Mohd. Firoz vs The State Of Madhya Pradesh on 19 April, 2022

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, S. Ravindra Bhat, Uday Umesh Lalit

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 612 OF 2019

MOHD. FIROZ .....APPELLANT(S)

VERSUS

STATE OF MADHYA PRADESH .....RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. The present appeal was initially filed by the appellant-Bibi Sidhika, the mother of the accused Mohd. Firoz, challenging the legality and validity of the impugned common judgement and order dated 15.07.2014 passed by the High Court of Judicature, Madhya Pradesh at Jabalpur, in the Criminal Reference No. 09 of 2013, Criminal Appeal No. 2920 of 2013 and Criminal Appeal No. 3132 of 2013. During the pendency of the present appeal, the said appellant having expired, the accused Firoz has been substituted as the appellant in view of the order passed by this Court on 21.10.2021. 10:07:01 IST Reason:

Case of Prosecution : -

2. The case of the prosecution as unfolded before the trial court was that on 17.04.2013, at about 06:30 PM, one Rakesh Choudhary (original accused no.

2) came to the house of the informant Ramkumari (mother of the victim) along with an unknown person (the present appellant-original accused no. 1) and requested the said Ramkumari and her mother Himmabai to provide an accommodation to the said unknown person for a day, however, Himmabai refused to provide such accommodation. Thereafter, Rakesh Choudhary left and his

friend sat for a while at the courtyard of the house of the complainant, where the victim aged about four years was playing with her brother Ramkishan and other cousins. After sometime, Ramkumari found that her daughter was missing and the other person (the accused no. 1) was also not there. She along with others tried to search her daughter at the nearby places, however, her daughter was not found. After sometime Ramkishan came with some bananas and told Ramkumari that Bhaijaan (accused no. 1) had taken the victim with him. Ramkumari therefore went to the police station Ghansaur for lodging a missing report. On the next day i.e., on 18.04.2013 morning, some villagers found that one girl child was lying unconscious in the field of one Badri Yadav. On receiving such information, Shyam Yadav, the brother of Ramkumari went to the spot and found that the victim was lying unconscious and blood was oozing from her mouth and nostrils. He immediately took the victim first to the Police Station and then to the Government Hospital at Ghansaur, however, since the condition of the victim was deteriorating, she was shifted to the hospital at Jabalpur. The Doctors who examined and treated her confirmed that a rape was committed on the victim. Considering her serious condition, the victim was taken to the Care Hospital at Nagpur, however, on 29.04.2013, the victim expired at the said hospital. Dr. Pradeep Gangadhar Dixit, a professor and H.O.D. in Forensic Medicine Department, Medical College, Nagpur along with his colleagues conducted the postmortem of the dead body of the victim at about 10.35 AM on 30th April 2013 and noted the external and internal injuries on the body of the victim. The final cause of death was stated to be “bronchopheumonia and cerebral hypoxia, which was caused by smothering the nose and mouth.”

3. In the meantime, Mr. R.D. Barthi, In-charge Inspector, Police Station, Ghansaur, on the missing person report given by Ramkumari Bai had started investigation and found that the accused Firoz Khan (the present appellant), who was working in Jhabua Power Plant had taken away the victim deceitfully. He therefore registered an FIR being no. 68 of 2013 against the accused at about 06:40 AM on 18.04.2013 for the offences under Section 363 and 366 of IPC. The accused Rakesh Choudhary came to be arrested on 20th April 2013 and the appellant-accused Firoz was arrested on 23rd April, 2013 from Husainabad, Police Station Mojahidpur, Balsaur, Bhagalpur, Bihar.

4. The investigating officer after completing the investigation laid the charge-

sheet against both the accused before the trial court. The accused Mohd. Firoz was charged for the offences under sections 363, 366, 376(2)(i), 376(2)(m) and 302 of IPC and under section 5(i), 5(m) and Section 6 of the Protection of Children from the Sexual Offences Act, 2012 (hereinafter referred to as the POCSO Act), and the accused Rakesh Choudhary was charged for the offences under sections 363 and 366 r/w Section 34 and under Section 109 of IPC and under Section 16/17 of the POCSO Act. Both the accused having abjured their guilt and claimed to be tried, the prosecution examined as many as 34 witnesses to prove their guilt. Both the accused denied the allegations levelled against them in their respective further statements recorded under section 313 of Cr.PC and stated that they were falsely implicated in the case. The accused no. 2 Rakesh Choudhary in his defence examined two witnesses i.e., DW-1 Virendra Choudhary and DW-2 Gopal Prasad Ahirwar. The Sessions Court at Seoni after appreciating the evidence on record convicted both the accused for the offences charged against them and awarded death sentence to the accused Firoz for the offence under section 302 of IPC and directed to undergo rigorous imprisonment for a period of 07 years

and pay fine of Rs. 2000/- for the offence under section 363, to undergo rigorous imprisonment for a period of 10 years and pay fine of Rs. 2000/- for the offence under section 366 of IPC, to undergo life imprisonment and pay fine of Rs. 2000/- for the offences under sections 376(2)(i), 376(2)(m) of IPC and under sections 5(i)r/w 6 & 5(m) r/w 6 of POCSO Act. The Sessions Court directed the accused Rakesh Choudhary to undergo rigorous imprisonment for a period of 07 years and pay fine of Rs. 2000/- for the offences under section 363/34, to undergo rigorous imprisonment for a period of 10 years and pay fine of Rs. 2000/- for the offences under section 366/34 and to undergo life imprisonment and pay fine of Rs. 2000/- for the offence under section 109 of IPC and for the offences under section 16/17 of POCSO Act.

5. The reference made by the Sessions Court to the High Court of M.P. at Jabalpur, for the confirmation of the death sentence to the accused-Firoz was registered as Criminal Reference No. 09 of 2013. The accused Mohd. Firoz had also filed an appeal being Criminal Appeal No. 2920 of 2013 and the accused Rakesh Choudhary had filed an appeal being Criminal Appeal No. 3132 of 2013 before the High Court. The High Court vide the impugned common judgement and order dated 15.07.2014 allowed the Criminal Appeal No. 3132 of 2013 filed by the accused Rakesh Choudhary and acquitted him from the charges levelled against him, however, dismissed the Criminal Appeal No. 2920 of 2013 filed by the accused Mohd. Firoz and confirmed the death sentence awarded to him. Being aggrieved by the same, the appellant has preferred the present appeal before this Court. Evidence: -

6. In order to prove the guilt of the accused, the prosecution had examined three sets of witnesses. In the first set, the relatives and acquaintances of the informant- Ramkumari, mother of the victim, were examined. The informant Ramkumari deposed inter alia that on 17th April, 2013 at about 7.00 p.m., when she came home after finishing her work, she saw that one person (the accused-Firoz Khan) was sitting on a chair in the courtyard of her house and Rakesh Choudhary (the other accused) was sitting on the platform of the courtyard. According to her, Rakesh Choudhary was telling her mother Himmabai that “Amma Bhaijaan will sleep here”, however, her mother refused. After the said conservation, she did not know where the said Choudhary had gone but Bhaijaan (Firoz) kept sitting on the chair. At that time, her daughters Pooja, Madhu, her brother’s son-Ramkishan and her sister’s son Nilesh all were playing in the courtyard. She went inside the house and after some time when she came out, she saw that her daughter Pooja and her brother’s son Ramkishan were not in the courtyard, and the said Firoz Bhaijaan was also not seen. She therefore started searching Pooja and Ramkishan, and she saw Ramkishan coming with bananas in a polythene bag. On being inquired by her as to where Pooja was, Ramkishan told her that Bhaijaan had taken Pooja along with him. She thereafter continued to search Pooja but could not find her. She, therefore, along with her sister Jyoti went to the Police Station, Ghansaur to lodge the report. The said report of missing person was lodged at about 20:35 at the police station, Ghansaur, (Exhibit P-1). She further deposed before the Court that on the next day, the persons who go out to defecate in open came to her house and told her brother Shyam that one girl was lying unconscious in the field. Her brother, therefore, went to the field and found that the victim was lying unconscious there and blood was oozing from her nose and genital organs. Thereafter, she alongwith her mother Himmabai and her brother Shyam took her daughter Pooja to the police station and then to the Ghansaur Hospital however Pooja remained unconscious. Her daughter, thereafter, was taken to the

Medical College, Jabalpur, from Ghansaur Hospital and then to Nagpur by air for treatment, where she was admitted in the Care Hospital. Her daughter was treated for about 08 days in the said hospital and she died on 29th April, 2013. She further deposed that the doctors of all the places like Ghansaur, Jabalpur and Nagpur, where her daughter had undergone the treatment had told that a rape was committed on her and that an attempt was made to murder her by strangulating her neck. After her death, the Nagpur police had registered a report (Exhibit P-2). During the course of her deposition, she had identified the accused-Firoz present in the Court and stated that he was the same Bhaijaan. She also stated that the said Firoz had raped Pooja and inflicted injuries which caused her death. The said version of PW-1 Ramkumari was fully supported by the witnesses PW-2 Madhu Yadav who happened to be the sister of the deceased, PW-6 Himmabai who happened to be the grandmother of the deceased and mother of Ramkumari, PW-7 Preeti Yadav who happened to be the younger sister of Ramkumari. They had stated to be present in the house when both the accused Rakesh and Firoz had come to the house of Ramkumari.

7. The prosecution, in order to prove that the victim was last seen together with the accused-Firoz had examined PW-31 Ramkishan Yadav. The said Ramkishan aged about four years happened to be the son of PW-5 Shyam Yadav i.e., brother of Ramkumari. Ramkishan deposed before the Court inter alia that Firozbhai had come to their home and then had taken him and Pooja to a fruit shop. Firozbhai had given him three bananas and biscuits and thereafter asked him to go home, however, had taken Pooja with him. Identifying the accused-Firoz sitting in the Court, Ramkishan had stated that he was Firoz Bhaijaan who had taken her sister Pooja with him and thereafter Pooja was found dead. He specifically denied in the cross-examination that after Firoz Bhaijaan gave bananas and biscuits to him, Pooja also came along with him.

8. PW-4 Nitin Namdev was the fruit seller. He deposed that on 17.04.2013 at about 7.00 pm, one person wearing a white shirt and black full pant had come with one girl and a boy, both aged about four years, and had purchased six bananas from his shop for Rs.20/-. He also identified the accused-Firoz sitting in the Court and stated that he had come to his shop. He further stated that the said person had given three bananas to the boy and asked him to go home and had taken the four years old girl with him, and then had gone towards the crossing. On the next day he came to know that a person named Firoz working in the Power Plant had committed rape on the girl and had killed her, and that he was the same person who had bought bananas from his shop. In the cross-examination, he had stated that after some days of the incident, the Tehsildar had asked him to come to a school, where he had identified the accused Firoz.

9. PW-5 Shyam Yadav who happened to be the brother of Ramkumari and maternal uncle of the victim, had stated that he was not staying with his mother and sister, however, on the day, when the victim was found missing, he had stayed back with them. On the next day morning, the Village Kotwar Santosh Das had come and informed him that a girl was lying in the field of Badri Yadav. He therefore went to the field along with the Kotwar and saw that the girl-Pooja was lying unconscious and blood was oozing from her nostrils. He also saw her underwear, skins of bananas and some money lying near her body. He took Pooja first to the police station Ghansaur and from there took her to the Ghansaur Hospital for treatment. According to him, since her condition was very critical, she was taken to the Hospital at Jabalpur and thereafter to the hospital at Nagpur for treatment,

however, she died there.

10. In the second set of witnesses, the prosecution had examined the doctors who had treated the victim. PW-17 Dr. Bharti Sonkeshariya, the Medical Officer at the Community Health Center, Ghansaur had examined the victim at about 7.30 a.m on 18.04.2013. She had stated that the patient was unconscious, and blood was oozing from her nose and also from her vagina. As her condition was very critical, she was referred to the Medical College, Jabalpur. Her Medical Report was marked as Exhibit P-36. PW-20 Dr. Bharti Sahu, Assistant Professor at Medical College, Jabalpur had stated that on 18.04.2013 at about 9.30 a.m. one girl named Pooja was brought for treatment by the police constable Dilip Rajput of police station, Ghansaur and she had found that Pooja was unconscious and was having seizures. After referring to the injuries, she had opined in the medical report (Exhibit P-40) that the victim's hymen was found ruptured due to sexual intercourse and that a rape was committed on her. PW-21 Dr. Hemant, a Private Medical Practitioner (Pediatrician) at Jabalpur Hospital, Jabalpur had also examined Pooja and carried out C.T. Scan. He had found swelling in her brain. She was kept on the ventilator, but her condition was very critical and, therefore, she was shifted to Nagpur.

11. PW-29 Dr. Deepak Ramratan Goyal, Pediatric Surgeon at the Care Hospital, Nagpur had deposed that on 20th April, 2013 at about 11.00 p.m. Kumari Pooja Yadav was brought to the Hospital by air ambulance from Jabalpur Research Centre. The girl was unconscious and was kept on artificial respiration. She was immediately admitted in the Intensive Care Unit of Children. He had found swelling in her brain due to deficiency of oxygen, and several injuries on her vaginal area. According to him, in spite of all the efforts, the girl could not be saved and she died on 29th April, 2013 at about 7.45 P.M. In his opinion, the cause of death was "Hypoxic Ischemic Encephalopathy with vaginal injury with cardiorespiratory arrest" i.e., she died due to cardiorespiratory arrest due to deficiency of oxygen in the brain, due to pressing of mouth and neck and due to excessive injury in the genital organ. The medical report given by him was marked as Exhibit P-50.

12. The post-mortem of the victim was conducted by PW-24 Dr. Pradeep Gangadhar Dixit, Professor and H.O.D in Forensic Medicine Department, Medical College, Nagpur, on 30th April, 2013, along with his colleagues. He had recorded the following in the post-mortem note (Exhibit P-44) - "1. The dead was wearing a shirt and Pajama of the Hospital. There were 8 teeth in upper portion and 10 temporary teeth on the lower portion of mouth. Right upper incisor tooth and left upper lateral incisor tooth were absent. Left upper central incisor tooth was loose with blue colored swollen gums of its surroundings.

1. On examination of the external genitals, I had found that labia majora and labia minora contused, oedematous with blue discolouration. Superficial partially healed vulva laceration present at 6 "O" clock position of size 0.3 cm x 0.3 cm. Vaginal canal oedematous and hyperemic. Hymen torn at 3.6 and 7 O'clock position. Dilatation of hymenal opening. Urethral meatas oedematuous and bruised present.

2. The following injuries were found on the body of deceased: -

1. Partially healed lacerated wound present over upper lip in midline involving mucosal area of size 0.2. cm x 0.2 cm muscle deep surrounding area contused, bluish.

2. Partially healed lacerated wound present over lower lip in midline involving mucosal area of size 0.2 x 0.2 cm muscle deep surrounding area contused, bluish.

3. Abrasion present over lateral aspect of neck on right side, 3 cm below tip of right mastoid bone of seize 2 cm x 2 cm dark brown.

4. Abrasion present 2 cm below of injury no. 3 of size 2 cm x 0.3 cm.

5. Abrasion present over area overlying right submandibular region of size 0.3 cm x 0.3 cm.

6. Abrasion present over nape of neck on right side at the level of C-7 vertebra of size 0.4 cm x 0.4 cm.

7. Abrasion present over right intra scapular region of size 0.2 cm x 0.2 cm.

8. Abrasion present over left scapular region of size 1.5 cm x 0.5 cm.

9. Multiple abrasions present over lower portion of stomach at right side of size varying from 0.3 cm x 0.2 cm to 0.2. cm x 0.1 cm.

10. Multiple linear abrasions present over posterior aspect of left thigh, middle 1/3rd part over an area of size 4 cm x 3 cm of size varying from 4 cm x 0.2 cm to 3 cm x 0.1 cm.

11. Tracheotomy wound present over anterior aspect of neck with stiches in situ which is done for ventilator.

12. A hole over right side of next which is made to assess the central venous pressure.

13. Puncture marks present over both elbow of hands, upper portion of right wrist, dorsum of right hand and both legs for administering I.V. fluids.

14. On conducting internal examination of the body, I had found the following: -

1. Symptoms of pneumonia were found in her right lung. Blood clotted over internal muscles of the neck. All the organs were found congested. Brain was found edematous."

13. The said doctor had deposed that all the injuries found on the body were ante-

mortem and the opinion regarding the cause of death was kept reserved. Thereafter, on 15.05.2013, the histopathology report (Exhibit P-46) was received from the Pathology Department, Medical College, Nagpur, in which the final cause of death reported was "bronchopneumonia and cerebral hypoxia, which was caused by smothering the nose and mouth."

14. The accused Firoz was medically examined by PW-18 Dr. Dipendra Sallame, the Medical Officer at C.H.C. Lakhnadon, District Seoni on 25.04.2021 and after his examination, he had opined that the accused Firoz was capable to do sexual intercourse. Doctor had prepared and sealed two semen slides of the semen of Mohd. Firoz and had also sealed a black coloured underwear of the said Firoz encircling a white spot, and had handed over the same to the said Constable. His examination report was exhibited as Exhibit P-39. PW-23 Dr. Vinod Dahayat, the Medical Officer at District Hospital, Seoni to whom the accused Firoz was brought on 04.05.2013, had taken his blood sample for the D.N.A. test. He had also attested the photograph of accused Firoz. The said Doctor had identified the accused Firoz sitting in the Court by stating that he was the same person whose blood sample was taken and whose photograph was attested by him.

15. PW-25 Dr. Pankaj Shrivastava, Scientific Officer at F.S.L., Sagar had received the Articles relating to the present case through the letter dated 21.04.2013 of the Superintendent of Police, Seoni brought by the Constable, Police Station Ghansaur on 24.04.2013, and through the letter dated 04.05.2013 of Superintendent of Police Station, Seoni brought by the Constable, Police Station Ghansaur on 06.05.2013 for conducting the D.N.A. test. He had stated that at the time of examination, all the Articles were found in sealed condition and the seals were found intact. He had also stated about the method used by him to obtain the D.N.A. from the received Articles and also about the opinion (Exhibit P-47) given by him on the basis of D.N.A. examination. He had opined as under -

"(i)Identical female D.N.A. profile was obtained from the source frock and vaginal smear slide of Pooja Yadav (Article "A"), frock and swab (Article "F") and blood sample (Article "G").

(ii)The D.N.A. profile obtained from the hair (Article "B") found from the place of incident and D.N.A profile obtained from the source blood sample (Article "I") of the accused Firoz is identical, which confirms this fact that these hair strands are of the accused Firoz."

16. The last set of witnesses examined by the prosecution comprised of the Police Witnesses, panch Witnesses and the Tehsildar who had conducted the T.I. Parade. PW-13 Mohammad Sultan was the Assistant Sub Inspector at the Police Station, Ghansaur. He alongwith the DSP R.N. Parteti had found the hair strands and skins of bananas in the field and had sealed them as per the seizure memo (Exhibit P-10) dated 20.04.2013. He had also stated that on 21.04.2013, he had received from the Constable Dilip, a sealed yellow envelope containing a Frock and vaginal slides of the deceased in presence of the witnesses and had prepared the Seizure Memo (Exhibit P-29). PW-15 Head Constable Niyaz Ahmad at Police Station Ghansaur had registered the missing person report at Sanha no. 747 as stated by Smt. Ramkumari Yadav on 17.04.2013 at 20:35.

17. PW-30 S. Ram Maravi, the Sub Inspector, In-charge Police Station at Police Station Kindrai, District Seoni (M.P.) was part of the team constituted by the Superintendent of Police, Seoni for search and arrest of the accused Firoz. According to this witness, he alongwith others had gone to Bhagalpur, Bihar and after collecting the call details of the accused, his location was found out with the cooperation of the local police of Bhagalpur. The accused Firoz was arrested from a place near a mosque situated near the house of his aunt on 23.04.2013, and was brought back after obtaining the transit remand from the concerned Court at Bhagalpur as per the order at Exhibit P-50.

18. PW-33 In-charge Police Station, Ghansaur Mr. R.D. Barthi had conducted the investigation of the Missing Person Case No. 10/13, and during the course of investigation, it was found that the alleged offences were committed by the accused-Firoz. He therefore had registered the Crime No. 68/13 for the offence under Section 363, 366 of I.P.C. (Exhibit P-60) against the accused. He had stated about the investigation carried out by him and about the arrest of the accused Rakesh Choudhary. The D.S.P. Mr. R.N. Parteti who had carried out the further investigation was examined as PW-

34. He had deposed about the details of investigation carried out by him till the chargesheet was filed in the case. PW-16 Tehsildar at Seoni Mr. Sudhir Jain had conducted the identification parade of the accused-Mohd. Firoz. According to him, the witnesses Smt. Ramkumari, Preeti Yadav, Nitin Namdev and Himmabai had identified the accused during the course of the T.I. Parade.

19. Significantly the accused-Firoz in his further statement recorded under Section 313 of Cr.P.C. had admitted about his visit to the house of the victim along with the other accused Rakesh Choudhary for making an inquiry about Shyam. The accused had also admitted having told the mother of Shyam that he (accused) had come from Gorakhpur and was staying in the house of Dassi Yadav. The accused also admitted about his arrest as per the arrest memo Exhibit P-54 and about he having been brought to Ghansaur after obtaining the transit remand from the Chief Judicial Magistrate, Bhagalpur. The other accused-Rakesh Choudhary, (who has been acquitted by the High Court), in his further statement had admitted to the extent that he had gone along with the accused-Firoz to the house of Ramkumari, however, according to him after showing the house to the accused Firoz, he had left the house. He in support of his defence had examined two witnesses i.e., D.W-1 Virendra Choudhary who was residing adjacent to his house and DW- 2 Gopal Prasad Ahirwar who had a footwear shop situated adjacent to the footwear shop of Virendra Choudhary. The Court is not required to deal in detail with the said evidence adduced on behalf of the accused-Rakesh, as he has already been acquitted by the High Court. His acquittal having not been challenged by the prosecution before this Court, the same has attained finality.

Submissions:

20. Learned Senior Counsel Mr. B.H. Marlapalle, appearing for the accused-

appellant appointed through the Supreme Court Legal Services Committee, while fairly not disputing the visit of the appellant-accused at the house of the victim on the date and time as per the case of the prosecution and also not disputing the medical reports of the victim, tried to highlight

certain discrepancies appearing in the evidence of the witnesses examined by the prosecution. Placing reliance upon the decision of this Court in the case of Masalti vs. State of U. P1., he submitted that while appreciating the evidence of the partisan and interested witnesses, the Court should be very careful in weighing such evidence. He also relied upon various decisions of this Court to substantiate his submission that the case of the prosecution being dependent on the circumstantial evidence alone, the entire chain was required to be proved beyond reasonable doubt by leading cogent evidence, which the prosecution had failed to prove. The trial court had also failed to bring to the knowledge of the accused the clear questions with regard to the incriminating evidence against the accused. The "last seen theory" as propounded by the prosecution was also not proved which could connect the accused with alleged crime. Merely because the accused had admitted his visit at the place of the victim, no inference could be drawn against the accused that he had committed the alleged crime of rape and murder. Invoking the provisions of Section 313 of Cr.P.C. he submitted that the said provisions must be observed faithfully and fairly. The attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against him so that he may be able to give such explanation as he may desire to give. AIR 1965 SC 202 In this regard, Mr. B.H. Marlapalle has placed reliance on the observations made by this Court in the case of Ajay Singh vs. State of Maharashtra 2. Mr. Marlapalle also submitted that there was a great media pressure on the investigating agency when the incident occurred and, therefore, the investigating officer without carrying out an in-depth investigation hurriedly submitted the charge-sheet against the accused. Since no advocate was ready to appear for the accused, the trial court had appointed a common advocate for both the accused from the legal service committee, however no fair trial was conducted. The purpose of the criminal trial is to conduct fair and impartial trial without being influenced by the extraneous consideration. In this regard, he has placed reliance on the decisions of this Court in the case of K. Anbazhagan vs. The superintendent of Police & Ors. 3 and in the case of Zahira Habibullah Sheikh & Anr. Vs. State of Gujarat & Ors.4

21. Per contra, the learned Advocate Mr. P.V. Yogeswaran, appearing for the respondent-State vehemently submitted that this was one of the heinous and despicable crimes committed by the appellant-accused. The trial court and the High Court having relied upon the cogent evidence adduced by the prosecution and convicted the appellant, this Court may not re-appreciate the evidence which has already been properly appreciated by the said two courts. According to him, the appellant-accused by admitting his visit at the house of the victim along with Rakesh Chaudhary, admitting his arrest as per the (2007) 12 SCC 341 (2004) 3 SCC 767 (2006) 3 SCC 374 case of the prosecution and by not disputing the medical reports of the victim had relieved, half of the burden of the prosecution to prove the allegations against him. He further submitted that every minor contradiction or discrepancies in the evidence of the witnesses cannot be termed as major contradictions requiring the court to throw the evidence of prosecution overboard. It was duly proved that the victim was lastly seen in the company of the accused and it was within special knowledge of the accused as to what happened to the victim after he took her with him from the shop of fruit vendor. The time gap between the victim being lastly seen with the accused and the time when she was found unconscious in the field was so proximate an inference was required to be drawn that it was the accused alone who had committed the alleged crime. Lastly, he submitted that the grievance of mis- trial or trial having not been conducted in fair manner, was not taken by the

appellant-accused either during the course of the trial before the trial Court or even before the appellate stage, and the same is sought to be raised for the first time before this Court which should not be entertained. Analysis and Findings :-

22. It is true that the entire case of the prosecution rested on the circumstantial evidence, inasmuch as though certain facts were admitted by the appellant- accused in his further statement under section 313 of Cr.P.C., like his visit to the house of the victim on the previous evening of the alleged incident, and he having been arrested and brought back from Bhagalpur, Bihar, as per the transit remand granted by the concerned court, there was no eye witness to the alleged incident. The law with regard to the appreciation of evidence when the case of the prosecution hinges on the circumstantial evidence is very well settled. The five golden principles laid down by this Court in the case of Sharad Birdhichand Sarda vs. State of Mahashtra5 and followed in catena of decisions, are worth reproducing:-

> "153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:
>
> (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal distinction between "may be proved" and "must be or should be proved" as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 Crl LJ 1783] where the observations were made. Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions.

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (3) the circumstances should be of a conclusive nature and tendency, 1984 (4) SCC 116 (4) they should exclude every possible hypothesis except the one to be proved, and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

23. Keeping in mind the above set of principles, let us examine whether the prosecution had proved beyond reasonable doubt, the entire chain of circumstances, not leaving any link missing for the accused to escape from the clutches of law. The first and foremost circumstance regarding the visit of the present appellant along with Rakesh Chaudhary on the date and time as alleged was very crucial and that was admitted by the appellant. By such admission, even his identity had stood proved. There cannot be gainsaying that no conviction could be based on the statement of the accused recorded under section 313 of the Cr.P.C. and the prosecution has to prove the guilt of the accused by leading independent and cogent evidence, nonetheless it is equally settled proposition of

law that when the accused makes inculpatory and exculpatory statements, the inculpatory part of the statement can be taken aid of to lend credence to the case of prosecution. This Court while dealing with the issue of inculpatory and exculpatory statements of the accused made under Section 313 Cr.P.C. has made very apt observations in case of Mohan Singh vs. Prem Singh & Anr.6- (2002) 10 SCC 236 "27. The statement made in defence by the accused under Section 313 CrPC can certainly be taken aid of to lend credence to the evidence led by the prosecution, but only a part of such statement under Section 313 of the Code of Criminal Procedure cannot be made the sole basis of his conviction. The law on the subject is almost settled that statement under Section 313 CrPC of the accused can either be relied in whole or in part. It may also be possible to rely on the inculpatory part of his statement if the exculpatory part is found to be false on the basis of the evidence led by the prosecution. See Nishi Kant Jha v. State of Bihar [(1969) 1 SCC 347 : AIR 1969 SC 422] : (SCC pp. 357-58, para 23) "23. In this case the exculpatory part of the statement in Exhibit 6 is not only inherently improbable but is contradicted by the other evidence. According to this statement, the injury which the appellant received was caused by the appellant's attempt to catch hold of the hand of Lal Mohan Sharma to prevent the attack on the victim. This was contradicted by the statement of the accused himself under Section 342 CrPC to the effect that he had received the injury in a scuffle with a herdsman. The injury found on his body when he was examined by the doctor on 13-10-1961 negatives both these versions. Neither of these versions accounts for the profuse bleeding which led to his washing his clothes and having a bath in River Patro, the amount of bleeding and the washing of the bloodstains being so considerable as to attract the attention of Ram Kishore Pandey, PW 17 and asking him about the cause thereof. The bleeding was not a simple one as his clothes all got stained with blood as also his books, his exercise book and his belt and shoes. More than that the knife which was discovered on his person was found to have been stained with blood according to the report of the Chemical Examiner.

According to the post-mortem report this knife could have been the cause of the injuries on the victim. In circumstances like these there being enough evidence to reject the exculpatory part of the statement of the appellant in Exhibit 6 the High Court had acted rightly in accepting the inculpatory part and piercing the same with the other evidence to come to the conclusion that the appellant was the person responsible for the crime." 28....

29....

"30. The statement of the accused under Section 313 CrPC is not a substantive piece of evidence. It can be used for appreciating evidence led by the prosecution to accept or reject it. It is, however, not a substitute for the evidence of the prosecution. As held in the case of Nishi Kant [(1969) 1 SCC 347 :

> AIR 1969 SC 422] by this Court, if the exculpatory part of his statement is found to be false and the evidence led by the prosecution is reliable, the inculpatory part of his statement can be taken aid of to lend assurance to the evidence of the prosecution. If the prosecution evidence does not inspire confidence to sustain the conviction of the accused, the inculpatory part of his statement under Section 313 CrPC cannot be made the sole basis of his conviction."

24. In the instant case also, though the conviction of the appellant-accused could not be made merely on his admission of the circumstance of his visit to the house of the informant on the previous day evening of the fateful day, such admission could certainly be taken aid of to lend assurance to the evidence of the prosecution.

25. The next and most important circumstance was with regard to the theory of "last seen together" propounded by the prosecution. In this regard, if the version of the witnesses examined by the prosecution, more particularly of PW-1 Ramkumari i.e. the mother of the victim, PW-6 Himmabai i.e. the grandmother of the victim, PW-7 Preeti Yadav i.e. the aunt of the victim and PW-31 Ram Kishan are closely appreciated, there remains no shadow of doubt that it was duly proved that after Himmabai refused Rakesh Chaudhary to permit the appellant-accused to stay at their house, Rakesh Chaudhary had left the house, but the appellant continued to sit in the courtyard of the house of the informant-Ramkumari. It was also proved that at that time the victim along with her cousins was playing in the said courtyard, and after sometime the appellant-accused, victim and Ram Kishan were not seen at the courtyard. According to Ramkumari, the mother of the victim, when she was searching for her daughter, she saw that Ram Kishan was coming with a polythene bag containing bananas, and Ram Kishan told her that the said bananas were given by Bhaijaan i.e., the appellant, and that he (i.e. Bhaijaan) had taken the victim along with him. The said Ram Kishan examined as PW- 31, though a young boy, had fully corroborated the said version of Ram Kumari, in his deposition before the Court. The fruit vendor, Nitin Namdev (PW-4), had also stated that the appellant along with two children had come to his shop to purchase the bananas and that he had given three bananas to Ram Kishan and asked him to leave home, and he had taken the victim with him. The evidence of these witnesses could not be disbelieved merely because they happened to be the relatives of the informant, as sought to be submitted by learned Senior Advocate Mr. Marlapalle for the appellant. Pertinently there was no concrete defence taken during the cross- examination of any of these witnesses examined by the prosecution. Some minor discrepancies in the evidence of the witnesses could not be said to be major contradictions to throw away the case of the prosecution overboard or disbelieve the prosecution. Nothing more could be expected from Ram Kishan who was aged about four years than what he had stated in his deposition, more particularly, when his testimony was found to be truthful and when the identity of the accused was not in dispute. Hence, it was also duly proved that the appellant-accused had taken the victim with him from the shop of fruit vendor Nitin Namdev in the evening hours of the alleged incident, which was a very strong circumstance proved against the accused.

26. Once the theory of "last seen together" was established, the accused was expected to offer some explanation as to under which circumstances, he had parted the company of the victim. It hardly needs to be reiterated that in the criminal jurisprudence, the entire burden of proving the guilt of the accused rests on the prosecution, nonetheless if the accused does not throw any light upon the facts which are proved to be within his special knowledge in view of Section 106 of the Evidence Act, such failure on the part of the accused may also provide an additional link in the chain of circumstances required to be proved against him. Of course, Section 106 of the Evidence Act does not shift the burden of the prosecution on the accused, nor requires the accused to furnish an explanation with regard to the facts which are especially within his knowledge, nonetheless furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when

the theory of "last seen together" as propounded by the prosecution is proved against him, to know as to how and when the accused parted the company of the victim.

27. In case of Rajender vs. State (NCT of Delhi)7, this Court has succinctly dealt with the doctrine of "last seen together" in the light of Section 106 of the Evidence Act. The relevant observations read as under:

> "12.2.4. Having observed so, it is crucial to note that the reasonableness of the explanation offered by the accused as to how and when he/she parted company with the deceased has a bearing on the effect of the last seen in a case. Section 106 of the Evidence Act, 1872 provides that the burden of proof for any fact that is especially within the knowledge of a person lies upon such person. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company with the deceased. In other words, he must furnish an explanation that appears to the court to be probable and satisfactory, and if he fails to offer such an explanation on the basis of facts within his special knowledge, the burden cast upon him under Section 106 is not discharged. Particularly in cases resting on circumstantial evidence, if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, such failure by itself can provide an additional link in the chain of circumstances proved against him. This, however, does not mean that Section 106 shifts the burden of proof of a criminal trial on the accused. Such burden always rests on the prosecution. Section 106 only lays down the rule that when the accused does not throw any light upon facts which are specially within his/her knowledge and which cannot support any theory or hypothesis compatible with his innocence, the court can consider his failure to adduce an explanation as an additional link which completes the chain of incriminating circumstances." (2019) 10 SCC 623

28. In Satpal vs. State of Haryana8, this Court observed, "6. We have considered the respective submissions and the evidence on record. There is no eyewitness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine."

29. Following the above ratio, in the case of Surajdeo Mahto vs. The State of Bihar9, it was held -

"29. The case of the prosecution in the present case heavily banks upon the principle of 'Last seen (2018) 6 SCC 610 (2021) 9 Scale theory'. Briefly put, the last seen theory is applied where the time interval between the point of when the Accused and the deceased were last seen together, and when the victim is found dead, is so small that the possibility of any other person other than the Accused being the perpetrator of crime becomes impossible. Elaborating on the principle of "last seen alive", a 3-judge bench of this Court in the case of Satpal v. State of Haryana (2018) 6 SCC 610, has, however, cautioned that unless the fact of last seen is corroborated by some other evidence, the fact that the deceased was last seen in the vicinity of the Accused, would by itself, only be a weak kind of evidence. The Court further held:

> ...Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the Accused, and the recovery of the corpse being in very close proximity of time, the Accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the Accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the Accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same. If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the Accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine.

30. We may hasten to clarify that the fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the Accused."

30. In the instant case, though it was duly proved that the appellant-accused had taken the victim with him from the shop of fruit vendor, neither any explanation was offered by the appellant in his further statement under Section 313 of Cr.P.C. nor any concrete defence was taken during the course of the cross-examination of the witnesses. It is pertinent to note that after the alleged incident, he had run away to his native place at Bihar. Admittedly he was arrested therefrom and was brought back after obtaining the transit remand from the concerned court at Bhagalpur. The said conduct of the accused in absconding away also was a circumstance duly proved by the prosecution against him.

31. So far as the proximity of time is concerned, it is required to be noted that Ramkumari, the mother of the victim, on being informed by Ram Kishan (PW-31) that Bhaijaan i.e. the appellant had taken the victim with him , the said Ramkumari along with her mother Himmabai and others had

immediately gone to the police station at Ghansaur to lodge a missing person report (Exhibit P-1). It is true that there was no direct allegation made by them against the appellant in the said report, however, at that point of time, the informant was not aware about the ill-intention of the appellant, and no such crime was reportedly committed. It was only when the victim, on the next day early morning, was found in the field of Badri Yadav lying unconscious, the FIR was registered against him. The victim was also immediately taken to the hospital at Ghansaur for her treatment, and thereafter, taken to the hospital at Jabalpur and Nagpur for better treatment as her health was deteriorating. As per the medical reports, she was raped and the injuries were found on the private parts of her body. She had remained unconscious all through out. She expired on 29 th April, 2013 and the final cause of death reported was "bronchopneumonia and cerebral hypoxia which was caused by smothering the nose and mouth." Thus, the time gap between the victim being lastly seen with the appellant-accused and the time when she was found injured and unconscious in the field was hardly 12 hours. The said injuries had resulted into her death.

32. Thus, coupled with the other evidence, the prosecution had proved the close proximity of time when the victim was last seen with the appellant and when the victim was found unconscious and in injured condition, which ultimately resulted into her death. The DNA profile obtained from the hair found from the place of incident and the DNA profile obtained from the source of blood sample of the appellant was identical, and confirmed that the hair strands were of the appellant only, as per the opinion at Exhibit P-47 given by P.W- 25 Dr. Pankaj Srivastava, Scientific Officer, FSL, Sagar. Fair Trial: -

> 33. Coming to the next issue raised by the learned Senior Advocate Mr. Marlapalle with regard to the trial having not been conducted in fair manner, it may be noted that the concept of fair trial has been enshrined not only in Article 21 and 39 A of the Constitution of India, but also in Section 304 of the Code of Criminal Procedure. Free and fair trial is sine qua non of Article 21, and after the formative decision in Maneka Gandhi vs. UOI10, it has been made clear that the procedure in criminal trials must be right, just and fair and not arbitrary, fanciful or oppressive. Article 39 A provides for free legal aid to the poor and weaker sections of the society and ensures justice for all. Section 304 of Cr.P.C. further provides that where in a trial before the Court of Session, the accused is not represented by a pleader, and where it appears to the court that the accused has no sufficient means to engage a pleader, the court shall assign a pleader for his defence at the expense of the State. This Court also time and again has emphasised the right to a fair trial by the courts, in the letter and spirit of the right to life and personal liberty flowing from the various guarantees enshrined in the Constitution of India.

We may hasten to add at this stage that right to fair and speedy trial applies as much to the victim as the accused. Right to get speedy justice applies to the victim as well. Hence considering the gravity and seriousness of the crime, if the trial is expedited by the Court, it could not to be said that such trial was not fair to the accused. Of course, while expediting the trial, it is imperative on the Court to see that the due procedure is followed during the course of trial.

34. So far as the facts of the present case are concerned, there is nothing on record to suggest that the due procedure was not followed or that the (1978) 1 SCC 248 appellant-accused had suffered on account of deprivation of the legal aid or legal assistance to him. The trial court did provide legal assistance to both the accused by appointing a lawyer at the expense of the State, who had thoroughly cross-examined all the witnesses examined by the prosecution, and had also examined two witnesses on behalf of accused Rakesh Choudhary. Apart from the fact that no such contention was raised during the course of trial or even before the High Court in the two separate appeals filed by the accused represented by two separate lawyers, no such contention has been raised by the appellant-accused even in the memorandum of the present appeal. The oral submission made by the learned Senior Advocate appearing on behalf of the accused at the fag end of his arguments that there was no fair trial conducted, without substantiating the said submission, cannot be entertained. Even otherwise, it may noted that during the course of recording the further statement, the appellant-accused had responded to the incriminating circumstances brought to his notice, after fully understanding them as transpiring from the answers recorded by the court. It is possible that the incident in question would have created an anguish amongst the public at large as also amongst the media, nonetheless in absence of any material on record, no inference could be drawn that because of such media pressure, the trial was not conducted in fair manner.

35. Though, it is true that the “Equality, Justice and Liberty” is the trinity of fair trial recognized in the administration of justice, it is equally true that such concept of fair trial entails triangulation of interest of the accused, the victim and the society at large. In the overzealous approach to protect the rights of the accused, the rights of the victim who is the most aggrieved should not be either undermined or neglected. Similarly, the cases involving heinous crimes, the society at large would also be an important stake-holder. Interest of the society, which acts through the State and prosecuting agencies, should also not be treated with disdain. Therefore, the court conducting the trial/appeal is not only obliged to protect the rights of the accused but also the rights of the victim, and the interest of the society at large. The Judge presiding over the criminal trial has not only to see that innocent man is not punished but has also to see that guilty man does not escape. Both are his public duties required to be discharged very diligently to maintain the public confidence and uphold the majesty of the law.

Conclusion:

36. Having regard to the proved circumstances on record, more particularly the circumstances that preceded and followed from the point the deceased- victim was seen last together with the appellant-accused, the court has no hesitation in holding that the prosecution had proved beyond reasonable doubt all the circumstances individually and also proved the circumstances forming a chain, so conclusive as to rule out the possibility of any other hypothesis except the guilt of the appellant-accused. It was duly proved that while committing the barbaric acts of rape and sexual assault on the young child-victim aged about 04 years, the appellant-accused had inflicted bodily injuries as mentioned in the post-mortem report which had caused her death. The court, therefore, holds that the trial court had rightly convicted the appellant-accused for the offences punishable under sections 302, 376(2)(i), 376(2)(m), 363, 366 of IPC and section 5(i) read with section 6 and section 5(m) read with section 6 of the POCSO Act. The said order of conviction was affirmed by the

High Court; and is being further affirmed by this Court.

37. The next question that falls for consideration is with regard to the sentence to be imposed on the appellant. The trial court while imposing various sentences for the other offences, had imposed the death penalty for the offence under Section 302 of IPC, which has been confirmed by the High Court in the impugned judgment. It may be noted that since the death of the victim was caused due to the injuries inflicted by the appellant while committing offence under Section 376(2)(i) and 376(2)(m), the provisions of Section 376A of the IPC would also get attracted which had come into force w.e.f. 03.02.2013 i.e.prior to the alleged incident in question, and which provided for wide range of punishments upto death penalty. The High Court in the impugned order, though made observation in this regard, did not consider it on the ground that the charge under Section 376 A of IPC was not framed by the Sessions Court against the accused. However, it may be noted that in view of Section 215 an omission to state the offence or its particulars in the charge could not be regarded as material, unless the accused was in fact misled by such error or omission, and it had occasioned a failure of justice. In the instant case, the accused was already charged for the offence under Section 302 which is punishable with death or life imprisonment, and was also charged for the offences under Section 376(2)(i) and 376(2)(m), as covered in Section 376A, IPC, which is also punishable upto death sentence amongst other lesser punishments. Hence, non-mentioning of Section 376A in the charge could not be said to have misled the accused, nor any failure of justice could be said to have occasioned.

38. It may be pertinent to note that this Court in terms of the law laid down by the Constitution Bench in Bachan Singh Vs. State of Punjab 11, and in tune with the directions issued in the other similar matters, touching upon the issues concerning the mitigating factors, had vide the order dated 25.11.2021, directed the State authorities to produce on record the report of the probationer officer, if any and had directed the Director General (Prison) of the State to place on record the reports from the concerned jails/prisons where the appellant was or is presently lodged, about his conduct and nature of work done by him while in the jail. The court had also called for the psychiatric and psychological evolution reports of the appellant. The said authorities have submitted their respective reports before the court.

39. The learned Senior Advocate Mr. Marlapalle relying upon the various decisions of this court would submit that in similar cases as the present one, this Court, considering the mitigating circumstances has commuted the sentence of death penalty to the life imprisonment. The case on hand could not be said to be the “rarest of rare case”, where the question of awarding (1980) 2 SCC 684 lesser punishment than the death penalty is totally foreclosed. He implored the court to consider before imposing the sentence upon the appellant, the documents produced on record after the completion of the arguments, like the affidavits of the family members, the jail documents and the social inquiry report of the appellant.

40. As demonstrated earlier, once again one of the most barbaric and ugly human faces has surfaced. A tiny bud like girl was smothered by the appellant before she could blossom in this world. The monstrous acts of the appellant suffocated the victim to such an extent that she had no option but to leave this world. Once again, all the Constitutional guarantees have failed to protect the victim

from the clutches of the demonizing acts of the appellant. In the opinion of the Court, any sympathy shown to the appellant would lead to miscarriage of justice. However, it has been brought to the notice of this Court that in series of judgements, this Court has not treated such case as the rarest of rare case.

41. In case of Bachan Singh Vs. State of Punjab (supra), the Constitution Bench while upholding the constitutional validity of the death sentence held inter alia that the imposition of death penalty is required to be guided by the paramount beacons of the legislative policy discernible from sections 354 (3) and 235 (2) of the Cr.P.C., namely – (i) the extreme penalty can be inflicted only in the gravest cases of extreme culpability; and (ii) in making the choice of the sentence. In addition to the circumstances of the offence, due regard must be paid to the circumstances of the offender also. In Machhi Singh vs. State of Punjab12, a three-judge bench of this Court, after noting the principles laid down in Bachan Singh's case regarding the formula of "rarest of rare cases" for imposing the death sentence, observed that the guidelines indicated in Bachan Singh's case will have to be culled out and applied to the facts of each individual case where the question of imposing death sentence arises.

42. In the recent case of Shatrughna Baban Meshram Vs. State of Maharashtra13, this court considering catena of earlier decisions in the light of section 302 read with section 376-A of IPC observed that as against section 302 IPC, while dealing with the cases under section 376-A IPC, a wider spectrum is available for consideration by the courts as to the punishment to be awarded. In the said case, this Court negatived the submission made on behalf of the appellant-accused that in the case based on circumstantial evidence, the death sentence should be commuted to the life imprisonment. However, considering the facts that the accused had not consciously caused any injury with an intent to extinguish the life of the victim, and that the offence in that case was under Clause Fourthly of Section 300 IPC, this Court had commuted the sentence of death penalty to the life imprisonment. The facts and circumstances of the case on hand are similar to the case of Shatrughna Baban Meshram with one distinction in that, Section 376A of IPC being applicable in the instant case. (1983) 3 SCC 470 (2021) 1 SCC 596

43. Considering the above, we, while affirming the view taken by the courts below with regard to the conviction of the appellant for the offences charged against him, deem it proper to commute, and accordingly commute the sentence of death for the sentence of imprisonment for life, for the offence punishable under Section 302 IPC. Since, Section 376A IPC is also applicable to the facts of the case, considering the gravity and seriousness of the offence, the sentence of imprisonment for the remainder of appellant's natural life would have been an appropriate sentence, however, we are reminded of what Oscar Wilde has said - "The only difference between the saint and the sinner is that every saint has a past and every sinner has a future". One of the basic principles of restorative justice as developed by this Court over the years, also is to give an opportunity to the offender to repair the damage caused, and to become a socially useful individual, when he is released from the jail. The maximum punishment prescribed may not always be the determinative factor for repairing the crippled psyche of the offender. Hence, while balancing the scales of retributive justice and restorative justice, we deem it appropriate to impose upon the appellant-accused, the sentence of imprisonment for a period of twenty years instead of imprisonment for the remainder of his natural

life for the offence under section 376A, IPC. The conviction and sentence recorded by the courts below for the other offences under IPC and POCSO Act are affirmed. It is needless to say that all the punishments imposed shall run concurrently.

44. Before concluding, we would like to place on record our gratitude and appreciation for the invaluable assistance provided and services rendered by the learned Senior Advocate Mr. Marlapalle, appearing for the appellant- accused, appointed through the Supreme Court Legal Services Committee.

45. The appeal stands allowed to the aforesaid extent.

.....J. [UDAY UMESH LALIT] .....J. [S. RAVINDRA BHAT] .....J. [BELA M. TRIVEDI] NEW DELHI 19.04.2022