

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
SHRI JUSTICE SUJOY PAUL
&
SHRI JUSTICE PRAKASH CHANDRA GUPTA**

CRRFC No.04 OF 2019

Between :-

IN REFERENCE

**ADDITIONAL SESSIONS JUDGE/SPECIAL
JUDGE, BUDHAR DISTRICT SHAHDOL M.P.**

....APPELLANT

***(BY SHRI SANJAY AGRAWAL, SENIOR ADVOCATE WITH SHRI
ANUJ AGRAWAL - ADVOCATE AS AMICUS CURIAE)***

AND

**RAMNATH KEWAT ALIAS BHURSOO,
S/O HEERALAL ALIAS HEERU KEWAT,
AGED ABOUT 28 YEARS, BY
OCCUPATION- LABOURER, R/O
VILLAGE JHAGARHA KHALE TOLA
WARD NO.5 P.S. AMLAAI, DISTRICT
SHAHDOL (M.P.).**

....RESPONDENT

(BY SHRI R.S. SHUKLA- ADVOCATE AS AMICUS CURIAE)

CRIMINAL APPEAL No.2754 OF 2019

Between :-

**RAMNATH KEWAT ALIAS BHURSOO,
S/O HEERALAL ALIAS HEERU KEWAT,
AGED ABOUT 28 YEARS, BY
OCCUPATION- LABOURER, R/O
VILLAGE JHAGARHA KHALE TOLA
WARD NO.5 P.S. AMLAAI, DISTRICT
SHAHDOL (M.P.).**

....APPELLANT

(BY SHRI ABHAY GUPTA - ADVOCATE)

AND

STATE OF MADHYA PRADESH,
THROUGH, POLICE STATION AMLAAI,
DISTRICT SHAHDOL (MP)

....RESPONDENT

(*BY SHRI YOGESH DHANDE- GOVERNMENT ADVOCATE*)

Reserved on : 25/7/2022
Delivered on : 29/7/2022

J U D G M E N T

Sujoy Paul, J. :-

The Death Reference and Criminal Appeal are arising out of impugned judgment dated 05.03.2019 passed in Case No.400160/2015 whereby appellant was held guilty for committing the offences and sentenced as under :-

<u>Serial No.</u>	<u>CONVICTION</u>	<u>SENTENCE</u>
1.	Under Section 376(2) (I) New Section of April 2, 2013 in Criminal Proceeding is Jointly with 5/6 Sexual Offences in Connection with the Child's Crime 376-A of the I.P.C.	Death Sentence to be hanged till death and fine of Rs.200/-(Rs. Two Hundred) Only. In default of payment of fine further R.I. for 01 month.
2.	Under Section 302 of the I.P.C.	Death and fine of Rs.200/-(Rs. Two Hundred Only. In default of Payment of fine further R.I. for 01 month.
3.	Under Section 201 of the I.P.C.	R.I. for seven years and fine of Rs.200/- only. In default of payment of fine further R.I. for 1 month.
All sentences shall run concurrently. In the above death sentence it is directed that the appellant be hanged by the neck till his death.		

FACTUAL BACKGROUND :-

2. The case of the prosecution before the Court below was that on 09.06.2015 at around 1:30 P.M. in village Jhagraha, Police Station Amlai, District Shahdol, the appellant raped and murdered 12 years old girl in the vacant room of Kailash Kewat and tried to hide her dead body under the paddy straws.

3. To elaborate, on 09.06.2015 the family members of victim were taking rest in their house. The father of victim was sleeping. The younger sister of victim (P.W.3) was watching T.V. with the victim. The victim told her younger sister (P.W.3) that she is going to answer the call of the nature. When she did not return for quite sometime, (P.W.3) came out of the house and found that in the house of Kailash Kewat, there is a vacant room which is opened. Out of curiosity, (P.W.3) went in front of that door and found that appellant is trying to hide. Out of fear, she came back. Thereafter, family members started searching for the victim. During search at around 7:00 P.M., the uncle of deceased (P.W.5) found that the dead body of victim is lying on the floor of a room of Kailash Kewat (P.W.9). The said room was being used to keep paddy straws & chaff. The legs of deceased were covered by using a heap of paddy straws.

4. The father of deceased (P.W.1) received an information on phone from his younger brother (P.W.5) about the dead body of her daughter. He, in turn, lodged the *merg intimation*. The police reached the scene of crime and prepared a *punchnama* of the dead body. Thereafter, the post mortem of dead body of the victim was conducted. The relevant educational qualification documents of victim were obtained from her father (P.W.1). During investigation, the statement of (P.W.3) was recorded under Section 164 of the Cr.P.C.

5. A site map was prepared. The undergarments and clothes of victim were recovered. In addition, the plain and blood stained soil were recovered. All the seized materials were sealed and a seizure memo was prepared. The appellant was arrested on 10.6.2015 and on the basis of his statement, from his house a blood stained T-shirt and underwear was recovered. The statement of accused was recorded in a DVD. The medical examination of appellant was conducted and during examination, his semen sample was also taken. The semen of accused, his clothes and blood sample were seized and were sent for examination to the Forensic Science Laboratory (FSL) and to the DNA Laboratory.

6. Thereafter, in due course, a charge-sheet was filed before the Special Court for committing offences under Sections 302, 376 and 201 of the **I.P.C.** read with Section 5/6 of **Protection of Children From Sexual Offences Act, 2012 (POCSO Act)**. In turn, matter was committed to the Special Court. In the said Court, the appellant abjured the guilt and prayed to conduct a full-fledged trial. The appellant stated that he does not wish to lead evidence in defence. The Court below framed eight questions for its determination.

7. After recording the evidence and hearing the parties, the impugned judgment was passed convicting the appellant and imposing the sentences mentioned hereinabove.

8. The first determination was regarding the age of the victim. In order to prove the age, the father of victim (P.W.1) deposed that the age of victim at the time of death was 12 years. This statement could not be demolished during cross-examination.

9. P.W.2 (mother of deceased) deposed that the age of her daughter was about 11 years. This statement was also not put to challenge during the cross-examination.

10. P.W.4 (grandmother of deceased) also stated in her court statement that deceased was studying in class-VI of a Government School and was aged about 12 years. This statement was further supported by P.W.5, P.W.6 and P.W.7. These statements were also not called in question during cross-examination.

11. Dr. R. K. Verma (P.W.16) and Dr. Radha Chaturvedi (P.W.19) conducted the post mortem. Dr. Radha Chaturvedi (P.W.19) stated that the age of deceased was about 12 years.

12. Vinod Kumar Singh (P.W.18), Headmaster of Government Middle School, Bakho entered the witness box and produced the Admission Register of the school. In addition, he produced the progress report (*Pragati Patrak*) of the deceased which were duly marked as Exhibits. In both the documents, namely Admission Register and Progress Report, the date of birth of deceased is mentioned as 15.8.2004. This witness (P.W.18) further deposed that a certificate Ex.P/22-A was produced which contains the date of birth of deceased as 15.8.2004. The original record on the strength of which this certificate was produced was also brought and exhibited as Ex.P/23. In candid terms, he stated that the Ex.P/22-A certificate contains the signature of the then Headmaster Shri Ramesh Namdeo, who retired on attaining the age of superannuation. He identified the signature of Ramesh Namdeo.

13. In view of foregoing documentary evidence, the Court below opined that on 09.8.2015, the age of victim was less than 12 years.

14. The Court below on the strength of statements of Dr. R. K. Verma (P.W.16) and Dr. Radha Chaturvedi (P.W.19) opined that the victim was subjected to rape/sexual assault and thereafter she was murdered by throttling/strangulating her. The incident had taken place before 24-36 hours. The post mortem report was exhibited as Ex.P/20. Importantly, the

doctors also opined that the deceased resisted the sexual assault made by the accused.

15. Dr. R. K. Verma (P.W.16) further stated that there were bleeding from private parts of the deceased. *Labia Majora & Minora* and hymen were ruptured. In order to get correct opinion, the vaginal swab of deceased and blood samples were taken and sent for FSL and DNA Test. During the cross-examination, the suggestion given by defence that injuries caused to the deceased could have been received if somebody fell down was denied by both the doctors. The Court below further recorded that a video recording of dead body of deceased was conducted which was provided to the accused and shown during camera trial. The appellant did not deny the same.

16. The statement of sister of deceased (P.W.3) was recorded under Section 164 of the Cr.P.C. Thereafter, her court statement was also recorded in due course. As per her version, she was watching TV along with the deceased. His brother and father were sleeping. The deceased left the house to answer the call of nature but did not return. (P.W.3) out of curiosity, peeped in the room of Kallu Kewat and found that accused Ramnath @ Bhursoo was trying to hide. In due course, the dead body of victim was found. The Court below opined that the appellant fled away after the incident and his this conduct is a relevant fact. The nature of injuries on the person of deceased were substantiated by the statements of P.W.1, P.W.5, P.W.6, P.W.7 and P.W.8.

17. The prosecution witnesses stated that the appellant is a relative of the deceased person and was called as '*Dada*' (grandfather). During the investigation, the sealed slides of samples taken from private part of deceased were given to the constable of concerned police station, A.S.I. Gulam Husain (P.W.14). He, in turn, gave it to Head Constable Hari

Kishore (P.W.15). The medical form requesting examination of victim is exhibited as Ex.P/13-A whereas seizure memo is Ex.P/14. Head Constable Hari Kishore (P.W.15) deposed that it contains his signature and he along with slides and clothes of deceased sent the same by memorandum Ex.P/9 through investigating officer (I.O.) (PW-20). The slides and the clothes were ultimately sent by the Superintendent of Police (S.P.) through Ex.P/26 for DNA Test. The DNA report (Ex.P/31) was received. The Court below held that the blood sample of accused and DNA report shows that prosecution could establish its case beyond reasonable doubt. In para-32 and 33 of the impugned judgment, the Court below gave findings in this regard.

18. In the impugned judgment, the Court below considered the statement of Hari Kishore (P.W.15) who deposed regarding information of death of victim to police station which was recorded at '0' (Zero) by Head Constable Madhav Singh (P.W.17). Sajjan Singh Parihar (P.W.20) stated that upon receiving the information of the dead body, he reached to the scene of crime. Photographer Mukesh Vishwakrama (P.W.12) took the photographs of the deceased and scene of crime. This photographer, in turn, entered the witness box and proved the photographs.

19. *Dehati Nalisi* (Ex.P/21) was recorded by Sajjan Singh Parihar (P.W.20). This witness further deposed that a spot map (Ex.P/2) was prepared in the presence of witnesses (P.W.7), Hira Kewat and (P.W.1) (father of deceased). The deceased was found to be wearing a yellow frock, green slacks and brown underwear. It is further deposed by him that a tile (*khapra*) of the roof of room where deceased was found was opened which gives an indication that somebody must have fled away from that place.

20. Sajjan Singh Parihar (P.W.20) further deposed as to how medical examination of accused was conducted, his blood sample for DNA was taken and sent for DNA examination along with his T-shirt and underwear. Similarly, he described the method by which the deceased's samples mentioned hereinabove were sent for the DNA Test through concerned Superintendent of Police.

22. The Court below from para-47 to 49 of the impugned judgment opined that chain of circumstances establishes the case of the prosecution and upon recording its satisfaction opined that the prosecution could establish its case beyond reasonable doubt and therefore, convicted the appellant for committing offences under Section Sections 302, 376 and 201 of the I.P.C. read with Section 5/6 of the POCSO Act.

23. Thereafter, the appellant was heard by the Court below on the question of sentence. The Court below after considering various judgments opined that appellant deserves the capital punishment. In this backdrop, this matter has come up for hearing before us.

Submissions of Appellant/*Amicus Curiae* :-

24. Shri Abhay Gupta, learned counsel for the appellant submits that the date of birth of victim determined by the Court below is highly doubtful. The witness namely Vinod Kumar Singh (P.W.18) who entered the witness box and proved the progress report (*Pragati Patrak*) and Admission Register did not depose as to on what basis the date of birth was recorded. Thus, determination of age is improper.

25. The attention of this Court was drawn on the material seized which was sent for DNA Test in contrast to the DNA report. It is urged that Mr. Vijay Girnar conducted the DNA Test and stated that material for DNA Test from 'A to E' were received through concerned Superintendent

of Police. A minute reading of the samples sent through a particular coding in juxtaposition to the coding given by DNA Institute shows that the coding was abruptly changed which creates serious doubt on the methodology adopted by DNA Institute. This vitiates the test report.

26. The statement of Sajjan Singh Parihar (I.O.) (P.W.20) was relied upon to contend that frock of deceased was of yellow colour. There is serious doubt whether it is the same frock which was recovered from the body of the deceased. The recovery memo dated 09.6.2015 (Ex.P/8) and Superintendent of Police's letter dated 18.6.2015 gives a different description of the frock. The colour of frock in those documents is shown as 'blue'. Thus, it cannot be safely said that the same frock which was seized from the person of the deceased was examined by the DNA Laboratory.

27. Shri Abhay Gupta, learned counsel also relied on the FSL report which was found to be negative.

28. The statement of P.W.3 recorded under Section 164 of the Cr.P.C. (Ex.P/6) and her court statement were read to show that the story narrated by her is not trustworthy. In her statement recorded under Section 164 of the Cr.P.C. (Ex.P/6), she deposed that the accused caught hold of the deceased by her neck when she was moving near the house of deceased. This part of statement is totally missing in her court statement. She further deposed that at around 4:00 P.M., she came to know that her sister is not traceable and informed her parents. The parents, in turn, lodged the '*Dehati Nalisi*' against an 'unknown person'. If P.W.3 had already informed the name and role of appellant to the parents, there was no occasion for them not to mention the name of accused in the '*Dehati Nalisi*'. The statement of Sajjan Singh Parihar Investigating Officer (P.W.20) was heavily relied upon wherein during cross-examination, he

categorically admitted that he tutored P.W.3 to depose her statement (Ex.P/6) under Section 164 of the Cr.P.C.

29. Shri Abhay Gupta, learned counsel for the appellant took this Court to the statement of P.W.6 which shows that a cow entered the room where dead body of deceased was lying. The same witness stated that a person namely Ram Rattan also entered the same room where dead body of deceased was lying. Ram Rattan, Heera and Sahadev were not examined.

30. The statement of PW-7 (aunt of deceased) was relied upon to contend that this witness also stated that a cow and two persons entered the room where dead body of deceased was found. This was absolutely impossible that none of them could notice the dead body when they entered a small room.

31. Learned counsel for the appellant also relied upon the statement of P.W.8 and Kailash Kewat (P.W.9). Kailash Kewat, who is owner of the house where dead body of the deceased was found, stated that his son Rahul took out some '*paira*' (paddy straws) from the room where dead body of victim was found. Shri Abhay Gupta, learned counsel submits that various persons entered the said room and Rahul even took out the '*paira*' (paddy straws) from the same room. Thus, it is totally unbelievable that none could notice the dead body lying there.

32. Shri Sanjay Agrawal, learned Senior Counsel/*Amicus Curiae* assisted by Shri Anuj Agrawal, Advocate assisted the Court and urged that P.W.2 (mother of deceased) could not state with accuracy as to when police reached the scene of crime. P.W.4 deposed that Ramnath was trying to hide the dead body of deceased but this witness turned hostile. Learned Senior Counsel also pointed out that there exists a difference in description of frock and other clothes of the deceased. In addition to the

contradictions pointed out by Shri Abhay Gupta, Advocate, Shri Agrawal, Senior Advocate pointed out that a 'trouser' was sent for DNA examination but DNA report talks about a 'slip'.

33. Learned Senior Counsel further submits that in the FIR, the age of victim was shown as 13 years. The case is based on circumstantial evidence. The reason of death is rape followed by asphyxia and throttling. Dr. R. K. Verma (P.W.16) and Dr. Radha Chaturvedi (P.W.19) proved the post mortem report. In addition, Dr. R. K. Verma (P.W.16) deposed that in the sample taken from the appellant, his photographs was affixed. During the course of hearing, learned Senior Counsel has also drawn our attention to the statement of P.W.3 recorded under Section 164 of the Cr.P.C. and her court statement.

34. Learned Senior Counsel has taken us to the entire legal journey on sentencing policy and urged that the sentence imposed is disproportionate in nature. It is not a fit case for imposing capital punishment.

35. Learned Senior Counsel placed reliance on **AIR 1952 SC 343 (Hanumant Govind Nargundkar Vs. State of M.P.), (1984) 4 SCC 116 (Sharad Birdhichand Sarda Vs. State of Maharashtra)** and **1989 Supp (2) SCC 706 (Padala Veera Reddy Vs. State of Andhra Pradesh)** which are related to circumstantial evidence. It is urged that *Panchsheel principles* laid down in the case of **Sharad Birdhichand (supra)** are consistently followed. As per said principles, the prosecution is required to establish a solid convincing chain of circumstantial evidence which must be flawless.

36. Another set of judgments cited by learned Senior Counsel are **(2001) 5 SCC 311 (Smt. Kamti Devi Vs. Poshiram), (2010) 9 SCC 747 (Santosh Kumar Singh Vs. State through CBI)** and judgment of

Madhya Pradesh High Court, M.P. dated 17.5.2019 passed in Criminal Appeal No. 458/2019 (Afjal Khan Vs. State of M.P.). These judgments are arising out of cases where conviction is recorded based on DNA report and circumstantial evidence. The relevant portion of these judgments were read out to show that clear chain of circumstantial evidence and DNA report can form basis of conviction.

37. Furthermore, learned Senior Counsel relied on judgments where death sentence is commuted to the sentence of specified term without remission. These judgments are **(2008) 13 SCC 767 (Swamy Shraddananda Vs. State of Karnataka), (2012) 5 SCC 766, (Neel Kumar @ Anil Kumar Vs. State of Haryana), (2013) 7 SCC 725 (Ram Deo Prasad Vs. State of Bihar), (2014) 5 SCC 353 (Rajkumar Vs. State of M.P.), (2019) 8 SCC 382 (Parsuram Vs. State of M.P.).**

38. Next volume of judgments provided by learned *Amicus Curiae* are those in which tests were laid down for the purpose of deciding the quantum of sentence. Reliance is placed on **(1973) 1 SCC 20, (Jagmohan Singh Vs. State of Uttar Pradesh), (1980) 2 SCC 684, (Bachan Singh Vs. State of Punjab), (1983) 3 SCC 470, (Machhi Singh Vs. State of Punjab), (1994) 2 SCC 220, (Dhananjay Chatterjee Vs. State of West Bengal), (1994) 2 SCC 467 (Bheru Singh Vs. State of Rajasthan), (1998) 7 SCC 177, (Panchhi and others Vs. State of Uttar Pradesh), (2001) 9 SCC 50, (Raju Vs. State of Haryana), (2001) 9 SCC 615 (Bantu @ Naresh Giri Vs. State of Madhya Pradesh), (2003) 8 SCC 92, (Amit Vs. State of Madhya Pradesh), (2006) 12 SCC 79 (Amrit Singh Vs. State of Punjab), (2010) 3 SCC 508 (Mulla and another Vs. State of Uttar Pradesh), (2010) 9 SCC 747, (Santosh Kumar Singh Vs. State through CBI), (2011) 12 SCC 56 (Haresh Mohandas Rajput Vs. State of Maharashtra), (2012) 4 SCC 107,**

(Amit Vs. State of Uttar Pradesh), (2013) 5 SCC 546, (Shankar Kishan Rao Khade Vs. State of Maharashtra), (2014) 4 SCC 69 (Anil @ Anthony Arikswamy Joseph Vs. State of Maharashtra), (2017) 6 SCC 1 (Mukesh & another Vs. State NCT of Delhi) (Nirbhaya Case).

39. It is further urged that in the judgment of Division Bench of this court in **CRRFC No.11/2019 dated 20.2.2020 (In Reference vs. Deepak @ Nanhu Kirar)**, this court has already considered the relevant tests prescribed by the Supreme Court for the purpose of deciding the quantum of sentence which is a case of similar nature where minor girl was raped and murdered. This Court has reduced the capital punishment to that of imprisonment for 35 years (without remission).

40. During the course of argument, Shri Abhay Gupta drew the attention of this Court to the Court's order dated 8.7.2019, whereby the trial court was directed to record the statement of Mr. Vijay Girnar, who conducted the DNA Test. In turn, said Shri Girnar was examined by the court below on 27.9.2019 and said statement is available on record with the appeal memo. Entire statement was read out to show that this statement is also silent about the change of code number on the articles sent for DNA examination. The suspicion regarding colour of frock could not be cleared even as per said statement of Mr. Girnar recorded on 27.9.2019.

Stand of prosecution :-

41. Shri Yogesh Dhande, learned Public Prosecutor supported the impugned judgment and placed reliance on statements of father of victim (P.W.1) and the mother of the victim (P.W.2) wherein they deposed that as per information received by them from their daughter (P.W.3), the appellant was trying to hide in the room from where the dead body of the victim was recovered. Mother of the victim (P.W.2) made it clear that her

family has no animosity with the appellant. Learned Government Counsel further urged that the statements of father of the victim (P.W.1), mother of the victim (P.W.2) and sister of the victim (P.W.3) on the specific fact that the appellant was trying to hide in the said room could not be demolished. It is also not in dispute that deceased was elder sister of P.W.3, who was a student of class VIth. No cross-examination was made on the statements of prosecution witnesses that the appellant was relative 'Dada' (grandfather) of the deceased.

42. Furthermore, reliance was placed on the statements of P.W.4 and P.W.5 and also on the photographs taken by the photographer Mukesh Vishwakrama (P.W.12) regarding the scene of crime and dead body etc.

43. The statements of Dr. R.K. Verma (P.W.16) and Dr. Chaturvedi (P.W.19) were relied upon to submit that the reason of death was rape and throttling. The death was homicidal in nature. This further shows that from the dead body, blood sample was collected with the consent of family members for DNA Test. Dr. Chaturvedi (P.W.19) made it clear that colour of frock of deceased was yellow. When all this incriminating material was brought to the notice of the appellant, he did not furnish any explanation in his statement recorded under Section 313 of Cr.P.C.

44. Shri Yogesh Dhande, learned Government Advocate further urged that the totality of evidence shows that date of birth of deceased was satisfactorily proved by prosecution through Vinod Singh (P.W.18), Upper Division Teacher who produced the Admission Register and 'Progress Report' which contains the date of birth of victim as 15.08.2004. Thus, there is no manner of doubt that victim was a minor.

45. In view of foregoing argument, Shri Dhande urged that it was clearly established that-

- (i) Victim was below the age of 12 years.
- (ii) The death was homicidal in nature and was outcome of rape and throttling.
- (iii) Injuries were found on the body of appellant.
- (iv) Appellant neither gave any explanation in his statement recorded under Section 313 of the Cr.P.C. about the injuries on his body nor gave any explanation about other incriminating materials which were confronted to him.
- (v) The scientific report of DNA conclusively establishes the factum of rape on the deceased.

46. In support of aforesaid submissions, Shri Dhande, Government Advocate placed reliance on **(2009) 6 SCC 600 (State of Uttar Pradesh Vs. Shobhanath and Ors.)** and **(2016) 12 SCC 660 (Anil Alias Bawa Vs. State of Haryana)**. It is canvassed that there is no reason why close relatives of appellant will unnecessarily rope-in the appellant by making wrong allegations against him. There is no reason to disbelieve the statement of close relatives of the deceased. **Namdeo v. State of Maharashtra, (2007) 14 SCC 150** was pressed into service to bolster the submission that one eye-witness is sufficient to record conviction as per Section 134 of the Evidence Act. It is the quality of evidence which matters and not the quantity/number of witnesses. In absence of any inherent improbability in the statements of prosecution witnesses, court below has not committed any error in passing the impugned judgment.

47. The Division Bench judgment of this Court in Cr.A. No. 7544/2019 was referred to submit that on the basis of scientific report of DNA alone conviction can be recorded. Recent judgment of Gwalior Bench reported in **2021 SCC Online MP 1628 (Yogesh Nath Vs. State**

of M.P.) was referred to establish the importance of DNA report. Lastly, (2019) 9 SCC 622 (Ravi S/o Ashok Ghumare Vs. State of Maharashtra) was cited which is related to sentencing policy. Shri Dhande also supported the capital punishment awarded in the impugned judgment.

48. Shri Abhay Gupta, Advocate in his rejoinder submission urged that a bare perusal of stand of appellant taken in the statements made under Section 313 of Cr.P.C. makes it clear that he has not admitted anything regarding collection of blood sample or DNA report etc. whereas the appellant of Cr.A. No. 7544/2019 in his statement recorded under Section 313 of Cr.P.C. admitted the factum of collection of blood sample from him for the purpose of DNA Test. At last, Shri Abhay Gupta, placed reliance on the judgment of this court in Cr.A. No. 646/2019 (Anand Kushwaha Vs. State) wherein this Court opined that since appellant therein was represented before the court below through a counsel provided by Legal Aid Committee, this is a mitigating circumstance in favour of the appellant.

49. Parties confined their arguments to the extent indicated above. We have bestowed our anxious consideration on rival contentions and perused the record.

FINDINGS :-

Age of the victim :-

50. In order to prove the age of deceased, prosecution produced Vinod Singh (P.W.18), an Upper Division Teacher of the Government School. This witness produced original Admission Register before the Court and copy thereof was marked as Ex.P/23. He also produced the progress report Ex.P/3 and categorically deposed that in the Admission

Register at relevant entry regarding date of birth of deceased, the signature of Shri Ramesh Namdeo, the then Head Master is there. He identified the said signature and mentioned that as per Admission Register and progress report, the date of birth of deceased was recorded as 15.8.2004. He was put to cross-examination and singular question asked was whether he was present at the time of admission of deceased ? He replied that since he was not posted in the school at that time, he cannot state as to on what basis date of birth of deceased was recorded.

51. Shri Abhay Gupta, learned counsel for the appellant argued that since source of recording date of birth in the Admission Register is not established, date of birth so recorded is not trustworthy. We do not see any merit in this contention. In **(2012) 9 SCC 750 Ashwani Kumar Saxena vs. State of M.P.**, the Apex Court opined as under :-

“38. We fail to see, after having summoned the admission register of the Higher Secondary School where the appellant had first studied and after having perused the same produced by the Principal of school and having noticed the fact that the appellant was born on 24-10-1990, what prompted the court not to accept that admission register produced by the Principal of the school. The date of birth of the appellant was discernible from the school admission register. Entry made therein was not controverted or countered by the counsel appearing for the State or the private party, which is evident from the proceedings recorded on 11-2-2009 and which indicates that they had conceded that there was nothing to refute or rebut the factum of date of birth entered in the school admission register.”

(Emphasis Supplied)

52. In **2013 SCC Online MP 10475 (Raje vs. State of M.P.)** this Court followed the ratio of **Ashwani Kumar Saxena (supra)** and opined as under :-

“Since in the recent judgment, the Apex Court has considered the case of *Jabar Singh* (supra) and opined that the admission register of the school fulfills the requirement of 2007 Rules, the argument of Shri. Maheshwari fails. The bone of contention of Shri. Maheshwari is that the Rule only talks about the date of birth certificate and not about the admission register. However, the Apex Court in *Ashwani Kumar Saxena* (supra) has made it clear that the admission register is also an important piece of evidence.”

(Emphasis Supplied)

53. Supreme Court in its recent judgment reported in **2021 SCC OnLine SC 1079 (*Rishipal Singh Solanki v. State of U.P.*)**, considered the relevant judgments on the question of determination of age and broadly laid down the principles in para-29 of the judgment. The relevant clauses are as under :—

(iii) That when a claim for juvenility is raised, the burden is on the person raising the claim to satisfy the Court to discharge the initial burden. However, the documents mentioned in Rule 12(3)(a)(i), (ii), and (iii) of the JJ Rules 2007 made under the JJ Act, 2000 or sub-section (2) of section 94 of JJ Act, 2015, shall be sufficient for prima facie satisfaction of the Court. On the basis of the aforesaid documents a presumption of juvenility may be raised.

(iv) The said presumption is however not conclusive proof of the age of juvenility and the same may be rebutted by contra evidence let in by the opposite side.

(vi) **That it is neither feasible nor desirable to lay down an abstract formula to determine the age of a person. It has to be on the basis of the material on record and on appreciation of evidence adduced by the parties in each case.**

(ix) That when the determination of age is on the basis of evidence such as school records, it is necessary that the **same would have to be considered as per Section 35**

of the Indian Evidence Act, inasmuch as any public or official document maintained in the discharge of official duty would have greater credibility than private documents.

(Emphasis Supplied)

54. As per the *ratio decidendi* of **Rishipal Singh Solanki (supra)**, it is clear that it is neither proper nor justifiable to apply any strict or abstract formula for determination of age of a person. The Court must examine the material available before it and on appreciation of evidence adduced by the parties in each case, should determine the age of victim/accused.

55. In the said judgment it was further made clear that determination of age when based on evidence, such as school record, the necessary requirement of Section 35 of Indian Evidence Act must be complied with.

56. We record our satisfaction in the manner prosecution has proved the date of birth/age of the victim. Original Admission Register and progress report of victim from a school first attended by her were produced and marked as Exhibits. The Government employee produced it, which shows that documentary evidence is produced from proper custody. The official documents were maintained in the discharge of official duty. The relevant entry of Admission Register shows that against each entry, there exists a certification of correctness of the said entry made by the concerned officer at the relevant time. Thus, there is no manner of doubt that date of birth of the victim was 15.8.2004 and she was a minor when she was raped and murdered.

Statement under Section 164 of Cr.P.C. and Court statement :-

57. The younger sister of deceased (P.W.3) in her statement recorded under Section 164 Cr.P.C. narrated somewhat a different story, if

compared with her Court statement, was a submission made by Shri Abhay Gupta. The comparison thereof shows that her Court statement is not reliable. The argument on the first place appears to be attractive but lost its complete shine when examined in the teeth of principle and purpose behind insertion of Section 164 of Cr.P.C. in the statute book.

58. In **AIR 1951 SC 441 (Tara Singh v. State)**, Vivian Bose, J. speaking for the Bench expressed the view as under :-

“38.I hold that the evidence in the committal court cannot be used in the Sessions Court unless the witness is confronted with his previous statement as required by Section 145 of the Evidence Act. Of course, the witness can be cross-examined about the previous statement and that cross-examination can be used to destroy his testimony in the Sessions Court. If that serves the purpose of the prosecution, then nothing more is required, but if the prosecution wishes to go further and use the previous testimony to the contrary as substantive evidence, then it must, in my opinion, confront the witness with those parts of it which are to be used for the purpose of contradicting him. Then only can the matter be brought in as substantive evidence under Section 288. As two of the eyewitnesses were not confronted in the manner required by Section 145, their statements will have to be ruled out, and if that is done the material on which the conviction is based is considerably weakened.”

(Emphasis Supplied)

59. The contention of learned counsel for the appellant deserves to be out-rightly rejected in view of authoritative pronouncement of Supreme Court in **(2010) 6 SCC 493 (Utpal Das v. State of W.B.)**. The curtains are finally drawn on this issue by holding thus :-

“16. Likewise, the statement recorded under Section 164 CrPC can never be used as substantive evidence of truth of the facts but may be used for contradictions and corroboration of a witness who made it. The statement

made under Section 164 CrPC can be used to cross-examine the maker of it and the result may be to show that the evidence of the witness is false. It can be used to impeach the credibility of the prosecution witness. In the present case it was for the defence to invite the victim's attention as to what she stated in the first information report and the statement made under Section 164 CrPC for the purposes of bringing out the contradictions, if any, in her evidence. **In the absence of the same the court cannot read the Section 164 statement and compare the same with her evidence.”**

(Emphasis Supplied)

60. It is noteworthy that in the cross-examination of P.W.3 in the Court, she was not confronted with her previous statement recorded under Section 164 of Cr.P.C. Thus, neither said statement under Section 164 of Cr.P.C. can be read as substantive evidence nor it can be read by the Court to demolish the Court statement of P.W.3. Putting it differently, as held in **Utpal Das (supra)**, the Court cannot compare the statement recorded under Section 164 of Cr.P.C. and Court statement in a case of this nature where the relevant witness was not put to test during cross-examination based on her previous statement recorded under Section 164 of Cr.P.C.

Ocular evidence :-

61. P.W.3, sister of deceased is an important witness. She in clear terms deposed that she was watching TV with her deceased sister. Deceased sister left the room and went outside the house in order to answer the call of nature. Since she did not turn up for quite some time, came out of house and found that front door of a room in front of her house is kept opened. When she peeped into it, she found the appellant there who made an attempt to hide himself. She informed this to her parents in due course of time. Father (P.W.1) and mother (P.W.2) of the

deceased supported this statement. Other prosecution witnesses also narrated that they came to know that appellant was trying to hide and while doing so was seen by P.W.3.

62. The site map (Ex.P/2) shows that the house of deceased is situated right in-front of the room where body of deceased was found. Thus, it is quite natural that when P.W.3 came out of her house in order to search her sister and found the door of the said room opened, she peeped inside the room and found the appellant attempting to hide himself. The story cannot be said to be unbelievable.

63. No doubt, there are little variations in the statement of prosecution witnesses regarding actual time of recovery of the dead body etc. but said minor contradictions are normal in a case of this nature where multiple witnesses have deposed their statements. No material contradictions could be established which can cause serious dent to the story of prosecution.

64. Apart from this, Vijay Kewat (P.W.10) is a recovery witness who proved the recovery of underwear and T-shirt of appellant which were marked as Ex.P/9. He proved his signature and seizure memo (Ex.P/10). The blood stained underwear and T-shirt were shown to him by prosecution before sealing the same. Sujeet Kewat (P.W.11) also supported the recovery and proved Ex.P/9 and seizure memo Ex.P/10.

65. Dr. R.K. Verma and Dr. Radha Chaturvedi conducted the post mortem and proved the relevant post mortem report. It is important to note that when *Naksha Panchnama* (Ex.P/7) was prepared, the description of clothes of deceased was given. It is mentioned that deceased was wearing a cream yellow colour half frock. Both the doctors opined that the reason of death is rape followed by

throttling/strangulation. The injury caused on the person of deceased must have been caused because of her resistance when she was subjected to sexual assault. It was further deposed that 3 ml. blood of accused was taken out for DNA Test which was handed-over to Sajjan Singh Parihar for DNA Test. The signature of appellant were also taken on the slip which was marked as Ex.P/34. In the said document, the signature of doctors are mentioned from “C – C” and “D – D” whereas appellant’s signatures are mentioned at “B – B”.

66. In view of the aforesaid ocular evidence, it is clear that victim was a minor. She was subjected to rape and murdered in a room situated in-front of her house. Appellant’s blood stained clothes were recovered in the presence of witnesses. Post mortem report of deceased shows the aforesaid reason of death. The appellant was seen by P.W.3 in the room where body of deceased was found.

67. A cumulative reading of statements of prosecution witnesses show that they have proved the aforesaid aspect beyond reasonable doubt.

Statement under Section 313 of Cr.P.C. :-

68. Dr. R.K. Verma (P.W.16) and Dr. Radha Chaturvedi (P.W.19) examined the appellant soon after the incident. Following injuries were found on his body :-

- (i) *Abrasion on the right knee of size 1/2 x 1/2 inches,*
- (ii) *similar abrasion on left knee,*
- (iii) *Abrasion on the right forearm of size 4 inches x 1/9 inches*
- (iv) *Abrasion was one and half inch by 1/4 inches on the lower one-third of the right forearm.*

- (v) *Abrasion on the left arm of size 2 x 1/2 inches.*
- (vi) *Abrasion on right shoulder of size 1/4 x 1/4 inches.*

69. The appellant when confronted with this incriminating material including nature of injuries, did not furnish any explanation at all. The purpose of inserting Section 313 of Cr.P.C. in the statute book is taken note of by Supreme Court in catena of judgments. In **(2012) 6 SCC 174 (Munna Kumar Upadhyay alias Munna Upadhyaya v. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh)**, the Apex Court has taken stock of previous judgments on this point and held as under :-

“73. It is a settled law that the statement under Section 313 CrPC is to serve a dual purpose, firstly, to afford to the accused an opportunity to explain his conduct and secondly to use denials of established facts as incriminating evidence against him. In this regard, we may refer to some recent judgments of this Court.

“21. Section 313 of the Code casts a duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as a necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

74. Again, in its recent judgment in *Manu Sao v. State of Bihar* [(2010) 12 SCC 310 : (2011) 1 SCC (Cri) 370], a Bench of this Court to which one of us, Swatanter Kumar, J., was a member, has reiterated the abovestated view as under: (SCC pp. 316-17, paras 12-14)

“12. Let us examine the essential features of this Section 313 CrPC and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code.

13. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the court and besides ensuring the compliance therewith the court has to keep in mind that the accused gets a fair chance to explain his conduct. The option lies with the accused to maintain silence coupled with simpliciter denial or in the alternative to explain his version and reasons for his alleged involvement in the commission of crime. This is the statement which the accused makes without fear or right of the other party to cross-examine him. However, if the statements made are false, the court is entitled to draw adverse inferences and pass consequential orders, as may be called for, in accordance with law. The primary purpose is to establish a direct dialogue between the court and the accused and to put to the accused every important incriminating piece of evidence and grant him an opportunity to answer and explain. Once such a statement is recorded, the next question that has to be considered by the court is as to what extent and consequences such statement can be used during the enquiry and the trial. Over the period of time, the courts have explained this

concept and now it has attained, more or less, certainty in the field of criminal jurisprudence.

14. The statement of the accused can be used to test the veracity of the exculpatory nature of the admission, if any, made by the accused. It can be taken into consideration in any enquiry or trial but still it is not strictly evidence in the case. The provisions of Section 313(4) explicitly provides that the answers given by the accused may be taken into consideration in such enquiry or trial and put in evidence against the accused in any other enquiry or trial for any other offence for which such answers may tend to show he has committed. In other words, the use is permissible as per the provisions of the Code but has its own limitations. The courts may rely on a portion of the statement of the accused and find him guilty in consideration of the other evidence against him led by the prosecution, however, such statements made under this section should not be considered in isolation but in conjunction with evidence adduced by the prosecution.”

75. In view of the above principles, **it was expected of the accused to render proper explanation for his injuries and his conduct.** However, he opted to deny the same and in fact even gave false replies to the questions posed to him.

76. If the accused gave incorrect or false answers during the course of his statement under Section 313 CrPC, the court can draw an adverse inference against him. In the present case, we are of the considered opinion that the accused has not only failed to explain his conduct, in the manner in which every person of normal prudence would be expected to explain but had even given incorrect and false answers. In the present case, the Court not only draws an adverse inference, but such conduct of the accused would also tilt the case in favour of the prosecution.”

(Emphasis Supplied)

70. In this view of the matter, the Court below has rightly taken into consideration this relevant fact into consideration while recording conviction. We do not find any infirmity or illegality in the said finding.

Photographs :-

71. The photographs of victim and the spot where she was raped and murdered were taken by a photographer Mukesh Upadhyay (P.W.12). The court below in para-38 and 39 of the impugned judgment dealt with these digital photographs and CD. On the basis of a judgment of Delhi High Court in **RFA No. 744/2016 (Puneet Prakash Vs. Suresh Kumar Singhal)** decided on 13th July, 2018, the court below opined that said statement of photographer and also the photographs and CD are admissible in evidence.

72. In our opinion, the judgment of Delhi High Court in **Puneet Prakash (Supra)** is based on the judgment of Supreme Court in **Shafhi Mohd Vs. State of Himanchal Pradesh (2018) 2 SCC 801**. The judgment of Supreme Court in **Shafhi Mohd (Supra)** was considered by a larger Bench of Supreme Court in **(2020) 7 SCC 1 (Arjun Panditrao Khotka Vs. Kailash Kushanrao Gorantyal and Others)** and in para-73 of this judgment, the Apex Court specifically overruled the judgment of **Shafhi Mohd (supra)**. Thus, judgment of Delhi High Court in **Puneet Prakash (Supra)** which was founded upon the judgment of **Shafhi Mohd (supra)** is impliedly overruled. Thus, we are unable to hold that said photographs are of any assistance to the prosecution.

DNA report :-

73. The DNA report is assailed on three counts.

Firstly, the colour of frock of victim in the DNA report is shown to be 'light yellow' whereas property seizure memo (Ex. P/18) shows that a

blue colour frock was recovered. This is further clear from the letter dated 18.06.2015 written by Superintendent of Police, Shahdol to Director, FSL Sagar. In this letter also frock is shown to be of blue colour.

Secondly, Exhibit 'C' in the report of Centre For DNA Fingerprinting And Diagnostics dated 23rd October, 2015, a pink colour slip Exhibit 'C' was shown whereas recovery memo does not reflect about any seizure of Exhibit 'C'. Indeed a 'trouser' of deceased was allegedly seized.

Thirdly, The document Ex.P/26 shows the description and marking of documents which is as under :-

“उपरोक्त सभी सामग्री DNA परीक्षण हेतु आपकी और आर. 650 अजय कुमार बाथम के द्वारा निम्न तालिका अनुसार भेजा जा रहा है।

क्रं.	वस्तु का विवरण	कब कहीं से जप्त किया गया	प्रदर्श
01.	एक सीलबंद थर्मर में आरोपी का रक्त नमूना 3.ml	दि. 16.06.2015 को सी.सच.सी. बुढार से।	A
02.	सीलबंद आरोपी की पज्जी	दि. 10.06.2015 को सी.सच.सी. बुढार से।	B
03.	शीलबंद मृत्तिका बेजाइनल स्येव स्लाइड	दि. 10.06.2015 को सी.सच.सी. बुढार से।	C
04.	शील बंद आरोपी की टी-सर्ट	दि. 10.06.2015 को आरोपी से	D
05.	शील बंद मृत्तिका की फाक।	दि. 10.06.2015 को सी.सच.सी. बुढार से।	E

उपरोक्त प्रदर्श A,B,C,D,E. वा DNA प्रोफाइल परीक्षण कर अभिमत देवें की क्या इन सभी प्रोफाइलों की DNA प्रोफाइल एक समान है ?

संलग्न –

- 1-प्र.सू.पत्र की छायाप्रति
- 2-शव पंचनामा की छायाप्रति
- 3-पी.एम.रिपोर्ट की छायाप्रति
- 4- जप्ती पत्रक की छायाप्रति
- 5- आइडेंटिफिकेशन एवं DNA फावर्ड नोट की मूल प्रति।
- 6- सी.एच.सी. बुढार की शील नमूना
- 7- नमूना शील थाना अमलाई

पुलिस अधीक्षक
शहडोल (म.प्र.)

अधिकार – पत्र

थाना अमलाई जिला शहडोल (म.प्र.) के अप.क. [217/15](#) धारा 302, 201, 376, 2(झ)(ज)(ड), 376क ता.हि. एवं [5/6](#) पास्को एक्ट के प्रकरण में परीक्षण में परीक्षण हेतु भेजे जा रहे प्रदर्शों को आवश्यकतानुसार विभक्त करने की अनुमति प्रदान की जाती हैं।

पुलिस अधीक्षक
शहडोल (म.प्र.) ”

74. If it is examined in juxtaposition with the DNA report, it will show that the exhibit numbers were rearranged. The description given in the DNA report dated 23rd October, 2015 reads as under :-

DESCRIPTION OF SOURCE

Name of the source	Received/collected on	Exhibit	Exhibit Code
Two slides said to be vaginal swab slides of deceased victim	19-06-2015	A	Z299 VSL1
Light yellow colour frock said to be of deceased victim	19-06-2015	B	Z299 CL1
Pink colour slip said to be of deceased victim	19-06-2015	C	Z299 CL2
Underwear said to be of accused Mr. Ramnath Kewat	19-06-2015	D	Z299 CL3
Green colour T-shirt said to be of accused Mr. Ramnath Kewat	19-06-2015	E	Z299 CL4
Blood sample said to be of Mr. Ramnath Kewat Identification form No.1	19-06-2015	F	Z299 B1

(Emphasis Supplied)

75. In addition, attention of this Court was drawn on the order of this court dated 08.07.2019 whereby matter was remitted before court below for a limited purpose of recording statement of Mr. Vijay Girnar who prepared and signed the DNA report dated 23rd October, 2015. The statement of Vijay Girnar recorded on 27.09.2019 were also read out.

76. No doubt, there is a clear difference in description of colour of frock of victim in the seizure memo, SP's aforesaid letter and the DNA report. Similarly, there exists a difference regarding description of 'slip' of deceased victim. The *Naksha Panchayatnama* (Ex. P/7) and post

mortem report Ex.P/20 which were duly proved by P.W.6 were prepared prior in time. This shows that deceased was wearing a half frock of yellow colour. It appears that while preparing the property seizure memo, the colour of frock is wrongly mentioned as 'blue' in place of 'yellow'. This description became foundation for SP's aforesaid letter. Even assuming that to this extent a doubt is created on the DNA report, it cannot be forgotten that as many as six materials were examined by DNA expert which includes -

- (i) Two vaginal swab slides of victim.
- (ii) Underwear of accused.
- (iii) T-shirt of accused &
- (iv) Blood sample of the accused - Ramnath Kewat.

77. The result of DNA examination and conclusion reads thus:-

CENTRE FOR DNA FINGERPRINTING AND DIAGNOSTICS

RESULT OF EXAMINATION

The source of **Exhibit A (two slides said to be vaginal swab slides of deceased victim)**, female fraction of the source of exhibit B (light yellow colour frock said to be of deceased victim) and the source of exhibit C (pink colour slip said to be of deceased victim) yielded identical autosomal DNA profiles of female origin. The source of exhibit D (underwear said to be of accused Mr. Ramnath Kewat) and male fraction of source of exhibit B (light yellow colour frock said to be of deceased victim Ms. Khusboo) yielded identical autosomal DNA profiles of male origin and are matching with the autosomal DNA profile of the source of exhibit F (blood sample said to be of Mr. Ramnath Kewat).

The source of exhibit E (green colour T-shirt said to be of accused Mr. Ramnath Kewat) yielded mixed autosomal DNA profile. The alleles present in the DNA profiles of the source of exhibit A (two slides said to be vaginal swab slides of deceased victim), exhibit B (light yellow colour frock said to be of deceased victim), exhibit C (pink colour slip said to be of deceased victim) and exhibit F (blood sample said to be of Mr. Ramnath Kewat) are accounted for being

present in the DNA profile of the source of exhibit E at the amplified loci, as shown in the enclosed Table-1.

The sources of exhibit A (two slides said to be vaginal swab slides of deceased victim), one part of exhibit B (light yellow colour frock said to be of deceased victim), Exhibit D (underwear said to be of accused Mr. Ramnath Kewat) and exhibit E (green colour T-shirt said to be of accused Mr. Ramnath Kewat) yielded identical Y-chromosomal DNA profiles and are matching with the Y-chromosomal DNA profile of the source of exhibit F (blood sample said to be of Mr. Ramnath Kewat). The source of exhibit C (pink colour slip said to be of deceased victim) and another part of the source of exhibit B (light yellow colour frock said to be of deceased victim) yielded Y-chromosomal DNA profiles as shown in the enclosed Table-2.

CONCLUSION

The DNA test performed on the exhibits provided is sufficient to conclude that the **biological fluid present on the sources of exhibit A (vaginal swab slides of deceased victim), exhibit B (light yellow colour frock said to be of deceased victim) and exhibit D (underwear of accused Mr. Ramnath Kewat) are from the source of exhibit F (Mr. Ramnath Kewat).**

(Emphasis Supplied)

78. Thus, even if we ignore the report to the extent frock and slip are mentioned, fact remains that the DNA report conclusively proves that biological fluid present on vaginal swab slides were of the source of present appellant.

79. Thus, we are of the considered view, that court below has taken a plausible view while giving finding related to DNA Test.

80. Mr. Vijay Girnar in furtherance of this Court's order dated 8.7.2019 deposed his statement before the trial Court and appellant got an opportunity to cross-examine him. A plain reading of his deposition makes it clear that no amount of cross-examination could be made which could cause dent on the fairness of the DNA Test. In other words, Shri Abhay Gupta, learned counsel although urged that change of coding in

the Articles by DNA Test Laboratory is bad in law. No question in this regard was asked which can be said to be fatal for the DNA Test.

81. The statement of Vijay Girnar recorded on 27.09.2019 does not improve the case of appellant. The conclusion of the report dated 23rd October, 2015 is not confined to the 'frock' and 'slip' alone. On the contrary, it is wide enough to include the finding based on vaginal swab slides and compared with the biological fluid and Exhibit-D (underwear of present appellant). Since source was same, no eyebrows can be raised on the DNA Test conclusion.

82. The argument of Shri Abhay Gupta that rearranging the exhibit numbers of articles is bad in law, in our opinion, is devoid of substance. A comparative reading of the material sent for DNA Test and material examined shows that although there is a change in exhibit numbers, the material were also identified by 'name of the source'. This is neither shown to be illegal nor could cause any prejudice to the present appellant.

83. In view of aforesaid analysis, we are of the considered opinion, that the court below has rightly relied upon the DNA Test Report. Pertinently, when this DNA Test Report was brought to the notice of the appellant, he did not furnish any explanation in his statement recorded under Section 313 of Cr.P.C. The DNA Test is a scientific test and if this test result conclusively proved the case of prosecution, this alone can be a ground to record conviction. It is profitable to record the legal journey on this aspect.

84. The Apex Court in **Santosh Kumar Singh v. State, (2010) 9 SCC 747** opined as under :-

“**68.** It is significant that not a single question was put to PW Dr. Lalji Singh as to the accuracy of the methodology or the procedure followed for the DNA profiling. The trial court has referred to a large number

of textbooks and has given adverse findings on the accuracy of the tests carried out in the present case. We are unable to accept these conclusions as the court has substituted its own opinion ignoring the complexity of the issue on a highly technical subject, more particularly as the questions raised by the court had not been put to the expert witnesses. In *Bhagwan Das v. State of Rajasthan* [AIR 1957 SC 589 : 1957 Cri LJ 889] it has been held that it would be a dangerous doctrine to lay down that the report of an expert witness could be brushed aside by making reference to some text on that subject without such text being put to the expert.

(Emphasis Supplied)

85. Apart from this, in view of scientific accuracy attached to DNA Test result, we are inclined to hold that Court below has rightly recorded the conviction of the appellant. The relevant paragraphs of the judgment of **Santosh Singh (supra)** needs to be reproduced thus :-

“65. We now come to the circumstance with regard to the comparison of the semen stains with the blood taken from the appellant. The trial court had found against the prosecution on this aspect. In this connection, **we must emphasise that the court cannot substitute its own opinion for that of an expert, more particularly in a science such as DNA profiling which is a recent development.**

67. The statements of Dr. Lalji Singh and Dr. G.V. Rao reveal that the samples had been tested as per the procedure developed by the laboratory, that the samples were sufficient for the purposes of comparison and that there was no possibility of the samples having been contaminated or tampered with. The two scientists gave very comprehensive statements supported by documents **that DNA of the semen stains on the swabs and slides and the underwear of the deceased and the blood samples**

of the appellant was from a single source and that source was the appellant.

71. We feel that the trial court was not justified in rejecting the DNA report, as nothing adverse could be pointed out against the two experts who had submitted it. We must, therefore, accept the DNA report as being scientifically accurate and an exact science as held by this Court in *Kamti Devi v. Poshi Ram* [(2001) 5 SCC 311 : 2001 SCC (Cri) 892 : AIR 2001 SC 2226].”

(Emphasis Supplied)

86. In a case of this nature, where DNA Test result conclusively proved the involvement of appellant even if the oral evidence is weak or vulnerable, conviction can be recorded. In **Hemudan Nanbha Gadhvi v. State of Gujarat, (2019) 17 SCC 523**, it was poignantly held that :-

“10. A criminal trial is but a quest for truth. The nature of inquiry and evidence required will depend on the facts of each case. The presumption of innocence will have to be balanced with the rights of the victim, and above all the societal interest for preservation of the rule of law. Neither the accused nor can the victim be permitted to subvert a criminal trial by stating falsehood and resort to contrivances, so as to make it the theatre of the absurd. Dispensation of justice in a criminal trial is a serious matter and cannot be allowed to become a mockery by simply allowing prime prosecution witnesses to turn hostile as a ground for acquittal, as observed in *Zahira Habibullah Sheikh v. State of Gujarat* [*Zahira Habibullah Sheikh v. State of Gujarat*, (2006) 3 SCC 374 : (2006) 2 SCC (Cri) 8] and *Mahila Vinod Kumari v. State of M.P.* [*Mahila Vinod Kumari v. State of M.P.*, (2008) 8 SCC 34 : (2008) 3 SCC (Cri) 414] If the medical evidence had not confirmed sexual assault on the prosecutrix, the TIP and identification therein were doubtful, corroborative

evidence was not available, entirely different considerations may have arisen.”

(Emphasis Supplied)

QUANTUM OF SENTENCE :-

Balance Sheet :-

87. In the light of judgment of Supreme Court in **Bachan Singh** and **Macchi Singh (supra)**, it is necessary to prepare a balance sheet of *mitigating circumstances* and *aggravating circumstances*.

The mitigating circumstances are :-

- (i) The appellant has no criminal record,
- (ii) The commission of crime was not extremely barbarous, gruesome, diabolical, brutal or heinous in nature.
- (iii) The rape was outcome of the personal lust,
- (iv) The murder was not outcome of any pre-meditation and it was done by accused in spontaneity,
- (v) The crime was not committed to terrorize or harm a particular or larger section of society.
- (vi) No weapons were used.
- (vii) The cause of death is rape and asphyxia/throttling.
- (viii) The accused is a young person of 28 years of age,

The aggravating circumstances are :-

- (i) The victim was an innocent minor girl, aged about twelve years,
- (ii) She was in a defenseless and unprotected state,
- (iii) Rape and murder of innocent minor girl.
- (iv) The appellant was a relative i.e. ‘dada’. Thus, enjoying a position of trust and domination.

88. Learned Government Counsel for the State supported the capital punishment imposed by the court below.

89. The Apex Court apart from aforesaid balance sheet, also relied upon other tests namely 'Crime Test', 'Criminal Test' and 'R-R Test'. This court considered these tests in sufficient detail in Cr.A. No.7544/2019 (Deepak @ Nanhu Kirar Vs. State of M.P.).

90. In **Deepak @ Nanhu Kirar Vs. State of M.P.** the court held as under:-

“62. The sentencing policy was taken note of by Apex Court in large number of cases. In the case of **Bachan Singh Vs. State of Punjab, 1980 (2) SCC 684**, it was held that the normal rule is that the offence of murder shall be punished with the sentence of life imprisonment. The Court can depart from that rule and impose the sentence of death only when there are special reason. If the offence is of an exceptionally depraved and heinous character and constitute on account of its design and the manner of its execution, a source of grave danger to the society at large, the Court may impose death sentence. While interpreting Section 354 of Cr.P.C., the Apex Court in **Machhi Singh and others Vs. State of Punjab, 1983 (3) SCC 470** opined that a balance sheet of aggravating and mitigating circumstance has to be drawn up and in doing so, the mitigating circumstance has to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances. The question which needs to be posed is whether the crime is such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstance.

63. In a recent judgment, **2018 SCC Online 2570 (Channulal Verma Vs. State of Chhattisgarh)**, the Apex Court took note of its previous judgments on sentencing policy and opined that the test discussed in *Shankar Kishanrao Khade* (supra) needs to be applied

while awarding the death sentence. The test for death sentence are (crime test, criminal test and R-R test) and not the “balance test”. To award death sentence, the ‘crime test’ has to be fully satisfied i.e. 100% and ‘criminal test’ 0% i.e. no mitigating circumstance favouring the accused. It was poignantly held that if there is any circumstance favouring the accused like young age of accused, ‘criminal test’ may favour the accused to avoid the capital punishment.”

(Emphasis Supplied)

91. Now, it is to be examined whether capital punishment imposed by court below is justified. In catena of judgments, it was held that the death sentence can be imposed only when there is no other alternative. Otherwise imposition of Life Imprisonment is the rule. In the instant case, there are *mitigating circumstances* which are in favour of the appellant. As per judgment of Apex Court in the case of **Chhannu Lal Verma (supra)**, even if one circumstance favours the accused, which includes his young age, the imposition of capital punishment is not justified.

92. A Division Bench of this Court in **Anand Kushwaha Vs. State of M.P. ILR [2019] M.P. 1470** considered judgments of Supreme Court of in tabular form. The first head deals with the cases in which the Apex Court affirmed the death sentence whereas second is relating to the cases where death sentence was commuted to imprisonment for life. It is profitable to quote the said tabular form in order to appreciate the backdrop and ‘aggravating’ and ‘mitigating circumstances’ and the result thereof.

Death Sentence Affirmed

S. No.	Details & Brief Facts of the case	Aggravating	Mitigating
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1.	<p>(1991) 3 SCC 471 (2J)-<i>Sevaka Perumal v. State of Tamil Nadu</i> Offence- u/s 302/34 and Section 364, 392, 120-B read with Section 397 IPC. The accused were indulged in illegal business of purchase and sale of Ganja. They conspired to entice innocent boys from affluent families, took them to far flung places where the dead body could not be identified. Letters were written to the parents purporting to be by the deceased to delude the parents that the missing boys would one day come home alive and that they would not give any report to the police and the crime would go undetected. Four murders in a span of five years were committed for gain in cold clouded, premeditated and planned way. One of the deceased was the nephew (elder sister's son) of the first accused.</p>	<p>i. Innocent boys victim. ii. Conspiracy to entice boys from affluent families. iii. Dead body could not be identified. iv. Four murders in a span of 5 years committed for gain in cold clouded, premeditated and planned way. v. Depravity & hardened criminality. vi. No regards for precious lives of innocent young boy. vii. Crime of murder for gain as a means of living.</p>	<p>i. Appellant young man. ii. Bread winner of the family.</p>
<p>* Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine to public confidence in the efficacy of law and society could not long endure under serious threats.</p>			
2.	<p>(1994) 2 SCC 220 (2J)-<i>Dhananjay Chatterji @ Dhana v. State of West Bengal</i> Offence-u/s 302,376 & 380 IPC. The accused was one of the security guard deputed to guard the building Anand Apartment. The deceased, a young girl of 18 years of age, complained to her mother that the accused had been teasing her on her way to and back from the school. On the complaint by the father of the deceased, the accused was transferred and another security guard was posted in his place.</p>	<p>1. Atrocity of the crime. 2. Conduct of the criminal. 3. Defenceless and without any provocation. 4. Unprotected state of victim. 5. Faith of society shaken. 6. Barbaric rape and murder.</p>	<p>1. Age 27 years. 2. Concern for dignity of human life is required to be kept in mind by the courts while considering the confirmation of sentence of death.</p>

	The accused went to the flat of the deceased at about 5.00 pm when she was all alone in her flat and committed rape and murder of the deceased.		
3.	(1994) 3 SCC 381 (2J)-Laxman Naik v. State of Orissa. Offence-u/s 376 & 302 IPC. The accused alongwith his mother and her seven years' old grand daughter i.e. niece of the accused had gone to a neighbouring village to take part in a funeral ceremony. In the afternoon, when all the relatives assembled for the ceremony and were busy in the observance of the ceremony, the accused commanded the deceased, his seven years' old niece to accompany him back to their village and the deceased followed him in obedience to his command. He sexually assaulted and murdered her, and her dead body was found lying in jungle with serious bleeding, injury in her private part and her clothes found smeared with blood.	i. Accused uncle of the deceased and occupied status of guardian. ii. Victim 7 years old, unmindful of the preplanned, unholy designs of the accused. iii. Victim was a totally helpless child, no one to protect her in the desert. iv. Misused the	
		confidence to fulfill the lust. v. Preplanned to commit by resorting to diabolic methods. Calculated, cold blooded and brutal murder of girl of tender age.	
4.	(1999) 5 SCC 1 (3J)- Jai Kumar v. State of M.P. Offence-u/s 302 IPC. The accused entered the house of his brother and bolted from outside the mother's room and thereafter removed certain bricks from the wall and Choukat. Thus facilitating the entry into the room where the deceased sister-in-law was	i. Cold blooded murder of 2 who were in hapless and helpless situation without provocation. ii. Calculated Ghastly and Cruel murder. iii. Sent shock waves in the society. iv. Create feeling of revolt in the	i. Age of accused 22 years. Possibility of Reformation

	<p>sleeping with the child, the conscience.</p> <p>accused committed the murder v. Subsequent disposal of his sister-in-law at about of the bodies. Living 11.00 pm by parsul-blows and danger in the gruesome then kulhari blows on her neck act severing her head from the body and taking away her eight years' old daughter and killing her in a jungle by axe-blows said to be by offering sacrifice to Mahua Maharaj and buried her in the sand covered with stone and thereafter came back home and carried the body of his deceased sister-in-law tied in a cloth to the jungle and hung the head tied on a branch with the hair and put the body on the trunk of the Mahua Tree.</p>	
5.	<p>(2004) 2 SCC 338 (2J) - <i>Sushil Murmu v. State of Jharkhand</i> Offence-u/s 302 IPC.</p> <p>Human Sacrifice of Child 9 years old for prosperity of accused. The recovery of the dead body was at the behest of the accused, the severed head was recovered from the bag thrown in the pond.</p>	<p>i. No basic humanness.</p> <p>ii. Lacks the Psyche or mind set which can be amenable for any reformation.</p> <p>iii. Accused had a child of same age as of the victim, yet he diabolically designed in a most dastardly and revolting manner to sacrifice hapless and helpless child of another.</p> <p>iv. Brutality of act is amplified by the grotesque and revolting manner in which the helpless child's head was severed.</p> <p>v. Carried head in a Gunny bag and threw in the pond, shows diabolic act, cruel in execution. Planned and deliberate act.</p>
6.	<p>(2005) 3 SCC 114 (2J)-<i>State of U.P. v. Satish</i></p> <p>Offence- u/s 363, 366, 376(2), 302 & 201 I.P.C</p> <p>On 16.8.2001 the victim who was studying in Sarvodaya Public School had gone to school and did not return at the usual time. On the next morning, her dead body was found in the sugarcane field of one Mulchand around 6.00 am. She was lying in a dead condition and blood was</p>	<p>Relying on Principals</p> <p>(sic : Principles) laid down in <i>Bachan Singh's case</i> and <i>Machhi Singh's case</i> one of the Rarest of Rare.</p>

	oozing from her private part and there were marks of pressing of her neck. The victim who was not even six years old lost her life on account of bestial act of the accused who raped her and thereafter murdered her.	
7. (2005) 3 SCC 793 (2J) <i>Holiram Bordoloi v. State of Assam.</i> Offence- U/S - 147, 148, 436, 326 & 302/1491. P.C. On the date of incident in question, the deceased was present at his house alongwith his wife, three children aged six years, eight years and sixteen years. The accused and the other accused persons who were armed with lathi, Dao, Jathi, Jong and various other weapons, came to the house of the deceased and started pelting stones on the bamboo wall of the said house. Thereafter, they closed the door from outside and set the house on fire. The son and one daughter and wife managed to come out from the house. The accused and another accused caught hold of him and threw him into the fire again. The deceased family was completely burnt and died on the spot. Thereafter, the elder brother who was staying in another	i. Cold blooded murder. ii. Accused leading the gang. iii. Victims did not provoke or contribute to the incident. iv. 2 victims were burnt to death by locking the house from outside. v. One of the victim was a 6 year old boy, who, somehow, managed to come out of the burning house, but he was mercilessly thrown back to the fire by accused. vi. Dragging of one of the victim by the accused to his house and then cutting him into pieces in broad day light, in the presence bystanders.	
	house at some distance of the house, was caught and dragged to the courtyard of the accused, where the accused cut him into pieces.	vii. The entire incident took place in the broad daylight and the crime was committed in the most barbaric manner to deter others from challenging the supremacy of the accused in the village. viii. Entire incident was preplanned. Accused when questioned under section 235(2) Cr.P.C. on sentence did not say anything, silence shows he has no repentance for the ghastly act committed.
8. (2007) 3 SCC 1 (2J) <i>Ram Singh v. Sonia</i> Offence u/s - 354(3), 366, 368, 302 I.P.C The accused alongwith her husband murdered her stepbrother and his family, which included 3 tiny tots aged 45 days, 2	i. Murder committed in diabolic manner. ii. Without any provocation. iii. Cold blooded and premediated. iv. Helpless victims.	

	and half year and 4 years, as also murdered her own father, mother and sister in a very diabolic manner so as to deprive her father from giving property to her stepbrother and his family.	v. Not possessed with basic humanness as the act is brutal, grotesque and in revolting manner. vi. Completely lacks the psyche or mindset which can amenable for any reformation.	
9.	(2007) 4 SCC 713 Shivu v. Registrar General, High Court of Karnataka Offence - U/S- 302/34 & 376/34 I.P.C Accused aged about 20 and 22 years respectively were sexually obsessed youngsters, who prior to the alleged incident had attempted to rape two girls of same village, only Panchayat of village elders was called on each occasion and the accused were admonished. Emboldened they committed rape on the deceased, a young girl of 18 years and to avoid detection, committed heinous and brutal act of her murder.	1. Rarest of Rare Case following guidelines of Bachan Singh & Machhi Singh 2. Earlier 2 instances of Rape Recorded.	
10.	(2008) 4 SCC 434 Prajeet Kumar Singh v. State of Bihar Offence u/s-302 I.P.C The accused was living in the house where he was taking his meals for which he was paying Rs. 500/- per month. For the last several months, he had not paid the amount and owed Rs. 4000/- altogether as rent for the house and for food to the informant for which the informant was making demand regularly. The day before the incident, the accused came back at 3.00 pm. After having dinner, when the informant asked the accused for the dues, the accused told him	i. Brutality in murder as several incised wounds. ii. Victims were helpless and had no weapon. iii. Accused was living as P.G. from 4 years, the act was preplanned. iv. Act was diabolic of the Superlative degree in conception and Cruel in execution and does not fall within (sic : within) any comprehension of the basic humanness	
	that he should accompany him to his home where he would be paid his money. Thereafter, the informant and his wife went to sleep in their room which was on the third floor of the house and the accused also went to sleep in the adjoining room on the third floor. All the children of the informant were sleeping on the second floor. The accused picked up dab (dagger like weapon) from the	which indicates the mindset and cannot be said to be amenable to any reformation	

	house, and murdered the son of informant about 16 years, daughter about 15 years and niece about 8 years and caused injuries to the informant and his wife.		
11.	<p>(2008) 7 SCC 561- Mohan Anna Chavan v. State of Maharashtra Offence u/s-302, 363, 376, 201 I.P.C</p> <p>Two young girl aged five years and ten years were sexually assaulted and murdered. The appellant was serial rapist, convicted for kidnapping and raping a minor girl, again convicted for raping a girl less than nine years.</p>	<p>1. Serial Rapist</p> <p>2. Rarest of Rare Case following guidelines of Bachan Singh & Machhi Singh</p>	
12.	<p>(2008) 11 SCC 113 (2J) Bantu v. State of Uttar Pradesh Offence u/s- 364, 376 & 302 I.P.C</p> <p>There was Devi Jagran in village, in the eventful night. A number of person of the locality had assembled there. The informant, alongwith his brother and niece (deceased) had also gone there. Around 9.00 pm the accused, a neighbour of the informant reached there, and after exhibiting playful and friendly gesture with the deceased with whom he was familiar before because of neighbourhood, enticed her away on the pretext of giving her a balloon. The deceased aged six years was raped and murdered. The villagers saw the accused thrusting a stem/stick in the vagina of the deceased. The accused was caught red handed in completely naked state by the villagers and the deceased was lying on the ground with injuries over face, head and neck. A wooden stick of 33 cms was found inside the vagina, the total stick was 57 cms × 0.8 cms in diameters. The uterus was ruptured, perforated intestines and pressure marks were present on the stick.</p>	<p>1. The serious kind of rape.</p> <p>2. Planned manner.</p> <p>3. Merciless in insertion of wooden stick causing death.</p>	
		<p>* In operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft modulation sentencing process be stern where it</p>	

		should be, and tempered with mercy where it warrants to be.	
13.	(2009) 6 SCC 667 (2J) - Ankush Maruti Shinde v. State of Maharashtra. Offence-u/s 397 read with Section 395 and 396, Section 307 read with Section 34 and Section 376 of IPC. The accused entered the house of the victim at about 10.30 pm demanding money and valuable from them. The accused also snatched ornaments worn by the family members. Thereafter, they went out of the hut and consumed liquor. After some time, they reentered the hut armed, started assaulting the family members and tied hands and legs of all. Three of accused then dragged a young girl aged 15 years out of the hut to guava garden, gang raped her. She was brought back dead in naked condition with injuries on her body. The other girl was also dragged towards the well and raped by one. She was brought back seriously injured. In the occurrence, five persons were murdered and two raped.	i. Murder were not only cruel, brutal but were diabolic. ii. Rape and murdered one victim of 15 years. iii. Incident is extremely revolting and shocking to conscience of community. iv. Defenceless attack without provocation and no animosity.	
14.	(2010) 9 SCC 567- C. Muniappan v. State of Tamilnadu with D.K. Rajendran v. State of Tamilnadu Offence-U/S- 302 I.P.C In a public demonstration against a court verdict, the accused became violent, violated prohibitory order and prevented the free flow of traffic and caused nuisance to general public at large. The accused were involved in two incidents. In the first incident, the accused burnt and damaged several buses. In the second incident burnt a bus carrying college girls where three girls were burnt to death and twenty were severely injured.	i. Offence had been committed after previous planning and extreme brutality. ii. Murder of helpless and unarmed young girl students in a totally unprovoked situation. iii. This activity is inhuman of the highest degree. iv. Commission of an offence is extremely brutal, diabolical, grotesque and cruel. v. Shocking to the collective conscience of the society.	
15.	(2010) 10 SCC 611Sunder Singh v. State of Uttranchal Offence-U/S- 302, 307,	i. Murder committed in a cruel, grotesque and diabolic manner.	i. Age of accused. ii. Rash act, without intention.

	436 I.P.C In this ghastly incident five persons of the same family were roasted alive and died either on the spot or while being taken to the hospital or in the hospital, and one suffered the burn injuries.	ii. Poured Petrol in the room set it to fire and closed the room also. iii. Premeditated and cold-blooded mind, as had carried petrol to his own cousins house. iv. Agony caused by dying witnesses because of their burn injuries would be enormous.	iii. Remaining under shadow of death since 2004 till 2010.
		V. No immediate provocation though enmity of family land was going on. vi. Deceased were without arms and helpless.	
16.	(2011) 5 SCC 317 - Mohd. Mannan @ Abdul Mannan v. State of Bihar Offence-U/S- 302, 376, 366 & 2011. P.C. The accused was working as a mason and engaged for the plaster work at the residence of informant's uncle. The accused gave two rupees to the niece of the informant aged about eight years to bring betel from the shop. After some time, the accused left the work, went to the shop and got seated the victim on the carrier of his bicycle, thereafter raped and murdered her. The deceased had injuries on the private part, her nails were munched and there were marks of bruises all over the body.	Rarest of Rare Case i. Age of accused, a matured man. ii. Misused the Trust in a calculated and pre-planned manner. iii. Girl aged 7 years, innocent and did no provocation for murder and was helpless and defenceless. iv. Act extreme indignation of the community and shocked the collective conscience of the society. v. Accused is a menace to the society and shall continue to be so and cannot be reformed.	
17.	(2012) 4 SCC 37 Rajendra Pralhadro Wasnik v. State of Maharashtra. Offence- U/S - 302,376(2)(f) & 377 I.P.C The accused came to the house of the victim at about 4.00 pm and after having tea he left.	Rarest of Rare Test i. Took advantage of the familiarity with the family under false name. ii. Belied the human relationship of Trust and Worthiness.	

	<p>Thereafter, again he came to the house at about 6.30 pm and took the victim to get her biscuit. The victim aged three years was raped and brutally murdered.</p>	<p>iii. Crime is brutal and inhuman; all her private parts swollen and bleeding. Bleeding through nose and mouth, bites on chest. The pain and agony of the deceased minor girl is beyond imagination and is the limit of viciousness. iv. Left the deceased in badly condition without clothes, this is the abusive facet of human conduct.</p>	
18.	<p>(2013) 3 SCC 215 (2J) <i>Sunder @ Sundarajan v. State by Inspector of Police</i> Offence-U/S - 364-A, 302, 201 I.P.C</p> <p>The accused was waiting on a motorcycle near the school van of the victim, he told the victim that his mother had instructed him to bring the victim to the hospital since his mother and grand mother were not well. Thereafter, the family members received a call on the mobile phone, demanding ransom of Rs. 5 lakhs for the release of their son. The accused strangled the victim for ransom, put his body in a gunny bag and threw it in the tank.</p>	<p>i. Found guilty of offence U/S -364-A, IPC. ii. Guilty of offence U/S-302 I.P.C. iii. Child of 7 years. iv. No value for human life, as the child was killed for non-fulfillment of ransom demand. v. Extreme mental perversion not worthy of human conditions. vi. Traits of outrageous criminality.</p>	
		<p>vii. Well thought and planned manner. viii. Acquaintance choice of kidnapping male child, planned and consciously motivated.</p>	
19.	<p>(2013) 10 SCC 421 <i>Deepak Rai v. State of Bihar</i> Offence U/S- 120-B, 148, 302 Read With Section 149, 307 Read With 149, 326, 429, 436 & 452 I.P.C</p> <p>The accused came to informant's</p>	<p>i. Time, place, manner of and the motive behind commission of crime speaks loud of premeditated and callous nature of offence.</p>	<p>i. Young age. ii. Army background. iii. Custodial behavior. Lack of Criminal</p>

	<p>house at 1.00 am, overpowered the husband of the deceased (sleeping in the veranda) and on the instruction of the accused, locked the door of the room where the wife and their five children aged 3 to 12 years were sleeping and set the house on fire after trapping them. When the informant attempted to save himself, they fired at him but he managed (sic : managed) to escape. The motive for the act was that the informant had not withdrawn FIR against the accused for theft of his buffalo.</p>	<p>ii. Ruthlessness and brutal murder by burning young children and lady alive to avenge their cause.</p> <p>iii. The threat the incident had instilled amongst the villagers, as no one deposed against the accused.</p> <p>iv. Extremely revolting and shocks the collective conscience of the community.</p> <p>v. Cold-blooded murder in a preordained fashion without provocation.</p>	<p>Antecedents.</p>
20.	<p>(2015) 1 SCC 67 - Mofil khan v. State of Jharkhand. U/S - 302/449 Read With Section 34</p> <p>At about 8.30 pm the deceased was offering Namaz in the mosque. The accused and others, who were none other than the deceased's brothers and nephews approached him, started assaulting him with sharp edged weapon such as sword, Tangi, Bhujali and spade. The deceased succumbed to the injuries. The accused, proceeded towards the house of the deceased and assaulted the two unarmed brothers with the aforesaid weapons due to which the two brothers collapsed and died. Thereafter the accused committed murder of the wife of the deceased and his four sons aged between 5 to 12 years.</p>	<p>i. Menace, threat and anti-theatrical to harmony in the society.</p> <p>ii. No provocation.</p> <p>iii. Deliberately preplanned crime.</p> <p>Diabolic murder.</p>	<p>i. No criminal antecedents.</p> <p>ii. Middle aged having dependant who would be devastated.</p> <p>iii. Reformation possibility.</p>
21.	<p>(2015) 6 SCC 632 (3J) - Shabnam v. State of U.P. Offence U/S-302/341. P.C. The accused daughter involved in relationship with the other accused, driven by opposition to their alliance from the deceased family and alive to conception of their</p>	<p>i. Murder of own kith and kin.</p> <p>ii. Extreme brutal, incalculated and diabolic nature of crime.</p> <p>iii. Little likelihood of reform and</p>	<p>Young age.</p> <p>Accused was pregnant and now has a minor child.</p>

	illegitimate child and to secure entire family property had hatched, depraved plan to first administer the family sedative mixed in tea prepared by the accused daughter and thereafter bleeding them to death by	abstaining from future crime. iv. Motive for commission. v. Manner of execution.	
	slitting vital blood vessels in their throats. Murdered seven innocent persons and did not even spare ten months old infant, so as to leave no survivor for claiming share in family property in future.	vi. Magnitude of crime. vii Remorseless attitude.	
22.	(2015) 6 SCC 652 (3J) Purshottam Dasrath Borate v. State of Maharashtra Offence U/S - 302, 376(2)(g), 364, 404 Read With Section 120-B I.P.C. The deceased was serving as an associate in a company for about a year, where she used to work in the night shift i.e. from 11.00 pm to 9.00 am. The company had arranged for and hired a private cab service to transport its employees from their residence to work place. Further, to ensure the safety and security of its female employees, the company imposed a mandatory condition upon the owner of the cab that a security guard be present. On the fateful day the cab was deputed to pickup the deceased from her residence at 10.30 pm. The driver of the cab and the security guard took the deceased to a jungle area and committed gang rape with the deceased and thereafter murdered her by means of strangulating her with her own Odhani, slashing her wrist with a blade and smashing	i. No provocation. ii. Meticulously executed deliberate, cold blooded and preplanned crime. iii. Scant regard to iv. Sheer brutality and apathy for human. v. Menace to society. vi. Impact of crime on community and particularly women in night shifts. Helpless young woman who had reposed trust.	i. Age. Lack of Criminal antecedents.
	her head with a stone, tripped the deceased of her possession and money and left her body in the field.		
23.	(2017) 4 SCC 124 (3J) B.A. Umesh v. Registrar General, High	i. Strangulation of defenceless woman	i. Accused aged 30 years.

	<p>Court of Karnataka Offence : u/s-376,302 & 392 of IPC</p> <p>The accused raped, murdered and committed robbery. The victim, a widow lady was subjected to brutal rape and murder.</p>	<p>after raping her violently.</p> <p>ii. In addition, committed robbery.</p> <p>iii. Accused an ex-police official, not an illiterate villager.</p> <p>iv. Criminal history of 21 cases.</p> <p>v. Emboldened committed two more robbery.</p> <p>vi. Fled from lawful custody twice, no chance of reformation.</p>	<p>ii. Left seven years child unharmed.</p> <p>iii. Murder was not pre-meditated (sic : pre-meditated).</p> <p>iv. Previous history not of rape & murder.</p> <p>v. Case of circumstantial evidence.</p> <p>vi. One H.C. Judge opined life imprisonment.</p>
24.	<p>(2017) 6 SCC 1 (3J) Mukesh v. State (NCT of Delhi) U/S - 365, 366, 376(2)(g), 377, 201, 395, 397, 412, 302/120-B.I.P.C</p> <p>Gang rape of a girl and murder of two inside moving bus and prosecutrix assaulted with hands, iron rods and kicks. Forced for oral sex. Entire intestine of prosecutrix perforated and splayed open due to repeated insertion of iron rods and hands repeatedly. Pulled out her internal organs and</p>		<p>i. Family circumstances such as poverty and rural background.</p> <p>ii. Young age.</p> <p>iii. Age of parents, ill-health of family members and their responsibilities.</p> <p>iv. Absence of criminal antecedents.</p>
	<p>threw the deceased in naked state from the moving bus. The friend of the deceased was also beaten up and thrown out of the bus.</p>		<p>v. Conduct in jail.</p> <p>vi. Likelihood of reformation.</p>
25.	<p>Cr.A. No. 1433-1434/2014 -Khushwinder Singh v. State of Punjab. Offence : u/s 302 of IPC.</p> <p>Accused stolen Rs. 36,70,000/- after administering pills to six victims and threw them in the canal.</p>	<p>i. Six innocent persons killed.</p> <p>ii. Pre-planned manner.</p> <p>iii. Death in a diabolic and dastardly manner.</p> <p>iv. Extreme brutality.</p> <p>v. Collective conscious of society shocked.</p> <p>vi. Eyewitness account.</p>	
Death Sentence Commuted to Life Imprisonment			

1. (1994) 4 SCC 353 - <i>Jashubha Bharat Singh Gohil v. State of Gujrat.</i> Offence-u/s 302 IPC 12 persons tried for committing murder of ten persons and causing injuries to others. Trial Court convicted the accused for life imprisonment and High Court enhanced the punishment to death sentence. Supreme Court commuted to Life Imprisonment.	1. Ten murders taken place in broad day light. 2. Conscious of the state shaken. 3. The manner in which the murders were committed exposed its gravity. 4. Unarmed and innocent persons, returning after offering condolence.	Specter of death hanging over head of the accused for more than six years.
Special reasons to be assigned u/s 354(3) Cr.P.C.		
2. (1999) 3 SCC 19 - <i>Om Prakash v. State of Haryana</i> Offence- u/s 302/34 IPC and Section 25 of the Arms Act. The accused, who were the neighbours of the deceased, entered into the house from the rear door and fired at the deceased and his family members to take revenge regarding the plot in dispute and dread anybody to confront them at the risk of elimination. 7 persons murdered.	i. Gruesome act. ii. Premeditated and well thought murder.	*Noticing the mentally depressed condition, caused by constant harassment and dispute. Held not rarest of rare case, as this is not a crime committed because of lust for wealth or woman; such as extortion, decoity (sic : dacoity) or robbery nor even for lust and rape, it is not an act of anti social element, kidnapping and trafficking a minor girl or dealing in dangerous drugs which affects the entire moral fibers of the society and kills a number of persons, nor it is a crime committed for power or critical ambitions or part of organized criminal activities.
3. (2001) 2 SCC 28 - <i>Mohd. Chaman v. State of Delhi</i> (NCT of Delhi) u/s 376,302 of the IPC. The father of the victim was running a tailoring factory near his house. The	i. Age of victim 1 Vi years. ii. Prey to lust of 30 years old man in a preplanned	i. No criminal antecedents. ii. No possibility of continued threat to the society or such; a

<p>accused was residing in the same house in a room adjacent to the room of the victim's parents. The accused sexually assaulted the victim aged 1 ½ years bitten over the cheek, injuries in vaginal wall, liver lacerated with vertical deep laceration, in the adjacent room from where the mother of the victim picked up the victim in an unconscious state, who was declared dead by the Doctor.</p>	<p>way. iii. Killed in most revolting manner arousing intense and extreme indignation of the community. iv. An act of extreme depravity and arouses a sense of revolution in the mind of common man. v. Menace to the society as it is a calculated and cold blooded murder.</p>	<p>dangerous person that to spare his life will endanger the community.</p>
<p>4. (2002) 3 SCC 76 - Lehna v. State of Haryana Offence : u/s 302,458,324 IPC.</p> <p>The father of deceased and accused had given 2 acres of land to the accused for the purpose of cultivation but the accused who was a person of bad habits tried to alienate the land that was given to him by his father. There was constant quarrel between the family over the ancestral land and the accused assaulted the deceased and the family members and three persons of the same family died.</p>	<p>1. The injuries sustained by the accused were of very serious nature. 2. Three persons of the same family died, who were his own kith and kins.</p>	<p>(i). No evidence of any diabolic planning to commit the crime. (ii) Deprived of the livelihood on account of the land being taken away. (iii) Frequency of quarrels indicates lack of any sinister planning to take away lives. (iv) The factual scenario gives impression of impulsive act and not planned assault.</p>
<p>5. (2002) 9 SCC 168 - Vashram Narshi Bhai Rajpara v. State of Gujrat. Offence : 302 and 201 IPC.</p> <p>The accused, a fruit vendor purchased a house and started living in the house with his family consisting of his wife, four daughters and a son aged 5 years. The wife and the daughter of the accused did not like the house and started pressurizing him to sell and purchase another house. The accused purchased 5 litres of petrol in</p>	<p>i. Meticulously planned. ii. Brutal & a gruesome act.</p>	<p>i. Quarrels and continuous harassment. ii. Constant nagging well affected the mental balance and such sustained provocation. iii. No criminal background and not menace to the</p>

<p>plastic can and kept in the kitchen. The accused and his son slept on the terrace of the house and other members slept in the rear room on the ground floor. At about 3.00 am, the accused sprinkled the petrol on his wife and daughters and set them on fire, thereafter, the accused ran away from the room by closing the door from outside. Brutal and cold blooded murder of his wife and four daughters by setting them on fire.</p>		<p>society. iv. Mentally depressed condition of the accused.</p>
<p>6. (2003) 7 SCC 141 - Ram Pal v. State of U.P. Offence : 302,307,436,440/149 of IPC. The victim's family was accused of having committed the murder of two of the close relatives of the accused family, who in turn</p>	<p>i. 21 persons of murdered by gunshot injuries or by burning in latched houses. ii. Young children were victims.</p>	<p>i. Incident was a sequel of murder of close relative of accused by the victims family. ii. Sufficient provocation.</p>
<p>murdered 21 persons including young children by gunshot injury or burning them in latched houses.</p>		<p>iii. Spent 17 years in custody after the incident.</p>
<p>Balance sheet of the aggravating and mitigating circumstances has to be drawn up and further to accord full weightage to the mitigating circumstances and then to strike a balance between the aggravating and mitigating circumstances before the option is exercised.</p>		
<p>7. (2008) 13 SCC 767 -Swamy Shraddanand @ Murli Manohar Mishra v. State of Karnataka. Offence u/s : 302,201 IPC. The accused married the deceased who came from a highly reputed and wealthy background. She was the grand daughter of a former Deewan of the Princely State of Mysore and held vast and very valuable landed properties in her own right. The accused murdered his wife after giving heavy dose of sleeping pills and put her in a wooden box when she was alive, dug a pit, filled with earth and cemented the surface and covered with stone slab.</p>	<p>i. Planned and cold-blooded murder. ii. Motive behind the crime.</p>	<p>Standardisation of sentence process impossible and tends to sacrifice justice at the altar of uniformity.</p>
<p>8. (2009) 6 SCC 498 -Santosh Kumar Satish Bariyar v. State of Maharashtra Offence : u/s 302 IPC The accused, who were the friends of the victim, hatched a conspiracy to abduct the victim for a ransom of Rs. 10 lakhs from the victim's family.</p>	<p>i. Manner and method of disposal of the body of deceased was abhorrent. ii. Most foul and despicable case of murder.</p>	<p>i. Deceased was friend not enemy of accused. ii. Motive to collect money. iii. Age of accused. iv. No criminal history. v. Not professional</p>

		killer.
The accused called the victim to see a movie and after seeing the movie a ransom call for a demand of Rs. 10 lakhs was made but with fear of being caught, they murdered the victim, cut the body into pieces and disposed it off at different places.		vi. All unemployed and searching jobs. vii. Reformation and rehabilitation.
*Doctrine of Rehabilitation and weightage of mitigating circumstances.		
*Doctrine of Prudence in case of circumstantial evidence.		
9. (2010) 9 SCC 747 - Santosh Kumar Singh v. State through CBI Offence u/s : 302 & 376 IPC. Deceased student of LLB 6th Semester was being harassed and intimidated by the accused continuously, thereupon, the deceased made several complaints against the accused in different Police stations. On day of incident the deceased returned to her residence, where she was sexually assaulted and murdered by the accused. There were 19 injuries on the body, but no internal injury on private parts.	i. Accused belongs to a category with unlimited power or pelf or even more dangerously, a volatile and heady cocktail of the two.	i. Case of circumstantial evidence. ii. Age of accused a 24/25 years. iii. Motive and murder had been proceeded by continuous harassment by the deceased over two years.
10. (2011) 3 SCC 685 - Ramesh v. State of Rajasthan Offence u/s : 302, 392, 120-B, 201, 404, 414, 457 & 460/34 IPC Accused Gordhanlal conspired with other accused persons trespassed into the house of deceased Ramlal by night and looted ornaments of gold and silver and murdered 2 persons.	i. Murder of gains. ii. Criminal record. iii. Ramesh/appellant inflicted injuries on both the deceased.	i. Accused not from wealthy background. ii. Motive was money. iii. Circumstantial evidence. iv. Reformation and Rehabilitation. v. Languishing in Death Cell for more than six years.
11. (2011) 7 SCC 437 - State of Maharashtra v. Goraksha Ambaju Adsul. Offence : u/s- 302,201 of IPC The accused who was serving in the Indian Army, used to demand partition of land and other property for him and his brother from his father. He and his brother murdered their father and 2 family members. The deceased were administered poisonous substance in pedas then	i. Brutal and diabolic killing of 3 innocent family members. ii. Manner in which crime committed is deplorable.	i. 2nd marriage of father. ii. Continuous quarrels for division of property. iii. Increase of pressure with passage of time and frustration. iv. Intensity of bitterness between members of family

	strangled with shoe laces and placed bodies in 2 trunks and left them in the train, which were found by the Station Master next day.		had exacerbated thought of revenge and retaliation. v. Continuous nagging.
12.	(2012) 4 SCC 257-<i>Ramnaresh v. State of Chhattisgarh</i>. Offence : u/s- 449, 376(2)(g) and 302/34 IPC. One of the accused, brother-in law of the deceased, along with the other accused entered the house of deceased when her husband was away and committed rape and murdered her.	i. Crime has been committed brutally. ii. Accused Ranjeet being brother-in-law of deceased owed a duty to protect rather than sexual assault and murder alongwith his friends. iii. Crime is heinous committed brutally.	i. Age of all accused. ii. Since deceased was mistress of brother of accused Ranjeet, this may have been matter of concern. iii. Possibility of death of the deceased
		iv. Helplessness of a mother of two infant at the odd hour of night in absence of her husband.	occurring incidentally as a result of act committed on her, thus not caused intentionally. iv. Not criminals nor incapable of being reformed cannot be terms menace.
Doctorine (sic : Doctrine) of Proportionality - The principle of proportion between the crime and the punishment is the principle of 'Just Deserts' that serves the foundation of every criminal sentence that is justifiable.			
13.	(2012) 5 SCC 766 - <i>Neel Kumar @ Anil Kumar v. State of Haryana</i> Offence : u/s- 376(2)(f), 302 & 201 IPC. The accused, father of the deceased, raped his own daughter who was 4 years old and murdered her. Cause of death was Asphyxia because of throttling which was antimortem in nature, lacerated wound was present in vagina extended from anus to urethral, opening admitting 4 fingers. Underlined muscles and ligaments were exposed and anus was also torn and on dissection, uterus was perforated in the abdomen.	i. Nature of offence. ii. Age of victim. iii. Relationship of victim with accused. iv. Gravity of injuries.	i. The accused can be reformed or rehabilitated. ii. Not a continuous threat to society.
14.	(2013) 2 SCC 452 - <i>Sangeet v. State of Haryana</i> . Offence u/s- :		i. Body of Seema was burnt below the waist

	302,307,148,449 r/w 149 IPC.		with a view to destroy evidence
	Due to the belief that the family of injured Amardeep had performed black magic leading to death of son of Ramphal, Ramphal & 5 other accused killed 3 adults and 1 child aged 3 years. The 3 adults had bullet injuries other injuries by sharp edged weapon "kukri". Body of Seema was burnt below the waist and upper part of head of child.		of sexual assault. ii. No evidence of being professional killers. Rahul was blown off by firearm injury.
15.	(2013) 2 SCC 713 -Gurvail Singh @ Gola v. State of Punjab. Offence- : u/s 302/34 IPC Accused and deceased were member of same family and there was dispute with regard to mutation of their shares in their names, since property was not mutated. The accused persons armed with Datar, Kirpan and Toka assaulted 4 persons of their family and murdered them.	Extremely brutal, grotesque, diabolic.	i. Age of first accused was 34 years and second was 22 years. ii. Unblemished antecedents. iii. Property dispute which culminated into death of four persons. iv Reformation and rehabilitation.
R-R Test- 1. Depends on the perception of the society and not Judge-centric. 2. Looks into various factors: 1. Society's abhorrence. 2. Extreme indignation and antipathy to certain types of crime, like rape and murder of minor girls, especially intellectually challenged minor girls, minor girls with physical disability, old and infirm women with disabilities.			
16.	(2013) 5 SCC 546 -Shankar Kisanrao Khade v. State of Maharashtra. Offence- u/s 363, 366A, 376, 302, 201 IPC Gruesome murder of a minor girl, aged 11 years, with Intellectual Disability (moderate) after subjecting her to a series of acts of rape by a middle aged, strangulated and murdered her.	i. Victim aged 11 years, innocent, defenceless and having moderate intellectual disability. ii. The accused was a fatherly figure of 52 years, father of two children. iii. Ghastly manner of execution of crime.	i. Previous track record of accused. ii. Other options are not unquestionably/foreclosed.
	The cause of death was Asphyxia due to	iv. Ruthless crime as per rape was committed	

	strangulation and clear evidence of carnal intercourse were there.	<p>followed by murder.</p> <p>v. The action of the accused was not only inhuman but also barbaric.</p> <p>vi. Shocks not only judicial conscience but the conscience of the society.</p> <p>vii. Considering the age of accused reformation or rehabilitation is practically ruled out.</p>	
17.	<p>(2014) 4 SCC 69-Anil @ Anthony Arikswamy Joseph v. State of Maharashtra.</p> <p>Offence-u/s 302,377,201 IPC.</p> <p>Gruesome murder of a minor boy, aged 10 years, who was staying with him from few days, after subjecting to carnal intercourse and then strangulating him to death.</p>	<p>i. Offence u/s 377 proved.</p> <p>ii. Murder was committed in an extremely brutal, grotesque, diabolical and dastardly manner.</p> <p>iii. Victim and innocent boy and only son of his mother.</p> <p>iv. Accused was in a dominating position.</p> <p>v. Life taken away in a gruesome and barbaric manner, pricked not only the judicial conscience but also the conscience of the society.</p>	<p>i. No previous criminal history.</p> <p>ii. Possibility of reformation or rehabilitation at the age of 42 years cannot be ruled out.</p>
18.	<p>(2014) 5 SCC 353-Raj Kumar v. State of M.P.</p> <p>Offence : u/s 376,450,302 IPC</p> <p>The accused was the neighbor of the deceased and used to call him 'Mama'. On the said night the accused had taken liquor and meals in the house of the deceased and around midnight he raped the deceased aged 14 years and murdered her. The hymen of the deceased was torn and blood was oozing out from her private parts, some blood was also present in the cavity of her uterus.</p>	<p>i. Heinous crime.</p> <p>ii. Innocent, defenceless and helpless minor girl.</p> <p>iii. Relationship of accused with family of deceased.</p> <p>iv. Shocked the conscience of society.</p>	<p>Accused aged 32 years.</p>

19.	<p>(2016) 9 SCC 675 - Tattu Lodhi @ Pancham Lodhi v. State of M.P.</p> <p>Offence : u/s 366A, 364, 376(200/511,201 IPC.</p> <p>The accused asked the victim to purchase and bring gutka for him, thereafter Kidnapped and committed rape of a minor girl, aged 7 year. The deceased put the dead body in a gunny bag and locked it in his house, with a view for destruction of evidence relating to the crime. The victim was throttled to death.</p>	<p>i. Brutality.</p> <p>ii. Helplessness of victim.</p> <p>iii. Unprovoked and premeditated design to attack.</p>	<p>Accused was about 27 years and there was no material to negate the chance of accused being reformed and gaining maturity.</p>
20.	<p>(2017) 4 SCC 393 -Sunil v. State of M.P.</p> <p>Accused, 25 years old taken his niece (victim) aged 4 years on pretext of taking her to the parents and raped her and murdered her.</p>		<p>i. Young age of accused.</p> <p>ii. Can be reformed and rehabilitated.</p> <p>iii. Probability of not committing similar crime.</p>
21.	<p>2018 SCC OnLine SC 2570 - Chhannu Lal Verma v. State of Chhattisgarh.</p> <p>Offence-u/s 302,307, 506(2) & 450 IPC</p> <p>The accused entered the house of the deceased and caused fatal injuries to 3 members of the family. Thereafter, the accused entered another house and inflicted grievous injuries to one person.</p>	<p>i. Murder of 3 persons.</p> <p>ii. Two of the deceased and one of the injured person were the women.</p>	<p>iv. Not a threat to society.</p> <p>i. No evidence as to the uncommon nature of the offence or the improbability of reformation or rehabilitation of the accused has been adduced.</p> <p>ii. No analysis undertaken by the High Court, whether, the person would be a threat to the society or whether not granting Death Penalty would send a wrong message to the society.</p> <p>iii No previous criminal record apart from acquittal in the case under Section 376 I.P.C.</p> <p>iv. Does not fulfill the test of Rarest of Rare case, where the alternative option is unquestionably foreclosed.</p>
			<p>v. Despite having lost all hope, yet no frustration has set on the accused as per the certificate given by the Superintendent of jail, that, his conduct in jail has been good.</p>

			Thus goes on to show that, he is not beyond reform. vi. Without assistance of psychological/psychiatric assessment and evaluation it would not be proper to hold, that, there is no possibility or probability of reform. vii. Procedural impropriety of not having a separate hearing for sentencing at the stage of trial. A bifurcated hearing for conviction and sentencing, a necessary condition.
22.	(2019) 2 SCC 311 Viran Gyanlal Rajput v. State of Maharashtra Offence- u/s 363, 376, 302 and 201 of IPC and Section 10 and 4 of POCSO Act. The accused kidnapped the victim aged 13 years, raped her, murdered her by strangulation and buried her body in the field.	i. Dastardly nature and manner of crime. ii. Youth and helplessness of the victim.	i. Young age. ii. Lack of criminal antecedents. iii. Post incarceration conduct. iv. Not a menace to society. v. Possibility of reform.
23.	2019 SCC OnLine SC 42 - Yogendra @ Joginder Singh v. State of M.P. Offence : u/s 302, 326A and 460 IPC. The deceased was married and had two issues. The accused snugg into the room of the deceased and warned her that, as she doesn't want to live with him, he is not going to let her live neither anybody else and threw acid on her. When the other family members tried to save her, the accused threw acid on them, in the attack the deceased sustained 90% burn injuries and died and the other three members were disfigured and injured.	Accused was out on bail in another case and committed the crime.	i. Disappointed with the deceased, who he believed had deserted him. ii. Not a cold blooded murder. iii. Intention was to cause injury or disfigurement, what was premeditated was injury not death. v. No particular depravity or brutality in the acts.
*There should be special reasons for sentencing to death. The term, 'Special Reasons' undoubtedly means, reasons that are, one of a special kind and not general reasons.			
24.	2019 SCC OnLine SC 43 - Nand Kishore v. State of M.P. Offence : u/s 302, 363, 366, 367(2)(i) IPC. The accused took away the deceased aged 8 years from the 'Mela' and committed rape and murdered her in a barbaric manner. Both legs of the deceased were fractured. Several injuries on the private parts of the deceased inflicted by the accused due to		"Special Reasons" not assigned by the High Court within the meaning of section 354(3) Cr.P.C. to impose death penalty on the accused.

	which the intestine had come out. The headless body of the deceased was recovered.		
*Para 14, <i>Ratio of Mukesh v. State of (NCT of Delhi)</i>			
25	2019 SCC OnLine SC 81-Raju Jagdish Paswan v. State of Maharashtra. Offence : u/s 302, 376(2)(f) and 201 IPC. The accused dragged the victim aged 9 year old into the sugarcane field, forcibly raped her and threw her in the well. The cause of death was drowning and there was evidence of vaginal as well as anal intercourse.	i. Murder involves exceptional depravity. ii. Manner of commission of crime is extremely brutal.	i. Murder not preplanned. ii. Accused young man aged 22 years. iii. No evidence produced by prosecution that the accused had the propensity of committing further crimes, causing continuity of threat to society. iv. The state did not bring on record any evidence to show that the accused cannot be reformed and rehabilitated.
26	2019 SCC OnLine SC 363 -Sachin Kumar Singraha v. State of M.P. Offence : u/s 363, 376A, 302, 201-11 IPC & Section 5(i)(m) r/w Section 6 of POCSO Act. The accused was the owner and driver of the vehicle in which he had taken the victim aged 5 years to the school, from the custody of her uncle on the false pretext of going along with her to school as he had to pay fees of his daughter. Thereafter, the victim was raped and murdered and body was found in the well with only an underwear.	i. Heinous offence in a premeditated manner. ii. False pretext given to the uncle of victim to gain custody of victim. iii. Abused faith. iv. Exploited the innocence and helplessness of the child.	i. Case rests on circumstantial evidence. ii. Probability of reformation. iii. Absence of prior offending history. iv. His overall conduct.
27.	Criminal Appeal No. 1411/2018- Dhyaneshwar Suresh Borkar v. State of Maharashtra Offence-u/s 302, 364, 201,34 IPC Accused killed a minor child.		I. Age of accused at the time of commission of offence was 22 years. ii. Spent 18 years in jail. iii. While in jail, his conduct was good. iv. Tried to join the society and has tried

		to become civilised man, completed his graduation from Jail. He has tried to become reformative. v. Written poem from jail. It appears he has realized his mistake.
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93. Before parting with the matter, we record our appreciation for valuable assistance provided by learned counsel for the parties in general and by learned Senior Advocate/*Amicus Curiae* in particular.

94. In the facts and circumstances of the case, the instant case does not fall in the category of the ‘rarest of the rare case’ deserving imposition of death penalty. There are other factors as discussed hereinabove which persuades us to hold that imposition of capital punishment is unwarranted in the factual matrix of the present case. The interest of justice would be met, if appellant is sentenced to undergo imprisonment of 35 years (without remission).

95. Resultantly, we partly allow the appeal. While confirming the conviction and other sentences, we modify the death penalty to life imprisonment of appellant for an actual period of 35 years without any remission. The appeal is **partly allowed** and **reference is answered accordingly.**

(SUJOY PAUL)
JUDGE

(PRAKASH CHANDRA GUPTA)
JUDGE