

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CONFIRMATION CASE NO. 1 OF 2019**

The State of Maharashtra
(Through P.S.O. Kasarvadavali Police
Station C.R.No.I-306/2013) ... Appellant.

V/S.

1. Ramkirat Munilal Goud,
Age : 30 years, Occu.: Nil,
R/o. Chawl of Manera,
Near Unnati Woods, Transit Camp,
Anand Nagar, Ghodbunder Road,
Dist. Thane. ... Respondent.

**WITH
CRIMINAL APPEAL NO. 661 OF 2019**

Ramkirat Munilal Goud,
Age : 30 years, Occu.: Nil,
R/o. Chawl of Manera,
Near Unnati Woods, Transit Camp,
Anand Nagar, Ghodbunder Road,
Dist. Thane. ... Appellant
(Orig. Accused)

V/S.

1. The State of Maharashtra
(Through P.S.O. Kasarvadavali
Police Station C.R.No.I-306/2013)
2. Manoj Bhaskar Sadavarte,
Age – 50, Occu.: Nil,
R/o. Junha Waghabil gaon,
Banjari Chawl, Laxminagar,
Thane (West). ... Respondents

Mr. Sachin R. Pawar a/w Mr. Nikhil Mallewar a/w Rohan Dilip Kaiche a/w Amjith Anandhan for the Respondent in Conf. Case No.1 of 2019 and for the Appellant in Appeal/661/2019.

Ms. M.M. Deshmukh, APP for the State.

Ms. Rebeca Gonsalvez, Advocate appointed for Respondent No. 2 in Cr. Appeal No. 661/2019.

**CORAM : SMT. SADHANA S. JADHAV &
PRITHVIRAJ K. CHAVAN, JJ.**

RESERVED ON : OCTOBER 26, 2021.

PRONOUNCED ON : NOVEMBER 25, 2021.

JUDGMENT (PER SMT. SADHANA S. JADHAV, J)

“A bud of rose was crushed before it bloomed, a kite was torn when about to fly, the budding flower was crushed to ashes and the kite took the soul away.”

This is yet another sad saga of a three year old girl child, who was playing with her little dog, when she was noticed by a knave man who was driven by a desire of lust upon the sight of a little happy harmless child playing in her own world.

2 The State is seeking confirmation of the death sentence passed by District Judge-7 & Special Judge under POCSO Act, Thane in Special Case (Child Protection) No138/2013 vide Judgment and Order dated 8/3/2019. Criminal Appeal No. 661 of 2019 is an appeal filed by a convict who is directed to be hang by the neck till he is dead for having committed

offences punishable under section 302, 363, 376 (2) (i), 201 of the Indian Penal Code and section 4 and 8 of Protection of Children from Sexual Offences Act, 2012 by District Judge-7 & Special Judge under POCSO Act, Thane in Special Case (Child Protection) No138/2013. The operative order reads thus :

1. Accused Ramkirat Munilal Goud, aged 30 years is hereby convicted as per section 235(2) of the Code of Criminal Procedure for the offence punishable under Sections 302, 363, 376(2)(i), 201 of Indian Penal Code and offence punishable under Sections 4 and 8 of the Protection of Children from Sexual Offences Act, 2012.
2. Accused is hereby convicted as per Section 235(2) of the Code of Criminal Procedure Code for the offence punishable under Section 302 of Indian Penal Code and be hanged by neck till he is dead.
3. Accused is hereby sentenced to suffer rigorous imprisonment for life which shall mean imprisonment for the remainder of his natural life and to pay fine of Rs. 5,000/- (Rupees Five Thousand only) for the offence punishable under section 376(2)(i) of Indian Penal Code. In default of payment of fine, shall suffer rigorous imprisonment for one year.
- 4 Accused is sentenced to suffer rigorous imprisonment for 5 years and shall pay fine of Rs. 5,000/- (Rupees Five Thousand only) for the

offence punishable under section 363 of IPC. In default of payment of fine shall suffer rigorous imprisonment for 6 months.

5. Accused is sentenced to suffer rigorous for 3 years and shall pay fine of Rs. 5,000/- (Rupees Five Thousand only) for the offence punishable under section 201 of IPC. In default of payment of fine, shall suffer rigorous imprisonment for 6 months.”

3 The facts of the case in a nutshell are that-

On 30/09/2013 Miss Y, a little three year and nine months old girl ventured out of her house to play with her dog. She did not return home. Her father searched for his daughter in the neighbourhood. He saw his dog tied in the watchman chawl. He lodged a missing report, and the investigation was set into motion. On 2/10/2013 at about 2 p.m., the police called upon PW. 1 to identify the dead body of a child lying in a mud pond. On 3rd October accused was arrested. The autopsy on the dead body of the child showed that she had been brutally sexually abused before she was put to death. The cause of death was “death due to head injury with extensive genital injuries.” The accused was charge-sheeted for offence punishable under section 302, 363, 376 (2) (i), 201 of the Indian Penal Code and section 4 and 8 of Protection of Children from Sexual Offences Act, 2012.

4 At the trial, the prosecution examined as many as 18 witnesses to bring home the guilt of the accused. PW.1 happens to be the unfortunate father of the deceased. He has deposed before the court that he works as a painter and resides with his mother, his wife had withdrawn herself from the society of her husband since two years. On 30th September 2013 at about 10 a.m. his mother had gone to fetch water, thereafter he left the house for his own work. When he returned after 15 minutes, he found that his daughter and his dog was missing. When he was searching for his daughter, the people in the neighbourhood told him that they had seen his daughter playing with the dog in front of his house. He then saw his dog tied in front of one of the tenements of watchman's chawl. He noticed that the legs of his dog were smudged with mud. He then lodged a missing complaint which is at Exh. 20.

5 After some time, he revisited the watchmen chawl to once again inquire about his missing daughter since, he had found his dog in the said vicinity. He saw a man and noticed that his legs were smudged with mud. He inquired with him, but in vain. With a heavy heart he has deposed in the court that he has identified the body of his daughter in the mud pond. He expressed his suspicion to the police, in respect of a man, who was standing in the vicinity of watchman chawl, clad himself in a lungi, standing on a dry surface with muddy legs and seemed to be disturbed when inquired about the girl

child.

6 In his deposition, he had named the persons with whom he had inquired. One Mrs. Shukla and her family members claimed to have seen a girl playing with a dog. They had noticed that the girl was not wearing anything besides a full sleeves T-shirt. He was sure that it has to be his daughter because his daughter was not wearing the undergarment since the beginning. Along with the police, P.W.1 went to a locked room which was opened by the police. They noticed blood-stains and hair on the spot. Thereafter, his supplementary statement was recorded in which he levelled allegations against the accused-appellant.

7 It is elicited in the cross-examination that the breed of the dog was Labrador. P.W. 1 has denied the suggestion that he had not suspected anybody on 30/09/2013 but admits that he has not given the name of the accused. It is also elicited that when he saw the dead body it was swollen. There were signs of nibbling by the aquatic creatures on the dead body and it was partially decomposed. He had identified the earrings adorned by his daughter. He admits that he has not seen the accused in the said area prior to the incident. He had been called for the test identification parade, however the accused was not present in the test identification parade.

8 It is also elicited in the cross-examination that nobody had told him about any person accompanying or taking away his daughter. The police had not called upon him to identify the accused in jail. As far as the topography of his house is concerned, he has stated that on the western side of his house there is cattle-shed, a brick-kiln and Asha Kirana Store and in the same area, there are 50 to 60 rooms where his dog was tied.

9 PW. 2 Mujammil Daire is a panch for seizure of the clothes of the deceased and 9 sealed bottles of samples. PW 3 Umashankar Pal is a panch for the spot where the dog was tied. The said spot was shown by the complainant and the said spot panchnama is at Exh 30. The spot panchnama speaks volume for itself, which is proved by the panchas. PW. 4 Rohidas Rathod who was a panch while conducting the panchnama of a room in Manera chawl. The room was closed by a wooden ply. In that room, they noticed bloodstains on coba flooring. Four long hair and four small hair were seized. PW5 Devidas Kale is the mason who had scraped the blood stain from the coba flooring, PW 6 Navnath Wagh is panch for the recovery of the dead body from a puddle. According to him, the swollen body was floating. The body was removed with the help of fire brigdade. They have noticed that there were marks indicating that a dog had gone to and fro from the pond.

The girl was wearing the pink colour T-shirt with no undergarments. The road leading to the pond was a muddy footway. PW 8 Archana Singh is a panch for inquest panchnama. She was residing in front of the house of the deceased. According to her, the dead body was swollen, her ears eyes and private parts were decomposed. She had noticed injury on her head and private part.

10 PW.9 Dipendra Kumar Shukla was residing in the transit camp in front of Unnati Woods. According to him, the face of the accused was familiar, but he was not acquainted to him. According to him the accused was residing in the same chawl along with his father, brother and four to five other people. According to him he had seen the deceased passing his house along with a dog at about 11.30 to 12.00 and about 1.00 p.m he saw the dog wandering on the road unaccompanied by the girl and at that very moment he had seen the accused coming out of bushes. He had seen the accused in uniform and at 4.00 p.m. he learnt that people were searching for that girl. It is elicited in the cross examination that there are 10 to 12 chawls in between Unnati Woods and transit camp. He had identified the girl in the photograph shown to him. The statement of the witnesses was recorded on 3rd October, 2013.

11 PW.14 Pradip Kumar Rawat is examined who claims to have seen the accused along with the girl at about 12.10 p.m.

12 Upon perusal of Exh. 90, it appears that since the perpetrator of crime was unknown, the investigating officer had got 30 watchmen medically examined, in order to ascertain whether any of them had sexually abused the child. It is pertinent to note that the father of the present convict, Munnilal Faku Gaud and brother of the convict Shamkirat Munnilal Gaud were also examined. It is not known as to why the convict was not examined on that day. The samples of their blood and semen as well as nails and hair were taken and sent to the Forensic Laboratory on 7/10/2013.

13 The accused was shown to be arrested on 3rd October, 2013. On 2nd October, 2013 the autopsy was performed on the dead body of the victim between 10 p.m. to 11.15 p.m. by P.W. 11 Dr. Sadanand Bhise. The observations made by the doctor at that time are reproduced herein:

“2. Rigor mortis is passed off. Facial features bloated. Body is in advanced state of decomposition. Eyes swollen and protuded tongue is protuded and bulging out. Body swollen greenish discolouration of skin at places marbling over chest abdomen, upper and lower limbs. Upper limbs are fixed at elbow joint, lower limbs are fixed at knee joint. Identifiable

scalp hairs blackish in colour easily pluckable facial features identifiable maggots are of size 1 cm in length crawling over body at places foul smell is perceived distention of abdomen seen peeling of skin over palm, chest, abdomen, back and lower extremities perianal region swollen anal canal, anus, vagina, dilated. Laceratio of posterior vaginal wall communicating with anal canal with intestines protuded out. Post-mortem lividity cannot be appreciated due to greyish green discolouration.

3 On examination of external genitals, it was found that libia majora surface is contused at places libia minora surface is hemorrhagic. Perineal tear communicating with opening of anus of size 3 x 2 cm markings irregular hemorrhagic exposing underlying muscles.”

This is an indication of the fact that the victim was brutally ravished before she was put to death. The cause of death as opined by P.W. 11 is death due to head injury with extensive genital injury.

14 The fact that identifiable maggots were seen crawling over the body, would show that the incident of rape and death of the victim was 3 days old and this has to be read in consonance with the fact that P.W. 10 had observed injuries on the foreskin of the penis of the accused which were 4-5 days old as he was examined on 3rd October, 2013. It is further pertinent to note that the accused has not offered any explanation for the injuries

sustained by him.

15 It is true that the present case rests on circumstantial evidence.

The circumstances are as follows :

1 P.W. 1 the complainant has categorically stated that in the course of searching his daughter, he had seen that his dog was tied to a window in front of a room in the watchman chawl. The legs of dog were smudged by mud.

2 On the same day at about 2 p.m., he revisited watchmen chawl to search for his daughter and he saw the accused standing behind his house. He was clad in a lungi and banian at that time. P.W. 1 has specifically observed that there was mud smudged on his legs too.

3 P.W. 1 had enquired with the accused whether he had seen the missing child but there was no reply, whereas other people in the neighbourhood had candidly told the complainant that at about 12 p.m. they had seen a little girl playing with the dog in that area. The complainant has also named the people who had told him about the same including P.W. 3 Uma Shankar Pal.

4 P.W. 14 Pradeep Kumar Rawat has deposed before the Court that

on 30th September, 2013 he was also working in phase II B-3 Unnati Woods as a watchman, whereas the accused was working as a watchman in Phase II B-5 and therefore, he was acquainted with the accused. Moreover, the accused was residing just 4-5 rooms away from P.W. 14. On 30th September, 2013 the accused had left for lunch break at about 12 noon. P.W. 14 had also proceeded for lunch and on the way he had seen the accused alongwith a small girl and an English dog standing on the road which was leading towards the forest and at that time, the accused was in his uniform.

5 The evidence of P.W. 1 and P.W. 14 is corroborated by P.W. 15 Sanjay Rawat who was also working as a watchman in Phase I building No. 3 of Unnati Woods. At about 1 p.m. on 30th September, 2013 he had seen a person with long hair enquiring with the accused the whereabouts of his daughter in the words "*Kutta edhar he to bacchi kidhar hai*" and at that time the accused was clad in a lungi.

6 This is further corroborated by the evidence of P.W. 17 Anil Singh who was working in Maharashtra Guard Force Security and was a rounder/supervisor in Unnati Woods. He was acquainted with the accused who had joined the duties just 6 to 7 days before the incidence, but his father Munnilal was working there for more than 2 years. The

duty of the accused was between 8 a.m. to 8 p.m. on 30th September, 2013. The accused was assigned duty in Phase II building No. 5 on that day. The police had been to Unnati Woods and had taken some of the watchmen with them for enquiry. On 1st October, 2013 at about 8.20 a.m. P.W. 17 noticed that the father of the accused was working on gate No. 4, but the accused was absent. He therefore, asked his father Munnilal to call his son. The accused met P.W. 17. Upon enquiry, as to why he had not attended the duty, the accused had replied that he was under stress. P.W. 17 had still asked him to join the duties which he denied and he informed P.W. 17 that he desires to return to his village immediately.

16 It is surprising that the witness has been declared hostile. We have perused the statement of P.W. 17 which was recorded under section 164 of the Code of Criminal Procedure, 1973, which shows that P.W. 17 had disclosed that the accused had in fact contended that he was under stress and therefore, had not attended the duty. He had further disclosed in his Statement under section 164 that he has told the accused that he would not have been relieved of stress by remaining at home and therefore, he had resumed the duties. The said contention is elicited in the cross-examination of P.W. 17. In the cross-examination by the prosecutor, the P.W. 17 has

further disclosed that the accused had divulged to him that he has committed a great blunder and therefore, he desires to return to his village. He had further divulged to P.W. 17 that the police had called him for enquiry on the previous day and it is in the same context that he has committed the blunder. In fact, P.W. 17 had also placed on record the attendance register which is marked as Articles G and H. The said register indicates that on 30th September, 2013 the accused was marked present. He was also marked present on 1st, 2nd and 3rd October, 2013. It is in these circumstances that P.W. 17 has stated that upon his directions, accused had attended his duties.

17 It is elicited in the cross-examination of P.W. 17 that the police had taken the accused for enquiry on 1st October, 2013. It is admitted by P.W. 17 that he had not disclosed about the confession of the accused to anybody till his statement was recorded by police.

18 He had admitted to have stated portion marked "A" read over to him which shows that P.W. 17 had disclosed to the police that the accused had told him that he was not attending the duties since he was under stress.

19 The evidence adduced by the prosecution would indicate that the accused was last seen with a small girl and the dog in the afternoon after 12 p.m. i.e. after he was relieved for lunch.

20 Upon meticulous appreciation of the evidence of P.W. 1, P.W. 14, P.W. 15 and P.W. 17, it is clear that the testimony of none of these above mentioned witnesses has been shattered by way of cross-examination. It is clear that the sterling testimony of P.W. 1, P.W. 14, P.W.15 and P.W. 17 deserves to be relied upon.

21 The said evidence would establish that the accused was lastly seen with a child who was found dead soon thereafter. This has to be read in consonance with the fact that the dog was tied to the window of a room just next to the house of the accused.

22 Apart from last seen, the scene of offence panchanama as drawn by the Investigating Agency is further substantiating the case of the prosecution observed hereinbelow:

(i) On 3/10/2013, the police had visited the watchman chawl in the transit camp. It was noticed that the first room in the chawl had no doors. It was filled with garbage. Room No. 2 was opened by the police. It was admeasuring 10 x 10 ft. In the north-east corner there was a small washing place admeasuring 3 x 2 sq.ft.. Just 2 ft. away from the door there were blood stains and some other stains, a sheet of jute, a purple colour shirt and some hair. There was cement

flooring. Blood stains on the cement flooring was scraped.

- (ii) The accused was residing in room No. 4 i.e. next to the room from where the blood stains were recovered.
- (iii) In the course of investigation, P.W. 1 has stated that he had seen the spot where his dog was tied and that was Room No. 2 of the said chawl.
- (iv) The spot panchanama Exh. 30 drawn on 1/10/2013 would show that there were marks of the scratches made by a dog on the wall below the window of Room No. 2. That P.W. 14 had seen a little girl playing with the dog in the space adjoining the chawl. At a distance of 10 ft. there are bushes and some agricultural tracts.
- (v) P.W. 4 Rohidas Rathod has proved the scene of offence panchanama which is at Exh. 34 of the room where four long hairs and small hairs and some blood stains were found on cement coba. Investigating agency had called upon a mason i.e. P.W. 5 Devidas Kale to scrap blood stains from the cement coba. It is elicited in his cross-examination that the said room was in a dilapidated condition.
- (vi) The dead body was found on 2/10/2013 in a pond behind Unnati Wood society in an agricultural land. The said pond was admeasuring about 25 x 15 ft. There was moss in the said pond. The dead body was swollen. It was in a decomposed state. There is

a muddy footway adjoining the pond and foot prints of a dog are clearly seen. This would indicate that a dog had run to and fro from the pond. There are bushes all around the pond.

- (vii) The recovery of articles from room No. 4 at the instance of the accused would show that there was a recovery of clothes of the accused. The lungi was also recovered. All the articles were sent for forensic analysis and it was noticed that there were blood stains on the lungi. This would corroborate the fact that P.W. 1 had noticed the accused in a lungi near the chawl at about 2 p.m.
- (viii) P.W. 9 Dipendra Kumar Shukla had seen the small girl playing with a dog at about 12 p.m. but after he returned from work he saw the dog wandering on the road but the small girl was not with the dog. At that very moment he had seen the accused arriving from the bushes. He was wearing watchman uniform at that time. The said bushes are near Unnati Woods. According to P.W.9, the distance between Unnati Wood and transit camp can be covered within 2 minutes.
- (ix) A pair of shoes of the accused were seized. There was mud on the sole of the shoes. The same was sent for chemical analysis alongwith the sample of earth collected from near the pond. The CA report(Exh. 105) shows that the earth collected from the pair of

shoes tallies with the earth which was collected from the scene of offence in respect of hue, physico chemical characteristic and spectro chemical composition. This by itself would show that the accused had rather visited the muddy space near the pond. In fact, he did not have to cross that passage to reach to his house in lunch time, neither the said passage was intervening his house and the location of his job.

23 In the present case, apart from circumstantial evidence, the medical evidence also assumes importance. All the above mentioned evidence has to be read alongwith the medical evidence which connects the accused with the alleged incident. The accused was taken for medical examination on 4/10/2013. The accused was examined by P.W. 10 Dr. Mahendra Kendre on 4th October, 2013. He had got the accused examined by Dr. Rokade who happens to be a Surgeon for the injuries on his genitalia. Upon clinical examination by Dr. Rokade, it was observed that there was abrasion on foreskin and congestion of glance penis. It was further opined that the age of injury was 4 to 5 days old. The medical certificate is at Exh. 53. There is nothing on record to deny the said opinion of P.W. 10 and Dr. Rokade. The accused has not assigned any reason for the injuries on his private parts. The said injuries go unexplained. However, it would go to

show that the accused has had sexual intercourse with a small child 3 to 4 days ago. At this juncture, learned Counsel for the appellant in Criminal Appeal No. 661 of 2019 has stated that there are certain interpolation in the said certificate, so much so, that the handwriting in which the opinion of Dr. Rokade is mentioned is at variance with the handwriting on the said certificate and it is shown to be a part of Exh. 53. The advocate for the appellant vehemently submits that Dr. Rokade has not been examined to prove the said injuries.

24 This again is further corroborated by the evidence of Dr. Sadanand Bhise who has performed the autopsy on the dead body of the little child. The injuries on the person of the little child are as follows :

“7. Uterus was intact. On examination of vagina internally lacerated injury of size 2 x 2 cm. found over posterior vaginal wall margins irregular hemorrhagic. It was communicating with anal canal laterally and also it was communicating with peritoneal cavity superiorly at level of posterior fornix through which small intestine prolapse. Hymen was lacerated and tags of hymenal remnents were seen with hemorrhagic margins on inner wall of vagina submucous hemorrhages were present at places.”

The post mortem was conducted on 2nd October, 2013 between 10 p.m. to

11.30 p.m. and it is opined that the death must have occurred 36 to 72 hours prior to the autopsy. There were extensive genital injuries. It is further stated that the injuries mentioned in column Nos. 17 and 18 are not corresponding to each other. The possibility that the child was struck hard on her head with hard and blunt object is not ruled out. The doctor has further opined that the hymen was lacerated and tags of hymenal remnants were seen with haemorrhagic margin on inner wall of vagina, submucous haemorrhages were present at places. The cause of death is also head injury with extensive genital injuries.

25 At this stage, it would be trite to refer to Chapter XVIII of Modi's medical jurisprudence. According to Modi, on examination of accused in a case of forcible sexual intercourse, the injuries on the person of the accused may be as follows :

"Injuries to the genital parts may result from force exerted by the accused or from forces applied by the victim, in addition to scratches or laceration on the penis caused by the finger nails of the victim during a struggle, an abrasion or laceration may be discovered on the prepuce or glance penis, but more often on the fraenum, due to the forcible introduction of the organ into the narrow vagina, especially of a child, but, it is not necessary that there should always be marks of such injuries on penis in every case."

True, the injuries may not be similar but necessarily there would be injuries on the penis which would be within the special knowledge of the accused.

26 A specific question was asked to the accused at Sr. No. 45 in his examination under section 313 of Code of Criminal Procedure, 1973, which reads as follows :

“Q-45: It has further come in his evidence that, he (Dr.Kendre-P.W.10) had taken the opinion of Surgeon Dr. Rokade for injuries on genitalia and notes of surgeon shows that there is abrasion on foreskin and congestion of glance penis and age of injury is 4 to 5 days old. He has taken samples of blood, nails, pubic hairs, semen and sealed it, handed it over to police and issued medical certificate vide Exh. 53. What have you to say about it ?

Ans. It is false.”

In fact, the injuries on his person were within his special knowledge and he ought to have given an explanation for the same.

27 The accused was arrested on 3/10/2013. At the time of recording of arrest panchanama, some injuries were noticed on his left knee, which is observed in Exh. 82. When he was asked about the old injury found on his left knee, the answer was strange. He said, “No. I was arrested on 30/9/2013.”

28 The learned Counsel for the appellant vehemently submits that in fact, the accused was taken in custody on 30th September, 2013. However, the arrest panchanama is recorded on 3/10/2013, as if to suggest that the accused was suspected by the police on the very day of the incident. In such circumstances, it would impossible to sustain such injuries on his genitalia while in police custody. It is the defence of the accused that he has been falsely implicated.

29 Another incriminating circumstance against the accused is in the nature of the evidence of P.W. 17 to whom he had purportedly made an extra judicial confession to the extent that he was under stress. The specific reason for stress was not divulged. However, he had confessed that he has done a wrong thing. In all probability, he could not be specific about the commission of a ghastly act. The learned Counsel submits that P.W. 17 has been declared hostile. In fact, evidence of P.W. 17 corroborates his contention in his statement under section 164 of Code of Criminal Procedure, 1973. We find no reason why the learned trial court allowed the prosecution to declare P.W. 17 hostile.

30 There is no doubt that an extra judicial confession is a weak piece of evidence. However, it reflects upon the conduct of the accused on the day of incident. Moreover, P.W. 17 has placed on record the attendance register which showed that the accused has attended his duties on 1/10/2013 and therefore, the answer to question No. 45 that he was arrested on 30th September, 2013 is falsified. There is no challenge to the said register. It was natural on his part to have disclosed to P.W. 17 that he does not wish to attend the duty since he is under stress. P.W. 17 was not a stranger to him. The defence of false implication needs to be ruled out.

31 Another important aspect in the present case is as to whether before awarding death sentence, the learned trial court has drawn a balance-sheet of the aggravating and mitigating circumstances as is held by the Supreme Court in the case of **Bachan Singh v/s. State of Punjab**¹. There is failure on the part of the court to only hold that the aggravating circumstances outweigh the mitigating circumstances. All this after observing in para-76 of the Judgment as follows :

“76. On the contrary, learned advocate of the accused has finished his argument in one line that suitable order may be passed which this court thinks proper and fit. When this court enquired with the accused about his submission on the point of

¹ 1980 Cr. L.J. 636.

sentence, he has only submitted that, he is an innocent.”

32 By no stretch of imagination, it can be said that this would amount to demonstrating the mitigating circumstances. The Supreme Court in the case of **Mohd. Mannan v/s. State of Bihar**² has observed as follows :

“74. The legal assistance provided to the convict at every stage including the stage of hearing on the question of sentence has to be effective and even if the accused has remained silent, the Court would be obliged and duty bound to elicit relevant factors. Opportunity should have been given to the convict to bring on record mitigating circumstances for reduction of the sentence and a balance struck between the aggravating and the mitigating circumstance.

75. The petitioner, as observed above, did not get the benefit of competent legal assistance. The Trial Court also did not make any attempt to elicit materials relevant to the imposition of death sentence. No affidavit was called for. The question of whether there were any mitigating circumstances was not addressed by the Trial Court or the appellate courts.”

Similarly in the case of **Dagadu v/s. State of Maharashtra**³, the Apex Court has observed thus :

79. The Court, on convicting an accused, must unquestionably hear him on the question of sentence. But if, for any reason, it omits to do so and the accused makes a grievance of it in the higher court, it would be open to that Court to remedy the breach by giving a hearing to the accused on the question of sentence.”

² (2019) 16 SCC 584

³ (1977) 3 SCC 68

33 In order to remedy the said error, this Court has personally heard the accused on the point of sentence through video conferencing. According to the convict in the present case,

- (i) He hails from a small village in Uttar Pradesh. The agriculture holding of the said family is just 10 Bighas. The father of the convict was therefore, working as a watchman in Unnati Woods Society in Mumbai to make both the ends meet for almost two years prior to the incident.
- (ii) That the accused was cultivating the said land.
- (iii) He was married. He has one son and two daughters. On 30/9/2013 his second daughter was hardly 9 months old. Since the family was suffering from economic stringencies, he chose to join his father and brother in Mumbai. He had joined the services hardly two weeks prior to 30/9/2013.
- (iv) That he belongs to scheduled caste and falls under the category of “below poverty line”.
- (v) That he has been falsely implicated in the present case. Upon his contention that he is falsely implicated, this Court specifically asked him as to whether he was on inimical terms with anyone who could have falsely implicated him. He has specifically denied the

same and has insisted that he is innocent.

- (vi) He was apprised that he had been awarded death sentence by the trial court on the basis of evidence adduced against him. He reiterated that he is innocent and has been falsely implicated and therefore, a lenient view be taken.
- (vii) He has also stated that he has old parents and that his wife is surviving hand to mouth. She is cultivating the 10 Bigha land and looking after his 3 children and there is no one to support her. He therefore, prays that the harsh sentence imposed upon him be set aside.

34 Without stopping at that, we also directed the learned APP to place on record an affidavit to show that any other sentence besides death penalty in the present case is unquestionably foreclosed. Similarly, we also directed the advocate appearing for the Respondent/appellant to file an affidavit of the convict on record duly verified by the Superintendent of Jail. Both the respective Counsel have placed their affidavits on record, which are taken on record and marked as Exh. X and Y respectively.

35 The learned APP seeking confirmation of the sentence passed by the learned trial Court has submitted that the said incident had raised public outcry. That in the facts of this case, the death penalty sentence is

justified. That it is the rarest of the rare case, wherein a girl child who is hardly 3 years old has been sexually abused brutally by the accused and thereafter, the child was eliminated in a cruel manner. That he would be a menace to the society looking at his conduct.

36 We agree with the learned APP that the act committed by the accused is gruesome and revolts human conscience. According to learned APP, the act of the accused by itself would show that the question of any other sentence except death penalty is unquestionably foreclosed.

37 The learned Counsel for the appellant has tried to bring on record certain lacunae in investigation. According to the learned Counsel, the dog was tied to the window of the room occupied by Sanjay Rawat(P.W.15). That P.W. 14 happens to be the brother of P.W.15. That it is categorically admitted by P.W. 15 that the dog was tied to the window of his room. He then claims to have seen one person having long hair enquiring with the accused about a missing child. According to the learned Counsel, this evidence ought to have been considered by the trial court and an adverse inference ought to have been drawn that possibility of P.W. 14 and P.W. 15 have falsely implicated the accused, as tying of the dog to the window of P.W. 15 unclinchingly points out to the culpability of P.W.15 and not the accused.

38 It is to be noted that from para-97 of the Judgment of the trial Court, it appears that a dog squad was called to trace the accused, since the trial Court has observed as follows:

“97. The act itself proves that he had committed it with extreme brutality. After commission of offence, he went on the spot and standing nearby wearing lungi and baniyan. Thereafter, when police called him for enquiry and help the dog squad he disclosed the said fact to witness Anil Singh. Then he maintained silence.”

39 It appears from the evidence of P.W. 18 that in the course of searching the victim, the Investigating agency had taken the help of a dog squad. The panchanama is at Exh. 70. It is true that canine inference is not admissible in evidence. In any case, it is only for the purpose of giving direction to the Investigating agency. The panchanama does not show that the accused was called upon by the police to cooperate the dog squad.

40 The learned Counsel further submits that there is no DNA matching. There are no semen stains on the clothes of the deceased or on her person and the same would belie the case of the prosecution. We cannot be oblivious of the fact that the dead body was partially

decomposed and was lying in a puddle of muddy water before it was traced i.e. almost for more than 48 hours.

41 The act of the accused is gruesome and is committed in a diabolic manner. It is an heinous offence. It is unimaginable that a cheerful, frolicking child enjoying with her pet would provoke the feelings of lust in a man who is a father of two daughters and a son. The perversity in the mind of the accused is apparent and therefore, we are of the opinion that the aggravating circumstances in the present case outweigh the mitigating circumstances placed before the court in the course of hearing of the appeal.

42 This is a case based on circumstantial evidence. In a case of circumstantial evidence, it is incumbent upon the prosecution to establish the chain of circumstances and the circumstances so established should be of a conclusive nature and must incriminate the accused. It is also incumbent upon the prosecution to prove the complete chain of circumstances, which should exclude every hypothesis of the innocence of the accused. In short, they must unerringly point to the only inference that the accused is guilty of the offence alleged against him.

43 In the present case, we would unhesitatingly observe that the

prosecution has proved the chain of circumstances against the accused beyond reasonable doubt.

44 At this stage, we would observe that the prosecution has not presented before us the conduct of the accused during his incarceration. But we have spoken to the accused personally and he has not shown any remorse. The only mitigating circumstance put forth by him is economic stringency of his family.

45 In the case of **Vasanta Sampat Dhupare v/s. State of Maharashtra** reported in 2017 6 scc 631, the Apex Court has placed reliance on the Judgment of the Apex Court in the case of **Ramnaresh V/s. State of Chattisgarh**⁴, in which the Apex Court has enumerated the principles of sentencing as follows :

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

81. Wherever, the offence which is committed, manner in which it is committed, its attendant circumstances and the motive and status of the victim, undoubtedly bring the case within the ambit of “rarest of rare” cases and the court finds that the imposition of life imprisonment would be inflicting of inadequate punishment, the court may award death penalty. Wherever, the case falls in any of the exceptions to the “rarest of rare”

⁴ (2012) 4 SCC 257

cases, the court may exercise its judicial discretion while imposing life imprisonment in place of death sentence.”

In the case of **Vasant Dhupare(Cited supra)**, a 45 years old man had lured a 4 years old child, raped her and eliminated her after battering her to death.

46 In the present case, looking at the monstrous act of the convict, it is apparent that the appellant had not, for a moment thought of the precious life of the minor child. It did not strike him for a moment that he himself happens to be a father of two daughters, who are yet to see the life. The crime smacks of degradation of a girl child, depravity and perversity of his mind. The child was sexually assaulted in barbaric and inhuman manner. It is diabolic in nature and thereafter, it was a brutal murder which makes it the rarest of rare case.

47 It is such an incident that parents of every small girl child would feel a chill down the spine before sending their undefended, innocent, minor girl child to see the rainbow as they would be scared as to whether she would fall a prey to any monster like the present one. It is the safety of a girl child which is of paramount importance to a society. The Supreme Court in the case of **Shyam Narayan v/s. State(NCT of Delhi)**⁵ has observed as follows :

⁵ (2013) 3 SCC (Cr.) 1

“The 8 year old child, who was supposed to spend time in cheerfulness was dealt with animal passion and her dignity and purity of physical frame was shattered. The plight of the child and the shocks suffered by her can be well visualised. The torment on the child has the potentiality to corrode the poise and equanimity of any civilised society. The age-old wise saying that “child is a gift of the providence” enters into the realm of absurdity.”

48 It is the bounden duty of the courts to impose a sentence which is proportionate to the offence committed by an accused. The accused in the present case deserves death penalty, as any alternative punishment would be unquestionably foreclosed taking into consideration the inhuman and barbaric act of the accused. The prosecution has proved the chain of aggravating circumstances as against the mitigating circumstances beyond reasonable doubt. The act of rape and the manner in which the child was murdered and abandoned in the muddy pond invites indignation and abhorrence. Hence, the death penalty awarded to the accused deserves to be confirmed by this Judgment.

49 Ms. Gonsalvez was requested by us to espouse the cause of the Respondent No. 2. She has placed on records the schemes framed for the victims of rape by NALSA. The Hon'ble Supreme Court of India

in Writ Petition (C) No. 565 of 2012 titled as **Nipun Saxena v/s. Union of India**, opined that -

“It would be appropriate if NALSA sets up a committed of about 4 to 5 persons who can prepare Model Rules for Victim Compensation for Sexual Offences and Acid Attack taking into account the submissions made by the learned Amicus.

The learned Amicus as well as learned Solicitor General have offered to assist the committee as and when required. The Chair person or the nominee of the Chair person of National Commission of Women should be associated with the Committee.”

50 In view of the above directions of the Supreme Court, NALSA set up a committee consisting of the experts from various fields for preparation of model scheme. The NALSA has submitted the compensation scheme for women victims/survivors of sexual assault/other crimes and submitted the report before the Supreme Court on 24/4/2018. According to that scheme, the schedule applicable to Women victims of Crimes shows that victim of rape would be entitled to Rs. 10 Lakhs. Besides this, the victim would also be entitled to compensation under the Maharashtra State Victim Compensation Scheme. In present case, the victim is murdered and

therefore, the compensation be paid to the father of the victim. The compensation, as directed, had not been paid by DLSA since the mother of the victim was not traced. We are of the opinion that the father of the victim would be entitled to the compensation, since mother of the victim had abandoned the child two years prior to the incident and has not even inquired about the death of her girl child. Accordingly, this Judgment be sent to the District Legal Service Authority(DLSA) forthwith and the DLSA shall issue notice to the father of the victim(P.W.1) and disburse the said amount within 30 days from the date of receipt of the judgment.

51 In view of the above discussion and various judgments of the Supreme Court, we pass following order:

ORDER

- (I) We accordingly, confirm the sentence of death passed by the trial court on the accused and dismiss the criminal appeal filed by the accused confirming his conviction and sentence.
- (II) Reference is, accordingly, answered.
- (III) Criminal Appeal No. 661 of 2019 is dismissed confirming the

conviction and sentence.

(IV) Ms. Gonsalvez is entitled to professional fees as per law.

(IV) Copy of this Judgment be sent to the accused in jail.

(PRITHVIRAJ K. CHAVAN, J)

(SMT. SADHANA S. JADHAV, J)