

a does not arrive at a conclusion for validity of euthanasia be it active or passive. So, the only judgment that holds the field in regard to euthanasia in India is *Aruna Shanbaug*<sup>3</sup>, which upholds the validity of passive euthanasia and lays down an elaborate procedure for executing the same on the wrong premise that the Constitution Bench in *Gian Kaur*<sup>1</sup> had upheld the same.

b 17. In view of the inconsistent opinions rendered in *Aruna Shanbaug*<sup>3</sup> and also considering the important question of law involved which needs to be reflected in the light of social, legal, medical and constitutional perspective, it becomes extremely important to have a clear enunciation of law. Thus, in our cogent opinion, the question of law involved requires careful consideration by a Constitution Bench of this Court for the benefit of humanity as a whole.

c 18. We refrain from framing any specific questions for consideration by the Constitution Bench as we invite the Constitution Bench to go into all the aspects of the matter and lay down exhaustive guidelines in this regard. Accordingly, we refer this matter to a Constitution Bench of this Court for an authoritative opinion.

d (2014) 5 Supreme Court Cases 345

(BEFORE RANJANA P. DESAI AND MADAN B. LOKUR, JJ.)

STATE OF RAJASTHAN

Appellant;

Versus

PARMANAND AND ANOTHER

Respondents.

e Criminal Appeal No. 78 of 2005<sup>†</sup>, decided on February 28, 2014

f A. Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 50 and Ss. 8, 18 and 29 — Compliance with S. 50 — Requirements of — Need for individual communication to each accused and independent consent by each accused — Joint communication of the right, not found sufficient in present case — Reversal of conviction, confirmed

g — Police witnesses stated that respondents were informed by a written notice that they have a right to be searched before nearest gazetted officer or nearest Magistrate or before PW 5 J, Superintendent of Police (part of raiding party) — It is not necessary to inform accused person, in writing, of his right under S. 50(1) — His right can be orally communicated to him — But, in the present case, there was no individual communication of right — A common notice was given on which only R-2 is stated to have signed for himself and for R-1 — R-1 did not sign — Furthermore, J being part of

<sup>3</sup> *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454 : (2011) 2 SCC (Civ) 280 : (2011) 2 SCC (Civ) 294

<sup>1</sup> *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648 : 1996 SCC (Civ) 374

<sup>†</sup> From the Judgment and Order dated 14.11.2003 of the High Court of Judicature of Rajasthan at Jaipur Bench, Jaipur in SB Cr. A. No. 788 of 1998

raiding party was not an independent officer and therefore was not a person before whom option of search could be given to comply with S. 50 — Respondents rightly acquitted by High Court (Paras 16 to 20)

**B. Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 50 — Compliance with — Proper compliance — Prior information — PW 10 SI Q informed respondents that they could be searched before nearest Magistrate or before nearest gazetted officer or before PW 5 J, Superintendent of Police, who was part of raiding party — PW 5 J cannot be called an independent officer — It was improper for PW 10 SI Q to tell respondents that a third alternative was available — PW 10 SI Q could not have given a third option to respondents when S. 50 does not provide for it — Such option would frustrate provisions of S. 50 — Search conducted by PW 10 SI Q is thus vitiated (Para 19)**

**C. Narcotic Drugs and Psychotropic Substances Act, 1985 — S. 50 — Applicability of — Conditions for — Personal search — What is — Search of bag — When amounts to personal search — If merely a bag carried by a person is searched without there being any search of his person, S. 50 will have no application — But if bag carried by him is searched and his person is also searched, S. 50 will have application — In the present case, R-1's bag was searched wherefrom opium was recovered — R-1's personal search was also carried out — Personal search of R-2 was also conducted — Therefore, S. 50 will have application (Para 15)**

Sub-Inspector, Office of the Narcotics Commissioner, Kota received information at 1900 hours that the respondents were to hand over about 10 kg opium on 14-10-1997 in the morning between 4.00 a.m. to 6.00 a.m. at Nangdi-Tiraha, Iklera, Chhipabaraud Road to a smuggler. On seeing the raiding party, the respondents tried to run away but they were stopped. The respondents were informed that they have a right to be searched in the presence of a gazetted officer or the nearest Magistrate or before J, the Superintendent, who was present there. They were given a written notice. On that notice, R-2 gave his consent in Hindi in his handwriting that he and R-1 were agreeable to be searched by PW 10 SI Q in the presence of PW 5 J, the Superintendent. R-2 signed on the notice in Hindi and put his thumb impression. R-1 did not sign. There was nothing to show that R-1 had given independent consent. The search was conducted. PW 10 SI Q did not find anything on the person of the respondents. Later on, he searched the bag which was in the left hand of R-1. In the bag, he found black-coloured material which was tested by a chemical kit. It was found to be opium.

Dismissing the appeal, the Supreme Court

*Held:*

A joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its

existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. Hence, the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before the nearest gazetted officer or before the nearest Magistrate. (Para 17)

*State of Punjab v. Balbir Singh*, (1994) 3 SCC 299 : 1994 SCC (Cri) 634; *State of Punjab v. Baldev Singh*, (1999) 6 SCC 172 : 1999 SCC (Cri) 1080; *Dilip v. State of M.P.*, (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377; *Union of India v. Shah Alam*, (2009) 16 SCC 644 : (2010) 3 SCC (Cri) 377, *relied on*

*Parmanand v. State*, Criminal Appeal No. 788 of 1998, order dated 14-11-2003 (Raj), *affirmed*

*Paramjit Singh v. State of Punjab*, (1997) 1 Crimes 242 (P&H); *Dharmaveer Lekhram Sharma v. State of Maharashtra*, (2001) 1 Crimes 586 (Bom), *approved*

*Kalema Tumba v. State of Maharashtra*, (1999) 8 SCC 257 : 1999 SCC (Cri) 1422; *State of H.P. v. Pawan Kumar*, (2005) 4 SCC 350 : 2005 SCC (Cri) 943, *considered*

*State of H.P. v. Pirthi Chand*, (1996) 2 SCC 37 : 1996 SCC (Cri) 210, *referred to*

J-D/52957/CR

Advocates who appeared in this case :

Imtiaz Ahmed, Ms Naghma Imtiaz, Milind Kumar, S.S. Shamsbery, Bharat Sood, Varun Punia, Sandeep Singh, Ritesh Prakash Yadav, Harshvardhan Singh Rathore, Amit Sharma and Ms Ruchi Kohli, Advocates, for the Appellant;

Ms Nidhi, D.K. Thakur, Devendra Jha and Debasis Misra, Advocates, for the Respondents.

*Chronological list of cases cited*

	<i>on page(s)</i>
1. (2009) 16 SCC 644 : (2010) 3 SCC (Cri) 377, <i>Union of India v. Shah Alam</i>	351c-d
2. (2007) 1 SCC 450 : (2007) 1 SCC (Cri) 377, <i>Dilip v. State of M.P.</i>	351b, 351d
3. (2005) 4 SCC 350 : 2005 SCC (Cri) 943, <i>State of H.P. v. Pawan Kumar</i>	350g-h
4. Criminal Appeal No. 788 of 1998, order dated 14-11-2003 (Raj), <i>Parmanand v. State</i>	349a, 349c
5. (2001) 1 Crimes 586 (Bom), <i>Dharmaveer Lekhram Sharma v. State of Maharashtra</i>	349d, 352d
6. (1999) 8 SCC 257 : 1999 SCC (Cri) 1422, <i>Kalema Tumba v. State of Maharashtra</i>	350f-g
7. (1999) 6 SCC 172 : 1999 SCC (Cri) 1080, <i>State of Punjab v. Baldev Singh</i>	350a-b, 350b-c, 351g-h
8. (1997) 1 Crimes 242 (P&H), <i>Paramjit Singh v. State of Punjab</i>	349c-d, 352d
9. (1996) 2 SCC 37 : 1996 SCC (Cri) 210, <i>State of H.P. v. Pirthi Chand</i>	350a
10. (1994) 3 SCC 299 : 1994 SCC (Cri) 634, <i>State of Punjab v. Balbir Singh</i>	349g-h

The Judgment of the Court was delivered by

**RANJANA P. DESAI, J.**— The respondents were tried by the Special Judge (NDPS Cases), Chhabra, District Baran for the offences under Section 8 read with Section 18 and under Section 8 read with Section 29 of the Narcotic Drugs and Psychotropic Substances Act, 1985 ("the NDPS Act")

2. The case of the prosecution was that on 13-10-1997 during Kota Camp at Iklera, P.N. Meena, Sub-Inspector, Office of the Narcotics Commissioner, Kota received information at 1900 hours in the evening that the respondents were to hand over about 10 kg opium on 14-10-1997 in the morning between

4.00 a.m. to 6.00 a.m. at Nangdi-Tiraha, Iklera, Chhipabaraud Road to a smuggler. This information was entered into by SI Meena in the diary and he forwarded it to the Investigating Officer J.S. Negi, Superintendent. J.S. Negi sent this information through Constable B.L. Meena to Assistant Narcotic Commissioner, Kota. Thereafter, raiding party was formed. The raiding party was headed by Superintendent J.S. Negi. The raiding party reached Nangdi-Tiraha by a government vehicle. Independent witnesses Ramgopal and Gopal Singh were called by SI Qureshi. Their consent was obtained. At about 4.25 a.m., the respondents came from Village Rajpura. On seeing the raiding party, they tried to run away but they were stopped. Enquiry was made with both the respondents in the presence of the independent witnesses by SI Qureshi. The respondents gave their names. Respondent 1 Parmanand had one white-coloured gunny bag of manure in his left hand.

3. SI Qureshi told the respondents that he had to take their search. They were told about the provisions of Section 50 of the NDPS Act. They were told that under Section 50(1) of the NDPS Act, they had a right to get themselves searched in the presence of any nearest Magistrate or any gazetted officer or in the presence of Superintendent J.S. Negi of the raiding party. One written notice to that effect was given to them. On this notice, respondent Surajmal gave consent in writing in Hindi for himself and for respondent Parmanand and stated that they are ready to get themselves searched by SI Qureshi in the presence of Superintendent J.S. Negi. He also put his thumb impression. Thereafter, bag of Respondent 1 Parmanand was searched by SI Qureshi. Inside the bag in a polythene bag some black material was found. The respondents told him that it was opium and they had brought it from the village. The weight of the opium was 9 kg 600 gm. Necessary procedure of drawing samples and sealing was followed. The respondents were arrested. After completion of the investigation, Respondent 1 Parmanand was charged for offence under Section 8 read with Section 18 of the NDPS Act and Respondent 2 Surajmal was charged for the offence under Section 8 read with Section 18 and for the offence under Section 8 read with Section 29 of the NDPS Act.

4. The prosecution examined 11 witnesses. The important witnesses are PW 5 J.S. Negi, the Superintendent, PW 9 SI Meena and PW 10 SI Qureshi. The respondents pleaded not guilty to the charge. They contended that the police witnesses had conspired and framed them. The case is false.

5. The learned Special Judge convicted Respondent 1 Parmanand under Section 8 read with Section 18 of the NDPS Act and Respondent 2 Surajmal under Section 8 read with Section 28 of the NDPS Act. They were sentenced to 10 years' rigorous imprisonment each and a fine of Rs 10 lakhs each. In default of payment of fine, they were sentenced to undergo rigorous imprisonment for two years. Aggrieved by the said judgment and order, the respondents preferred an appeal to the Rajasthan High Court. By the

impugned order<sup>1</sup>, the Rajasthan High Court acquitted the respondents. Hence, this appeal by the State.

a 6. Mr Intiaz Ahmed, learned counsel for the State of Rajasthan submitted that the High Court was wrong in coming to the conclusion that there was no compliance with Section 50 of the NDPS Act. The counsel submitted that PW 10 SI Qureshi has clearly stated that the respondents were communicated their right under Section 50(1) of the NDPS Act. A written notice was also given to them and only after they consented to be searched by b PW 10 SI Qureshi in the presence of PW 5 J.S. Negi, the Superintendent, that the search of their person and search of bag of Respondent 1 Parmanand was conducted. The counsel submitted that the High Court was also wrong in disbelieving independent pancha witnesses. The counsel urged that the impugned order<sup>1</sup> is perverse and deserves to be set aside.

c 7. Ms Nidhi, learned counsel for the respondents, on the other hand, submitted that admittedly notice under Section 50 of the NDPS Act was a joint notice. The respondents were entitled to individual notice. The search is, therefore, vitiated. In this connection, the counsel relied on the judgment of the Punjab and Haryana High Court in *Paramjit Singh v. State of Punjab*<sup>2</sup> and judgment of the Bombay High Court in *Dharmaveer Lekhram Sharma v. State of Maharashtra*<sup>3</sup>. The counsel submitted that the search was a farce. d The High Court has, therefore, rightly acquitted the respondents.

e 8. The question is whether Section 50 of the NDPS Act was complied with or not? Before we go to the legalities, it is necessary to see what exactly the important police witnesses have stated about compliance with Section 50 of the NDPS Act. The gist of the evidence of the police witnesses PW 5 J.S. Negi, the Superintendent, PW 9 SI Meena and PW 10 SI Qureshi is that the respondents were informed that they have a right to be searched in the presence of a gazetted officer or the nearest Magistrate or before J.S. Negi, the Superintendent, who was present there. They were given a written notice. On that notice, Respondent 2 gave his consent in Hindi in his handwriting that he and Respondent 1 Parmanand are agreeable to be searched by PW 10 SI Qureshi in the presence of PW 5 J.S. Negi, the Superintendent. He signed f on the notice in Hindi and put his thumb impression. Respondent 1 Parmanand did not sign. There is nothing to show that Respondent 1 Parmanand had given independent consent. The search was conducted. PW 10 SI Qureshi did not find anything on the person of the respondents. Later on, he searched the bag which was in the left hand of Respondent 1 Parmanand. In the bag, he found black-coloured material which was tested g by chemical kit. It was found to be opium.

9. In *State of Punjab v. Balbir Singh*<sup>4</sup>, this Court held that Section 50 of the NDPS Act is mandatory and non-compliance therewith would vitiate

1 *Parmanand v. State*, Criminal Appeal No. 788 of 1998, order dated 14-11-2003 (Raj)

2 (1997) 1 Crim 242 (P&H)

3 (2001) 1 Crim 586 (Bom)

4 (1994) 3 SCC 299; 1994 SCC (Cr) 634

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trial. In *State of H.P. v. Pirthi Chand*<sup>5</sup>, this Court held that breach of Section 50 does not affect the trial. There were divergent views on this aspect and, therefore, a reference was made to the Constitution Bench. Out of the three questions of law, which the Constitution Bench dealt with in *State of Punjab v. Baldev Singh*<sup>6</sup>, the question which is relevant for the present case is whether it is the mandatory requirement of Section 50 of the NDPS Act that when an officer duly authorised under Section 42 of the NDPS Act is about to search a person, he must inform him of his right under sub-section (1) thereof of being taken to the nearest gazetted officer or the nearest Magistrate?

10. The conclusions drawn by the Constitution Bench, which are relevant for this case could be quoted: (*Baldev Singh case*<sup>6</sup>, SCC pp. 208-09, para 57)

“(1) That when an empowered officer or a duly authorised officer acting on prior information is about to search a person, it is imperative for him to inform the person concerned of his right under sub-section (1) of Section 50 of being taken to the nearest gazetted officer or the nearest Magistrate for making the search. However, such information may not necessarily be in writing.

(2) That failure to inform the person concerned about the existence of his right to be searched before a gazetted officer or a Magistrate would cause prejudice to an accused.

(3) That a search made by an empowered officer, on prior information, without informing the person of his right that if he so requires, he shall be taken before a gazetted officer or a Magistrate for search and in case he so opts, failure to conduct his search before a gazetted officer or a Magistrate, may not vitiate the trial but would render the recovery of the illicit article suspect and vitiate the conviction and sentence of an accused, where the conviction has been recorded only on the basis of the possession of the illicit article, recovered from his person, during a search conducted in violation of the provisions of Section 50 of the Act.”  
(emphasis in original)

11. In the present case, the conviction is solely based on recovery of opium from the bag of Respondent I Parmanand. No opium was found on his person. In *Kalema Tumba v. State of Maharashtra*<sup>7</sup> this Court held that if a person is carrying a bag or some other article with him and narcotic drug is recovered from it, it cannot be said that it was found from his person and, therefore, it is not necessary to make an offer for search in the presence of a gazetted officer or a Magistrate in compliance with Section 50 of the NDPS Act.

12. In *State of H.P. v. Pawan Kumar*<sup>8</sup>, a three-Judge Bench of this Court held that a person would mean a human being with appropriate coverings and

5 (1996) 2 SCC 37 : 1996 SCC (Cr) 210

6 (1999) 6 SCC 172 : 1999 SCC (Cr) 1080

7 (1999) 8 SCC 257 : 1999 SCC (Cr) 1422

8 (2005) 4 SCC 350 : 2005 SCC (Cr) 943

clothing and also footwear. A bag, briefcase or any such article or container, etc. can under no circumstances be treated as a body of a human being.

a Therefore, it is not possible to include these articles within the ambit of the word "person" occurring in Section 50 of the NDPS Act. The question is, therefore, whether Section 50 would be applicable to this case because opium was recovered only from the bag carried by Respondent 1 Parmanand.

13. In *Dilip v. State of M.P.*<sup>9</sup>, on the basis of information, search of the person of the accused was conducted. Nothing was found on their person.

b But on search of the scooter they were riding, opium contained in plastic bag was recovered. This Court held that: (SCC p. 456, para 16)

"16. ... provisions of Section 50 might not have been required to be complied with so far as the search of scooter is concerned, but keeping in view the fact that the person of [the accused] was also searched, it was obligatory on the part of [the officers] to comply with the said provisions."

c which was not done. This Court confirmed the acquittal of the accused.

14. In *Union of India v. Shah Alam*<sup>10</sup>, heroin was first recovered from the bags carried by the respondents therein. Thereafter, their personal search was taken but nothing was recovered from their person. It was urged that since personal search did not lead to any recovery, there was no need to comply with the provisions of Section 50 of the NDPS Act. Following *Dilip*<sup>9</sup>, it was held that since the provisions of Section 50 of the NDPS Act were not complied with, the High Court was right in acquitting the respondents on that ground.

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f 15. Thus, if merely a bag carried by a person is searched without there being any search of his person, Section 50 of the NDPS Act will have no application. But if the bag carried by him is searched and his person is also searched, Section 50 of the NDPS Act will have application. In this case, Respondent 1 Parmanand's bag was searched. From the bag, opium was recovered. His personal search was also carried out. Personal search of Respondent 2 Surajmal was also conducted. Therefore, in the light of the judgments of this Court mentioned in the preceding paragraphs, Section 50 of the NDPS Act will have application.

g 16. It is now necessary to examine whether in this case, Section 50 of the NDPS Act is breached or not. The police witnesses have stated that the respondents were informed that they have a right to be searched before the nearest gazetted officer or the nearest Magistrate or before PW 5 J.S. Negi, the Superintendent. They were given a written notice. As stated by the Constitution Bench in *Baldev Singh*<sup>6</sup>, it is not necessary to inform the accused person, in writing, of his right under Section 50(1) of the NDPS Act. His right can be orally communicated to him. But, in this case, there was no individual communication of right. A common notice was given on which

h <sup>9</sup> (2007) 1 SCC 450; (2007) 1 SCC (Cr) 377

<sup>10</sup> (2009) 16 SCC 644; (2010) 3 SCC (Cr) 377

<sup>6</sup> *State of Punjab v. Baldev Singh*, (1991) 6 SCC 172; 1999 SCC (Cr) 1080

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<sup>10</sup> (2009) 16 SCC 644 : (2010) 3 SCC (Cr) 377

<sup>6</sup> *State of Punjab v. Baldev Singh*, (1989) 6 SCC 172 : 1989 SCC (Cr) 1080

only Respondent 2 Surajmal is stated to have signed for himself and for Respondent 1 Parmanand. Respondent 1 Parmanand did not sign.

17. In our opinion, a joint communication of the right available under Section 50(1) of the NDPS Act to the accused would frustrate the very purport of Section 50. Communication of the said right to the person who is about to be searched is not an empty formality. It has a purpose. Most of the offences under the NDPS Act carry stringent punishment and, therefore, the prescribed procedure has to be meticulously followed. These are minimum safeguards available to an accused against the possibility of false involvement. The communication of this right has to be clear, unambiguous and individual. The accused must be made aware of the existence of such a right. This right would be of little significance if the beneficiary thereof is not able to exercise it for want of knowledge about its existence. A joint communication of the right may not be clear or unequivocal. It may create confusion. It may result in diluting the right. We are, therefore, of the view that the accused must be individually informed that under Section 50(1) of the NDPS Act, he has a right to be searched before the nearest gazetted officer or before the nearest Magistrate. Similar view taken by the Punjab and Haryana High Court in *Paramjit Singh*<sup>2</sup> and the Bombay High Court in *Dharmaveer Lekhram Sharma*<sup>3</sup> meets with our approval.

18. It bears repetition to state that on the written communication of the right available under Section 50(1) of the NDPS Act, Respondent 2 Surajmal has signed for himself and for Respondent 1 Parmanand. Respondent 1 Parmanand has not signed on it at all. He did not give his independent consent. It is only to be presumed that he had authorised Respondent 2 Surajmal to sign on his behalf and convey his consent. Therefore, in our opinion, the right has not been properly communicated to the respondents. The search of the bag of Respondent 1 Parmanand and search of person of the respondents is, therefore, vitiated and resultantly their conviction is also vitiated.

19. We also notice that PW 10 SI Qureshi informed the respondents that they could be searched before the nearest Magistrate or before the nearest gazetted officer or before PW 5 J.S. Negi, the Superintendent, who was a part of the raiding party. It is the prosecution case that the respondents informed the officers that they would like to be searched before PW 5 J.S. Negi by PW 10 SI Qureshi. This, in our opinion, is again a breach of Section 50(1) of the NDPS Act. The idea behind taking an accused to the nearest Magistrate or the nearest gazetted officer, if he so requires, is to give him a chance of being searched in the presence of an independent officer. Therefore, it was improper for PW 10 SI Qureshi to tell the respondents that a third alternative was available and that they could be searched before PW 5 J.S. Negi, the Superintendent, who was part of the raiding party. PW 5 J.S. Negi cannot be called an independent officer. We are not expressing any opinion on the

<sup>2</sup> *Paramjit Singh v. State of Punjab*, (1997) 1 Crimes 242 (P&H)

<sup>3</sup> *Dharmaveer Lekhram Sharma v. State of Maharashtra*, (2001) 1 Crimes 586 (Bom)

a question whether if the respondents had voluntarily expressed that they wanted to be searched before PW 5 J.S. Negi, the search would have been vitiated or not. But PW 10 SI Qureshi could not have given a third option to the respondents when Section 50(1) of the NDPS Act does not provide for it and when such option would frustrate the provisions of Section 50(1) of the NDPS Act. On this ground also, in our opinion, the search conducted by PW 10 SI Qureshi is vitiated.

b 20. We have, therefore, no hesitation in concluding that breach of Section 50(1) of the NDPS Act has vitiated the search. The conviction of the respondents was, therefore, illegal. The respondents have rightly been acquitted by the High Court. It is not possible to hold that the High Court's view is perverse. The appeal is, therefore, dismissed.

c (2014) 5 Supreme Court Cases 353

(BEFORE DR B.S. CHAUHAN AND M.Y. EQBAL, JJ.)

RAJKUMAR

.. Appellant;

*Versus*

d STATE OF MADHYA PRADESH

.. Respondent.

Criminal Appeals Nos. 1419-20 of 2013<sup>†</sup>, decided on February 25, 2014

e A. Penal Code, 1860 — Ss. 376, 450 and 302 — Rape and murder of a 14 yr girl — Breach of faith — Child witness found reliable — DNA report establishing presence of semen of appellant in vaginal swab of prosecutrix — Death sentence commuted to minimum non-remittable sentence of 35 yrs of RI

f B. Penal Code, 1860 — S. 302 — Murder — Sentence — Death sentence — Principles for imposition of, reiterated — Aggravating and mitigating circumstances — Crime Test and Criminal Test — Life imprisonment is the rule and death sentence is an exception — Extreme penalty of death need not be inflicted except in gravest cases of extreme culpability — Before opting for death penalty, circumstances of offender (Criminal Test) also require to be taken into consideration along with circumstances of crime (Crime Test) — Penalty of death sentence may be warranted only in a case where Court comes to conclusion that imposition of life imprisonment is totally inadequate — For awarding death sentence, there must exist aggravating circumstances and there must be a consequential absence of mitigating circumstances — As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand

(Para 29)

g *Held:*

The appellant, aged 32 years, came to the house of his neighbour PW 1, and stayed with his four children as PW 1 and his wife had gone to irrigate agricultural fields in the night. The appellant was on visiting terms with the

h <sup>†</sup> From the Judgment and Order dated 27-6-2013 of the High Court of Madhya Pradesh, Bench at Jabalpur in CrI Reference No. 1 of 2013