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CASE COMMENTARY: MUKESH AND ANR. V. STATE FOR NCT OF DELHI & ORS.

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INTRODUCTION AND FACTS

The morning of December 17th 2012 unfolded with a shocking news for humanity as a 23 years old woman was brutally raped in a moving bus and thrown outside. On the previous night the woman after watching a movie with her male friend in the PVR theatre entered in a bus which in a span of one hour changed her life and finally took away her life. After watching the movie, the woman and her friend entered in an off-duty private bus in South Delhi and paid for their tickets. Soon after they entered the bus, the shutters of the bus were shut and the lights were put-off. The bus was already occupied by 6 men along with the driver. Soon before they can sense danger, her friend was thrown out of the seat and beaten brutally until he fell unconscious. The woman was then dragged to the front cabin where she was brutally raped by the six men of which one was a minor. The crime was so heinous that even humanity fell off in the sight of the news. She was gang-raped for nearly half an hour and was beaten up. An iron rod was inserted in her private parts which caused profuse bleeding and internal injuries. The living monsters ripped her intestines and private parts apart using the iron rod and throwed her and the friend by dragging their hair from the moving bus after robbing them of all their belongings. They even tried to run off the bus over them to confirm their death from which they both survived by a slight movement of their half-dead body. They were finally noticed by a patrolling vehicle at 11pm and was taken to the hospital. The woman had received several treatments both in India and in abroad and had also undergone six major surgeries but she died

of the injuries on 29th December at a hospital in Singapore. The incident resulted in massive protests all over the nation raising serious concerns regarding the safety of women¹.

PROCEDURES AND ISSUES

The investigation and trial procedures in Nirbhaya case² was done properly following all the legal procedures. This added a golden feather in the prosecution's victory and hence it helped in giving the adequate punishment to the demonic culprits. Six men were involved in the crime and the trial court declared death penalty for the four. The driver of the bus died of suicide while undergoing trial and one was a juvenile and he was given the highest punishment under the Juvenile justice act. The convicted approached the High court where the decision of the trial court was affirmed and the appeal was then made to the Supreme court. The major question of law was that the 'rarest of rarest doctrine' was applicable in the case.

JUDGEMENT & REASONING

The Supreme court upheld the decision of the High court by re-applying the principle of the 'rarest of rarest doctrine'. The acts of all the 6 convicted's was utmost heinous and an open challenge towards the humanity. The insertion of iron rod was beyond human imagination and the culprits do not deserve any mercy. The assertion of grievous injuries and throwing the victims out of the moving bus also depicted inhumane cruelty and brutality. The offence was pre-planned and executed with no mercy added to the seriousness of the issue. The culprits were also found guilty of robbing another man who ride on the bus, which itself showed the combined guilty mind of all the men involved in the case. The court concluded the punishment sentence stating that the crime deserves no other punishment than death sentence taking into account the fact that this was one of the most heinous and brutal crime that the humanity has ever witnessed. The crime and its intensity were both disturbing and raised serious concerns regarding the safety of women.

ANALYSIS OF LEGAL ISSUES

1. Rarest of the rarest doctrine: The case involved the application of the rarest of rarest doctrine something which is unusual in the Indian judicial system. While considering the circumstances and the evidences the Hon'ble Supreme court declared that the crime is ultimately inhumane.

¹ White Black Legal, <https://www.whiteblacklegal.co.in/details/unveiling-justice-a-comprehensive-analysis-of-nirbhaya-case-and-it-s-impact-on-legal-reforms-in-india-by-shreya-jha->.

² *Mukesh & Anr. v. State of NCT of Delhi & Ors.*, AIR 2017 SC 2161

2. Capital punishment: On declaring the rarest of the rare doctrine and on conducting the trial procedures, the court awarded the ultimate punishment of capital punishment; death sentence while assessing the cruelty and brutality of the case.
3. Gravity and combination of offences: The final judgement was made after combining the gravity of all the offences that the culprits had committed. This involved the charges of rape, gang rape, dacoity and homicide. The offence was treated as a backlash to the Indian judicial system.
4. Juvenile justice: One among the offenders escaped the hands of justice just because of the fact that he was months away from turning eighteen years of age and subsequently escaped the death penalty and only received three years of imprisonment. The judicial system failed to deliver justice while adhering to the juvenile justice act. This led to widespread protest.

SIGNIFICANCE OF THE CASE IN THE STATUTORY FRAMEWORK

The case acted as catalyst for many major changes in the criminal justice system of India. The parliament constituted justice Verma committee to identify the loop holes of the criminal justice system. As a result, the parliament expanded the definition of rape under sec.375 of the Indian Penal code³ and imposed amendments for ensuring strict punishments for the offenders. More provisions like stalking, voyeurism and acid attack were added into the act as separate offences to ensure more protection of women. The punishments of the gang rape were increased to death penalty if the act resulted in the death or vegetative state of the victim. The juvenile justice act was amended to fit into the evolving need of the justice system. The act made it compulsory to check the intensity of the crime committed by the juvenile rather than simply relying on the age of the offender. Police training sessions were conducted in order to carry out the investigations more efficiently and to adopt a victim-centric approach. Fast track courts were implemented for faster adjudication of cases. In the Kathua rape case⁴, the court relied upon the amendments made as a result of the Nirbhaya case⁵ and sentenced the offenders to severe punishments. Similarly, in the Hathras gang rape case⁶, the court followed the amendments and declared severe punishments.

CONCLUSION

³ The Indian Penal Code, § 375 (1860)

⁴ *State of J&K v. Shubam Sangra*, (2022) 13 SC 350

⁵ *Ibid* at pg.1.

⁶ *Satyama Dubey v. Union of India*, W.P. (C) No. 1118 of 2020 (India)

The Nirbhaya case has resulted in many major changes in the criminal justice system of India and resulted in many reforms in the judiciary as well. But the increasing number of sexual and other offences against women raises serious concerns regarding the effectiveness of all these acts. Recently conducted studies have been showing the increasing crime rate in our country. In a country where the land is treated as a woman, the ones living in itself feels suffocated even to move around. Women are being materialised in all possible ways and what more disturbing is that even children are not safe in our country. Even after all these amendments, a major number of culprits are set free and enjoy the benefit of law. Many cases are dissolved at an initial stage and while during trial using money and power. A Nirbhaya had to suffer in order for other women to feel protected. The real question is, *how many more Nirbhaya's will be yet needed for safeguarding all the women?* This is a question the country and humanity should answer to.