

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(D.B. HON'BLE JUSTICE SHRI S.C. SHARMA & HON'BLE
JUSTICE SHRI SHAILENDRA SHUKLA)

CRRFC. No.1/2019

State of M.P.

V/s.

Waris s/o. Nahar Khan

aged 42 years, r/o. Kushalgarh,

P.S. Piploda, District Rat lam (M.P.)

Shri R.S. Chhabra, learned Addl. Advocate General with Shri Kanishk Gupta, Advocate for the Appellant/State.

Shri Avinash Sirpurkar, learned Senior Advocate with Ms. Seema Sharma, Advocate for the respondent, as *amicus curiae*.

CRA. No.1854/2019

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(JUDGMENT)

(Indore Dt.18.11.2019)

Per Shailendra Shukla, J:-

The present reference and appeal arise out of judgment dated 17.12.2018, pronounced in Special Case No.3/2018, by the Second ASJ and Special Judge (POCSO Act), Jaora, District Ratlam whereby, accused Waris has been convicted under the provisions of Section 376(2)(F), 376(2)(N),

376(AB), 302 and 201 of IPC and Section 5/6 of POCSO Act and has been sentenced as under :-

Provision of IPC	Sentence
Section 376-AB IPC	Death sentence (to hang till death) with fine of Rs.5000/-. One year RI if fine not paid.
Section 302 of IPC	Death sentence (to hang till death) with fine of Rs.5000/-. One year RI if fine not paid.
Section 201 of IPC	RI for a period of 5 years with fine of Rs.5000/-

2. The accused has not been sentenced separately under Section 376(2F), 376(2) of IPC and Section 5/6 of POCSO Act in view of Section 71 of IPC, which provides for imposing sentence in an offence, which provides for more severe punishment.

3. The admitted facts are that Salma Bi was the third wife of accused and that the deceased girl-child 'A' (name withheld) was the daughter of Salma Bi born out of previous marriage of Salma Bi and that Salma Bi had brought girl-child 'A' along with her to the house of accused after '*Nikah*'. It is also admitted that Salma Bi wanted to cremate girl-child 'A' at Jaora and the dead body of deceased girl-child 'A' was carried to Jaora (Rat lam) from Kushalgarh. It is further admitted that the girl-child 'A' had suffered burn injuries on her heel and that the accused had brought deceased girl-child 'A' to Madhav Singh hospital for dressing.

4. On 23.4.2018, Amit Tolani (PW24) while posted as Station House Officer in Police Station Piploda received a call on his mobile phone that accused Waris Khan, has caused death of his daughter girl-child 'A' by assaulting her and the

deceased is being taken for being cremated. This information was recorded in Rojnamcha Sanha (Exhibit P/38). Witness proceeded to the house of accused Waris at Kushalgarh, but found the same locked and thereafter went to Jaora Civil Hospital and from there went to the house of Jahur Khan who was relative of Salma Bi (PW1) , the wife of Waris. The body of the deceased was retrieved and ASI Virender Singh Kushwaha (PW16) was directed to conduct postmortem examination.

5. Just prior to this, the deceased girl-child 'A' had been brought to Civil Hospital at Jaora by the accused and was shown to duty doctor S.L. Kharadi (PW8). The doctor found the deceased as having been brought dead with multiple abrasions. He prepared his MLC report Exhibit P/4, which was sent to ASI T.M. Sankhla (PW15), who was on duty in Civil Hospital at Jaora. On the basis of this report, Shri Sankhla instituted merg on zero, which is Exhibit P/9.

6. Meanwhile, ASI V.S. Kushwah (PW16), who had been directed by Amit Tolani to conduct postmortem of deceased girl-child 'A', proceeded to Civil Hospital at Jaora. There he met T.M. Sankhla, who handed him over the documents pertaining to merg registered as 0/2018.

7. T.M. Sankhla (PW15), filled up the safina form Exhibit P/10 and drew Naksha Panchayatnama Exhibit P/11 and gave an application Exhibit P/1 to Dr. Chandra Pratap Rathore (PW6) posted as medical officer in Civil Hospital, who conducted postmortem of deceased on 24.4.2018 and he along with two other penal doctors drew P.M. report Exhibit

P/2 and short P.M. report Exhibit P/3 and opined that the deceased has been subject to sexual violence and the death was a result of asphyxiation caused by throttling.

8. ASI V.S. Kushwaha carried the merg to police station Piploda where HCM Rajendra Jagtap (PW18) recorded the original merg registered as 23/2018 (Ex.P/13). Shri Kushwaha (PW16), on receiving short P.M. report, registered FIR, (Ex.P/14) under Section 302 and 201 of IPC at Crime No.98/2018, against unknown person.

9. The penal of doctors collecting postmortem examination of deceased prepared slides of vaginal smear of deceased and sealed the same, which was handed over to HCM Rajendra Jagtap (PW18).

10. Amit Tolani (PW24) after returning from Jaora, recorded the statements of Salma Bi, Nadeem and Jahid on 24.4.2018 and proceeded to Kushalgarh on 25.4.2018 and prepared spot map which is at (Ex.P/40). He also seized a mattress on which offence was committed by accused Waris Khan and also seized his shirt, trouser and underwear of Waris Khan and prepared seizure memo (Ex.P/7). Accused Waris was arrested on 25.4.2018 vide Ex.P/41. I.O, on 26.4.2018, recorded the memorandum (Ex.P/8) of accused on whose information clothes worn by the deceased on the date of incident were recovered (Ex.P/8).

11. I.O. Amit Tolani (PW24) sent the accused for his medical examination after filling a form (Ex.P/5). Constable Mangilal (PW20) took accused – Waris to Civil Hospital, Jaora where Dr. Ghanshyam Patidar (PW9) conducted

medical examination and gave a positive report (Ex.P/5) regarding his potency. The nails of accused Waris were cut and preserved, his underwear and clothes were also preserved along with seamen slide. Mangilal (PW20) took seized items and handed the same to HCM Rajendra Jagtap (PW18) who drew seizure memo (Ex.P/18).

12. Amit Tolani (PW24) proceeded to enquire about the age of the deceased on 30.4.2018 and found the accused to be below 12 years. Seized items were sent to FSL and the blood sample of Waris was sent for DNA matching and after receipt of the report and after completing the investigation, filed the charge sheet under the provisions of Sections 302, 201, 376(ii)(i), 376(A)(B) of IPC and under Section 5(M)(N) / 6 of POCSO Act.

13. The Special Judge POCSO Act, Jaora, framed charges against accused – Waris under the provisions of Section 376(2)(F), 376(2)(N), 376(AB), 302 and 201 of IPC and under Section 5/6 of POCSO Act.

14. The accused – appellant abjured his guilt and in his statement recorded under Section 313 of Cr.P.C took a defence that Dr. Chandra Pratap Rathore has taken money and given false statements and submitted false report and that Salma Bi is under pressure of her sister-in-law, Ilias Bi and has made false statements otherwise the parents of Salma Bi would be driven out by Ilias Bi. The accused has stated that girl-child 'A' died due to illness. The appellant has lead defence evidence and apart from himself has also examined

two defence witnesses namely Rajiya Bi (DW-2) and Golu (DW-3). He has also submitted written final submissions.

15. The appellant in his appeal memo has controverted the findings arrived at by the Trial Court and has stated that there are number of contradictions in the evidence of witnesses which have been overlooked by the Trial Court. It has also been stated that it is very unnatural that mother Salma Bi (PW-1) of the deceased to have kept quite about the alleged torture meted out to the deceased by the appellant. Such conduct creates doubt on her testimony, that Bhagwan Singh (PW-13) and Jaspal Singh (PW-14) have turned hostile and their depositions have not been considered by the Trial Court, that the prosecution witness Dr. S. L. Kharadi (PW-8) admitted in his cross-examination that the injuries found on the person of the deceased could have been caused due to sudden fall while sprinting, that MLC does not show as to the duration of the injuries found on the person of the deceased, that from the statements of Dr. Ghanshyam Patidar (PW-9), it could not be concluded that the appellant had indulged in committing the offence as alleged, that the conduct of the appellant in taking deceased to the hospital shows his concern and compassion for the deceased and not vice-versa and this fact has not been considered and further that there was no attempt on the part of the appellant to dispose of the body of the deceased but duly taken to the matrimonial home of Salma Bi, that the counsel engaged on behalf of the appellant was junior counsel having not much experience and he could not properly conduct the trial, that the Trial Court did not give any importance to the defence evidence produced on behalf of the

appellant, that the appellant being in jail could not contact his lawyer therefore, delay has been caused which is prayed to be condoned.

16. These are the grounds on which acquittal has been sought.

There are following questions for determination :-

(i) Whether the deceased girl-child 'A' was below the age of 12 years on the date of incident ?.

(ii) Whether the appellant being the step father of the deceased girl had committed rape upon her ?.

(iii) Whether the death of the deceased girl-child 'A' was the result of culpable homicide ?.

(iv) Whether the appellant is responsible for committing the culpable homicide of the deceased and whether the same amounted to murder ?.

(v) Whether the appellant caused the evidence of the commission of offence of rape and murder to disappear with the intention of screening himself from the legal punishment ?.

(vi) Whether the sentence of the capital punishment awarded to the appellant was appropriate punishment in the given circumstances ?.

Regarding determination of the question No.1,

17. Salma Bi (PW1), in para 9 has stated that deceased girl-child 'A' was six years of age, when she died and she had handed over the birth certificate of girl-child 'A' to the Investigation Officer and had appended the thumb impression on the seizure memo of the birth certificate. The Investigation Officer Amit Tolani (PW24) in para 11 of his evidence states

that on 30.4.2018, he went to the house of Zahur Khan to inquire the age of deceased girl-child 'A' where, Salma Bi, the mother of girl-child 'A' gave him her birth certificate as also the Rashan Card. The birth certificate is Exhibit P/20, showing the date of birth of girl-child 'A' as 10.11.2012 and seizure memo is Exhibit P/42.

18. Dr. Meena Verma (PW19) on 10.11.2012 was posted in the District Hospital, Mandsaur and girl-child 'A', daughter of Salma Bi was born on 10.11.2012 and she has issued the birth certificate Exhibit P/20, which carries signature from A to A para.

19. The deceased named as Saina also had an alias name Aaliya and this fact has been admitted by the appellant in his accused statement. Dr. Chandra Prakash Rathore (PW6) who has performed the postmortem on the body of the deceased girl-child 'A', also stated that the deceased was about 7 years of age.

20. From the perusal of the birth certificate and the statements of the witnesses, the age of the deceased girl-child 'A' was about six years at the time of her death and this fact has also not been controverted by the appellant. Thus, it is proved that the deceased was below 12 years of age, when she died and this question is answered in affirmative.

Regarding question No.2

21. Dr. Chandra Prakash Rathore (PW6) states that when he conducted the postmortem of the deceased girl-child 'A', he along with two other panel members have found that there was small tear of fourchette in her vagina with oozing of blood. Her hymen was torn, which admitted one finger easily whereas, at

such tender age the vagina does not admit one finger and this shows that the deceased had been subjected to sexual assault. The report is Exhibit P/2. In his cross examination, he denies the suggestion that such injuries could be caused due to a fall. Thus, as per this witness deceased girl-child 'A' was a victim of sexual assault. From the report of Dr. Rathore (PW6), whose evidence has not been challenged successfully, which is proved that the deceased had been subjected to sexual assault, which was of the nature of penetrative sexual assault.

22. The mother of deceased girl-child 'A', Salma Bi (PW1) states that the appellant being a step father of girl-child 'A' had been subjecting girl-child 'A' to sexual assault for quite sometime. She states that the appellant used to sleep in between her and deceased girl-child 'A' and would commit sexual assault on girl-child 'A'. On one occasion, she had seen that the appellant had been fondling the genitals of girl-child 'A' beneath the blanket, which was found out when Salama Bi (PW1) getting suspicious suddenly withdrew the blanket. She states that on another occasion, the appellant raped girl-child 'A' in a room while the witness was confined in another room and the mouth of witness gagged with a cloth and the hands of witness tied by the appellant and since then, the deceased became depressed. The witness further states that on 21.4.2018, at about 7.00 PM, the appellant started beating the deceased girl-child 'A' and thereafter, took her to room and the witness was again confined in another room, but when the witness heard muffled cries of girl child 'A', she pleaded with accused to open the room and when the room was opened by the appellant, the

witness ran and found girl-child 'A' lying down without leggy and underwear and her '*Kurti*' was lifted above her waist. The witness states that she picked up girl-child 'A' and took her to wash room, but girl-child 'A' could not relieve herself even having urged to do and complaint of pain in her stomach. The witness states that she found genital of girl-child 'A' to be swollen and radant and then girl-child 'A' told her that appellant has taken off his own clothes and her also and had committed wrongful act ('*Galat Kaam*'). The witness states that she thus came to know that the appellant had committed rape on girl-child 'A'. The whole night girl-child 'A' remained ill at ease. The next day, ie., on 22.4.2018, girl-child 'A' continued to be ill and was not able to consume the water, but the appellant did not take her to hospital when pleaded by the witness and went out.

23. In her cross examination, she has been given suggestion that despite such atrocities why she did not report to the police and did not told her own family members. The witness respond that people are afraid of the appellant and, therefore, did not come to help. A general suggestion has been given to the witness that the appellant did not commit wrongful act on girl-child 'A'. The witness denies such suggestion. Thus, evidence of the witness Salma Bi (PW1) regarding appellant's committing the sexual assault and rape upon deceased girl-child 'A', number of times has been not challenged in cross examination appropriately. Regarding submission on behalf of the appellant that Salma Bi (PW1) did not complaint to any one regarding such alleged dastardly act to any one creates a doubt on the statement of Salma Bi ((PW1) as afterthought, carries no

weight. The background of Salma Bi (PW1) shows that she had been remarried to the appellant by her family members who were looking after her as three kids have been born out from her first wedlock and she was not inclined to burden them with her miseries and, therefore, she did not complaint.

24. Thus, the evidence of Salma Bi (PW1) regarding the appellant committing sexual assault and rape upon the deceased girl-child 'A' over a period of time has not been challenged in cross examination. Her statements are supported by the medical evidence that the deceased was a victim of sexual assault.

25. The eye witness account of rape on the deceased girl child apart, the prosecution has also adduced circumstantial evidence to prove that it was accused/appellant Waris who had committed rape on the deceased girl-child as already stated the clothes of the deceased were recovered by the appellant from his almera vide seizure memo (Ex.P/8) and these clothes along with the clothes of Waris and his semen slides were sent to DNA matching to FSL by Amit Tolani I.O. (PW24). The DNA report is Exhibit P/46. As per this report, male 'Y' Chromosomes were found on the leggie of the deceased girl-child 'A' and the DNA profile of this 'Y' Chromosomes matched with the DNA profile of 'Y' Chromosomes of appellant – Waris. The DNA profile of vaginal smear of the deceased also matched with DNA profile of leggie of the deceased girl-child 'A', meaning thereby, that the it was proved that the leggie was worn by the deceased girl-child 'A' and from this leggie, the male Chromosome was tested positive. This male Chromosome matched with that of accused/appellant.

26. The Apex court in its various judgments has laid out the importance of DNA profiling and has held that the DNA matching, due to its scientific character, conclusively nails the culprit. These citations are *Dharam Deo Yadav v/s. State of Uttar Pradesh, (2014) 5 SCC 509*, *Santosh Kumar Singh v/s. State through CBI, (2010) 9 SCC 747* and the Nirbhaya's case, which is cited as *Mukesh & Anr. v/s. State (NCT of Delhi) & Ors., (2017) 6 SCC 1* etc. The Apex court in the case of Santosh Kumar Singh (supra) held that it would be dangerous doctrine to lay down that report of an expert witness could be brushed aside by making reference to some other text. In Nirbhaya's case, the Supreme Court commented on DNA profiling as under :-

"455. Before considering the above findings of DNA analysis contained in tabular form, let me first refer to what is DNA, the infallibility of identification by DNA profiling and its accuracy with certainty. DNA - De-oxy-ribonucleic acid, which is found in the chromosomes of the cells of living beings, is the blueprint of an individual. DNA is the genetic blueprint of life and is virtually contained in every cell. No two persons, except identical twins have ever had identical DNA. DNA profiling is an extremely accurate way to compare a suspect's DNA with crime scene specimens, victim's DNA on the blood-stained clothes of the accused or other articles recovered, DNA testing can make a virtually positive identification when the two samples match. A DNA finger print is identical for every part of the body, whether it is the blood, saliva, brain, kidney or foot on any part of the body. It cannot be changed; it will be identical no matter what is done to a body. Even relatively minute quantities of blood, saliva or semen at a crime scene or on clothes can yield sufficient material for analysis. The Experts opine that the identification is almost hundred per cent precise. Using this i.e. chemical structure of genetic information by generating DNA profile of the individual, identification of an individual is done like in the traditional method of identifying finger prints of offenders. Finger prints are only on the fingers and at times may be altered. Burning or cutting a finger can change the make of the finger print. But DNA cannot be changed for an individual no matter whatever happens to a body.

456. We may usefully refer to Advanced Law Lexicon, 3rd Edition Reprint 2009 by P. Ramanatha Aiyar which explains DNA as under:-

"DNA.- Deoxyribonucleic acid, the nucleoprotein of chromosomes. The double-helix structure in cell nuclei that carries the genetic information of most living organisms. The material in a cell that makes up the genes and controls the cell. (Biological Term) DNA finger printing- A method of identification especially for evidentiary purposes by analyzing and comparing the DNA from tissue samples. (Merriam Webster)"

In the same Law Lexicon, learned author refers to DNA identification as under:

DNA identification- A method of comparing a person's deoxyribonucleic acid (DNA) - a patterned chemical structure of genetic information - with the DNA in a biological specimen (such as blood, tissue, or hair) to determine if the person is the source of the specimen. Also termed DNA finger printing; genetic finger printing (Black, 7th Edition, 1999).

457. DNA evidence is now a predominant forensic technique for identifying criminals when biological tissues are left at the scene of crime or for identifying the source of blood found on any articles or clothes etc. recovered from the accused or from witnesses. DNA testing on samples such as saliva, skin, blood, hair or semen not only helps to convict the accused but also serves to exonerate. The sophisticated technology of DNA finger printing makes it possible to obtain conclusive results. [Section 53A Cr.P.C.](#) is added by [the Code of Criminal Procedure \(Amendment\) Act, 2005](#). It provides for a detailed medical examination of accused for an offence of rape or attempt to commit rape by the registered medical practitioners employed in a hospital run by the Government or by a local authority or in the absence of such a practitioner within the radius of 16 kms. from the place where the offence has been committed by any other registered medical practitioner.

458. Observing that DNA is scientifically accurate and exact science and that the trial court was not justified in rejecting DNA report, in [Santosh Kumar Singh v. State](#) (2010) 9 SCC 747, the Court held as under:

461. As discussed earlier, identification by DNA genetic finger print is almost hundred per cent precise and accurate. The DNA profile generated from the blood-stained clothes of the accused and other articles are found consistent with the DNA profile of the victim and DNA profile of PW-1; this is a strong piece of evidence against the accused. In his evidence, PW-45 Dr. B.K. Mohapatra has stated that once DNA profile is generated and found consistent with another DNA profile, the accuracy is hundred per cent and we find no reason to doubt his evidence. As pointed out by the Courts below, the counsel for the defence did not raise any substantive ground to rebut the findings of DNA analysis and the findings through the examination of

PW-45. The DNA report and the findings thereon, being scientifically accurate clearly establish the link involving the accused persons in the incident."

27. Based on the above, citations underlined the importance of DNA matching, the forensic expert's report (Ex.P/46) also shows that it was the accused who had violated the deceased the girl-child 'A'.

28. Apart from this witness account of Salma Bi (PW1) and DNA matching as shown above, the other circumstantial evidence was the recovery of clothes worn by the deceased at the time of her rape committed by the accused – appellant, on the basis of memorandum of the appellant from an almirah kept in his house. Both these documents, *ie.*, memorandum and seizure memo have been Exhibited as Ex.P/8 (mistakenly one numeral assigned to both the Exhibits). This also shows that the appellant had hidden the tainted clothes of the deceased, which if recovered, would have implicated him. Further, his act of not taking the girl-child to a doctor is also a relevant fact proved against the accused appellant since visit to doctor would have revealed rape committed upon the girl-child.

29. The defence of appellant/accused-Waris Khan is that of Plea of Alibi. This witness himself has deposed as (DW-1) and has also adduced the defence evidence. He has also examined another defence witness-Raziya Bi (DW-2) and Golu (DW-3). The appellant/accused-Waris Khan (DW-1) states that on 21.04.2018, he had gone out to village-Khudana and had stayed the whole night in that village only. He states that he had gone to that village for religious trip and on the

second day i.e. on 22.04.2018, he had gone to Jaora at 12:30 pm and from that place he reached to Kushalgarh at 1:00 pm. On reaching that place, he saw that his daughter was unwell and then he went to Dr. Madhav Singh and brought his daughter for treatment. Her mother served her food but the girl child 'A' vomited, but her condition worsened and then he took her to hospital – Hasanpalia but on the way she died. He then took the dead body of her daughter to village-Kushalgarh and then again brought the dead body to Jaora where her in laws reside. At Jaora, the police personnel from Piplouda Police Station came and told him that the girl child 'A' had been murdered and that its post-mortem will have to be conducted and then the body of girl-child 'A' was taken to Jaora hospital and he was also questioned. The appellant/accused states that on being questioned, he denied his involvement and had he committed the crime, the dead body would have been cremated in the vicinity of his village. The appellant states that he was assaulted by police personnel of Police Station at Piplouda. He further states that on Amit Tolani the Investigating Officer then asked him to provide him with a case pertaining to NDPS Act which could be registered in the police station, but the appellant/accused expressed his helplessness and it was then Mr. Amit Tolani, the Investigating Officer had issued a direction for registering a case under Sections 376 and 201 of IPC and POCSO Act, 2012. Thereafter, he was kept in the police station and then sent to Ratlam Jail.

30. While the accused/appellant states that he was not in his

home on 21.04.2018 and came back only on 22.04.2018, in his accused statement, he states that he was not in his home on the day when the incident occurred and he came back on 23.04.2018. It is to be noted that the death of girl-child 'A' occurred on 23.04.2018. No such suggestion has been given to Salma Bi (PW-1) in her cross-examination by the accused/appellant regarding absence on relevant dates that the accused/appellant had gone to a religious trip to some other place. The Plea of '*alibi*' has been taken by the accused/appellant for the first time in his accused statement. Further, there is divergence/mismatching regarding date/dates from the house in his accused statement and in the deposition of appellant/accused. The second defence witness, *i.e.*, Raziya Bi (DW-2) states that on the date of incident she was at village-Arniapitha and on that day the appellant – Waris had come to her and told her that he had come to Kalukheda for attending a marriage ceremony and there were 3 to 4 persons with accused/appellant-Waris and at that time, the wife of Waris called him on phone and asked him to come back to Kushalgarh. Witness stated that when she asked him, appellant/accused – Waris told the witness that his wife beats and commits physical violence with her deceased girl-child 'A'. The appellant – Waris then went to Kushalgarh *via* Jaora, Ratlam (MP).

31. While the appellant/accused-Waris (DW-1) states that he had gone to village-Khudana which is near village-Kalukheda on a religious trip, Raziya Bi (DW-2) states that the appellant-Waris had gone to village-Kalukheda in a marriage function.

This witness states that appellant/accused-Waris had cut short his stay on receiving the phone of his wife and he had told the witness that his wife is in the habit of physically assaulting the girl-child 'A'. However, no such statement has been made by the appellant-Waris in his own deposition.

32. Thus, there are number of omissions and contradictions in the statement of appellant-Waris (DW-1) and Raziya Bi (DW-2). The case of appellant-Waris is that he had gone to Jaora, Ratlam on the date of incident with his friends but none of these persons have been examined by him. There are number of contradictions in his own statement and the statement of witness-Raziya Bi (DW-2) and Waris himself. Neither in his deposition, and nor in his accused statements accused Waris has brought out a defence that it was the mother of the deceased-girl-child 'A' who used to physically assault her own girl-child 'A' and therefore, such defence is an after-thought defence. The appellant has also examined Golu (DW-3) who is the brother of deceased. He states that he lives along with his other brothers and with his grand mother who resides at Arniapitha. He states that he had gone to Jaora on the date of incident. He states that he met Waris who told the witness to accompany him and then the witness went to Kushalgarh along with Waris and saw that his mother Salma Bi was assaulting his sister. Salma Bi was questioned by the appellant and then deceased girl-child 'A' was taken to Hasanpipliya and after coming back, he came to know that girl child 'A' had died.

33. The witness-Golu (DW-3) although states that he resides with his grandmother at Arniapitha, he has not shown his

address at Arniapitha in the column for “Address” in deposition sheet. In the said column, he has shown his address at Kushalgarh.

34. Thus, there are vital contradictions and omissions between the statements of appellant/accused-Waris Khan (DW-1) and other two witnesses i.e. Raziya Bi (DW-2) and Golu (DW-3). The appellant-Waris Khan states that on the date of incident that he was not in his house but had gone to another village along with ten to fifteen persons but no such person has been examined by Waris Khan (DW-1). This fact, coupled with previously discussed contradictions and omissions between the evidence of appellant and other witnesses, the Plea of Alibi has not been substantially proved by the appellant-Waris Khan.

35. Accused-appellant - Waris Khan, having not been able to prove the defence of '*alibi*', onus lied upon him under Section 106 of Evidence Act to prove as to who committed the offence of sexual assault on the deceased-girl child which was a fact within his knowledge. This burden has not been discharged by the accused. The act of accused in not taking the deceased-girl child 'A' to a doctor even though she was seriously ill and injured also shows that he deliberately avoided taking her to doctor to avoid the detection of rape on her and this act is relevant fact under provisions of Section 8 of the Evidence Act.

36. Thus, from the eye-witness account of Salma Bi and other evidence as already discussed, it is conclusively found proved that it was the accused appellant who had committed

rape upon the deceased girl-child. This question is answered in “affirmative”.

Regarding question Nos. 3 and 4

37. Dr. Chandra Pratap Rathore (PW-6) states that on 24.04.2018, while he was posted as Medical Officer in Civil Hospital at Jaora (Ratlam), he received an application-Exhibit-P/1 sent by Assistant Sub-Inspector (ASI), T.N. Sankhla who conducted the post-mortem of deceased girl-child 'A' of Waris aged seven years. The witness states that he along with two other panel members, Dr. Ajay Rathore and Dr. Atul Mandvariya conducted the post-mortem of the deceased and he found following injuries on her.

38. Dead body of female child aged seven years lying naked supine on PM table. Rigor mortis had passed off. There were following injuries found on the body :-

- “(i) Multiple scratch abrasion 10 to 15 in no. 1-1.5 cm in length and 0.1 cm breadth semicircular in shape suggestive of nail marks over Rt. side of neck sternocleidomastoid muscle area close to rt. Angle of jaw.*
- (ii) Bruise 2x1 cm near Rt. angle of Jaw.*
- (iii) 4x2 cm bruising obliquely placed over Rt. side of sternocleidomastoid muscle area.*
- (iv) Bruising over Rt. side of face covering whole cheek extending laterally towards neck.*
- (v) 4x2 cm bruising near lt. Angle of jaw with scratch abrasion (nail marks) 5 to 6 in no. around bruising.*
- (vi) There are scratch abrasion 4 in no. over Rt. flank with bruising around it.*
- (vii) Bruising over both knee with abrasion varying in size at places.*
- (viii) Multiple abrasion over Rt. arm (lower 3rd) and elbow (anteriorly).*
- (ix) There is abrasion over back (Rt. side lower part) with bruising over Rt. buttock.*
- (x) Scratch mark near Rt. medial malleolus 2 in no.*
- (xi) There is small tear at Fourchette with oozing of blood.”*

39. Dr. Rathore (PW6) states that as per the opinion of panel of doctors, the death was the result of asphyxiation due

to throttling and the time of death was within 48 hours. The P.M. report is (Ex.P/2) and short P.M. report is (Ex.P/3). In cross-examination, the witness denies the suggestion that the asphyxiation could have been caused due to entry of food particles in the windpipe. He also denies the suggestion that the injuries on other parts of the body could have been caused by sudden fall by sprinting.

40. There is no reason to doubt the opinion expressed by the panel of Doctors in the reports-Exhibit-P/2 and Exhibit-P/3. Hence, it is found proved that the death of girl child was the result of culpable homicide. It has already been found proved that it was the appellant who had committed aggravated sexual assault and rape on the deceased of whom the appellant was the step-father.

41. Salma Bi (PW-1) has stated that the appellant used to be physically violent towards deceased girl-child 'A', he used to thrash the deceased and did not allow her to go to Aaganwadi and would compel her to press his legs and would hit her with stick used for whipping animals and had once attempted to throttle the deceased girl-child 'A' to death and this attempt was committed five months prior to her death. The appellant also used to make attempts to satisfy his carnal desires from the deceased. He had once burnt the ankle of deceased on gas when the deceased was insisting to accompany her mother to a programme. The witness states that on 21.04.2018 at around 7:00 pm, the appellant held the deceased by her hair and threw her on ground and started assaulting her forcefully and also committed rape that on her that day. That on the second day,

i.e., on 22.04.2018, the appellant when called by the witness for taking her to Doctor, came home and went to the room where her daughter was lying. On hearing her muffled cries, when the witness-Salma Bi went to her room, she saw the appellant suddenly withdrawing his hands from the neck of deceased and she then saw the deceased collapsing after rolling her eyes upwards. The witness states that the accused was trembling in fear and was saying that he did not do anything to the deceased. The witness further states that the appellant/accused then went out and brought a private Doctor from Village-Hatnara and that the private Doctor although came but instead of examining the deceased stood near the front door of the house and told the appellant/accused that it is not within his ability to do anything and asked them to take the deceased girl-child 'A' elsewhere. These statements have not been challenged appropriately in cross – examination.

42. Nadeem-Ul-Islam (PW-3) states that on 23.04.2018 at around 2:30 pm, Waris, accused – appellant and his wife brought the deceased girl-child 'A' to his clinic and the appellant told him that girl-child 'A' is having fever and is not responding. The witness states that deceased girl-child 'A' was covered in a Shawl. The witness states that he examined the pulse and saw the eyes of deceased and informed the appellant that the deceased girl-child 'A' had died and advised him to take the body to Jaora hospital. Dr. M.L. Kharadi (PW-8) who was posted at Civil Hospital on 23.04.2018 at Jaora, states that examined the deceased girl-child 'A' and found her to be brought dead. He also found number of injuries on the body of

deceased and recorded in Exhibit-P/4.

43. Thus, it can be seen that the appellant/accused was with the deceased from the time when she was alive to the time when she died. The evidence of Salma Bi (PW-1) regarding physical violence by appellant with deceased girl-child 'A' resulting in her death has not been challenged in cross-examination apart from plain.

44. The defence of the accused that Salma Bi (PW1) made improvements in her statements in court over her statements made under Section 164 of Cr.P.C to police and, therefore, she is not reliable, has been properly countered by the trial court in para 21 of its judgment, in which it has been stated that it was only after the arrest of accused, that Salma Bi (PW1) who was earlier petrified due to violent behavior of accused, opened up and narrated the sequence of events in relaxed manner and this was the reason for Salma Bi (PW1) to make statements which defers from her earlier statements made under Section 164 of Cr.P.C.

45. The accused/appellant has not been able to prove that the deceased died due to illness. The onus lied upon the accused/appellant to show the circumstances under which girl-child 'A' died. The injuries found on the body of girl child 'A' have also not been explained by the appellant.

46. The above evidence apart, there is evidence of extra judicial confession of accused made to Iliasbi (PW4), who states that when she asked accused – Waris as to how the girl-child died, the accused confessed to her and told her that he has assaulted the girl-child as a result of which she died.

47. Witness Iliyas Bi (PW4) also states that she had seen nail marks on the neck of girl-child who told her that (Papa) accused – Waris beats her up. She has narrated about the atrocities committed by accused Waris upon Salma Bi (PW1) and girl-child as narrated by Salma Bi to her.

48. Taj Mohammed (PW5) has stated that when girl-child 'A' came to his shop he saw her ankle to be burnt and the girl-child told him that her father (accused – Waris) had kept her foot on a burning gas stove.

49. Accused – Waris while confronted with these statements admits in his accused statement that girl-child 'A' foot was infact burnt, but denies that it was he who had burnt her.

50. Taj Mohammed (PW5) also states that a day prior to death of girl-child 'A', he had seen nail marks on her neck and when asked she had named accused.

51. Shehjad Khan (PW2) states that on 22.4.2018, when he wake up in the morning, he heard the girl-child 'A' pleading to his father accused – Waris that she be spared and not beaten up and then Taj Mohammed made a telephonic call to his neighbour Raees and told him that accused – Waris is beating his daughter, but Raees expressed his helplessness expressing that looking to the behaviour of accused – Waris, he cannot intervene. These statements have not been challenged in the cross-examination.

52. Thus, there is ample evidence to show that appellant was in habit of beating up the girl-child 'A' on regular basis and girl-child 'A' had developed mortal fear of her father, ie.,

accused – Waris. Such acts of the appellant would also be relevant facts to be considered against him.

53. Thus, from the ocular testimony of Salma Bi (PW1), other witnesses and evidence against the appellant as also from his own conduct, it is found proved beyond reasonable doubt that the appellant/accused had committed culpable homicide of deceased girl-child 'A'. There are no circumstances available which would show that there was no intention of appellant to cause death of girl child 'A'. There is no evidence in the nature of exceptions to Section 300 IPC which could pave way for holding that it was culpable homicide not amounting to murder. There is no other conclusion which can be drawn except that the appellant committed culpable homicide of deceased girl-child 'A' which amounted to murder. This question is also answered in “affirmative”.

Regarding question No.5

54. Whether the appellant/accused had caused the evidence of commission of offence of rape and murder to disappear with the intention of screening himself with legal punishment. Salma Bi (PW-1) has stated that despite pleading the appellant to show the deceased to a Doctor, the appellant/accused did not oblige. She states that a day prior to her death, the appellant/accused had committed rape of her daughter and her genitals had turned red and the girl-child found it difficult to relieve herself and despite having urge to do so. It is quite clear that if the deceased girl-child 'A' were to be taken to physician, the factum of rape on the deceased

would have been disclosed and therefore fearing so, the accused did not seek help of any medical expert. The accused/appellant showing false concern, first brought Nadeem-Ul-Islam (PW-3) to examine girl-child 'A' and then took her the girl child to Doctor H.L. Kharadi (PW-8) knowing fully well that she was dead already. Appellant was attempting to cremate her hurriedly and thus attempts were made by the appellant to make the evidence of injuries on girl-child 'A' to disappear. The appellant was inclined to cremate the dead body on Kushalgarh only but at the insistence of Salma Bi (PW-1), the dead body was taken to Jaora (Ratlam). Had the police not been alerted by Taj Mohammad (PW-5) the body of the deceased girl-child 'A' would have been cremated and the factum of her murder and evidence against the accused/appellant would have been obliterated. It is also proved that the appellant had hidden the clothes of deceased girl-child 'A' worn by her at the time of rape committed upon her in an almirah, which also proves his intention to conceal the evidence of rape. Consequently, it is found proved that the appellant/accused caused the evidence of commission of offence of rape and murder to disappear with the intention of screening himself from legal punishment. This question is also, thus, answered in "affirmative".

Regarding question No.6:

55. Whether the sentence of capital punishment awarded to the appellant was appropriate punishment in the given circumstances ?

56. It has been found proved that the appellant has made the girl child a medium to satisfy his carnal desires. It has also been found proved that the accused/appellant had been torturing and sexually assaulting the innocent victim over a period of time. The appellant/accused had legally married the mother of girl child and was enjoined to look after welfare and security of his step-daughter, but as against such expectation, he not only sexually exploited her over a period of time making her life a living hell but also extinguished the flame of life from her small frame, when the fear of exposure regarding commission of rape by him loomed large over him. The offence of appellant/accused was shocking, diabolic, abhorrent and was of such magnitude which would send shivers down the spine of any person.

57. The question before this Court is whether in the given circumstances, sentence of hanging imposed by the trial Court to the accused/appellant is appropriate or whether the punishment deserves to be scaled down ?

58. The Legislature realizing the seriousness of sexual offences perpetrated on girl-child below 12 years of age has incorporated amendments in IPC on 21st April, 2018, (the date, subsequent to which the offence of rape and murder was committed by the accused – Waris), enhancing the quantum of punishment to death. Section 376 (AB) of IPC, so incorporated vide this amendment reads as under :-

"376AB. Whoever, commits rape on a woman under twelve years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and with fine or with death"

59. Such stringent provisions have been incorporated in IPC looking to increasing incidences of girl children being victimized by persons with depraved bent of mind which makes them stoop to satiating their baser instincts devoid of consideration for the age of the victim. The spirit of legislative mandate needs to be borne in mind while deliberating on quantum of sentence.

60. The legislature has risen to the scenario where young girl children are increasingly facing the spectre of sexual exploitation and the penal provisions have thus been made fluid and stringent. Now death penalty can be awarded even in case of raping a girl child if the circumstances so warrant.

61. In the present case, rape of a girl-child 'A' has been compounded with her murder by the appellant. Further, the appellant has committed a rape of the deceased over a period of time when as step father, it was his bounden duty to look after her welfare and security. It would be pertinent to reproduce Section 5(n) of POCSO Act, 2012, which is as under :-

*“Whoever being a relative of the child through blood or adoption or marriage or guardianship or in foster care or having a domestic relationship with a parent of a child or who is living in the same or shared household with the child, commits penetrative sexual assault on such child, is said to commit **aggravated penetrative assault.**”*

62. Aggravated penetrative assault is the most serious kind of sexual violence against a girl-child. This has been regarded by the trial Court as the most serious circumstance against the appellant calling for maximum punishment of death under Section 376-AB of IPC.

63. However, as has been laid down by the Apex court in its various judgments such as ***Bachan Singh v/s. State of Punjab, 1980 (2) SCC 684***, ***Macchi Singh v/s. State of Punjab, 1983 (3) SCC 470*** etc., the death penalty can be awarded only in “rarest of rare” cases.

64. In ***Bachan Singh's*** case (supra), the Apex Court had laid down aggravating and mitigating circumstances against and in favour of accused and it was directed that a balance-sheet of such circumstances be drawn up and a just balance has to be accorded while awarding such sentence. The court has to record exceptional reasons founded on exceptional grave circumstances of a particular act relating to the crime and the criminal.

65. In ***Macchi Singh's*** case (supra), the Apex court observed that before awarding death sentence following questions need to 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 ?

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 here in above, the circumstances of the case are such that death sentence is warranted, the court would proceed to do so.

66. The Apex court in the case of ***Shankar Kisan Rao Khade v/s. State of Maharashtra, 2013 (5) SCC 546***, has held that for awarding death penalty, the Crime Test, Criminal Test and R.R. Test have to be satisfied. Crime Test

has to be 100%, Criminal Test 0% and R.R. Test, *ie.*, Rarest of Rare Test is also required to be proven. Crime Test is 100% when no iota of doubt remains regarding commission of offence by the accused. Criminal Test is 0% when there are no such mitigating circumstances in favour of the accused, which may call for a lenient view in his favour.

67. The following excerpts from **Shankar Kisan Rao Khade's** (supra) are relevant :-

50..... *In my considered view that the tests that we have to apply, while awarding death sentence, are “crime test”, “criminal test” and the R-R Test and not “balancing test”. To award death sentence, the “crime test” has to be fully satisfied, that is 100% and “criminal test” 0%, that is no Mitigating Circumstance favouring the accused. If there is any circumstance favouring the accused, the 'crime test' made favoured the accused to avoid the capital punishment. Even if both the test are satisfied, *ie.*, the aggravating circumstances, fullest extent and no mitigating circumstances favouring the accused, still we have to apply finally the Rarest of Rare Case test (R-R Test). R-R Test depends upon the perception of the society that is “society centric” and not “Judge centric” that is, whether the society will approve the awarding of death sentence to certain types of crimes or not. While applying that test, the Court has to look into variety of factors like society’s abhorrence, extreme indignation and antipathy to certain types of crimes like sexual assault and murder of minor girls intellectually challenged, suffering from physical disability, old and infirm women with those disabilities etc.. Examples are only illustrative and not exhaustive. Courts award death sentence since situation demands so, due to constitutional compulsion, reflected by the will of the people and not the will of the judges.*

68. The Apex court in the case of **Shankar Kisan Rao Khade** (supra) took into account a number of Apex court judgments in which the offence of rape and murder of children had been committed by the accused and in some of which the extreme penalty of death was imposed and in others life imprisonment had been imposed and observed that

the reason for such variance was not considering the mitigating circumstances, ie., Criminal Test. The Apex court in para 47 has observed as under :-

“47. Bachan Singh is more than clear that the crime is important (cruel, diabolic, brutal, depraved and gruesome) but the criminal is also important and this, unfortunately has been overlooked in several cases in the past (as mentioned in Santosh Kumar Satishbhushan Bariya v/s. State of Maharashtra, (2009) 6 SCC 498) and even in some of the cases referred to above. It is this individualized sentencing that has made this Court wary, in the recent past, of imposing death penalty and instead substituting it for fixed term sentences exceeding 14 years (the term of 14 years or 20 years being erroneously equated with life imprisonment) or awarding consecutive sentences. Some of these cases, which are not necessarily cases of rape and murder, are mentioned below.”

69. In the present case, as already found proved, the accused Waris exhibited extreme depraved state of mind when he made the innocent little girl-child, whose welfare was his bounden duty, a tool to satiate his carnal desires and heaped miseries upon her in the form of her sexual exploitation over a period of time and ultimately, he brutally ebbed out her flame of life by strangulating her. The act was clearly cruel, diabolic, depraved and gruesome and the guidelines for awarding the death sentence culled out in Macchi Singh's case (supra) are satisfied.

70. The Apex court in the case of **Purushottam Dashrat Borate v/s. State of Maharashtra** reported as 2015 (6) SCC 652 has held that the age of the accused or family background of the accused or lack of criminal antecedents cannot be said to be mitigating circumstances. It cannot also be considered as mitigating circumstance, particularly taking into

consideration the nature of the heinous offence and cold and calculated manner in which it was committed by the accused person.

71. How the society would consider the nature of crime committed by an accused such as the appellant has been described by the Apex court in the case of ***Sham Narain*** v/s. ***State (NCT of Delhi)*** reported as ***(2013) 7 SCC 77*** wherein it has been observed as follows :-

“1. The wanton lust, vicious appetite, depravity of senses, mortgage of mind to the inferior endowments of nature, the servility to the loathsome beast of passion and absolutely unchained carnal desire have driven the appellant to commit a crime which can bring in a “tsunami” of shock in the mind of the collective, send a chill down the spine of the society, destroy the civilized stems of the milieu and comatose the marrows of sensitive polity”.

72. A three Judges Bench of the Apex court in a judgment of ***Vasanta Sampat Dupare*** vs. ***State of Maharashtra*** reported as ***(2015) 1 SCC 253*** maintained the death sentence and observed as under :-

“58. Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that the appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father of the deceased and the children used to call him “uncle”. He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had an insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant

is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitly designed biological desires of this nature, went with the uncle who extinguished her life- spark. The barbaric act of the appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous”

73. The Co-ordinate Bench of this High Court in the case of **In Reference vs. Vinod @ Rahul Chouhtha** reported as **LLR. [2018] M.P. 2512 (DB)**, affirmed the death penalty imposed upon the accused while observing thus :-

“66. In the light of the evidence and the judgments referred to hereinabove, we find that there is no mitigating circumstance in favour of the appellant in the present case. The appellant was young unmarried boy aged 22 years at the time of commission of offence but he breached the trust of a girl child of four years when he tempted her by offering biscuit to accompany him to meet her father. He violated her and took her life within 3-4 hours of taking her with him. It is an act of extreme depravity when the appellant prompted a young child whose only fault was that she believed the appellant to be her well-wisher. The crime against the girl child are on rise, therefore, extreme punishment may deter the other criminals indulging in such crime. Such crime sends shock wave in the society when it is committed against a girl child. This Court has the social responsibility to make the citizen of this country know that law cannot come to the rescue of such person on the basis of humanity. The extreme punishment may convey a message to these predators that it is not a soft State where the criminals committing such serious crimes may get reprieve in the guise of humanity. The humanity is more in danger in the hands of the persons like the appellant. Therefore, we find that the capital punishment awarded to the appellant is one of the rarest of rare cases where the extreme capital punishment is warranted.

67. In view of the foregoing reasons, we affirm the death sentence awarded to the appellant by the Trial Court while dismissing the appeal preferred by the accused against his conviction and sentence. We order accordingly.”

74. In the case of ***Omprakash v/s. State of Haryana, (1999) 3 SCC 19***, it has been held that the court must respond to the cry of the society and to settle what would be a deterrent punishment for what was an apparently abominable crime.

75. In view of the aforesaid pronouncements of Apex court and for foregoing reasons, we find that the proven facts bring the offence under rarest of rare category, that crime test is 100%, the criminal test is 0% and such circumstances call for a punishment no less than death sentence. Consequently, while affirming conviction under Sections 376(2)(F), 376(2)(N), 376(AB), 302 and 201 of IPC and Section 5/6 of POCSO Act, we affirm the death sentence awarded to the accused – appellant by the trial court for committing offence under Section 376-AB as well as under Section 302 of IPC. There shall be no change in the fine amounts imposed for committing these offences and also affirm the conviction and sentence awarded under Section 201 of IPC. Accordingly, the Criminal Reference No.01/2019, made by Special Judge, POCSO Act, Jaora, District Ratlam under Section 366(1) of Cr.P.C for confirmation of death penalty is answered in affirmative. Criminal Appeal No.1854/2019, filed by the accused-appellant stands disposed of as dismissed.

76. The order of the trial court regarding disposal of the property is maintained.

77. Let a copy of this judgment be retained in the record of Criminal Appeal No.1854/2019

78. Office is directed to send a copy of this judgment immediately to the trial court concerned to take appropriate steps as per law.

(S.C. SHARMA)
JUDGE

(SHAIENDRA SHUKLA)
JUDGE

SS/- Arun, GP

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(D.B. HON'BLE JUSTICE SHRI S.C. SHARMA & HON'BLE
JUSTICE SHRI SHAIENDRA SHUKLA)

CRRFC. No.1/2019

State of M.P.

V/s.

Waris s/o. Nahar Khan

CRA. No.1854/2019

Waris s/o. Nahar Khan

V/s.

State of M.P.

JUDGEMENT

For consideration

(Shailendra Shukla)

Judge

15.11.2019

Hon'ble Justice Shri S.C. Sharma

(S.C. Sharma)

Judge

Post for :- .11.2019

(S.C. Sharma)

Judge

HIGH COURT OF MADHYA PRADESH BENCH AT INDORE
(D.B. HON'BLE JUSTICE SHRI S.C. SHARMA & HON'BLE
JUSTICE SHRI SHAILENDRA SHUKLA)

CRRFC. No.1/2019

State of M.P.

V/s.

Waris s/o. Nahar Khan

Indore dt.9.9.2019

Shri R.S. Chhabra, learned Addl. Advocate General with
Shri Kanishk Gupta, Advocate for the Appellant/State.

Shri Avinash Sirpurkar, learned Senior Advocate with Ms.
Seema Sharma, Advocate for the respondent, as *amicus curiae*.

Heard finally
Reserved for judgment.

(S.C. Sharma)
Judge

(Shailendra Shukla)
Judge

CRA. No.1854/2019

Waris s/o. Nahar Khan

V/s.

State of M.P.

Indore dt.9.9.2019

Shri Avinash Sirpurkar, learned Senior Advocate with Ms.
Seema Sharma, Advocate for the appellant
(CRA.No.1854/2019) as *amicus curiae*.

Shri R.S. Chhabra, learned Addl. Advocate General with
Shri Kanishk Gupta, Advocate for the respondent/State.

Heard finally.
Reserved for judgment.

(S.C. Sharma)
Judge

(Shailendra Shukla)
Judge

**THE HIGH COURT OF MADHYA PRADESH : BENCH
AT INDORE**

**BEFORE DIVISION BENCH: JUSTICE S.C. SHARMA
AND JUSTICE SHRI SHAILENDRA SHUKLA**

Case No.	:	CRRFC. No.1/2019 & CRA.NO.1854/2019
Parties name	:	State of M.P. v/s. Waris (CRRFC.No.1/2019) & Waris v/s. State of M.P. (CRA. No.1854/2019).
Date of Judgement	:	18/11/19
Bench constituted of	:	Hon'ble Justice Shri S.C. Sharma and Hon'ble Justice Shri Shailendra Shukla
Judgement delivered by	:	Hon'ble Justice Shailendra Shukla
Whether approved for reporting	:	Yes
Name of counsels for the parties	:	Shri R.S. Chhabra, learned Addl. Advocate General with Shri Kanishk Gupta, Advocate for the Appellant/State. Shri Avinash Sirpurkar, learned Senior Advocate with Ms. Seema Sharma, Advocate for the respondent, as <i>amicus curiae</i> .
Law laid down	:	Rape and murder of six years old step daughter by the appellant. Sentence of death imposed by the trial court under Section 376-AB and 302 of IPC affirmed. Maximum Sentence of death prescribed under Section 376- AB of IPC incorporated on 21.4.2018 by way of amendment. Offence of rape committed on 21.4.2018 and subsequently as well. The spirit of legislative mandate needs to be borne in mind while deliberating on quantum of sentence (para 59). “ Rarest of Rare ” case – accused showing extreme

	<p>depraved state of mind when he made the innocent little girl-child, whose welfare was his bounden duty, a tool to satiate his carnal desires and ultimately strangled her to death. Satisfies the standard of “rarest of rare” case (para 69).</p> <p>The Offence is “rarest of rare” in nature, Crime Test is 100% and Criminal Test is 0% and such circumstances call for a punishment not less than death sentence (para 75).</p>
Significant paragraph numbers	: 59, 69, 75