also filed a review petition, Review Petition (Crl) No. 671-673 of 2017, which was dismissed vide order dated 09.07.2018 of this Hon'ble Court.

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.

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:

GROUNDS:

A. 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.

B. Because the impugned judgment is bad in law as subsequent judgments of this Hon'ble Court have definitively changed the law on death sentence in India, allowing several convicts similarly placed as the Petitioner to have their death sentence 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

C. 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.

D. 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.

E. Reliance has also been placed at para 501 on the case of *Ankush Maruti Shinde v. State of Maharashtra*, (2009) 6 SCC 667 to impose the sentence of death on the Petitioner. However, this

case was overruled by this Hon'ble Court in *Ankush Maruti Shinde v. State of Maharashtra* (Review Petition (Crl) Nos. 18-19 OF 2011 in Criminal Appeal Nos. 881-882 of 2009, judgment dated October 31, 2018) and the case was directed to be heard as a fresh criminal appeal. Upon concluding arguments in the criminal appeal this Hon'ble Court through judgment dated March 5, 2019 acquitted all the accused in the case and directed compensation of Rs. 5 lacs to be paid to each of the accused. The reliance of such case law in the Petitioner's case is a travesty of justice and calls for a resentencing exercise to be undertaken in this case.

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. This corpus of case law has caused a definite change in the sentencing jurisprudence which requires that the Petitioner's case be reheard and the law laid down in these cases be applied to the Petitioner's case. The list of these seventeen cases is given below:

Sr No.	Case title	Brief facts
1	Babasaheb Maruti Kamble v State of Maharashtra (Criminal Appeal No	Rape and murder of a 6 year old girl by a 52 year

G. The impugned judgment has relied on the judgment of *Dhananjoy 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 Dhananjoy 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".

Death penalty in the name of 'Collective Conscience'

H. 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."

I. 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

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."

O. 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.

P. 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]

Q. The death sentence upheld by the impugned judgment further was occasioned by the immense media frenzy and political pressure surrounding the case of the Petitioner, thereby creating an atmosphere of prejudice against him. This has led to a denial

of natural justice. Compounded with the extreme penury of the Petitioner and his family, this has led to a systemic bias against the Petitioner. To eliminate systemic and political bias against the Petitioner, it is imperative that this case be reheard in open court by the senior most judges of this Hon'ble Court without the damocles sword of an execution warrant handing over the proceedings.

R. 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 and the media driven hue and cry around it.

S. 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. The various mitigating circumstances in favour of the Petitioner are enumerated below.

Young Age

T. The Petitioner's young age has been erroneously rejected as a mitigating factor. The impugned judgement reported as Mukesh

v. State (NCT of Delhi), (2017) 6 SCC 1 at para 498 holds that "Even the young age of the accused is not a mitigating circumstance for commutation to life". This is in direct conflict with the constitution bench decision of this Hon'ble Court in Bachan Singh v State of Punjab (1980) 2 SCC 684 which notes at para 206 that "The age of the accused. It the accused is young or old, he shall not be sentenced to death." Young age has been noted to be of "compelling importance" at para 207. The impugned judgment is thus in conflict with the binding observations of a larger bench decision.

U. The court has relied on judicial precedent to conclude that young age alone is not a mitigating factor. Reliance is also placed on *Dhananjoy Chatterjee v. State of West Bengal,* (1994) 2 SCC 220 which has been doubted in *Santoshkumar Satishbhushan Bariyar v. State of Maharashtra,* (2009) 6 SCC 498. However, the Courts have not considered what the import of young age is or its relevance in the present case as a mitigating circumstance.

V. Age of the Petitioners in the present case: It is clear from the records that the Petitioner as well as his co-accused Pawan had contested juvenility claims during the trial. The Petitioner's age was determined to be around 19 years on the date of the offence i.e. on 16.12.2012.

W. The impugned judgement has erred in not appreciating the impact of young age on both the individual responsibility or culpability of the accused towards the crime, and also the

rehabilitated is also a factor to be borne in mind." [para 19, pp.729]

AA. A 3 judge bench of the Supreme Court in *Shyam Singh @ Bhima v. State of Madhya Pradesh, (decided on 1st September 2016, CRIMINAL APPEAL NO. 864/2013)* in a case of the accused being 23 years of age, found guilty of triple murder, has held that age is one of the relevant factors in the determination of appropriate sentence, and thereafter commuted the death sentence of the accused to life imprisonment.

BB. That even after the impugned judgment was pronounced, several cases have found young age to be a strong mitigating factor. This Hon'ble Court in Prahlad v. State of Rajasthan, Criminal Appeals Nos. 17940-1796 of 2017, judgment dated 14.11.2018 commuted the sentence of death to life imprisonment. In Raju Jagdish Paswan v. State of Maharashtra, Criminal Appeal Nos. 88-89 of 2019, judgment dated 17.01.2019, this Hon'ble Court in a case involving the rape and murder of a nine year old girl found young age to be an important mitigating factor.

CC. Therefore the recent judicial trend in cases concerning young age as a mitigating factor indicates that the young age of the accused is a very strong mitigating factor which further assists the claim that the accused is not beyond reform in the absence of any material to suggest otherwise, and therefore does not unquestionably foreclose the option of life imprisonment. While

'young age' as a sole mitigating factor has been disregarded in certain judgements of the Supreme Court, in the present cases, owing to the socio-economic backwardness of the Petitioners, and the specific absence of any evidence to suggest that the accused are beyond reform, or are not probable to reform, the young age of the accused is a particularly relevant factor.

DD. That the mitigating factor of young age was specifically argued in favour of the Petitioner, as is evident in para 332 of the impugned judgment which records the argument of the Ld. Amicus curiae as "young age is a mitigating factor and this Court has taken note of the same". However, this has not been addressed in the impugned judgment leading to a violation of the principles of natural justice.

EE. That while judgements by courts have considered young age as a mitigating factor not solely but as a factor of consideration in determining the possibility of reformation, there is scientific evidence to suggest that young adults are less neurologically capable of ascertaining the consequences of the impulse-driven actions. This factor has not been considered in the impugned judgement.

FF. From a neurological/brain development perspective, 'young adults' (ages 18-23/25) are at a similar impulse-driven stage of the development of their brain as adolescents or persons with a mental impairment, as the frontal lobe of the brain, capable for restricting impulses based on long-term moral aspirations or

assessment of consequences, does not fully develop until the age of around 25. Owing to the other circumstances involving the manner of commission of the crime, such as the inebriation of the accused, the argument and scuffle with the friend of the deceased, the argument that the accused were placed in a relatively worse position to make an objective assessment of the consequences and moral depravity of their actions.

GG. In order to give full effect to the 'individualized sentencing' espoused in *Bachan Singh* which would involve questions of the nature of premeditation and the capacity of premeditation in young adults like the accused, a scientific analysis of the age of the accused only aids the sentencing court in making a more objective analysis of the circumstances concerning the criminal. [Scientific studies on 'young adults': Davies, P. L., & Rose, J. D. (1999). Assessment of cognitive development in adolescents by means of neuropsychological tasks. Developmental Neuropsychology, 15(2), 227-2 ; Sowell, E., & Jernigan, T. (1998). Further MRI evidence of late brain maturation: Limbic volume increase and changing asymmetries during childhood and adolescence. Developmental Neuropsychology, 14, 599-61]

HH. Therefore, the impugned judgment has erroneously not recognized the distinction on the capacity of young adults, the relative distinction between the ability of young adults to retain impulse when compared to older adults. This factor has been recognised as mitigating by various judgments of this Hon'ble

Court and is based on empirical scientific evidence which must be applied in the present case.

Socio economic circumstances

II. The poor socio-economic condition of the accused is an important mitigating circumstance which needs to 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.

JJ. 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

SS. In the Jessical Lall murder case, the convict Manu Sharma/Siddharth Vashisht was given life imprisonment and not death sentence despite it being a brutal and unprovoked murder of a defenceless woman. The convict was a very powerful person from a political family.

TT. This inequity of outcome between the Petitioner's case and those mentioned above highlights the fundamental divide in the criminal justice system where the poor and the weak always suffer the worst punishments, even when people from other classes are guilty of offences that are barbaric and heinous. It also indicates a systemic bias against the poor which has caused prejudice against the Petitioner

UU. That the death sentence as a punishment is disproportionately visited upon the poor and the marginalized. This is highlighted by the Death Penalty India Report done by the National Law University of Delhi in 2016 shows that 74.1 % of all prisoners on death row were economically vulnerable, and more than 60% were the primary earners of their families. This highlights the previous point that there is a systemic bias and disparate impact of the criminal justice system against the poor and the underprivileged in death penalty cases.

Probability of reformation

VV. That Reformation is a necessary part of the rarest of rare test and has been expressly read so by this Hon'ble Court in

reformation. As per the ruling in *Rajesh Kumar* this itself becomes a mitigating circumstance.

YY. 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).*

ZZ. In the present case the state has led no evidence in the form of a psychological/psychiatric structured clinical judgment based on the Appellant's life in the prison context, including the time spent in prison (around 7 years) and life prior to it, in the background of his mental impairment, his adjustment to and

interaction with other inmates and officials, efforts made by the prison to provide opportunities for the appellant's adjustment and rehabilitation, and conduct of the Appellant in prison.

Lack of criminal antecedents

AAA. 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*].

BBB. 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 justiciae* that the death sentence of the Petitioner is also commuted to life imprisonment.

Arbitrary Sentencing in this Hon'ble Court and Hon'ble High Courts

CCC. That the Hon'ble Supreme Court and various High Courts have consistently commuted the death sentence in multitudes of cases involving sexual violence and murder, including cases of gangrape.

DDD. Since November 2018, till date the Hon'ble Supreme Court has commuted death sentences in 17 cases involving rape and

murder. Since 2018, various High Courts all over the country commuted the death sentence of 74 convicts in offences pertaining to rape and murder. A total of 91 death sentence cases were commuted from death to life imprisonment all over the country from 2018. In this context, executing the Petitioner would amount to a travesty of justice, as other individuals who are similarly placed have been spared the noose, but the Petitioner is being made to suffer death. This highlights the sheer arbitrariness that is implicit in our judicial system of giving the death penalty and continuing to impose the death sentence on the Petitioner would be a grave violation not only of Article 21, but also of Article 14 of the Cosntitution of India.

Erroneous reliance on deterrence

EEE. This court in the impugned judgment has fallen back on deterrence as the reason which justifies the death penalty. The impugned judgment notes "Protection of society and deterring the criminal is the avowed object of law." However, an extensive review of studies on the deterrent effect of the death penalty conducted by the National Research Council in the United States concluded that "research to date on the effect of capital punishment on homicide is not informative about whether capital punishment decreases, increases, or has no effect on homicide

rates. Therefore, the committee recommends that these studies not be used to inform deliberations requiring judgments about the effect of the death penalty on homicide."

FFF. This view is also supported by the United Nations ('UN'), which has consistently held that there is no conclusive evidence on deterrence and the death penalty, in Resolutions on the Moratorium on the Use of the Death Penalty of 2008, 2010, 2013 and 2015. Further, the UN, in Reports has noted that no evidence of deterrence can be presumed to exist. The UN has also noted that deterrence is nothing more than a "myth."

GGG. Rejecting the deterrent justifictaion, the Law Commission even recommended the abolition of the death penalty in its 262 Report. Similarly, the Justice Verma Committee which submitted its Report on January 23, 2013 noted:

> "It is also stated that there is considerable evidence that the deterrent effect of death penalty on serious crimes is actually a myth., According to the Working Group on Human Rights, the murder rate has declined consistently in India over the last 20 years despite the slowdown in the execution of death sentences since 1980. Hence we do take note of the argument that introduction of death penalty for rape may not have a deterrent effect."

HHH. That India's history of executions for crimes against women and also crimes committed which garnered major public attention

in the national capital illustrates the point that the mere act of execution does not create any deterrent effect on society.

III. 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:

Year	Reported Rape incidents in India	Reported Rape incidents in West Bengal
1990 *Incident in Dhanonjoy Chatterjee's case	10068	561
1994	13208	743

*Supreme Court judgement in Dhanonjoy Chatterjee's case		
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

JJJ. 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.

KKK. 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.

LLL. **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. The Petitioner's parents are old and extremely poor. The case has been a huge drain on their resources and now they are left almost empty handed. The Petitioner's father earns a meagre living for the family. The family has no savings and live in the Harijan Basti in RK Puram. If the Petitioner is executed his entire family will be destroyed. That in the case of Sushil Sharma v. State of NCT of Delhi (2014) 4 SCC 317, this Hon'ble Court considered the impact of execution on the family of the convict and commuted the sentence of death. It is

submitted that the Petitioner's parents are innocent, and this Court must factor the effect the execution of their son will have on them.

MMM. That globally the majority of the countires have shunned violence and removed the death penalty from the criminal justice system. Over 141 countries in the world are abolitionist in law or practice. Of these 104 have completely abolished, 7 have abolished for ordinary crimes. 30 countries are abolitionist in practice - they have not carried out an execution in over 10 years and have a policy or established practice of not carrying out executions. Only 23 countries carried out executions in 2016 with most executions taking place in China, Iran, Saudi Arabia, Iraq and Pakistan – in that order.

NNN. 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 in the face of subsequent changes in death penalty sentencing law would be of paramount import to the cause of justice.

OOO. 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 05.05.217 in Criminal Appeal No. 609 of 2017 and connected matters and the review petition dismissed by this Hon'ble Court on 09.07.2018 vide order in Review Petition Nos. 671-673 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 09.07.2018 in Review Petition (Crl.) No. 671-673 of 2017;

b. 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.

Drawn & Settled by
Dr A.P. Singh
AOR
DELHI

FILED BY

SADASHIV
AOR-2364

B

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 of 2017, which was confirmed by order dated 09.07.2018 in Review Petition (Crl) No. 671-673 of 2017.

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 Petition is filing the current curative petition to challenge the sentence imposed upon him, and raise important issues which are occasioned by reliance on overruled law and new and changed circumstances which require attention of this Hon'ble Court. While determining the sentence to the imposed on the Petition, the impugned judgment has relied upon several decisions, such as *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, which have been subsequently overruled by decisions of this Hon'ble Court. Furthermore, the impugned judgment has relied on factors such as "collective conscience of the society" and public opinion in deciding the sentence to be imposed on the Petitioner and his co-accused. In other decisions, the Hon'ble Supreme Court has unequivocally stated that these factors should not be considered while determining the punishment. The impugned judgment is also bad in law as subsequent judgments of this Hon'ble Court have definitively changed the law on death sentence in India, allowing several convicts similarly placed as the Petitioner to have their death sentence commuted to life imprisonment. After the pronouncement of the impugned judgment in 2017, 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. This corpus of case law has caused a definite change in the sentencing jurisprudence which requires that the Petitioner's case be reheard and the law laid down in these cases be applied to the Petitioner's case. 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]

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. 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 young age of the Petitioner has been erroneously rejected as a mitigating circumstance. Other mitigating circumstances, notably the Petitioner's poor socio-economic circumstances, number of family dependents including ailing parents, good conduct in jail and probability of reformation have not been adequately considered in the impugned judgment, leading to a gross miscarriage of justice.

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.