Ramnaresh & Ors vs State Of Chhattisgarh on 28 February, 2012

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Bench: A.K. Patnaik, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.166-167 OF 2010

Ramnaresh & Ors. b & Appellants

Versus

State of Chhattisgarh b & Respondent

J U D G M E N T

Swatanter Kumar, J.

1. The present appeals are directed against the concurrent judgments of conviction and award of capital punishment. The Additional Sessions Judge, Pendra Road, District Bilaspur, convicted the four accused (the appellants herein), for offences under Sections 499, 376(2)(g) and 302 read with Section 34 of the Indian Penal Code, 1860 (for short b IPCb) and sentenced them vide judgment and order of sentence dated 20th November, 2007 as follows:

Offences	Punishment/Sentence
302/34 IPC	Award of capital sentence and ordered that they be hanged till death.
376(2)(g) IPC	Life Imprisonment and fine of Rs.200/- each. In case of default in the payment of fine, each accused to further undergo an additional rigorous imprisonment of one month each.
449 IPC	Ten years rigorous imprisonment with fine of Rs.200/- and in default to undergo additional rigorous imprisonment for one month.

2. The Division Bench of the High Court vide its judgment dated 24th July, 2009 confirmed the judgment and order of sentence passed by the learned Additional Sessions Judge giving rise to the present appeal.

3. Learned counsel appearing for the appellant, inter alia, but primarily, has raised the following challenges to the judgments under appeal:

> (1) That the prosecution has failed to prove its case beyond any reasonable doubt.
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> (2) That the sole witness, PW6, Dhaniram is not a credible witness and, in fact, he himself falls within the realm of suspicion as being an accused. Number of other witnesses including, PW2, Sunita, PW5, Bela Bai, and PW10, Kamlesh, turned hostile in the court. This clearly is indicative of false implication of the accused.
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> (3) That there are variations and serious contradictions in the statements of the witnesses, which have been relied upon by the courts, while convicting the accused.
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> (4) Furthermore, there is an inordinate and unexplained delay in lodging the FIR. Therefore, the conviction of the accused is unsustainable.

The contention is that the linking evidence is missing in the present case. The incriminating evidence produced by the prosecution does not connect the appellants with the commission of crime.

(5) The High Court has erred in law in relying upon the statement of the witnesses which are not reliable. The courts are expected to examine statements of such witnesses and/or sole witness cautiously. The learned Trial Court as well as the High Court has failed to apply these settled principles correctly to the facts of the present case.

(6) FSL report does not clearly state or link the appellants with the commission of the crime.

For these reasons and grounds, the appellant claims acquittal.

4. Before we proceed to discuss the merits or otherwise of the above contentions, it will be necessary for us to state the case of the prosecution and the evidence on record. Rajkumari (the deceased) was residing at Village Gullidand, Police Station Marwahi, with her husband Indrajeet and two infant children. On 8th August, 2006, her husband had gone to the house of his father at Rajnagar. Rajkumari was at her residence with her children. On 9th August, 2006, Rajkumari had called Dhaniram, their domestic servant, to sleep in their house in the night. It was the day of Raksha Bandhan. Anita (PW3), Savita (PW2) and Bela Bai (PW5), neighbours of Rajkumari, visited her house to view television in the night. At about 9 ob clock, they went back to their houses after viewing television. Ranjeet Kewat, is the brother of Indrajeet and brother-in-law of Rajkumari. He had a house near the house of Indrajeet. Vishwanath, Amar Singh, Kamlesh and Ramnaresh, who used to reside at the house of Ranjeet came to his house, sat there for some time and then went

away. At about 11.30 p.m., they are stated to have again come to the house of Ranjeet and consumed alcohol. Thereafter, at about 12 ob clock in the night, when Rajkumari had gone to sleep in her room and the servant, Dhaniram, was watching television in the verandah, the accused persons, Ranjeet, Vishwanath, Amar Singh and Ramnaresh came into the house of Rajkumari and told Dhaniram that they would have illicit relations with Rajkumari and if he disclosed anything to anybody, he would be eliminated. Ramnaresh and Amar Singh sat down along with Dhaniram while Ranjeet and Vishwanath went into the room of Rajkumari and committed rape on her. After committing the offence, they came out and took Dhaniram into the courtyard. Then Ramnaresh and Amar Singh entered the room of Rajkumari. They also committed rape on her and came out after some time. Then, the accused asked Dhaniram to go away to which he objected. Upon his objection, he was threatened of elimination. Thereafter, Dhaniram went to the room of Rajkumari and saw that she was breathing heavily, was not able to speak and blood was oozing from her mouth and nose. Dhaniram came out of the room and was again threatened by all the accused. Ranjeet asked him to go to the house of his aunt (bua), mother of Rajkumari and tell her that Rajkumari is not waking up. Before leaving, they extended the threat again and told him to act as per their directions. Dhaniram went to the house of Sugaribai, mother of Rajkumari, PW12 and narrated the incident as he was directed by the accused. Sugaribai asked him to stay at her house while she went to the house of Rajkumari. There she noticed that Rajkumari was lying dead. She called the neighbours and thereafter, the information was given to Indrajeet, husband of the deceased, who came in the morning. Indrajeet visited the Police Station Marwahi and informed about the death of Rajkumari vide Ex.P1. The police visited the spot and took the body of the deceased vide Ex.P3 and also collected other materials from the place of occurrence. Dr. Sheela Saha and Dr. Mahesh Raj conducted the postmortem of the dead body and submitted the postmortem report, Ex.P12, wherein it was opined that death of Rajkumari had taken place due to blockage of breathing on account of strangulation and the act of commission of rape on her was also established. The police registered a case under Section 376/302 IPC vide Ex.P16 and started its investigation. Statements of as many as 14 witnesses were recorded by the police. Various items like blood stained underwear and piece of yellow-coloured saree on which blood spots were visible at various places were also seized from the place of occurrence and were exhibited as Ex.P10. Slide of semen of the accused from the hospital was seized vide seizure memo Ex.P13. Thereafter, the accused were arrested. During further investigation, clothes, shirts and underwear of the other accused persons and the petticot and saree of the deceased were also seized. After the medical examination of the accused, report of the FSL and recording of statements of the witnesses, the police filed the report before the court of competent jurisdiction. The accused were committed to the Court of Sessions and tried in accordance with law, which resulted in their conviction, as afore-noticed. As per Ex.P12, there were following injuries upon the person of the deceased:-

> b External Injury in the neck- (A) Abrasion with scratch mark by nail present. Abrasion in number, below the angle of right mandible and sternocleidomastoideus muscles present size measuring 0.5 x 0.5 cm (B) Scratch mark b length 1b present above mentioned area. Abrasion on the left side of Neck below the angle of mandible to mastoid process abrasion scratch mark 2 B=b present.
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> (C) Abrasion in the thigh 1b x 0.5b and 1b x 1b .

1b x 1b contusion on private part on medial side of the Rt. Present on both medial aspect of thigh.

ON P/V EXAMINAL Laceration plus abrasion 3 to 4b in no. over perineum. Blood mix discharge present.

P/V Ex-Uterus Anteverted normal size.b

5. PW1, husband of the deceased had stated in his statement under Section 161 of the Code of Criminal Procedure (Cr.P.C.) that PW6 had not told him as to how Rajkumari had died. In his statement, he had also stated that he had not married Rajkumari and she was staying with him as his mistress. He had been married earlier to a girl from village Pyari. However, he did not remember the name of the girl, as it was more than 16 years ago. He further stated that the deceased Rajkumari was married to one Bhupendra, who was from the village of her father, i.e. village Khongapani. He admitted that he had two children from Rajkumari and also that his relationship with Bhupendra were bitter on account of retaining Rajkumari as his mistress. He also stated that he had suspected Bhupendra of committing the said crime. According to this witness, he was informed by one Mr. Ashok of the incident. He stated that Dhaniram had been serving as a servant with them for the past three years and he used to have his meals and sleep in the verandah of the house. The broken pieces of bangles of Rajkumari were kept by Dhaniram when he cleaned the room.

6. The other witnesses, i.e. PW2, PW5 and PW10, who had seen Ranjeet and the other accused assembling outside the house of Rajkumari had been declared hostile during their examination before the court by the prosecutor. These witnesses, however, had admitted that they had acquaintance with the accused persons as well as with the deceased Rajkumari. PW5, Bela Bai stated that she had gone to watch television in the house of Rajkumari along with Anita and Savita and nobody else was there. It was at that stage that the witness was declared hostile and she denied the suggestion that she had seen the accused persons. This witness and all other witnesses live in and around the house of Rajkumari.

7. PW6 who is the main witness of the prosecution, was about 16 years old at the time of recording of his statement in the Court. He fully supported the case of the prosecution and was subjected to a lengthy cross- examination. According to him, he was watching television when Ranjeet along with other accused had come to the house of Rajkumari. He also stated that he did not raise hue and cry as he was under constant threat by the other co-accused, who were surrounding him. He also stated that he was confused and was unable to point out anything at that point of time. In his cross-examination, he was posed the following question, which adds to the veracity of his statement:

> b Question: - When Raj Kumari was restless due to pain, did you go to call up Ranjeet?
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> Ans:- Why I should have gone to call up Ranjeet when he, in person, was involved in this incident.b

8. As already noticed, this witness was subjected to a detailed cross- examination. He also admitted in his cross-examination b it is correct to say that I was afraid whether the police would not make me the accused.b

9. PW12, Sugaribai, is the mother of the deceased and she had also supported the case of the prosecution and corroborated the statement of PW6. She stated that when she visited the house of Rajkumari, Ranjeet was holding the younger infant of Rajkumari in his lap and she had sent Ranjeet to call the people but instead he called Rewa Lohar, a witch doctor.

10. PW1, PW6 and PW12 had substantially supported the case of the prosecution and we are unable to notice any substantial conflict or contradiction in their statements. The semen, blood and blood-stained clothes, which had been seized during the investigation, had been sent for examination. The report of the FSL had been placed on record as Ex.P23. Such evidence would be admissible in terms of Section 293 Cr.P.C. The merit or otherwise of this report was examined by the High Court as follows:-

> b (8) During trial, report of the Forensic Science Laboratory, Raipur Ex.P-23 dated 31-7-2007 was produced and admitted in evidence under Section 293 of the Code by which presence of blood on Articles A, B, C, D, E, F1, F2 and presence of seminal stains and human spermatozoa on Articles C, D, E, F1, F2, G1, H1, I1, J1 and K1 was confirmed. Seminal stains and human spermatozoa was not found on Articles A and B. The seminal stains on Articles C, D, E, F1 and F2 were not sufficient for serological examination. The Slides Articles G2, H2, I2, J2 and K2 were preserved if D.N.A. Test was felt necessary. The prosecution examined as many as 16 witnesses. The appellants/accused examined Samelal D.W.-1 and Kamla D.W.-2 wife of Ranjeet to establish that the appellants/accused had slept in their respective houses between 9 to 10 P.M. on 9-8-2006.b

11. As is evident from the above findings, the report of the FSL was inconclusive but not negative, which would provide the accused with any material benefit.

12. We have examined this case in light of the above ocular and documentary evidence. One very important aspect of the present case is that the accused were not declared accused instantaneously. Dhaniram had been kept in the Police Station for two days thereafter apparently for the purposes of verifying and investigating what he informed the police. The needle of suspicion pointed towards Dhaniram and Bhupendra for the reason that Bhupendra was earlier married to Rajkumari and Dhaniram with reference to the circumstances in existence at the spot and he being the only person available. It was argued that Dhaniram could have committed the crime as he was the only person present in the house when all the persons watching the television had left the house. Thus, the Investigating Agency had to conduct a proper investigation before it could identify the real suspects and the accused in the case, which in our opinion, the police did.

13. The fact that at a given point of time, some person other than the accused were suspected to have committed the offence would lose its relevance once the investigation is completed, report under

Section 173 Cr.P.C. is filed before the Court of competent jurisdiction, of course, unless the Court, upon presentation of the report finds that some other person is also liable to be summoned as an accused or directs further investigation. In the present case, the possibility of PW6, Dhaniram, having committed the crime is ruled out in view of the evidence collected during the investigation. It is nobodyb s case before us that there is even an iota of evidence which points towards Bhupendra for commission of such an offence.

14. Now, we may deal with the first contention raised on behalf of the appellants with reference to the credibility of the testimony of PW6. The learned counsel appearing for the appellants, contended that PW6, the sole eye-witness, cannot be relied upon to convict the accused for the reason that the witness, being a suspect himself, is not credible and has not spoken the truth before the Court. It is also contended that the Court should deal with the statement of a sole eye-witness cautiously and it may not be very safe to rely upon the testimony of such a witness. In support of his contention, he derives strength from the judgments of this Court in the cases of Joseph v. State of Kerala [(2003) 1 SCC 465] and State of Haryana v. Inder Singh & Ors. [(2002) 9 SCC 537]. In the case of Joseph, this Court has stated the principle that where there is a sole witness to the incident, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of evidence tendered by other witnesses or the material evidences placed on record. This Court further stated that Section 134 of the Indian Evidence Act does not provide for any particular number of witnesses and it would be permissible for the Court to record and sustain a conviction on the evidence of a solitary eye-witness. But, at the same time, such a course can be adopted only if evidence tendered by such a witness is credible, reliable, in tune with the case of the prosecution and inspires implicit confidence. In the case of Inder Singh (supra), the Court held that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused. The testimony of a sole witness must be confidence-inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court.

15. The principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eye-witness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eye-witness to the crime. All that is needed is that the statement of the sole eye-witness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime.

16. In light of this principle, now we may examine the facts of the present case. PW6, at the time of occurrence and even at the time of recording of the statement, was a young boy of 16 years. He had been serving in the house of Indrajeet, PW1, for a number of years prior to the date of incident. It was his regular feature to have his meals as well as sleep in the verandah of the house of PW1. There existed no motive for him to commit the crime. He was kept under continuous threat to his life right from the time Ranjeet and others entered the house of the deceased Rajkumari till the accused were taken in police custody after recording evidence of various persons, more importantly, PW1 (Indrajeet), PW12 (Sugaribai), PW6 (Dhaniram) and PW7 (Dr. Shila Saha). His statement clearly narrates how the offence was committed by the accused and there is nothing abnormal and inconsistent in his testimony. Furthermore, his statement is fully corroborated by medical evidence

of PW7, Dr. Shila Saha and the testimony of PW12, Sugaribai. The confirmation of blood on the piece of saree used for gagging the mouth of Rajmukari and the confirmation of presence of semen and human spermatozoa on the vaginal slides of Rajkumari and the findings during autopsy duly proved by PW7, Dr. Shila Saha and the corroboration of other witnesses including that of the Investigating Officer leave no room for any doubt that the appellants had committed house trespass in the house of Rajkumari and committed the offence with which they are charged. A very significant piece of evidence in the present case is the medical evidence and the injuries inflicted upon the body of the deceased. Both, the external and internal injuries that the deceased suffered as a consequence of rape and the strangulation clearly indicate that the crime could not have been committed by a single person. Once that possibility is ruled out, it would attach greater reliability to the testimony of PW6. Thus, the statement of PW6, despite he being the sole eye-witness, need not be doubted by this Court. It fully satisfies the tests of law enunciated in the above judgments of this Court. Resultantly, we find no merit in this submission of the learned counsel appearing for the appellants.

17. The next contention is that there was inordinate delay in lodging the FIR which gave an opportunity to the police to falsely implicate the accused. Thus, the entire prosecution story being founded on the said FIR, needs to be disbelieved by the Court and the appellants be entitled to acquittal. In this regard, reliance has been placed upon the judgment of this Court in the case of State of Gujarat v. Patel Mohan Mulji [AIR 1994 SC 250]. At the very outset, we may notice that the facts of the case in Patel Mohan Mulji (supra) are significantly different from the facts of the case in hand. There, the Court had acquitted the accused not only for the sole reason of delay in recording the FIR but also for the reason that there was close relationship of witnesses with the deceased and the accused. There were discrepancies in the inquest report and clear conflict between the medical evidence and the oral evidence. The evidence of the prosecution was also found to be suffering from serious infirmities. In the present case, none of these exists. There are four or five prosecution witnesses, including PW2, PW3, PW4, PW5 and PW10, who had been declared hostile during the course of hearing of the trial. These witnesses were not the witnesses to the scene of crime. They were witnesses only to support the fact that the accused persons were seen together near the house of the deceased Rajkumari, after all others had gone to their respective houses, after watching television at the house of the deceased. This fact is not the determinative factor and does not demolish the case of the prosecution in its entirety or otherwise. The presence of Ranjeet Kewat at the house of the deceased, Rajkumari, immediately after the occurrence and trying to keep a watch on PW6 clearly shows that the most likely and truthful witness in the case of the prosecution is PW6. PW6, as already noticed, had withstood the long cross-examination despite his young age, the threat extended to him by the accused and being the sole eye-witness of such a heinous crime. It goes to the credit of this witness that despite the fact that other five witnesses had turned hostile being the person of the village, he nevertheless stood to his testimony.

18. As far as the delay is concerned, we are not in agreement with the learned counsel appearing for the appellants that the delay does not stand explained in the present case. The occurrence took place at about 11 p.m. at night in a village area where normally by this time, people go to their respective houses and stay inside thereafter. After committing the rape on the deceased and her subsequent death which itself took a considerable time, the accused persons remained in the house for some time. Thereafter, they made it sure that PW6 goes to the house of PW12 and tells her incorrectly and

without disclosing the true facts that the deceased was not waking up despite efforts, which he did and this fact is fully established by the statement of PW12. In the meanwhile, the news had spread and one Ashok had rung up PW1 who came to the spot of occurrence. After seeing his wife in that horrible condition and doubting that Bhupendra might have committed the crime since by that time PW6 had not told him the correct story, he went to the Police Station and lodged the FIR at about 10.50 a.m. on 10th August, 2006. Police registered the FIR under Sections 376 and 302 IPC vide Exhibit P16. Thus, there is plausible explanation available on record of the case file which explains the delay in lodging the FIR. We also cannot lose sight of the statement of PW4, father of PW6, who stated that when he went to the Police Station, he found his son there who informed him that he was in the Police Station since the past two days. His son had challenged all the four accused persons in his presence and later he was informed by the Police that his son was a witness in the case. This witness knew the accused persons as well as the deceased Rajkumari. He was a party to the seizure memo, Exhibit P/7 to P/10 though in the Court he stated that nothing was seized in his presence and, at this stage, he was declared hostile. The statement of PW6 does not suffer from any legal or factual infirmity and appears to be the true and correct version of what actually happened at the scene of occurrence. The delay, if any, in lodging the FIR, thus, stands explained and is, in no way, fatal to the case of the prosecution.

19. Now, we would deal with the contention that the recoveries effected during the period of investigation are improper and inadmissible. The report submitted by the FSL, as per Exhibit P/23, does not indicate or connect the accused with the commission of the crime and, therefore, the case of the prosecution should essentially fail. This argument, again, is without any merit. Firstly, Exhibit P/23 and the effect of the FSL Report have been appropriately discussed by the High Court in its judgment. The articles seized, the human blood noticed on Articles A, B, C, D, E, F1 and F2 and presence of seminal stains and human spermatozoa on Articles C, D, E, F1, F2, G1, H1, I1, J1 and K1 confirmed. Seminal stains and human spermatozoa were not found on Articles A and B. The seminal stains on Articles C, D, E, F1 and F2 were not sufficient for serological examination. This was so recorded in Exhibit P23. This document further stated that Articles G2, H2, I2, J2 and K2 were not examined by the FSL, Raipur. It was further recorded that in case of necessity, the DNA test could be performed at Hyderabad. The report also stated that the articles with regard to the blood group and serum had been sent to Kolkata Laboratory for futher investigation. Indefinite conclusion of the expert to this extent, cannot be treated as a report entirely in favour of the accused which ipso facto would entitle them for an order of acquittal. This expert report, has to be examined in conjunction with the oral evidence and particularly the medical evidence. Exhibit P/12 is the post mortem report which has depicted various external and internal injuries on the body of the deceased as afore-noticed. It is also clear that the cause of death of Rajkumari was asphyxia due to throttling. It is further clear from the findings in the post mortem report that petechial hemorrhage of lungs was present, the right side of heart was filled with blood while the left chamber was empty and bloody froth was oozing from nostrils and mouth of the deceased. There has to be a very strong and compelling reason for the Court to disbelieve an eye-witness. Statement of PW6 does not suffer from any contradictions nor is at variance with the case of the prosecution. He was being kept under a constant watch inasmuch as he was the servant of PW1, whose brother Ranjeet was one of the accused. Accused was even present near the dead body of Rajkumari till she was taken for post mortem. We have already noticed that the expert evidence clearly demonstrates, particularly in view

of the injuries caused to the deceased during the heinous crime, that it could not have been done by a single person and, therefore, involvement of two or more persons is most probable and in line with the story of the prosecution. The cumulative effect of the oral/documentary and expert evidence is that the prosecution has been able to prove its case beyond any reasonable doubt.

20. It is a case where not only the entire incriminating material evidence was put to the accused while they were being examined under Section 313 Cr.P.C. but also that the accused examined two witnesses DW1, Samelal Kewat and DW2, Kamla, wife of Ranjeet Singh. In their statements under Section 313 Cr.P.C., they have taken the stand that they were not present at the place of occurrence but, in fact, they were present in their respective houses and as such they have been falsely implicated. The two witnesses were examined in support of this fact. DW1 has stated that he lives nearby the house of Rajkumari and he did not hear any noise or cries on the fateful night. He also stated that Ramnaresh came to his house at about 10:00 ob clock when he was going to attend the Ramayana. He further stated that Ramnaresh was in his house and, thus, he could not have committed the crime. DW2 is the wife of Ranjeet. She stated that his husband was sleeping in the house only and on the said date Ramnaresh, Vishwanath and Amar Singh had not visited their house. The cross examination of these two witnesses has clearly created a doubt in regard to the authenticity of their statements. Firstly, as per the version of the prosecution and as is even clear from the medical evidence, the mouth of deceased Rajkumari had been gagged. Therefore, the question of hearing any noise or screaming would not arise and, secondly, DW2 is the wife of the accused and is bound to speak in his favour as an interested witness. Furthermore, both these witnesses had not informed the Police during the course of investigation and even when the accused were arrested that they had been present at their respective houses and not at the place of occurrence. In fact, this has not even been the suggestion of the defence while cross-examining the prosecution witnesses.

21. In terms of Section 313 Cr.P.C., the accused has the freedom to maintain silence during the investigation as well as before the Court. The accused may choose to maintain silence or complete denial even when his statement under Section 313 Cr.P.C. is being recorded, of course, the Court would be entitled to draw an inference, including adverse inference, as may be permissible to it in accordance with law. Right to fair trial, presumption of innocence unless proven guilty and proof by the prosecution of its case beyond any reasonable doubt are the fundamentals of our criminal jurisprudence. When we speak of prejudice to an accused, it has to be shown that the accused has suffered some disability or detriment in relation to any of these protections substantially. Such prejudice should also demonstrate that it has occasioned failure of justice to the accused. One of the other cardinal principles of criminal justice administration is that the courts should make a close examination to ascertain whether there was really a failure of justice or whether it is only a camouflage, as this expression is perhaps too pliable. [Ref. Rafiq Ahmed @ Rafi v. State of Uttar Pradesh [(2011) 8 SCC 300].

22. It is a settled principle of law that the obligation to put material evidence to the accused under Section 313 Cr.P.C. is upon the Court. One of the main objects of recording of a statement under this provision of the Cr.P.C. is to give an opportunity to the accused to explain the circumstances appearing against him as well as to put forward his defence, if the accused so desires. But once he

does not avail this opportunity, then consequences in law must follow. Where the accused takes benefit of this opportunity, then his statement made under Section 313 Cr.P.C., in so far as it supports the case of the prosecution, can be used against him for rendering conviction. Even under the latter, he faces the consequences in law.

23. In the present case, the accused have denied their presence on the spot, at the time of occurrence. Thus, it was for them to prove that they were not present at the place of occurrence and were entitled to plea of alibi. In our considered opinion, they have miserably failed to establish this fact. On the contrary, the behaviour explained by the defence witnesses appears to be somewhat unnatural in the social set up in which the accused, the deceased and even some of the prosecution witnesses were living. They knew each other very well and the normal course of life in a village is that they are quite concerned with and actively participate in each otherb s affairs, particularly sad occasions. Ranjeet was present at the place of occurrence and was holding one of the minor children of PW1. This supports the statement of PW6 that he was constantly under threat and watch from either of the accused. The version put forward by the accused in their statement under Section 313 Cr.P.C. is unbelievable and unacceptable. There is no cogent evidence on record to support their plea.

24. For the reasons afore-recorded, we have no hesitation in holding that the prosecution has been able to prove its case beyond reasonable doubt. The accused are guilty of committing the offence under Sections 499, 376(2)(g) and 302 IPC. We hold them guilty of committing these offences.

The death sentence and principles governing its conversion to life imprisonment

25. Despite the transformation of approach and radical changes in principles of sentencing across the world, it has not been possible to put to rest the conflicting views on sentencing policy. The sentencing policy being a significant and inseparable facet of criminal jurisprudence, has been inviting the attention of the Courts for providing certainty and greater clarity to it. Capital punishment has been a subject matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one undisputable statement of law follows that it is neither possible nor prudent to state any universal formula which would be applicable to all the cases of criminology where capital punishment has been prescribed. It shall always depend upon the facts and circumstances of a given case. This Court has stated various legal principles which would be precepts on exercise of judicial discretion in cases where the issue is whether the capital punishment should or should not be awarded.

26. The law requires the Court to record special reasons for awarding such sentence. The Court, therefore, has to consider matters like nature of the offence, how and under what circumstances it was committed, the extent of brutality with which the offence was committed, the motive for the offence, any provocative or aggravating circumstances at the time of commission of the crime, the possibility of the convict being reformed or rehabilitated, adequacy of the sentence of life imprisonment and other attendant circumstances. These factors cannot be similar or identical in any two given cases. Thus, it is imperative for the Court to examine each case on its own facts, in light of the enunciated principles. It is only upon application of these principles to the facts of a

given case that the Court can arrive at a final conclusion whether the case in hand is one of the b rarest of rareb cases and imposition of death penalty alone shall serve the ends of justice. Further, the Court would also keep in mind that if such a punishment alone would serve the purpose of the judgment, in its being sufficiently punitive and purposefully preventive.

27. In order to examine this aspect in some greater depth and with objectivity, it is necessary for us to reiterate the various guiding factors. Suffices it to make reference to a recent judgment of this Court in the case of State of Maharashtra v. Goraksha Ambaji Adsul [(2011) 7 SCC 437], wherein this Court discussed the law in some detail and enunciated the principles as follows :

> b a0. The principles governing the sentencing policy in our criminal jurisprudence have more or less been consistent, right from the pronouncement of the Constitution Bench judgment of this Court in Bachan Singh v. State of Punjab. Awarding punishment is certainly an onerous function in the dispensation of criminal justice. The court is expected to keep in mind the facts and circumstances of a case, the principles of law governing award of sentence, the legislative intent of special or general statute raised in the case and the impact of awarding punishment. These are the nuances which need to be examined by the court with discernment and in depth.
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> 31. The legislative intent behind enacting Section 354(3) CrPC clearly demonstrates the concern of the legislature for taking away a human life and imposing death penalty upon the accused.

Concern for the dignity of the human life postulates resistance to taking a life through law's instrumentalities and that ought not to be done, save in the rarest of rare cases, unless the alternative option is unquestionably foreclosed. In exercise of its discretion, the court would also take into consideration the mitigating circumstances and their resultant effects.

32. The language of Section 354(3) demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, b in the case of sentence of death, the special reasons for such sentenceb unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence. This is how the concept of the rarest of rare cases has emerged in law. Viewed from that angle, both the legislative provisions and judicial pronouncements are at ad idem in law. The death penalty should be imposed in the rarest of rare cases and that too for special reasons to be recorded. To put it simply, a death sentence is not a rule but an exception. Even the exception must satisfy the prerequisites contemplated under Section 354(3) CrPC in light of the dictum of the Court in Bachan Singh.

33. The Constitution Bench judgment of this Court in Bachan Singh has been summarised in para 38 in Machhi Singh v. State of Punjab and the following guidelines have been stated while considering the possibility of awarding sentence of death:

(Machhi Singh case, SCC p. 489) b (i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability.

(ii) Before opting for the death penalty the circumstances of the b offenderb also requires to be taken into consideration along with the circumstances of the b crimeb .

(iii) Life imprisonment is the rule and death sentence is an exception. b & death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided the option to impose sentence of imprisonment for life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances.

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.b (emphasis supplied)

34. The judgment in Bachan Singh, did not only state the above guidelines in some elaboration, but also specified the mitigating circumstances which could be considered by the Court while determining such serious issues and they are as follows:

(SCC p. 750, para 206) b â06. b & b Mitigating circumstances.b In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the accused can be reformed and rehabilitated.

The State shall by evidence prove that the accused does not satisfy Conditions (3) and (4) above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct.b

35. Now, we may examine certain illustrations arising from the judicial pronouncements of this Court.

36. In D.K. Basu v. State of W.B. this Court took the view that custodial torture and consequential death in custody was an offence which fell in the category of the rarest of rare cases. While specifying the reasons in support of such decision, the Court awarded death penalty in that case.

37. In Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra this Court also spelt out in paras 56 to 58 that nature, motive, impact of a crime, culpability, quality of evidence, socio-economic circumstances, impossibility of rehabilitation are the factors which the court may take into consideration while dealing with such cases. In that case the friends of the victim had called him to see a movie and after seeing the movie, a ransom call was made, but with the fear of being caught, they murdered the victim. The Court felt that there was no evidence to show that the criminals were incapable of reforming themselves, that it was not a rarest of the rare case, and therefore, declined to award death sentence to the accused.

38. Interpersonal circumstances prevailing between the deceased and the accused was also held to be a relevant consideration in Vashram Narshibhai Rajpara v. State of Gujarat where constant nagging by family was treated as the mitigating factor, if the accused is mentally unbalanced and as a result murders the family members. Similarly, the intensity of bitterness which prevailed and the escalation of simmering thoughts into a thirst for revenge and retaliation were also considered to be a relevant factor by this Court in different cases.

39. This Court in Satishbhushan Bariyar also considered various doctrines, principles and factors which would be considered by the Courts while dealing with such cases. The Court discussed in some elaboration the applicability of the doctrine of rehabilitation and the doctrine of prudence. While considering the application of the doctrine of rehabilitation and the extent of weightage to be given to the mitigating circumstances, it noticed the nature of the evidence and the background of the accused. The conviction in that case was entirely based upon the statement of the approver and was a case purely of circumstantial evidence. Thus, applying the doctrine of prudence, it noticed the fact that the accused were unemployed, young men in search of job and they were not criminals. In execution of a plan proposed by the appellant and accepted by others, they kidnapped a friend of theirs. The kidnapping was done with the motive of procuring ransom from his family but later they murdered him because of the fear of getting caught, and later cut the body into pieces and disposed it off at different places. One of the accused had turned approver and as already noticed, the conviction was primarily based upon the statement of the approver.

40. Basing its reasoning on the application of doctrine of prudence and the version put forward by the accused, the Court, while declining to award death penalty and only awarding life imprisonment, held as under: (Satishbhushan Bariyar case, SCC pp. 551 & 559-60, paras 135, 168-69 & 171-73) b Æ35. Right to life, in its barest of connotation would imply right to mere survival. In this form,

right to life is the most fundamental of all rights. Consequently, a punishment which aims at taking away life is the gravest punishment. Capital punishment imposes a limitation on the essential content of the fundamental right to life, eliminating it irretrievably. We realise the absolute nature of this right, in the sense that it is a source of all other rights. Other rights may be limited, and may even be withdrawn and then granted again, but their ultimate limit is to be found in the preservation of the right to life. Right to life is the essential content of all rights under the Constitution. If life is taken away, all other rights cease to exist.

* * *

168. We must, however, add that in a case of this nature where the entire prosecution case revolves round the statement of an approver or is dependant upon the circumstantial evidence, the prudence doctrine should be invoked. For the aforementioned purpose, at the stage of sentencing evaluation of evidence would not be permissible, the courts not only have to solely depend upon the findings arrived at for the purpose of recording a judgment of conviction, but also consider the matter keeping in view the evidences which have been brought on record on behalf of the parties and in particular the accused for imposition of a lesser punishment. A statement of approver in regard to the manner in which crime has been committed vis-C -vis the role played by the accused, on the one hand, and that of the approver, on the other, must be tested on the touchstone of the prudence doctrine.

169. 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 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 2 and 3 were as much a part of the crime as the appellant. Though it is true, that it was he who allegedly proposed the idea of kidnapping, but at the same time it must not be forgotten that the said plan was only executed when all the persons involved gave their consent thereto.

* * *

171. Section 354(3) of the Code of Criminal Procedure requires that when the conviction is for an offence punishable with death or in the alternative with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and in the case of sentence of death, the special reasons thereof. We do not think that the reasons assigned by the courts below disclose any special reason to uphold the death penalty. The discretion granted to the courts must be exercised very cautiously especially because of the irrevocable character of death penalty. Requirements of law to assign special reasons should not be construed to be an empty formality.

172. We have previously noted that the judicial principles for imposition of death penalty are far from being uniform. Without going into the merits and demerits of such discretion and subjectivity,

we must nevertheless reiterate the basic principle, stated repeatedly by this Court, that life imprisonment is the rule and death penalty an exception. Each case must therefore be analysed and the appropriateness of punishment determined on a case-by-case basis with death sentence not to be awarded save in the b rarest of the rareb case where reform is not possible. Keeping in mind at least this principle we do not think that any of the factors in the present case discussed above warrants the award of the death penalty. There are no special reasons to record the death penalty and the mitigating factors in the present case, discussed previously, are, in our opinion, sufficient to place it out of the b rarest of rareb category.

173. For the reasons aforementioned, we are of the opinion that this is not a case where death penalty should be imposed. The appellant, therefore, instead of being awarded death penalty, is sentenced to undergo rigorous imprisonment for life. Subject to the modification in the sentence of the appellant (A-1) mentioned hereinbefore, both the appeals of the appellant as also that of the State are dismissed.b (emphasis in original)

41. The above principle, as supported by case illustrations, clearly depicts the various precepts which would govern the exercise of judicial discretion by the courts within the parameters spelt out under Section 354(3) CrPC. Awarding of death sentence amounts to taking away the life of an individual, which is the most valuable right available, whether viewed from the constitutional point of view or from the human rights point of view. The condition of providing special reasons for awarding death penalty is not to be construed linguistically but it is to satisfy the basic features of a reasoning supporting and making award of death penalty unquestionable. The circumstances and the manner of committing the crime should be such that it pricks the judicial conscience of the court to the extent that the only and inevitable conclusion should be awarding of death penalty.b

28. In Machhi Singh & Ors. v. State of Rajasthan [(1983) 3 SCC 470], this Court stated certain relevant considerations like the manner of commission of murder, motive for commission of murder, anti-social or socially abhorrent nature of the crime, magnitude of crime and the personality of the victim of murder. These considerations further demonstrate that the matter has to be examined with reference to a particular case, for instance, murder of an innocent child who could not have or has not provided even an excuse, much less a provocation for murder. Similarly, murder of a helpless woman who might be relying on a person because of her age or infirmity, if murdered by that person, would be an indicator of breach of relationship or trust as the case may be. It would neither be proper nor probably permissible that the judicial approach of the court in such matters treat one of the stated considerations or factors as determinative. The court should examine all or majority of the relevant considerations to spell comprehensively the special reasons to be recorded in the order, as contemplated under Section 354(3) of the Cr.P.C.

29. In the case of Dhananjoy Chatterjee @ Dhana v. State of West Bengal [(1994) 2 SCC 220] while affirming the award of death sentence by the High Court, this Court noticed that b in recent years, the rising crime rate- particularly violent crime against women has made the criminal sentencing by the courts a subject of concernb . The Court reiterated the principle that it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime, as also the society, has the

satisfaction that justice has been done to it. The Court held as follows:-

> b Æ5. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenceless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the society's cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.b

30. In this case, the Court was concerned with the case of a security guard who had been transferred at the complaint of a lady living in the flats with regard to teasing of her young girl child. The security guard went up to the flat of the lady, committed rape on her daughter and then murdered her brutally. The Court found it to be a fit case for imposition of capital punishment.

31. Again, in the case of Surja Ram v. State of Rajasthan [(1996) 6 SCC 271], this Court affirmed the death sentence awarded by the High Court primarily taking into consideration that there was no provocation and the manner in which the crime was committed was brutal. Noticing that the Court has to award a punishment which is just and fair by administering justice tempered with such mercy not only as the criminal may justly deserve but also to the rights of the victims of the crime to have the assailant appropriately punished and the society's reasonable expectation from the court for the appropriate deterrent punishment conforming to the gravity of the offence and consistent with the public abhorrence for the heinous crime committed by the accused. The Court further held as under:-

> b Æ8. After giving our anxious consideration to the facts and circumstances of the case, it appears to us that for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced in a dispassionate manner. Such act of balancing is indeed a difficult task. It has been very aptly indicated in Dennis Councle McGautha v. State of California that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime of murder. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime of murder, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.b

32. This Court in Prajeet Kumar Singh v. State of Bihar [(2008) 4 SCC 434], B.A. Umesh v. Registrar General, High Court of Karnataka [(2011) 3 SCC 85], State of Rajasthan v. Kashi Ram [(2006) 12 SCC 254] and Atbir v. Government of NCT of Delhi [(2010) 9 SCC 1] had confirmed the death sentence awarded by the High Courts for different reasons after applying the principles enunciated

in one or more afore-referred judgments.

33. Now, we may notice the cases which were relied upon by the learned counsel appearing for the appellants and wherein this Court had declined to confirm the imposition of capital punishment treating them not to be the rarest of rare cases.

34. In Ronny @ Ronald James Alwaris Etc. v. State of Maharashtra [(1998) 3 SCC 625], the Court while relying upon the judgment of this Court in the case of Allauddin Mian & Ors. v. State of Bihar [(1989) 3 SCC 5], held that the choice of the death sentence has to be made only in the b rarest of rareb cases and that where culpability of the accused has assumed depravity or where the accused is found to be an ardent criminal and menace to the society. The Court also noticed the above-stated principle that the Court should ordinarily impose a lesser punishment and not the extreme punishment of death which should be reserved for exceptional cases only. The Court, while considering the cumulative effect of all the factors such as the offences not committed under the influence of extreme mental or emotional disturbance and the fact that the accused were young and the possibility of their reformation and rehabilitation could not be ruled out, converted death sentence into life imprisonment.

35. Similarly, in the case of Bantu @ Naresh Giri v. State of M.P. [(2001) 9 SCC 615] while dealing with the case of rape and murder of a six year old girl, this Court found that the case was not one of the b rarest of rareb cases. The Court noticed that, accused was less than 22 years at the time of commission of the offence, there were no injuries on the body of the deceased and the death probably occurred as a result of gagging of the nostril by the accused. Thus, the Court while noticing that the crime was heinous, commuted the sentence of death to one of life imprisonment.

36. The above judgments provide us with the dicta of the Court relating to imposition of death penalty. Merely because a crime is heinous per se may not be a sufficient reason for the imposition of death penalty without reference to the other factors and attendant circumstances.

37. Most of the heinous crimes under the IPC are punishable by death penalty or life imprisonment. That by itself does not suggest that in all such offences, penalty of death alone should be awarded. We must notice, even at the cost of repetition, that in such cases awarding of life imprisonment would be a rule, while b deathb would be the exception. The term b rarest of rareb case which is the consistent determinative rule declared by this Court, itself suggests that it has to be an exceptional case. The life of a particular individual cannot be taken away except according to the procedure established by law and that is the constitutional mandate. The law contemplates recording of special reasons and, therefore, the expression b specialb has to be given a definite meaning and connotation. b Special reasonsb in contra-distinction to b reasonsb simplicitor conveys the legislative mandate of putting a restriction on exercise of judicial discretion by placing the requirement of special reasons.

38. Since, the later judgments of this Court have added to the principles stated by this Court in the case of Bachan Singh (supra) and Machhi Singh (supra), it will be useful to re-state the stated principles while also bringing them in consonance, with the recent judgments.

39. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh (supra). The aforesaid judgments, primarily dissect these principles into two different compartments b one being the b aggravating circumstancesb while the other being the b mitigating circumstancesb . The Court would consider the cumulative effect of both these aspects and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to one of the classes under any of the following heads while completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354(3) Cr.P.C.

Aggravating Circumstances :

(1) The offences relating to the commission of heinous crimes like murder, rape, armed dacoity, kidnapping etc. by the accused with a prior record of conviction for capital felony or offences committed by the person having a substantial history of serious assaults and criminal convictions.

(2) The offence was committed while the offender was engaged in the commission of another serious offence.

(3) The offence was committed with the intention to create a fear psychosis in the public at large and was committed in a public place by a weapon or device which clearly could be hazardous to the life of more than one person.

(4) The offence of murder was committed for ransom or like offences to receive money or monetary benefits.

(5) Hired killings.

(6) The offence was committed outrageously for want only while involving inhumane treatment and torture to the victim.

(7) The offence was committed by a person while in lawful custody.

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance, murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

(9) When the crime is enormous in proportion like making an attempt of murder of the entire family or members of a particular community.

(10) When the victim is innocent, helpless or a person relies upon the trust of relationship and social norms, like a child, helpless woman, a daughter or a niece staying with a father/uncle and is inflicted with the crime by such a trusted person.

(11) When murder is committed for a motive which evidences total depravity and meanness.

(12) When there is a cold blooded murder without provocation.

(13) The crime is committed so brutally that it pricks or shocks not only the judicial conscience but even the conscience of the society.

Mitigating Circumstances :

(1) The manner and circumstances in and under which the offence was committed, for example, extreme mental or emotional disturbance or extreme provocation in contradistinction to all these situations in normal course.

(2) The age of the accused is a relevant consideration but not a determinative factor by itself.

(3) The chances of the accused of not indulging in commission of the crime again and the probability of the accused being reformed and rehabilitated.

(4) The condition of the accused shows that he was mentally defective and the defect impaired his capacity to appreciate the circumstances of his criminal conduct.

(5) The circumstances which, in normal course of life, would render such a behavior possible and could have the effect of giving rise to mental imbalance in that given situation like persistent harassment or, in fact, leading to such a peak of human behavior that, in the facts and circumstances of the case, the accused believed that he was morally justified in committing the offence.

(6) Where the Court upon proper appreciation of evidence is of the view that the crime was not committed in a pre-ordained manner and that the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

(7) Where it is absolutely unsafe to rely upon the testimony of a sole eye-witness though prosecution has brought home the guilt of the accused.

40. While determining the questions relateable to sentencing policy, the Court has to follow certain principles and those principles are the loadstar besides the above considerations in imposition or otherwise of the death sentence.

Principles :

(1) The Court has to apply the test to determine, if it was the b rarest of rareb case for imposition of a death sentence.

(2) In the opinion of the Court, imposition of any other punishment, i.e., life imprisonment would be completely inadequate and would not meet the ends of justice.

(3) Life imprisonment is the rule and death sentence is an exception.

(4) The option to impose sentence of imprisonment for life cannot be cautiously exercised having regard to the nature and circumstances of the crime and all relevant considerations.

(5) The method (planned or otherwise) and the manner (extent of brutality and inhumanity, etc.) in which the crime was committed and the circumstances leading to commission of such heinous crime.

41. Stated broadly, these are the accepted indicators for the exercise of judicial discretion but it is always preferred not to fetter the judicial discretion by attempting to make the excessive enumeration, in one way or another. In other words, these are the considerations which may collectively or otherwise weigh in the mind of the Court, while exercising its jurisdiction. It is difficult to state it as an absolute rule. Every case has to be decided on its own merits. The judicial pronouncements, can only state the precepts that may govern the exercise of judicial discretion to a limited extent. Justice may be done on the facts of each case. These are the factors which the Court may consider in its endeavour to do complete justice between the parties.

42. The Court then would draw a balance-sheet of aggravating and mitigating circumstances. Both aspects have to be given their respective weightage. The Court has to strike a balance between the two and see towards which side the scale/balance of justice tilts. The principle of proportion between the crime and the punishment is the principle of b just desertsb that serves as the foundation of every criminal sentence that is justifiable. In other words, the b doctrine of proportionalityb has a valuable application to the sentencing policy under the Indian criminal jurisprudence. Thus, the court will not only have to examine what is just but also as to what the accused deserves keeping in view the impact on the society at large.

43. Every punishment imposed is bound to have its effect not only on the accused alone, but also on the society as a whole. Thus, the Courts should consider retributive and deterrent aspect of punishment while imposing the extreme punishment of death.

44. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly brings the case within the ambit of b rarest of rareb cases and the Court finds that the imposition of life imprisonment would be

inflicting of inadequate punishment, the Court may award death penalty. Wherever, the case falls in any of the exceptions to the b rarest of rareb cases, the Court may exercise its judicial discretion while imposing life imprisonment in place of death sentence.

45. Guided by the above principles, now, we shall proceed to deal with the contentions raised on behalf of the appellants that the present case is not one of the b rarest of rareb cases where the Court should find that imposition of life imprisonment would be entirely inadequate, even if the accused are held guilty of the offences charged.

46. We have already held that all the accused in the present appeals are guilty of the offences under Sections 376(2)(g) and 302 read with Section 34 IPC. On the question of quantum of sentence, the argument raised on behalf of the appellants is that all the accused were of young age at the time of commission of the crime, i.e. 21 to 31 years of age. They had no intention to kill the deceased and it was co-accidental that the death of the deceased occurred. Even if the accused are held guilty for the offences under Sections 376(2)(g) and 302 IPC, still it is not the b rarest of rareb case which would justify imposition of capital punishment, particularly in the facts and circumstances of the case.

47. To the contra, the learned counsel for the State has contended that the crime has been committed brutally. Accused-Ranjeet, being the brother- in-law of the deceased owed a duty to protect rather than expose her to such sexual assault and death, along with his friends. The manner in which the crime has been committed and the attendant circumstances fully justify imposition of death sentence upon the accused. The crime is heinous and has been committed brutally, without caring for the future of the two infants of the deceased, who were sleeping by her side at the time of the crime. There cannot be two opinions that the offence committed by the appellants is very heinous and all of them have taken advantage of the helplessness of a mother of two infants at that odd hour of the night and in the absence of her husband.

48. There are certain circumstances, which if taken collectively, would indicate that it is not a case where the Court would inevitably arrive at only one conclusion, and no other, that imposition of death penalty is the only punishment that would serve the ends of justice. Firstly, the age of all the appellants is one of the relevant considerations before the Court. Secondly, according to PW1, Indrajeet, the deceased Rajkumari was his mistress and he had not married her, though he had two children with her. According to him, she was earlier married to one Bhupendra and he was not maintaining good relations with the said Bhupendra on account of his living with the deceased. This may have been a matter of some concern for the family, including Ranjeet, the brother of PW1. Thirdly, it has come in evidence that during investigation, the Investigating Officer recovered a piece of saree from the place of occurrence, which was blood-stained. According to the statement of the PW7, Dr. Shila Saha, there were external injuries on the body of the deceased. Petechial hemorrhage was present in the left and right lungs. Blood mixed with froth was flowing out from the mouth of the deceased which was indicative of the possibility of the accused persons having gagged her mouth with the piece of the saree while committing rape upon her. Thus, the possibility of death of the deceased occurring co-accidentally as a result of this act committed on her by the accused cannot be ruled out. In similar circumstances, in the case of Bantu @ Naresh Giri (supra) (supra), this Court

took the view that it was not a death caused intentionally, despite the fact that it was a case of rape being committed on a minor girl. Lastly, there is no attempt made by the prosecution to prove on record that these accused are criminals or are incapable of being reformed even if given a chance to improve themselves. While relying upon the judgment of this Court in the case of Goraksha Ambaji Adsul (supra), the contention raised on behalf of the accused is that, it is not a case where no other alternative is available with the Court except to award death sentence to the accused and that they are likely to prove a menace to the society. It is further stated that the statement of the sole witness is not credible as he himself fell within the range of suspicion and a number of other witnesses had turned hostile. There are contradictions and discrepancies in the statements of the witnesses. The accused are neither previous convicts nor involved in any other crime. Thus, given a chance, they are capable of being reformed and be law-abiding citizens.

49. Having dealt with these contentions at some length in the earlier part of the judgment, we do not consider it necessary to again deliberate on these questions. Suffices it to note that the accused are guilty of the offences for which they were charged. It is correct that the possibility of their being reformed cannot be ruled out. The Court has to consider various parameters afore-stated and balance the mitigating circumstances against the need for imposition of capital punishment. The factors to be considered could be different than the mitigating circumstances. While we cumulatively examine the various principles and apply them to the facts of the present case, it appears to us that the age of the accused, possibility of the death of the deceased occurring accidently and the possibility of the accused reforming themselves, they cannot be termed as b social menaceb . It is unfortunate but a hard fact that all these accused have committed a heinous and inhumane crime for satisfaction of their lust, but it cannot be held with certainty that this case falls in the b rarest of rareb cases. On appreciation of the evidence on record and keeping the facts and circumstances of the case in mind, we are unable to hold that any other sentence but death would be inadequate.

50. Accordingly, while commuting the sentence of death to that for life imprisonment (21 years), we partially allow their appeals only with regard to the quantum of sentence.

b &b &b &b &b &b &b &b &b &b &b &.,J.

[A.K. Patnaik] b &b &b &b &b &b &b &b &b &b &b &.,J.

[Swatanter Kumar] New Delhi;

February 28, 2012.