1 was not a juvenile. Learned counsel for the respondent has referred to the order of the trial court dated 10.01.2013 which fully supports his submission. The trial court on being fully satisfied that petitioner is not a juvenile has rightly rejected the application for ossification test submitted by petitioner No.1. There is no substance in this submission and no ground is made out to review the judgment.

A 43. Now, coming to the submission of the learned counsel for petitioner No.2 that he was juvenile at the time of occurrence. The said issue was also considered by the trial court and rejected. The trial court on the basis of the material placed before it had rightly concluded that petitioner No.2 was not a juvenile. Learned counsel for the respondent has rightly referred to the proceedings of trial court dated 10.09.2013. In this respect this submission also does not furnish any ground for review of the judgment.

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44. Before closing we need to reiterate that criminal appeals filed by the appellants (petitioners herein) against the judgment of the High Court were heard by this Court giving them sufficient time for raising all possible submissions. The hearing in criminal appeals continued about 38 days. The learned counsel for the appellants/petitioners had made elaborate submissions which were all duly considered by us in our main judgment. In these review petitions no ground has been made out which may furnish any ground to review the judgment. We, thus, find no merit in these review petitions and consequently, the review petitions are dismissed.

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Ankit Gyan Review Petitions dismissed.