A.F.R

Reserved on: 24.08.2022

Delivered on: 18.10.2022

Court No. - 1

Case :- CAPITAL CASE No. - 1 of 2018

Appellant :- State of U.P.
Respondent :- Govind Pasi
Counsel for Appellant :- Govt. Advocate
Counsel for Respondent :- Manish Bajpai

Connected with:

Case :- CRIMINAL APPEAL No. - 1004 of 2018
Appellant :- Govind Pasi
Respondent :- State of U.P.
Counsel for Appellant :- Anil Kumar Singh
Counsel for Respondent :- Govt. Advocate

Hon'ble Ramesh Sinha,J.
Hon'ble Mrs. Renu Agarwal,J.

(Delivered by Hon’ble Mrs. Renu Agarwal,J.)

1. The capital reference No. 1 of 2018 arises out of reference made by learned trial court under Section 366 (1) of Cr.P.C, 1973 to this Court for confirmation of death sentence awarded to appellant Govind Pasi.

2. The Criminal Appeal No. 1004 of 2018 has also been preferred by the convict appellant Govind Pasi s/o Hari Prasad Pasi R/o Gram Kumbh Police Station Gyanatnagar District

Faizabad against the judgment and order dated 17. 5.2018 passed by the Additional Sessions Judge, F.T.C.-I, Faizabad in Sessions Trial No. 122 of 2013 State Vs. Govind Pasi, arising out of Case Crime No. 27 of 2013 Police Station Inayat Nagar District Faizabad vide which the accused has been convicted and punished with imprisonment for life and fine of Rs. 20,000/- under Section 376 IPC, imprisonment for the period of three months in default of payment of fine and has been convicted and punished with death penalty with 20,000/- fine under Section 302 IPC.

3. The facts of the case in brief are that:

4. An FIR was lodged by the complainant Jamuna Prasad on 29.01.2013 that his niece aged about 10 years went to school but did not return. On search the dead body of deceased ‘X’ was found in the field at about 7:30 p.m. Her scarf was wrapped around her neck.

5. On the basis of written report in Police Station Inayat Nagar District Faizabad, a case was registered as Case Crime No. 27 of 2013 on the same day i.e. on 29.01.2013 at about 08:30 p.m. against some unknown persons under Section 302 IPC and the same was entered in general diary No. 38 at 20:30 p.m. The investigation was entrusted upon the Station House Officer, Ajay Prakash Mishra who recorded the statement of witnesses under Section 161 Cr.P.C, inspected the spot and prepared the site plan, collected plain and blood contained earth,

prepared recovery memo and prepared recovery memo of under-garments, leggings (Pajama), shoes and school bag of the deceased ‘X’ and conducted inquest and prepared inquest report and all the relevant papers relating to the postmortem of the deceased ‘X’. The postmortem of the deceased ‘X’ was conducted by Dr. S.K. Tripathi.

6. The name of convicted/appellant Govind Pasi came into light during investigation. The arrest and recovery memo of under-garments of accused were also prepared. The Investigating Officer collected evidences against the convicted/appellant Govind Pasi and filed the chargesheet in the Court.

7. The accused was provided copies of the police papers in compliance of the provisions of Section 207 Cr.P.C and the concerned court committed the case to the Court of Session.

8. The charges were framed against the convicted/appellant Govind Pasi under Section 302, 376 IPC and read over to convicted/ appellant Govind Pasi. The accused abjured himself from charges and claimed to be tried.

9. The prosecution, in order to prove its case produced 11 witnesses:

(A) P.W.-1 Jamuna Prasad-complainant;

(B) P.W. -2 Ram Prakash, last seen witness of the deceased ‘X’;

(C) P.W.-3-Phool Chand, who has seen the deceased ‘X’ being carried by the appellant Govind Pasi towards the sugarcane field of Shri Pal.

(D) P.W.-4- Vinod Kumar, who is also the witness of fact and said to have seen the deceased ‘X’ when she was running towards her school to the north west near the grove.

(E) P.W.-5 Dr. S.K. Tripathi, who assisted Dr. S.P. Bansal in conducting post mortem of deceased. P.W.-5 deposed that the dead body of the deceased was identified by Jamuna Prasad who revealed his identity as the uncle of the deceased. The postmortem was conducted at 8:15 a.m. on 30.01.2013. P.W.-5 also narrated the ante mortem injuries found on the body of the deceased.

(F) P.W.-6 constable clerk Rahul Singh proved the Chik report No. 7/13. P.W-6 prepared and signed the chik report in his hand writing. The chik report is exhibited (Ka-3).

(G) P.W-7 Uma Shankar Yadav, Principal of M.D. Public School deposed that the name of the deceased ‘X’ was entered in register prepared in the school in due course of business and the name of the deceased ‘X’ was registered at page number 42 in the register. Her name was deleted by red pen after her death.

(H) P.W.-8 Dinesh Kumar is the witness of recovery of the under- garments of the appellant recovered at the pointing out of

the appellant. He has proved the recovery memo 9A/1 exhibit (Ka-7).

(I) P.W.-9 Raj Kumar Kannojiya is also the witness to recovery of undergarments recovered at the pointing of the appellant from the fields of Shri Pal. He has also corroborated the exhibit (Ka-7).

(J) P.W.-10 Dr. Vipin Kumar Verma, who medically examined the appellant on 31.01.2013 and prepared medico-legal report exhibit (Ka-8).

(K) P.W.-11 Ajay Prakash Mishra, the Investigating Officer of the Case No. 27/13, who recorded the statement of witnesses under Section 161 Cr.P.C, inspected the spot wherefrom the dead body of the deceased 'X' was recovered and prepared the map exhibit (Ka-9). This witness collected blood contained and simple earth and prepared the recovery memo exhibit (Ka-10), and further prepared the recovery memo of under-garments and other materials recovered from the body of the deceased 'X' exhibit (Ka-11), recovery memo of black shoes of deceased 'X' is exhibit (Ka-12). The Investigating Officer prepared inquest report and other relevant papers relating to postmortem, photo-lash, challan-lash, letter written to CMO, and letter written to R.I. etc (exhibits Ka-14 to Ka-19), site plan of recovery (exhibit Ka-20) and after completing investigation submitted charge-sheet (exhibit Ka-21), in Court.

10. Besides ocular evidence following relevant documents were also produced by the prosecution:-

(a) Written report (exhibit Ka-3),

(b) FIR of case crime No. 27 of 2013 (exhibit Ka-7),

(c) Recovery memo of under-garments of accused (exhibit Ka-7).

(d) Medico-legal report of accused Govind Pasi (exhibit ka-8).

(e) Site plan of Crime No. 27 of 2013 (exhibit Ka-9).

(f) Recovery memo of blood contained and plain earth (exhibit Ka-10).

(g) Recovery memo of undergarments and leggings of deceased ‘X’ (Exhibit Ka-11).

(h) Recovery memo of shoes of deceased ‘X’(exhibit Ka-12).

(i) Recovery memo of school bag containing copies and books of deceased ‘X’ (exhibit Ka-13).

(j) inquest report (exhibit Ka-14).

(i) The site plan of Crime No. 27 of 2013 (exhibit Ka-20).

11. After completion of ocular and documentary evidence adduced by the prosecution, the statement of accused was recorded under Section 313 Cr.P.C. The appellant denied the

allegations levelled against him and stated that he has been falsely implicated in the case. The appellant also denied the recovery of article on his pointing out and the site plan prepared by the Investigating Officer. The appellant stated that he was arrested from his house by showing fabricated recovery from the accused and has falsely been implicated in this case. The medico-legal report is also prepared under the pressure of complainant. All the witnesses are interested witnesses and therefore, their evidence cannot be relied upon.

12. The appellant adduced defence evidence in his favour to rebut the case of prosecution. D.W 1 Bihari Lal appeared in Court and deposed that he is residing in village after his retirement since 31.07.2008. The appellant resides in front of his house. On the relevant date i.e. on 29.01.2013, the accused Govind was sitting with his grand parents in his chappar around the bonfire. Due to cold weather the accused including his grand parents and three sisters were at home.

13. No other witnesses was adduced by the accused in his defence.

14. After hearing the submission of D.G.C and learned counsel for accused and upon perusal of record, learned trial court found that the accused was guilty of offence under Section 376, 302 IPC and sentenced the accused with life imprisonment and Rs. 20,000 as fine under Section 376 IPC further simple imprisonment in default of payment of fine and further

sentenced the accused with death penalty and with fine 20,000 under Section 302 IPC.

15. Being aggrieved with the impugned judgment and order of the trial court the accused/appellant has filed this criminal appeal No. 937 of 2015 from jail.

16. Heard Shri Manish Bajpai, learned Amicus Curiae, for the convicted/appellant and Shri Vimal Kumar Srivastava, learned Government Advocate, assisted by Shri Chandra Shekhar Pandey, learned Additional Government Advocate for the State.

17. The learned counsel for the appellant has assailed the judgment and order passed by the learned trial court on the ground that it is neither warranted in law nor on facts. The judgment is perverse and contradictory to the facts on record. The trial court has committed error in the eyes of law. The accused is innocent and has been falsely implicated in the present case due to political rivalry with the help of police. He was not named in the first information report and his name was dragged in the case after the recovery of the dead body. P.W.-3 did not support the prosecution story and has been declared hostile. The case is based on circumstantial evidence and the chain of circumstances is not complete one.

18. No Forensic Science Laboratory report in respect of the alleged recovery of undergarments, semen and blood of the appellant is placed on record. No DNA test has been ever conducted by the prosecution. As per the prosecution story the

blood stain spots were found on the alleged recovered undergarments of the appellant as well as on the undergarments of the deceased ‘X’. They were not send to Forensic Science Laboratory for obtaining report by the prosecution. Semen slide of the appellant was also unable to compete successfully with the semen slide of the deceased ‘X’. No Forensic Science Laboratory report was obtained to ascertain that the alleged scratch marks, found on the face of the appellant, were caused by the nails of the deceased ‘X’. The owner of the sugarcane field Shri Pal is not produced in court as a witnesses. The alleged recovery is highly suspicious. There was no material on record before the learned trial court to prove the story of the incident. Therefore, the judgment of the trial court is totally biased against the appellant.

19. Learned trial court has not taken into consideration the evidence of defence witness Bihari Lal who is an independent witness. The learned trial court has given fanciful presumption and reasons in the judgment in favour of the prosecution. There are major contradictions on material points in the statement of prosecution witness of fact and their statement did not inspire any confidence and the same are not reliable and trustworthy. The prosecution has failed to prove its case beyond reasonable doubt. The provisions of section 313 Cr.P.C has not been properly complied with. The investigation of the case is highly tainted. The sentence awarded by the learned trial court against the appellant is too severe. The appellant is a young boy having no criminal history. Therefore by way of this appeal the

appellant has prayed for setting aside the judgment and order dated 17/5/2018 passed by the trial court.

20. Learned counsel for the appellant argued that the learned trial court has erred in convicting and sentencing the appellant as there is no evidence against him. The prosecution has not proved its version. The post mortem report does not corroborate the version of eye witnesses. He was not named in the FIR which came into the light only after the recovery of the dead body. The sentence awarded by trial court is too severe, therefore, the judgment and sentence passed by trial court is liable to be set aside.

21 To the contrary, learned Government Advocate appearing on behalf of the State has argued that the victim was 10 years old and when she was returning from school, the appellant lifted her in his lap, carried her to sugarcane field of Shripal, committed rape and brutally murdered her. She was strangulated by her own scarf which she was wearing on her head at the time of going to school. It is also stated by learned A.G.A that this is a rarest of the rare case where the appellant has murdered 10 years old girl after committing rape therefore the judgment passed by the learned trial court is based on ocular and documentary evidence as well as the recovery of under-garments of the deceased ‘X’ which were recovered at the pointing out of the accused appellant. Therefore the judgment of the trial court is sustainable and is liable to be upheld.

22. We have considered the rival submissions and perused the record of the lower court as well as record of this appeal and gone through the settled case law.

23. In the present matter FIR was lodged by the informant against the unknown person stating that the deceased ‘X’ was his niece. She was studying in M.D. Public School in Class III. On the date of occurrence on 29.01.2013 she went to the school at about 9:30 a.m. but did not return from the school. During search the dead body of the deceased ‘X’ was found in the field of Shripal. She was strangulated by her own scarf.

24. In order to prove the case, the prosecution adduced evidence of P.W.-1 who stated on oath that her niece was studying in M.D. Public School in Class III. She did not return from school at due time and on being searched the dead body was found in the field of Shripal.

25. P.W.-2 deposed in Court and stated that on 29.01.2013 when he was carrying paddy at his horse-cart he saw Govind Pasi standing at the chak road near the sugarcane field and he saw the deceased ‘X’ running towards the school carrying her school bag thereafter P.W.-2 returned his home.

26. P.W.-3 deposed that at about 10 a.m. on 29.01.2013 he was passing through the road and when he reached the chak road near Gurwa Kumbhi he saw the appellant standing in front of sugarcane field of Shripal and the deceased ‘X’ was going towards school via Gorwa Chak Marg. As soon as she reached

near the sugar cane field of Shripal, the convict appellant Govind Pasi lifted her in his arms and moved towards the field of Shripal. Thereafter, the P.W.-3 got shaved and went to his duty. Afterwards on his return from duty when he came to know about the death of the deceased 'X'. Then he became assured that the incident must have been committed by the accused Govind Pasi and no one else.

27. P.W.-4 stated on oath that when he was returning from defecation on 29.01.2013 at about 10 a.m, he saw the deceased going to school carrying her school bag. The deceased did not return thereafter.

28. P.W.-5 stated on oath that he conducted autopsy on the body of the deceased along with Dr. S.P. Bansal. The dead body of the deceased was brought by Constable Sirajuddin and Constable Angad Verma in the sealed condition. The body was identified by the uncle of the deceased. The whole proceedings of postmortem was videographed. The following ante mortem injuries were found on the body of deceased 'X'.

(i) Two contusions on the right side of the face 3cm below the eye, 0.3x0.2cm in lower jaw area.

(ii) Five contusions of area 0.2x0.2 cm to 0.3x0.3 cm extended up to left eye towards the left nose and contusions of 5x3cm on the cheek.

(iii) Ligature marks 0.8x3 cm on the upper side of the neck on the left side in the middle line.

29. After conducting postmortem both the doctors opined that the cause of death is asphyxia due to strangulation. P.W.-5 collected and prepared vaginal swab slide and sixth left rib for the purposes of DNA test.

30. P.W.-6 Constable Rahul Singh stated that he lodged the FIR on the basis of written report by Jamuna Prasad and reduced in writing the chik report No. 7 of 2013 at about 20:30 p.m. and the chik report (Ka-3) G.D No. 38 as K-4.

31. The P.W.-7 appeared in trial court with the S.R. Register and prove that the name of the deceased was entered at page No. 42 and her name was deleted when she passed away. P.W.-7 further stated that class teacher Sukh Raj Maurya marked absence of deceased in the attendence register on 29.01.2013. The copy of register is produced exhibit Ka-6.

32. P.W.-8 Dinesh Chand Chaurasiya deposed that on 30.01.2013 at 8:30 p.m., Investigating Officer recovered under-garments of appellant Govind Pasi at his pointing out which was hidden near the well situated on the western side of the sugarcane field. The convicted Govind Pasi gave his blood sample, semen and under-garments to Investigating officer who sealed them and prepared recovery memo which was signed by him and by witness Ram Kumar as well as by the accused

Govind Pasi which is exhibit Ka-a7. P.W.-9 also corroborated the evidence of P.W.-8.

33. P.W.-10 Dr. Vipin Verma stated on oath that he medically examined the appellant and abrasions were found on the face of the appellant caused by pointed object which were 48 to 72 hours old. The witness also stated that these abrasions may be caused by nails of 10 years old girl. The following injuries were found on the accused appellant:

(1) Multiple abrasion (3.5x 1.5 cms) right side of face 03 cms away from right angle of mouth.

(2) Abrasion (01x0.3 cms) left side of face 3.5 cms away from left angle of mouth.

Duration: 48 to 72 hours.

Opinion: All injuries are caused by some hard and blunt object and simple in nature.

34. It is the case based on circumstantial evidence. Hon'ble Apex Court had laid down certain principles applicable to appreciation of evidence in cases involving circumstantial evidence in **Manoj and others Vs. State of Madhya Pradesh** reported at **2022 LiveLave (SC) 510:**

> *"149. In one of its earlier decisions this court had in Hanumant v. The State of Madhya Pradesh indicated that the correct approach of courts trying criminal cases involving circumstantial evidence should be that the circumstances alleged, be fully established;all the facts so established should be consistent only with hypothesis*

of the guilt of the accused; circumstances should be conclusive and of such tendency that they should be such as to exclude every hypothesis but the one proposed to be proved. This view was followed later in Tufail v. State of Uttar Pradesh and Ram Gopal v. State of Maharashtra. All these and other decisions were revisited in the three-judge bench decision in Sharad Birdi Chand Sarda v. State of Maharashtra and the court enunciated a set of principles that every court trying criminal cases entirely based on circumstantial evidence had to follow.

150. The conclusions recorded by this court in Sarda were listed in Para 152 (which were characterised in Para 153 as "five golden principles").They are extracted below:

"(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 & Anr v State of Maharashtra where the following 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.

> *These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence."*
>
> *151. These principles have stood the test of time, and the evidence in all criminal cases, have been evaluated in their light, throughout the country. In light of these binding principles this court would now examine whether the circumstances supported by evidence, i.e., those accepted by this court in the previous part of the judgement, was of such conclusion as to stand the test of the five golden principles enunciated in Sarda (supra).*

35. P.W.-1 Jamuna Prasad stated that deceased was his niece who was going to school on the fateful day. When she did not return from school at due time, he started search and during search he found the dead body of the deceased in the sugar case field. Her scarf was tied on her neck. Apparently, he presumed that she was murdered. This witness is not the witness of fact rather he proved exhibit-Ka 2. PW-2 in his statement proved the fact that at about 8 to 8:30 a.m. on 29.01.2013, he unloaded paddy in the field of Mata Badan r/o Village Kumbhi situated near government tubewell and loaded rice belonging to Ram Abhilash and delivered the same. As soon as he reached near the field of Shripal he saw convict/appellant Govind Pasi standing there and his bicycle was also lying there. This witness proved the the deceased 'X' was running towards the school carrying her bag. When he returned home in the evening, he came to know that the deceased 'X' did not return from school and he along with the complainant started searching the deceased 'X'. As soon as they reached the place where the accused was standing in the morning and deceased 'X' was moving towards

the school, the dead body of the deceased ‘X’ was found in the field of Shripal. The body of the deceased ‘X’ was naked and pooled in blood at that time. P.W.-3 also corroborated the testimony of P.W.-2 and stated that he was going to government tube well in village Kumbhi and saw that convicted appellant Govind Pasi standing near the sugarcane field of Shri Pal and the deceased ‘X’ aged about 10 years was going to school via Gorwa Chak Marg. The witnesses also deposed that as soon as the deceased ‘X’ reached near the sugar cane field of Shripal, Govind Pasi lifted her in his arms and went towards the field. Thereafter the witnesses went on his duties and came to know in the evening that the dead body of the deceased ‘X’ was found in the field of Shripal. He firmly believed that this must have been done by convict appellant Govind Pasi.

36. All the prosecution witnesses No. 2 to 4 had seen the accused Govind Pasi standing in front of the sugar cane field of Shripal and the victim running towards her school. P.W.-3 had also proved that the deceased ‘X’ was being taken towards the field by the appellant. P.W.-7 who is the Principal has proved that the victim did not attend the school on the fateful day i.e. on 29.01.2013 which further corroborates that fact that the deceased ‘X’ was picked up by accused-appellant before she reached her school. . She was not seen thereafter by any of the villagers. Thus prosecution proved last seen evidence. The chain of circumstances is also closely related and proves that the victim was going to school and the accused was near the field of Shri Pal and when the deceased ‘X’ reached near the field, the

convicted appellant Govind Pasi lifted her in her arms and moved towards the filed. Thereafter, she was found dead in the field of Shripal.

37. In **State of U.P. Vs. Satish (2005) 3 Supreme Court Cases page no. 114**, Hon'ble Supreme Court has held thus:

> *" 22. The last-seen theory comes into play where the time-gap between the point of time when the accusd and the deceased were last seen alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guild in those cases. In this case there is positive evidence that the deceased and the accused were seen together by witnesses Pws 3 and 5, in addition to the evidence of PW 2."*

38. **Duryodhan Rout Vs State of Orissa 2014 (86) ACC 574** Hon'ble Supreme Court has held thus:

> *"11. The trial court convicted the appellant on the basis of the chain of circumstantial evidence available against the accused. It was found that the accused carried the deceased on his cycle at about 4 pm but returned alone at 5p.m. He confessed to have murdered the deceased before Mulia Bhoi (P.W 5) ..... Thus, the accused was last seen with the deceased. There is nothing to indicate that within one hour, there was any scope for anybody else, other than the accused to commit rape and murder of the deceased. The chain of circumstances of the case thereby leads to the hypothesis that the accused and the accused alone was the author of the crime, and therefore, the trial court rightly convicted the accused under Sections 376 (2) (f)/ 302/201 IPC."*

39. In **Purna Chandra Kusal Vs. State of Orissa 2012 (78) ACC 957**; Hon'ble Supreme Court has held as follows:

> *"6. We find absolutely no reason to interfere with the conviction of the appellant. In addition to the last seen evidence of P W 5*

> *and PW10, we have the evidence of the recoveries made at the instance of the appellant. The clothes that the appellant and the deceased had been wearing had also been taken into possession by the investigating agency and were found to be stained with human blood. We find, therefore, that the last seen evidence finds full corroboration from the recoveries."*

40. We have gone through all the documents and evidence produced in the impugned case by the prosecution. The witness produced by the prosecution unequivocally stated that the girl was seen by the witnesses in the arms of appellant who was carrying the victim towards the sugarcane field of Shri Pal. P.W.-7 deposed that she did not attend the school on that day as per the register and she was not seen by any one in village. It is also pertinent to mention here that in the present case abrasion were also found on the face of the accused. P.W.-10 Dr. Vipin Kumar Verma proved that convict Govind had injuries in the nature of abrasion 3.5 cm x 1.5. cm at the distance of 3 cm from the right side of the face of the appellant and 1.0x0.3 which is found 3.5 cm away from the left side of the lips. The injuries are proved by the doctor during the trial and it is stated that these injuries may be caused to the appellant by nails of 10 years old girl.

41. The accused denied the allegation in his statement under Section 313 Cr.P.C but did not explain how the injuries on his face were caused. P.W.- 3 though declared hostile in court under cross-examination made by the ADGC, has admitted that the accused confessed in the police station that he committed rape upon the victim and strangulated her.

42. Hon'ble Apex Court held in **State of U.P. Vs. Anil Singh** reported at **(1998) supp SCC 686** that:

> *"17. It is also our experience that invariably the witnesses add embroidery to prosecution story perhaps for the fear of being disbelieved. But that is no ground to throw the case overboard, if true, in the main. If there is a ring of truth in the main, the case should not be rejected. It is the duty of the court to cull out the nuggets of truth from the evidence unless there is reason to believe that the inconsistencies or falsehood are so glaring as utterly to destroy confidence in the witnesses. It is necessary to remember that a Judge does not preside over a criminal trial merely to see that no innocent man is punished. A Judge also presides to see that a guilty man does not escape. One is as important as the other. Both are public duties which the Judge has to perform"*

43. It has been further emphasized that if discrepancies in the depositions are minor, that that witnesses contradict themselves during their testimonies as opposed to their previous police statements what is important is that the nature of contradictions. In **Rammi @ Rameshwar Vs. State of Madhya Pradesh**, Hon'ble Supreme Court held that:

> *"24. … Courts should bear in mind that it is only when discrepancies in the evidence of a witnesses are so incompatible with the credibility of his versions that the Court is justified in jettisoning his evidence. But too serious a view to be adopted on mere variations falling in the narration of an incident (either as between the evidence of two witnesses or as between two statements of the same witness) is an unrealistic approach for judicial scrutiny"*

44. Thus in view of the above said facts prosecution has proved complete chain of circumstances to prove the guilt of appellant to the extent that no other conclusion can be arrived at except the guilt of the appellant. There is cogent evidence to

prove that the the victim was subjected to rape and murder by convicted appellant only.

45. Insofar as the question of motive is concerned in the case of circumstantial evidence the prosecution has to prove the motive behind the crime but in cases of sexual assault motive looses its importance to be proved. Besides, the motive is something in the mind of accused which is not always possible to be proved by prosecution. Apparently accused/appellant raped the deceased who was a ten year od girl to satisfy his lust and murdered her in order to suppress the evidence against him.

46. In the case of **State of U.P. Vs. Krishanpal 2008 (16) SCC 73** it has been held by the Supreme Court that the motive can be considered as a circumstances which is relevant for evidence. Similarly in the case of **Shriaji Genu Mohite Vs. State of Maharashtra 1973 Supreme Court 55** it is observed by the Supreme Court that in case the prosecution is not able to discover motive the same shall not reflect upon the credibility of the witness proved to be reliable eyewitnesses. However, the evidence as to motive would not do away a case where the case is dependent upon circumstantial evidence, said evidence would fall as one of the link in the chain of circumstantial evidence.

47. In the case of **Amitava Benerjee @ Amit @ Bappa Banerjee Vs. State of West Bengal AIR 2011 Supreme Court 2193,** it was held by Apex Court that the motive for commission of offence no doubt assumes greater importance in cases of

circumstantial evidence than those of direct evidence yet failure to prove motive in cases rest on circumstantial evidence is not fatal by itself.

48. In view of the aforesaid pronouncement by the Supreme Court it is apparent that in case of circumstantial evidence motive assumes importance and it holds one of the link in the chain of circumstances however failure to provide motive is not fatal by itself.

49. In the instant case, as stated above, it has been established that P.W.-2 proved that the appellant was standing on the way of school and P.W.-3 though declared hostile yet stated that the accused confessed his crime to Sub-Inspector in his presence. P.W-4 has also proved the fact he saw the victim going to school victim was not seen thereafter. P.W.-7 proved her absence in school. Injuries of the victim are proved and the injuries sustained by the appellant are not explained.

50. Thus the prosecution established a complete chain which leads to the conclusion that only convicted appellant can commit the alleged crime and none other than the convicted appellant can be suspected to have committed this crime similarly every hypothesis suggesting innocence of appellant is ruled out by such evidence and the irresistible inference which follows is his guilt.

51. In **Darga Ram Vs. State of Rajasthan 2015 (88) ACC 634**, Hon’ble Supreme Court laid down that if recovery is made

at the pointing out of the accused then this type of recovery shall be admissible in evidence under Section 27 of the Indian Evidence Act. Thus in view of the above the recovery of under-garments at the pointing out of the convict is covered by Section 27 of the Indian Evidence Act and admissible in evidence. The prosecution has also proved by medical evidence that private parts of the victim were found pooled in blood. Vagina was torned, Hymen was torned, stool was coming out of anus and abrasion was present 10 cm below the right eye 0.3x 0.2 cm and 0.3 x 02 cm on the lower jaw. Five abrasions were also found on the face below the left eye extended to the neck and cheek and ligature marks 0.8x3 cm were found on midline of neck. Dead body was recovered with her scarf tied around her neck which also corroborates the prosecution case that she was murdered by strangulation with her scarf after rape.

52. Learned counsel for the convicted appellant argued that all witnesses of fact are relative of the deceased ‘X’ therefore they are highly interested witnesses hence their evidence could not be relied upon. This argument has no force. It is a well settled law that evidence of relative witness cannot be brushed aside only for the reason that he is related to the complainant if they inspire confidence to the level of independent, impartial, cogent and consistent witness.

53. In ***Kartik Malhar Vs. State of Bihar (1996) 1 SCC 614***, the Hon’ble Apex Court has held as under:-

"We may also observe that the ground that the witness being a close relative and consequently, being a partisan witnesses, should not be relied upon, has no substance. This theory was repelled by this Court as early as in Dilip Singh's case (supra) in which this Court expressed its surprise over the impression which prevailed in the minds of the members of the Bar that relative were not independent witnesses. Speaking through Vivian Bose, J., the Court observed :

We are unable to agree with the learned Judges of High Court that the testimony of the two eye-witnesses requires corroboration. If the foundation for such an observation is based on the fact that the witnesses are women and that the fate of seven men hangs on their testimony, we know of no such rules. If it is grounded on the reason that they are closely related to the deceased we are unable to concur. This is a fallacy common to many criminal cases and one which another Bench of this Court endeavoured to dispel in Rameshwar v. The State of Rajasthan [1952] SCR 377= AIR 1952 SC 54. We find, however, that it is unfortunately still persist, if not in the judgments of the Courts, at any rate in the arguments of counsel."

In this case, the Court further observed as under:

"A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause such an enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person. It is true, when feelings run high and there is personal cause for enmity, that there is tendency to drag in an innocent person against whom a witness has a grudge along with the guilty, but foundation must be laid for such a criticism and the mere fact of relationship far from being a foundation is often a sure guarantee of truth.

In another case of ***Mohd. Rojali Versus State of Assam: (2019) 19 SCC 567****, the Hon'ble Apex Court in this regard has held as under:-*

"As regards the contention that all the eyewitnesses are close relatives of the deceased, it is by now wellsettled that a related witness cannot be said to be an 'interested' witnesses merely by virtue of being a relative of the victim. This court has elucidated the difference between 'interested' and ' related' witness in a plethora of cases, stating that a witness may be called interested only when he or she derives some benefit from the result of a litigation, which in the context of a criminal case would mean that the witness has a direct or indirect interest in seeing the accused punished due to prior enmity or other reasons, and thus has a motive to falsely implicate the accused (for instance, see ***State of Rajasthan v. Kalki (1981) 2 SCC 752; Amit v. State of Uttar Pradesh, (2012) 4 Scc 107;*** *and* ***Gangabhavani v. Rayapati Venkat Reddy, (2013) 15 SCC 298)****. Recently, this difference was reiterated in* ***Ganapathi v. State of Tamil Nadu, (2018) 5 SCC 549****, in the following erms, by referring to the three Judge bench decision in State of Rajasthan v. Kalki (supra): "14. "Related" is not equivalent to "interested". A witness may be called "interested' only when he or she derives some benefit from the result of a litigation; in the decree in a civil case, or in seeing an accused person punished. A witness who is a natural one and is the only possible eye witness in the circumstances of the case cannot be said to be "interested"."*

11. In criminal cases, it is often the case that the offence is witnessed by a close relative of the victim, whose presence on the scene of the offence would be natural. The evidence of such a witness cannot automatically be discarded by labelling the witness as interested. Indeed, one of the earliest statements with respect to interested witnesses in criminal case was made by this Court in ***Dalip Singh v. State of Panjab 1954 SCR 145****, wherein this Court observed:*

> *"26. A witness is normally to be considered independent unless he or she springs from sources which are likely to be tainted and that usually means unless the witness has cause, such as enmity against the accused, to wish to implicate him falsely. Ordinarily, a close relative would be the last to screen the real culprit and falsely implicate an innocent person..."*
>
> *12. In case of related witness, the Court may not treat his or her testimony as inherently tainted, and needs to ensure only that the evidence is inherently reliable, probable, cogent and conistent. We may refer to the observations of this Court in* ***Jayabalan v. Union Territory of Pondicherry, (2010) 1 SCC 199****;*
>
> *"23. We are of the considered view that in cases where the Court is called upon to deal with the evidence of the interested witnesses, the approach of the Court while appreciating the evidence of such witnesses must not be pedantic. The Court must be cautious in appreciating and accepting the evidence given by the interested witnesses but the Court must not be suspicious of such evidence. The primary endeavour of the Court must be to look for consistency. The evidence of a witnesses cannot be ignored or shown out solely because it comes from the mouth of a person who is closely related to the victim."*

54. Having considered the fact and circumstances and the material in the record, we are of the view that the prosecution has established the case of circumstantial evidence beyond reasonable doubt and the chain is also complete so as to suggest that only accused can commit the crime and there is no possibility that can lead to the conclusion that any person other than the accused can commit this crime. After due consideration of evidence on record we are of the view that the trial court has rightly convicted the appellant Govind Pasi and there is no legal

infirmity in the judgment with regard to the conviction of the convict appellant.

55. Now, while upholding the conviction of the convict-appellant, we proceed to consider the question of death sentence awarded by him by the trial court under Section 302 IPC.

56. Capital punishment has been the subject-matter of great social and judicial discussion and catechism. From whatever point of view it is examined, one indisputed statement of law follows that is is neither possible nor prudent to state any universal formula which apply to all the cases of criminology where capital punishment has been prescribed. Thus, the Court must examine each case on its facts, in the light of enunciated principles and before option for death penalty, the circumstances of the offender are also required to be taken into consideration along with the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception.

57. Before going into the legality and propriety of question of sentence imposed upon the convict/appellant, it is desirable to look at the various decisions of the Apex court in the matter. The decision in ***Bachan Singh v. State of Punjab*** reported in ***AIR 1980 SC 898*** pronounced by the Constitutional Bench of the Hon'ble Apex Court stands first among the class making a detailed discussion after the amendment of Cr.P.C in 1974. In this case, the Apex Court had held that provision of death penalty was an alternative punishment for murder and is not

violative of Article 19 of the Constitution of India. Relevant paragraphs of the said judgment are relevant and the same are reproduced herein below:-

> "*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, 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 farmers 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 Indian Penal code, 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 presentence 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.

200. Drawing upon the penal statutes of the States in U.S.A framed after Furman vs. Georgia, in general, and Clauses 2(a), (b), (c) and (d) of the Indian Penal code (Amendment) Bill passed in 1978 by the Rajya Sabha, in particular, Dr. Chitale has suggested these "aggravating circumstances":

Aggravating circumstances: A court may however, in the following cases impose the penalty of death in its discretion:

(a) if the murder has been committed after previous planning and involves extreme brutality; or

(b) if the murder involves exceptional depravity; or

(c) if the murder is of a member of any of the armed forces of the Union or of a member of any police force or of any public servant and was committed-

(i) while such member or public servant was on duty; or

(ii) in consequent of anything done or attempted to be done by such member or public servant in the lawful discharge of his duty as such member or public servant whether at the time of murder he was such member or public servant, as the case may be, or had ceased to be such member or public servant; or

(d) if the murder is of a person who had acted in the lawful discharge of his duty under Section 43 of the CrPC, 1973 or who had rendered assistance to a Magistrate or a police officer demanding his aid or requiring his assistance under Section 37 and Section 129 of the said Code.

201. Stated broadly, there can be no objection to the acceptance of these indicators but as we have indicated already, we would prefer not to fetter judicial discretion by attempting to make an exhaustive enumeration one way or the other.

204. Dr. Chitaley has suggested these mitigating factors:

"Mitigating circumstances";- in the exercise of its discretion in the above cases, the Court shall take into account the following circumstances:

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

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

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

(4) The probability that the accused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the condition 3 and 4 above.

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

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

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

207. We will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of the sentence.

209. There are numerous other circumstances justifying the passing of the lighter sentence; as there are countervailing circumstances of aggravation. "We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables and an imperfect and undulating society. "Nonetheless, it cannot be over-emphasised that the scope and concept of mitigating factors in the area of death penalty must receive a liberal and expansive construction by the courts in accord with the sentencing policy writ large in Section 354 (3). Judges should never be blood thirsty. Hanging of murders has never been too good for them. Facts and figures albeit incomplete, furnished by the Union of India , show that the past Courts have inflicted the extreme penalty with extreme infrequency- a fact which attests to the caution and compassion which they have always brought to bear on the exercise of their sentencing discretion in so grave a matter. It is, therefore, imperative to voice the concern that courts, aided by the broad illustrative guidelines indicated by us, will discharge the onerous function with evermore scrupulous care and humane concern, directed along the high-road of legislative police 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 through law's instrumentality. That ought not to be done save the rarest of rare cases when the alternative option is unquestionable foreclosed."

58. In ***Machhi Singh v. State of Punjab*** reported in ***(1983) 3 SCC 470***, the Hon'ble Supreme Court has made an attempt to

cull out certain aggravating and mitigating circumstances and it has been held that it was only in ‘rarest of rare’ cases, when the collective conscience of the community is to shocked that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty. In this Judgment the Hon’be Supreme Court has summarized the instances on which death sentence may be imposed, which reads thus:

“38.xxxx

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before option for the death penalty the circumstances of the ‘offender’ also requires 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 has 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 question 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 herein above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so."

(Emphasis supplied)

59. The issue again came up before the Hon'ble Apex Court in ***Ramnaresh & others v. State of Chhattisgarh*** reported in (2012) 4 SCC 257, wherein the Hon'ble Supreme Court reiterated thirteen aggravating and seven mitigating circumstances as laid down in the case of Bachan Singh (supra) required to be taken into consideration while applying the doctrine of "rarest of rare" case. Relevant para of the same reads thus:-

> *"76. The law enunciated by this Court in its recent judgments, as already noticed, adds and elaborates the principles that were stated in the case of Bachan Singh (supra) and thereafter, in the case of Machhi Singh, (supra). The aforesaid judgments, primarily dissect these principles into two different compartments- one being the "aggravating circumstances" while the other being the "mitigating circumstances". The Court would consider the cumulative effect of both these aspect and normally, it may not be very appropriate for the Court to decide the most significant aspect of sentencing policy with reference to the classes under any of the following beads while*

completely ignoring other classes under other heads. To balance the two is the primary duty of the Court. It will be appropriate for the Court to come to a final conclusion upon balancing the exercise that would help to administer the criminal justice system better and provide an effective and meaningful reasoning by the Court as contemplated under Section 354 (3) of Cr.P.C.

Aggravating Circumstances:

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

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

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

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

(5) Hired killings.

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

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

(8) The murder or the offence was committed to prevent a person lawfully carrying out his duty like arrest or custody in a place of lawful confinement of himself or another. For instance,

murder is of a person who had acted in lawful discharge of his duty under Section 43 Cr.P.C.

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

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

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

(12) When there is a cold blooded murder with provocation.

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

Mitigating Circumstances:

(1) The manner and circumstances 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 behaviour possible and cold 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 pre-ordained manner and the death resulted in the course of commission of another crime and that there was a possibility of it being construed as consequences to the commission of the primary crime.

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

60. In the matter of ***Dharam Deo Yadav Vs. State of U.P.*** reported in ***(2014) 5 SCC 509***, the Hon'ble Supreme Court had held thus:

"36. We may not consider whether the case falls under the category of rarest of the rare case so as to award death sentence for which, as already held, in Shankar Kisanrao Khade vs. State of Maharashtra (2013) 5 SCC 546 this Court laid down three tests, namely, Crime Test, Criminal Test and RR test. So far as the present case is concerned, both the Crime Test and Criminal Test have been satisfied as against the accused. Learned counsel appearing for the accused, however, submitted that he had no previous criminal records and that apart from the

circumstantial evidence, there is no eye-witness in the above case, and hence, the manner in which the crime was committed is not in evidence. Consequently, it was pointed out that it would not be possible for this Court to come to the conclusion that the crime was committed in a barbaric manner and, hence the instant case would fall under the category of rarest of rare. We find some force in that contention.

Taking in consideration all aspect of the matter, we are of the view that, due to lack of any evidence with regard to the manner in which the crime was committed, the case will not fall under the category of the rarest of rare case.

Consequently, we are inclined to commute the death sentence to life and award 20 years of rigorous imprisonment, over and above the period already undergone by the accused, without any remission, which, in our view, would meet the ends of justice.

61. In ***Kalu Khan v. State of Rajasthan*** report in ***(2015) 16 SCC 492***, the Hon'ble Supreme Court had held that:-

"30. In Mahesh Dhanaji Shinde v. State of Maharashtra, the conviction of the appellant-accused was upheld keeping in view that the circumstantial evidence pointed only in the direction of their guilt given that the modus operandi of the crime, homicidal death, identity of 9 of 10 victims, last seen theory and other incriminating circumstances were proved.

However, the Court has thought it fit to commute the sentence of death to imprisonment for life considering the age, socio-economic conditions, custodial behaviour of the appellant-accused persons and that the case was entirely based on circumstantial evidence. This Court has placed reliance on the observations in Sunil Dutt Sharma Vs. State (Govt. Of NCT of Delhi) as follows: (Mahest Dhanaji case SCC p. 314, para 35)

> *"35. In a recent pronouncement in Sunil Dutt Sharma v. State (Govt. Of NCT of Delhi), it has been observed by this Court that the principles of sentencing in our country are fairly well settled- the difficulty is not in identifying such principles but lies in the application thereof. Such application, we may respectfully add, is a matter of judicial expertise and experience where judicial wisdom must search for an answer to the vexed question-- whether the option of life sentence is unquestionably foreclosed? The unbiased and trained judicial mind free from all prejudices and notions is the only asset which would guide the Judge to reach the 'truth'."*

62. In the light of the proposition of law we are required to scrutinize the case in hand mainly to find out whether the case was in the category of rarest of the rare case and imposition of death penalty would be the only appropriate sentence and the imposition of life imprisonment, which is a rule, would not be adequate to meet the ends of justice. While awarding death sentence to the appellant, the trial court has drawn the conclusion that the convicted has committed rape of 10 years old innocent child hence she sustained grievous injuries on her private parts and was brutally murdered by appellant the same come under the category of rarest of the rare case.

63. From the perusal of the above it is clear that the aggravated circumstances assessed by the trial court for awarding the extreme penalty of death are that the crime was committed with an innocent child of 10 years who was living alone with her maternal grandparents (Nana and Nani) and her parents were living in Delhi for livelihood of family. The special reason assigned by the trial court held that the balance sheet of

gravity and mitigating circumstances heavily weight against the appellant making it the rarest of rare case and consequently awarded death sentence.

64. However, the convict/ appellant committed the crime which is abominable, vicious and ferocious in nature and has caused scar on the society. If crime is said to be of such a brutal, depraved or heinous nature so as to fall in the category of rarest of rare, he must be adequately punished for that. But we have to consider the circumstances of accused also before awarding punishment. Convict/appellant was of 20 years of age at the time of commission of crime now he has dependents in the form of wife and children. There is no evidence that the accused committed the crime with pre-planning or pre-ponderance. There is no evidence on record that there is no possibility of improvement in the conduct of the accused. No such evidence is adduced in the trial court that the accused is a hardened criminal. No criminal history of the appellant is stated during the trial.

65. Hence after considering the above facts and circumstances we are of the view that each link in the chain of circumstantial evidence has been adequately established by prosecution and conviction is hereby affirmed but that the instant case does not fall in the category of rarest of rare case warranting capital punishment. Before proceeding further, it would be pertinent to mention that death penalty is an exception only when life imprisonment would be inadequate to the crime. Therefore, the

death sentence awarded to the convict under Section 302 IPC is liable to be commuted into life imprisonment which will accomplish the ends of justice.

Conclusion

66. While affirming the conviction of the appellant under Section 376 and 302 IPC we set aside the death penalty of the appellant awarded by the trial court under Section 302 I.P.C. and this Court modify his sentence from death penalty to life imprisonment without remission under Section 302 I.P.C.

67. The Criminal Appeal No. 1004 of 2018 is **partly allowed**. In the light of the above discussion reference for confirmation of death penalty is liable to be rejected and is accordingly **rejected**.

68. The appellant is in jail and shall serve out his sentence as has been ordered and modified by this Court.

69. We appreciate the able assistance of Shri Manish Bajpai, learned Amicus Curiae who assisted the Court in disposal of the present reference and appeal.

70. Let a copy of this judgment as well as lower court record be transmitted to the trial court forthwith for necessary information and compliance.

(Mrs. Renu Agarwal,J.) (Ramesh Sinha,J.)

Order Date :- 18.10.2022/Nadeem