
HONOUR, HOMICIDE AND THE "RAREST OF THE RARE": A CRITICAL ANALYSIS OF DILIP PREMNARAYAN TIWARI V STATE OF MAHARASHTRA (2010) 1 SUPREME COURT CASES 775 (INDIA)

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ABSTRACT

This research note critically examines the Supreme Court's decision in *Dilip Premnarayan Tiwari v State of Maharashtra*, a landmark judgment situated at the intersection of evidentiary principles, honour killing jurisprudence, and capital sentencing under Indian criminal law. The note analyses the Court's approach towards the evidentiary value of injured eyewitness testimony, omissions in the First Information Report, and the treatment of dying declarations, while evaluating the procedural safeguards employed in a capital trial. It further explores the Court's application of the "rarest of the rare" doctrine, with particular emphasis on the balancing of aggravating and mitigating circumstances, the relevance accorded to the offender's socio-psychological background, and the shift from a crime-centric to a criminal-centric sentencing framework. The research situates the judgment within the broader evolution of Indian death penalty jurisprudence by examining its engagement with established constitutional principles governing proportionality, individualized sentencing, and procedural fairness. It also assesses the implications of treating caste-based honour killings through the lens of mitigation, particularly in light of subsequent constitutional jurisprudence affirming dignity, equality, and individual autonomy. The note argues that while the judgment reinforces the necessity of individualized sentencing and procedural fairness in capital cases, it simultaneously exposes unresolved tensions in the Supreme Court's treatment of honour killings and the consistent application of the *Bachan Singh* framework. In doing so, it contributes to the continuing discourse on the constitutional limits of judicial sentencing discretion and the evolving contours of India's capital punishment jurisprudence.

DILIP PREMNARAYAN TIWARI v STATE OF MAHARASHTRA¹

(2010) 1 Supreme Court Cases 775 (India)

Court: Supreme Court

Bench: V.S. Sirpurkar and Deepak Verma, JJ.

FACTS

This case is regarding two criminal appeals numbered 1026 of 2008 and 1025 of 2008 filed by Dilip Premnarayan Tiwari (accused 1), Manoj Paswan (accused 3) and Sunil Ramashray Yadav (accused 2) respectively. They had appealed against the death sentence awarded to them by the Sessions Court and its affirmation by the Bombay High Court.²

According to the facts of the case, Sushma, Dilip's sister, fell in love with Prabhu who lived in their neighbourhood and they communicated through Abhayraj @ Bachhu who lived next to the Nochils and between the houses of Tiwari and Nochil families, and Bijit (Prabhu's father Krishnan Nochil's nephew). Their wedding took place on 29/10/2003 before the Registrar of Marriages in Bandra, Mumbai. They were threatened by Sushma's family who were staunchly opposed to the marriage since they were of the Brahmin caste from the state of Uttar Pradesh and felt superior to Prabhu, who was a Malayali of the "Ezhava" caste. Dilip had earlier even abused Sushma with kicks and fist blows because she loved Prabhu.³

On 8/5/2004, Sushma, who was a college student, met her elder sister Kalpana who like her other family members convinced her to leave Prabhu. The couple relocated to Kerala, where Sushma was sent to Shashidharan's (Prabhu's relative) house in Andheri because she was pregnant at the time. The tragedy occurred on the night of May 16th/17th, when Prabhu's father went to unlock the house's backyard door at about 1:15 AM. Dilip, Manoj, Sunil and one more unknown person entered the house straightaway. Dilip and Manoj attacked Krishnan Nochil with knife blows to his chest and stomach, and then stabbed Prabhu in the stomach and chest with a knife. Moving on, Dilip directed Sunil and an unknown person to take Prabhu out and murder him. When Deepa attempted to save her brother, Dilip and Manoj raced at her with

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² Dilip Premnarayan Tiwari v State of Maharashtra, (2010) 1 SCC 775 [1]-[3] (India).

³ id [4]-[6].

knives, but Bijit caught hold of Manoj and asked not to attack Deepa. Manoj further inflicted blows on Bijit's hand, chest and cheek that caused him to collapse. Dilip and Manoj further inflicted blows with the knife on Deepa's face and body and even assaulted Indira when she arrived. Later the unknown person and Sunil inflicted knife blows over the neck of Abhayraj, assaulted him and rushed outside chasing him.⁴

Manoj had dropped his knife in the room while leaving. After a while, Deepa called PW-1 Balan and told him how Dilip, Manoj, Sunil, and another person had committed the crime while Indira and Prabhu were seriously injured and Krishnan Nochil and Bijit were already dead. Balan and Shashidharan had reached by 4:00 AM, while going to the health center in the mobile van Deepa and Indira were unconscious, but Prabhu told Shashidharan who was accompanying them that Dilip, Manoj, Sunil and one more person had assaulted, and injured them. Later, Prabhu also succumbed to his injuries. While Balan around 5:30 AM lodged a FIR. registered as CR No.1-144/04 for charges under sections 302,307,452 read with section 34 IPC. PSI Shri Bharve prepared the inquest panchnama for the bodies of Krishnan Nochil, Bijit, and Abhayraj who was lying outside the home next to K.T. Maidan and sent them for post-mortem. He also recorded the crime scene, collected blood samples, and found a blood-stained knife and handkerchief. After Prabhu's death, his body was also sent for post-mortem.⁵

Deepa and Indira's statements were recorded on 18/5/2004 and 2/6/2004 respectively. Dilip was apprehended on 29/5/2004 with bloodstained clothes and a knife. Sunil was arrested on 2/6/2004 with similar evidence. Manoj was taken into custody on 22/6/2004, followed by Dilip's parents on 25/6/2004.⁶

PROCEDURAL HISTORY

Following the complete investigation, a charge sheet was filed against the five accused under sections 302,307,452,34 of the Penal Code and 120-B of the IPC (substantive). The trial court, after its proceedings eventually acquitted accused 4 Premnarayan Brijkishore Tiwari and accused 5 Tulsa Devi as they were not a part of the crime and thus could not be charged under section 120-B of criminal conspiracy. The other three accused were held liable for sections 302, 307, 452 read with Section 120-B of the Indian Penal Code and Section 34 and Section

⁴ id [7]-[10].

⁵ id [11]-[14].

⁶ id [15].

120-B, IPC (substantive). They were convicted of a variety of offenses, including Section 302 read with Section 34, Section 307 read with Section 34, IPC and Section 452 read with Section 34, IPC. While they were sentenced to death for the offence under Section 302; to 10 years rigorous imprisonment with a penalty of Rs. 5,000/- each as well as in default to suffer 5 months imprisonment each for the offence under Section 307 read with Section 34, IPC, and 3 years rigorous imprisonment with a fine of Rs. 1,000/- each and by default to experience one month imprisonment.⁷

The punishment being a death sentence was referred to the High Court for confirmation where the accused also appealed against the trial court's decision. However, their appeals were dismissed and the decision of the trial court was upheld and they were sentenced to death. The accused appealed further to the Supreme Court.⁸

ISSUES

- Whether the decision of the sessions judge to give the death sentence to the three accused, the High Court's decision to uphold it, and the Supreme Court's decision to commute it to life imprisonment justified? (This includes aspects of non-identification of an accused person individually in a court amounting to absolution, the accused's young age and no criminal antecedent being a defense for them, mitigating factors like the actions of the unknown person also be considered)
- Whether Prabhu's dying declaration should be accepted and considered essential evidence against the accused?
- Whether the psyche of the offender, particularly in the context of a social issue like an inter-caste-community marriage, influence the legal considerations in this specific case?
- Whether the court should follow the doctrine of 'rarest of the rare' as established in Bachan Singh's case or the doctrine of 'gravity of the crime' as in Ravji's case?

⁷ id [2],[16].

⁸ id [3].

ANCILLARY ISSUES

- Whether the judiciary performed its functions correctly and whether the trial was fair in the District Court and the High Court?
- Whether importance be given to the absence of a person's name in FIR as in Sunil's and Manoj's case?
- Whether Deepa was a natural witness and whether Indira's testimony stands to be accepted by the court?

RATIO

After considering the facts and the legal issues provided by the learned counsel the key legal reasonings provided by the court for its judgment are-

When discussing about the dying declaration, the court stated that it had a significant role in the case and its omission was a critical one on the part of the prosecution. The High Court earlier noted that despite the availability of the declaration throughout the trial, no concerns were raised regarding it by Sunil's lawyers and they had to reject the declaration due to significant resistance from the Public Prosecutor and attorneys representing Dilip and Manoj. Supreme Court said that it was the duty of the judges to guarantee the fairness of the trial and according to them, the Public Prosecutor should not have opposed the declaration remembering the hearings before the High Court were effectively an extended trial and the accused were facing death penalty. As a court officer, the Public Prosecutor should have ensured the fairness of the trial by permitting the document to be included in the record. This duty of the investigating officer was even upheld in the case of *Rampal Pithwa Rahidas v. State of Maharashtra*⁹ as cited by the court. Even if Dr. S.S. Ankal was not questioned about the dying declaration, the chance to establish the document should not have been denied.¹⁰

The court analyzed the FIR and evidence, noting that despite her injuries, Deepa called Balan to report an assault by Dilip, Sunil, Manoj, and another person. Balan and Shashidharan, who were related to the victims, acted quickly and Balan filed a complaint with the Manikpur Police Station but did not name Manoj or Sunil in the FIR. The court said that the incident might be

⁹ Rampal Pithwa Rahidas v State of Maharashtra, 1994 Supp (2) SCC 73 (India).

¹⁰ Dilip (n 2) [45]-[48].

allegedly motivated by Dilip's dislike of Sushma's love marriage to Prabhu. Balan claimed he told the police about Manoj and Sunil, but their names were not on the FIR. The court stated that while the omission of Manoj and Sunil's names was significant, it was not deemed crucial considering Balan's mental condition, after learning about the brutal murder of his son and brother-in-law and the grievous injuring of others. These omissions would be important if each accused was judged individually. Thus, the omission stood no ground.¹¹

The court validated Deepa's presence at the crime scene as confirmed by the doctor's reports. She had not mentioned that all four assailants were armed with knives, as she had not been asked. Despite some inconsistencies in her testimony, she identified Sunil and Manoj as Dilip's friends and refuted suggestions that she had not witnessed the incident. Thus the court found Deepa's statement credible and considered her a natural witness. They even dismissed the claim that Deepa had not individually identified the accused in court as the defense had not asked her to name each accused. Therefore, her testimony about Dilip, Manoj, and Sunil's involvement in the assault was unchallenged. Indira, another injured witness, confirmed seeing Sunil, Dilip, and Manoj attack Abhayraj. Her claim of knowing Dilip, Manoj, and Sunil was unchallenged. Prabhu's dying declaration to Shashidharan was not mentioned by Deepa or Indira, likely because they were unconscious. The defense's cross-examination did not aid their case as there was no reason for the witnesses to falsely incriminate Sunil and Manoj. The clear testimonies of Deepa and Indira were enough to convict Dilip, Manoj and Sunil and were accepted by all the courts.¹²

The court did not consider the dying declaration since Dilip and Manoj were unable to cross-examine it and its witnesses. The court concluded that the lack of Sunil's name in the declaration would not affect the evidence because the testimony of the two eyewitnesses clearly demonstrated his criminal culpability. As a result, the Court upheld the Sessions Court and High Court decisions that all three accused were responsible under the aforementioned provisions.¹³

The High Court for its judgment had cited cases like *Dhananjay Chatterjee v. State of West*

¹¹ id [25]-[27].

¹² id [31]-[34],[36].

¹³ id [40],[50].

*Bengal*¹⁴, *Ronny v. State of Maharashtra*¹⁵, *Ediga Anamma v. State of Andhra Pradesh*¹⁶, *State of U.P. v. Dharmendra Singh*¹⁷, and *Lehna v. State of Haryana*¹⁸, wherein all it emphasized the need for a thorough analysis of each fact and possible defenses before rendering a judgment.

Supreme Court cited precedents such as *Machhi Singh v. State of Punjab*¹⁹ and *Bachan Singh v. State of Punjab*²⁰, stating that the factors warranting a death sentence and mitigating circumstances should be considered together to arrive at a decision. The High Court was criticized for not thoroughly examining the mitigating circumstances, despite the Trial Court having done so. The Supreme Court was presented with and considered several mitigating circumstances, including the accused's young age and lack of criminal antecedent, the possibility of moral justification for the attack, unintentional consequences and the unknown person's involvement. The court acknowledged its responsibility to weigh these factors.

The court noted that Dilip, a young man under 25 with no criminal history, seemed influenced by societal caste considerations especially against the lower caste. Moreover, it seemed to have happened out of the psyche of the offender which was infested with ideas of caste differentiation. Therefore, the disturbed mental element played a significant role in this case, as observed in the case of *Om Prakash v. State of Haryana*²¹ and *Ram Pal v. State of Uttar Pradesh*²². In death sentence cases, it is crucial to consider the criminal's history, psychology, societal conditions, and mentality, not just the crime. The court cited *Ravji v. State of Rajasthan*²³, which focused on the crime's nature and severity but also cited *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*²⁴, which criticized this approach as it contradicted Bachan Singh's case law. This law asserts that both the crime and the criminal's circumstances should be considered, and death penalty should only be applied in the rarest of rare cases. Therefore, the court considered Dilip's mindset and the harsh caste bias that may have influenced his actions and decided not to sentence Dilip, Manoj, and Sunil to death but to

¹⁴ Dhananjay Chatterjee v State of West Bengal, (2004) 9 SCC 751 (India).

¹⁵ Ronny v State of Maharashtra, (1998) 3 SCC 625 (India).

¹⁶ Ediga Anamma v State of Andhra Pradesh, (1974) 4 SCC 443 (India).

¹⁷ State of U.P. v Dharmendra Singh, (1999) 8 SCC 325 (India).

¹⁸ Lehna v State of Haryana, (2002) 3 SCC 76 (India).

¹⁹ Machhi Singh v State of Punjab, (1983) 3 SCC 470 (India).

²⁰ Bachan Singh v State of Punjab, (1980) 2 SCC 684 (India).

²¹ Om Prakash v State of Haryana, (1999) 3 SCC 19 (India).

²² RamPal v State of Uttar Pradesh, (2003) 7 SCC 141 (India).

²³ Ravji v State of Rajasthan, (1996) 2 SCC 175 (India).

²⁴ Santosh Kumar Satishbhushan Bariyar v State of Maharashtra, (2009) 6 SCC 498 (India).

life imprisonment considering their roles in the crime.²⁵

Finally, the court concluded that regular life imprisonment was an insufficient punishment. Therefore, Dilip and Manoj who assaulted Krishnan, Prabhu and two ladies, were sentenced to life imprisonment of 25 years. Sunil was sentenced to life imprisonment of 20 years considering his actions and involvement. This judgement was founded on precedents established in *Haru Ghosh v. State of West Bengal*²⁶ and *Swamy Shraddananda v. State of Karnataka*²⁷, which endorsed such criteria for sentencing.²⁸

ANALYSIS

The court must observe the rule '**Audi alteram partem**' which states that no one should be condemned unheard. This implies that the court is responsible for ensuring that all parties are given a fair hearing and that all documents pertaining to the case are produced and reviewed. The judiciary's role is to guarantee that the accused is not wrongfully convicted and to assess guilt or innocence based on the factual matrix of the case and the evidence given. Furthermore, investigative agencies should strive tirelessly to do their tasks without errors. In this case, the police can be perceived as negligent for making complainants shuttle between police stations rather than taking immediate action. There is a need for diligence and efficiency in the execution of duties to uphold the principles of justice and fairness. Further, it is seen that the Supreme Court considers mental and other factors under whose influence the crime was committed by the accused more important rather than the gravity of the crime committed.

This is a case concerning honour killing that further explains how they have rapidly increased over time and generally occur in the name of caste which leads to the united society being divided on various grounds. However, Supreme Court seems to have depicted this serious issue to be just a sad reality of our society that cannot be denied as it just talks about caste, inter-caste marriages and how Prabhu might have acted under its influence demonstrating how deeply the caste ideology is edged in our society and therefore considered it as a mitigating factor. Whereas in another case of the SC, the court identified honour killings as an evil prevalent in society and categorized it as the rarest of rare. The Supreme Court pronounced

²⁵ Dilip (n 2) [64].

²⁶ Haru Ghosh v State of West Bengal, (2009) 15 SCC 551 (India).

²⁷ Swamy Shraddananda v State of Karnataka, (2008) 13 SCC 767 (India).

²⁸ Dilip (n 2) [70].

them as unconstitutional in *Shakti Vahini v. Union of India*²⁹ case, identifying these crimes as a breach of an individual's human and fundamental rights which are guaranteed under Articles 19 and 21 of the Constitution. The court even gave extensive guidance for preventing and dealing with similar offences.

The aspect of the Supreme Court overturning the death sentence speaks volumes about its functioning. Some could say that the court seems to follow the abolitionist perspective of doing away with the death sentence as the goal of punishment is to reform and deter individuals from doing so, while death sentences are used when the person being punished is believed incapable of being reformed.³⁰ This has been observed in the cases of *Bachan Singh*³¹, *Ediga Anamma v. State of Andhra Pradesh*³² and *Maneka Gandhi v. Union of India*³³ where it was held that only in exceptional situations, the court supported awarding the death penalty, demanding a comparative review of aggravating and mitigating factors in relation to the accused. The court also noted that if it decides to impose a death sentence, it must provide a special justification.

On the other hand, it seems that the court despite following the principle of the rarest of the rare does not seem to apply it completely in this case as the court differentiated these honour killings from other crimes where death sentence could be awarded. It failed to address why a crime as heinous as one at hand did not come under the doctrine of rarest of the rare whereas the same court had held this doctrine valid in the case of *Union of India v. Shriharan*³⁴ and such sentences valid in *Bhagwan Dass case*.³⁵ It's worth noting that, on the one hand, the constitution guarantees equality to all individuals, regardless of caste, while, on the other hand, the court does not sentence the accused to death for killings committed in the name of caste. The court should advocate for equal treatment under the law regardless of an individual's caste background. It calls for the fair and unbiased application of legal principles and punishments, without allowing caste considerations to influence judicial decisions and strive to ensure that individuals are held accountable for their actions based on the merits of their cases, rather than their caste identities.³⁶

²⁹ *Shakti Vahini v Union of India*, (2018) 7 SCC 192 (India).

³⁰ RAM JETHMALANI & D.S. CHOPRA, *The Indian Penal Code*, Vol 1 (Thomson Reuters, 2017).

³¹ *Bachan* (n 20).

³² *Ediga* (n 16).

³³ *Maneka Gandhi v Union of India*, (1978) 1 SCC 248 (India).

³⁴ *Union of India v Shriharan*, (2016) 7 SCC 1 (India).

³⁵ *Bhagwan Dass v State* (NCT of Delhi), (2011) 6 SCC 396 (India).

³⁶ AMARTYA SEN, *The Idea of Justice* (Belknap Press, 2009).

In conclusion, the Supreme Court of India's attitude towards honour crimes and death sentences may have changed in recent times but still it is characterized by a vacillation between sustaining the death penalty in "rarest of rare" circumstances and advocating for procedural fairness and consideration of mitigating factors. This shows the continuous discussion and shifting rules in India around the topic of death sentence.

CONCLUSION

Dilip, Manoj, and Sunil were found guilty and received life imprisonment from the Supreme Court in the case. Above all, I believe while the dominant position on the death penalty is not of abolition but sparing use, the case at hand warranted it due to its abhorrent nature and discriminatory fervor.

Hence, in my opinion, the court has failed to comprehend the magnitude and heinousness of crimes and not only detracted from the basic notions of dignity but also acted in contravention of its jurisprudence in Bhagwan Dass³⁷ in principle, and the rarest of the rare doctrine in Bachan Singh³⁸ by not considering it an important factor in sustaining death penalty.

³⁷ Bhagwan (n 35).

³⁸ Bachan (n 20).