Manoj Pratap Singh vs The State Of Rajasthan on 24 June, 2022

Author: Dinesh Maheshwari

Bench: A.M. Khanwilkar, Dinesh Maheshwari, C.T. Ravikumar

REPORTA

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO(S). ……. OF 2022
(ARISING OUT OF SLP (Crl.) No(s). 7899-7900 of 2015)

MANOJ PRATAP SINGH ……. APPELLANT(S)

VERSUS

THE STATE OF RAJASTHAN ……. RESPONDENT(S)

JUDGMENT

Dinesh Maheshwari, J.

2. These appeals are directed against the common judgment and order dated 29.05.2015 in D.B. Criminal Murder Reference No. 3 of 2013 and D.B. Criminal Jail Appeal No. 854 of 2013 whereby, the High Court of Judicature for Rajasthan at Jodhpur has affirmed the judgment of conviction dated 28.09.2013 and order of sentencing dated 01.10.2013 in Sessions Case No. 12 of 2013, as passed by the Court of Special Judge, Protection of Children from Sexual Offences Cases, Rajsamand. 2.1. The High Court, while upholding conviction of the appellant of offences punishable under Sections 363, 365, 376(2)(f), 302 of the Indian Penal Code, 18601 and Section 6 of the Protection of Children from Sexual Offences Act, 20122, has confirmed the death sentence awarded to him by the Trial Court for the offence under Section 302 IPC. 2.2. In addition to the sentence of death for the offence under Section 302 IPC, the appellant has been awarded the punishments of imprisonment for a term of 7 years and fine of Rs. 25,000/- for the offence under Section 363 IPC; imprisonment for a term of 7 years and fine of Rs. 25,000/- for the offence under Section 365 IPC; imprisonment for life and a fine of Rs. 50,000/- for the offence under Section 376(2)(f) IPC; and imprisonment for life and a fine of Rs. 1,00,000/- for the offence under Section 6 POCSO. While providing for default stipulations of further imprisonment in case of non-payment of fine amount, it has also been provided that the fine amount shall be given to the mother of the deceased girl as compensation.

1 Hereinafter also referred to as 'IPC'.

2 Hereinafter also referred to as 'POCSO'.

3. In these appeals, the conviction of the appellant as also the punishment awarded to him, particularly the capital punishment, are under challenge. Before dealing with the relevant aspects in necessary details, we may draw a brief sketch and outline of the matter. 3.1. The appellant has been accused of kidnapping a physically and mentally challenged seven-and-a-half-year-old girl in front of her parents from their fruit and vegetable vending cart; having thereafter taken her to a secluded place; having committed rape upon her; and having killed her by causing injuries on her head.

3.2. The prosecution case rested on circumstantial evidence to the effect that the victim was lastly seen with the appellant when he took her away; that the dead body of victim and other articles related with the crime were recovered at the instance of the appellant; that the appellant failed to satisfactorily explain his whereabouts and his knowledge of the location of dead body; and that the medical and other scientific evidence was consistent with the prosecution case. Thus, according to the prosecution, the entire chain of events was complete and was conclusive of the guilt of the appellant, excluding any other hypothesis. Per contra, the appellant asserted that he was falsely implicated, though he did not adduce any evidence in defence.

3.3. In its judgment dated 28.09.2013, the Trial Court convicted the appellant of the offences aforesaid with the findings that the prosecution had been able to substantiate the charges by proving beyond doubt that the appellant kidnapped the victim girl, committed rape and then murdered her and concealed the dead body. Then, on 01.10.2013, after having heard the accused-appellant and the prosecution on the question of sentence, the Trial Court found no reason to take any lenient view in the matter, particularly looking to the gruesome nature of crime and thus, awarded varying punishments, including that of death sentence under Section 302 IPC.

3.4. The sentence of death was submitted for confirmation to the High Court in terms of Section 366 of the Code of Criminal Procedure, 1973 3. On the other hand, the accused-appellant preferred an appeal against the judgment and order of the Trial Court. Both, the reference case for confirmation of death sentence and the appeal preferred by the appellant, were considered together and the High Court, after finding that each and every incriminating circumstance had clearly been established, affirmed the conviction. As regards the question of sentence, the High Court, with reference to the nature of offence, in brutal rape and murder of a seven- and-a-half-year-old mentally and physically challenged girl along with the calculated attempt to cover up the crime, found the present one to be 'rarest of rare case' and, accordingly, confirmed the punishments awarded to the appellant, including the sentence of death.

3.5. In the present appeals, conviction of the appellant has been questioned essentially with the contentions that the investigation was not 3 'CrPC', for short.

impartial; that the trial was conducted in a hurried manner; that proper legal aid with a counsel of sufficient experience was not provided to the appellant; that probability of false implication cannot be ruled out since the name of the appellant was not stated in the missing person report; and that blood sample might not have been collected from the motorcycle since, admittedly, it was raining heavily at the relevant time. The sentence awarded to the appellant has also been put to the question, essentially with the submissions that awarding of sentence both under IPC and POCSO is not sustainable; and that the Trial Court as also the High Court have not properly examined the mitigating factors existing in favour of the appellant, including the residual doubts in the weak chain of circumstances. It is also submitted that in the hurriedly conducted trial, the appellant was unable to effectively present his case; and that the young age of the appellant, his poor socio-economic background with family members being dependant on him, and the likelihood of reformation deserve due consideration as mitigating factors against capital punishment.

3.6. Per contra, it is contended on behalf of the respondent-State that the evidence of the witnesses related with the deceased is duly corroborated by the testimony of independent witnesses; that name of the appellant finds mentioned in the missing person report as also in the FIR; and that the forensic and medical evidence is consistent with the case of the prosecution. It is also submitted that the abhorrent nature of crime justifies awarding of death sentence in the present case, where the appellant kidnapped a minor girl who was not of sound physical and mental health; and committed brutal rape and murder. It has also been submitted that the subsequent conduct of the appellant in jail has been moreover questionable and he had killed another inmate with stone for which, he has been further convicted of the offence under Section 302/34 IPC; and this demonstrates that the

appellant is a threat to the society. 3.7. Thus, two major points would arise for determination in these appeals; first, as to whether conviction of the appellant calls for any interference; and second, if conviction is maintained, as to whether the sentence of death awarded to the appellant deserves to be affirmed or deserves to be substituted by any other sentence?

4. With the aforesaid outline, we may take note of the relevant factual and background aspects in necessary details. Relevant factual and background aspects

5. The prosecution in the present case had its foundation in the oral information stated in the form of complaint by PW-1 Kamla on 17.01.2013 at about 08:15 p.m. at Police Station Kankroli, District Rajsamand while being accompanied by her father PW-3 Madan Lal. The complainant alleged that earlier in the day, she was at her fruit-vegetable vending cart near R. K. Hospital with her husband PW-2 Dharam Das and her father PW-3 Madan Lal; that at around 06:30 p.m., Manoj Singh, who earlier lived in the nearby Housing Board Colony, came to her cart on a motorcycle, purchased fruits and gave chocolates to her 8-year-old mentally challenged daughter K4 and left; that he returned to the cart after about 10 minutes, placed her daughter K on his motorcycle and proceeded towards Somnath Chauraha; and that attempts were made to chase him but he was not found. It was also stated by the complainant that she could not note the registration number of the motorcycle but the same was of sky-blue colour. The complainant also described the features and attire of her daughter and alleged that Manoj Singh had kidnapped her daughter.

5.1. The contents of aforesaid oral complaint were reduced in writing (Ex. P-1) by PW-19 Nand Lal, who was the Officer-in-charge of Police Station Kankroli at the relevant time (as the Station House Officer 5 PW-20 Ganesh Nath was away) and, accordingly, FIR No. 16 of 2013 (Ex. P-2) came to be registered for the offence under Section 363 IPC. 5.2. The said PW-19 Nand Lal immediately commenced investigation and recorded the statements of informant Kamla as also of her father Madan Lal; informed the SHO; transmitted messages for Nakabandi; and also carried out unsuccessful search at the Housing Board Colony and other places. Thereafter, the SHO - PW-20 Ganesh Nath - took over investigation and recorded the statement of Dharam Das, father of the 4 Having regard to the nature of case, the name of victim has been omitted in the narrations and extractions and at all other places in this judgment; and is substituted by the expression 'K'. For clarification, it may also be stated that the name of victim girl has been mentioned differently and with alias at different places. But her identity is otherwise not in dispute and we have retained the substituted expression 'K' at every place, irrespective of any of the alternative names appearing.

5 'SHO', for short.

victim girl; and in view of the allegations, added the offence under Section 365 IPC.

5.3. All the proceedings aforesaid took place until midnight of 17.01.2013. The SHO, thereafter, proceeded in search of the victim and the offender while taking the said Madan Lal and Dharam Das with him. Ultimately, the accused-appellant was found at the Old Bus Stand, Kankroli, at about 2 a.m., who divulged his name and particulars as Manoj Pratap Singh son of Surendra Pratap Singh Rajput, resident of Basantpur, Police Station Gugli, District Maharajganj, Uttar Pradesh. He was

taken to Police Station Kankroli, was arrested, and his clothes carrying bloodstains were seized.

5.4. It has been the case of prosecution that on being questioned, the appellant stated that he had killed the girl whom he kidnapped near R. K. Hospital and her dead body was lying near Kamal Talai, which he could get recovered. The information so furnished by the appellant was recorded (Ex. P-40); and the body of the deceased was recovered at around 3:15 a.m. from a patari by the bridge at Kamal Talai as per the disclosure of the appellant.

5.5. In view of the recovery of the dead body of K, the offence under Section 302 IPC was added for investigation. The SHO prepared the necessary memos and reports and sent the dead body for post-mortem examination. In view of the post-mortem report indicating rape with the victim, the offence under Section 376(2)(f) was also added. The SHO also got the accused-appellant examined in relation to the injuries on his body. In the meantime, investigation was transferred to the Circle Officer, Rajsamand PW-25 Umesh Ojha. According to prosecution, the accused- appellant divulged more information on 19.01.2013 about the location of motorcycle used in the crime as also the place of committing the crime and the place where clothing of the deceased was lying. This information was reduced in writing (Ex. P-48) and in pursuance thereof, motorcycle bearing registration number RJ30 3M 5944 was recovered; the bloodstains on the motorcycle were collected; the frock-like-skirt of the deceased was recovered; the place of incident was identified; and bloodstained soil as also control soil were collected and sealed. Further, the Investigating Officer got the accused-appellant medically examined for sexual potency and his blood sample was also collected. The collected articles/samples were sent for Forensic Science Laboratory 6 examination. The Investigating Officer further collected the certificates relating to the date of birth of the victim as also the certificates concerning her mental and physical disablement.

5.6. The Investigating Officer also recorded the statements of witnesses who had allegedly seen the accused-appellant taking the victim girl on his motorcycle. Apart from other witnesses, PW-12 Ranjeet Singh, the salesman of a liquor shop, stated that the accused-appellant came to his shop at about 6:30 p.m. with a girl sitting on the motorcycle, 6 ‘FSL’, for short.

purchased a bottle of beer and also quarrelled regarding the price. As per the contents of charge-sheet, the Investigating Officer also found, after carrying out background verification, that the accused-appellant had been involved in a few other criminal cases. Significantly, it was found that the said motorcycle bearing registration No. RJ30 3M 5944 was stolen from Nathdwara on 14.01.2013 for which, an FIR bearing No. 39 of 2013 had already been registered at Police Station Nathdwara for offence under Section 379 IPC.

5.7. In the post-mortem examination, the Medical Board found varying injuries on the dead body of the victim, including those on head and on private parts. The Medical Board opined that the cause of death was head injury and that the deceased had been subjected to ante-mortem rape. 5.8. After other processes of investigation, charge-sheet was filed against the appellant on 02.02.2013 and the case was committed to the Court of Sessions. At the request of the accused-appellant, legal aid was provided to him from the District Legal Services Authority and the Court heard the matter for framing of charge only after appointment of a legal aid counsel. The appellant was charged of the

offences under Sections 363, 365, 376(2)(f) and 302 IPC and Section 6 POCSO. The appellant pleaded not guilty and claimed trial.

The Evidence

6. In trial, the prosecution examined as many as 25 witnesses and produced 52 documents. In view of the contentions raised and issues involved, we may take note of the salient features of testimonies of material witness as also relevant documentary evidence in requisite details7.

7. There had been several non-official witnesses, including the parents and grandfather of the victim girl child and other persons who had testified to the factum of kidnapping of the victim girl by the appellant and who had also been the part of investigation proceedings. 7.1. PW-1 Kamla, mother of the deceased-child, deposed on the basic and primary facts of this case in her examination-in-chief as under: -

> "The incident is of 17.1.2013 at 6.30 p.m. I use to place my fruits and vegetables cart outside R.K. Hospital Rajsamand and hence, I was there. My father Madan Lal and my husband Dharamdas were also present there. At that time accused Manoj Pratap Singh, present in Court, came to my cart to buy fruits. Name of my daughter is K who is 8 years old. Accused Manoj Pratap Singh, present in the Court, gave my daughter kurkure and chocolate on which we told him not to do so but he gave these articles to my daughter and left. After 10-15 minutes accused Manoj Pratap Singh again came and took my daughter on motorcycle towards Somnath Chouraha. At that time my father Madan Lal and husband Dharam Das followed accused but they could not find him. Motorcycle was of sky-blue colour. I had not seen the number of motorcycle. At that time my daughter K was wearing a red kurta, pink colour jacket and black legging. The colour of my daughter was fair and height 4 feet. We went to police station. At that time my father also went along with me and we gave a report in the police station.
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> 7 It may be indicated that the depositions and substantial part of the relevant documents in the original record as also the judgment of the Trial Court are in Hindi language. One set of translations of the depositions has been supplied by the High Court and another set of translations has been placed on record by the respondent-State with its reply affidavit. We have scanned through the record with the assistance of learned counsel for the parties; and the extracts in this judgment are with reference to the translations available on record and also, as far as feasible, near to the meaning of the text in original.

The report is Exhibit P-1 on which A to B are my signatures. FIR is Exhibit P-2 on which A to B are my signatures.

Then my father and my husband went along with police to search my daughter. I was sitting where my lorry was near R.K. Hospital Rajsamand. In the night at 12.30 we came to know that accused

Manoj Pratap Singh had been found. Then we were called at the police station. Accused Manoj Pratap Singh took my husband and father to Kamal Talai where dead body of my daughter K was found. Accused Manoj Pratap Singh was residing at Housing Board and sometimes came to us to buy vegetables; therefore, I could identify him. Accused Manoj Pratap Singh took my daughter and killed her." 7.1.1. On being cross-examined, this witness stated as under: -

> "At that time, accused Manoj Pratap Singh was wearing brown coloured jacket. On that day, we lodged a missing report of K. It is true that my daughter K was mentally retarded. It is wrong to say that my daughter had been missing once or twice before this incident. It is wrong to say that my daughter used to go here and there without informing me. I do not know where accused Manoj Pratap Singh used to work. It is correct to say that I did not raise any alarm when accused took my daughter because at that time there was nobody nearby. I do not know the time of death of my daughter. We went to the police station in the evening at 7.45 p.m. The accused took away my daughter at 6.30 p.m. The police station is located at a distance of about 7 km from the place of incident. We hired an auto to the police station and it took about 30-45 minutes. We lodged missing report of my daughter at the police station. It is true that at the time of lodging the missing report, we did not mention the name of accused Manoj Pratap Singh." 7.1.2. The aforesaid deposition of PW-1 Kamla was recorded on 05.04.2013. At that point of time, clothing of the deceased had been with the FSL and the same were received later in the Trial Court. The prosecution, after completion of other evidence, moved an application under Section 311 CrPC for further examination of this witness PW-1 Kamla, for the purpose of identification of the clothes of deceased. This application was duly contested by the learned counsel for the accused-

appellant with the submissions that such recalling of the witness would be allowing the prosecution to fill up the lacunae in its case. However, the Trial Court, by its considered order dated 26.08.2013, accepted the said application looking to its purpose and while indicating that the accused would nevertheless have the opportunity of cross-examination. This witness PW-1 Kamla was, accordingly, again examined on 04.09.2013 where she stated about the attire of her daughter when she was kidnapped by the accused-appellant and duly identified Article No. 1, being the leggy (lower) as also Article No. 7, being the kurta (frock) of her daughter K. 7.2. PW-2 Dharam Das, father of the deceased girl, corroborated the testimony of PW-1 Kamla and stated that the appellant came and took their daughter. He also stated that he was present when the appellant was arrested from Kankroli Bus Stand, when the appellant made a disclosure statement at the police station, and when the body of his daughter was recovered at the instance of the appellant. This witness also testified to various proceedings of recoveries and seizures and identified his signatures on various memos like that of site inspection, arrest of the appellant, recovery of the dead body, its panchayatnama etc. This witness further testified that his daughter was 8 years of age and was mentally retarded; and exhibited the relevant documents in that regard, being Ex. P-11 to P-14. This witness was also thoroughly cross- examined where he stated, inter alia, as under: -

"I am hawker of fruits and vegetables. On the day of incident, I was at the cart. That time I was selling vegetables to customers.

That time accused Manoj Pratap Singh was the customer who bought fruits and went. It is wrong that thereafter accused Manoj Pratap did not come to the cart. That time it was drizzling, therefore none else was there. It is wrong that there were some more carts near my carts; other carts were away from my cart. I do not know the names of other cart owners. There is a milkman's shop, which is away from my lorry. There are some carts of snacks but due to cold weather and rain fall, there was no cart. We were about to go home after some time, but accused Manoj Pratap Singh abducted and took away my daughter. He lured by giving chocolate to my daughter. It is wrong that I do not know accused Manoj Pratap Singh. He used to come to my cart. It is wrong that my daughter went with accused with her consent, but she was abducted by accused Manoj Pratap Singh. It is true that K went with the accused Manoj Pratap Singh on being lured by chocolate. I stopped my daughter but as she was feebleminded and so, did not stop. It is true that at the time the accused abducted and took away my daughter, nobody was there. That time accused Manoj Pratap Singh was wearing check shirt and jacket. My daughter was not wearing any footwear. On 17.1.2013 at night signature was taken on memo Ex. P-3. Then said, signature was taken on another day. While signature was taken nobody was with me. Then said, my father-in-law was also with me. My signature was taken on Ext. P-3 at police station. Then said signature was taken at Kamal Talai. Signature was taken at different times which I do not remember. The police officials did not read over and explain what was written on the document. Then said that they read over and explained the contents but do not remember the same today. I am illiterate, I can only sign therefore, I do not know the contents of memo Ex. P-4. It is wrong that when we went to the police station, accused Manoj Pratap Singh was sitting in the police station. I had said that he was sitting at bus stand. Accused Manoj Pratap Singh was arrested on the same night. It is wrong that police officials did not seize clothes in front of me. The same were seized in the night of 17.1.2013. I do not know what was written on jacket of accused Manoj Pratap Singh. My daughter's dead body was found at Taledi Kamal Talai. Dead body was lying at the bridge. Bruises were found on head and all other parts of body of my daughter. It is wrong that injuries were not found on the legs. It is wrong that police official took my signature on memo at police station. Signature was taken at different places such as police station and house. It is true that Ex. P-12 was released after the incident. It is true that certificate Ex. P-14 was also released after the incident." 7.3. Father of the informant, PW-3 Madan Lal, also corroborated the testimony of PW-1 Kamla and PW-2 Dharam Das as regards kidnapping of the victim girl by the appellant, arrest of the appellant, his disclosure statement at the police station, and the subsequent recovery of the body of the victim girl at the instance of the appellant. He also deposed regarding the memos of arrest, seizure, recoveries, and panchayatnama, and identified his signatures on the memos Ex. P-5 to Ex. P-8. We may usefully extract the relevant part of statement made by this witness in his cross-examination as follows: -

"…..At about 6:30 p.m., I reached the place of incident and stood there. Accused Manoj Pratap Singh came to buy vegetables just after me and thereafter some more customers came. About 15 feet away from my son-in-law's cart, there were some more carts. Saras Milk Diary and Ayurvedic medicine shop is also there. Due to rainfall and storm, there was nobody. That time accused Manoj Pratap Singh bought fruits and vegetable, gave chocolate to the baby girl and went. Then after 10-15 minutes he came back at 6:30 p.m. and immediately took the child on his motorcycle and went away. Since the child was feebleminded, she used to sit with anybody. We were attending the customers. It is wrong that I have not seen the accused abducting the child and the customers informed about the abduction. Somnath Choraha is approximately 3-4 km away from the place of incident. Baby girl's dead body was found at Kamal Talai bridge. I do not know about the direction of Kamal Talai from the place of incident. I could not see the accused Manoj Pratap Singh. Then we went to the police post. We went to Bandiyabada police post where missing report was lodged that the accused Manoj Pratap Singh took away the child. Because we knew the name of Manoj Pratap Singh, we gave his name in the report. I do not know the name of father of accused Manoj Pratap Singh. We went to search accused Manoj Pratap Singh because the child was with him. We reached police station at about 7:00- 8:00 p.m. Two police Jeeps came out of the police station, one moved towards R. K. Hospital and another moved towards bus stand. In one of the Jeep, my daughter Kamla and some police officials went towards R. K. Hospital. In another Jeep, Dharam Das, some of the police officials went towards bus stand. I was sitting on the motorcycle of my colleague Manilal. Then we searched Dhoinda and various other places in jeep but we were unable to find anyone, so we returned to the police station and in second round, we went towards bus stand. In the first instance we went to Dhoinda via R K; it is wrong that we went via Kamal Talai road, instead we went via bypass. We met accused Manoj Pratap Singh present in the court when we went to bus stand in the second round. Accused Manoj Pratap Singh was wearing jacket and jeans and at that time it was raining lightly. Accused Manoj Pratap Singh was standing near the water kiosk. Nobody was near him. Firstly, the police saw the accused Manoj Pratap Singh with bloodstains on his clothes…..Accused Manoj was brought to police station in jeep and upon enquiry he disclosed that the child had been left at Kamal Talai bridge. On one side of Kamal Talai bridge there was a house whose name I do not remember and on the other side was a cremation ground. Ex. P-3 Site Plan of the place of incident was prepared at 7:00 a.m. At Kamal Talai, I signed at two or three places… It is true that, I have not seen anyone killing my granddaughter K." 7.4. PW-5 Maniraj Singh has been an independent witness to the kidnapping of the victim girl, as also to the inquest report. He stated in his examination-in-chief all the essential facts in corroboration of the statements above-noted. He also testified to the inquest report, seizure memo and other memos concerning delivery of dead body, site plan of Kamal Talai and site plan of the place of kidnapping. In his cross-

examination, this witness stated, inter alia, as under: -

"....The place of Incident is 200 to 300 feet away from my office. On the day of incident other carts were open. I do not remember the name of carts which were open. I know deceased K. It is wrong that I did not see K when she was abducted. That time we did not know that accused Manoj Pratap Singh is abducting the child; therefore we did not prevent him from doing so. It is wrong that K willingly sat on the motorcycle of the accused, instead the accused caught her and made her sit in front seat of his motorcycle. I did not know that accused is abducting the child; therefore I did not stop him. It is correct that at that time other persons were also standing at the fruit cart. It is correct that other persons who were standing at the fruit cart did not stop him. It is possible that in my police statement, I have stated that the colour of the motorcycle was sky blue but in my statement the colour of the motorcycle has been written as green. It is correct that I am off duty at 5:00 p.m. It is true that I have motorcycle, and I am using it to go to my office. It is correct that at that time I did not try to follow accused Manoj Pratap Singh because my motorcycle was parked at some distance. I do not know about employment of accused Manoj Pratap Singh. I know accused Manoj Pratap Singh as I used to see him at that place for past two to four months. I do not have any special identification of accused Manoj Pratap Singh. It is wrong that someone dictated me the name of accused Manoj Pratap Singh. The place of Incident is opposite to the place from where the dead body of K was recovered. Accused Manoj Pratap Singh took away K towards Somnath Choraha which is in another direction. There were injuries on right eye below eyebrows and behind the head above the neck of the deceased K.... It is wrong that my signature was taken on all the memos at the same time. Then said whatever memos were prepared were signed by him after reading. I do not remember the colour of the clothes that the accused Manoj Pratap Singh was wearing at the time of incident." 7.5. PW-17 Dinesh Bhatia had been another witness to the kidnapping of the deceased. He is brother of PW-2 Dharam Das, and has a tea stall behind the cart of PW-1 Kamla. He too corroborated the testimonies of PW-1 Kamla, PW-2 Dharam Das, PW-3 Madan Lal and PW-5 Maniraj Singh.

7.6. One more independent witness, in regard to the fact that the deceased girl was last seen with the appellant, had been PW-12 Ranjeet Singh. He was the salesman at a liquor shop, where the appellant stopped to purchase beer immediately after taking the victim girl on his motorcycle. This witness stated in his examination-in-chief that the appellant came to his shop with an eight-year-old girl sitting on his motorcycle, purchased a bottle of beer, and even quarrelled as regards the price. The relevant portion of this testimony would read as under: -

"I work as a salesman at Salampura Wine Shop. This shop is owned by Bansi Lal Mewada, resident of Sardargarh. On 17.01.2013, at 6.30 p.m. in the evening, I was at the liquor shop.

At that time, the accused Manoj Pratap Singh, who is present in the court, came on motorcycle. A girl of about eight years was sitting in front of his motorcycle. The accused Manoj Pratap Singh came

to the liquor shop and he asked for a bottle of beer. I gave him a bottle of beer and asked for eighty rupees. He was having shortage of twenty rupees. He quarrelled and fought with me.

Then he gave twenty rupees, took the bottle of beer and went away on motorcycle. At that time the child was sitting with him on the motorcycle. Next day I came to know that accused Manoj Pratap Singh raped and killed the child." 7.6.1. In his cross-examination, this witness PW-12 Ranjeet Singh stated as under: -

> "Police came to my shop on 18th and made enquiries. On the same day, they took my statement. I work alone on the Salampura Wine Shop. At first he did not gave twenty rupees but thereafter he gave it. The fact of giving twenty rupees has not been written in the police statement. It was a sky-blue coloured passion motorcycle. I do not know the registration number of the motorcycle. I do not remember the colour of the clothes that accused Manoj Pratap Singh, who is present in the court, was wearing on that day. Accused Manoj Pratap Singh, who is present in the court, went towards Housing Board on his motorcycle. I did not see accused Manoj Pratap Singh raping or killing the child. I heard about it on the next day." 7.7. PW-6 Khemchand, who is the brother of Dharam Das, identified his signatures on panchayatnama (Ex. P-8), site plans (Ex. P-3 and Ex.

P-4), memo of seizure of clothes (Ex. P-9), and memo of handing over the dead body to Dharam Das (Ex. P-10). PW-4 Narendra Singh was also a witness to panchayatmana and he too identified his signatures. PW-7 Kuldeep Singh and PW-8 Ajay Singh had been the witnesses to various proceedings in the investigation including seizure of the motorcycle (Ex. P-15), collection of blood samples from the tank, pedal and cylinder of the motorcycle (Ex. P-16); recovery of the frock of the deceased which was smeared with blood (Ex. P-17); collection of soil sample carrying bloodstains (Ex. P-18); preparation of site plan of the place of occurrence and memo of inspection (Ex. P-20 and Ex. P-21); and memos of further inspection of the motorcycle and the place of occurrence (Ex. P-22 and Ex. P-23). They duly testified to the proceedings conducted in their presence and to their signatures on the relevant memos.

8. The medical, scientific and other cognate evidence in this matter could be broadly divided into four parts: first being the post-mortem report of the dead body of victim girl and depositions of the members of Medical Board who carried out post-mortem; second being the evidence concerning medical examination of the accused-appellant; third being the evidence concerning age and disabilities of the victim girl; and fourth being the report of the Forensic Science Laboratory, particularly on DNA matching.

8.1. In the post-mortem report (Ex. P-35), the nature and extent of the injuries on the dead body of the victim came to be stated, inter alia, in the following terms: -

> "*** *** ***
> II CRANIUM & SPINAL CORD

Note: - The Spinal canal need not be examined unless any indication of disease or injury exists.

1. Scalp, Skull and vertebrae 2. Membranes 3. Brain and Spinal Cord (1) Lacerated wound of 5 X 1cm in between 2 eyebrows.

(2) There was # (fracture) of frontal bone below the wound. (3) Hematoma on occipital region of 5 X 5 cm.

(4) Multiple haemorrhages large in size (extra & subdural) in frontal temporoparietal & Occipital regions) *** *** ***

11. Organs generation: External and Internal (1) Hymen completely torned.

(2) Vagina torned upto unijunction of lower 2/3 rd & upper 1/3rd posteriorly & laterally on both side.

(3) II° Perineal tear.

(4) Vault was intact.

(5) Blood showing on external genital regions & on medial & anterior sides of thighs.

*** *** *** EXTERNAL INJURIES UNDER HEADING I

1) Multiple abrasions & bruises on forehead.

2) Lacerated wound of 5x1cm in between both eyebrows.

3) Hematoma in preauricular area of 10x8cm right side.

4) Bruises all around the left ear and on pinna.

5) Bruise of 5x3 cm below left mandible & below lower lip of 2x1 cm.

6) Multiple abrasions on both cheeks.

7) Multiple abrasions on both sides & front of neck.

8) Multiple abrasions & bruises on front, back top of shoulders of both sides.

9) Multiple abrasions on front & back chest, specially on prominent bony areas.

10) Multiple abrasions on supra pubic region extruding up to both iliac fossa.

11) Multiple abrasions on upper anterior and lateral parts of both thighs.

12) Abrasions of 7x5 cm on lateral side of right knee joint.

13) Multiple abrasions on & around left knee joint." 8.2. The members of Medical Board comprising of three medical officers pointed out in the post-mortem report that all the injuries were fresh and of the duration within 16-18 hours of examination. They stated their remarks in the following terms: -

> "REMARKS BY MEDICAL OFFICER In the opinion of Medical Board, cause of death is Head injury. Ante mortem rape done." 8.3. PW-14 Dr. Manju Purohit, who was working as Gynaecologist, R. K. Hospital, Rajsamand at the relevant time and was a member of the Medical Board, testified to the aforesaid post-mortem report and to the steps taken by the Medical Board in collecting, sealing and delivering various samples/swabs. This witness was not only cross-examined on behalf of the accused-appellant, but was also posed questions by the Court and was cross-examined yet further. The relevant part of her testimony in cross-examinations and Court questioning could be usefully extracted as under: -
>
> "Generally, after six hours of death, rigor mortis starts in a body but it also depends upon the weather condition. It is wrong to say that contraction was found in the body. All the external injuries mentioned in Ex. P-35 post-mortem report cannot be sustained together by falling from motorcycle. Injuries below neck, jaw and vagina cannot be sustained after falling from a motorcycle. It is wrong to say that the injuries could be sustained due to dupatta stuck on the neck. It is correct that at the time of examination, human semen was not found on her body. It is correct that human semen was also not found on the outer surface of vagina. It is correct that on Ex. P-36 the certificate and post-mortem report number is blank.
>
> QUESTION BY COURT: -
>
> Q. What is your expert medical opinion after conducting external and internal examination of the injuries on the body and after analysing the entire circumstances and condition of the body?
>
> A. In my expert opinion, the eight year old innocent girl had been brutally and inhumanly raped and on objecting, the person who raped her behaved in an inhuman and cruel manner as a result of which, she sustained different simple and grievous injuries due to which she died. Laceration of the vagina of the deceased shows that she was brutally raped in an inhuman manner.
>
> CROSS EXAMINATION: - ADVOCATE FOR THE ACCUSED SHRI B.K. BAIRWA.
>
> The cause of death was injury caused on the head" 8.4. PW-15 Dr. Kailash Chand as also PW-21 Dr. Chetna Vaishnav had been the other members of the Medical Board that carried out post-

mortem examination and they corroborated the testimony of PW-14 on all the material particulars. PW-21 Dr. Chetna Vaishnav, also stated in her examination-in-chief that after examination, the Medical Board was of the opinion that 'the deceased was subjected to brutal rape and her death was caused'. This witness further testified to the physical examination of the accused-appellant after his arrest, when she found abrasions on his right knee and made such an entry on the application of the Investigating Officer (Ex. P-41). The relevant parts of her testimony in cross- examination would read as under: -

> "…. It is wrong that the entire injury on the body of the deceased can occur after falling from motorcycle. It is correct that traces of sperm were not found on the body of the deceased but we took the samples from vagina of the deceased for examination of this fact…..It is wrong that all the injuries on the body of the deceased were self-caused but some of the injuries on the body of the deceased may be self-caused. It is correct that in Ex. P 35, from X to Y, it has not been mentioned in the opinion regarding death that which of the specific injury sustained on which part of the head resulted in death but in the opinion of medical board, multiple injuries were found on the head of the deceased which collectively resulted in death of the deceased. The said injuries can be sustained by blunt weapon or by ramming the head on stone. It is correct that in this context, there is no opinion of the medical board available on Ex. P35 post-mortem report. Signature of PMO is from G to H on Ex. P-41 and, date is of 20.01.2013 and time is 11:40 a.m. It is wrong that Ex P-41 Letter was given on 20.01.2013. I had examined the accused on 19.01.2013 at 12:00 p.m. It seems that PMO has mistakenly mentioned the date on Ex.

P-41 from G to H. It is wrong that Ex. P-41 was given on 20th…." 8.5. As regards the medical procedures conducted on the question of sexual capability of the appellant and collection of his blood sample, PW- 22 Dr. Satish Singhal, the Medical Officer, R. K. Hospital, Rajsamand testified to his report (Ex. P-43) to the effect that there was nothing to suggest that the appellant was not capable of doing sexual intercourse. This witness also testified to the factum of collection of blood sample of the appellant after his consent (Ex. P-44) and to the forwarding letter for the Chief Chemical Examiner of the Forensic Science Laboratory (Ex. P-

45). Nothing substantial is available in his cross-examination except that the details of procedure carried out by him were not mentioned in Ex. P-

43. 8.6. As regards age of the deceased and her mental and physical disabilities, the prosecution led documentary evidence in support, being the Medical Board's Certificate dated 04.03.2010 on permanent disability (Ex. P-11), where it was noted that the deceased K suffered from spastic palsy with 70% permanent disability; Progress Report (Ex. P-13) issued by Jagriti Vidyalaya, a special school for children with mental disabilities, along with a Certificate (Ex. P-12) issued by the same school, which stated that the child had an IQ of 50%. Another Certificate from Government Primary School, Gadriyawas Dhoinda (Ex. P-14) was also produced. The said Certificates (Exs. P-12 to P-14) gave her date of birth as 09.07.2005. PW-18 Dr. Narendra Paliwal proved the said Certificate Ex. P-11. The relevant part of his deposition in the cross-examination would read as under: -

> "It is correct that in Ex.P-11 certificate, the age of K is not mentioned and identification mark is also not mentioned.....It is correct that in Ex. P-11, neither there is signature nor thumb impression of K.....It is correct that in issuance of this certificate there was no neurologist in the board. I had issued the said certificate for physical disability and not for any neurological examination. It is correct that the said certificate is related to orthopaedics. It is wrong to say that the muscles could tear in this disease." 8.7. It is also noticed that by way of a communication dated 22.01.2013 (Ex.- 52), the later Investigating Officer PW-25 Umesh Ojha sought medical opinion/comments regarding the nature of disablement of deceased K with reference to the said certificate dated 04.03.2010 (Ex. P-

11) whereupon, the Medical Officer made his endorsement in the following words: -

> "As per the certificate issued, her cordination movements of limbs which are controlled by brain were disturbed and as such she was physically and mentally challenged child." 8.8. We may also usefully extract the relevant parts of the report of DNA examination carried out by the State Forensic Science Laboratory, Rajasthan, Jaipur (that was drawn on 08.04.2013 and came to be marked as Ex. P-51), which would read as under: -
>
> "DNA was extracted from all the samples except exhibit No.7 (Control swab), 9 (Blood smeared soil) and 10 (Control Soil). DNA profiles were prepared by using Microsatellite loci of AmpFISTR® Identifiler® Plus. Data was analysed by GeneMapper ID-X® Software. Blood samples were consumed during examination.
>
> RESULT OF EXAMINATION (1). Same Female DNA profile was obtained from the Exhibit No. 1 (Coat), 2 (Pant), 3 (Shirt), 5 (Pajami), 6 (Blood from Motor Cycle), 8 (Frock), 12 (Vaginal Swab), 13 (Vaginal Smear) and Exhibit No. 14 (Blood sample of K).

2. Male DNA profile was obtained from Exhibit No. 4 (underwear) which is matching with the DNA profile of Exhibit No. 11 (Blood sample of Manoj Pratap Singh) CONCLUSION The DNA test performed on the exhibits is sufficient to conclude that the DNA profile obtained from Exhibit No.1 (Coat), 2 (Pant), 3 (Shirt), 5 (Pajami), 6 (Blood from Motor Cycle), 8 (Frock), 12 (Vagina Swab), 13 (Vaginal Smear) is matching with the DNA profile of Exhibit No. 14 (Blood sample of K)."

9. The evidence of a few official witnesses related with the process of investigation may also be noticed in requisite details. 9.1. PW-19 Nand Lal was the second in command at Police Station, Kankroli at the relevant time. This witness testified to the facts about lodging of report and handing over investigation to PW-20 SHO upon his arrival at the police station. He identified the signatures of PW-1 Kamla and PW-3 Madan Lal as also his own signature on the report Ex. P-1 and the FIR Ex. P-2.

9.2. The testimony of PW-20 Ganesh Nath, SHO is pertinent since the appellant was arrested by him; the first disclosure statement was made by the appellant to him; and the initial processes related with investigation were carried out by him. The relevant extracts of his examination-in-chief, particularly those relating to the arrest and medical examination of the appellant as also of discoveries on the information of the appellant, would read as under: -

> "....I started the search proceedings alongwith grandfather and father and brought Manoj Pratap Singh from Kankaroli bus stand to the police station and after making necessary enquiry, arrested him vide Ex. P-5 .....At the time when Manoj Pratap Singh was arrested, he was wearing coat, jeans, shirt and underwear among which, bloodstains were found on his coat, Jeans and underwear, which were seized vide memo Ex. P-6. Then they were sealed and stamped.....
>
> In custody, accused Manoj Pratap Singh voluntarily disclosed on 18.01.2013 at 2:30 a.m. to me, the SHO, that he could get recovered the dead body of the girl whom he abducted from R.K. Hospital, Rajsamand, killed her and disposed her body at Kamal Talai. The said information was written according to the statement of the accused and the memo has been marked as Ex. P-40 on which signature of accused Manoj Pratap Singh is from A to B who was read over and explained the contents of memo marked as Ex. P-40 who understood the contents and imposed his signature from A to B and my signature is from C to D. After writing the said information, we went to the place in government vehicle as disclosed by accused Manoj Pratap Singh alongwith witnesses Madan Lal and Dharam Raj who were present there. He asked us to stop and get down from the vehicle at the place where Kamal Talai Road meets at 50 feet road. He got down from the vehicle and walking ahead, pointed towards dead body of a girl on the railing of a bridge and said that this is the girl whom he had abducted. Dharam Raj who was also accompanying saw the body and exclaimed that she is her daughter K. Since it was dark, I inspected the body in torch light and found that the girl was dead. There was black colour underwear on her body and rest of the body was completely nude. Multiple abrasions were present on the body of the girl and there was injury on her eye. Since it was night, I prepared memo of recovery Ex. P-7 on which signature of accused Manoj Pratap Singh is from E to F, signature of witness Dharam Raj is from A to B, signature of witness Madan Lal is from C to D and my signature is from G to H.....Thereafter, at dawn, Panchayatnama of girl K was prepared after calling the attesting witnesses wherein all the particulars and the injuries present on the entire body were mentioned; the same were read over to Panchas who, after looking at all the circumstances, opined that the death of the girl K was the result of injuries caused to her body. Memo of Panchayatnama of the body is Ex. P-8..... Thereafter, the dead body was seized and kept in the mortuary of R.K. Hospital, Rajsamand and report was sent to the board for post-mortem. Post-mortem was conducted by medical board and after post- mortem black coloured lower (pajami) which the girl was wearing at the time of incident and on which bloodstains were found, was seized, kept in a bag, sealed, stamped and marked as Ex. P-9.... .....In custody, I got the injuries on the body of accused Manoj Pratap Singh examined for

which, I gave the requisition to the medical officer of R.K. Hospital, Rajsamand, the copy of which is Ex. P-41 on which, my signature is from A to B. Thereupon, the accused was physically examined by Dr. Chetna, who recorded the description of injuries on Ex. P-41 which is C to D and signature of doctor is from E to F. Thereafter, following the order of the higher officials, the investigation was handed over to the circle officer Shri Umesh Ojha…..” 9.2.1. The relevant portion of the cross-examination of PW-20 Ganesh Nath could also be usefully reproduced as under: -

“It is wrong that on the same day Kamla handed over a missing report to Nand Lalji. It is correct that I was not present when Kamla came to the police station. My staffs, Dharam Raj and Madan Lal were accompanying me when search proceedings were conducted. When I received the information at 8:20 p.m., I was with my staffs. Thereafter, I came to the police station and went in search alongwith Dharam Raj and Madan Lal. I came back to the police station after 2-3 hours and went in search alongwith Dharam Raj and Madan Lal. Accused Manoj Pratap Singh was arrested by me. I caught accused Manoj Pratap Singh from old bus stand at Kankaroli, took him to the police station and after making enquiries, I arrested him. I prepared the arrest memo after arresting the accused at the police station, therefore, in Ex. P-5 the place of arrest is blank but at the top the place of arrest has been mentioned as Kankaroli police station. It is correct that I seized the clothes of the accused Manoj Pratap Singh and thereafter provided him other clothes to wear. I cannot say as to whether at that time accused Manoj Pratap Singh was under influence of any intoxicant but he has not consumed liquor and he did not appear to be under influence of the same…. After receiving information under section 27, I went to the place of incident where accused Manoj Pratap Singh got down from the vehicle and he was walking in front of us. There was a house in front of the place where dead body of K was found and remaining areas were plots and agricultural lands. It is correct that the dead body was found at Kamal Talai road where 50 feet road meets. It is correct that I did not enquire the people of the said house or people near that house because further investigation was done Deputy Sir. Statement of accused Manoj Pratap Singh under Section 27 was written word by word. It is correct that accused Manoj Pratap Singh is educated. Accused has stated that he is educated till class 10. It is correct that it was dark when the body of K was recovered. It was 3:00 a.m. …..It is correct that at the time of arrest, there was injury on the knee of accused Manoj Pratap Singh. It is correct that there was no injury on the face and chest of accused Manoj Pratap Singh….It is wrong that I have arrested any wrong person or there was any pressure on me.” 9.2.2. The disclosure statement made by the appellant to PW-20 SHO on 18.01.2013 has been marked as Ex. P-40, and its contents would read as under: -

“I have murdered the girl whom I had kidnapped from R.K. Hospital. Her dead-body is lying towards Kamal Talai, which I can get recovered.” 9.3. The testimony of PW-25 Umesh Ojha, who was the Circle Officer, Rajsamand and who carried out the later part of investigation in this case is equally pertinent. The appellant allegedly

disclosed the place of incident, the location of motorcycle and the location of frock to this witness, who carried out the necessary seizures and follow-up proceedings. This Investigating Officer also collected other evidence concerning the appellant, including his sexual capability test report and his antecedents. The relevant extracts of his testimony would read as under8: -

"…..On 19.01.2013 accused Manoj Pratap Singh present in court today voluntarily informed me that he could show the place where motorcycle which was used in the incident had been left, he can accompany us to the place and the nearby places where he raped the deceased and where her blood soaked kurta had been left. The said information Ex. P-48 was recorded word by word as stated by the accused and thereafter read over to him…. As per the information obtained, we went to the place of incident for investigation and recovery alongwith the summoned witnessed Kuldeep Singh and Ajay Singh and accused Manoj Pratap Singh. As per the information of accused Manoj Pratap Singh we reached near canal ahead of cremation ground on the way to Dhoinda from 50 feet road where the accused Manoj Pratap Singh asked us to stop; hence we stopped the vehicle and got down. Then accused Manoj Pratap Singh pointed towards east and said that it was the place where he raped the deceased and left the motorcycle. …. 250 meters away from where we got down, accused Manoj Pratap Singh… who was walking in front of us, stopped and pointed towards the place where he left the motorcycle. We saw the motorcycle lying near the bundle of sticks. The side of the motorcycle where there is silencer was touching the ground, head light of motorcycle was towards wall of field, motorcycle was blood smeared and its number was RJ 30 3M 5944. Accused Manoj Pratap Singh stated that on this very motorcycle he brought the girl here. The said motorcycle was used in the incident and therefore, it was seized and memo prepared which is Ex. P-15… Motorcycle's right side back indicator was broken and hanging;

and its petrol tank, silencer, engine body, and rim of backside tyre were smeared with blood. Since it was not possible to send the motorcycle to FSL for examination of the bloodstains on it, specimen sample of blood was taken on gauze of white cloth and control sample was also taken; and they were placed in separate plastic containers and were sealed. The sample was marked D and control was marked D 1 for which a separate memo was prepared which is Ex. P-16…. 8 It may be indicated that this witness PW-25 also asserted about the appellant having made other disclosures like the place where he smashed the head of the victim girl on hard gravelly surface (stone) upon her resistance; and having smashed her forehead between silencer and engine of motorcycle etc. These parts of his testimony as also other parts of formal nature have been omitted from extraction.

Thereafter accused Manoj Pratap Singh… walked approximately 3 metres from where motorcycle was lying and indicated by his hand and said that there is frock-type skirt, which the deceased girl was wearing; on a close look, the skirt was of red colour with light yellow dots; the skirt was torn and there was blood on its lower side….. …Thereafter…Manoj Pratap Singh…walked to another side of way approximately 2.5 metres, showed by hand, and said that at this place I raped the deceased girl, That place was looking hard on which scratch marks and bloodstains were there. In presence of

witnesses, blood sample and control sample were taken separately for test by FSL... *** *** *** During investigation I wrote a letter to Medical Officer R.K. Hospital about DNA test and sexual capability test of accused Manoj Pratap Singh which is Exhibit P–42 on which G to H is my signature. On this medical officer gave the sexual capability report Exhibit P– 43; carbon copy of identity and consent form is Exhibit P–44 and carbon copy of forwarding the blood sample for DNA test is Exhibit P–45... *** *** *** During investigation I had obtained the disability certification of K by the Board of Doctors, which is Exhibit P–11 on which I to J is my endorsement and K to L is my signature. I also obtained the mental retardation certificate of deceased K from Shri Dwarkesh Aksham Seva Sansthan which is Exhibit P–12 on which C to D is my endorsement, E to F is my signature and A to B signature of the grandfather of the deceased Madan and G to H is signature of Principal Jagriti Special School, Kankroli. The progress report of Jagriti Special School, Kakroli is Exhibit P–13 on which C to D is my endorsement and E to F is my signature. The certificate of date of birth and school entrance form of Govt. Primary School, Gadriyawas is Exhibit P–14 on which C to D is my endorsement and E to F is my signature, G to H is signature and seal of the Principal Govt. Primary School, Gadriyawas Dohinda... *** *** *** ... The First Information Report registered at Police Station Nathdwara regarding theft of the motorcycle number RJ 30 3M 5944, used by the accused Manoj Pratap Singh in the present incident, is Exhibit P-46, carrying my endorsement at C to D and my signature at E to F. A written requisition sent to the SHO, P.S. Shambhupra District Chittorgarh for obtaining the previous conviction record of the accused Manoj Pratap Singh and his report is Exhibit P-47 on which G to H is my endorsement and I to J is my signature. Along with this letter, the SHO P.S. Shambhupra District Chittorgarh had forwarded the true copy of FIR No. 69/11 registered against accused Manoj Pratap Singh with the charge-sheet, which was taken on the file. Similarly, FIR No. 428/12 and charge-sheet therein against the accused Manoj Pratap Singh at P.S. Rajnagar, District Rajsamand was taken on record. The copies of FIR and charge-sheet in case Nos. 79/12 and 78/12 registered at P.S. Kankroli, District Rajsamand were also taken on record..." 9.3.1. We may also usefully extract the relevant parts of the statement made by this witness in cross-examination as under: -

> "It is true that from where motorcycle was seized was an open area. It is also true that from where deceased's frock was seized was an open area. It is wrong that cremation ground was near the place of incident but was far away from there. It is wrong that public movement is there at the place of incident. 50 feet road is far away from the place of incident. It is wrong that near canal public way is situated rather, trails type way is available for movement towards fields. It is true that information provided by the accused under section 27 which is Ex. P-48 was written by me. It is true that accused Manoj Pratap is educated. The accused Manoj Pratap Singh was only signed on Ex. P-48. It is wrong that houses are constructed nearby the place of incident. Fields being situated near the place of incident and nobody being there, the information about fields was obtained from the area patvari and the owners were asked about the incident but they did not have any information and therefore their statement not recorded....It is true that there was one house near the place where the victim's dead body was lying, which was a little away. It is true that the person who was residing in that house had no knowledge about the incident that took place in the night and therefore, his statement was not recorded. It is true that the bridge where

the victim's dead body was found might be of public movement, but as the incident happened during night therefore, there would have been no public movement at that time..... I can't say that there had been rainfall at the time of incident. I can't say that there had been rainfall on second day of incident....It is true that information related to incident as given by the accused was recorded word to word. It is wrong that at that time accused told that he is innocent. It is wrong that seized article were safely not sent to the FSL for test. It is true that no criminal case was lodged against the accused at Police Station Gugali, District Maharajganj, (Uttar Pradesh) which is endorsed on the back of memo Ex. P-31. It is wrong that I was under pressure and carried out wrong investigation. It is wrong that there had been demonstrations in the city when the accused was not found; rather, after his arrest there had been demonstrations against him. It is wrong that I investigated the case only on the basis of circumstantial evidence, rather investigated with recording of the statements of independent witnesses present at the time of kidnapping. It is true that no one had seen the accused raping and killing the deceased." 9.3.2. The disclosure statement made by the accused-appellant to PW-

25 on 19.01.2013 has been marked as Ex. P-48 and its contents would read as under: -

"I can show the place where the motorcycle used by me at the time of incident is lying and the nearby place where blood smeared kurta of the deceased is lying and the place where I committed rape on her, which is also nearby." 9.4. PW-23 Ramdev Regar, Sub-Inspector of Police, deposed regarding the fact that a report about theft of motorcycle bearing registration No. RJ30 3M 5944 was lodged at Police Station Nathdwara on 14.01.2013. This witness stated as under: -

"On 14.01.2013, I was posted as Sub Inspector at Nathdwara Police Station. On that day complainant Ramesh Chand son of Purushottam, resident of Sundercha presented a written report that Hero Honda Passion Plus motorcycle of his master Girishji Garg, bearing registration No. RJ 30 3AM 5994 was parked near Naniji ka Bag, Nathdwara, which had been stolen by an unknown person. On the basis of the said report, Case No 39/13 under Section 379 IPC was registered and investigation was handed over to ASI Peshawar Khan. On the basis of the said report, I registered the FIR, the certified photocopy whereof is 46 and my signature is from A to B." 9.4.1. This witness PW-23 deposed in his cross-examination as under: -

"In this matter, I have not seized the said motorcycle. It is correct that in the instant matter, I have not obtained the RC or other documents of the motorcycle." 9.5. There had been other official witnesses who carried out different tasks in the aid of investigation, like PW-10, PW-11, PW-13, PW-16; and another official witness PW-24, who filed the charge-sheet. Their evidence, essentially of formal nature, need not be dilated upon.

> 10. The appellant in his statement under Section 313 CrPC stated that he had been falsely implicated in the case. The appellant, however, did not lead any evidence in his defence.

The Trial Court found the appellant guilty and awarded death sentence

11. The Trial Court, in its judgment of conviction dated 28.09.2013, accepted the prosecution case and, while rejecting the contentions urged in defence, held that the chain of circumstances was duly established by the prosecution, bringing home the guilt of the accused-appellant. Deceased aged 7 ½ years, mentally and physically challenged

12. The Trial Court, in the first place, took up for consideration the questions relating to the age and alleged disablement of the deceased. The Trial Court held, with reference to the Medical Board's Certificate on Permanent Disability dated 04.03.2010 (Ex. P-11) and the statement of PW-18 Dr. Narendra Paliwal, that the deceased was suffering from spastic palsy because of which, the aggregate percentage of her permanent disability was 70%. The doctor also specified that the medical condition of the deceased girl was due to imbalance between the movements of limbs and brain. The Court also referred to the statements of PW-1 Kamla, PW-2 Dharam Das, PW-3 Madan Lal, PW-17 Dinesh Bhatia and PW-5 Maniraj Singh, who testified to the fact that the deceased was a mentally and physically challenged child. In fact, in the Certificate dated 20.01.2013 issued by the Jagriti Vidyalaya, a special school for children with disabilities (Ex. P-12), it was also stated that the deceased was a mentally retarded child with 50% IQ.

12.1. As regards the age, with reference to the aforesaid Certificate (Ex. P-12) as also the Progress Report of the same school for the session 2009-10 (Ex. P-13) and the Certificate from the Government Primary School, Gardiyawas Dohinda (Ex. P-14), the Trial Court found that the date of birth of the deceased K was 09.07.2005 and hence, she was about 7½ years of age on the date of incident, i.e., 17.01.2013. The Trial Court also observed that the witnesses stated her age at 8 years only in their approximation.

12.2. Thus, the Trial Court concluded that the deceased was 7½ years of age at the time of incident and she was suffering from 70% physical disablement and was also mentally retarded.

Deceased last seen with the appellant

13. The Trial Court, thereafter, took up for consideration the question of kidnapping of the deceased girl and referred to the testimony of PW-1 Kamla, PW-2 Dharam Das, PW-3 Madan Lal, PW-17 Dinesh Bhatia as also that of PW-12 Ranjeet Singh and PW-5 Maniraj and held proved the facts that the appellant kidnapped the deceased from the lawful guardianship of her parents with intent to secretly and wrongly confine her; and that the deceased was last seen with the appellant. Discoveries on the information of appellant

14. Moving on with the chain of circumstances, the Trial Court referred to the facts emanating from the statements of PW-2 Dharam Das and PW-3 Madan Lal that: a) the appellant was found at about

2:00 a.m. at the bus stand with bloodstained clothes; b) the appellant disclosed that the dead body of the victim was lying at Kamal Talai; and c) the appellant got recovered the dead body at Kamal Talai. The Trial Court also referred to the testimony of PW-20 Ganesh Nath as regards arrest of the appellant and the disclosure statement made by him (Ex. P-40) whereupon the dead body was recovered at Kamal Talai. Thus, the Trial Court held proved the basic facts that the appellant was arrested after about 7½ hours of his kidnapping the victim girl; the clothes worn by him were bloodstained, which were seized and sealed; and after about 1½ hours of his arrest, the dead body of the victim girl was recovered at the disclosure and information of the appellant.

15. The Trial Court also found proved the factum of other recoveries at the instance of the appellant like that of motorcycle used by him and the frock worn by the deceased, as duly established by the oral and documentary evidence adduced by the prosecution. It was also observed by the Trial Court that the place of recoveries was such that it was only within the knowledge of the appellant.

Medical evidence

16. As regards the questions of rape and murder of the victim girl, the Trial Court made an elaborate reference to the post-mortem report (Ex. P-

35) and the depositions of PW-14 Dr. Manju Purohit and PW-21 Dr. Chetna Vaishnav, particularly concerning the nature of injuries and the expert opinion on the manner of causing them and, inter alia, found as under: -

> "...as per her expert opinion, forcible rape has been committed on 8 year old innocent girl in extremely cruel and heinous manner and on resisting the rape, she was treated with extreme cruelty and mercilessly due to which, several simple and grave injuries were caused on the person of deceased and she died due to such injuries. The witness has also expressed that vagina of the deceased was ruptured leading to the conclusion that rape was committed on her in a beastly and merciless manner. The said statements of witnesses were confirmed by post-mortem report (Exhibit – P35) prepared by the Medical Board." Report of FSL

17. The Trial Court also referred to the other evidence on record establishing the collection of samples and proper forwarding of the same to the FSL. The Trial Court further referred to the linking evidence, including the additional statement of PW-1 Kamla, as regards the clothing of her deceased daughter. Thereafter, the Trial Court referred to the FSL report (Ex. P-51) wherein it was found that the DNA profile of blood collected from the person and clothing of the deceased matched with the DNA profile of blood found on the coat, pant and shirt of the appellant as also that found on the motorcycle. The facts established by this substantial piece of evidence and the conclusions deducible therefrom were found by the Trial Court as follows: -

> "Thus from the said D.N.A. test, the D.N.A. profile obtained from the coat (Exhibit No.1), pant (Exhibit No.2) and shirt (Exhibit No.3) and from the Pajami of the prosecutrix (Exhibit No.5), blood sample taken from the motorcycle of the accused

(Exhibit No.6), frock of the prosecutrix (Exhibit No.8), vaginal swab of the prosecutrix (Exhibit No.12) and vaginal smear (Exhibit No.13) are matching with D.N.A. profile of blood sample obtained from the prosecutrix (Exhibit No.14). Meaning thereby, blood found on coat, pant and shirt worn by the accused at the time of incident, which were seized at the time of arrest and that found on the motorcycle used by the accused at the time of incident, is matching with D.N.A. profile of blood sample of the prosecutrix. From this cogent circumstantial evidence, the only conclusion is that with intention to secretly and wrongfully confine the prosecutrix, only the accused kidnapped her and took her to a secluded place and committed rape on her and murdered her by causing injuries." (emphasis supplied) Defence contentions rejected

18. The assertion of the appellant that he was falsely implicated in the matter was not accepted by the Trial Court, since he did neither provide any reason for his false implication nor made any such suggestion to the prosecution witnesses. The Trial Court also dealt with every submission made on behalf of the appellant by the defence counsel and rejected the same, as noticed infra.

18.1. It was contended that as per PW-1 Kamla, she had not stated the name of appellant at the time of giving the initial report. With reference to the timing of report as also the statement of PW-3 Madan Lal, the Trial Court found that such a contention was totally baseless and a particular line in the statement of PW-1 Kamla occurred only because of her ignorance about the meaning of words. It was also found that in the report (Ex. P-1), the particulars were clearly stated that the appellant was previously known to them. Another contention that the parents and other relatives of the deceased did not raise alarm at the time of kidnapping of the girl was also found baseless with reference to the facts of the case and the statement of PW-1 Kamla. Even this was argued that the FIR was lodged after some delay but the Court found, with reference to the time of kidnapping and the distance of police station, that there was no such delay in lodging the FIR. It was further argued that there was discrepancy in the colour of motorcycle as stated by PW-1 Kamla (sky-blue colour) and as stated by PW-17 Dinesh Bhatia (green colour). The Court found that the recovered motorcycle was green in colour and bloodstains of deceased were found on the same. Thus, such discrepancy of colour was of no effect. Another contention was that the place of arrest was not stated in Ex. P-5. The Trial Court found that the place of arrest was mentioned as Police Station Kankroli and it was not of any effect on the substance of the prosecution case. Similarly, the attempts on the part of the defence to suggest some minor contradictions, about how many persons were available at the time of kidnapping of the child or whether she was wearing slippers or not and the contention that the main witnesses were all interested persons, were rejected by the Trial Court, being of no substance. Further, the questions sought to be raised about the presence of witnesses of seizure and recovery etc. were also found baseless and were rejected. An argument was also raised that the place of recovery of the dead body, i.e., Kamal Talai, was on the public way where anybody could leave the dead body. The Trial Court rejected this contention too, with reference to the fact that immediately after the incident, the dead body was recovered at the instance of the appellant and he had failed to show any other reason of his knowledge about the location of dead body. It was also argued that the house of one Manoj was shown near the place of incident but he was not examined and that the registration certificate of the motorcycle was also not produced. The Trial Court found that the

Manoj was not even remotely related with the matter nor was the owner of the motorcycle. It was also observed that, in any case, such minor shortcomings in the investigation were of no assistance to the accused. It was further argued on behalf of the appellant that PW-12 Ranjeet Singh had not stated the registration number of the motorcycle; that according to PW-1 Kamla, she came to know at about 12:30 in the night that the appellant was found but the time of arrest was shown at 2:00 a.m.; that no other injury except one on knee was found on the body of the appellant; that the blood group was not established; and that PW-25 Umesh Ojha stated the colour of the skirt of deceased as red with yellow dots but PW-1 Kamla stated that the dots were of white colour. All these hair-splitting arguments were noticed and rejected by the Trial Court for being of no substance and having no material bearing on the cogent and convincing evidence led by the prosecution. Even the admissibility of FSL report was also questioned but this contention was rejected by the Trial Court with reference to Section 293 CrPC.

18.2. The aforementioned consideration of the contentions urged on behalf of the appellant by the Trial Court is to indicate the nature of extensive arguments advanced on behalf of the accused-appellant in the Trial Court. As shall be noticed hereafter later, this feature coupled with in-depth cross-examination of each and every prosecution witness, is of material bearing on one of the contentions urged before us about want of proper legal assistance to the appellant in the Trial Court. Chain of circumstances complete

19. Since there were no witnesses to the crime of rape and murder and it had been a case of circumstantial evidence, after the above-noted discussion, the Trial Court held that prosecution had been successful in establishing the chain of circumstances linking the appellant with the crime in such a manner that no other conclusion except that of his guilt was possible. The Court held, inter alia, as under: -

> "On the basis of aforesaid discussion and analysis, the prosecution has been fully successful in proving beyond doubt that near about 6.30 p.m. on 17.01.2013, the accused with premeditated criminal mentality kidnapped, with intention to secretly and wrongfully confine the 7½ years old 70 per cent mentally disabled, innocent, helpless, meek handicapped daughter of complainant Kamla, by making her to sit on motorcycle in broad day light in presence of her parents, grandfather and uncle, taking unfair advantage of her natural abnormality, physical and mental disability and by tempting her with food stuff, from Housing Board within jurisdiction of Police Station Kankroli, District- Rajsamand; and took her to a lonely place near crematorium on 50 feet road towards Dhoinda, in Kankroli with premeditated intention of committing rape on her kidnapped her; and thereafter, in order to enhance his beastliness and inhumanity, he consumed beer and then in a brutal manner, while scratching the body of an innocent girl child, crossed the height of ignobility by committing rape on her in extremely heinous manner; and murdered here by causing multiple simple and grave injuries on her body in extremely barbaric manner. Moreover, it is also proved that the accused committed the offence of aggravated penetrative sexual assault by causing grievous hurt and bodily harm to the deceased while committing penetrative sexual assault.

> Therefore, after aforesaid entire discussion, the prosecution has been found successful in proving the offence charged against accused Manoj Pratap Singh under Sections 363, 365, 376(2)(f), 302 I.P.C. and under Section 6 Protection of Children from Sexual Offences Act, 2012, beyond reasonable doubt. Hence, accused Manoj Pratap Singh is liable to be convicted for the offence punishable under Sections 363, 365, 376(2)(f), 302 I.P.C. and under Section 6 Protection of Children from Sexual Offences Act, 2012." (emphasis supplied)

20. Thus, in the overall appreciation of the evidence on record and the surrounding factors, the Trial Court was satisfied that the prosecution had successfully substantiated its case beyond reasonable doubt and accordingly, convicted the appellant of offences under Sections 363, 365, 376(2)(f), 302 IPC and Section 6 POCSO by its judgment dated 28.09.2013.

Death sentence by the Trial Court

21. After having recorded the conviction as aforesaid, the Trial Court took up the matter three clear days later, i.e., on 01.10.2013 and heard the arguments on the question of sentencing. The burning question before the Trial Court was about the punishment to be awarded for the major offences of rape and murder of a seven-and-a-half-year-old girl child.

21.1. Having heard learned Public Prosecutor for the State as also learned amicus curiae for the accused-appellant, the Trial Court took note of the principles enunciated in various decisions of this Court; and examined the aggravating factors on record, particularly those relating to the gruesome nature of the crime as also the mitigating factors projected on behalf of the accused-appellant that it was his first offence; that he was 28 years of age; that he was a married person with an 8-year-old daughter; and that his family including old parents was dependant on him. Having examined all the relevant facts and factors, the Trial Court formed the opinion that a lenient view could not be taken looking to the nature of the crime; and, taking the case in 'rarest of rare' category, found it just and appropriate to award death sentence for the offence under Section 302 IPC. The Trial Court also awarded other punishments, as noticed hereinbefore.

21.2. A few of the relevant observations of the Trial Court with reference to the decisions of this Court and in its appreciation of aggravating and mitigating circumstances before forming the opinion in favour of awarding death sentence could be usefully extracted as under: -

> "It is true that in homicidal offence, life sentence is a rule and death sentence is an exception. 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. This point should also be considered whether there is anything abnormal to award death sentence in the offence for which life sentence could be awarded? Even after considering all the important circumstances favouring an accused, the circumstances of the offence should be such that there be no option but to award death sentence. Death sentence should not be awarded except in the most serious criminal cases. Before choosing the substitute of death sentence, the

circumstances of offence and accused should be taken into consideration. When any helpless, innocent girl is murdered and the accused is in a position to dominate her, then it will be proper to award him death sentence. A Judge should prudently and carefully determine the proportional and justified punishment for the accomplishment of the objectives as per the sentencing provided by law for serious offences. If, without any provocation and with cool mind, a girl is kidnapped, raped and brutally murdered and the murder is so heinous which not only hurts judicial sensitivity but also shocks the pure conscience of society, death sentence will be the only justice in such a case.

*** *** *** As it has been mentioned earlier that prosecution has clearly proved against the accused with direct & circumstantial, cogent, conclusive, incontrovertible evidence that on 17.01.2013 at about 6:30 p.m., accused Manoj Pratap Singh son of Surendra Pratap Singh, caste Rajput, aged 28 years, resident of Basantpur, Police Station Gugli, District Maharajganj (Uttar Pradesh) kidnapped a 7½ year old 70% physically disabled, retarded, helpless, weak girl from the custody of her parents without their permission in broad day-light and committed rape on her in a brutal manner after taking her to a lonely place. During commission of rape, the accused caused multiple simple & grave injuries on the body of that helpless innocent girl in a cruel manner. The injuries mentioned in the oral evidence of Medical Jurist and in post- mortem report (Exhibit P-35) were found on the body of deceased. Multiple abrasions, contusions and wounds were found on the head, ears, jaw, cheeks, around neck, both the shoulders, chest, back, around frontal part below umbilicus, thighs & knees of deceased. Hymen of vagina of deceased was found to be having recent signs of ruptures; 2/3rd lower part of vagina of deceased and posterior and lateral side were found completely torn; the outer skin in between vagina and anus of the deceased was completely torn; and blood clots were found all around the vagina. On internal examination of deceased, multiple fractures were found on her frontal occipital and tempo parietal regions due to the injuries inflicted on head. In reply to the questions asked by the Court, the Medical Jurist Dr. Manju Purohit (PW-14) has expressed her expert opinion as under: -

"As per my expert opinion, forcible, brutal and heinous rape was committed with an 8 year old innocent girl and the deceased resisted the rape and whosoever committed rape on her, had behaved in extremely brutal and heinous manner because of which various simple and serious injuries were inflicted on the body of the deceased and she succumbed to the injuries found on her body. The vagina of deceased having been found in torn condition, the only inference is rape had been committed on her in heinous and brutal manner".

No evidence is available on record in support of the arguments advanced on behalf of accused. Even if these statements of accused are taken to be true for the sake of arguments that he is married and father of 8 year old daughter and he is the only son of his old parents, then too, on the basis of such circumstances he does not deserve lenient view or sympathy. Rather in the case in hand, no such

circumstances are present in favour of the accused on the basis of which it would be justified to have sympathy or leniency for him while passing order of sentence for the commission of the charged offence.

In the aforesaid facts and circumstances, in my humble opinion, the accused committed rape on deceased heinously and brutally at a lonely place after kidnapping her intentionally with cool mind without any provocation. Thereafter, in the same sequence, the deceased has been brutally murdered by causing injuries on her body in a very inhumane, merciless and heinous manner. The act of accused against humanity falls within the purview of the rarest of the rare case for being lowest, extreme, most brutal, merciless and heinous murder case for which, it is obligatory to punish the accused with death sentence for securing justice." High Court confirmed the death sentence awarded to the appellant

22. As noticed, this case came up before the High Court on two counts, viz., the death sentence submitted for confirmation and the appeal against conviction and sentence preferred by the appellant. The High Court reappreciated the material placed on record and, in its common judgment and order dated 29.05.2015, upheld the decision of the Trial Court in convicting the appellant of the aforementioned offences and sentencing him to death for the offence under Section 302 IPC.

23. The High Court examined the statement of PW-1 Kamla, which had been corroborated by PW-2 Dharam Das, PW-3 Madan Lal and PW- 5 Maniraj Singh, to note that the appellant came to the fruit and vegetable stand and took the deceased on his motorcycle towards Somnath Chauraha; and that despite people in the locality chasing the motorcycle, the appellant could not be located.

23.1. The High Court found that PW-6 Khem Chand had duly proved Ex. P-3 (memo of inspection of place of incident and site map) and Ex. P- 8 (panchayatnama of the dead body of the deceased); and that he had accompanied PW-2 and PW-3 when body of the deceased was recovered pursuant to the disclosure statement of the appellant, who led them to the location of the body. The factum of recovery of the motorcycle used by the appellant and other articles was also found proved by the statements of PW-7 Kuldeep Singh and PW-8 Ajay Singh.

23.2. The High Court laid emphasis on the statements of PW-14 Dr. Manju Purohit, PW-15 Dr. Kailash Chand and PW-21 Dr. Chetna Vaishnav as also on the post-mortem report (Ex. P-35) to find that the deceased had been subjected to great cruelty at the time of commission of the crimes of rape and murder. The High Court, thereafter, examined the FSL's report on DNA Examination (Ex. P-51) to find that the samples of blood on the articles recovered from the appellant matched the samples of the blood taken from the deceased. The findings of the High Court in this regard could be reproduced as under: -

> "The D.N.A. Report which is Ex.P. 51 on the record, shows that the same D.N.A. of female profile, namely of the deceased was obtained from Ex.1 coat, Ex.2 pant, Ex.3 shirt, Ex.4 underwear. Also to be noted is the statement of the investigating officer that when the accused was apprehended he had bloodstains on his clothing and the

> same were sent for DNA examination. The matching of the blood group gains signification in such a circumstance. The incriminating articles, namely, the clothes and the blood group matching is an important circumstance showing complicity of the appellant in the crime in question." (emphasis supplied)

24. Having thus examined and analysed the evidence on record, the High Court found that the prosecution had been successful in establishing the chain of circumstances conclusively linking the appellant with the crime, while ruling out any other hypothesis. The High Court summed up its findings and conclusion as follows: -

> "21. Taking all the evidence into account, we are of the opinion that the circumstances which have been clearly established are:
>
> that the appellant was seen taking the deceased on his motorcycle; that the appellant had led to discovery of the dead body of the deceased, the place where he kept his motorcycle which had bloodstains of the deceased on it; at his instance the stone smeared with blood was recovered 9; that the medical report clearly indicates about the injuries sustained by the deceased on her body; that the injuries sustained on the private parts have been stated by the doctor to have been caused by forcible sexual intercourse; that the chemical analysis report links the accused with the crime; that the appellant has not offered any explanation with regard to the recovery made at his instance; other than a bald statement that he was not guilty, the accused has not any evidence either to discredit the prosecution witness or to establish his innocence: and that nothing has been stated in his examination under Section 313 Cr.P.C that there was any justifiable reason to implicate him in the crime in question. Thus, we find that each of the incriminating circumstances has been clearly established and the chain of events are conclusive in nature to exclude any other kind of hypothesis, but the one proposed to be proved, and lead to a definite conclusion that the crime was committed by the accused.
>
> 22. Therefore, finding no infirmity in the judgment under challenge, we affirm the judgment given by the learned trial Judge and dismiss the appeal filed by the accused Manoj Pratap Singh.

(emphasis supplied)

25. Having affirmed the conviction of the appellant, the High Court proceeded to consider the question as to whether the death sentence awarded to the appellant required any interference. 25.1. It was sought to be argued on behalf of the appellant before the High Court that the case did not fall under the rarest of rare category; that 9 The High Court appears to have gathered an impression that some 'stone' was recovered at the instance of the appellant with reference to the memo dated 21.01.2013 (Ex. P-23) and statements of PW-7 Kuldeep Singh and PW-8 Ajay Singh as also PW-25 Umesh Ojha, where they indicated that the accused-appellant had shown the place of incident and hard gravelly surface with stone whereupon did he smash the head of the victim while committing

rape. It does not appear that any 'stone' was as such recovered and seized. However, this aspect is not of material bearing on the substance of the matter.

the mitigating circumstances operating in favour of the appellant should be considered; and that a lenient view ought to be taken with regard to sentencing, since he was 28 years of age at the time of commission of the crime and had a family comprising of a minor daughter, his wife and his father dependent on him.

25.2. The High Court took note of various leading decisions wherein this Court has enunciated the principles to be applied in the matters of sentencing, particularly relating to the offences where death sentence could also be awarded. The High Court took note of the facts of the present case involving the heinous crime of brutal rape and murder of a young girl, who was below 8 years of age and was suffering from physical and mental disabilities. The High Court also observed that there was no element of compassion on the part of the appellant, who brutally raped the child and smashed her head; and that the conduct of the appellant with brutal nature of the offence did not call for any leniency. The High Court further took note of the submissions made on behalf of the accused-appellant about his being a young person and having a family to support but observed that these were not the mitigating circumstances in this case which gives repulsions to the conscience of the Court and the community. Hence, the High Court found that the present case was falling in the category of rarest of rare and proceeded to confirm the death sentence awarded to the appellant while observing as under: -

> "32. In the case in hand, there are no aggravating circumstances (sic) or mitigating circumstances put forth to award a lesser punishment than what has been awarded by the Sessions Court.

The accused after giving a chocolate to a young girl aged 8 years, who not only was having permanent disability of 70% but also having I.Q. of 50%, abducted her and took her away on a motorcycle. Thereafter, he committed a heinous crime of not only brutally raping her, but also hit her head against the silencer of the motorcycle as well as with her stone causing her death. It is evident from the statement made by the doctor who had conducted the postmortem that the young deceased tried to resist the rape but there was no compassion shown at all. The plea raised by the learned counsel appearing for the accused that leniency should be shown since the accused was a young man with a family, cannot be said to be a mitigating circumstance at all. The accused after brutally raping her, hit her head against the motorcycle and then used a stone to smash her head and tried to flee that very night itself. The heinous offence of brutal rape on a helpless young girl followed by a cold-blooded murder and calculated attempt to cover-up the said incident shocks and repulses the conscience of this Court and the community. Placing reliance upon the settled principles as enumerated by the Apex Court in several judgments, this Court has no hesitation in holding that this case falls within the category of rarest of rare cases and upholds the judgment passed by the Sessions Court. In our opinion, the judgment passed by the Sessions Court suffers from no error."

33. Therefore, the D. B. Criminal Murder Reference No.3/2013 preferred by the State of Rajasthan is allowed affirming the judgment and order passed by the learned Sessions Judge dated 28.9.2013. The death sentence awarded is confirmed. D. B. Criminal Jail Appeal No. 854/2013 filed by the accused appellant Manoj Pratap Singh is hereby dismissed.

(emphasis supplied) Rival Submissions

26. Assailing the judgment and order aforesaid, Mr. A. Sirajudeen, learned senior counsel for the appellant has put forward a variety of submissions while questioning the process of investigation as also the manner of conducting the trial; and has asserted that the appellant was denied a proper and adequate opportunity to defend himself. Learned counsel has also endeavoured to find faults or shortcomings in the evidence adduced by the prosecution; the main plank of submissions had been that the prosecution case is based on a weak chain of circumstantial evidence and the appellant is entitled to the benefit of 'residual doubt'. The learned counsel has also questioned the sentence awarded to the appellant with the submissions that in view of several mitigating factors, it would not be justified to punish him with death.

26.1. Learned senior counsel for the appellant has strenuously argued that the investigation in this case had not been impartial and has raised questions over investigation with the submissions that after finding the appellant at the bus stand, the police along with the father of deceased (PW-2), took him directly to the police station, recorded his confession and thereafter took him to the spot where the body of deceased was found, instead of enquiring from him the whereabouts of the deceased. Further, the unusual collecting of evidence against the appellant in relation to other cases and overt reliance on personal opinion of doctors about the manner of commission of offence, establishes that the investigation was not impartial, where final report was submitted within 12 days of the appellant's arrest, even before receiving the DNA report. 26.2. Learned senior counsel has further contended that the trial was conducted in a hurried manner, where reasonable time to prepare for facing charges was not afforded to the appellant and at least two months' time should have been given for the purpose of perusal of final report. It has also been contended that the appellant was not given the opportunity to meet his family members after arrest nor was he given proper opportunity to engage a counsel of his choice, thereby depriving him of his constitutional right guaranteed under Article 22(1) of the Constitution of India. According to the learned counsel, an inexperienced counsel was appointed in legal aid, who failed to have any meeting or discussion with appellant in prison in order to formulate a better version of his defence in trial; and the manner of cross-examination of the prosecution witnesses shows the absence of preparation of the counsel and his inexperience in conducting the defence.

26.3. While assailing the findings against the appellant on the basis of the chain of circumstances, the learned senior counsel has referred to certain aspects, which according to him, show the shortcomings and lacunae in the prosecution case. In this regard, learned counsel has submitted that the name of appellant was not mentioned in the missing person report initially filed in this matter, as admitted by PW-1 and PW-3, though the appellant was known to the family of the victim; and the said initial missing person report is not on record. These factors, according to the learned counsel, give rise to the possibility of the appellant being not the culprit. The learned counsel has

further submitted that the doctors PW-14, PW-15 and PW-21 unjustifiably used the expressions "brutal" and "inhuman" in their statements though they were only expected to depose about the nature of injuries found on the body and the weapon/object likely to have caused said injuries. According to the learned counsel, absence of semen on the body of the victim as also in the vaginal swab operate against the theory of rape in this case. Yet further, learned counsel has submitted that as per the account given by a number of witnesses including eye-witnesses, there was rain, drizzling and storm at the time of occurrence and the motorcycle used for kidnapping was kept in open space. In such a situation, even the possibility of bloodstains remaining on the metal surface of motorcycle is rare. Learned counsel for the appellant has further argued that there is nothing on record to show that the girl was mentally retarded; that the witnesses have only deposed that she was feeble minded and even the certificate issued from school to prove her mental caliber cannot be relied upon because the person who issued such certificate was never examined.

26.3.1. According to the learned senior counsel for the appellant, the aforesaid factors individually and cumulatively lead to the position that the present one is a case of weak chain of circumstances and conviction of the appellant remains unsustainable.

26.4. Again, with reference to the nature of evidence adduced in this matter and asserting it to be a case of weak chain of circumstances, the learned senior counsel has strenuously argued that in any case and at any rate, residual doubt remains about involvement of the appellant in commission of the crime and he is entitled to the benefit thereof. 26.4.1. In this line of submissions, learned senior counsel for the appellant has also endeavoured to argue that the injuries found on the body of the deceased were only bruises and abrasions, apart from the injury on the head; and in the context of the deposition of PW-21 that the death might have been caused as a result of rape, it could be deduced that causing of death was not the intention of the appellant. According to the learned counsel, only the knowledge of consequence of act may be attributed but residual doubt does exist about absolute certainty of the intention to commit the offence in a brutal manner.

26.5. Learned counsel has also submitted that the accused of an offence of rape cannot be convicted under both POCSO and IPC as per Section 42 of POCSO. It can only be under any one of the enactments that Court could impose maximum punishment provided therein and hence, life sentence awarded by the Trial Court for the offence under Section 376 IPC as also under Section 6 POCSO is unsustainable in law.

27. As regards the question of sentence, learned senior counsel for the appellant has contended that even when the charge is proved beyond reasonable doubt but is based on certain circumstances rather than absolute proof, the benefit of residual doubt ought to be given to the accused and capital sentence should not be awarded. According to the learned counsel, even if this case at all warrants conviction, it doesn't warrant the punishment of death because it may be a rare case but, is not rarest of rare.

27.1. Learned senior counsel for the appellant, while adverting to the mitigating factors, has submitted that there is nothing on record to show that the appellant has become a menace to the society or cannot be reformed. It has also been highlighted that the appellant was only about 28

years of age when the FIR was registered against him; that he comes from a poor economic background; and that he has a family with wife, 8- year-old daughter and 70-year-old father to look after. With reference to these factors and the overall circumstances, learned counsel would argue that the appellant does not deserve death and the sentence as awarded in this matter deserves to be commuted to that of imprisonment for life. 27.2. Learned senior counsel for the appellant, in support of his plea against the death sentence, has referred to several decisions of this Court wherein death sentence was altered/commuted to other sentence, including those in Viran Gyanlal Rajput v. State of Maharashtra: (2019) 2 SCC 311; Babasaheb Maruti Kamble v. State of Maharashtra: (2019) 13 SCC 640; Nand Kishore v. State of Madhya Pradesh: (2019) 16 SCC 278; and Central Bureau of Investigation v. Sakru Mahagu Binjewar & Ors.: (2019) 20 SCC 102.

28. Per contra, Dr. Manish Singhvi, learned senior counsel appearing for the respondent-State has duly opposed the submissions made on behalf of the appellant with reference to the evidence on record and the findings recorded by the Trial Court and the High Court. 28.1. Learned senior counsel for the respondent-State has contended that the investigation has been carried out in the present matter with due attention to necessary details; and there had not been any shortcoming affecting the substance of the case. In relation to the questions of procedural safeguards in the trial and opportunity to the accused- appellant to defend himself, learned counsel for the respondent has submitted that the appellant never asked for a counsel of his choice and it was through the legal aid that a defence counsel was appointed, who possessed sufficient experience of about 9 years. Moreover, the counsel so appointed made qualitative efforts to conduct the trial and examination of witnesses with best of his ability, who rather deserves admiration for the efforts made by him. Hence, it cannot be said that the accused- appellant was deprived of proper legal assistance and proper opportunity to defend himself.

28.2. Learned senior counsel for the respondent would submit that the evidence adduced by mother, father and maternal grandfather of the deceased (PW-1, PW-2 and PW-3 respectively), is creditworthy and unimpeachable; and the same is duly corroborated by PW-5 Maniraj Singh, PW-12 Ranjeet Singh and PW-17 Dinesh Bhatia, who were independent witnesses of the relevant facts, particularly those relating to the kidnapping of the victim girl from the vending cart of her parents. Thus, according to the learned counsel, the fact that the deceased was last seen with the appellant is established beyond any doubt. In relation to the argument that the name of appellant was not mentioned in the missing person report, learned counsel for the respondent would submit that this contention is not correct inasmuch as the name of the appellant was indeed mentioned in the missing report (Ex. P-1) lodged by PW-1 at 8:15 p.m., though it was mentioned as “Manoj Singh” instead of “Manoj Pratap Singh”; and the FIR (Ex. P-2), which was registered on the basis of the said report also carries the name of appellant. Learned counsel for the respondent would further submit that by way of the documents available on record, i.e., Exs. P-11, P-12 and P-13 and the evidence of PW-18 Dr. Narendra Paliwal, it is proved beyond doubt that the deceased was a mentally and physically disadvantaged child, who was also suffering from spastic palsy, i.e., uncontrolled movement of muscles and joints.

28.3. Learned senior counsel for the respondent-State has referred to the extensive injuries pointed out in the post-mortem report (Ex. P-35) and has submitted that such injuries prove beyond any

doubt that the deceased was subjected to brutal rape and was murdered mercilessly, as noticeable from the injuries on the occipital and parietal region of the head of the deceased and as concluded by the doctors of Medical Board that the she died due to the injuries on her head. Learned counsel has also strongly relied upon the FSL's report on DNA Examination (Ex. P-51) to submit that the matching of DNA profile of the blood sample taken from the body of the deceased with that of the blood samples taken from clothing of the appellant as also with the blood samples taken from the motorcycle used in the crime, is a rather clinching piece of evidence that leaves nothing to doubt that the brutal rape and murder of the deceased could only be attributed to the appellant.

29. Learned senior counsel for respondent has further submitted that there was no infraction of the requirements of Section 235(2) CrPC, as a sufficient time gap of 3 days was observed by the Trial Court between the date of conviction and the date of awarding death sentence, which too was awarded only after duly hearing the appellant, duly appreciating all the material factors and circumstances, and duly recording special reasons which take the present case into the rarest of rare category. 29.1. The learned senior counsel for the respondent, while highlighting the aggravating circumstances of this case, has submitted that the victim was a feeble minded and physically challenged girl; and when the appellant was known to the victim, there was an element of betrayal of trust. The learned counsel would also refer to the fact that the victim girl was lured by way of first offering chocolates, to submit that the entire modus operandi of the appellant was pre-meditated, leading to brutal rape and murder of the hapless girl. The learned counsel has further submitted that the extensive injuries on the private parts of the victim were caused in a most diabolical and barbaric manner, which shows the ghastly nature of crime; and the medical expert evidence has established that the deceased died due to the injuries caused on her head. Thus, the appellant not only committed rape in a ghastly manner but also clubbed the victim to death by brutal smashing of her head. According to the learned counsel, on the facts of this case, the circumstances as referred on behalf of the appellant could hardly be said to be sufficiently mitigating the aggravated crime committed by the appellant. Thus, there are no mitigating circumstances in this case and nature of crime is such that it shocks the collective conscience of society and shakes the very foundation of civilization; and in this case, awarding of death sentence is immensely justified.

29.2. Learned senior counsel for the respondent-State has cited various decisions in relation to the question concerning death sentence and the principles evolved by the Courts in that regard, including the requirement of special reasons and rarest of rare doctrine, as elucidated in the case of Bachan Singh v. State of Punjab: (1980) 2 SCC 684; the requirement of balance sheet of aggravating and mitigating circumstances, as explained in the case of Machhi Singh & Ors. v. State of Punjab: (1983) 3 SCC 470; and the crime and criminal test, as elaborated in Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra: (2009) 6 SCC 498. 29.3. As regards the contentions urged on behalf of the appellant invoking the doctrine of 'residual doubt', learned senior counsel for the respondent-State has contended that our criminal jurisprudence recognises the requirement of 'proof beyond reasonable doubt' to hold any accused guilty; and any lingering doubt leads to the 'benefit of doubt' to the accused. Thus, there ought not be any uncertainty in coming to the conclusion of guilt of the accused. According to the learned counsel, in the face of such stringent requirements of proof beyond reasonable doubt, there is no place for any 'residual doubt' after the finding of guilt and consequential conviction of the accused. The learned counsel has contended that

the concept of 'residual doubt' has not been found applicable in our country; and has referred to the decision of this Court in Shatrughna Baban Meshram v. State of Maharashtra: (2021) 1 SCC

596. 29.4. While supporting the death sentence in the present case, learned senior counsel for the respondent-State has submitted that the recurrent underlying principles are that in the cases of rape and murder of a girl child, if death occurs due to rape alone, then death sentence is normally not awarded but, if rape is followed by separate act of murder, death sentence is countenanced, like the present case where, apart from gruesome rape, the girl was done to death by causing horrific injuries on her head. According to the learned counsel, the present case is similar and akin to the cases where death sentence has been awarded and maintained. In this regard, the learned counsel has particularly referred to the decision in Kamta Tiwari v. State of M.P.: (1996) 6 SCC 250 as also two elaborate decisions in Vasanta Sampat Dupare v. State of Maharashtra where, in the case of rape and murder of a four-year-old girl child, death sentence was affirmed by this Court while dismissing the main appeals [reported as (2015) 1 SCC 253] and then, the review petitions were also dismissed with the finding that the aggravating circumstances were outweighing the alleged mitigating circumstances [reported as (2017) 6 SCC 631].

29.5. Learned counsel for respondent has also submitted in the alternative that if at all death penalty is not affirmed by this Court, the appellant ought to remain behind the bars for the remainder of his life without any kind of remission, as per the course adopted by this Court in the case of Swamy Shraddananda (2) v. State of Karnataka: (2008) 13 SCC 767.

30. Apart from the factors relating to the heinous nature of crime committed by the appellant, learned counsel for the respondent, in his written submissions, has pointed out other startling facts leading to further aggravating circumstances in view of the conduct of the appellant post-conviction. These circumstances, as regards post-conviction conduct of the appellant, have been stated as under: -

> "B. Aggravating circumstances of the Criminal
>
> a) Conduct of Criminal Post conviction whilst in jail (Committed another murder with stone):
>
> i) On dated 17.04.2015 the detainee had quarrelled with another detainee Meharajuddin son of Chiragmuddin in Ward No. 10, whereupon the detainee was awarded 07 days punishment.
>
> ii) On dated 20.02.2019 the detainee had quarrelled along with other detainees in the T.V. room of the Higher Security Ward (Ward No. 10) constructed in the prison with detainee Shakar Ulla @ Mohammed Hanif on account of watching TV and committed murder of detainee by assaulting with the stone used to put over TV. Detainee Manoj Pratap Singh son of Surendra Pratap Singh has been convicted and sentenced to life imprisonment by the learned Special Judge (Prevention of Sati) & Addl. Sessions Judge, Jaipur Metropolitan, Jaipur under Section 302/34 IPC. He's a recidivist i.e.

> prove to killing and people dangerous to society/jail inmates." (underlining in original written submissions) 30.1. The aforesaid factual aspects and circumstances relating to post-

conviction conduct of the appellant did not surface earlier during the course of oral hearing and looking to their nature and impact, we placed the matter for directions on 16.02.2022 and required filing of an affidavit of the authorised officer of the State, giving all the necessary particulars with the concerned proceedings/judgment, while supplying advance copy to the appellant in jail. We also permitted the appellant to file response thereto.

30.2. Pursuant to the directions aforesaid, an affidavit of the Superintendent of Central Jail, Jaipur has been filed with a copy of the judgment and order dated 10.01.2020 passed by the Court of Special Judge (Prevention of Sati) and Additional Sessions Judge, Jaipur Metropolitan in Sessions Case No. 204 of 2019 (11 of 2019), making out that the appellant has been convicted of the offence punishable under Section 302/34 IPC with three other inmates of Central Jail, Jaipur. This conviction came to be recorded after the said Trial Court found proved the prosecution case that the accused persons (including the appellant) committed murder of another inmate of high security ward, namely, Shakar Ulla @ Mohammed Hanif, a Pakistani national who was undergoing sentence.

30.3. In response on behalf of the appellant to the facts above-stated, reference has been made to paragraph 40 of the said judgment and order dated 10.01.2020 with the submissions that the allegations in the said case had not been of any act by the appellant individually but in a group; there was no eye-witness to the occurrence; the weapon used was only a stone; and there was no evidence regarding specific overt act on the part of the appellant. It has also been submitted that the said judgment and order dated 10.01.2020 may not be taken into consideration by this Court because the appellant has already filed an appeal against the same, being Criminal Appeal (DB) No. 78 of 2020, which remains pending with the High Court. It has also been submitted that except such allegation of his involvement in the said case, overall conduct of the appellant is without any blemish; that he is a reformed person and not a menace to the society. It has also been urged that in the given circumstances, psychological evaluation of the appellant may be ordered before deciding finally the question of sentence.

31. We have given anxious consideration to the rival submissions and have scanned through the entire record with reference to the law applicable.

The scope and width of these appeals

32. As noticed, the Trial Court and the High Court have concurrently recorded the findings in this case that the prosecution has been able to successfully establish the chain of circumstances leading to the only conclusion that the appellant is guilty of the offences of kidnapping, rape and murder of the victim girl. The fundamental fact, as held proved against the appellant is that the victim, a seven-and-a-half-year old mentally and physically challenged girl, was lastly seen in the company of the appellant when he lured her and took her along with himself on his motorcycle. The other significant fact, as held proved, is that the dead body of the victim girl, her clothing, and the

motorcycle used in the crime were recovered at a faraway place at the instance of the appellant. Coupled with these two aspects are the factors that there were bloodstains on the clothes of the appellant when he was found at the bus stand after about 7½ hours of the incident of kidnapping and that bloodstains were also found on the body of the motorcycle; and the DNA profile obtained from these bloodstains matched with the DNA profile of the blood sample of the victim girl. Added to these had been the circumstance that the appellant failed to explain his whereabouts since he was last seen with the victim girl as also about his knowledge of the location of her dead body. These facts and factors, taken together with the medical evidence that there were several injuries all over the body of the victim girl including gruesome injuries on her private parts and horrific injuries on her head, are said to be of a complete chain of circumstances, leading to the conclusion on the guilt of the appellant in relation to the offences of kidnapping, rape and murder.

33. As could be readily noticed, the concurrent findings leading to the appellant's conviction have been challenged as if it were a matter of regular appeal; and as if inviting re-appreciation of entire evidence on its contents as also its surrounding factors. However, we cannot lose sight of the fact that the present one is a matter of concurrent findings of fact by the Trial Court and the High Court. Though the parameters of examining the matters in an appeal by special leave under Article 136 of the Constitution of India have been laid down repeatedly by this Court in several of the decisions but, having regard to the submissions made in this case, we may usefully iterate what has been observed in the case of Pappu v. The State of Uttar Pradesh: Criminal Appeal Nos. 1097-1098 of 2018 decided on 09.02.2022 wherein, after referring to Articles 134 and 136 of the Constitution of India and Section 2 of the Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Act, 1970 as also with a detailed reference to several of the relevant decisions10, this Court has summed up the subtle but relevant distinction in the scope of a regular appeal and an appeal by special leave in the following words: -

> "20. In summation of what has been noticed hereinabove, it is but clear that as against any judgment/final order or sentence in a criminal proceeding of the High Court, regular appeals to this Court are envisaged in relation to the eventualities specified in Article 134 of the Constitution of India and Section 2 of the Act of 1970. The present one is not a matter covered thereunder and the present appeals are by special leave in terms of Article 136 of the Constitution of India. In such an appeal by special leave, where the Trial Court and the High Court have concurrently returned the findings of fact after appreciation of evidence, each and every finding of fact cannot be contested nor such an appeal could be dealt with as if another forum for reappreciation of evidence. Of course, if the assessment by the Trial Court and the High Court could be said to be vitiated by any error of law or procedure or misreading of evidence or in disregard to the norms of judicial process 10 Like those in the cases of Pritam Singh v. State: AIR 1950 SC 169; Ramaniklal Gokaldas and Ors. v. State of Gujarat: (1976) 1 SCC 6; Mst Dalbir Kaur and Ors. v. State of Punjab: (1976) 4 SCC 158; and Hari & Anr. v. The State of Uttar Pradesh: Criminal Appeal No. 186 of 2018 decided on 26.11.2021.

leading to serious prejudice or injustice, this Court may, and in appropriate cases would, interfere in order to prevent grave or serious miscarriage of justice but, such a course is adopted only in rare and exceptional cases of manifest illegality. Tersely put, it is not a matter of regular appeal. This Court would not interfere with the concurrent findings of fact based on pure appreciation of evidence nor it is the scope of these appeals that this Court would enter into reappreciation of evidence so as to take a view different than that taken by the Trial Court and approved by the High Court."

34. Keeping the principles aforesaid in view, we may examine if the concurrent findings call for any interreference while reiterating that wholesome reappreciation of evidence is not within the scope of these appeals, even though we have scanned through the entire evidence in order to appropriately deal with the rival submissions. Procedural questions relating to investigation and trial

35. Before dealing with the contentions relating to the evidence on record, we deem it appropriate to address the procedural aspects put in question by the learned counsel for the appellant, particularly relating to the investigation and the trial in this matter.

35.1. The contentions urged by learned counsel for the appellant against the process of investigation have only been noted to be rejected. The chronology of the events and steps in the investigation leave nothing to doubt that the Investigating Officers of this case (the SHO PW-20 Ganesh Nath and the Circle Officer PW-25 Umesh Ojha) and other police officers have indeed methodically discharged their duties. Rather than finding faults or shortcomings in the investigation, we could only appreciate the thoroughness of investigation, where every step was appropriately and punctually taken and all the relevant processes were methodically documented; and where the charge-sheet was swiftly presented to the Court with all relevant particulars. 35.2. As per the evidence on record, the information referable to Section 27 of the Indian Evidence Act, 187211 as furnished by the appellant at 2:30 a.m. on 18.01.2013 was duly recorded by PW-20 Ganesh Nath (Ex. P-40). Thereafter, the appellant was taken to the location of the dead body of the victim girl and the same was recovered as per the said information furnished by the appellant. There is no substance in the contention against the process taken up by PW-20 Ganesh Nath after the arrest of the appellant. Similarly, there does not appear to be any unusual manner in which evidence against the appellant for other cases was collected. As noticed, last one of the other cases against the appellant was that of theft of the very same motorcycle, which was used in the present crime. The other thread of contentions against the process of investigation, about placing reliance on the personal opinion of doctors, is very difficult to be appreciated. The doctors of the Medical Board were rather under bounden duty to state their opinion, particularly as regards the nature and duration of injuries and the cause of death.

35.3. The suggestions that the charge-sheet was filed within 12 days of his arrest and even without receipt of DNA report and that the appellant 11 Hereinafter also referred to as 'the Evidence Act'. should have been given more time to study the police report stand rather at conflict with the desirability of prompt proceedings by the investigating agency and also by the Trial Court in such matters. The constitutional guarantees of equality before law, protection of life and personal liberty, protection in respect of conviction, and protection against the arrest and detention, do not expand into a corresponding right with an accused person to question the swiftness of investigation and

expeditious proceedings of the trial or to suggest that he has to be tried at a pace of his choice. It sounds rather preposterous that an accused would question the trial proceedings only because of the pace maintained by the prosecution and the Trial Court so as to take the trial to its logical conclusion at the earliest. While rejecting the contentions urged on behalf of the appellant, we would rather observe that the speed and pace expected in the cases like the present one, per force, require utmost expedition by the investigating agency as also by the Trial Court. 35.4. The contention that the appellant was deprived of his right of defence and he was given services of an inexperienced counsel remain too far-stretched and rather unjustified. Apart that no such grievance was ever suggested before the Trial Court or even before the High Court, we find from the record that legal aid counsel was appointed at the request of the appellant himself and in fact, the Trial Court proceeded with the matter only after appointment of a counsel for the appellant. A perusal of the record further makes it clear that the legal aid counsel left no stone unturned to defend the appellant and thoroughly cross-examined each and every witness to the minutest and minor details. He contested every proposition of the prosecution and even the application for recalling of PW-1 (only for the purpose of identification of the clothes of deceased, which were received later from FSL) was also thoroughly contested by him by filing a reply and contending that the prosecution was trying to fill up a lacuna in their case. Hereinbefore, we have referred to the extensive contentions urged on behalf of the accused-appellant by the legal aid counsel, as dealt with by the Trial Court in its judgment dated 28.09.201312.

Having examined the record, we find the criticism in this appeal against the conduct of case by the legal aid counsel to be unwarranted and rather unfair. The said counsel had indeed faithfully discharged his duties and had thoroughly defended the appellant. As regards the defence version, it has not been shown if the appellant ever suggested to the counsel about his desire to have one or more meetings with him or to confer with him about any particular line of defence. We are constrained to observe that the negative comments qua the said legal aid counsel cannot be countenanced and raising of such contentions in this appeal is difficult to be appreciated; these contentions are rejected in toto. Concurrent findings of fact: whether requiring interference? 12 Vide paragraphs 18, 18.1 and 18.2 (supra).

36. Moving on to the submissions assailing the findings on guilt of the appellant, we may reiterate that the present case is based on circumstantial evidence where the Trial Court and the High Court have concurrently recorded their findings that the prosecution has been able to successfully establish the chain of circumstances leading to the unmistakable conclusion that the appellant is guilty of the offences of kidnapping, rape and murder of the victim girl. However, learned counsel for the appellant has endeavoured to project certain so-called shortcomings and lacunae in the prosecution case. While dealing with such submissions, we may usefully take note of the basic principles relating to a case based on circumstantial evidence. 36.1. The principles explained and enunciated in the case of Sharad Birdhichand Sarda v. State of Maharashtra: (1984) 4 SCC 116 remain a guiding light for the Courts in regard to the proof of a case based on circumstantial evidence, wherein this Court referred to the celebrated decision in the case of Hanumant v. State of Madhya Pradesh.: AIR 1952 SC 343 and deduced five golden principles, panchsheel, of proving a case based on circumstantial evidence in the following passages: -

> "152.....It may be useful to extract what Mahajan, J. has laid down in Hanumant case:
>
> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."
>
> 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] 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, (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.

154. These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

155. It may be interesting to note that as regards the mode of proof in a criminal case depending on circumstantial evidence, in the absence of a corpus delicti, the statement of law as to proof of the same was laid down by Gresson, J. (and concurred by 3 more Judges) in King v. Horry [1952 NZLR 111] thus:

> "Before he can be convicted, the fact of death should be proved by such circumstances as render the commission of the crime morally certain and leave no ground for reasonable doubt: the circumstantial evidence should be so cogent and compelling as to convince a jury that upon no rational hypothesis other than murder can the facts be accounted for."

156. Lord Goddard slightly modified the expression "morally certain" by "such circumstances as render the commission of the crime certain".

157. This indicates the cardinal principle of criminal jurisprudence that a case can be said to be proved only when there is certain and explicit evidence and no person can be convicted on pure moral conviction..."

37. Keeping the aforesaid principles in view, when we examine the contentions of the learned counsel for the appellant, we find nothing of substance therein.

37.1. It has been contended on behalf of the appellant that his name was not mentioned in the first missing person report lodged in this matter, as admitted by PW-1 Kamla and PW-3 Madan Lal; and that the said first report has not been placed on record. This contention has its roots in the last line occurring in the statement made by PW-1 Kamla in her cross- examination that she had lodged a missing person report in which the name of appellant was not stated. It may also have its basis in the statement made by PW-3 Madan Lal in his cross-examination that after the accused Manoj Pratap Singh took away the child, they went to Police Post Bandiyabada, where missing report was lodged. 37.1.1. The contention is, however, totally detached from reality as also from the factual matrix. It has been consistently maintained that the appellant kidnapped the victim girl at about 6:30 p.m. from the vending cart of PW-1 Kamla. It has been proved by all the relevant witnesses that the attempts were made to chase the appellant but he could not be stopped. Though no such report made in writing at Police Post Bandiyabada is on record but, even if it be assumed that they first went to the said police post (as stated by PW-3), so far giving the name of the appellant as the person kidnapping the child is concerned, PW-3 had been specific that his name was known to them and was given to the police post too. Reference to some report at the said police post carries hardly any adverse impact on the prosecution case because the information stated in the form of complaint by PW-1 Kamla accompanied by PW-3 Madan Lal was indeed recorded in writing by PW-19 Nand Lal at 8:15 p.m. at the police station. It has been established that the police station was at a distance of about 7 km from the place of kidnapping. It has also been pointed out by PW-1 that it took about 30 to 45 minutes to reach the police station in an auto and the oral report was made at 8:15 p.m. In view of the specific facts stated in unison by the relevant prosecution witnesses that the name and identity of the kidnapper was known to them, coupled with the time that elapsed from the moment of kidnapping (around 6:30 p.m.) and until lodging of the report at the police station (around 8:15 p.m.) while providing for commuting time, there was neither any occasion nor any reason for the prosecution witnesses to omit the name of the appellant.

37.1.2. The report (Ex. P-1) and the FIR registered on its basis (Ex. P-2) had been specific, not only giving the name of the appellant (though in the report, the name given was Manoj Singh and not

Manoj Pratap Singh) but further to that, the informant also stated her knowledge that the person concerned was the one who was earlier living in the Housing Board Colony. In the face of the contents of the report Ex. P-1 and the FIR Ex. P- 2 as also the consistent testimony of PW-1 Kamla, PW-2 Dharam Das, PW-3 Madan Lal, PW-5 Maniraj Singh and PW-17 Dinesh Bhatia, who stated in no uncertain terms that it was the appellant who kidnapped the victim girl, the contention urged on behalf of the appellant could only be rejected. Moreover, PW-12 Ranjit Singh has established a crucial fact that around the very same time as that of kidnapping of the victim girl, the appellant reached the liquor shop and purchased beer while a girl child was sitting on his motorcycle. The testimony of this witness has also remained unshaken in the cross-examination. The appellant has not been able to show as to why this independent witness would at all be deposing against him. The appellant has further failed to explain if the girl child sitting on his motorcycle at the time of purchasing beer from the shop of PW-12 Ranjit Singh was not the victim girl but anyone else. 37.1.3. Thus, the evidence on record is categorical and clear that the victim girl was last seen alive only with the appellant. 37.2. The other part of contention with reference to the medical and other scientific evidence also carry no substance whatsoever. It has been argued, by relying on one sentence in the deposition of one of the doctors of Medical Board during cross-examination that the death might have been caused as a result of rape, that the appellant had not intended to cause death. The post-mortem report (Ex. P-35), as reproduced hereinbefore leaves nothing to doubt that the hapless victim sustained extensive injuries all over her body and the injuries particularly on her head as also on the private parts had been rather horrific. Her death ultimately had been due to head injuries, as opined by the doctors of the Medical Board. We have reproduced hereinbefore the relevant part of the statement of PW-14 Dr. Manju Purohit, a member of the Medical Board conducting post-mortem examination13. The expressions “brutal”, “inhuman”, “cruel” etc. came in her statement with reference to the Court question, where she was asked her expert medical opinion after conducting external and internal examination of injuries and after analysing the circumstances and condition of body; and she opined with reference to the injuries that ‘the eight year old innocent girl had been brutally and inhumanly raped and on objecting, the person who raped her behaved in an inhuman and cruel manner as a result of which, she sustained different simple and grievous injuries due to which she died’. She further pointed out her opinion about brutality while stating that ‘laceration of the vagina of the deceased shows that she was brutally raped in an inhuman manner’. However, in her further cross-examination, this witness categorically affirmed the opinion stated by the Medical Board in the post-mortem report about the cause of death and clearly stated that ‘the cause of death was injury caused on the head’. In the 13 Vide paragraph 8.3 (supra).

given set of circumstances and cogent expert medical evidence, the absence of semen on the body of the victim or in the vaginal swab is hardly of any bearing on the substance of the matter. Hence, the contentions urged on behalf of the appellant in relation to the medical evidence remain baseless and stand rejected. In continuity, we may also observe that the submissions suggestive of the victim having received only bruises and abrasions apart from injury on head are also incorrect. A bare reference to the extensive post-mortem report (Ex. P-35) and the statements of the doctors of the Medical Board PW-14, PW-15 and PW- 21 is sufficient to reject these suggestions.

37.2.1. Apart from the above, one line occurring in the deposition of PW- 21 Dr. Chetna Vaishnav has been picked up to build an argument on behalf of the appellant that the death of the victim girl

might have been caused as a result of rape; and it has been submitted that causing death cannot be taken to be the intention of the appellant. The argument is premised on a wrong and incomplete reading of the statement of PW-21 Dr. Chetna Vaishnav. She too had been categorical in her examination- in-chief about the post-mortem report and had deposed consistently with PW-14 Dr. Manju Purohit and PW-15 Dr. Kailash Chand that as per Medical Board, the head injury was the cause of death. She reasserted this fact in her cross-examination too, while stating that 'in the opinion of medical board, multiple injuries were found on the head of the deceased which collectively resulted in death of the deceased'. She had, of course, stated in her examination-in-chief that 'the deceased was subjected to brutal rape and her death was caused' but, reading her testimony as a whole, it is but clear that in this sentence, what she intended to convey was about two different acts, i.e., of committing rape and of causing death. She had not stated that death was caused by rape. 37.2.2. Having examined the post-mortem report and the testimonies of the doctors conducting post-mortem, we are clearly of the view that even by distortion of language occurring in their testimonies, it cannot be deduced that there was any doubt or difference of opinion in the Medical Board about the cause of death. In other words, the doctors had been clear, categorical and consistent that the victim girl died due to the injuries caused on her head.

37.3. As regards another contention about the doubts on collection of blood samples from the metal surface of the motorcycle in question because of the alleged rain or drizzling or storm, first of all it may be mentioned that there had not been any specific evidence about any excessive rain in the nature of storm. It has, of course, been stated by the witnesses that at the time of kidnapping of the victim girl, it was raining/drizzling. However, there is no such evidence that at the time of arrest of the appellant, or at the time of his disclosure statement at about 2:00 a.m. on 18.01.2013, or at the time of recovery of dead body at about 3:15 a.m. on 18.01.2013, or at the time of recovery of motorcycle at about 4:45 p.m. on 19.01.2013, or at the time of collection of blood sample from the motorcycle at about 5:00 p.m. on 19.01.2013, there had been any such rain or drizzle for which, the requisite samples could not have been collected. This is apart from the fact that FSL had clearly and undoubtedly performed DNA test on the blood sample collected from motorcycle (packet marked D-Exhibit No. 6 in the FSL report Ex. P-51). Thus, the submission doubting the collection of blood sample from the motorcycle is also totally baseless and stands rejected.

37.4. The other submission seeking to question the factum of mental and physical disabilities of the victim girl does not carry any substance at all. Apart from the fact that mental and physical disabilities of the child have been consistently stated by her parents and grandfather, the fact of the matter remains that way back on 04.03.2010, the Medical Board found her suffering from spastic palsy (vide Ex. P-11); and PW-18 Dr. Narendra Paliwal indeed proved the said certificate. In fact, the Investigating Officer PW-25 Umesh Ojha took care to seek medical opinion/comments regarding the nature of disablement of the victim girl with reference to the said certificate Ex. P-11 by way of a communication dated 22.01.2013 (Ex.- 52) and thereupon, the Medical Officer made his endorsement to the effect that 'her cordination movements of limbs which are controlled by brain were disturbed and as such she was physically and mentally challenged child'. The submissions as regards evidentiary value of school certificates carry no meaning when the matter is examined with reference to the overall evidence on record, which leaves nothing to doubt that the victim girl was a mentally and physically challenged child. Percentage of disablement is not the matter in issue here.

The relevant facts are that she was suffering from mental and physical disabilities and was below 8 years of age. These facts are duly proved on record.

38. Hence, the contentions urged on behalf of the appellant seeking to question the concurrent findings by reference to certain non-existent or irrelevant factors need to be rejected altogether.

39. We may usefully summarise the facts and factors established beyond doubt on record forming the complete chain of circumstances that: a) the deceased was seven-and-a-half-years old mentally and physically challenged girl; b) the deceased was last seen with the appellant when he kidnapped her from the lawful guardianship of her parents; c) the appellant was arrested within about 7½ hours of kidnap; d) the clothes worn by the appellant were bloodstained, which were seized and sealed; e) after about 1½ hours of his arrest, the dead body of the victim girl was recovered at a faraway place on the disclosure and information of the appellant; f) the motorcycle used by the appellant and the frock worn by the victim girl were also recovered at a faraway place at the disclosure and information of the appellant; g) the appellant failed to account for his own whereabouts as also the whereabouts of the victim girl since after the time of kidnap; h) the appellant also failed to show the reason of his knowledge about the place/places where the dead body, the motorcycle and the frock were recovered; i) as per the evidence on record, it had been a case of brutal rape (with gruesome injuries on and around private parts) and merciless killing (with horrific injuries on head) of the victim girl; j) the victim died due to the injuries on her head; k) the DNA profile of blood collected from the person and clothing of the victim girl matched with the DNA profile of blood found on the coat, pant and shirt of the appellant and on the motorcycle 14. This chain is so complete in itself that no stretch of imagination could take us to any other hypothesis except the guilt of the appellant in relation to the offences charged. Hence, the concurrent findings of the Trial Court and the High Court holding the appellant guilty are imminently just and proper; and call for no interference whatsoever.

39.1. We may also indicate at least two other facts established on record which not only strengthen the complete chain of circumstances noticed above but, have their own bearing in this matter. The first one of these facts, which is duly attached to the chain of circumstances, is that the motorcycle used in this crime bearing registration number RJ30 3M 5944 was itself stolen on 14.01.2013 for which, a theft report had already 14 The value and worth of DNA profile matching in criminal cases has been succinctly stated by this Court in the case of Anil @ Anthony Arikswamy Joseph v. State of Maharashtra: 2014 (4) SCC 69 in the following terms: -

> “18. Deoxyribonucleic acid, or DNA, is a molecule that encodes the genetic information in all living organisms. DNA genotype can be obtained from any biological material such as bone, blood, semen, saliva, hair, skin, etc. Now, for several years, DNA profile has also shown a tremendous impact on forensic investigation. Generally, when DNA profile of a sample found at the scene of crime matches with the DNA profile of the suspect, it can generally be concluded that both the samples have the same biological origin. DNA profile is valid and reliable, but variance in a particular result depends on the quality control and quality procedure in the laboratory.” been lodged at Police Station Nathdwara, as distinctly proved by PW-23

Ramdev Regar, Sub-Inspector of Police. It has been duly established on record that the appellant indeed used that motorcycle in kidnapping the victim girl and the motorcycle was recovered as per the information supplied by the appellant. It has not been a case of the appellant that the motorcycle belonged to him or was given to him by its owner. Thus, undoubtedly, the appellant used stolen motorcycle in committing this crime. The second one of these facts, duly established by the testimony of PW-12 Ranjeet Singh, had been that after kidnapping the victim girl from the lawful guardianship of her parents, the appellant headed towards the liquor shop with the victim girl sitting on the motorcycle; he purchased a bottle of beer and he even quarrelled as regards the price; and he left the liquor shop with a bottle of beer and with the victim girl sitting on the motorcycle. These facts and factors only worsen the criminality of conduct duly found proved against the appellant.

40. For what has been discussed hereinabove, we have not an iota of doubt that the present case of circumstantial evidence answers to the panchsheel principles of Sharad Birdhichand Sarda (supra). The appellant was rightly convicted by the Trial Court and his conviction has rightly been maintained by the High Court. To put it in other words, having examined the matter in its totality, we are satisfied that the prosecution has been able to prove its case beyond reasonable doubt, rather beyond any doubt whatsoever. The chain of circumstances projected by the prosecution is complete in its entirety and leads only to the result that the appellant had been the person who kidnapped, raped and murdered the victim, seven-and-a-half-years old mentally and physically challenged girl.

Hence, the concurrent findings leading to conviction of the appellant of the offences aforementioned call for no interference; and deserve to be confirmed.

41. Even when we uphold the concurrent findings leading to conviction of the appellant, the question remains about the death sentence awarded to him for the offence under Section 302 IPC, which has been seriously challenged in these appeals. Before proceeding to deal with this major question calling for determination in this case, we may dispose of one of the unnecessary submissions made on behalf of the appellant as regards his conviction both under POCSO and IPC. This submission, made with reference to Section 42 POCSO, is also baseless. The mandate for awarding punishment which is greater in degree does not correspondingly lead to the proposition that the appellant could not have been convicted of the offence under Section 376 IPC as also under Section 6 POCSO. This aspect need not detain us much longer because the core question in this case after confirmation of conviction is as to whether death sentence awarded for the offence under Section 302 IPC be maintained or be substituted by any other sentence. Whether death sentence be maintained or substituted by any other sentence

42. As noticed, two-fold submissions have been put at the forefront by learned senior counsel for the appellant in challenge to the death sentence awarded in this case. First, that the present case is based on circumstantial evidence rather than absolute proof and therefore, benefit of ‘residual doubt’ ought to be given to the appellant and capital sentence should not be awarded because, the

present case may be a rare one but is not the rarest of rare. Secondly, learned senior counsel has referred to the mitigating factors wherefor the appellant deserves to be spared from capital sentence, being those of his young age at the time of commission of the crime in question; his poor economic background; his having family with wife, minor daughter and aged father; and strong probability of his reformation. Per contra, learned senior counsel for the respondent-State has highlighted the aggravating circumstances that the appellant had kidnapped, raped and murdered a mentally and physically challenged girl child; that his acts and actions disclose his planning and pre-meditated actions; and that the ghastly crime was committed in a diabolical and barbaric manner. Apart from other factors, learned senior counsel for the respondent-State has highlighted the facts about post-conviction felonious conduct of the appellant where once he was awarded 7 days' punishment for quarrelling with another detainee and then, he was convicted of the offence under Section 302/34 IPC for killing of another jail inmate. Learned counsel for the respondent would submit that the appellant has proven himself to be a recidivist, the person who is prone to killing people, has committed crimes in the past and has shown the tendency to relapse into crime repeatedly, and is dangerous to society. 42.1. Apropos the rival submissions and the fact that the sentence under consideration is that of termination of a natural life, it is obvious that the matter calls for a serious and heightened scrutiny of all the relevant aspects, with reference to the statutory requirements as also the legal principles enunciated by this Court.

Death sentence: Evolution of principles and norms

43. As regards the statutory requirements, as per sub-section (2) of Section 235 CrPC, on being convicted and not being released on probation or after admonition in terms of Section 360 CrPC, the accused has to be heard by the Judge concerned on the question of sentence and then, sentence has to be passed according to law. Moreover, as per sub- section (3) of Section 354 CrPC, if the conviction is for an offence punishable with death or in the alternative, with imprisonment for life or imprisonment for a particular term of years, the judgment has to state the reasons for the sentence awarded; and in case of death sentence, the judgment has to state 'special reasons' therefor.

43.1. Sub-section (2) of Section 235 CrPC, providing for mandatory hearing of the accused before passing sentence, reads as under: -

> "(2) If the accused is convicted, the Judge shall, unless he proceeds in accordance with the provisions of section 360, hear the accused on the question of sentence, and then pass sentence on him according to law." 43.2. Sub-section (3) of Section 354 CrPC, requiring reasons for sentence and 'special reasons' in case of death sentence, reads as under:-
>
> "(3) 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 for such sentence."

44. We may now usefully summarise the salient features of evolution of legal principles and norms for dealing with the question of sentencing in such matters where the sentence of death could also be awarded, particularly with reference to the leading cases and expositions therein. 44.1. In the case of Jagmohan Singh v. The State of U.P.: (1973) 1 SCC 20, the questions in their broader spectrum were raised about the constitutional impermissibility of death sentence with the submissions: (i) that the death sentence was unreasonable for it would put an end to all the rights guaranteed under clauses (a) to (g) of Article 19(1) of the Constitution of India; (ii) that the discretion vested in the Judges to impose capital punishment was not based on any standards or policy and hence, the provision suffered from the vice of excessive delegation of legislative function; (iii) that the uncontrolled and unguided discretion in the Judges to impose capital punishment or imprisonment for life was hit by Article 14 of the Constitution of India; and (iv) that under Article 21 of the Constitution, no person shall be deprived of his life except according to the procedure established by law but, the provisions of law did not provide a procedure for trial of factors and circumstances crucial for making the choice between the capital punishment and imprisonment for life.

44.1.1. The Constitution Bench rejected the aforesaid and corollary arguments while pointing out, inter alia, that the provisions in the Constitution of India, like those of Articles 72(1)(c), 72(3), 21, 134 as also the then applicable provisions of Sections 401 and 402 of the Code of Criminal Procedure, 1898 were indicative that capital sentence had not been regarded per se unreasonable or not in public interest; and that the policy of law in giving a very wide discretion in the matter of punishment to the Judge has its origin in the impossibility of laying down standards, rather exercise of judicial discretion on well-recognised principles is the safest possible safeguards for the accused.15 As regards the contentions urged on the anvil of Article 21 of the Constitution of India, the Bench observed that the Court in such matters would be principally concerned with the facts and circumstances, whether aggravating or mitigating, which are connected with the particular crime under inquiry and which are capable of being proved in accordance with the laws of procedure; and 15 The Constitution Bench underscored the significance and worth of judicial discretion in the following words: -

> “26……The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the judges with a very wide discretion in the matter of fixing the degree of punishment. The discretion in the matter of sentence is, as already pointed out, liable to be corrected by superior courts. Laying down of standards to the limited extent possible as was done in the Model Judicial Code would not serve the purpose. The exercise of judicial discretion on well-recognised principles is, in the final analysis, the safest possible safeguards for the accused.” finally the parties on both sides were having opportunity to address the Court whereafter the Judge would decide on the guilt and punishment.
>
> The Constitution Bench observed that the relevant provisions were part of the procedure established by law and those provisions were not shown to be constitutionally invalid. Thus, the Bench concluded that ‘the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional

> under Article 21.' 44.2. Two major factors/events after the decision in Jagmohan (supra) led to another reference to the Constitution Bench of this Court in regard to the constitutional validity of death penalty for the offence of murder as also of the sentencing procedure. One had been the amendment of the law relating to criminal procedure with advent of the Code of the Criminal Procedure, 1973 in replacement of the old Code of 1898, which introduced, as regards sentencing procedure, the above-quoted sub-

section (2) of Section 235 and sub-section (3) of Section 354. Several persons convicted of murder and sentenced to death filed the petitions under Article 32 of the Constitution of India challenging the constitutional validity of death penalty provided in Section 302 IPC for the offence of murder and that of the sentencing procedure provided in sub-section (3) of Section 354 CrPC. The other one had been the majority opinion of a 3- Judge Bench of this Court in the case of Rajendra Prasad v. State of Uttar Pradesh: (1979) 3 SCC 646, purportedly seeking to whittle down the ratio of Jagmohan (supra); and correctness of such an opinion having been doubted by another Bench of this Court. The reference so made to the Constitution Bench came to be answered in locus classicus Bachan Singh (supra) with its 'rarest of rare' doctrine. The opinion of majority in Bachan Singh is the guiding light and foundational discipline for all the later developments and enunciations on the subject. 44.3. In Bachan Singh (supra), the Constitution Bench of this Court examined two major questions, i.e., as to whether death penalty provided for the offence of murder under Section 302 IPC was unconstitutional; and if not, as to whether the sentencing procedure in Section 354(3) CrPC was unconstitutional on the ground that it invested the Court with unguided and untrammelled discretion.

44.3.1. After having examined a variety of features and factors pertaining to Articles 19(1) and 21 of the Constitution of India, the Court (per majority of the Constitution Bench) answered the first question in the negative, while observing and pointing out, inter alia, as under: -

> "132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death penalty in Section 302 of the Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners argument that retention of death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime conditions in India, contemporary public opinion channelized through the people's representatives in Parliament, has repeatedly in the last three

decades, rejected all attempts, including the one made recently, to abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware — as we shall presently show they were — of the existence of death penalty as punishment for murder, under the Penal Code, 1860, if the 35th Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre- sentence hearing and sentencing procedure on conviction for murder and other capital offences were before the Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302 of the Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19.

*** *** ***

136. Article 21 reads as under:

"No person shall be deprived of his life or personal liberty except according to procedure established by law." If this Article is expanded in accordance with the interpretative principle indicated in Maneka Gandhi [(1978) 1 SCC 248], it will read as follows:

"No person shall be deprived of his life or personal liberty except according to fair, just and reasonable procedure established by valid law." In the converse positive form, the expanded Article will read as below:

"A person may be deprived of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law." Thus expanded and read for interpretative purposes, Article 21 clearly brings out the implication, that the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law. There are several other indications, also, in the Constitution which show that the Constitution-makers were fully cognizant of the existence of death penalty for murder and certain other offences in the Penal Code, 1860. Entries 1 and 2 in List III — Concurrent List — of the Seventh Schedule, specifically refer to the Penal Code, 1860 and the Code of Criminal Procedure as in force at the commencement of the Constitution. Article 72(1)(c) specifically invests the President with power to suspend, remit or commute the sentence of any person convicted of any offence, and also "in all cases where the sentence is a sentence of death". Likewise, under Article 161, the Governor of a State has been given power to suspend, remit or commute, inter alia, the sentence of death of any person convicted of murder or other capital offence relating to a matter to which the executive power of the State extends. Article 134, in

terms, gives a right of appeal to the Supreme Court to a person who, on appeal, is sentenced to death by the High Court, after reversal of his acquittal by the trial court. Under the successive Criminal Procedure Codes which have been in force for about 100 years, a sentence of death is to be carried out by hanging. In view of the aforesaid constitutional postulates, by no stretch of imagination can it be said that death penalty under Section 302 of the Penal Code, either per se or because of its execution by hanging, constitutes an unreasonable, cruel or unusual punishment. By reason of the same constitutional postulates, it cannot be said that the framers of the Constitution considered death sentence for murder or the prescribed traditional mode of its execution as a degrading punishment which would defile "the dignity of the individual" within the contemplation of the preamble to the Constitution. On parity of reasoning, it cannot be said that death penalty for the offence of murder violates the basic structure of the Constitution." 44.3.2. In relation to the second question, the Court examined the development of law, particularly the change of legislative policy with introduction of Section 354(3) CrPC as also the Law Commission's reports and various past decisions; and summarised the propositions laid down in Jagmohan (supra) in the following terms: -

"160. In the light of the above conspectus, we will now consider the effect of the aforesaid legislative changes on the authority and efficacy of the propositions laid down by this Court in Jagmohan case. These propositions may be summed up as under:

(i) The general legislative policy that underlines the structure of our criminal law, principally contained in the Indian Penal Code and the Criminal Procedure Code, is to define an offence with sufficient clarity and to prescribe only the maximum punishment therefor, and to allow a very wide discretion to the Judge in the matter of fixing the degree of punishment.

With the solitary exception of Section 303, the same policy permeates Section 302 and some other sections of the Penal Code, where the maximum punishment is the death penalty.

(ii) (a) No exhaustive enumeration of aggravating or mitigating circumstances which should be considered when sentencing an offender, is possible. "The infinite variety of cases and facets to each case would make general standards either meaningless 'boiler plate' or a statement of the obvious that no Jury (Judge) would need." (referred to McGoutha v. California: (1971) 402 US

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(b) The impossibility of laying down standards is at the very core of the criminal law as administered in India which invests the Judges with a very wide discretion in the matter of fixing the degree of punishment.

(iii) The view taken by the plurality in Furman v. Georgia: (1976) 1 SCC 425, decided by the Supreme Court of the United States, to the effect, that a law which gives uncontrolled and unguided discretion to the Jury (or the Judge) to choose arbitrarily between a sentence of death and imprisonment for a capital offence, violates the Eighth Amendment, is not applicable in India. We do not have in our Constitution any provision like the Eighth Amendment, nor are we at liberty to apply the test of reasonableness with the freedom with which the Judges of the Supreme Court of America are accustomed to apply "the due process" clause. There are grave doubts about the expediency of transplanting western experience in our country. Social conditions are different and so also the general intellectual level. Arguments which would be valid in respect of one area of the world may not hold good in respect of another area.

(iv) (a) This discretion in the matter of sentence is to be exercised by the Judge judicially, after balancing all the aggravating and mitigating circumstances of the crime.

(b) The discretion is liable to be corrected by superior courts. The exercise of judicial discretion on well recognised principles is, in the final analysis, the safest possible safeguard for the accused.

In view of the above, it will be impossible to say that there would be at all any discrimination, since crime as crime may appear to be superficially the same but the facts and circumstances of a crime are widely different. Thus considered, the provision in Section 302, Penal Code is not violative of Article 14 of the Constitution on the ground that it confers on the Judges an unguided and uncontrolled discretion in the matter of awarding capital punishment or imprisonment for life.

(v) (a) Relevant facts and circumstances impinging on the nature and circumstances of the crime can be brought before the court at the pre-conviction stage, notwithstanding the fact that no formal procedure for producing evidence regarding such facts and circumstances had been specifically provided. Where counsel addresses the court with regard to the character and standing of the accused, they are duly considered by the court unless there is something in the evidence itself which belies him or the Public Prosecutor challenges the facts.

(b) It is to be emphasised that in exercising its discretion to choose either of the two alternative sentences provided in Section 302 Penal Code, "the court is principally concerned with the facts and circumstances whether aggravating or mitigating, which are connected with the particular crime under inquiry. All such facts and circumstances are capable of being proved in accordance with the provisions of the Indian Evidence Act in a trial regulated by the CrPC. The trial does not come to an end until all the relevant facts are proved and the counsel on both sides have an opportunity to address the court. The only thing that remains is for the Judge to decide on the guilt and punishment and that is what Sections 306 (2) and 309 (2), CrPC purport to provide for. These provisions are part of the procedure established by law and unless it is shown that they are invalid for any other reasons they must be regarded as valid. No reasons are offered to show that they are constitutionally invalid and hence the death sentence imposed after trial in accordance with the procedure established by law is not unconstitutional under Article 21". (SCC p. 36), (emphasis added)" 44.3.3. The Court, thereafter, observed that the authority of the propositions aforesaid had not been affected by the legislative changes but two of the propositions, at No. (iv)(a) and (v)(b),

would require modulation in terms of the changed legislative policy delineated in Sections 354(3) and 235(2) CrPC. Thus, while otherwise reaffirming the view taken in Jagmohan (supra) the Court held and laid down as under: -

> "164. Attuned to the legislative policy delineated in Sections 354(3) and 235(2), propositions (iv)(a) and (v)(b) in Jagmohan shall have to be recast and may be stated as below:
>
> (a) The normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The court can depart from that rule and impose the sentence of death only if there are special reasons for doing so. Such reasons must be recorded in writing before imposing the death sentence.
>
> (b) While considering the question of sentence to be imposed for the offence of murder under Section 302 of the Penal Code, the court must have regard to every relevant circumstance relating to the crime as well as the criminal. If the court finds, but not otherwise, that the offence is of an exceptionally depraved and heinous character and constitutes, on account of its design and the manner of its execution, a source of grave danger to the society at large, the court may impose the death sentence.

165. The soundness or application of the other propositions in Jagmohan, and the premises on which they rest, are not affected in any way by the legislative changes since effected. On the contrary, these changes reinforce the reasons given in Jagmohan, for holding that the impugned provisions of the Penal Code and the Criminal Procedure Code do not offend Articles 14 and 21 of the Constitution. Now, Parliament has in Section 354 (3) given a broad and clear guide-line which is to serve the purpose of lodestar to the court in the exercise of its sentencing discretion. Parliament has advisedly not restricted this sentencing discretion further, as, in its legislative judgment, it is neither possible nor desirable to do so. Parliament could not but be aware that since the Amending Act 26 of 1955, death penalty has been imposed by courts on an extremely small percentage of persons convicted of murder — a fact which demonstrates that courts have generally exercised their discretion in inflicting this extreme penalty with great circumspection, caution and restraint. Cognizant of the past experience of the administration of death penalty in India, Parliament, in its wisdom, thought it best and safe to leave the imposition of this gravest punishment in gravest cases of murder, to the judicial discretion of the courts which are manned by persons of reason, experience and standing in the profession. The exercise of this sentencing discretion cannot be said to be untrammelled and unguided. It is exercised judicially in accordance with well recognised principles crystallised by judicial decisions, directed along the broad contours of legislative policy towards the signposts enacted in Section 354(3).

166. The new Section 235(2) adds to the number of several other safeguards which were embodied in the Criminal Procedure Code of 1898 and have been re-enacted in the Code of 1973. Then, the errors in the exercise of this guided judicial discretion are liable to be corrected by the superior courts. The procedure provided in Criminal Procedure Code for imposing capital punishment for

murder and some other capital crimes under the Penal Code cannot, by any reckoning, be said to be unfair, unreasonable and unjust. Nor can it be said that this sentencing discretion, with which the courts are invested, amounts to delegation of its power of legislation by Parliament. The argument to that effect is entirely misconceived. We would, therefore, reaffirm the view taken by this Court in Jagmohan, and hold that the impugned provisions do not violate Articles 14, 19 and 21 of the Constitution." (emphasis supplied) 44.3.4. The Court also stated that 'special reasons' in the context of Section 354(3) CrPC would obviously mean 'exceptional reasons', meaning thereby, that the extreme penalty should be imposed only in extreme cases in the following terms: -

> "161. ....The expression "special reasons" in the context of this provision, obviously means "exceptional reasons" founded on the exceptionally grave circumstances of the particular case relating to the crime as well as the criminal. Thus, the legislative policy now writ large and clear on the face of Section 354(3) is that on conviction for murder and other capital offences punishable in the alternative with death under the Penal Code, the extreme penalty should be imposed only in extreme cases." (emphasis supplied) 44.3.5. After taking note of various circumstances projected before it, which could be of mitigating factors, and while observing that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction, the Court proceeded to uphold the constitutional validity of Section 354(3) CrPC, with the observations that the legislature had explicitly prioritised life imprisonment as the normal punishment and death penalty as being of exception, and with enunciation of rarest of rare doctrine in the following words: -
>
> "209.....It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guide-lines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the highroad of legislative policy outlined in Section 354(3), viz., that for persons convicted of murder, life imprisonment is the rule and death sentence an exception. A real and abiding concern for the dignity of human life postulates resistance to taking a life through law's instrumentality. That ought not to be done save in the rarest of rare cases when the alternative option is unquestionably foreclosed." (emphasis supplied) 44.4. In fact, Bachan Singh (supra) judgment has been succinctly summarised and its principles explained by another Constitution Bench of this Court in the case of Mithu v. State of Punjab: (1983) 2 SCC 277 while dealing with the question of constitutional validity of Section 303 IPC, which provided for death sentence as the mandatory punishment for a person who, being under sentence of imprisonment for life, would commit murder. In the course of declaring the said provision contained in Section 303 IPC constitutionally invalid, the Constitution Bench dealt with a large number of arguments; and one of them had been that the validity of death sentence had already been upheld in Bachan Singh (supra) and, therefore, such questions should not be allowed to raise their head over again. While pointing out the fallacy of this argument, the Constitution Bench explained as to what exactly had been the ratio of Bachan Singh in the following words: -

"7.....The majority did not lay down any abstract proposition in Bachan Singh that "death sentence is Constitutional", that is to say, that "It is permissible under the Constitution to provide for the sentence of death". To be exact, the question which arose for the consideration of the Court was not whether, under the Constitution, it is permissible to provide for the sentence of death. The precise question which arose in that case was whether Section 302 of the Penal Code which provides for the sentence of death as one of the two alternative sentences is valid. It may be recalled that Section 302 provides for the sentence of death as an alternative sentence which may be imposed. The normal sentence for murder is life imprisonment; and if the death sentence has to be imposed, the Court is under a legal obligation under Section 354(3) of the Criminal Procedure Code to state the special reasons for imposing that sentence. That explains why, in Bachan Singh, Sarkaria J., who spoke for the majority, underscored the words "alternative" and "may" in paragraph 19 of the judgment, whilst observing that prescribes death as an alternative punishment to which the offender may be sentenced in cases relating to seven kinds of offences. The majority concluded that of the Penal Code is valid for three main reasons: Firstly, that the death sentence provided for by Section 302 is an alternative to the sentence of life imprisonment, secondly, that special reasons have to be stated if the normal rule is departed from and the death sentence has to be imposed; and, thirdly, because the accused is entitled, under Section 235(2) of the Code of Criminal Procedure, to be heard on the question of sentence. The last of these three reasons becomes relevant, only because of the first of these reasons. In other words, it is because the Court has an option to impose either of the two alternative sentences, subject to the rule that the normal punishment for murder is life imprisonment, that it is important to hear the accused on the question of sentence....The ratio of Bachan Singh, therefore, is that, death sentence is Constitutional if it is prescribed as an alternative sentence for the offence of murder and if the normal sentence prescribed by law for murder is imprisonment for life...." (emphasis supplied) 44.5. Thereafter, in Machhi Singh (supra), a 3-Judge Bench of this Court, while considering a case where the appellant was convicted of orchestrating and executing a conspiracy, which resulted in the murder of as many as 17 people due to a family feud, explained the philosophy pertaining to the death sentence in the following words: -

"32. ...Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by "killing" a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so "in rarest of rare cases" when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. The community may entertain such a sentiment when the crime is viewed from the platform of the motive for, or the manner of commission of the crime...." (emphasis supplied) 44.5.1. The Court also

explained the relevant propositions of Bachan Singh (supra) and the pertinent queries for applying those propositions in the following terms: -

"38. In this background the guidelines indicated in Bachan Singh case will have to be culled out and applied to the facts of each individual case where the question of imposing of death sentence arises. The following propositions emerge from Bachan Singh case:

(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 'offender' also require to be taken into consideration along with the circumstances of the 'crime'.

(iii) Life imprisonment is the rule and death sentence is an exception. In other words 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.

39. In order to apply these guidelines inter alia the following questions may be asked and answered:

(a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

(b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

40. If upon taking an overall global view of all the circumstances in the light of the aforesaid proposition and taking into account the answers to the questions posed hereinabove, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so." (emphasis supplied) 44.6. Another relevant decision to be noticed is that in the case of Swamy Shraddananda (2) (supra). The said decision was rendered by a 3-Judge Bench of this Court in the backdrop that though a 2-Judge Bench of this Court upheld the conviction of the appellant of offences under Sections 302 and 201 IPC but, one of the learned Judges felt that in the facts and circumstances of the case, punishment of imprisonment till the end of the natural life of the convict would serve the ends of justice, whereas the other learned Judge was of the view that the appellant

was liable to the punishment of death. In keeping with the ever-progressing canons of penology, the 3-Judge Bench carved out a different course, being of not awarding death penalty but, of conditioning the sentence of imprisonment for life with a rider that the convict shall not be released from the prison for the rest of his life. The Court explained the logic of such sentencing, which overrides the availability of remission, in the following terms: -

> "92. The matter may be looked at from a slightly different angle. The issue of sentencing has two aspects. A sentence may be excessive and unduly harsh or it may be highly disproportionately inadequate. When an appellant comes to this Court carrying a death sentence awarded by the trial court and confirmed by the High Court, this Court may find, as in the present appeal, that the case just falls short of the rarest of the rare category and may feel somewhat reluctant in endorsing the death sentence. But at the same time, having regard to the nature of the crime, the Court may strongly feel that a sentence of life imprisonment subject to remission normally works out to a term of 14 years would be grossly disproportionate and inadequate. What then should the Court do? If the Court's option is limited only to two punishments, one a sentence of imprisonment, for all intents and purposes, of not more than 14 years and the other death, the Court may feel tempted and find itself nudged into endorsing the death penalty. Such a course would indeed be disastrous. A far more just, reasonable and proper course would be to expand the options and to take over what, as a matter of fact, lawfully belongs to the Court i.e. the vast hiatus between 14 years' imprisonment and death. It needs to be emphasised that the Court would take recourse to the expanded option primarily because in the facts of the case, the sentence of 14 years' imprisonment would amount to no punishment at all.
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> 93. Further, the formalisation of a special category of sentence, though for an extremely few number of cases, shall have the great advantage of having the death penalty on the statute book but to actually use it as little as possible, really in the rarest of rare cases. This would only be a reassertion of the Constitution Bench decision in Bachan Singh besides being in accord with the modern trends in penology." (emphasis supplied) 44.7. We need not elongate this discussion by assembling various other decisions rendered in variegated circumstances and factual matrices but deem it appropriate to refer to the decision in the case of Shankar Kisanrao Khade v. State of Maharashtra: (2013) 5 SCC 546, wherein this Court surveyed a large number of cases on either side that is, where death sentence was upheld/awarded or where it was commuted; and pointed out the requirement of applying 'crime test', 'criminal test' and 'rarest of rare test'. This Court recounted, with reference to previous decisions, the aggravating circumstances (crime test) and the mitigating circumstances (criminal test) as follows: -
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> 49. In Bachan Singh and Machhi Singh cases, this Court laid down various principles for awarding sentence: (Rajendra Pralhadrao case, SCC pp. 47-48, para 33) "'Aggravating circumstances — (Crime test) (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 of the Code of Criminal Procedure.

(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 — (Criminal test) (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 behaviour 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 behaviour 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 preordained 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 eyewitness though the prosecution has brought home the guilt of the accused." This Court further said: -

> "52. Aggravating circumstances as pointed out above, of course, are not exhaustive so also the mitigating circumstances. In my considered view, the tests that we have to apply, while awarding death sentence are "crime test", "criminal test" and the "R-R test" and not the "balancing test". To award death sentence, the "crime test" has to be fully satisfied, that is, 100% and "criminal test" 0%, that is, no mitigating circumstance favouring the accused. If there is any circumstance favouring the accused, like lack of intention to commit the crime, possibility of reformation, young age of the accused, not a menace to the society, no previous track record, etc. the "criminal test" may favour the accused to avoid the capital punishment. Even if both the tests are satisfied, that is, the aggravating circumstances to the fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the rarest of the rare case test (R-R test). R-R test depends upon the perception of the society that is "society-centric" and not "Judge-centric", that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the court has to look into variety of factors like society's abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of intellectually challenged minor girls, suffering from physical disability, old and infirm women with those disabilities, etc. Examples are only illustrative and not exhaustive. The courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the Judges." (emphasis and extra emphasis supplied) 44.8. It is also noteworthy that the said proposition of special category of sentencing by way of life imprisonment sans remission was again a matter of debate and led to a reference to the Constitution Bench, which came to be answered in the case of Union of India v. V. Sriharan Alias Murugan and Ors.: (2016) 7 SCC 1. There had been several questions referred to the Constitution Bench as regards the powers of remission, but all those aspects need not be dilated herein. The aspect relevant for the present purpose is that a majority of three Judges approved the ratio in Swamy Shraddananda (2) (supra)

providing for special category of life sentence without remission. Though the minority opinion concurred that imprisonment for life in terms of Section 52 read with Section 45 IPC only meant imprisonment for the rest of the life of the convict, where the right to claim remission, commutation etc. as provided under Article 72 or 161 of the Constitution of India would always be available but, did not concur with other part of the majority opinion approving the aforesaid special category sentence with the reasoning that such a course of providing mandatory period of actual imprisonment would be inconsistent with Section 433-A CrPC. The majority view, being the declaration of law by this Court, could be usefully noticed from the relevant question and its answer as follows: -

"Question 52.1: Whether imprisonment for life in terms of Section 53 read with Section 45 of the Penal Code meant imprisonment for rest of the life of the prisoner or a convict undergoing life imprisonment has a right to claim remission and whether as per the principles enunciated in paras 91 to 93 of Swamy Shraddananda (2), a special category of sentence may be made for the very few cases where the death penalty might be substituted by the punishment of imprisonment for life or imprisonment for a term in excess of fourteen years and to put that category beyond application of remission?

Answer

177. Imprisonment for life in terms of Section 53 read with Section

45 of the Penal Code only means imprisonment for the rest of the life of the convict. The right to claim remission, commutation, reprieve, etc. as provided under Article 72 or Article 161 of the Constitution will always be available being constitutional remedies untouchable by the Court.

178. We hold that the ratio laid down in Swamy Shraddananda (2) that a special category of sentence; instead of death can be substituted by the punishment of imprisonment for life or for a term exceeding 14 years and put that category beyond application of remission is well founded and we answer the said question in the affirmative." 44.9. Before proceeding further, we may observe that with development of the law on sentencing procedure in accord with the decisions aforesaid, one of the elements of mitigating factors namely, probability of reformation of the convict and his rehabilitation and reintegration into the mainstream society, has been given due consideration, rather extra weightage, as highlighted by various decisions of this Court. As an example, we may refer to the decision in Rajendra Pralhadrao Wasnik v. State of Maharashtra: (2019) 12 SCC 460, wherein the appellant was convicted of offences under Section 376(2)(f), 377 and 302 IPC for rape and murder of a three-year-old girl on the basis of circumstantial evidence and was sentenced to death. Though his appeal to this Court was dismissed and review petition was also dismissed but, his review petition was later on reopened and heard by a 3-Judge Bench. This Court held that there was no hard and fast rule that death sentence could not be awarded if conviction was based on circumstantial evidence, but proceeded to commute death sentence into that of life imprisonment after finding that the Trial Court and the High Court did not consider various factors including the

probability of the petitioner to be reformed. This Court, inter alia, held as under: -

> "45. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, inter alia, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.
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> *** *** ***
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> 47. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be overemphasised. Until Bachan Singh, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. Bachan Singh placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances... where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in Sangeet16 "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social reintegration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social reintegration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible." 16 Sangeet and Anr. v. State of Haryana: (2013) 2 SCC 452.

45. Learned counsel for the appellant has cited a few decisions with the submissions that in these cases, the death sentence was altered to other sentence by this Court while applying the principle of 'residual doubt'. Though it is noticed that the cited decisions did not as such proceed on the theory of 'residual doubt' but, we may take note of the relevant features of the cited decisions. It may, however, be observed that the contentions relating to the theory of 'residual doubt' shall be adverted to a little later.

45.1. In the case of Viran Gyanlal Rajput (supra), the accused was convicted of the offences under Sections 302, 201 IPC and Sections 10 and 14 POCSO, for kidnapping, rape and murder of a 13-year-old girl and causing disappearance of evidence, and he was awarded death sentence for the offence under Section 302 IPC. The case was based on circumstantial evidence, with the incriminating circumstances operating against the appellant being that he was last seen with the deceased while she was walking home from school; he was later seen running alone in the evening; the dead body and the incriminating articles like clothes of the victim were recovered at his instance; mud stains on his pants matched the mud stains seized from the spot; his failure to explain the injuries found on his person; medical evidence showing that the victim had been forcibly raped and killed; hiding the dead body to suppress evidence; and failure of the appellant to offer a plausible explanation for the incriminating circumstances against him. While confirming the conviction of the appellant under other provisions as also the death sentence, the High Court set aside the conviction of the appellant under Section 10 POCSO. As regards death sentence, this Court reiterated the principle that life imprisonment was the rule and death sentence was the exception, which was to be imposed only when the alternative of life imprisonment had been unquestionably foreclosed. This Court found that even though the crime committed by the appellant was abominable, it could not be held to be falling within the 'rarest of rare'. This Court also found that the prosecution had been unable to prove that the appellant could not be reformed and thus, commuted the sentence of death into that of imprisonment for life without scope of remission for 20 years. These findings of this Court could be usefully reproduced as under: -

> "25. Though we agree that the crime committed is of an abominable nature, it cannot be said to be of such a brutal, depraved, heinous or diabolical nature so as to fall into the category of the rarest of rare cases and invite punishment with death. We also find ourselves unable to agree with the view of the courts that the appellant is such a menace to society that he cannot be allowed to stay alive. On the other hand, we are of the view that the prosecution did not establish that the appellant was beyond reform, especially given his young age. We are also mindful of the appellant's lack of criminal antecedents prior to the commission of this crime, and of his post-incarceration conduct, which in no way suggests the impossibility of his reform. It would be pertinent to observe at this point that although the trial court noted his lack of remorse during the hearing, and the High Court noted his lack of remorse after committing the crime, as he was found calmly wandering around the locality, this does not in any way indicate that there is no scope of reform for the appellant.
>
> 26. Thus, neither the circumstances of the crime nor the circumstances of the criminal i.e. the appellant, would go to show that the instant matter falls into the category of the rarest of rare cases, or that the sentence of life imprisonment is unquestionably foreclosed and grossly disproportionate. Therefore, in the totality of the facts and circumstances of this case, we find it fit to commute the death sentence of the appellant to life imprisonment.
>
> 27. At the same time, we are of the opinion that a sentence of life imprisonment simpliciter would not be proportionate to the gravity of the offence committed, and

> would not meet the need to respond to crimes against women and children in the most stringent manner possible. Moreover, though we have noticed above that the possibility of reform of the accused is not completely precluded, we nevertheless share the concerns of the trial court and the High Court regarding the lack of remorse on behalf of the appellant and the possibility of reoffending. In such a situation, we deem it fit to restrict the right of the appellant to claim remission in his sentence of life imprisonment for a period of 20 years." 45.2. In the case of Babasaheb Maruti Kamble (supra), the appellant was convicted of offences under Sections 302, 376(2)(f) and 342 IPC and was awarded death sentence for the offence punishable under Section 302 IPC. The said case also rested on circumstantial evidence which included the circumstances that the deceased girl was last seen with the appellant; the dead body of the victim girl was found in his house and under his bed; and slippers and clothes of the victim girl were also recovered from his house along with bloodstained chadar; DNA and post-

mortem examination report corroborated the prosecution case. Having found the conviction not calling for any interference, this Court took into account the factors that the appellant had reached the age of 60 years, had no criminal antecedents, there was likelihood of reform and the respondent-State could not point out any blameworthy conduct by him in jail. Thus, this Court commuted the death sentence into that of life with a cap of 20 years' imprisonment without remission.

45.3. In the case of Nand Kishore (supra), the accused-appellant, about 50 years of age, was convicted of the offences under Sections 302, 363, 366 and 376(2)(i) IPC for kidnapping, rape and murder of an 8-year- old girl. The case was based on circumstantial evidence where PW-4, brother of the deceased girl, identified the appellant in Test Identification Parade and categorically stated that the appellant took away the deceased from mela. The last seen evidence was corroborated by PW-7. This Court upheld the conviction. As regards the question of sentence, where the appellant had been sentenced to death, this Court referred, inter alia, to the enunciation in Swamy Shraddananda (2) (supra) and observed that the appellant was having no criminal antecedents and was coming from a poor socio-economic background, where the local Bar Association refused to represent the appellant and he was provided legal aid only on the day of framing of charge. This Court also found that there was no finding recorded by the Courts below that the appellant could not be reformed. In the overall circumstances, this Court commuted death sentence into life imprisonment with actual period of 25 years without any benefit of remission in the following: -

> "15. ...So far as the present case is concerned, it solely rests on circumstantial evidence. It is the specific case of the appellant that he was denied the proper legal assistance in the matter and he is a manhole worker. The appellant was aged about 50 years. Further, in this case there is no finding recorded by the courts below to the effect that there is no possibility of reformation of the appellant. We are of the view that the reasons assigned by the trial court as confirmed by the High Court, do not constitute special reasons within the meaning of Section 354(3) CrPC to impose death penalty on the accused.

> 16. Taking into account the evidence on record and the totality of the circumstances of the case, and by applying the test on the touchstone of case law discussed above, we are of the view that the case on hand will not fall within the "rarest of rare" cases. In that view of the matter, we are of the view that the death sentence imposed by the trial court, as confirmed by the High Court, requires modification. Accordingly, this appeal is allowed in part;

while confirming the conviction, recorded by the trial court, as confirmed by the appellate court, we modify the sentence to that of life imprisonment with actual period of 25 years, without any benefit of remission. It is further made clear that sentences imposed for all offences shall run concurrently." 45.4. The decision in the case of Sakru Mahagu Binjewar (supra) does not have any factual correlation with the case at hand except that therein, this Court referred to the principles in Bachan Singh and Machhi Singh (supra) while pointing out that the same have been consistently followed by Courts depending on the facts and circumstances of each case as also that this Court has referred to the principles evolved in Swamy Shraddananda (2) (supra), as approved by the Constitution Bench in V. Sriharan (supra). In that case, the High Court, while upholding conviction under Section 302 IPC based on the evidence of eye-witnesses, commuted the death sentence awarded to some of the accused persons, inter alia, for the reasons that the accused felt they were falsely implicated in a criminal case; and that there was no evidence to suggest that the accused had a criminal record. In the given set of facts and circumstances, this Court found no ground to interfere with the judgments under appeal.

46. Yet further, a few other decisions, relied upon by learned counsel for the respondent-State in support of his arguments could also be noticed as follows:

> 46.1. Kamta Tiwari (supra) was a case of rape followed by murder of a 7-year-old girl by a person who was close to the family of the victim and the victim used to call him "Tiwari uncle". The girl was kidnapped by the accused; was subjected to rape; was strangulated to death; and then, the dead body was thrown into the well. The enormity of crime coupled with the misuse of trust weighed with this Court in confirming the death sentence.
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> 46.2. In Santosh Kumar Satishbhushan Bariyar (supra), this Court extensively dealt with three broad values emerging from Bachan Singh (supra), that is, individualised sentencing, threshold of rarest of rare, and principled sentencing and said, inter alia, as under: -
>
> "131. When the court is faced with a capital sentencing case, a comparative analysis of the case before it with other purportedly similar cases would be in the fitness of the scheme of the Constitution. Comparison will presuppose an identification of a pool of equivalently circumstanced capital defendants. The gravity, nature and motive relating to crime will play a role in this analysis.

132. Next step would be to deal with the subjectivity involved in capital cases. The imprecision of the identification of aggravating and mitigating circumstances has to be minimised. It is to be noted that the mandate of equality clause applies to the sentencing process rather than the outcome. The comparative review must be undertaken not to channel the sentencing discretion available to the courts but to bring in consistency in identification of various relevant circumstances. The aggravating and mitigating circumstances have to be separately identified under a rigorous measure.

133. Bachan Singh when mandates principled precedent-based sentencing, compels careful scrutiny of mitigating circumstances and aggravating circumstances and then factoring in a process by which aggravating and mitigating circumstances appearing from the pool of comparable cases can be compared. The weight which is accorded by the court to particular aggravating and mitigating circumstances may vary from case to case in the name of individualised sentencing, but at the same time reasons for apportionment of weights shall be forthcoming. Such a comparison may point out excessiveness as also will help repel arbitrariness objections in future. A sentencing hearing, comparative review of cases and similarly aggravating and mitigating circumstances analysis can only be given a go-by if the sentencing court opts for life imprisonment." 46.3. In the case of Vasanta Sampat Dupare (supra), where this Court dealt with the main appeals and thereafter, the review petitions and confirmed the death sentence for the offence under Section 302 IPC, the accused had taken the victim girl on his bicycle when she was playing in the courtyard and was found to have raped and murdered her. The facts of the said case had been strikingly similar to the facts of the present case, where it was found that the accused raped the four-year-old victim girl, and battered and smashed her head by stones and killed her.

46.3.1. In the main judgment dealing with the appeals in Vasanta Sampat Dupare17, this Court examined all the circumstances, including the misuse of trust reposed by the girl in the accused; the factual matrix unfolding the premeditation, the proclivity and the rapacious desire; the crime speaking of depravity and degradation; the crime being diabolical and barbaric; and less likelihood of reformation/rehabilitation of the convict. Thus, this Court upheld the sentence of death while observing as under: -

"58. Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that the appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father of the deceased and the children used to call him "uncle". He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had an insatiable and 17 reported as (2015) 1 SCC 253.

ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitly designed biological desires of this nature, went with the uncle who extinguished her life-spark. The barbaric act of the appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous.

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60. In the case at hand, as we find, not only was the rape committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a girl child and the soul of society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner. Indubitably, these go a long way to establish the aggravating circumstances.

61. We are absolutely conscious that mitigating circumstances are to be taken into consideration. The learned counsel for the appellant pointing out the mitigating circumstances would submit that the appellant is in his mid-fifties and there is possibility of his reformation. Be it noted, the appellant was aged about forty-seven years at the time of commission of the crime. As is noticeable, there has been no remorse on the part of the appellant. There are cases when this Court has commuted the death sentence to life finding that the accused has expressed remorse or the crime was not premeditated. But the obtaining factual matrix when unfolded stage by stage would show the premeditation, the proclivity and the rapacious desire. The learned counsel would submit that the appellant had no criminal antecedents but we find that he was a history-sheeter and had a number of cases pending against him. That alone may not be sufficient. The appalling cruelty shown by him to the minor girl child is extremely shocking and it gets accentuated, when his age is taken into consideration. It was not committed under any mental stress or emotional disturbance and it is difficult to comprehend that he would not commit such acts and would be reformed or rehabilitated. As the circumstances would graphically depict, he would remain a menace to society, for a defenceless child has become his prey. In our considered opinion, there are no mitigating circumstances.

62. As we perceive, this case deserves to fall in the category of the rarest of rare cases. It is inconceivable from the perspective of the society that a married man aged about two scores and

seven makes a four-year minor innocent girl child the prey of his lust and deliberately causes her death. A helpless and defenceless child gets raped and murdered because of the acquaintance of the appellant with the people of the society. This is not only betrayal of an individual trust but destruction and devastation of social trust. It is perversity in its enormity. It irrefragably invites the extreme abhorrence and indignation of the collective. It is an anathema to the social balance. In our view, it meets the test of the rarest of the rare case and we unhesitatingly so hold.

63. Consequently, we dismiss the criminal appeals preferred by the appellant and affirm the death sentence." 46.3.2. In the review petitions, several other mitigating circumstances were projected before the Court including the qualifications acquired by the accused during the pendency of the matter and the probability of his reformation. This Court found that the aggravating circumstances, i.e., extreme depravity and barbaric manner of the crime outweighed the mitigating circumstances. Hence, while dismissing the review petitions, this Court observed and concluded as under18: -

> "21. The material placed on record shows that after the judgment under review, the petitioner has completed Bachelors Preparatory Programme offered by Indira Gandhi National Open University enabling him to prepare for Bachelor level study and that he has also completed the Gandhi Vichar Pariksha and had participated in drawing competition organised sometime in January 2016. It is asserted that the jail record of the petitioner is without any blemish. The matter is not contested as regards Conditions (1), 18 The decision in review petitions reported as (2017) 6 SCC 631.

(2), (5), (6) and (7) as stated in para 206 of the decision in Bachan Singh, but what is now being projected is that there is a possibility of the accused being reformed and rehabilitated. Though these attempts on part of the petitioner are after the judgment under review, we have considered the material in that behalf to see if those circumstances warrant a different view. We have given anxious consideration to the material on record but find that the aggravating circumstances, namely, the extreme depravity and the barbaric manner in which the crime was committed and the fact that the victim was a helpless girl of four years clearly outweigh the mitigating circumstances now brought on record. Having taken an overall view of the matter, in our considered view, no case is made out to take a different view in the matter. We, therefore, affirm the view taken in the judgment under review and dismiss the present review petitions."

47. In the case of Pappu (supra), after taking note of various decisions on the subject, we had summarised the principles evolved and norms followed by the Courts in the matters involving capital punishment; and would iterate the same as under: -

> "41. It could readily be seen that while this Court has found it justified to have capital punishment on the statute to serve as deterrent as also in due response to the society's call for appropriate punishment in appropriate cases but at the same time, the principles of penology have evolved to balance the other obligations of the society, i.e., of preserving the human life, be it of accused, unless termination thereof is inevitable and is to serve the other societal causes and collective conscience of society. This has led to the evolution of 'rarest of rare test' and then, its appropriate

> operation with reference to 'crime test' and 'criminal test'. The delicate balance expected of the judicial process has also led to another mid-way approach, in curtailing the rights of remission or premature release while awarding imprisonment for life, particularly when dealing with crimes of heinous nature like the present one."
> The theory of residual doubt

48. As regards the theory of 'residual doubt', which has been heavily relied upon by the learned senior counsel for the appellant, we may usefully reiterate that nothing of any so-called 'residual doubt' theory was referred to or applied in the cases cited by the learned counsel. Rather, in the case of Sakru Mahagu Binjewar (supra), the proposition for extending benefit of doubt was rejected by this Court with reference to the overwhelming and unimpeachable evidence on record. Be that as it may, we may profitably refer to the relevant decisions to point out the approach of this Court towards this theory as also the fact that the propositions about inapplicability of this theory have been clearly stated in the later decisions, as discussed infra.

48.1. In the case of Ravishankar Alias Baba Vishwakarma v. State of Madhya Pradesh: (2019) 9 SCC 689, a 3-Judge Bench of this Court re- affirmed the conviction of the appellant of offences of kidnapping, rape, and resultant death of a 13-year-old girl and destruction of evidence. The case had been that of circumstantial evidence and on the question of sentence, this Court examined as to whether death sentence was justified. Though this Court made it clear that even in the case where conviction is based on circumstantial evidence, capital punishment could be awarded but then, proceeded to observe that this Court had been increasingly applying the theory of 'residual doubt', which effectively create a higher standard of proof over and above the "beyond reasonable doubt" standard used at the stage of conviction, as a safeguard against routine capital sentencing, keeping in mind the irreversibility of death. Applying this theory and indicating certain 'residual doubts', it was held that the said case fell short of 'rarest of rare' category; and the death sentence was commuted into one of life for the remainder of the natural life of the convict.

48.2. However, in Shatrughna Baban Meshram v. State of Maharashtra: (2021) 1 SCC 596, another 3-Judge Bench of this Court considered an appeal against conviction and award of death sentence for rape and murder of a 2½-year-old girl by her maternal uncle. On the question of sentencing, 67 cases decided by the Supreme Court over the past 40 years were noticed; and it was observed that when the offences were of Sections 376 and 302 IPC, and the age of the victim was under

> 16 years, death sentence was confirmed in 15, but in 3 of them, the sentence was later on commuted to life in review. Hence, in only 12 out of the 67 cases the death sentence was confirmed. As regards the guiding factors, it was held that death penalty was not entirely impermissible to be awarded in circumstantial evidence cases but the circumstantial evidence ought to be of unimpeachable character with option of lesser sentence foreclosed. The Court also examined the theory of 'residual doubt' and, after a survey of the decisions of this Court and those of the U.S. Supreme Court, opined against the applicability of this theory in the following passages: -

> "75.4. These features are only illustrative to say that the theory of "residual doubt" that got developed was a result of peculiarity in the process adopted. Even then, what is material to note is that the theory has consistently been rejected by the US Supreme Court and as stated by O'Connor, J.: "Nothing in our cases mandated the imposition of this heightened burden of proof at capital sentencing." *** *** ***
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> 77. When it comes to cases based on circumstantial evidence in our jurisprudence, the standard that is adopted in terms of law laid down by this Court as noticed in Sharad Birdhichand Sarda and subsequent decisions is that the circumstances must not only be individually proved or established, but they must form a consistent chain, so conclusive as to rule out the possibility of any other hypothesis except the guilt of the accused. On the strength of these principles, the burden in such cases is already of a greater magnitude. Once that burden is discharged, it is implicit that any other hypothesis or the innocence of the accused, already stands ruled out when the matter is taken up at the stage of sentence after returning the finding of guilt. So, theoretically the concept or theory of "residual doubt" does not have any place in a case based on circumstantial evidence. As a matter of fact, the theory of residual doubt was never accepted by the US Supreme Court as discussed earlier." (emphasis supplied) 48.2.1. This Court also referred to some of the decisions of this Court where the said theory of 'residual doubt' was referred to, including that in Ashok Debbarma Alias Achak Debbarma v. State of Tripura: (2014) 4 SCC 747, and it was pointed out that those 'matters were considered from the standpoint of individual fact situation where, going by the higher or stricter standard for imposition of death penalty, alternative to death sentence was found to be appropriate'.19 48.3. We may also observe that the theory of 'residual doubt' was previously suggested before us in the case of Pappu (supra) but, in that case, it was not considered necessary to dilate much on this aspect because a strong case for commuting death sentence into that of imprisonment for life was nevertheless made out with the mitigating factors of probability of reformation and rehabilitation of the convict and his satisfactory jail conduct. However, we had indicated, with reference to 19 Vide paragraphs 76 to 76.4 of the said decision in Shatrughna Baban Meshram.

the aforesaid decision in the case of Shatrughna Baban Meshram, as follows:-

> "43.2. Having said so, we may observe that so far as the other arguments on behalf of the appellant, with reference to the theory of 'residual doubt', are concerned, in the later 3-Judge Bench decision of this Court in Shatrughna Baban Meshram (supra), it was observed that the said theory, developed as a result of peculiarity in the process adopted in U.S. jurisdictions, has not found favour even by the U.S. Supreme Court. We need not dilate on this aspect any further in the present case for the simple reason that the strong mitigating factor of probability of reformation and rehabilitation, particularly with reference to the antecedents and background of the appellant coupled with his satisfactory jail conduct, make out a case for communing death sentence into that of imprisonment for life." 48.4. For what has been discussed

> hereinabove and to put the record straight, we deem it appropriate to observe that in the case based on circumstantial evidence, the conclusion of guilt is recorded only after the circumstances are found to be forming an unbreakable chain, so consistent as to rule out any other hypothesis except the guilt of the accused. These being stringent norms, as followed consistently by the Courts based on the panchsheel principles expounded in Sharad Birdhichand Sarda (supra), and requirement being of the proof of the case beyond reasonable doubt, theoretically there is no scope for any 'residual doubt' operating even in the cases of circumstantial evidence.

The cases in which theory of residual doubt has at all been referred, had been standing on their own facts, where alternative to death sentence was considered appropriate. However, while taking up the matter for sentencing, it is not expected to reopen the chain of circumstantial evidence to find any weak link which may fall in the category of residual doubt. Needless to reiterate that if at all any such doubt is reasonably existing, the very basis of conviction would be in question. To put it in other words, after the final conclusion on the guilt and after pronouncing conviction, no concept of residual doubt as such is available for the purpose of sentencing.

49. However, even when we find no reason to proceed on the theory of residual doubt, the question of sentence in the present case has to be determined in accordance with sentencing principles enunciated by the Constitution Bench in Bachan Singh (supra) and the principles/norms further evolved by this Court in the other decisions, as noticed hereinbefore with the requirements of close analysis of 'crime test', 'criminal test' and 'rarest of rare test'.

The crime and criminal tests: Aggravating and Mitigating circumstances of the present case

50. Keeping the aforesaid principles in view, we need to examine the material facts as also all the relevant factors and circumstances for determining the question as to whether the capital punishment awarded to the appellant be maintained or be substituted by any other punishment?

50.1. Before examining the material facts and the relevant circumstances, we may observe that so far the Trial Court is concerned, it had scrupulously carried out its duty in terms of Section 235(2) CrPC. The judgment of conviction was pronounced on 28.09.2013 and the question of sentence was taken up 3 clear days later, i.e., on 01.10.2013; and the death sentence was awarded only after duly hearing the accused- appellant, after duly taking into consideration the aggravating and mitigating factors, and while duly recording special reasons. 50.2. The heinous nature of the crime, like that of the present one, in brutal rape and killing of a mentally and physically challenged girl, who was only about seven-and-a-half-year-old, definitely carries excessively aggravating circumstances, particularly when the manner of commission of both the major offences of rape and murder shows depravity of highest order and would ex facie shock anyone's conscience. The horrific manner of killing the victim, by causing ghastly head injuries had been nothing less than beastly conduct of the appellant. However, as noticed, gruesome nature of the action and the crime, by itself, may not be decisive, particularly as regards the question of capital punishment. Thus, we need to cautiously examine the other relevant factors, particularly those of the tests pertaining to the criminal himself. 50.3. Undoubtedly, the appellant was 28 years of age at the time of commission of crime and was

having family comprising of his wife, an eight-year-old daughter and parents. He is not shown to be coming from any affluent background but, at the same time, it is also not shown if he comes from a very poor socio-economic background. Taken as a whole, these factors of the age, family and socio-economic background of the appellant are not so clinching as to overwhelm and override the aggravating factors.

50.3.1. Then, the pertinent question is as to whether there exists a reasonable probability of reformation and rehabilitation of the appellant? If the answer to this material question is in the affirmative, it may have bearing upon the test to find if the case falls in rarest of rare category. But, if there are factors which operate against affirmative answer to this question on the probability of reformation and rehabilitation, the aggravating circumstances would assuredly outweigh the mitigating circumstances warranting capital punishment.

50.4. In regard to the above, the facts emerging from record are as follows:

> 50.4.1. It is noticed that before the Trial Court, a suggestion was made while pleading leniency for the appellant, that it was his first offence. This suggestion, however, does not appear to be correct. It is noticeable from the contents of the charge-sheet that in the process of residence verification, it was found that the appellant was hailing from village Basantpur, Police Station Gugli, District Maharajganj, Uttar Pradesh; and it came to the light that he had had a history of criminal cases inasmuch as, he was charge-sheeted in Case No. 69 of 2011 of Police Station Shambhupura, District Chittorgarh for offence under Section 3 of Prevention of Damage to Public Property Act, 1984 and 307 IPC. He was also involved in Police Station Kankroli 20 Case Nos. 78 of 2012 and 79 of 2012 for offence under Section 379 IPC; and in Police Station Rajnagar Case No. 428 of 2012 for offence under Section 379 IPC.
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> 50.4.2. There is another crucial fact having direct co-relation and connection with the present case itself, which emanates from the statement of PW-23 Ramdev Regar, Sub-Inspector, Police Line, Rajsamand. He testified to the fact that on 14.01.2013, a written report about the theft of Hero Honda Passion Plus motorcycle bearing registration No. RJ30 3M 5944 was filed at Police Station Nathdwara, whereupon, FIR bearing No. 39 of 2013 was registered for offence under Section 379 IPC against unknown person. Significantly, the said motorcycle bearing registration No. RJ30 3M 5944 was the same one which was used by the appellant in the present crime. This motorcycle was recovered near the scene of crime at the information of the appellant;

and bloodstains were also collected therefrom; and DNA profile of those bloodstains matched the DNA profile of the blood samples of the victim girl.

50.5. Thus, the facts surfacing on record make it clear that the crime in question was not the singular criminal activity of the appellant. The antecedents of the appellant depict a person whose conduct had not been free from blemish and, in any case, he committed the crimes of kidnapping as also murder of the victim girl with the use of a vehicle 20 The same police station which has dealt

with the present case. which did not belong to him but was a stolen one 21. In other words, the past of the appellant before the present case had been of involvement in criminal cases; and abhorrent crimes of the present case were committed by him with the aid of a stolen vehicle. These facts and factors magnify the aggravating circumstances manifold.

51. In view of what has been noticed hereinabove, the net result of crime test and criminal test could be summarised as follows: The present case had been of extreme inhumane acts and actions of the appellant where, amongst other offending acts and actions, he (1) kidnapped the victim girl, who was only 7½ years of age, who was even otherwise a mentally and physically challenged child, with betrayal of trust when the victim girl got lured with confectionary items given by him; (2) brutally raped the victim girl, as noticeable from the gruesome injuries on and around her private parts and as established by the medical officers who conducted post-mortem; and (3) mercilessly killed the victim girl by causing horrid injuries on her head, as established not only by the doctors but also by the surrounding facts, including bloodstains on the scene of crime, on the motorcycle, and on the clothing of the appellant at the time of his arrest. On the personal score, even though the appellant was about 28 years of age and was having the family of wife, a daughter who was also about 8 years of age and aged parents, he was continuously involved in criminal activities. Even if the other past cases are left aside, 21 As per the evidence of PW-23 Ramdev Regar, the report about theft of the motorcycle in question was lodged at Police Station Nathdwara on 14.01.2013 i.e., 3 days before the incident of the present case.

he committed the crimes in question by using a stolen motorcycle. Unfortunately, the matter does not end here.

51.1. The tremors thrown by the appellant to shock anyone's conscience with his beastly conduct have not stopped even with this inhumane crime and even after his conviction.

52. As noticed, in a substantial number of cases, when nothing further exacerbates the crime in question, the Courts have refrained from awarding or approving death sentence even in the cases of gruesome killings, essentially on the premise that even a semblance of probability of reformation of the convict ought to be given a chance, rather than awarding capital punishment, which is of irretrievable nature. In this regard, the jail conduct of the convict carries its own bearing and relevance in the overall consideration; and this Court has leaned in favour of commuting the sentence of death to that of imprisonment for life in case of unblemished jail conduct, even if the crime itself had been of gruesome or abhorrent nature22-23. However, in the present case, the further shocking and disturbing factor is that even while in jail, the 22 The case of Pappu v. The State of Uttar Pradesh: Criminal Appeal Nos. 1097-1098 of 2018 decided on 09.02.2022 by us is directly an illustration of this approach where, despite finding it to be similar case of gruesome rape and murder of a seven-year-old girl child, we found the unblemished jail conduct coupled with other circumstances indicating the probability of reformation of the convict and hence, commuted the death sentence into that of imprisonment for life but with stipulations of his undergoing actual imprisonment for a period of 30 years. 23 The case of Veerendra v. State of Madhya Pradesh: Criminal Appeal Nos. 5-6 of 2018 decided on 13.05.2022 by us is another direct illustration of this approach where, despite finding it to be similar case of gruesome rape and murder of an

eight-year-old girl child, who was daughter of the cousin of the convict, we observed that the convict's unblemished jail conduct coupled with other mitigating circumstances would not go unnoticed; and probability of reformation and rehabilitation of the convict was not ruled out. Hence, we again adopted the course of commuting the death sentence into that of imprisonment for life with stipulations of actual imprisonment for a period of 30 years.

appellant's conduct has not been free from blemish where, apart from quarrelling with other inmate on 17.04.2015 and earning 7 days' punishment, the appellant had been accused and convicted of the offence of yet another murder, this time of a co-inmate of the jail, while joining hands with three other inmates.

53. At this juncture, we may again point out that the fact regarding the appellant's involvement in another murder while being in jail and his conviction of the offence under Section 302/34 IPC came to be stated only in the written submissions filed on behalf of the respondent-State after conclusion of hearing. Such a fact having not been specified during the course of hearing, we posted the matter for further directions and, on 14.02.2022, the State was directed to place the relevant facts on record with affidavit of the officer concerned. In compliance thereof, an affidavit of Rakesh Mohan Sharma, Superintendent, Central Jail, Jaipur has been filed and a copy of judgment and order dated 10.01.2020 in Sessions Case No. 204 of 2019 by the Court of Special Judge (Prevention of Sati) and Additional Sessions Judge, Jaipur Metropolitan has also been filed. A perusal of the material placed on record makes it clear that the appellant, with three other jail inmates, has been convicted by the Trial Court of the offence under Section 302/34 IPC for murder of another jail inmate, who was a Pakistani national in the high security cell of the prison; and that the appellant has been awarded the sentence of imprisonment for life. Though it has been pointed out that an appeal against the said decision is pending and we would not be making any comments on the merits of that case at all but, the appellant's culpable conduct in jail compels us to ponder over the question as to whether it would be realistic to believe on the probability of his reformation and rehabilitation yet.

54. We may also observe that even though rarest of rare doctrine and its accompanying principles, as enunciated and explained in Bachan Singh and Machhi Singh (supra), have been almost uniformly applied by Courts in the country while dealing with the question of sentencing when the statute provides for death penalty; and over the time, even the proposition of larger/longer term of actual imprisonment with no remission or curtailed remission has also evolved but, it has never been the effort of the Courts to somehow make this punishment (sentence of death) redundant and non-existent for all practical purposes. The quest for justice in such cases, with death sentence being awarded and maintained only in extreme cases, does not mean that the matter would be approached and examined in the manner that death sentence has be avoided, even if the matter indeed calls for such a punishment. The judicial process, in our view, would be compromising on its objectivity if the approach is to nullify the statutory provision carrying death sentence as an alternative punishment for major offences (like that of Section 302 IPC), even after it has passed muster of judicial scrutiny and has been held not unconstitutional. The pursuit in collecting mitigating circumstances could also not be taken up with any notion or idea that somehow, some factor be found; or if not found, be deduced anyhow so that the sentence of death be forsaken. Such an approach would be unrealistic, unwarranted and rather not upholding the rule of law.

55. An attempt has been made to suggest on behalf of the appellant that his overall conduct in prison is without any blemish except the allegation of his involvement in a case of murder. We could only wonder what more of criminal activity would qualify as blemish, if not the involvement and conviction in a case of murder of a fellow jail inmate! This is apart from the other 7 days' punishment earned by the appellant for quarrelling with another jail inmate.

56. We may also take into account another suggestion made on behalf of the appellant that his psychological evaluation report may be called.

56.1. In the case of Anil @ Anthony Arikswamy Joseph v. State of Maharashtra: 2014 (4) SCC 69, this Court observed that in appropriate cases, after conviction, the Court may call for report to determine whether the accused could be reformed or rehabilitated; and it would depend on the facts and circumstances of each case24. Again, there cannot be any universal formula for calling for a report in terms of the said decision in Anil. For example, in the present case, where the appellant is found to be indulging incessantly in criminal activities before the crime in question; has carried out gruesome deeds of the present crime; has further been 24 Vide paragraph 33, SCC p. 86.

involved in questionable jail conduct, including quarrelling with a fellow inmate and earning 7 days' punishment; and then, to cap it all, has been involved in an offence of no less degree than murder of another jail inmate, calling for any further report of the likelihood of reformation and rehabilitation of the appellant could be proposed only if the judicial process is determined to annul the death sentence altogether, by finding one way or the other to avoid the same in every case. Such an approach would be counter-productive to the entire system of maintenance of order in the society; and could be countenanced only if we would be inclined to think that whatever be the society's cry for justice, the statutory provision of death sentence should itself be given its interment or burial. Obviously, this approach would be squarely contrary to the statutory mandates as also the principles enunciated by multiple Constitution Bench decisions of this Court; and would strike at the roots of the rule of law. In the given set of circumstances of this case, the suggestions about calling for any so- called psychological evaluation report could only be termed as impractical and unrealistic and could only be rejected.

57. In the present case, where all the elements surrounding the offence as also all the elements surrounding the offender cut across the balance sheet of aggravating and mitigating circumstances, we are clearly of the view that there is absolutely no reason to commute the sentence of death to any other sentence of lesser degree. Even the alternative of awarding the sentence of imprisonment for whole of the natural life with no remission does not appear justified in view of the nature of crimes committed by the appellant and looking to his incorrigible conduct.

58. We may sum up thus: In the case of the present nature, the crime had been of extreme depravity, which shocks the conscience, particularly looking to the target (a seven-and-a-half-year old mentally and physically challenged girl) and then, looking to the manner of committing murder, where the hapless victim's head was literally smashed, resulting in multiple injuries including fracture of frontal bone. This is apart from the facts that the innocent victim was kidnapped on a stolen motorcycle by misusing the trust gained by offer of confectionary items and also, apart from the fact

that she was brutally and inhumanly raped. Taking up the test parameters pertaining to the criminal (i.e., the appellant), of course, he has a family with wife and minor daughter and aged father and the crime was committed when he was only 28 years of age. However, these mitigating factors are pitted against several other factors pertaining to the appellant himself. One, being of his activities and actions before the present crime where he was found involved in at least four cases with offences ranging from Section 3 of Prevention of Damage to Public Property Act, 1984, Section 379 IPC and even 307 IPC. Second, being the fact that the present crime itself was carried out with the aid of a stolen motorcycle. Third, and crucial one being his conduct post- conviction where he not only earned 7 days' punishment in jail for quarrelling with a co-inmate but he has been convicted of the offence of murder of another jail inmate. Read as a whole, the fact-sheet concerning the appellant leads only the logical deduction that there is no possibility that he would not relapse again in this crime if given any indulgence. A fortiori, there appears no probability of his reformation and rehabilitation. This possibility of the appellant relapsing in the same crime over again and nil probability of his reformation/rehabilitation is a direct challenge as also danger to the maintenance of order in the society. Hence, the facts of the present case, taken as a whole, make it clear that it is unlikely that the appellant, if given an absolution, would not be capable of and would not be inclined to commit such a crime again. Consequently, we find it to be a case of no other option but to confirm the death sentence awarded to the appellant, for that being inevitable in this particular case.

59. Before concluding on this matter, we deem it appropriate to put on record our appreciation for the learned senior counsel appearing in legal aid for the appellant who, despite having a tough brief to handle, has attempted his best to espouse the cause of the appellant. Conclusion

60. Accordingly, these appeals are dismissed; conviction of the appellant of offences under Sections 363, 365, 376(2)(f), 302 of the Indian Penal Code, 1860 and Section 6 of the Protection of Children from Sexual Offences Act, 2012 is confirmed; and the sentences awarded to the appellant, including the death sentence for the offence under Section 302 of the Indian Penal Code, 1860, are also confirmed.

.....J. (A.M. KHANWILKAR)1 .....J. (DINESH MAHESHWARI) .....J. (C.T. RAVIKUMAR) NEW DELHI;

JUNE 24, 2022