Haresh Mohandas Rajput vs State Of Maharashtra on 20 September, 2011

Equivalent citations: AIR 2011 SUPREME COURT 3681, 2011 AIR SCW 5414, AIR 2011 SC(CRI) 2165, 2011 (6) AIR BOM R 670, 2012 (2) AIR JHAR R 205, (2011) 10 SCALE 629, (2011) 4 CHANDCRIC 93, (2011) 4 RECCRIR 257, (2011) 50 OCR 603, 2011 ALLMR(CRI) 3593, (2011) 4 BOMCR(CRI) 604, (2011) 4 DLT(CRL) 42, 2011 CRILR(SC&MP) 828, (2011) 4 CRIMES 163, (2012) 1 MAD LJ(CRI) 117, (2011) 50 OCR 719, (2011) 2 CRILR(RAJ) 828, (2011) 4 CURCRIR 26, 2011 (12) SCC 56, 2011 CRILR(SC MAH GUJ) 828, 2011 CRI LJ (SUPP) 126 (SC), (2012) 109 ALLINDCAS 49 (SC), (2012) 76 ALLCRIC 269, (2011) 4 ALLCRILR 22, 2012 (1) SCC (CRI) 359, 2011 (4) KLT SN 48 (SC)

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Bench: B.S. Chauhan, P. Sathasivam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOs. 2030-2031 of 2009

Haresh Mohandas Rajput ...Appellant

Versus

State of Maharashtra ...Respondent

J U D G M E N T

Dr. B.S. CHAUHAN, J.

1. These appeals have been preferred against the impugned judgment and order dated 11.1.2008 in Criminal Appeal Nos.1020/2001 and 401/2002 of the High Court of Bombay in which the High Court has confirmed the order of conviction dated 19.9.2001 passed by the Additional Sessions Judge, Pune in Sessions Case No.41 of 2000 for the offences of rape and murder, however, altered the sentence of life imprisonment awarded by the Trial Court to death sentence while allowing the criminal appeal of the State for enhancement of punishment.

2. FACTS:

A. On 24.10.1999, Pooja, deceased, aged 10 years was playing on the road between her house and the house of the appellant at about 4 p.m. along with her brother Nitesh (PW.3) and sister. She was found missing by Nitesh (PW.3) who searched for her but in vain. Smt. Tara (PW.1) mother of Pooja, deceased, who had been away for work, on being informed came back and looked around but Pooja could not be traced. Smt. Tara (PW.1) reached the police station at 9.30 p.m. to lodge the First Information Report (hereinafter called the "FIR"). While Smt. Tara (PW.1) was still in the police station, Khushal (PW.10) son of the appellant arrived at the police station and informed the police that the appellant, who was addicted to liquor, told him that he had killed Pooja, deceased and her dead body was lying under the cot in his house. The police acted on the information and reached the spot and found that a large number of persons had gathered there and the appellant was sitting outside his home. B. The dead body of Pooja was recovered from the house of the appellant and panchnama was prepared. Appellant was arrested and after completing the investigation, the chargesheet was filed against him under Sections 302 and 376 of the India Penal Code, 1860 (hereinafter called "IPC") . During the trial, the prosecution examined a large number of witnesses in support of its case and after conclusion of the trial, the Trial Court vide judgment and order dated 19.9.2001 convicted the appellant and sentenced him to undergo life imprisonment under Section 302 IPC and 10 years imprisonment under Section 376 IPC. However, both the sentences were directed to run concurrently.

C. Being aggrieved, the State of Maharashtra preferred the appeal for enhancement of sentence and the appellant also filed an appeal against his conviction. The High Court vide impugned judgment and order dated 11.1.2008 upheld the conviction and enhanced the sentence to death penalty, while disposing of both the appeals.

Hence, these appeals.

RIVAL SUBMISSIONS:

3. Shri D.N. Goburdhan, learned counsel appearing for the appellant, has submitted that there is no evidence on record to connect the appellant with the crime. Circumstantial evidence was not to the

effect that it would indicate towards the guilt of the appellant in exclusion of any hypothesis of innocence. There are material inconsistencies in the statements of the witnesses which go to the root of the case. There is no sufficient evidence on record on the basis of which conviction of the appellant could be recorded. However, under no circumstance the High Court could be justified in enhancing the punishment from life imprisonment to death sentence. Thus, the appeals deserve to be allowed.

4. Per contra, Shri Arun R. Pednekar, learned counsel appearing for the State, has opposed the appeals contending that the courts below have taken into consideration a large number of circumstances which stood proved to establish the guilt of the appellant. The dead body of Pooja, deceased, was recovered from the house of the appellant. The medical report revealed that she had been killed by strangulation after being subjected to sexual assault. The inconsistencies in the statements of the witnesses, if any, are of trivial nature. The concurrent findings of facts recorded by the courts below on the basis of which the appellant has been convicted, do not require any interference. The appeals lack merit and are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record. FACTS UNDISPUTED:

6. Indisputably, the dead body of Pooja was found inside the house of the appellant with blood stains under the cot. There had been blood stains on the bed-sheet and on the floor underneath the cot. Appellant could not offer any explanation whatsoever as how the dead body of the victim girl could reach his house. More so, there is nothing on record to controvert the evidence of the doctor who conducted the post- mortem and opined that there had been sexual assault on the victim and she died of strangulation and there had been ligature marks on her neck. Appellant was present in his house when police arrived there. The alibi taken by the appellant that he had gone to a liquor shop for drinks leaving his house open remained unsubstantiated and was found to be false.

INJURIES:

7. Dr. P.D. Rokade, PW-7, conducted the post-mortem examination on 25.10.1999 on the body of Pooja and found the following injuries:

1. Contused abrasion over the labia majora from the junction behind the backwards size 1 x 0.25 cm/oblique.

2. Crescent marks on the labia majnora near the clitoris size 0.25 cm.

3. Abrasion with radial from the labia minora behind and backwards noted.

4. Four chit the torn radially and bruised.

5. Posterial commisure torn.

6. Hymen lacerated along 3 and 9 O'clock position.

Dr. P.D. Rokade (PW.7) found following injuries on external examination:

1. Contused abrasion left frontal eminence size 0.25 x 0.25 cms.

Single.

2. Crescent abrasion right upper lip lateral aspect size 0.5 x 0.25 cm. horizontal.

3. Contusion right ala of nose 0.5 x 0.1 cms.

4. Contusion right orbital plate 2 cms below the outer canthus, size 1 x 0.25 cms. Oblique.

5. Crescent abrasion right angle of mouth 0.25 x 0.25 cm .

6. Contused abrasion right cheek 4 in No.1 below another with 1 cm. apart oblique in direction of size 1.5 x 0.5 cm.

7. Ligature mark around the neck over the thyroid cartilage extending from left sternclodomastoid upto the right posterior triangle of neck size 15 cm. x 1.5 cm. on left and 1 cm. on right side.

8. Ligature mark is 7 cm. below left ear 6.5 cm. below chin and 8 cm. below right ear and is more prominent on left side.

9. Contusion right anterior triangle of neck 2 cm. x 0.5 cm. irregular.

10. Crescent abrasion over right forearm and wrist 7 in No. of 0.1 to 0.25 cm. and 1-2 cm. apart.

11. Crescent abrasion left forearm and wrist externally 2 in number 4 cm. part size 0.1 to 0.2 cm.

12. Old unhealed seen over the left knee with recent scab removal (granulate on tissue seen) size 2 x 1 cm. and 3 x 2 cm.

All the injuries were ante-mortem.

The doctor also opined that injuries to genitals mentioned in column no. 151 may be possible due to sexual assault. There injuries as well as internal injuries mentioned in para no. 20, organs of generations may be possible due to rape by a fully developed person by full penetration.

The age of the injuries was 24 hours before post-mortem examination. Injuries caused by finger nails referred above may be caused in sexual assault. Injuries mentioned in column no. 3 may be possible due to resistance during sexual assault.

The witness further opined that Pooja was raped and then murdered on 24.10.1999 between 4.00 p.m. to 10.00 p.m.

8. The instant case is based on circumstantial evidence as there is no eye-witness of the incident and the High Court has awarded the death sentence to the appellant. Thus, we have to examine as to whether the prosecution case meets the requirement of proof on circumstantial evidence and the facts of the case warranted the imposition of death sentence.

CIRCUMSTANTIAL EVIDENCE:

9. In Krishnan v. State represented by Inspector of Police, (2008) 15 SCC 430, this Court after considering a large number of its earlier judgments observed that when a case rests upon circumstantial evidence, such evidence must satisfy the following tests:

> (i) the circumstances from which an inference of guilt is sought to be drawn, must be cogently and firmly established;
>
> (ii) those circumstances should be of definite tendency unerringly pointing towards guilt of the accused;
>
> (iii) the circumstances, taken cumulatively, should form a chain so complete that there is no escape from the conclusion that with all human probability the crime was committed by the accused and none else; and
>
> (iv) the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence."

Though a conviction may be based solely on circumstantial evidence, however, the court must bear in mind the aforesaid tests while deciding a case involving the commission of a serious offence in a gruesome manner.

10. In Sharad Birdhichand Sarda v. State of Maharashtra, AIR 1984 SC 1622, this Court observed that it is well settled that the prosecution's case must stand or fall on its own legs and cannot derive any strength from the weakness of the defence put up by the accused. However, a false defence may be called into aid only to lend assurance to the court where various links in the chain of circumstantial evidence are in themselves complete. The circumstances from which the conclusion of guilt is to be drawn should be fully established. The same should be of a conclusive nature and exclude all possible hypothesis except the one to be proved. The facts so established must be consistent with the hypothesis of the guilt of the accused and the chain of evidence must be so complete as not to leave any reasonable ground for a 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. The Court also discussed the nature, character and essential proof required in a criminal case which

rests on circumstantial evidence alone and held as under:

> "(a) The circumstances from which the conclusion of guilt is to be drawn should be fully established;
>
> (b) 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;
>
> (c) The circumstances should be of a conclusive nature and tendency;
>
> (d) They should exclude every possible hypothesis except the one to be proved; and
>
> (e) 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."

11. A similar view has been reiterated by this Court persistently observing that the evidence produced by the prosecution should be of such a nature that it makes the conviction of the accused sustainable. (See: Paramjeet Singh @ Pamma v. State of Uttarakhand, AIR 2011 SC 200; Wakkar & Anr. v. State of Uttar Pradesh, (2011) 3 SCC 306; Mohd. Mannan @ Abdul Mannan v. State of Bihar, (2011) 5 SCC 317; Inspector of Police, Tamil Nadu v. John David, (2011) 5 SCC 509; and SK. Yusuf v. State of West Bengal AIR 2011 SC 2283).

DEATH SENTENCE - WHEN WARRANTED:

12. The guidelines laid down in Bachan Singh v. State of Punjab, AIR 1980 SC 898, may be culled out as under:

"(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 alongwith 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 just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised."

13. In Machhi Singh & Ors. v. State of Punjab, AIR 1983 SC 957, this Court expanded the "rarest of rare" formulation beyond the aggravating factors listed in Bachan Singh to cases where the "collective conscience" of a community is so shocked that it will expect the holders of the judicial powers centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, such a penalty can be inflicted. But the Bench in this case underlined that full weightage must be accorded to the mitigating circumstances in a case and a just balance had to be struck between aggravating and mitigating circumstances.

14. "Rarest of the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful co-existence of the society. The crime may be heinous or brutal but may not be in the category of "rarest of the rare case". There must be no reason to believe that the accused cannot be reformed or rehabilitated and that he is likely to continue criminal acts of violence as would constitute a continuing threat to the society. The accused may be a menace to the society and would continue to be so, threatening its peaceful and harmonious co-existence. The manner in which the crime is committed must be such that it may result in intense and extreme indignation of the community and shock the collective conscience of the society. Where an accused does not act on any spur-of-the-moment provocation and indulges himself in a deliberately planned crime and meticulously executes it, the death sentence may be the most appropriate punishment for such a ghastly crime. The death sentence may be warranted where the victims are innocent children and helpless women. Thus, in case the crime is committed in a most cruel and inhuman manner which is an extremely brutal, grotesque, diabolical, revolting and dastardly manner, where his act affects the entire moral fiber of the society, e.g. crime committed for power or political ambition or indulge in organized criminal activities, death sentence should be awarded. (See: C. Muniappan & Ors. v. State of Tamil Nadu, AIR 2010 SC 3718; Rabindra Kumar Pal alias Dara Singh v. Republic of India, (2011) 2 SCC 490; Surendra Koli v. State of UP & Ors., (2011) 4 SCC 80; Mohd. Mannan (supra); and Sudam @ Rahul Kaniram Jadhav v. State of Maharashtra, (2011) 7 SCC 125).

15. Thus, it is evident that for awarding the death sentence, there must be existence of aggravating circumstances and the consequential absence of mitigating circumstances. As to whether death sentence should be awarded, would depend upon the factual scenario of the case in hand.

16. The instant appeals are required to be decided in the light of the aforesaid settled propositions of law.

CIRCUMSTANCES:

17. The following circumstances have been taken into consideration by the courts below while convicting the appellant:

(1) Incident occurred in the house of the appellant. (2) Appellant was present at his house when the children were playing.

(3) Appellant had an opportunity to take Pooja inside the house.

(4) During play Pooja was found missing.

(5) Nitesh (PW.3) saw Pooja in the house of the appellant and asked him about it and he denied.

(6) Appellant admitted before his mother and son Khushal (PW.10) to have killed Pooja.

(7) Khushal (PW.10) had given information at the Police Station that his father/appellant killed Pooja and put the dead body below the cot in his house.

(8) Police Head Constable G.R. More (PW.4), Ashok (PW.2) and Deepak Jawahar Agarwal (PW.8) went to the house of the appellant and recovered the dead body of Pooja.

Explanation given by the appellant that he had gone to liquor shop for drinking leaving his house open was not found to be acceptable.

(9) Recovery of rope used in the crime at the instance of the appellant from his house.

(10) Person other than the appellant had no opportunity to commit the crime.

18. So far as the first circumstance is concerned, material on record reveals that:

I. Pooja's dead body was found in the house of the appellant.

II. Ashok (PW.2) who took out the dead body stated that the frock and knickers of the deceased were stained with blood. III. Clothes of the deceased were seized under panchanama Ex.20. Panchanama also shows that the clothes were stained with blood. Ravindera Pawar, PSI who conducted this panchanama has also stated about this fact. Cloth pieces and bed sheet as well as the frock and knickers sent for chemical analysis.

IV. As per the Chemical Analysis Report, Ex.49, these articles were having human blood.

V. The medical evidence referred earlier as well as inquest panchanama, the admitted document, point out that Pooja was sexually assaulted before murder.

> VI. Spot panchanama Ex.24 stood proved through panch witness Mohd. Sharif. This witness has stated that there was a bed sheet on the cot and it was having blood stains over it. The blood stains were also found below the cot on the floor. VII. The bed sheet as well as two cloth pieces having blood stains were seized by the police.

19. There is no reason to disbelieve the above evidence/factors. Moreover, this aspect has not been challenged by the appellant at any stage of the proceedings. The fact that blood was found on the bed sheet, on the cot as well as on the floor below the cot clearly indicates that the incident occurred there only. It is very unlikely that the culprit committed the heinous act elsewhere and then placed Pooja's dead body in appellant's house.

20. It has come on record that after finding Pooja missing, her brother Nitesh (PW.3) searched for her. On receiving the information that Pooja was missing her mother Smt. Tara (PW.1) came and searched for her. In such a fact-situation, where people came to know about the disappearance of Pooja within a very short span of time, the culprit could not have had any opportunity to transfer the body from any other place to the appellant's house. It was on the basis of the above that the courts below came to the conclusion that Pooja was raped and murdered in the house of the appellant. The appellant in his examination under Section 313 of Code of Criminal Procedure, 1973, (hereinafter called `Cr.P.C.), while answering Question Nos. 27, 28 and 29 himself admitted that he was sitting outside his house when the police arrived. The police had searched his house and the dead body of Pooja lying below the cot in his house was recovered. We do not see any cogent reason to interfere with finding of facts recorded by the courts below on this count.

21. The second circumstance against the appellant had been that he was present at the place of occurrence when the children were playing. Both the courts below have appreciated the evidence on record particularly deposition of Nitesh (PW.3) and held that appellant was present at the place of occurrence at the relevant time. Nothing could be brought to our notice to contradict the findings of the courts below. Of course, the Trial Court did not accept the evidence of Nitesh (PW.3), 12 years old child to the extent that the appellant had offered chocolates to him and Pooja, though Pooja had accepted it but Nitesh (PW.3) did not accept the same. The High Court while dealing with the evidence of Nitesh (PW.3) held that the children had been playing in front of his house and the appellant had called them and given them chocolates. Discrepancy remained regarding acceptance of chocolate by Nitesh (PW.3), which of course, is not relevant enough for the case taking into consideration the other circumstances.

22. So far as the third circumstance is concerned, admittedly, appellant had been living for a long long time in close vicinity of the house of Pooja, deceased and was very well acquainted with the victim as well as her family members. The admitted fact remained that appellant's mother and son, who were the other inmates of his house, had gone out to procure the medicines to cure his addiction and on the fateful day, appellant was alone in his house. The children had been busy in running here and there as they were playing hide and seek. Thus, it was not possible in such a fact-situation that every child could remain attentive on every moment about other children. Such circumstance gives an opportunity to a person having evil design. Thus, appellant had an opportunity to take the victim Pooja inside the house.

23. The fourth circumstance stood fully proved by the evidence on record, particularly by the depositions of Smt. Tara (PW.1) and Nitesh (PW.3). Nitesh (PW.3) deposed that as Pooja had disappeared he searched for her and as he could not find her out, he went to inform his mother Smt. Tara (PW.1), who at that relevant time had been at Shagun Chowk. Smt. Tara (PW.1) came back and searched for Pooja. More so, this part of the prosecution case has never been challenged by the defence and it stands proved that Pooja disappeared while playing in front of the house of the appellant that evening.

24. The fifth circumstance had been that Nitesh (PW.3) saw Pooja in the house of the appellant and on being asked, the appellant denied her presence. Nitesh (PW.3) is a child witness as at the relevant time he was 12 years of age. When he noticed that Pooja was not seen at the place of play he searched for her and asked in the neighbourhood and when he could not trace her, only then he went to inform his mother Smt. Tara (PW.1) at Shagun Chowk and returned with her. They both searched for Pooja and as they failed to find her out, Smt. Tara (PW.1) went to the police and Nitesh (PW.3) stayed at home. Up to this extent, the prosecution case has not been challenged by the appellant. Nitesh (PW.3) has deposed that after his mother left for the police station, his friend came and told him that his sister was in the house of the appellant. So, Nitesh (PW.3) went there from the back side of the house and saw Pooja lying in the room. He went to one Semabai and told her about it. Semabai entered the house from the backside of the house of the appellant, however, could not see Pooja there. Nitesh (PW.3) asked the appellant about Pooja but he denied that she was there. The Trial Court after appreciating the entire evidence on the issue came to the conclusion that it was nothing but an imagination of Nitesh (PW.3) and this circumstance was not proved. We have examined the evidence of Nitesh (PW.3) on this issue and we are of the considered opinion that conclusion reached by the Trial Court on the issue is correct and does not require any interference.

25. Circumstance No.6 relates to an extra-judicial confession by the appellant before his mother and son Khushal (PW.10) to the extent that he had killed Pooja. According to the prosecution, Khushal (PW.10) alongwith his grandmother had gone to Kalyan and returned in the night and found that the lights of the house were off and the appellant was present therein. The appellant became annoyed as Khushal (PW.10) put on the lights and so Khushal (PW.10) put the lights off. When he again put on the lights the appellant became very angry, on this the appellant's mother came in and at that time the appellant told them that he had committed the murder of Pooja and threatened them not to disclose to anybody. Khushal (PW.10) ran out of the house, went to the police station and revealed this fact. The prosecution examined Khushal (PW.10), however, he was declared hostile. Appellant's mother was not examined. Thus, the issue of extra-judicial confession was not proved. There is not enough evidence on record to prove this circumstance against the appellant

26. So far as the other part of this issue that Khushal (PW.10) had informed the police that the dead body was lying below the cot in his house, the courts below appreciated his evidence with full care and caution, being a hostile witness, as Khushal (PW.10) denied that he had gone to the police station in the night and gave information. The Trial Court came to the conclusion that evidence of Smt. Tara (PW.1), Ashok (PW.2), Deepak Jawahar Agarwal (PW.8), and G.R. More (PW.4) were enough to establish that when police was recording the complaint of Smt. Tara (PW.1), Khushal (PW.10) reached the police station crying and told them that his father had killed Pooja and kept the

dead body below the cot in his house. None of the aforesaid witnesses had any animosity with the appellant and thus, there could be no reason to enrope him falsely. The evidence on this point particularly, is nowhere shakened during their cross-examination. The information was given to the police in close vicinity at the time of commission of the crime, though exact time of death is not known. The courts below found the circumstance fully proved and we concur with the said finding.

27. So far as the eighth circumstance is concerned, it relates to the recovery of the dead body of Pooja from the house of the appellant. It is admitted in view of the depositions of Ashok (PW.2), G.R. More (PW.4) and Deepak Jawahar Agarwal (PW.8) that the dead body of Pooja was recovered from the house of the appellant. According to Deepak Jawahar Agarwal (PW.8), he had gone to police station along with Smt. Tara (PW.1) and it was in his presence that Khushal (PW.10) has reached the police station and revealed that his father had killed Pooja and dead body was lying below the cot. He has further deposed that they came with the police to the house of the appellant and entered his house. During search, Ashok (PW.2) father of the deceased saw the dead body. It was taken out and put on a handcart. The appellant was standing in front of the house and the police caught him. In the suggestion put to him, he has denied that he was deposing falsely. Ashok (PW.2), father of Pooja, deceased has corroborated the evidence of Deepak Jawahar Agarwal (PW.8) fully to the extent that he was also at the police station when Khushal came and revealed the fact that his father had killed Pooja. He further deposed that he along with the policemen, entered the house of the appellant and recovered the dead body of his daughter, Pooja as it was lying below the cot in the house of the appellant. Similarly, G.R. More (PW.4), Head Constable had deposed in this regard that he entered the house of the appellant along with Ashok (PW.2) and Deepak Jawahar Agarwal (PW.8). They searched the house and saw that a girl was lying below the cot therein. Ashok (PW.2) had taken her out. She was motionless. She was kept on a handcart. Appellant has admitted the recovery of Pooja's body from his house while answering Question No.29 in his examination under Section 313 Cr.P.C. Thus, this circumstance to the extent that the dead body was recovered from the house of the appellant stood fully proved.

The explanation furnished by the appellant that he had gone to liquor shop for drinks leaving his house open, had to be proved by him in view of the provisions of Section 106 of Indian Evidence Act, 1872, which he miserably failed and the courts below have disbelieved him. Learned counsel for the appellant could not point out any single evidence on the basis of which a contrary inference can be drawn.

28. The recovery of rope used in the crime has been disbelieved by the Trial Court on the ground that such ropes were easily available in the market. Rope so recovered did not contain any special mark for identification. The police had entered the house prior to Panchanama. Therefore, it could not be established that the same rope had been used while committing the crime. Death was caused by strangulation. Though the High Court has found sufficient material to believe the recovery of the rope but in view of the fact that there was nothing on record to show that same rope had been used for committing the crime, the finding so recorded by the High Court loses significance.

29. This brings us to the next circumstance as to whether any other person had an opportunity to commit the crime. The dead body was found from the house of the appellant. Any outsider may not

know that the appellant's mother and son had gone out and they would not return till night. The outsider must not have an idea that house was lying open and no person was present inside. It is not probable that a person having no concern with such a house would dare to take a girl inside the house to fulfill lust and to kill her. The rape was committed on the cot that is why blood stains were found on it. No outsider could have committed rape so comfortably using the cot in someone else's house. The dead body was found below the cot that indicates that the accused attempted to conceal the body. Had any outsider done it, after committing the crime he would have run away leaving the dead body on the cot itself as he would have no reason to be afraid of search and trace of the dead body. In fact, such a fear exists in the mind of a person to whom the house belongs. The outsider would not make any attempt to conceal the dead body, as his prime concern remains to run away after commission of the crime.

The evidence led by the prosecution clearly establishes the aforesaid circumstances.

30. Out of the aforesaid circumstances, only a very few which are immaterial and are not vital to determine the case, stood fully proved against the appellant. In such a fact-situation, we do not find any cogent reason to interfere with the well-reasoned judgments of the courts below so far as the conviction of the appellant is concerned, and we affirm his conviction under Sections 302 and 376 IPC.

So far as the sentence part is concerned, in view of the law referred to hereinabove, we are of the considered opinion that the case does not fall within the "rarest of rare cases". The High Court was not justified in enhancing the punishment. Thus, in the facts and circumstances of the case, we set aside the punishment of death sentence awarded by the High Court and restore the sentence of life imprisonment awarded by the Trial Court.

With this modification, the appeals stand disposed of.

.....J. (P. SATHASIVAM) .....J. (Dr. B.S. CHAUHAN) New Delhi, September 20, 2011