

MRC-7-2023 &  
CRA-D-1302-2023

CNR No: PHHC011250642023  
2026:PHHC:108587-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

MRC-7-2023 &  
CRA-D-1302-2023

State of Haryana ...Appellant

Versus

Pawan alias Moni ...Respondent

| JUDGMENT<br>RESERVED ON | JUDGMENT<br>PRONOUNCED ON | OPERATIVE PART<br>PRONOUNCED OR FULL | UPLOADED<br>ON |
|-------------------------|---------------------------|--------------------------------------|----------------|
| 27.07.2026              | 11.08.2026                | FULL PRONOUNCED                      | 11.08.2026     |

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA  
HON'BLE MR. JUSTICE RAMESH CHANDER DIMRI

Present: Mr. Rahul Mohan, Addl. A.G., Haryana  
Mr. Yuvraj Shandilya, A.A.G., Haryana  
Mr. Karan Sharma, D.A.G., Haryana  
Mr. Shiva Khurmi, D.A.G., Haryana.

Mr. Gaurav Datta, Advocate  
Mr. K.P.S. Dhaliwal, Advocate  
Ms. Srishti Sharma, Advocate  
Mr. Abhishek Sharma, Advocate and  
Mr. Raghav Grover, Advocate for the appellant.

Mr. P.S. Sekhon, Sr. Advocate (Amicus Curiae) with  
Mr. L.S. Sekhon, Advocate  
Mr. A.P.S. Mann, Advocate and  
Mr. Rajdeep Singh Gill, Advocate.

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ANOOP CHITKARA, J.

| FIR No.                                  | Dated      | Police Station                | Section                                                                                                         |
|------------------------------------------|------------|-------------------------------|-----------------------------------------------------------------------------------------------------------------|
| 395                                      | 08.10.2022 | Kalayath, District<br>Kaithal | 365 IPC (Final report submitted under<br>Sections 365, 366, 376-AB, 376(3), 302,<br>201 IPC and 6 of POCSO Act) |
| CIS number before the Sessions Court     |            |                               | SC/167/2022<br>CNR No. HRKH01-008267-2022                                                                       |
| Date of Decision                         |            |                               | 15.09.2023                                                                                                      |
| Date of order on the quantum of sentence |            |                               | 16.09.2023                                                                                                      |

|                             |                                                                                                                                            |
|-----------------------------|--------------------------------------------------------------------------------------------------------------------------------------------|
| Name of the accused/convict | <b>Pawan alias Moni</b>                                                                                                                    |
| Conviction under Sections   | 302 <sup>1</sup> , 365 <sup>2</sup> , 366 <sup>3</sup> , 376-AB <sup>4</sup> , and 201 <sup>5</sup> of IPC and 6 <sup>6</sup> of POCSO Act |

| <b>Sentence imposed upon the convict –Pawan alias Moni</b> |                                                            |             |                                        |
|------------------------------------------------------------|------------------------------------------------------------|-------------|----------------------------------------|
| Section                                                    | Sentence of imprisonment                                   | Fine in INR | Sentence in default of payment of fine |
| 302 IPC                                                    | DEATH SENTENCE<br>He be hanged by the neck till he is dead | 5000/-      | -                                      |
| 6 of POCSO Act                                             | DEATH SENTENCE<br>He be hanged by the neck till he is dead | 5000/-      | -                                      |
| 365 IPC                                                    | RI for 07 years                                            | 1000/-      | SI for 10 days                         |
| 366 IPC                                                    | RI for 10 years                                            | 1000/-      | SI for 10 days                         |
| 201 IPC                                                    | RI for 07 years                                            | 1000/-      | SI for 10 days                         |

1. On Oct 08, 2022, in a village situated in District Kaithal, Haryana, the victim, ‘M’, whom this Court would affectionately refer to as ‘Laadli’, aged just 7 years, 7 months and 23 days, was allegedly allured and abducted by the convict, Pawan alias Moni, (hereinafter referred to as Pawan), then aged 21 years, who by taking advantage of her playing alone in the village, took Laadli to an isolated place, where he committed rape upon her, throttled her to death, bought petrol and after sprinkling it on her dead body, set it on fire due to which her body was burnt partially.
2. The next day, the villagers spotted a half-burnt dead body in a nearby jungle, which Laadli’s parents identified to be of her, and it was sent for postmortem examination. After scrolling through the CCTV footage, the accused was apprehended. He was taken for medical examination, where doctors obtained his blood samples for forwarding these to the Forensic Science Laboratory to match the DNA with genetic material found on Laadli’s body and clothes, and to trace the presence of Laadli’s genetic material on the accused’s body and clothes. On receipt of the reports from the FSL, the police took the final opinion of doctors.
3. After completing the investigation, the police filed a challan under §173(2) of the CrPC, 1973, before the Additional Sessions Judge, Special Court, Kaithal, under the penal provisions of IPC, 1860 and the POCSO Act, 2012, against the accused, Pawan.

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<sup>1</sup> §302. Punishment for murder  
<sup>2</sup> §365. Kidnapping or abducting with intent secretly and wrongfully to confine person.  
<sup>3</sup> §366. Kidnapping, abducting or inducing woman to compel her marriage, etc.  
<sup>4</sup> §376AB. Punishment for rape on woman under twelve years of age.  
<sup>5</sup> §201. Causing disappearance of evidence of offence, or giving false information to screen offender.  
<sup>6</sup> §6. Punishment for aggravated penetrative sexual assault.

4. Vide order dated Nov 02, 2022, the Additional Sessions Judge, Special Court, Kaithal framed charges against the accused for offences punishable under Sections 365, 366, 376-AB, 302, 201 IPC and 6 of POCSO Act. The accused did not plead guilty and claimed trial.
5. The prosecution proved the accused's age on the date of the alleged crime, i.e., Oct 08, 2022, to be above 18 years. PW-13 Dilbagh Singh, Head Teacher of the concerned Government Primary School, tendered in evidence the extracts from the Admission and Withdrawal Register as Ext P-22, per which the date of birth of the accused was Oct 06, 2001. Even otherwise, the accused did not claim to be a minor.
6. The accused examined his father as his defence witness, who testified that Pawan was falsely implicated.
7. On completion of the trial, the trial Court was of the opinion that the evidence produced and proved before it was sufficient to establish Pawan's guilt. Consequently, the trial Court convicted Pawan for the charges of kidnapping, committing rape and murder of Laadli, causing disappearance of evidence by burning her body, and sentenced him to death under §302 of IPC and §6 of POCSO Act.
8. Seeking confirmation of the death sentence, the trial Court sent the above-mentioned reference to this Court under §366<sup>7</sup> of the CrPC, 1973 [§407 BNSS, 2023]. Challenging the conviction and the consequent sentence as captioned above, the convict also came before this Court by filing the present Criminal Appeal under §374(2)<sup>8</sup> CrPC, 1973 [§415 BNSS, 2023].
9. An analysis of the evidence and the submissions of the Counsel for the convict, the State, and of the Ld. Amicus would lead to the following outcome.
10. **MISSING OF LAADLI:**
11. On Oct 08, 2022, Laadli's father, PW-1, filed a written complaint [Ext P-1] to the SHO of Police Station Kalayat, which was entered in DDR at Sr. No. 38, [Ext P-80]. The victim's father stated that he was a laborer and had three daughters and a son. His eldest daughter, Laadli, was 07 years old and a student of Class 2nd at xxxx School. He further stated that at around 2 PM on Oct 08, 2022, she had gone from the house to play in the alley but did not return. They searched for her at their own level but were unable to find her. He described Laadli as having wheatish [*Gandami*] skin and wearing red-colored clothes and red-colored slippers. He mentioned her height as 3 feet. He suspected that his daughter had been kidnapped and sought legal action.

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<sup>7</sup> §366. Sentence of death to be submitted by Court of Session for confirmation.

<sup>8</sup> §374. Appeals from convictions.

12. PW-34 Mahabir Singh, Sub Inspector (now retired), admitted receipt of the complaint and stated that, based on this complaint, he registered a formal FIR and tendered it in evidence as Ext P-79.

13. The victim's father testified as PW-1 and reiterated the allegations which he had made in Ext P-1. Similarly, the victim's mother testified as PW-2 and mentioned the disappearance of her daughter at around 2 PM on Oct 08, 2022. Thus, the circumstances regarding Laadli's disappearance are proved beyond any doubt.

**14. DISCOVERY AND IDENTIFICATION OF LAADLI'S DEAD BODY:**

15. PW-3 Dilbag, a co-villager, testified that on Oct 09, 2022, he, along with Mohan Singh, several other villagers, and the Police were searching for the child. During the search, he and Mohan Singh noticed a half-burnt, dead body of Laadli in a Banni/jungle situated on the premises of Dera Baba Mahiraval Puri, which was within the jurisdiction of Village Kurar, District Kaithal. He further testified that he and Mohan Singh [Not Examined] recognized the dead body of Laadli.

16. According to Laadli's father, who testified as PW-1, the police had reached Village Kurar and had started a massive search. All the exit points of the village were manned by villagers so that no one could escape with Laadli. PW-1 testified that on Oct 09, 2022, Laadli's half-burnt dead body was found in a Banni/jungle situated on the premises of Dera Baba Mahiraval Puri, which was within the jurisdiction of Village Kurar, District Kaithal, and he identified the dead body to be of his daughter Laadli.

17. Laadli's mother testified as PW-2 and deposed regarding the discovery of a half-burnt dead body of Laadli in a Banni/jungle situated on the premises of Dera Baba Mahiraval Puri, which was within the jurisdiction of Village Kurar, District Kaithal.

18. SI PW-34 Mahabir Singh testified that on receipt of the complaint of the missing victim, an SIT was constituted and they started searching for Laadli at midnight of Oct 08/09, 2022. They searched ponds, canals, and other places and received information from Dilbag [PW-3] and Mohan about the sighting of a dead body in a Banni/jungle of Dera Baba Mahiraval Puri of Village Kurar, and on receipt of this information, he reached the crime scene. Thus, the prosecution has been able to establish the discovery of the half-burnt dead body of Laadli from the *bheed banni* of Dera Baba Mahiraval Puri, and also its identification by her parents and other witnesses, and such identification was by her body features and clothes. The memo of identification was also prepared vide Ext P-2.

19. The above evidence establishes that the half-burnt dead body which was recovered from the *Bheed Banni* of Dera Baba Mahiraval Puri was of Laadli.

**20. CRIME SCENE REPORT:**

21. PW-22, Beera Ram, Senior Scientific Officer, testified that on Oct 09, 2022, he received a telephone call from SI Mahabir Singh to proceed to the place of occurrence on the premises of Dera Baba Mahiraval Puri, Village Kurar. He arrived at the place of occurrence, inspected the crime scene, and tendered photographs Ext P-50 to Ext P-57, Ext P-58 (Certificate for photographs under §65-B of the Indian Evidence Act, 1872), in evidence. He also prepared a crime scene report and tendered it in evidence as Ext P-59, which reads as follows:

“7. Observations:-

- 1) *Dead body of a girl child age about 7 years namely xxx D/o Gxxx s/o Rxxx r/o village Kurar in partially burnt condition was seen lying on earth between the prickly bushes grown up in the "banni"/jungle situated in the premises of "Dera Baba Mahiravalpuri" in the jurisdiction of village Kurar. (Photo 1,2,5)*
- 2) *The affected place, where dead body recovered, was looking like a hut made up by bushes grown up at the spot. The size of this hut was approx. 15' x 10' (Photo 4)*
- 3) *More burning was observed on the face, chest and abdomen area of deceased. However, the burning effect was also observed on the legs of deceased. (Photo 6,7,8)*
- 4) *Injury looking like caused by being eaten by an animal was observed on the left leg of deceased. (Photo 7)*
- 5) *Froth was also observed coming from nose/mouth of deceased. (Photo 8)*
- 6) *Stool was also found discharged.*
- 7) *Wooden fire sticks and loose soil were observed lying on and nearby the dead body. (Photo 5,6,7)*
- 8) *Left arm of deceased was found buried with loose soil and wooden fire sticks except left hand. However, left hand was full of loose soil. (Photo 7)*
- 9) *One partially burnt green colored plastic bottle was observed lying near the dead body. This bottle piece was at a distance approx. 10" from the right leg of deceased. Green colored plastic cap of bottle was also observed in the same direction at a distance approx. 17" from the right leg of deceased. (Photo 5,6)*
- 10) *The height of prickly bushes present just above the dead body was approx. 45" from the ground level.*
- 11) *One red colored bathroom chappal in tilted condition was observed lying on the spot at a distance approx. 2" from the head in the left side of dead body. Another chappal was observed stuck in the prickly bushes just above dead body. (Photo 6)*
- 12) *Smoke was also observed on the bushes grown up at the spot just above the dead body.*
- 13) *No blood stain could be observed on the spot.”*

**22. SCIENTIFIC EVIDENCE ESTABLISHING THE DEAD BODY TO BE OF LAADLI:**

23. On Oct 10, 2022, at 12:22 P.M., Laadli's dead body was sent for post-mortem examination, and the doctors handed over to the Police her genetic material, and a parcel of

blood-soaked cotton swab [Ext P-36] and sent it to the FSL for DNA analysis. After that, the Investigator produced PW-1, Laadli's father, and PW-2, Laadli's mother, before the doctors on Oct 12, 2022. As per PW-1, on Oct 12, 2022, the police took his blood sample and that of his wife for DNA examination. PW-2 also stated similar facts. The memo regarding receipt of blood samples was tendered in evidence as Ext P-38 by PW-19, LSI Dhanpati.

24. The relevant extract of Ext P-39, which is DNA report received from the FSL, Haryana, Madhuban, Karnal, dated 15.11.2022, reads as follows:

**“CONCLUSION**

*DNA profiling (STR analysis) performed on the of exhibits '17' (blood on cotton swab), '18' (blood of mother of victim) & '19' (blood of father of victim) are sufficient to conclude that female DNA profile generated from the source of exhibit "17" (blood on cotton) **is the biological offspring** of the DNA profile generated from the source of exhibit '18' (blood of mother of victim) & '19" (blood of father of victim).”*

25. Therefore, the prosecution has established beyond a reasonable doubt that the partially burnt dead body recovered from the *bheed banni* of Dera Baba Mahiraval Puri was of Laadli, i.e., daughter of PW-1 and PW-2.

**26. INJURIES NOTICED ON LAADLI'S BODY DURING HER POST-MORTEM EXAMINATION:**

27. The Post-Mortem Report, Ext P-47, regarding injuries, reads as follows:

*On examination of genital region, redness was seen over the labia majora and its surrounding area. On dissection and exploration, deep patches of redness were seen over inner aspects of both labia majora, minora and vestibule. A small tear over vaginal margin was present extending posteriorly over fourchette in midline. The hymen was not seen. Redness was seen over the lower part of vaginal wall through the vaginal orifice.*

*Both eyes were close and mouth was partially open.*

*Floral pattern designs with mehndi were present over ventral aspects of both forearms and palmer aspect of both hands.*

*Blackish grey coloured ashes were present all over the body more so over the upper half of the body. The body was blackened due to deposition of black sooty particles all over it. It was emitting cooked met like smell. Superficial to deep burns with superficial to deep charring at places were present all over the body except parts of both upper limbs, small part over right side of torso and small part over back and buttocks. The scalp was burnt off at places with charring and blackening. The scalp hair, eyebrows and eyelashes were burnt and singed. The remaining scalp hair at places were singed and about 14 to 15 cm long. The left ear pinna was burnt, charred and only remanents of pinna were*

*present. Ears, eyes, nose, mouth, lips were deformed and facial features were distorted due to deep burns and charring. The mouth was partially open and upper anterior and tip of tongue were covered with blackish ashes. Superficial to muscle deep burns with charring were present over face more so over left side. The underlying facial bones were intact. Skin to muscle deep burns with charring were present all over neck. The chest wall over anterior aspect more so over towards left side showed muscle deep to bone deep burns with charring exposing the underlying shrivelled and charred intercostal muscles and ribs. Superficial to deep burns with charring were present all over back sparing small parts over back and buttocks. Muscle deep burns with charring were present over anterior abdominal wall exposing the underlying abdominal muscles towards left side which were shrivelled and charred. The intestinal loops were exposed through the gap in abdominal muscles towards left side. Superficial to deep burns with charring were present over right thigh, leg and foot. A skin deep defect of size 15 x 4 cm was present over dorsomedial aspect of lower part of right leg and foot exposing the underlying muscles. Deep burns with charring were present over left thigh, leg and foot. The underlying muscles were shrivelled and charred. Burns were present over genital region and soles of both feet.*

*No zone of hyperaemia or line of redness was seen in the burnt areas. The skin tissue in burnt areas was dried and hardened.*

*A defect of size 13 x 5 cm was present over left side of anterior abdominal wall situated 6 cm left to midline and 21 cm below tip of left axilla. The loops of intestine were coming out through the defect. The margins of defect were irregular and without extravasation of blood.*

*A defect of size 24 x 7 cm was present vertically over anterior aspect of left thigh. Skin, soft tissues and muscles were missing and underlying shaft of femur bone was exposed. The margins of defect were irregular and without extravasation of blood therefore suggestive of gnawing effect.*

*A defect of size 19 x 6 cm was present vertically over anterolateral aspect of left leg. Skin, soft tissues and muscles were missing and underlying shafts of tibia and fibula bones were exposed. The margins of defect were irregular and without extravasation of blood therefore suggestive of gnawing effect.*

**28. CLOTHES FOUND ON LAADLI'S BODY DURING HER POST-MORTEM EXAMINATION:**

29. As per the testimony of PW-21, Dr. Sachin Mandlay, the relevant portions of the post-mortem report [Ext P-47, dated Oct 10, 2022] reads as follows:

*“That we noticed following findings on the body of deceased:*

*The length of body was 113 cm. The body was wearing*

*(1). A pinkish cream coloured full sleeved upper T shirt with cartoon print design all over it. It was burnt at places and open at front. The burnt cloth part was charred, shrunk and hard.*

*(2). Remanents of pinkish cream coloured lower pajami with cartoon print design all over it and having elastic waistline. It was burnt and smudged with stools at places. The burnt cloth part was charred, shrunk and hard.*

*The clothes were sealed in a parcel with one seal of mark CH KTL and handed over to accompanying police person.”*

**30. FINAL OPINION OF DOCTORS ABOUT SEXUAL ASSAULT ON LAADLI AND HER CAUSE OF DEATH:**

31. On an application Ext P-48 moved by the I.O/SI Mahabir Singh [PW-34], the Medical Board, which conducted the post-mortem examination of Laadli's body, issued the final opinion, vide Ext P-49, dated Jan 10, 2023, which reads as follows:

*“Opinion: After perusal of all the above stated documents the undersigned board of doctors is of the opinion that **“the cause of death in this case is smothering with manual strangulation associated with head injury and their complications, and also the forcible recent vaginal penetration of deceased with any object can not be ruled out”**.*

**32. EVIDENCE OF VICTIM'S AGE:**

33. The best evidence to prove age is the mother's statement, and when corroborated by the proof of the certificate of registration of birth, it clinches the proof of the date of birth.

34. Laadli's mother testified as PW-2 and stated that Laadli's date of birth was Feb 15, 2015. PW-1, Laadli's father, had also testified similarly and tendered in evidence Laadli's date of birth certificate as Ext P-5. PW-9, Dr. Parul, the Registrar of Birth and Death at CHC Siwan, District Kaithal, Haryana, tendered in evidence the victim's date of birth certificate as Ext. P-8. Thus, on Oct 08, 2022, the date of crime, i.e., the victim was aged 7 years, 7 months, and 23 days, i.e., under 12 years of age.

**35. EVIDENCE OF SUSPICION ON ACCUSED:**

36. Upon learning of the discovery of Laadli's dead body, PW-7 Mahavir, a co-villager who had installed CCTV cameras in his house, scrolled through the footage recorded on the DVR through the camera installed outside his house. He noticed the accused, Pawan, whom he identified in Court as the same person, taking away the daughter of PW-1 'M', aged about 07 years. On watching CCTV footage, he also observed that after one and a half hours, the accused was seen returning alone. He further testified on oath that he knew the accused as a co-villager and supplied a copy of the CCTV footage to the police on a pen drive, which was exhibited as Ext P-3.

37. Laadli's father, PW-1, testified that he, along with his family members, saw the CCTV footage of the video camera installed in front of the government school and the CCTV camera installed at Dera Baba Mahiraval Puri and noticed that the accused was going towards Dera Baba Mahiraval Puri road along with his daughter 'M', and he was



trying to scale the wall by lifting his daughter. After around one hour, the accused returned alone.

38. PW-4 Ramesh Kumar also testified that he had seen the CCTV footage of the video camera installed at Dera Baba Mahiraval Puri and saw that the accused was going towards a School of Village Kurar along with the victim 'M'. He had seen that the accused was trying to scale the wall along with the victim. He further stated that in CCTV footage, after about one hour, the accused was seen coming alone. PW-8 Gurmeet also testified in similar terms.

39. Thus, once the villagers had noticed the victim with the accused, they informed the police and PW-32 SI Ishwar Singh also watched CCTV footage and vide arrest memo Ext P-61, formally arrested the accused at 8 P.M. on Oct 09, 2022; however, as per column no. 8, the accused was taken into custody at 7 PM.

**40. THE EVIDENCE OF THE CCTV FOOTAGE IN WHICH THE ACCUSED WAS SEEN WALKING ALONG WITH LAADLI:**

41. It shall be appropriate to extract the cross-examinations of the following witnesses regarding their testimony watching the accused on the digital screen of CCTV:

42. The relevant testimony of PW-7 Mahavir, a co-villager reads as follows:

*"I have seen the CCTV footage. The passage/street through which child-victim-M and accused are passing is a thoroughfare. It is correct that accused Pawan alias Moni is not holding the hand of child-victim-daughter of complainant. Accused Pawan alias Moni had not taken the child-victim in his lap. Other persons are also going through that passage. It is correct that the face of accused Pawan alias Moni is not visible while returning alone."*

43. The relevant testimony of PW-8 Gurmeet, a co-villager reads as follows::

*"I have seen the CCTV footage. It is correct that dogs are appearing near the stadium of village Kurar in the CCTV footage. I am not able to identify the girl and accused Pawan alias Moni at the wall of stadium in the CCTV footage. It is correct that I cannot say that child victim-M and accused Pawan alias Moni are clearly visible in the stadium near the wall. Self stated that I had identified the accused Pawan alias Moni from his appearance with the child victim in other CCTV footage from front side. In my camera recording, in which accused Pawan alias Moni was appearing, while coming alone, is not available in the Pendrive Ex.P3. It*

*is correct that the passage/street through which, accused Pawan alias Moni is coming, is a thoroughfare.”*

**44. EVIDENCE OF CCTV OF PETROL PUMP WHERE ACCUSED WAS SEEN PURCHASING PETROL:**

45. PW-6 Satish Kumar testified that he was running a petrol pump at Dhanori Road in Village Kurar and that CCTV cameras had been installed at the petrol pump. He further testified that he had provided CCTV footage of Oct 08, 2022, from their petrol pump. In Court, he identified the accused, Pawan, through Video Conference and stated that he was the same person who had taken petrol in a bottle from their petrol pump. He further testified that he had seen him in the CCTV footage. The Pendrive [Ext P-3] containing the CCTV footage was tendered in evidence as Ext P-3, and he further testified that he had seen the CCTV footage from the Pen Drive Ext P-3, and in the footage, he could identify Pawan, who was purchasing petrol from their petrol pump. In cross-examination, PW-6 admitted that he was not present at the petrol pump when the accused had come and purchased the petrol. Thus, PW-6 Satish Kumar had identified the accused only through CCTV footage, which he had tendered in evidence on a Pendrive Ext P-3. Thus, even the identification by PW-6 depends upon the legal admissibility of the CCTV footage.

46. The foundational arguments of counsel for the convict and the Id. Amicus are that the prosecution has failed to prove a certificate under §65-B of the Indian Evidence Act regarding CCTV footage. Despite referring to the record, the State's Counsel could not counter the arguments.

47. An analysis of the trial Court record establishes that undoubtedly the Police had obtained certificates under §65-B of the Indian Evidence Act from PW-7 Mahavir, PW-8 Gurmeet, and PW-6 Satish. However, these certificates were not tendered in evidence through PW-7 Mahavir, PW-8 Gurmeet, and PW-6 Satish but were later on tendered in evidence by PW-34 SI Mahabir Singh.

48. A perusal of the certificates under §65-B (4) of the Indian Evidence Act reveals that Ext P-68 is signed by Satish, Ext P-69 by Gurmeet, and Ext P-70 by Mahavir. PW-6 Satish, in his cross-examination, stated that he had not issued any certificate under §65-B (4) of the Indian Evidence Act. Similarly, PW-7 Mahavir and PW-8 Gurmeet in their cross-examinations stated that they had not issued any certificates under §65-B (4) of the Indian Evidence Act. Despite PW-6, PW-7, and PW-8 not supporting the prosecution's case, neither any request appears to have been made by the concerned Public Prosecutor to declare PW-6 Satish, PW-7 Mahavir, and PW-8 Gurmeet as hostile witnesses nor were these witnesses confronted with their signatures on the certificates which were later on

tendered in evidence by the Investigator PW-34 Mahabir Singh as Exhibits P-68, P-69, and P-70.

49. The Public Prosecutor concerned did not put these certificates to the witnesses in their Examination-in-chief. It was Ld. Defence Counsel who had put specific questions to these witnesses that they had not issued any certificates under §65-B (4) of the Indian Evidence Act, and all these witnesses admitted that they had not issued any certificates. If the certificates had been shown to PW-6, PW-7, and PW-8, there was no certainty of their denying signatures or of their issuance. If denied, in the absence of allegations that these certificates were fabricated, the option would have been to send the original certificates for comparison of handwriting. If the handwriting expert had opined that the signature(s) were from the same person(s), then legal recourse could have been taken. Even the trial Judge did not consider it appropriate to proceed under §165 of the Indian Evidence Act. In the present case, the investigation is outstanding and the lapses in not proving the certificate under §65-B of the Evidence Act cannot be attributed to the Investigators or their supervisory officers, and they could not have done a better job.

50. In Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Ors., [2020] 7 S.C.R. 180; 2020-INSC-453, July 14, 2020, a three-Judge Bench of the Hon'ble Supreme Court holds,

Per R. F. NARIMAN, J.

[2]. These Civil Appeals have been referred to a Bench of three honourable Judges of this Court by a Division Bench reference order dated 26.07.2019, dealing with the interpretation of Section 65B of the Indian Evidence Act, 1872 ("Evidence Act") by two judgments of this Court. In the reference order, after quoting from Anvar P.V. v. P.K. Basheer (2014) 10 SCC 473 (a three Judge Bench decision of this Court), it was found that a Division Bench judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad v. State of Himachal Pradesh (2018) 2 SCC 801 may need reconsideration by a Bench of a larger strength.

[72]. The reference is thus answered by stating that:

(a) Anvar P.V. (supra), as clarified by us hereinabove, is the law declared by this Court on Section 65B of the Evidence Act. The judgment in Tomaso Bruno (supra), being per incuriam, does not lay down the law correctly. Also, the judgment in SLP (Crl.) No. 9431 of 2011 reported as Shafhi Mohammad (supra) and the judgment dated 03.04.2018 reported as (2018) 5 SCC 311, do not lay down the law correctly and are therefore overruled.

(b) The clarification referred to above is that the required certificate under Section 65B(4) is unnecessary if the original document itself is produced. This can be done by the owner of a laptop computer, computer tablet or even a mobile phone, by stepping into the witness box and proving that the concerned device, on which the original information is first stored, is owned and/or operated by him. In cases where the "computer" happens to be a part of a "computer system" or "computer network" and it becomes impossible to physically bring such system or

network to the Court, then the only means of providing information contained in such electronic record can be in accordance with Section 65B(1), together with the requisite certificate under Section 65B(4). The last sentence in Anvar P.V. (supra) which reads as “...if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act...” is thus clarified; it is to be read without the words “under Section 62 of the Evidence Act,...” With this clarification, the law stated in paragraph 24 of Anvar P.V. (supra) does not need to be revisited.

**51. EVIDENTIARY VALUE OF CCTV FOOTAGE WITHOUT MEETING THE MANDATORY REQUIREMENTS OF §65-B (4) OF EVIDENCE ACT:**

52. In the absence of the original digital device, the statutory provision legislated under §65-B of the Indian Evidence Act, 1872 mandates certification in terms as mentioned in the statute.

53. In the present case, the DVR was not seized, which was the original device, and a copy of the CCTV footage was taken on a pen drive, necessitating a certificate under §65-B of the Indian Evidence Act from the persons who were controlling such DVR. Since issuance of such certificates were denied by the witnesses who were managing the CCTVs and DVRs, i.e., the concerned digital devices, as such the CCTV footage tendered in evidence cannot be read as a document in terms of the language of §65-B of the Indian Evidence Act. Consequently, the CCTV footages, their content and ocular versions are rendered inadmissible as digital evidence against the accused.

**54. THE EVIDENCE OF TAKING OF BLOOD SAMPLE OF ACCUSED:**

55. PW-29 Dr. Pardeep testified that he was posted as Medical Officer at District Civil Hospital, Kaithal. On Oct 09, 2022, the accused, whose aged was mentioned by the doctor as 19 years, was brought before him with an alleged history of committing sexual assault on Oct 08, 2022, at around 2 PM. He examined the accused, took into possession his underwear, pubic hair, oral swab, blood and urine samples, and handed over the same to the police. He also tendered in evidence MLR Ext P-73. In addition to other material objects, PW-29 also tendered in evidence blood sample of the accused as Ext MO-33.

**56. EVIDENCE OF LAST SEEN BY PW-5 HOSHIYAR SINGH:**

57. PW-5 Hoshiyar Singh testified that on Oct 08, 2022, when he was sitting in his Baithak/Nohra, then at about 1-1.30 PM, he had noticed the accused, whom he had identified in Court, was going towards the school along with the child victim ‘M’. In cross-examination, he mentioned the main gate of his baithak to be 8 feet wide and 9 feet in height. He also stated that the accused was related to him as a brother. Thus, there is a statement of the witness who was related to the accused and who had noticed the accused

walking along with the victim. It is not the case that he was not familiar with the accused; in fact, he explicitly mentioned in examination-in-chief that the accused whom he identified in Court was walking with the victim, daughter of G S (PW1). Although the accused examined his father as DW-1, Ram Karan, who alleged inimical relations with PW-5 Hoshiyar Singh, such enmity remains unexplained and does not dent the credibility of this sterling witness.

58. The evidence of last seen as stated by PW-5 Hoshiyar Singh was duly put to the accused in question no. 11 [At page 675 of the Trial Court Record] under §313 CrPC, and the accused denied the evidence as incorrect.

59. Given the above, the prosecution has been able to prove the evidence of last seen. It has also been established from the statements of PW-1 and PW-2 that the victim had gone missing and the time gap between her going missing and when she was last seen with the accused is so short that it can lead to no other inference except involvement of the accused. It was established that the accused had taken the victim away, and the burden shifted upon the accused to prove that, once he was accompanying the victim, where had he left her, but there is no such explanation.

60. In Arjun Marik and Ors. v. State of Bihar, [1994] 2 S.C.R. 265, pg. 285; 1994-INSC-100, Mar 2, 1994, the Hon'ble Supreme Court holds,

[G – H]. Thus the evidence that the appellant had gone to Sitaram in the evening of 19.7.85 and had stayed in the night at the house of deceased Sitaram is very shaky and inconclusive. Even if it is accepted that they were there it would at best amount to be the evidence of the appellants having been seen last together with the deceased. But it is settled law that the only circumstance of last seen will not complete the chain of circumstances to record the finding that it is consistent only with the hypothesis of the guilt of the accused and, therefore, no conviction on that basis alone can be founded.

61. In Bodhraj @ Bodha and Ors. v. State of Jammu and Kashmir, 2002 Supp. (2) S.C.R. 67, pg. 85; 2002-INSC-360, Sep 03, 2002, the Hon'ble Supreme Court holds,

[B - C]. The last seen theory comes into play where the time gap between the point of time when the accused and deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that accused and deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases. ...

62. In State of U.P. v. Satish, [2005] 1 S.C.R. 1132, pg. 1142, 2005-INSC-68, Feb 08, 2005, the Hon'ble Supreme Court holds,

[C – D]. The last seen theory comes into play where the time-gap between the point of time when the accused and the deceased were seen last alive and when the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. It would be difficult in some cases to positively establish that the deceased was last seen with the accused when there is a long gap and possibility of other persons coming in between exists. In the absence of any other positive evidence to conclude that the accused and the deceased were last seen together, it would be hazardous to come to a conclusion of guilt in those cases.

63. In *Ramreddy Rajeshkhanna Reddy and Anr. v. State of Andhra Pradesh*, [2006] 3 S.C.R. 348, pg. 359, 2006-INSC-173, Mar 24, 2006, the Hon'ble Supreme Court holds,

[C]. The last-seen theory, furthermore, comes into play where the time gap between the point of time when the accused and the deceased were last seen alive and the deceased is found dead is so small that possibility of any person other than the accused being the author of the crime becomes impossible. Even in such a case courts should look for some corroboration.

64. In *State of Goa v. Sanjay Thakran*, [2007] 3 SCR 507; 2007-INSC-241, Mar 02, 2007, the Hon'ble Supreme Court holds,

[29]. From the principle laid down by this Court, the circumstance of last-seen together would normally be taken into consideration for finding the accused guilty of the offence charged with when it is established by the prosecution that the time gap between the point of time when the accused and the deceased were found together alive and when the deceased was found dead is so small that possibility of any other person being with the deceased could completely be ruled out. The time gap between the accused persons seen in the company of the deceased and the detection of the crime would be a material consideration for appreciation of the evidence and placing reliance on it as a circumstance against the accused. But, in all cases, it cannot be said that the evidence of last seen together is to be rejected merely because the time gap between the accused persons and the deceased last seen together and the crime coming to light is after a considerable long duration. There can be no fixed or straight jacket formula for the duration of time gap in this regard and it would depend upon the evidence led by the prosecution to remove the possibility of any other person meeting the deceased in the intervening period, that is to say, if the prosecution is able to lead such an evidence that likelihood of any person other than the accused, being the author the crime, becomes impossible, then the evidence of circumstance of last seen together, although there is long duration of time, can be considered as one of the circumstances in the chain of circumstances to prove the guilt against such accused persons. Hence, if the prosecution proves that in the light of the facts and circumstances of the case, there was no possibility of any other person meeting or approaching the deceased at the place of incident or before the commission of the crime, in the intervening period, the proof of last seen together would be relevant evidence. For instance, if it can be demonstrated by showing that the accused persons were in exclusive possession of the place where the incident occurred or where they were last seen together with the deceased, and there was no possibility of any intrusion to that place by any third party, then a relatively wider time gap would not affect the prosecution case.

65. In Kanhaiya Lal v. State of Rajasthan, [2014] 3 S.C.R. 744, pg. 751, 2014-INSC-190, Mar 13, 2014, the Hon'ble Supreme Court holds,

[12]. The circumstance of last seen together does not by itself and necessarily lead to the inference that it was the accused who committed the crime. There must be something more establishing connectivity between the accused and the crime. Mere non-explanation on the part of the appellant, in our considered opinion, by itself cannot lead to proof of guilt against the appellant.

66. In Digamber Vaishnav and Anr. v. State of Chhattisgarh, [2019] 2 S.C.R. 844, pg. 861, 862, 2019-INSC-308, Mar 5, 2019, a three-Judge Bench of the Hon'ble Supreme Court holds,

[40]. ...To constitute the last seen together factor as an incriminating circumstance, there must be close proximity between the time of seeing and recovery of dead body.

67. In Surajdeo Mahto v. State of Bihar, [2021] 8 S.C.R. 911; 2021-INSC-379, Aug 04, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

[30]. We may hasten to clarify that the fact of last seen should not be weighed in isolation or be segregated from the other evidence led by the prosecution. The last seen theory should rather be applied taking into account the case of the prosecution in its entirety. Hence, the Courts have to not only consider the factum of last seen, but also have to keep in mind the circumstances that preceded and followed from the point of the deceased being so last seen in the presence of the accused.

68. In Ram Gopal S/O Mansharam v. State of M.P., SLP (Crl). No. 9221 of 2018, Feb 17, 2023, the Hon'ble Supreme Court holds,

[6]. It may be noted that once the theory of "last seen together" was established by the prosecution, the accused was expected to offer some explanation as to when and under what circumstances he had parted the company of the deceased. It is true that the burden to prove the guilt of the accused is always on the prosecution, however in view of Section 106 of the Evidence Act, when any fact is within the knowledge of any person, the burden of proving that fact is upon him. Of course, Section 106 is certainly not intended to relieve the prosecution of its duty to prove the guilt of the accused, nonetheless it is also equally settled legal position that if the accused does not throw any light upon the facts which are proved to be within his special knowledge, in view of Section 106 of the Evidence Act, such failure on the part of the accused may be used against the accused as it may provide an additional link in the chain of circumstances required to be proved against him. In the case based on circumstantial evidence, furnishing or non-furnishing of the explanation by the accused would be a very crucial fact, when the theory of "last seen together" as propounded by the prosecution was proved against him.

69. In Shambu Nath Mehra v. The State of Ajmer, [1956] 1 SCR 199, pg. 203- 204, 1956-INSC-15, Mar 12, 1956, the Hon'ble Supreme Court, explaining the scope of § 106 of the Evidence Act in criminal trial, holds,

This lays down the general rule that in a criminal case the burden of proof is on the prosecution and Section 106 is certainly not intended to

relieve it of that duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are “especially” within the knowledge of the accused and which he could prove without difficulty or inconvenience. The word “especially” stresses that. It means facts that are *pre-eminently* or *exceptionally* within his knowledge. If the section were to be interpreted otherwise, it would lead to the very startling conclusion that in a murder case the burden lies on the accused to prove that he did not commit the murder because who could know better than he whether he did or did not. It is evident that that cannot be the intention and the Privy Council has twice refused to construe this section, as reproduced in certain other Acts outside India, to mean that the burden lies on an accused person to show that he did not commit the crime for which he is tried. These cases are *Attygalle v. Emperor* [AIR 1936 PC 169] and *Seneviratne v. R.* [(1936) 3 All ER 36, 49].

70. In *Sawal Das v. State of Bihar*, [1974] 3 SCR 74, pg. 79, 1974-INSC-4, Jan 9, 1974, the Hon’ble Supreme Court holds,

[D]. Neither an application of Section 103 nor of 106 of the Evidence Act could, however, absolve the prosecution from the duty of discharging its general or primary burden of proving the prosecution case beyond reasonable doubt. It is only when the prosecution has led evidence which, if believed, will sustain a conviction, or, which makes out a *prima facie* case, that the question arises of considering facts of which the burden of proof may lie upon the accused.

71. In *Dinesh Kumar v. The State of Haryana*, [2023] 4 SCR 220, pg. 236; 2023-INSC-493, May 04, 2023, the Hon’ble Supreme Court holds,

[12].....Section 106 of the Act is an exception to the rule which is Section 101 of the Act, and it comes into play only in a limited sense where the evidence is of a nature which is especially within the knowledge of that person and then the burden of proving that fact shifts upon him that person.

The burden of proof is always with the prosecution. It is the prosecution which has to prove its case beyond a reasonable doubt. Section 106 of the Act does not alter that position. It only places burden for disclosure of a fact on the establishment of certain circumstances...

72. In *Deonandan Mishra v. The State of Bihar*, [1955] 2 S.C.R. 570, pg. 582; 1955-INSC-47, Sep 28, 1955, a three-Judge Bench of the Hon’ble Supreme Court holds,

It is true that in a case of circumstantial evidence not only should the various links in the chain of evidence be clearly established, but the completed chain must be such as to rule out a reasonable likelihood of the innocence of the accused. But in a case like this where the various links as stated above have been satisfactorily made out and the circumstances point to the appellant as the probable assailant, with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offers no explanation, which if accepted, though not proved, would afford a reasonable basis for a conclusion on the entire case consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completes the chain.



We are, therefore, of the opinion that this is a case which satisfies the standards requisite for conviction on the basis of circumstantial evidence.

73. In the light of the judicial precedents, the evidence of last seen, and the proximity of time, the prosecution has been able to prove the evidence of last seen, i.e., the presence of the accused with the victim when she was last seen alive, shifting the burden on the accused to explain as to what had happened to Laadli and where was she taken, which he failed to explain.

**74. DNA EVIDENCE [Ext P-41] OF THE DETECTION OF THE ACCUSED'S SEMEN ON VICTIM'S CLOTHES AND EVIDENCE LINKING THE CHAIN OF CUSTODY:**

75. State's Counsel submits that the presence of the accused's DNA on the victim's clothes is conclusive; as such, it is an open-and-shut case against the accused.

76. The convict's Counsel submits that once the dead body was burnt, the presence of the Accused's semen not disintegrating is questionable.

77. As per the affidavit Ext P-45 of Dr. Sachin Mandlay tendered by him in his testimony as PW-21, the relevant portions of the post-mortem report read as follows:

*D). That after conducting the post-mortem examination, following items were handed over to the police person (police official accompanying the body):*

- 1. Dead body after post-mortem examination duly stitched.*
- 2. Computerized copy of Postmortem examination report no. SM/RM/HG/61/KTL/2022 dated 10/10/2022.*
- 3. Police inquest papers duly initialed numbering 1 to 10.*
- 4. Piece(s) of cloth bearing sample of seals with signature of the doctor: 5 of CH KTL.*
- 5. A sealed envelope for detection of inflammable material with forwarding letter addressed to Director, FSL, Madhuban, Karnal.*
- 6. A sealed vial containing scalp hair for detection of inflammable material.*
- 7. A sealed envelope for detection of seminal fluid and spermatozoa with forwarding letter addressed to Director, FSL, Madhuban, Karnal.*
- 8. A sealed jar containing four sealed samples i.e. high vaginal swab and smear, low vaginal swab and smear, perivaginal/perineal swab and smear and anal swab and smear for detection of seminal fluid and spermatozoa, if any.*
- 9. A sealed envelope for detection of accused cells/DNA profiling with forwarding letter addressed to Director, FSL, Madhuban, Karnal.*

- 10. A sealed jar containing two sealed samples in vials i.e. nail clippings from fingers of right hand and nail clippings from fingers of left hand of deceased for detection of accused cells/DNA profiling.
- 11. A sealed parcel containing clothes of the deceased as described in postmortem examination report.
- 12. A sealed envelope for DNA analysis with forwarding letter addressed to Director, FSL, Madhuban, Karnal.
- 13. A sealed jar containing dried blood-soaked cotton pieces smudged with blood of the deceased for DNA profiling.

78. Since the prosecution has collected and relied upon scientific evidence, it is incumbent to test the chain of custody, the link evidence, and its relevance. To establish the link and to prove the chain of custody, the DNA evidence is presented in the following tabular format.

79. **VICTIM’S CLOTHES:**

| Date & No. of Exhibit                                                      | Exhibit Name                                                | Description and Findings                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | TCR Page |
|----------------------------------------------------------------------------|-------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|
| 09.10.2022<br>Ext P-59                                                     | Crime Scene Visit Report by FSL, Haryana, Madhuban (Karnal) | Member of scientific team: 1. Sh. Beera Ram, Senior Scientific Officer/SOC. I/C MFSU Kaithal.<br><br>Time of arrival: 3.00 PM<br><br>Time of departure: 4.30 PM<br><br>OBSERVATIONS: 1) Dead body of a girl child age about 7 years namely M D/o G s/o R r/o village Kurar in partially burnt condition was seen lying on earth between the prickly bushes grown up in the "banni"/jungle situated in the premises of "Dera Baba Mahiravalpuri" in the jurisdiction of village Kurar. (Photo 1,2,5)     | 327      |
| PW-22<br><br>Beera Ram<br>Senior Scientific Officer/SOC. I/C MFSU Kaithal. | Examination-in-chief                                        | Stated that on 9.10.2022, I was posted as Senior Scientific Officer at Mobile Forensic Science Unit, Kaithal. On that day, SI Mahavir Singh Police Station Kalayat telephonically requested me to reach at the place of occurrence situated in the banni/jungle situated in the premises of Dera Baba Mahiraval Puri, village Kurar. I reached at the place of occurrence and inspected the scene of crime minutely.<br>I had prepared my report Ex.P59 which bears my signature and my official stamp. | 533      |
| 09.10.2022<br>Ext P-7                                                      | Inquest Report                                              | Half burnt dead body, burnt face, Foaming at the mouth, wound on left leg below knee, littering came out, left arm half buried in soil, half burnt clothes colour creamy.<br>Prepared by: SI Mahabir Singh                                                                                                                                                                                                                                                                                              | 121      |
| PW-34                                                                      | Examination-                                                | Inquest proceedings on the dead body of                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 637      |

|                                    |                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |     |
|------------------------------------|----------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| SI Mahabir Singh                   | in-chief                         | deceased were conducted vide inquest report Ex.P7.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |     |
| 10.10.2022<br>Ext P-47<br>Ext P-45 | Post-mortem Report/<br>Affidavit | <p>Body brought by: SI Mahabir</p> <p>General description</p> <p>The body was wearing:</p> <ol style="list-style-type: none"> <li>1. A pinkish cream coloured full sleeved upper T shirt with cartoon print design all over it. It was burnt at places and open at front. The burnt cloth part was charred, shrunk and hard.</li> <li>2. Remanents of pinkish cream coloured lower pajami with cartoon print design all over it and having elastic waistline. It was burnt and smudged with stools at places. The burnt cloth part was charred, shrunk and hard.</li> </ol> <p>The clothes were sealed in a parcel with one seal of mark CH KTL and handed over to accompanying police person.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 289 |
| PW-21<br>Dr. Sachin Mandlay        | Examination-in-chief             | <p>Stated that I tender my duly sworn affidavit Exhibit P45, in evidence, which is prepared and signed by me. Contents of the same be read as part of my evidence.</p> <p>On 10.10.2022, I along-with Dr. Hamita Gupta and Dr. Rakesh Mittal being the Members of the Board had conducted postmortem examination on the dead body of child-victim-M aged about 7 years, on police application Ex.P46. The Board had prepared postmortem report Ex.P47, which bears my signature along-with the signatures of Dr. Hamita Gupta and Dr. Rakesh Mittal.</p> <p>At this stage, other sealed parcel (containing case property) has been opened on the request of learned State counsel and its contents i.e. pinkish cream coloured full sleeved T-shirt with cartoon print design all over it and it was burnt at places and pinkish cream coloured lower pajami with cartoon print design all over it, having elastic waistline and it was burnt and smudged with stools at places, of deceased, have been taken out). I have seen pinkish cream coloured full sleeved T-shirt with cartoon print design all over it Ex.MO/13, and pinkish cream coloured lower pajami with cartoon print design all over it Ex.MO/14, today in the Court. These are the same which were handed over to the police by the Board after postmortem examination of the deceased.</p> | 525 |
| 10.10.2022<br>Ext P-35             | Recovery memo of<br>Parcels      | After conducting postmortem of deceased Mansi, by the board of Dr Sachin Mandley SMO, Dr Hamita ASMO, Rakesh Mittal ASMO Government Hospital Kaithal presented to me one parcel of half burnt                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 231 |

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|-------------------------------------|--------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|                                     |                                                  | clothes having one seal of CH KTL along with sample seal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                   |
| PW-34<br>SI Mahabir Singh           | Examination-in-chief                             | <p>On 10.10.2022, I reached at Government Hospital, Kaithal for getting conducted the postmortem examination on the dead body of deceased child-victim.</p> <p>Board of Doctors consisting of Dr. Sachin Mandlay, Dr. Hamita and Dr. Rakesh Mittal conducted the postmortem examination of the child-victim and handed over the copy of postmortem report, dead body of deceased and other parcels to me which were taken into police possession vide recovery memo Ex.P35. Recovery memo was signed by LSI Dhanpati as a witness.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 641-643           |
| Ext P-33                            | Affidavit of PW-17 Head Constable Virender Singh | <p>I Head Constable Virender Singh no 132 Malkhana Mohrer Police Station Kalayat stated through my affidavit that:-</p> <p>1. That I am posted as Malkhana Moherer in Police Station Kalayat and the malkhana of the police station remained in my custody</p> <p>5. That on dated 11.10.2022 at about 12:41 PM, SI Mahabir Singh no 228 KR Police Station Kalayat deposited the case property with me in Malkhana Police Station Kalayat i.e. , one parcel of half burnt clothes having one stamp of CHKTL along with sample seal.</p> <p>7. That as per RC No. 710 dated 11.10.2022, one parcel of half burnt clothes having one seal of CH KTL along with sample seal, bring out the Malkhana and handover to Constable Dilawar SINGH NO 800/Kaithal for depositing in FSL Madhuban. On dated 12.10.2022 the receipt was handover to me by Constable Dilawar Singh, after depositing in FSL Madhuban.</p> <p>10. As long as the case property remained in my possession, I did not tamper with it and nor any one allowed to do.</p> | 101 of Hindi Part |
| PW-17 Head Constable Virender Singh | Cross-examination                                | The register No.19 of Police Station Kalayat is present in the Court today. The relevant entries regarding the depositing and withdrawing of the parcels from the Malkhana are duly made in the said register. (Register No.19 of Police Station Kalayat brought in the Court inspected by defence counsel and returned). Total approximate nineteen parcels were deposited with me. The exact number of parcels which were deposited and taken out from the Malkhana are recorded in the register brought by me today in the Court as well as in my affidavit                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 503               |

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|-------------------------------|--------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------|
| Ext P-31                      | Affidavit of PW-15 Constable Dilawar | <p>Stated- I Constable Dilawar no 800/Kaithal posted in police station Kalayat and stated through my affidavit.</p> <p>1). That I am posted in Police Station Kalayat.</p> <p>2). That on dated 11.10.2022 Head Constable Virender Singh no 132 Kaithal Malkhan Moherer Police Station Kalayat bring out the case property i.e. one parcel of half burnt clothes having one seal of CH KTL along with sample seal, from the Malkhana and handover to me vide RC No. 710 dated 11.10.2022 for depositing in FSL Madhuban.</p> <p>3). On dated 12.10.2022 I deposited the all remaining parcel in FSL Madhuban and after depositing the receipt was handed over to HC Virender Singh no. 132 Kaithal, Malkhana Moherer in Police Station Kalayat.</p> <p>5). As long as the case property remained in my possession, I did not tamper or alteration and nor any one allowed to do.</p>                         | 97 of Hindi part |
| PW-15 Constable Dilawar Singh | Examination-in-chief                 | Stated that I tender my duly sworn affidavit Exhibit P31, in evidence, which is prepared and signed by me. Contents of the same be read as part of my evidence.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 495              |
| 20.10.2022<br>Ext P-43        |                                      | <p>Report/Opinion No.: 22/FSL MBN/2210115613, Bio-1040/2022<br/>Prepared by Chitrekha, Senior Scientific Officer (Biology) Forensic Science Laboratory Madhuban, Karnal (Haryana)</p> <p>R.C. No. 25057820221011288680/710<br/>date 11-10-2022<br/>through DILAWAR SINGH (800KTL) and received in this division on 12-10-2022</p> <p>FSL:<br/>PS: 50578-221011-129996<br/>4 1-CH KTL</p> <p>Sealed cloth parcel containing exhibit-4a &amp; 4b stated to be of deceased,</p> <p>Exhibit-4a. One dirty light orange with red, green &amp; purple print burnt piece of lower.<br/>Exhibit-4b. One dirty light orange with red, green &amp; purple print full sleeved burnt piece of shirt.</p> <p>RESULT OF EXAMINATION</p> <p>1. Human semen was detected on exhibit-4a (Lower), exhibit-10 (Underwear) &amp; exhibit-16b (Shirt). However, semen could not be detected on rest of the exhibits mentioned</p> | 267              |

|                                                                                        |                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |     |
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|                                                                                        |                                                                                                | above.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |     |
| PW-24<br>Chitrekha<br>Senior<br>Scientific<br>Officer,<br>Biology,<br>FSL,<br>Madhuban | Examination-<br>in-chief                                                                       | <p>Stated that on 12.10.2022, I was posted as Senior Scientific Officer in Biology Division at FSL Madhuban. On that day, nine parcels with seals intact were received in Biology Division of FSL Madhuban pertaining to this case.</p> <p>On 20.10.2022, I had examined the contents of the parcels and prepared my report Ex.P43 (already exhibited on 4.2.2023) which bears my signature and my official stamp. After examination, I had recorded result of examination in my report Ex.P43 and parcels No.I, II, IV, X, XI and XVI were forwarded to DNA Division. Parcels No.4 &amp; 16 forwarded to Physics Division Madhuban. Parcel No.4 forwarded to Chemistry Division for further analysis.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                               | 545 |
| 26.12.2022<br>Ext P-41                                                                 | Case<br>property<br>received in<br>DNA unit on<br>21.10.2022<br>by FSL,<br>Madhuban,<br>Karnal | <p>22/FSL MBN/2210115613</p> <p>Prepared by Dr Garima Chaudhary, Senior Scientific Officer (DNA) Forensic Science Laboratory Madhuban, Karnal (Haryana)</p> <p>Parcel 4: One sealed paper envelope sealed with '03' seals of "C BIO FSL (H)", containing exhibit '4a' &amp; '4b', labeled as, P-4, Barcode: 50578-221012-1993756.</p> <p>Exhibit 4a: One cut/torn burnt dirty peach colored lower having printed design.</p> <p>Exhibit 4b: One cut/torn burnt dirty peach colored shirt having printed design.</p> <p>RESULT OF EXAMINATION</p> <p>DNA profile of male origin has been generated from the source of exhibits '<b>4a</b>' (<b>lower of victim-semen</b>), '<b>4b</b>' (<b>shirt of victim-semen</b>). Alleles from the source of exhibit '12' (blood of accused) are accounted in the alleles from the source of exhibits '4a' (lower of victim-semen), '4b' (shirt of victim-semen)</p> <p>CONCLUSION</p> <p>1. Male DNA profile generated from the source of exhibits '4a' (lower of victim-semen), '4b' (shirt of victim-semen) are similar to the male DNA profile generated from the source of exhibit '12' (blood of accused).</p> | 253 |
| PW-28<br>Dr Garima<br>Chaudhary<br>Senior                                              | Examination-<br>in-chief                                                                       | <p>On 21.10.2022, seven parcels pertaining to the present case were received in DNA Unit of FSL Madhuban with seals intact. I had examined the contents of the parcels and</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | 581 |

|                                                            |  |                                                                                                                                                                                                                          |  |
|------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|
| Scientific<br>Officer, DNA<br>Division<br>FSL,<br>Madhuban |  | prepared my report Ex.P41 (running into seven pages), which bears my signature at point A, B, C, D, E, F & G of the same.<br>On 26.12.2022, I had sent report Ex.P41 along-with forwarding letter Ex.P42 to DSP Kalayat. |  |
|------------------------------------------------------------|--|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|

**80. BLOOD SAMPLE OF ACCUSED PAWAN:**

| Date & No.<br>of Exhibit                   | Exhibit<br>Name                                                     | Description and Findings                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | TCR<br>Page                |
|--------------------------------------------|---------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
| 09.10.2022<br>Ext P-61                     | Arrest memo                                                         | Place of Arrest: village Kurar<br>Time of arrest: 7pm-8pm<br>Date of arrest: 09.10.2022<br><br>By SI Ishwar Singh [PW-32]                                                                                                                                                                                                                                                                                                                                                                                                                                   | 121<br>of<br>Hindi<br>part |
| PW-32<br>SI Ishwar<br>Singh                | Examination-<br>in-chief                                            | I visited the house of accused Pawan alias Moni and apprehended him. The huge crowd had surrounded the house of the accused, I had taken accused Pawan alias Moni to a safe place near the canal. I made inquiries from the accused Pawan alias Moni and duly arrested him in the present case vide memo of arrest Ex.P61.                                                                                                                                                                                                                                  | 617                        |
| 09.10.2022<br>Ext P-73<br><br>11:07 P.M.   | Medical<br>Examination<br>at Civil<br>Hospital<br>Haryana           | Accused Pawan arrived for Medical Examination conducted by Dr. Pradeep Kumar<br>Brought by ASI Virender Singh<br>5 ML BLOOD SAMPLE TAKEN IN EDTA VIAL AND SEALED WITH 1 SEAL AND HANDED OVER TO IO<br>SAMPLE SEAL ATTACHED WITH FORWARDING LETTER TO FSL MADHUBAN.                                                                                                                                                                                                                                                                                          | 369                        |
| PW-29<br>Dr Pardeep,<br>Medical<br>Officer | Examination-<br>in-chief                                            | I had given opinion that there was nothing to suggest that he was not capable to perform sexual intercourse. I had prepared MLR Ex.P73 of accused Pawan alias Moni, which bears my signature.<br>(At this stage, other sealed parcel (containing case property) has been opened on the request of learned State counsel and its contents i.e. a vial containing blood sample of accused, has been taken out). I have seen blood sample Ex.MO/33, today in the Court. It is the same which was handed over to the police by me after examination of accused. | 589                        |
| 10.10.2022<br><br>Ext P-72                 | Recovery<br>memo of<br>parcels of<br>accused<br>Pawan alias<br>Moni | After conducting the sexual medical examination of accused, at the time of investigation today 10.10.2022 Dr Pardeep Kumar Medical officer Government Hospital Kaithal presented one sample of blood having one seal of CH KTL, Separate sample seal of all the parcel having one seal of CH KTL, one forwarding letter addressed to FSL Madhuban and one MLR no. PK/68/GHK/2022 dated                                                                                                                                                                      | 143<br>of<br>Hindi<br>Part |

|                                     |                                                  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                   |
|-------------------------------------|--------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|
|                                     |                                                  | 09.10.2022, of accused Pawan alias Moni. Which were taken in Police possession as evidence by recovery memo.<br>Witness: HC Manoj Kumar                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                   |
| Ext P-33                            | Affidavit of PW-17 Head Constable Virender Singh | I Head Constable Virender Singh no 132 Malkhana Mohrer Police Station Kalayat stated through my affidavit that:-<br><br>(1). That I am posted as Malkhana Moherer in Police Station Kalayat and the malkhana of the police station remained in my custody.<br>(3). That on dated 10.10.2022 at about 02:00 PM SI Ishwar Singh 81/Kaithal Crime Investigation Branch No 1 Kaithal deposited the case property with me in Malkhana Police Station Kalayat i.e. one parcel of blood sample of accused having stamp of CHKTL along with sample seal.<br>(7). That as per RC No. 710 dated 11.10.2022, One parcel of blood sample of accused having seal of CHKTL along with Sample seal, bring out the Malkhana and handover to Constable Dilawar SINGH NO 800/Kaithal for depositing in FSL Madhuban. On dated 12.10.2022 the receipt was handover to me by Constable Dilawar Singh, after depositing in FSL Madhuban.<br>(10). As long as the case property remained in my possession, I did not tamper with it and nor any one allowed to do. | 101 of Hindi Part |
| PW-17 Head Constable Virender Singh | Cross-examination                                | The register No.19 of Police Station Kalayat is present in the Court today. The relevant entries regarding the depositing and withdrawing of the parcels from the Malkhana are duly made in the said register. (Register No.19 of Police Station Kalayat brought in the Court inspected by defence counsel and returned). Total approximate nineteen parcels were deposited with me. The exact number of parcels which were deposited and taken out from the Malkhana are recorded in the register brought by me today in the Court as well as in my affidavit                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | 503               |
| Ext P-31                            | Affidavit of PW-15 Constable Dilawar             | Stated- I Constable Dilawar no 800/Kaithal posted in police station Kalayat and stated through my affidavit.<br><br>(1). That I am posted in Police Station Kalayat.<br><br>(2). That on dated 11.10.2022 Head Constable Virender Singh no 132 Kaithal Malkhan Moherer Police Station Kalayat bring out the case property i.e. One parcel of blood sample of accused having seal of CHKTL along with Sample seal, from the Malkhana and handover                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             | 97 of Hindi Part  |



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|----------------------------------------------------------------------------------------|-------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                                                                                        |                                                                         | <p>to me vide RC No. 710 dated 11.10.2022 for depositing in FSL Madhuban.</p> <p>On dated 12.10.2022 I deposited the all remaining parcel in FSL Madhuban and after depositing the receipt was handed over to HC Virender Singh no. 132 Kaithal, Malkhana Moherer in Police Station Kalayat.</p> <p>(5). As long as the case property remained in my possession, I did not tamper or alteration and nor any one allowed to do.</p>                                                                                                                                                                                                                                                                         |     |
| PW-15<br>Constable<br>Dilawar                                                          | Examination-<br>in-chief                                                | Stated that I tender my duly sworn affidavit Exhibit P31, in evidence, which is prepared and signed by me. Contents of the same be read as part of my evidence.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | 495 |
| 20.10.2022<br>Ext P-43                                                                 | FSL Report,<br>Madhuban,<br>Karnal<br>(Haryana)                         | <p>Report/Opinion No.: 22/FSL MBN/2210115613, Bio-1040/2022<br/>Prepared by Chitrekha, Senior Scientific Officer (Biology) Forensic Science Laboratory Madhuban, Karnal (Haryana)</p> <p>R.C. No. 25057820221011288680/710<br/>date 11-10-2022<br/>through DILAWAR SINGH (800KTL) and received in this division on 12-10-2022</p> <p>FSL: 50578-221012-1993761<br/>PS: 50578-221010-129921 1-CH KTL<br/>Parcel No. 12. Blood sample stated to be of accused-Forward to DNA Division as such in original.</p>                                                                                                                                                                                               | 267 |
| PW-24<br>Chitrekha<br>Senior<br>Scientific<br>Officer,<br>Biology,<br>FSL,<br>Madhuban | Examination-<br>in-chief                                                | <p>Stated that on 12.10.2022, I was posted as Senior Scientific Officer in Biology Division at FSL Madhuban. On that day, nine parcels with seals intact were received in Biology Division of FSL Madhuban pertaining to this case.</p> <p>On 20.10.2022, I had examined the contents of the parcels and prepared my report Ex.P43 (already exhibited on 4.2.2023) which bears my signature and my official stamp. After examination, I had recorded result of examination in my report Ex.P43 and parcels No.I, II, IV, X, XI and XVI were forwarded to DNA Division. Parcels No.4 &amp; 16 forwarded to Physics Division Madhuban. Parcel No.4 forwarded to Chemistry Division for further analysis.</p> | 545 |
| 26.12.2022<br>Ext P-41                                                                 | Case<br>property<br>received in<br>DNA unit on<br>21.10.2022<br>by FSL, | <p>22/FSL MBN/2210115613<br/>Prepared by Dr Garima Chaudhary, Senior Scientific Officer (DNA) Forensic Science Laboratory Madhuban, Karnal (Haryana)</p> <p>Parcel 12: One sealed blood vacuatainer</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 253 |

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|----------------------------------------------------------------------------------------------------------|--------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
|                                                                                                          | Madhuban,<br>Karnal      | sealed with '01' seal of "CH KTL", containing exhibit '12', labeled as Barcode: 50578-221012-1993757.<br>Exhibit 12: One EDTA vial having liquid blood, stated to be of accused.                                                                                                                                                                                                                 |     |
| PW-28<br>Dr Garima<br>Chaudhary<br>Senior<br>Scientific<br>Officer, DNA<br>Division,<br>FSL,<br>Madhuban | Examination-<br>in-chief | On 21.10.2022, seven parcels pertaining to the present case were received in DNA Unit of FSL Madhuban with seals intact. I had examined the contents of the parcels and prepared my report Ex.P41 (running into seven pages), which bears my signature at point A, B, C, D, E, F & G of the same.<br>On 26.12.2022, I had sent report Ex.P41 along-with forwarding letter Ex.P42 to DSP Kalayat. | 581 |

81. Once the scientific report clearly points out the presence of DNA of the accused on the victim's clothes, the burden shifts on the accused to explain that his semen was found on the victim's clothes, and the accused did not rebut this clinching evidence.

82. The evidence of DNA [Ext P-41] and the chain of custody was duly put to the accused in question no. 19 [At page 689 of the Trial Court Record] under §313 CrPC, and the accused denied the evidence as incorrect.

83. An analysis of the above establishes that in the present case the chain of custody is without any delay, remains unbroken, all the links in the chain of custody are complete, and is legally proved.

84. Additionally, the DNA results are admissible in evidence, and the following judicial precedents shall be relevant.

85. In Mukesh and Anr. v. State for NCT of Delhi & Ors., [2017] 6 S.C.R. 1, pg. 23; 2017-INSC-448, May 05, 2017, a three-Judge Bench of the Hon'ble Supreme Court holds,

[11.1] DNA technology as a part of Forensic Science and scientific discipline not only provides guidance to investigation but also supplies the Court accrued information about the tending features of identification of criminals. The recent advancement in modern biological research has regularized Forensic Science resulting in radical help in the administration of justice. In our country also like several other developed and developing countries, DNA evidence is being increasingly relied upon by courts. After the amendment in the Criminal Procedure Code by the insertion of Section 53A by Act 25 of 2005, DNA profiling has now become a part of the statutory scheme. Section 53A relates to the examination of a person accused of rape by a medical practitioner. Similarly, under Section 164A inserted by Act 25 of 2005, for medical examination of the victim of rape, the description of material taken from the person of the woman for DNA profiling is must. ....

86. In Pattu Rajan v. State of Rajasthan, [2019] 5 SCR 535; 2019-INSC-420, Mar 29, 2019, a three-Judge bench of the Hon'ble Supreme Court holds,

[31]. ...One cannot lose sight of the fact that DNA evidence is also in the nature of opinion evidence as envisaged in Section 45 of the Indian Evidence Act. Undoubtedly, an expert giving evidence before the Court plays a crucial role, especially since the entire purpose and object of opinion evidence is to aid the Court in forming its opinion on questions concerning foreign law, science, art, etc., on which the Court might not have the technical expertise to form an opinion on its own. In criminal cases, such questions may pertain to aspects such as ballistics, fingerprint matching, handwriting comparison, and even DNA testing or superimposition techniques, as seen in the instant case.

87. In *Karandeep Sharma @ Razia @ Raju v. State of Uttarakhand*, [2025] 3 SCR 1482; CrA 630-631 of 2018, 2025-INSC-444, Mar 04, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

[54]. In order to make the DNA report acceptable, reliable and admissible, the prosecution would first be required to prove the sanctity and chain of custody of the samples/articles right from the time of their preparation/collection till the time they reached the FSL. For this purpose, the link evidence would have to be established by examining the concerned witness.

**88. DISCLOSURE STATEMENTS OF ACCUSED EXHIBITS P-62 & P-63 DID NOT LEAD TO DISCOVERY OF ANY INCRIMINATING OR RELEVANT FACT AND THUS REMAINS INADMISSIBLE:**

89. A perusal of the disclosure statements, Exhibits P-62 and P-63, allegedly made by the accused, neither led to the proof of any incriminating evidence nor did it prove any relevant fact that was discovered pursuant to such statement. As such, they are hit by §26 of the Indian Evidence Act, 1872, and are inadmissible in evidence.

90. In *State of Uttar Pradesh v. Deoman Upadhyaya*, [1961] 1 SCR 14, pg. 29; 1960-INSC-107, May 6, 1960, a Constitutional Bench of the Hon'ble Supreme Court holds, [Majority View],

Sections 25 and 26 are manifestly intended to hit at an evil, viz., to guard against the danger of receiving in evidence testimony from tainted sources about statements made by persons accused of offences. But these sections form part of a statute which codifies the law relating to the relevancy of evidence and proof of facts in judicial proceedings. The State is as much concerned with punishing offenders who may be proved guilty of committing offences as it is concerned with protecting persons who may be compelled to give confessional statements. If s. 27 renders information admissible on the ground that the discovery of a fact pursuant to a statement made by a person in custody is a guarantee of the truth of the statement made by him, and the legislature has chosen to make on that ground an exception to the rule prohibiting proof of such statement, that rule is not to be deemed unconstitutional, because of the possibility of abnormal instances to which the legislature might have, but has not extended the rule. The principle of admitting evidence of statements made by a person giving information leading to the discovery of facts which may be used in evidence against him is manifestly

reasonable. The fact that the principle is restricted to persons in custody will not by itself be ground for holding that there is an attempted hostile discrimination because the rule of admissibility of evidence is not extended to a possible, but an uncommon or abnormal class of cases.

91. In Dinesh Kumar v. The State of Haryana, [2023] 4 SCR 220, pg. 229; 2023-INSC-493, May 04, 2023, the Hon'ble Supreme Court holds,

[8]. ...If the disclosure has been made by the accused to the police while he was in their custody and such a disclosure leads to discovery of a fact then that discovery is liable to be read as evidence against the accused in terms of Section 27 of the Act. All the same, the distinguishing feature of such a discovery must be that such a disclosure must lead to the discovery of a "distinct fact". The recovery of the stolen tractor, the place where the murder was committed and the place where body was thrown in the canal were facts which were already in the knowledge of the police, since it is the case of the prosecution that the co-accused Mange Ram, who was arrested by the police 2 days preceding the arrest of the present appellant, had earlier led to the same discoveries on 12th, 13th & 14th of May, 2000. So, this disclosure and discovery made thereafter cannot be read against the present appellant. There cannot be a "discovery" of an already discovered fact!

92. In Govind v. State of Haryana, [2025] 12 SCR 206; 2025-INSC-1318, Nov 14, 2025, the Hon'ble Supreme Court holds,

[15]. As per Section 25 of the Evidence Act, the confession given in the Police custody, cannot be proved against a person accused of an offence unless it is given in the immediate presence of the Magistrate. However, Section 27 deals with how much of the information as received from the accused, in Police custody may be proved.

xxx

On a glance of the language of the said section [27 IEA], which starts with the expression "provided that", it is apparent that this Section is an exception to the preceding Sections 25 and 26. The language further indicates that when any fact is deposed to as discovered in consequence of information received from a person who is in custody of the Police in connection of an offence, it must relate distinctly to the fact so discovered. For relevancy, the "*facts thereby discovered*" is preceded with the words "*so much of such information, whether it amounts to confession or not as relates distinctly*". Special emphasis must be given to the word '*distinctly*'. The word "distinctly" has its own importance which is a derivative of the word 'distinct'. As per Concise Oxford English Dictionary [Concise Oxford English Dictionary (10th Edition, Revised in 2002, Edited by Judy Pearsall)] it means recognizable, different in nature, individual or separate, readily distinguishable by the senses. As per Advance Law Lexicon [P Ramanatha Aiyar, Advanced Law Lexicon (3rd Edition, 2005)], "distinctly" means clearly, explicitly, definitely, precisely, unmistakably, in a distinct manner. Therefore, "distinctly", as used in Section 27, is meant to exclude certain language and to limit and confine the information which may be proved within definite limits and not necessarily to include everything which may relate to that information. The said word "distinctly" indicates directly, indubitably, strictly and unmistakably, apparently, used in Section 27 to limit and define the scope of probable information. Therefore, only that much information as is clearly connected with the fact discovered can be treated as relevant under the phrase '*facts discovered*'.

93. **CIRCUMSTANTIAL EVIDENCE:**

94. The prosecution's case is based on circumstantial evidence of the accused's last-seen with the victim and also on the scientific evidence of the presence of the accused's DNA in the biological material recovered from Laadli's clothes. The law regarding circumstantial evidence is well settled for more than half a century by the Hon'ble Supreme Court in the following judicial precedents.

95. In Hanumant v. The State of Madhya Pradesh, [1952] 1 SCR 1091, pg. 1097: 1952-INSC-41, Sep 23, 1952, the Hon'ble Supreme Court holds,

It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused...

96. In Shivaji Sahebrao Bobade & Anr. v. State of Maharashtra, [1974] 1 SCR 489, pg. 493; 1973-INSC-151, Aug 27, 1973, a three-Judge Bench of the Hon'ble Supreme Court holds,

[A-E]. The cherished principles or golden thread of proof beyond reasonable doubt which runs thro' the web of our law should not be stretched morbidly to embrace every hunch, hesitancy and degree of doubt. The excessive solicitude reflected in the attitude that a thousand guilty men may go but one innocent martyr shall not suffer is a false dilemma. Only reasonable doubts belong to the accused. Otherwise any practical system of justice will then break down and lose credibility with the community. The evil of acquitting a guilty person light-heartedly as a learned *author*<sup>9</sup> has sapiently observed, goes much beyond the simple fact that just one guilty person has gone unpunished. If unmerited acquittals become general, they tend to lead to a cynical disregard of the law, and this in turn leads to a public demand for harsher legal presumptions against indicated 'persons' and more severe punishment of those who are found guilty. Thus too frequent acquittals of the guilty may lead to a ferocious penal law, eventually eroding the judicial protection of the guiltless. For all these reasons it is true to say, with Viscount Simon, that "*a miscarriage of justice may arise from the acquittal of the guilty no less than from the conviction of the innocent. ..*" In short, our jurisprudential enthusiasm for presumed innocence must be moderated by the pragmatic need to make criminal justice potent and realistic. A balance has to be struck between chasing enhance possibilities as good enough to set the

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<sup>9</sup> Glanville Williams in 'Proof of Guilt'. (2) [1934] L. R. 61 I.A., 398.6—L382 Sup.CD74

delinquent free and chopping the logic of preponderant probability to punish marginal innocents. We have adopted these cautions in analysing the evidence and appraising the soundness of the contrary conclusions reached by the courts below. Certainly, in the last analysis reasonable doubts must operate to the advantage of the appellant. In India the law has been laid down on these lines long ago.

97. In Kali Ram v. State of Himachal Pradesh, [1974] 1 SCR 722, pg. 734- 735, 1973-INSC-173, Sep 24, 1973, a three-Judge Bench of the Hon'ble Supreme Court holds,

[G – B]. Another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. This principle has a special relevance in cases wherein the guilt of the accused is sought to be established by circumstantial evidence. Rule has accordingly been laid down that unless the evidence adduced in the case is consistent only with the hypothesis of the guilt of the accused and is inconsistent with that of his innocence, the court should refrain from recording a finding of guilt of the accused. It is also an accepted rule that in case the court entertains reasonable doubt regarding the guilt of the accused, the accused must have the benefit of that doubt. Of course, the doubt regarding the guilt of the accused should be reasonable: it is not the doubt of a mind which is either so vacillating that it is incapable of reaching a firm conclusion or so timid that it is hesitant and afraid to take things to their natural consequences. The rule regarding the benefit of doubt also does not warrant acquittal of the accused by resort to surmises, conjectures or fanciful considerations.

98. In Sharad Birdhi Chand Sarda v. State of Maharashtra, [1985] 1 SCR 88, pg. 162-164; 1984-INSC-121, Jul 17, 1984, where a bride was found dead in her bed after 4 months of her marriage, a three-Judge Bench of the Hon'ble Supreme Court holds,

[E-G]. Before discussing the cases relied upon by the High Court we would like to cite a few decisions on the nature, character and essential proof required in a criminal case which rests on circumstantial evidence alone. The most fundamental and basic decision of this Court is *Hanumant v. The State of Madhya Pradesh* [(1952) SCR 1091]. This case has been uniformly followed and applied by this Court in a large number of later decisions upto date, for instance, the cases of *Tufail (Alias) Simmi v. State of Uttar Pradesh* [(1969) 3 SCC 198] and *Ramgopal v. State of Maharashtra* [AIR 1972 SC 656]. It may be useful to extract what Mahajan, J. has laid down in *Hanumant's case* (*supra*): "It is .....accused."

[C-B]. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must

be or should be proved' as was held by this Court in *Shivaji Sahabrao Bobade & Anr. v. State of Maharashtra* [(1973) 2 SCC 793] where the following observations were made:

"Certainly, it is a primary principle, that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be-consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

99. An analysis of the proved and established facts in the light of the judicial precedents mentioned above points towards only one view, and that view is the involvement of the accused Pawan and no one else.

100. Although it was the CCTV footage that led to suspicion against the accused, resulting in his arrest and the taking of his blood sample, which was connected to the DNA profile obtained from the victim's dead body, yet, even if the certificates are not tendered in evidence, it was not the CCTV footage alone but the ocular version of PW-5 Hoshiyar Singh who had noticed the accused taking away Laadli, on the same date and time. Thus, despite the certificate under §65-B of the Indian Evidence Act not being legally proved, its impact on the initial identification of the accused has been established beyond reasonable doubt by PW-5 Hoshiyar Singh.

101. It shall be relevant to refer to §106 of the Indian Evidence Act, which reads as follows:

*106. Burden of proving fact especially within knowledge. — When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.*

102. In *Dinesh Kumar v. The State of Haryana*, [2023] 4 SCR 220, pg. 236; 2023-INSC-493, May 04, 2023, the Hon'ble Supreme Court holds,

[13]. What has to be kept in mind is that Section 106 of the Act, only comes into play when the other facts have been established by the prosecution. ....

103. The fact that accused Pawan had committed a penetrative sexual assault with the victim is established by Laadli's Postmortem Report and is confirmed by the DNA evidence. The chain of custody stands proved, there is no gap in the link evidence, and all these relevant facts clearly establish that the human semen recovered from the victim's clothes matched with the blood sample of the accused. An analysis of the evidence of last seen, the presence of accused's DNA on the victim's clothes, establish beyond reasonable doubt that it was Pawan who committed the rape upon Laadli. Once the rape is established and the accused is connected through the evidence of last seen and the scientific evidence, the motive to kill is implied, and the burden shifts upon Pawan under §106 of the Indian Evidence Act, [§109 of BSA, 2023] and it would have been for Pawan to state that after he had committed rape upon Laadli, then at what time and at which place did he leave her in such an injured and fragile condition. Given this, the prosecution has been able to connect the accused with the factum of rape and murder by the evidence of last-seen as well as the evidence of DNA, which are sufficient to hold him guilty for rape and murder of the girl child Laadli.

104. Resultantly, the conviction of Pawan for the commission of the rape and murder of Laadli, punishable under §6 of the POCSO Act and §302 IPC, as well as under §§365, 366, 376-AB & 201 IPC is upheld.

105. The convict's Counsel submits that, if this Court upholds the conviction, it is not a case for the death sentence and prays for commutation of the death sentence, referring to the mitigating factors taken by the accused before the trial Court.

106. State's counsel submits that if this Court commutes the death sentence to life imprisonment, it must be clarified that the accused shall not be released until the end of his natural life to protect other girls from suffering the same fate.

107. Learned Amicus submits that this Court must do justice to all concerned.

108. Now, coming to the part of the death sentences imposed by the trial Court, the gravity of the offence and a balancing of whether the aggravation outweighed the mitigation are considered.

109. Pursuant to the orders passed by this Court, State counsel has filed reply dated Feb 21, 2026, which contains psychological assessment of the convict and sociological report. The relevant portion of the Psychological and Sociological Report reads as follows:

*"No active Psychopathology" at present and his IQ was noted 94 average intelligence. No evidence of Intellectual disability or Cognitive Impairment and he is mentally fit to understand court proceeding, adequate judgment and consequences therein according to this report his*



*social environment was reported that nothing is indicating of social pathology. As per consultation with Psychiatrist of GH Jind patient has no psychotic and no depressive symptoms.*

110. After analyzing the factual background of rape and murder of helpless Laadli by accused Pawan, there does not appear to be any mitigating factor.

111. The trial Court awarded the death sentence, holding that the case fell within the rarest of rare category and that the circumstances established the accused's grave act, leaving only one sentence, which was death sentence.

112. In Rajendra Pralhadrao Wasnik v. State of Maharashtra, [2018] 14 S.C.R. 585, pg617, 2018-INSC-1194, Dec 12, 2018, while commuting the death sentence awarded on the conviction for rape and murder of a girl-child aged 3 years, a three-Judge Bench of the Hon'ble Supreme Court holds,

[58]. The history of the convict, including recidivism cannot, by itself, be a ground for awarding the death sentence. This needs some clarity. There could be a situation where a convict has previously committed an offence and has been convicted and sentenced for that offence. Thereafter, the convict commits a second offence for which he is convicted and sentence is required to be awarded. This does not pose any legal challenge or difficulty. But, there could also be a situation where a convict has committed an offence and is under trial for that offence. During the pendency of the trial he commits a second offence for which he is convicted and in which sentence is required to be awarded.

113. In Ediga Anamma v. State of Andhra Pradesh, [1974] 3 S.C.R. 329, pg. 336, 338; 1974-INSC-27, Feb 11, 1974, the Hon'ble Supreme Court holds,

[336G–A]. “354(3) When the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.”

The unmistakable shift in legislative emphasis is that life imprisonment for murder is the rule and capital sentence the exception to be resorted to for reasons to be stated.

[338C]. While deterrence through threat of death may still be a promising strategy in some frightful areas of murderous crime, to espouse a monolithic theory of its deterrent efficacy is unscientific and so we think it right to shift the emphasis, to accept composite factors of penal strategy and not to put all the punitive eggs in the 'hanging' basket but hopefully to try the humane mix.

[338D–E]. We assume that a better world is one without legal knifing of life, given propitious social changes. Even so, to sublimate savagery in individual or society is a long experiment in spiritual chemistry where moral values,

socio-economic conditions and legislative judgment have a role. Judicial activism can only be a signpost, a weather vane, no more. We think the penal direction in this jurisprudential journey points to life prison normally, as against guillotine, gas chamber, electric chair, firing squad or hangmen's rope. 'Thou shalt not kill' is a slow commandment in law as in life, addressed to citizens as well as to States, in peace as in war. We make this survey to justify our general preference where s.302 keeps two options open and the question is of great moment.

[338E–A]. Let us crystallise the positive indicators against death sentence under Indian Law currently. Where the murderer is too young or too old, the clemency of penal justice helps him. Where the offender suffers from socio-economic, psychic or penal compulsions insufficient to attract a legal exception or to downgrade the crime into a lesser one, judicial commutation is permissible. Other general social pressures, warranting judicial notice, with an extenuating impact may, in special cases, induce the lesser penalty. Extraordinary features in the judicial process, such as that the death sentence has hung over the head of the culprit excruciatingly long, may persuade the court to be compassionate. Likewise, if others involved in the crime and similarly situated have received the benefit of life imprisonment or if the offence is only constructive, being under s. 302 read with s. 149, or again the accused has acted suddenly under another's instigation, without premeditation, perhaps the court may humanely opt for life, even like where a just cause or real suspicion of wifely infidelity pushed the criminal into the crime. On the other hand, the weapons used and the manner of their use, the borrandous features of the crime and hapless, helpless state of the victim, and the like, steal the heart of the law for a sterner sentence. We cannot obviously feed into a judicial computer all such situations since they are astrological imponderables in an imperfect and undulating society. A legal policy on life or death cannot be left for ad hoc mood or individual predilection and so we have sought to objectify to the extent possible, abandoning Retributive ruthlessness, amending the deterrent creed and accenting the trend against the extreme and irrevocable penalty of putting out life.

114. In *Bachan Singh etc. etc. v. State of Punjab, etc.* [1983] 1SCR 145, pg229, 237; 1980-INSC-120, May 09, 1980/Aug 16, 1982, the Constitutional Bench of the Hon'ble Supreme Court while upholding the Constitutional validity of the Capital Sentence, in a reference to the Constitution Bench regarding the constitutional validity of death penalty for murder provided in § 302, Penal Code, and the sentencing procedure embodied in sub-§ (3) of § 354 of the Code of Criminal Procedure, 1973, holds,

[A-C]. Section 354(3) of the Code of Criminal Procedure, 1973, marks a significant shift in the legislative policy underlying the Code of 1898, as in force immediately before Apr. 1, 1974, according to which both the alternative sentences of death or imprisonment for life provided for murder and for certain other capital offences under the Penal Code, were normal sentences. Now, according to this changed legislative policy which is patent on the face of Section 354(3), the normal punishment for

murder and six other capital offences under the Penal Code, is imprisonment for life (or imprisonment for a term of years) and death penalty is an exception.

[F]. In the context, we may also notice Section 235(2) of the Code of 1973, because it makes not only explicit, what according to the decision in *Jagmohan's* case was implicit in the scheme of the Code, but also bifurcates the trial by providing for two hearings, one at the pre-conviction stage and another at the pre-sentence stage.

Pg237. [C-E]. Now, Section 235(2) provides for a bifurcated trial and specifically gives the accused person a right of pre-sentence hearing, at which stage, he can bring on record material or evidence, which may not be strictly relevant to or connected with the particular crime under inquiry, but nevertheless, have, consistently with the policy underlined in Section 354(3), a bearing on the choice of sentence. The present legislative policy discernible from Section 235(2) read with Section 354(3) is that in fixing the degree of punishment or making the choice of sentence for various offences, including one under Section 302, Penal Code, the Court should not confine its consideration "principally" or *merely* to the circumstances connected with the particular *crime*, *but also* give due consideration to the circumstances of the *criminal*.

115. In *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*, CrA No. 1478-2005, pg. 35- 36, May 13, 2009, the Hon'ble Supreme Court holds,

*Rarest of rare* dictum, as discussed above, hints at this difference between death punishment and the alternative punishment of life imprisonment. The relevant question here would be to determine whether life imprisonment as a punishment will be pointless and completely devoid of reason in the facts and circumstances of the case? As discussed above, life imprisonment can be said to be completely futile, only when the sentencing aim of reformation can be said to be unachievable. Therefore, for satisfying the second exception to the *rarest of rare* doctrine, the court will have to provide clear evidence as to why the convict is not fit for any kind of reformatory and rehabilitation scheme. This analysis can only be done with rigor when the court focuses on the circumstances relating to the criminal, along with other circumstances. This is not an easy conclusion to be deciphered, but Bachan Singh (supra) {[1983] 1SCR 145} sets the bar very high by introduction of *Rarest of rare doctrine*.

116. In *Machhi Singh and others v. State of Punjab*, [1983] 3 SCR 413, pg. 430- 431; 1983-INSC-78, Jul 20, 1983, a three-Judge Bench of the Hon'ble Supreme Court holds,

[H-D]. The reasons why the community as a whole does not endorse the humanistic approach reflected in "death sentence in no case" doctrine are not far to seek. In the first place, the very humanistic edifice is constructed on the foundation of "reverence for life" principle. When a member of the community violates this very principle by killing another member, the society may not feel itself, bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent to those who have no scruples in killing others if it suits their ends. Every

member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by ‘Killing’ a member of the community which protects the murderer himself from being killed, or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It may do so (in rarest of rare cases) when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death penalty...

117. In *Mohinder Singh v. State of Punjab*, [2013] 3 SCR 90, pg. 108, 2013-INSC 61, Jan 28, 2013, the Hon’ble Supreme Court holds,

[20E-F]. It is well settled law that awarding of life sentence is a rule and death is an exception. The application of the "rarest of rare" case principle is dependent upon and differs from case to case. However, the principles laid down and reiterated in various decisions of this Court show that in a deliberately planned crime, executed meticulously in a diabolic manner, exhibiting inhuman conduct in a ghastly manner, touching the conscience of everyone and thereby disturbing the moral fiber of the society, would call for imposition of capital punishment in order to ensure that it acts as a deterrent.

118. In *Shankar Kisanrao Khade v. State of Maharashtra*, [2013] 6 SCR 949, pg. 997; 2013-INSC-281, Apr 25, 2013, the Hon’ble Supreme Court, while commuting the death sentence of a middle-aged man to life [End of Natural Life under S. 376AB], awarded on the conviction for continuous rape and murder of a girl child aged 11, with moderate intellectual disability, holds,

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

119. In *Mofil Khan and Anr. v. The State of Jharkhand*, R.P. (Crl.) No. 641 of 2015, in Crl.A. No. 1795 of 2009, *pg. 13*, Nov 26, 2021, a three-Judge Bench of the Hon'ble Supreme Court holds,

[10]. It is well-settled law that the possibility of reformation and rehabilitation of the convict is an important factor which has to be taken into account as a mitigating circumstance before sentencing him to death...

120. In *Sundar @Sundarrajan v. State by Inspector of Police*, [2023] 5 S.C.R. 1016, *pg. 1064*; 2023-INSC-264, Mar 21, 2023, a three-Judge Bench of the Hon'ble Supreme Court holds,

[89] ..... 'rarest of rare' doctrine requires that the death sentence not be imposed only by taking into account the grave nature of crime but only if there is no possibility of reformation in a criminal.

121. In *Vasanta Sampat Dupare v UOI and Ors.*, W.P. (Cr.) no. 371-2023, *pg. 1*, 2025-INSC-1043, Aug 25, 2025, a three-Judge Bench of the Hon'ble Supreme Court holds,

[1]. The majesty of our Constitution lies not in the might of the State but in its restraint. When the Court contemplates the ultimate punishment, i.e. the Capital Punishment, it enters a domain where justice must be tempered by conscience and guided by the unwavering promises of equality, dignity and fair procedure. A Constitution that proclaims liberty and dignity as its first commitments cannot permit the State to end a human life unless every safeguard of fairness has been honoured and every civilising impulse of the law has been heard. The question is never only what penalty a crime might merit, it is first whether the machinery of the Republic has honoured every safeguard that makes punishment lawful in a constitutional democracy. In the narrow space between guilt and the gallows, a robust Constitution demands that we pause, look again, and ask whether the process itself has measured up to the high bar that humanity and the rule of law together set.

122. It appears that the subsequent act of murder was committed in the aftermath of panic to destroy the evidence of rape, rather than a premeditated act. Every life, whether of young or old, of rich or poor, of citizen or an alien, is equally precious and its loss is irreparable, and no one has the right to take it away except by following the due process of law with extreme care—Compulsive retribution by the State, without justifying due process of law, cannot immunize such acts, even when done in the name of the greater public good.<sup>10</sup>

**123. PRECEDENTS WHERE SENTENCE WAS COMMUTED IN ALMOST IDENTICAL CASES:**

124. In *Ravishankar @ Baba Vishwakarma v. The State of Madhya Pradesh*, [2019] 14 SCR 285, *pg. 310, 311*; 2019-INSC-1116, Oct 03, 2019, a three-judge bench of the Hon'ble Supreme Court holds,

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<sup>10</sup> Punjab and Haryana High Court, *State of Punjab v. Sonu Singh*, MRC-2-2025, para 31, Mar 19, 2026.

|                   |          |            |       |
|-------------------|----------|------------|-------|
| Age of girl-child | 13 years | Age of Man | Adult |
|-------------------|----------|------------|-------|

[61]. In the present case, there are some residual doubts in our mind. A crucial witness for constructing the last seen theory, P.W.5 is partly inconsistent in cross-examination and quickly jumps from one statement to the other. Two other witnesses, P.W.6 and P.W.7 had seen the appellant feeding biscuits to the deceased one year before the incident and their long delay in reporting the same fails to inspire confidence. The mother of the deceased has deposed that the wife and daughter of the appellant came to her house and demanded the return of the money which she had borrowed from them but failed to mention that she suspected the appellant of committing the crime initially. Ligature marks on the neck evidencing throttling were noted by P.W.20 and P.W.12 and in the postmortem report, but find no mention in the panchnama prepared by the police. Viscera samples sent for chemical testing were spoilt and hence remained unexamined. Although nails' scrapplings of the accused were collected, no report has been produced to show that DNA of the deceased was present. Another initial suspect, Baba alias Ashok Kaurav absconded during investigation, hence, gave rise to the possibility of involvement of more than one person. All these factors of course have no impact in formation of the chain of evidence and are wholly insufficient to create reasonable doubt to earn acquittal.

[62]. We are cognizant of the fact that use of such 'residual doubt' as a mitigating factor would effectively raise the standard of proof for imposing the death sentence, the benefit of which would be availed of not by the innocent only. However, it would be a misconception to make a cost-benefit comparison between cost to society owing to acquittal of one guilty versus loss of life of a perceived innocent. This is because the alternative to death does not necessarily imply setting the convict free.

[63]. As noted by the United States Supreme Court in *Herrera v. Collins*, [506 U.S. 390 (1993)] "*it is an unalterable fact that our judicial system, like the human beings who administer it, is fallible.*" However, death being irrevocable, there lies a greater degree of responsibility on the Court for an indepth scrutiny of the entire material on record. Still further, qualitatively, the penalty imposed by awarding death is much different than in incarceration, both for the convict and for the state. Hence, a corresponding distinction in requisite standards of proof by taking note of 'residual doubt' during sentencing would not be unwarranted.

[64]. We are thus of the considered view that the present case falls short of the 'rarest of rare' cases where the death sentence alone deserves to be awarded to the appellant. It appears to us in the light of all the cumulative circumstances that the cause of justice will be effectively served by invoking the concept of special sentencing theory as evolved by this Court in **Swamy Shraddananda (supra) and approved in Sriharan case (supra).**

[65]. For the reasons aforesaid, the appeal is allowed in part to the extent that the death penalty as awarded by the courts below is set aside and is substituted with the imprisonment for life with a direction that no remission shall be granted to the appellant and he shall remain in prison for the rest of his life.

125. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon’ble Supreme Court, although commuted the death sentence but imposed imprisonment for life, till the end of natural life.

126. In *Rameshbhai Chandubhai Rathod v. The State of Gujarat*, [2011] 1 SCR 829, pg. 835, Jan 24, 2011, a three-Judge Bench of the Hon’ble Supreme Court, while commuting the death sentence to the remainder of life, holds,

|             |                      |            |          |
|-------------|----------------------|------------|----------|
| Age of girl | Studying in Class IV | Age of Man | 27 Years |
|-------------|----------------------|------------|----------|

[2] .....We notice that there is a very thin line on facts which separates the award of a capital sentence from a life sentence in the case of rape and murder of a young child by a young man and the subjective opinion of individual Judges as to the morality, efficacy or otherwise of a death sentence cannot entirely be ruled out. It is now well settled that as on today the broad principle is that the death sentence is to be awarded only in exceptional cases.

.....In arriving at its conclusion, the Court relied on similar observations made in the case of *Ramraj v. State of Chhattisgarh* [(2010) 1 SCC 573]. We are, therefore, of the opinion that the appellant herein ought to be awarded a similar sentence. We accordingly commute the death sentence awarded to him to life but direct that the life sentence must extend to the full life of the appellant but subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

127. In *Chhotelal v. State of M.P.*, July 14, 2011, [2011] 8 SCR 239, pg. 241; 2011-INSC-492, the Hon’ble Supreme Court holds,

|                   |          |            |       |
|-------------------|----------|------------|-------|
| Age of girl-child | 10 Years | Age of Man | Adult |
|-------------------|----------|------------|-------|

[4]. We, accordingly, dismiss the appeal but direct (in the light of the aforesaid observations) that the appellant would serve out the sentence of imprisonment upto the end of his life but this direction would be subject to any remissions which the Government may choose to give under the circumstances to the appellant...

128. In *Amit v. State of Uttar Pradesh*, Feb 23, 2012, [2012] 1 SCR 1009, pg. 1022; 2012-INSC-100, the Hon’ble Supreme Court holds,

|                   |         |            |          |
|-------------------|---------|------------|----------|
| Age of girl-child | 3 Years | Age of Man | 28 years |
|-------------------|---------|------------|----------|

[12]. ...In the present case also, we find that when the appellant committed the offence he was a young person aged about 28 years only. There is no evidence to show that he had committed the offences of kidnapping, rape or murder on any earlier occasion. There is nothing on evidence to suggest that he is likely to repeat similar crimes in future. On the other hand, given a chance he may reform over a period of years. Hence, following the judgment of the three Judge Bench in *Rameshbhai Chandubhai Rathod (2) v. State of Gujarat* (supra) [(2011) 2 SCC 764], we convert the death sentence awarded to the appellant. to imprisonment for life and direct that the life sentence of the appellant will extend to his

full life subject to any remission or commutation at the instance of the Government for good and sufficient reasons.

129. In *Md. Mannan @ Abdul Mannan v. State of Bihar*, [2019] 8 SCR 266, *pg.* 295, 296; 2019 INSC 196, Feb 14, 2011, a three-Judge Bench of the Hon’ble Supreme Court holds,

|                   |         |            |             |
|-------------------|---------|------------|-------------|
| Age of girl-child | 8 Years | Age of Man | 42-43 years |
|-------------------|---------|------------|-------------|

[86]. It is also pertinent to note herein that the relevant Prison Rules also recognise the phenomenon of post-conviction mental illness and state that the execution of such persons shall be deferred, pending orders of the Government.<sup>11</sup> In the light of the aforesaid considerations, we conclude that the mental health of the petitioner at the time of execution is a relevant mitigating factor which must be taken into consideration in the present case. As observed above, there are materials put forward now, in the form of medical opinion, which show that the petitioner is not mentally sound. For the reasons discussed above, we are of the view that it would not be appropriate and/or safe to affirm the death sentence awarded to the petitioner.

[89]. Even though life imprisonment means imprisonment for entire life, convicts are often granted reprieve and/or remission of sentence after imprisonment of not less than 14 years. In this case, considering the heinous, revolting, abhorrent and despicable nature of the crime committed by the petitioner, we feel that the petitioner should undergo imprisonment for life, till his natural death and no remission of sentence be granted to him.

130. In *Rajendra Pralhadrao Wasnik v. State of Maharashtra*, [2018] 14 S.C.R. 585, *pg.* 594; 2018-INSC-1194, Dec 12, 2018, a three-Judge Bench of the Hon’ble Supreme Court holds,

|                   |         |            |       |
|-------------------|---------|------------|-------|
| Age of girl-child | 3 Years | Age of Man | Adult |
|-------------------|---------|------------|-------|

[1]. ‘Sentenced to death’ – these few words would have a chilling effect on anyone, including a hardened criminal. Our society demands such a sentence on grounds of its deterrent effect, although there is no conclusive study on its deterrent impact. Our society also demands death sentence as retribution for a ghastly crime having been committed, although again there is no conclusive study whether retribution by itself satisfies society. On the other hand, there are views that suggest that punishment for a crime must be looked at with a more humanitarian lens and the causes for driving a person to commit a heinous crime must be explored. There is also a view that it must be determined whether it is possible to reform, rehabilitate and socially reintegrate into society even a hardened criminal along with those representing the victims of the crime.

[43]. At this stage, we must hark back to **Bachan Singh** and differentiate between possibility, probability and impossibility of reform and rehabilitation. **Bachan Singh** requires us to consider the probability of reform and rehabilitation and not its possibility or its impossibility.

<sup>11</sup> Bihar Prisons Manual 2012, Rule 642.



- [45]. The law laid down by various decisions of this Court clearly and unequivocally mandates that the probability (not possibility or improbability or impossibility) that a convict can be reformed and rehabilitated in society must be seriously and earnestly considered by the courts before awarding the death sentence. This is one of the mandates of the "special reasons" requirement of Section 354(3) CrPC and ought not to be taken lightly since it involves snuffing out the life of a person. To effectuate this mandate, it is the obligation on the prosecution to prove to the court, through evidence, that the probability is that the convict cannot be reformed or rehabilitated. This can be achieved by bringing on record, *inter alia*, material about his conduct in jail, his conduct outside jail if he has been on bail for some time, medical evidence about his mental make-up, contact with his family and so on. Similarly, the convict can produce evidence on these issues as well.
- [46]. If an inquiry of this nature is to be conducted, as is mandated by the decisions of this Court, it is quite obvious that the period between the date of conviction and the date of awarding sentence would be quite prolonged to enable the parties to gather and lead evidence which could assist the Trial Court in taking an informed decision on the sentence. But, there is no hurry in this regard, since in any case the convict will be in custody for a fairly long time serving out at least a life sentence.
- [47]. Consideration of the reformation, rehabilitation and reintegration of the convict into society cannot be over-emphasised. Until **Bachan Singh**, the emphasis given by the courts was primarily on the nature of the crime, its brutality and severity. **Bachan Singh** placed the sentencing process into perspective and introduced the necessity of considering the reformation or rehabilitation of the convict. Despite the view expressed by the Constitution Bench, there have been several instances, some of which have been pointed out in Bariyar and in **Sangeet v. State of Haryana** [(2013) 2 SCC 452], where there is a tendency to give primacy to the crime and consider the criminal in a somewhat secondary manner. As observed in **Sangeet** "In the sentencing process, both the crime and the criminal are equally important." Therefore, we should not forget that the criminal, however ruthless he might be, is nevertheless a human being and is entitled to a life of dignity notwithstanding his crime. Therefore, it is for the prosecution and the courts to determine whether such a person, notwithstanding his crime, can be reformed and rehabilitated. To obtain and analyse this information is certainly not an easy task but must nevertheless be undertaken. The process of rehabilitation is also not a simple one since it involves social re-integration of the convict into society. Of course, notwithstanding any information made available and its analysis by experts coupled with the evidence on record, there could be instances where the social re-integration of the convict may not be possible. If that should happen, the option of a long duration of imprisonment is permissible.
- [80]. For all these reasons, we are of opinion that it would be more appropriate looking to the crimes committed by the appellant and the material on record including his overall personality and subsequent events, to commute the sentence of death awarded to the appellant but direct that he should not be released from custody for the rest of his normal life. We order accordingly.

131. In *Dattatraya @ Datta Ambo Rokade v. The State of Maharashtra*, [2019] 11 SCR 295, pg. 340; 2019-INSC-247, Feb 21, 2019, a three-Judge Bench of the Hon’ble Supreme Court holds,

|                   |         |            |       |
|-------------------|---------|------------|-------|
| Age of girl-child | 5 Years | Age of Man | Adult |
|-------------------|---------|------------|-------|

[144]. Even though life imprisonment means imprisonment for entire life, convicts are often granted reprieve and/or remission of sentence after imprisonment of not less than 14 years. In this case, considering the heinous, revolting, abhorrent and despicable nature of the crime committed by the appellant, we feel that the appellant should undergo imprisonment for life, till his natural death and no remission of sentence be granted to him.

[145]. For the above reasons, we are of the view that the present appeals are one of such cases where we would be justified in holding that confinement till natural life of the accused-appellant shall fulfil the requisite criteria of punishment considering the peculiar facts and circumstances of the present case. Accordingly, the death sentence awarded by the trial court is hereby modified to "life imprisonment" i.e., imprisonment for the natural life of the appellant herein. The appeals are allowed accordingly to the extent indicated above.

132. In *Accused ‘X’ v. State of Maharashtra*, [2019] 6 S.C.R. 1, pg. 39; 2019-INSC-518, Apr 12, 2019, a three-Judge Bench of the Hon’ble Supreme Court, while commuting the death sentence for the rape and murder of two minor girls, who were raped, killed and their dead bodies thrown in a well, holds,

|                   |                     |            |       |
|-------------------|---------------------|------------|-------|
| Age of girl-child | Students of Classes | Age of Man | Adult |
| Two girls         | I and Class IV      |            |       |

[73]. At the same time, we cannot lose sight of the fact that a sentence of life imprisonment *simpliciter* would be grossly inadequate in the instant case. Given the barbaric and brutal manner of commission of the crime, the gravity of the offence itself, the abuse of the victims’ trust by the Petitioner, and his tendency to commit such offences as is evident from his past conduct, it is extremely clear that the Petitioner poses such a grave threat to society that he cannot be allowed to roam free at any point whatsoever. In this view of the matter, we deem it fit to direct that the Petitioner shall remain in prison for the remainder of his life...

133. In the following judicial precedent of rape and death by asphyxiating the girl, the Hon’ble Supreme Court commuted the death sentence to imprisonment for life.

134. In *Akhtar v. State of U.P.*, MANU-SC-1008-1999, pg. 2; (1999) 6 SCC 60, Feb 02, 1999, the Hon’ble Supreme Court holds,

[3]. ...The medical evidence also indicates that the death is on account of asphyxia. In the circumstances we are of the considered opinion that the case in hand cannot be held to be one of the rarest of rare cases justifying the punishment of death. We, therefore, uphold the conviction of the appellant under Section 302, IPC, but looking to other mitigating

circumstances, we commute the sentence of death to imprisonment of life.

135. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon’ble Supreme Court commuted the death sentence to imprisonment for life.

136. In *Mohd. Chaman v. State (N.C.T. of Delhi)*, Crl.A. No. 68-69 of 1999, pg. 10, Dec 11, 2000, the Hon’ble Supreme Court holds,

|                   |                 |            |          |
|-------------------|-----------------|------------|----------|
| Age of girl-child | 1 year 6 months | Age of Man | 30 years |
|-------------------|-----------------|------------|----------|

Coming to the case in hand, the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human-being who has no control over his carnal desires. Then the question is: whether the case can be classified as of a 'rarest of rare category justifying the severest punishment of death. Testing the case on the touchstone of the guidelines laid down in *Bachan Singh (supra)*, *Machhi Singh (supra)* and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can be appropriately called one of the 'rarest of rare cases deserving death penalty. We find it difficult to hold that the appellant is such a dangerous person that to spare his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. It is our considered view that the case is one in which a humanist approach should be taken in the matter of awarding punishment. Accordingly, the capital sentence imposed against the appellant by the Courts below is set aside, instead the appellant shall suffer rigorous imprisonment for life. Subject to the above modification of sentence, the appeals filed by the accused are dismissed.

137. In *Raju v. State of Haryana*, [2001] Supp. 3 SCR 409, pg. 414; 2001-INSC-247, May 02, 2001, the Hon’ble Supreme Court holds,

|                   |          |            |       |
|-------------------|----------|------------|-------|
| Age of girl-child | 11 years | Age of Man | Adult |
|-------------------|----------|------------|-------|

[C – D]. There is nothing on record to indicate that the appellant was having any criminal record nor he can be said to be a grave danger to the society at large. In these circumstances, it would be difficult to hold that the case of the appellant would be rarest of rare case justifying imposition of death penalty.

We, therefore, uphold the conviction of the appellant under Section 302, but commute the sentence of death to imprisonment of life.

138. In *Bantu @ Naresh Giri v. State of M.P.*, [2001] Supp. 4 SCR 298, pg. 301, 302; 2001-INSC- 518, Oct 17, 2001, the Hon’ble Supreme Court holds,

|                   |         |            |                |
|-------------------|---------|------------|----------------|
| Age of girl-child | 6 Years | Age of Man | Under 22 years |
|-------------------|---------|------------|----------------|

[G-H]. In the present case, there is nothing on record to indicate that the appellant was having any criminal record nor it can be said that he will be a grave danger to the society at large. It is true that his act is a heinous and requires to be condemned but at the same time it cannot be said that it is rarest of the rare case where accused requires to be eliminated from the society. Hence, there is no justifiable reason to impose the death sentence.

[A-B]. In the result, we confirm the conviction of the appellant under Section 302 IPC but modify the sentence by commuting the sentence of death to an imprisonment for life. For the offence punishable under Section 376 IPC, he is sentenced to undergo rigorous imprisonment for 10 years. Both the sentences to run concurrently. The appeal is partly allowed accordingly.

139. In *Amit @ Ammu v. State of Maharashtra*, 2003 SUPP. (2) SCR 285, pg. 289; 2003-INSC-373, Aug 06, 2003, the Hon’ble Supreme Court holds,

|                   |                                        |            |          |
|-------------------|----------------------------------------|------------|----------|
| Age of girl-child | 11-12 years and student of VI standard | Age of Man | 20 years |
|-------------------|----------------------------------------|------------|----------|

[D-E]. The next question is of the sentence. Considering that the appellant is a young man, at the time of incident his age was about 20 years; he was a student; there is no record of any previous heinous crime and also there is no evidence that he will be a danger to the society, if the death penalty is not awarded. Though the offence committed by the appellant deserves serve condemnation and is a most heinous crime, but on cumulative facts and circumstances of the case, we do not think that the case falls in the category of rarest of the rare case. We hope that the appellant will learn a lesson and have opportunity to ponder over what he did during the period he undergoes the life sentence. Having regard to the totality of the circumstances, we modify the impugned judgment and instead of death penalty, award life imprisonment to the appellant for offence under Section 302, IPC.

140. In *Surendra Pal Shivbalakpal v. State of Gujarat*, [2004] SUPP. 4 SCR 464, pg. 469; 2004-INSC-526, Sep 16, 2004, the Hon’ble Supreme Court holds,

|                   |                                              |            |          |
|-------------------|----------------------------------------------|------------|----------|
| Age of girl-child | Little Child-Accused carried her on shoulder | Age of Man | 36 years |
|-------------------|----------------------------------------------|------------|----------|

[A-C]. The next question that arises for consideration is whether this is a 'rarest of rare case', we do not think that this is a 'rarest of rare case' in which death penalty should be imposed on the appellant. The appellant was aged 36 years at the time of the occurrence and there is no evidence that the appellant had involved in any other criminal case previously and the appellant was a migrant labour from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to the society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case. We confirm conviction of the appellant on all the counts, but the sentence of death penalty imposed on him for the offence under Section 302 IPC is commuted to life imprisonment.

141. In Bishnu Prasad Sinha v. State of Assam, [2007] 1 SCR 916, pg. 945; 2007 INSC 42, Jan 16, 2007, the Hon’ble Supreme Court holds,

|                   |           |            |                  |
|-------------------|-----------|------------|------------------|
| Age of girl-child | 7-8 Years | Age of Men | Both were Adults |
|-------------------|-----------|------------|------------------|

[62]. There is another aspect of this matter which cannot be overlooked. Appellant No. 1 made a confession. He felt repentant not only while making the confessional statement before the Judicial Magistrate, but also before the learned Sessions Judge in his statement under Section 313 of the Code of Criminal Procedure.

[63]. It is, therefore, in our opinion, not a case where extreme death penalty should be imposed. We, therefore, are of the opinion that imposition of punishment of rigorous imprisonment for life shall meet the ends of justice. It is directed accordingly. Both the appellants, therefore, are, instead of being awarded death penalty, are sentenced to undergo rigorous imprisonment for life, but other part of sentence imposed by the learned Sessions Judge are maintained.

142. In Purna Chandra Kusal v. State of Orissa, Crl.A. No. 1228 of 2008, pg. 3, Jul 12, 2011, the Hon’ble Supreme Court holds,

|                   |         |            |          |
|-------------------|---------|------------|----------|
| Age of girl-child | 5 years | Age of Man | 30 Years |
|-------------------|---------|------------|----------|

[5]. We are, however, of the opinion that the death sentence in the present case was not called for. The appellant was a labourer living in a basti along side the railway line and was, at the time of the incident, about 30 years of age. We also see that the entire evidence is circumstantial in nature. Concededly, there is no inflexible rule that a death sentence cannot be awarded in a case resting on circumstantial evidence but courts are as a matter of prudence, hesitant in awarding this sentence, in such a situation. It is true that the crime was indeed a heinous one as the victim was only five years of age and the daughter of P.W. 5 who was a neighbour of the appellant. On a cumulative assessment of the facts, we are of the opinion that the death sentence should be commuted into one for life.

143. In Kalu Khan v. State of Rajasthan, Crl.A. No. 1892-2014, pg. 29, Mar 10, 2015, a three-Judge Bench of the Hon’ble Supreme Court commuted the death sentence in murder, abduction, and rape of a girl child aged 4, holding as follows,

|                   |         |            |       |
|-------------------|---------|------------|-------|
| Age of girl-child | 4 years | Age of Man | Adult |
|-------------------|---------|------------|-------|

[30]. ...We are of the opinion that the four main objectives which the State intends to achieve namely deterrence, prevention, retribution and reformation can be achieved by sentencing the appellant-accused for life.

144. In Sunil v. State of Madhya Pradesh, Crl.A. No. 39-40 of 2014, pg. 9, [(2017) 4 SCC 393], Apr 08, 2016, a three-Judge Bench of the Hon’ble Supreme Court holds,

|                   |                               |            |          |
|-------------------|-------------------------------|------------|----------|
| Age of girl-child | 4 years<br>(Niece of Accused) | Age of Man | 25 Years |
|-------------------|-------------------------------|------------|----------|

[9]. ...In the present case, one of the compelling/mitigating circumstance that must be acknowledged in favour of the accused-appellant is the young age at which he had committed the crime. The fact that the accused can be reformed and rehabilitated; the probability that the accused would not commit similar criminal acts; that the accused would not be a continuing threat to the society are the other circumstances which could not but have been ignored by the learned trial court and the High Court.

[10]. We have considered the matter in the light of the above. On such consideration we are of the view that in the present case, the ends of justice would be met if we commute the sentence of death into one of life imprisonment...

145. In *Vijay Raikwar v. State of Madhya Pradesh*, Crl.A. No. 1112 of 2015, pg. 6, Feb 05, 2019, a three-judge bench of the Hon’ble Supreme Court holds,

|                   |           |            |          |
|-------------------|-----------|------------|----------|
| Age of girl-child | 7 ½ years | Age of Man | 19 years |
|-------------------|-----------|------------|----------|

[7]. Now, so far as the request and the prayer made on behalf of the accused to commute the death sentence to life imprisonment is concerned, having heard the learned counsel appearing on behalf of the accused on the question of death sentence imposed by the learned Sessions Court, confirmed by the High Court and considering the totality and circumstances of the case and the decisions of this Court in the cases of *Bachan Singh* (supra) and *Shyam Singh* (supra), we are of the opinion that the present case does not fall within the category of ‘rarest of rare case’ warranting death penalty. We have considered each of the circumstance and the crime as well as the facts leading to the commission of the crime by the accused. Though, we acknowledge the gravity of the offence, we are unable to satisfy ourselves that this case would fall in the category of ‘rarest of rare case’ warranting the death sentence. The offence committed, undoubtedly, can be said to be brutal, but does not warrant death sentence. It is required to be noted that the accused was not a previous convict or a professional killer. At the time of commission of offence, he was 19 years of age. His jail conduct also reported to be good. Considering the aforesaid mitigating circumstances and considering the aforesaid decisions of this Court, we think that it will be in the interest of justice to commute the death sentence to life imprisonment.

146. In the following judicial precedents, where the age of the victim girl-child was 14 years, the Hon’ble Supreme Court, although commuted the death sentence to imprisonment for life, with clarification that the convict must serve a minimum of 35 years in jail without remission.

147. In *Rajkumar v. State of M.P.*, [2014] 3 SCR 212, pg. 229; 2014-INSC-136, Feb 25, 2014, the victim used to address the accused as ‘Mama’, the victim’s parents called him to stay at their house because they had to go to irrigate the fields, and during the night he raped and murdered her, the Hon’ble Supreme Court holds,

|                   |          |            |          |
|-------------------|----------|------------|----------|
| Age of girl-child | 14 years | Age of Man | 32 years |
|-------------------|----------|------------|----------|

[19]. The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability. Before opting for the death penalty the circumstances of the offender also require to be taken into consideration alongwith the circumstances of the crime for the reason that life imprisonment is the rule and death sentence is an exception. The penalty of death sentence may be warranted only in a case where the court comes to the conclusion that imposition of life imprisonment is totally inadequate having regard to the relevant circumstances of the crime. The balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so, the mitigating circumstances have to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before option is exercised.

[20]. A three-Judge Bench of this Court in Swami Shraddhananda @ Murali Manohar Mishra v. State of Karnataka, AIR 2008 SC 3040, wherein considering the facts of the case, the Court set aside the sentence of death penalty and awarded life imprisonment, but further explained that in order to serve the ends of justice, the appellant therein would not be released from prison till the end of his life.

[21]. Thus, taking into consideration the aforesaid judgments, we are of the view that in spite of the fact that the appellant had committed a heinous crime and raped an innocent, helpless and defenceless minor girl who was in his custody, he is liable to be punished severely but it is not a case which falls within a category of rarest of rare cases. Hence, we set aside the death sentence and award life imprisonment. The appellant must serve a minimum of 35 years in jail without remission, before consideration of his case for pre-mature release. However, it would be subject to clemency power of the Executive.

148. In the following judicial precedents, where the age of the victim girl-child was under 12 years, the Hon’ble Supreme Court, although it commuted the death sentence to imprisonment for life, with clarification that the convict must serve a minimum of 30 years in jail without remission.

149. In Neel Kumar v. State of Haryana, [2012] 5 SCR 696, pg. 714; 2012-INSC-204, May 7, 2012, on the allegation against the appellant of rape and murder of his 4-year-old daughter, the Hon’ble Supreme Court holds,

|                   |         |            |       |
|-------------------|---------|------------|-------|
| Age of girl-child | 4 years | Age of Man | Adult |
|-------------------|---------|------------|-------|

[27]. Thus, in the facts and circumstances of the case, we set aside the death sentence and award life imprisonment. The appellant must serve a minimum of 30 years in jail without remissions, before consideration of his case for pre-mature release.

150. In Selvam v. State Thr. Insp. of Police, Crl.A. No. 1287 of 2011, pg. 10, May 02, 2014, while commuting the death sentence for the rape and murder of a girl-child aged 9, a three-Judge Bench of the Hon’ble Supreme Court holds,

|                   |         |            |       |
|-------------------|---------|------------|-------|
| Age of girl-child | 9 years | Age of Man | Adult |
|-------------------|---------|------------|-------|

[9]. ...As a result, we do not find any cogent reason to interfere so far as the findings of guilt recorded by the courts below are concerned. However, considering the facts and circumstances of the case the death sentence awarded by the courts below require to be converted into life imprisonment but taking note of the diabolic manner in which the offence had been committed against a child, it is desirable that the appellant should serve minimum sentence of 30 years in jail without remission, though subject to exercise of constitutional power for clemency.

151. In Raju Jagdish Paswan v. The State of Maharashtra, CrA Nos. 88-89 of 2019, pg. 10, Jan 17, 2019, the Hon’ble Supreme Court holds,

|                   |                                 |            |          |
|-------------------|---------------------------------|------------|----------|
| Age of girl-child | 9 years<br>Studying in Class IV | Age of Man | 22 years |
|-------------------|---------------------------------|------------|----------|

[9]. The Appellant dragged a girl of nine years into a sugarcane field, raped her and dumped her in a well. The cause of death according to the medical evidence was signs of recent sexual intercourse with death due to drowning. There is no doubt that the murder involves exceptional depravity which is one of the aggravating circumstances. The manner of commission of the crime is extremely brutal. However, we are of the considered opinion that the Appellant does not deserve the sentence of death in view of the following mitigating circumstances:

- a) On a thorough examination of the offence, we are unable to accept the prosecution version that the murder was committed in a pre-planned manner.
- b) The Appellant was a young man aged 22 years at the time of commission of the offence.
- c) There is no evidence produced by the prosecution that the Appellant has the propensity of committing further crimes, causing a continuing threat to the society.
- d) The State did not bring on record any evidence to show that the Appellant cannot be reformed and rehabilitated.

[10]. In view of the above, we are unable to agree with the courts below that the sentence of death is appropriate in this case. Applying the guidelines laid down by this Court for sentencing an accused convicted of murder and being mindful that a death sentence can be imposed only when the alternative option is unquestionably foreclosed, we are of the opinion that this case does not fall within the rarest of rare cases.

[13]. Though we have already expressed our view that the Appellant does not deserve to be put to death, he is not entitled to be released on completion of 14 years while serving life imprisonment. The brutal sexual assault by the Appellant on the hapless victim of nine years and the grotesque murder of the girl compels us to hold that the release of the Appellant on completion of 14 years of imprisonment would not be in the interest of the society. Considering the gravity of the offence and the manner in which it was done, we are of the opinion that the Appellant deserves to be incarcerated for a period of 30 years....

152. In Parsuram v. State of Madhya Pradesh, CrI.A. No. 314-315 of 2013, pg. 9, Feb 19, 2019, commuting the death sentence of a boy aged 22, who had raped and murdered a minor girl, a three-Judge Bench of the Hon’ble Supreme Court holds,



|                   |         |            |          |
|-------------------|---------|------------|----------|
| Age of girl-child | Student | Age of Man | 22 years |
|-------------------|---------|------------|----------|

[14]. Having regard to the totality of the facts and circumstances of the case, more particularly when the accused has taken advantage of his relationship with the family of the victim as a tutor, though we find that the instant case does not fall in the category of the “rarest of rare” cases deserving imposition of the death penalty, the interest of justice would be met if the appellant herein is sentenced to undergo imprisonment of 30 years (without any remission). Accordingly, we partly allow the appeals. While confirming the conviction, we modify the sentence imposed on the appellant from death to life imprisonment of an actual period of 30 years (without any remission).

153. In *Irappa Siddappa Murgannavar v. State of Karnataka*, [2021] 11 S.C.R. 51, pg. 73; 2021-INSC-707, Nov 08, 2021, a girl-child aged 5 years and 2 months was raped and killed by strangulation, and then her body was put in a gunny bag and disposed of in the stream; a three-Judge Bench of the Hon’ble Supreme Court holds,

|                   |                    |            |             |
|-------------------|--------------------|------------|-------------|
| Age of girl-child | 5 years & 2 months | Age of Man | 23/25 years |
|-------------------|--------------------|------------|-------------|

[30]. ...The appeals are, however, partly allowed by commuting the death sentence to that of life imprisonment with the stipulation that the appellant shall not be entitled to premature release/remission before undergoing actual imprisonment of 30 years for the offence under Section 302 of the Code and further the sentences awarded shall run concurrently and not consecutively.<sup>12</sup>

154. In *Arvind @ Chhotu Thakur v. State of M.P.*, CrI.A. No. 12 of 2022, pg. 3, Jan 04, 2022, the Hon’ble Supreme Court holds,

|                   |          |            |       |
|-------------------|----------|------------|-------|
| Age of girl-child | 10 years | Age of Man | Adult |
|-------------------|----------|------------|-------|

In the facts and circumstances of this case, the appellant is convicted for offences under Sections 376-A, 302, 363, 201 IPC and Section 6 of POCSO Act and is sentenced to imprisonment for a period of 30 years. He shall not be entitled to seek remission.

155. In *Pappu v. State of Uttar Pradesh*, [2022] 2 S.C.R. 13, pg. 100; 2022-INSC-164, Feb 09, 2022, the allegations in the matter were that the accused had enticed a seven-year-old girl to accompany him under the pretext of picking lychee fruits; then, he committed rape upon the child, caused her death, and dumped her body near a bridge on the riverbank, and commuting the death Sentence to 30 years of actual life imprisonment, a three-Judge bench of the Hon’ble Supreme Court holds,

|                   |         |            |             |
|-------------------|---------|------------|-------------|
| Age of girl-child | 7 years | Age of Man | 33-34 years |
|-------------------|---------|------------|-------------|

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<sup>12</sup> In view of the Constitutional Bench decision in *Union of India v. Sriharan alias Murugan and others*, (2016) 7 SCC 1, the above direction would not affect the constitutional power of the President or Governor under Article 72 or 161 of the Constitution of India.

[45]. The appellant was about 33-34 years of age at the time of commission of crime in the year 2015. Looking to the overall facts and circumstances, in our view, it would be just and proper to award the punishment of imprisonment for life to the appellant for the offence under Section 302 IPC while providing for actual imprisonment for a minimum period of 30 years. Having regard to the circumstances of this case and other punishments awarded to the appellant, it is also just and proper to provide that all the substantive sentences shall run concurrently.

156. In *Bhaggi @Bhagirath @Naran v. The State of Maharashtra*, [2024] 2 S.C.R. 111, pg. 122; 2024-INSC-82, Feb 05, 2024, the Hon’ble Supreme Court holds,

|                   |         |            |          |
|-------------------|---------|------------|----------|
| Age of girl-child | 7 years | Age of Man | 40 years |
|-------------------|---------|------------|----------|

[21]. We further direct that the petitioner-convict shall not be released from jail before completion of actual sentence of 30 years, subject to the observation made in the matter of its computation, as mentioned above.

157. There are additional factors that might not justify the irreversible sentence of capital punishment. There must be a justification for the death sentence, and the quality of the evidence, investigation, and trial must leave no ‘Residual Doubt.’ All the attending factors must rule out any ‘Chance of Reformation,’ and thus make it fall in the ‘Rarest of Rare’ category. It is one of those rare cases where the line that separates the categories of the “Rarest of Rare” from “Rare” is on the razor’s edge. The biggest challenge before this Court is that when the death penalty is not imposed and when Executive policies permit early release, how do we save the girls from the perverts who, after committing rape, kill them to destroy the evidence? Section 6 of POCSO Act and the judicial precedents on §302 IPC permit us to commute death to life till the end of natural life. However, we have to take a conscious decision by sending an underlying message that the irreparable of the two crimes was her murder, because if the accused had not strangled her to death, medical science might have saved her life, and no one can rule out this possibility; and now to ensure that this pervert is not a potential risk to the other girls, he must remain in prison till the sunset of his virility.

158. The trial Court sentenced the convict to DEATH on two counts, first for the offence of rape of a minor under §6 of POCSO Act, and second for the offence of murder punishable under §302 IPC. Regarding the sentence under §302 IPC, all the mitigating factors compel this Court to award the maximum possible incarceration, other than capital punishment, to avoid violating the accused's right to a sentence proportionate to what was awarded to other similarly placed convicts, as an alternative to a death sentence. Given the above, it shall be appropriate to commute the death sentences on both counts of murder and rape to life imprisonment, with the following clarifications.

159. For the offence of murder punishable under §302 IPC, the convict Pawan is sentenced to imprisonment for life, with the stipulation that he shall not be released unless he has served 50 years of sentence, and the fine is enhanced to Rs. Fifty Lacs [INR 50,00,000/-], which on realization shall be paid as compensation to the victim's family. There shall be no imprisonment in default of payment of fine for the reason that the fine amount has to be recovered from the convict and paid as compensation.

160. When calculating sentences for the rape of minor victims, punishable under §6 of the POCSO Act, 2012, the most significant factors include the victim's age, the nature of injuries, the degree of cruelty, and the number of assailants. We clarify that we are not discussing any scenario that depicts apparent *prima facie* consent. We are also not discussing the rape of adult victims. We do not have any sentencing guidelines to guide us. Even the judicial precedents on the doctrine of proportionality fail to cast sufficient light to help us avert a crash. Clear guidelines are always better than impulse, and it is better to be logical than to vacillate intuitively. In the absence of distinct sentencing guidelines, the only process we can follow is the hydraulic force of the descending scale model, which would suggest the hypothetical median starts at the age of consent, with *minima* starting from the age of consent accelerating towards the lowest age as *maxima*. By following the process of the descending scale model for calculating the proportionate and just sentence for rape, in a case of a minor victim, when the victim's age goes down, the sentence goes up. The lower the victim's age, the higher the sentence; graver the cruelty, harsher the sentence; and more the number of perpetrators, severer the sentence.

161. In the present case, the victim is around seven years and seven months of age and falls within the bracket of seven to eight years of age, and there was a single perpetrator. In such a situation, the proportionate sentence for rape punishable under §6 of POCSO Act should be 23 years of rigorous imprisonment, and the fine is enhanced to Rupees twenty-three lacs [INR 23,00,000/-], which on realization shall be paid as compensation to the victim's family. There shall be no imprisonment in default of payment of fine for the reason that the fine amount has to be recovered from the convict and after its recovery, in full or in part, to be paid as compensation.

162. As a result, the appeal is partly allowed; the conviction is upheld on all counts; however, the death sentence is commuted to the sentence as mentioned herein.

163. Given the above, the conviction of the appellant Pawan alias Moni for all the charges is upheld, and the sentence shall stand modified to the following terms: -

- (i) **The death sentence awarded under §302 IPC is commuted to Rigorous imprisonment for Life, with the clarification that Pawan alias Moni shall**

not be released unless he has served a minimum actual sentence of fifty years (50 years), and the fine is enhanced to Rupees fifty lacs [INR 50,00,000/-], which on realization shall be paid as a compensation to the victim’s family. There shall be no imprisonment in default of payment of fine for the reason that fine amount has to be recovered from the convict to be paid as compensation.

- (ii) The death sentence awarded under §6 of POCSO Act is also commuted, and the convict is sentenced to suffer Rigorous imprisonment for twenty-three years (23 years), and the fine is enhanced to Rupees twenty-three lacs [INR 23,00,000/-], which on realization shall be paid as compensation to the victim’s family. There shall be no imprisonment in default of payment of fine for the reason that fine amount has to be recovered from the convict to be paid as compensation.
- (iii) Remaining sentences awarded by the trial Court under §§365, 366, & 201 of IPC, are upheld, however, sentence in default of payment of fine is reduced to simple imprisonment for 1 day for each default.
- (iv) All the substantive sentences shall run concurrently. Period already undergone from arrest in this FIR till the award of sentence shall be set off in terms of §428 CrPC [§468 BNSS].

164. The trial Court shall order the destruction of all other case property in accordance with the rules, notifications, and office orders, if any, after six months from the pronouncement of this Judgment. If any SLP/Appeal/Review/Curative Petition is filed before the Hon’ble Supreme Court of India, then, as per its directions, if any, regarding the case property, and if no such directions are made, then after six months from the final order of the Hon’ble Supreme Court.

165. As an outcome, the conviction and sentence awarded by the trial Court to the Convict Pawan alias Moni is modified and shall stand substituted as follows:

| Substituted Sentence imposed upon the convict –Pawan alias Moni |                                                                                                                                                                   |                                   |                                                                                                        |
|-----------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|--------------------------------------------------------------------------------------------------------|
| SECTION                                                         | SENTENCE OF IMPRISONMENT                                                                                                                                          | FINE IN INR                       | SENTENCE IN DEFAULT OF PAYMENT OF FINE                                                                 |
| 302 IPC                                                         | Rigorous imprisonment for Life, with the clarification that Pawan alias Moni shall not be released unless he has served a minimum actual sentence of fifty years. | INR 50,00,000/-<br>Rs. Fifty Lacs | There shall be no imprisonment in default of payment of fine for the reason that fine amount has to be |

|                        |                                                     |                                              |                                                                                                                                                                      |
|------------------------|-----------------------------------------------------|----------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                        |                                                     |                                              | <b>recovered from the convict to be paid as compensation.</b>                                                                                                        |
| <b>6 of POC SO Act</b> | <b>Rigorous imprisonment for twenty-three years</b> | <b>INR 23,00,000/- Rs. Twenty-three Lacs</b> | <b>There shall be no imprisonment in default of payment of fine for the reason that fine amount has to be recovered from the convict to be paid as compensation.</b> |
| <b>365 IPC</b>         | <b>RI for 07 years</b>                              | <b>INR 1000/-</b>                            | <b>Simple Imprisonment for 1day</b>                                                                                                                                  |
| <b>366 IPC</b>         | <b>RI for 10 years</b>                              | <b>INR 1000/-</b>                            | <b>Simple Imprisonment for 1day</b>                                                                                                                                  |
| <b>201 IPC</b>         | <b>RI for 07 years</b>                              | <b>INR 1000/-</b>                            | <b>Simple Imprisonment for 1 day</b>                                                                                                                                 |

166. All the substantive sentences awarded to the appellant shall run concurrently.
167. The sentence shall include total custody till date, including remission if earned till the date of pronouncement of this judgment, as actual custody.
168. In case the prisoner Pawan alias Moni suffers from any mental or health issues, then during that time, he may be kept out of prison in some other facility, subject to and in terms of the opinion of the Doctors and the Subject Specialists, and the period spent for this term shall be considered as if he had served his actual sentence.
169. The compensation amount shall be paid to the parents and siblings of the deceased victim in equal shares, and the concerned Court shall take steps to disburse it after realization from the convict, and all the Authorities concerned shall fully cooperate in tracing the victim’s parents and siblings, so that the compensation, if recovered can be distributed evenly to all the above mentioned family members who are surviving at the time of disbursement.
170. CRA-D 1302 of 2023, Pawan alias Moni v. State of Haryana, is partly allowed on the terms mentioned above.
171. Murder Reference No. 7 of 2023 is dismissed because of the commutation of the death sentence to the sentence as mentioned above.
172. To comply with §412 BNSS, 2023 [371 CrPC, 1973], the proper officer of the High Court shall, without delay, send either physically or through electronic means, a copy of the

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order, under the seal of the High Court and attested with their official signature, to the Court of Session.

173. Both matters stand closed on the terms set out in this verdict. All pending miscellaneous applications, if any, stand disposed of.

**(ANOOP CHITKARA)**  
**JUDGE**

**(RAMESH CHANDER DIMRI)**  
**JUDGE**

Aug 11, 2026  
Jyoti Sharma

|                           |            |
|---------------------------|------------|
| Whether speaking/reasoned | YES        |
| Whether reportable        | <b>YES</b> |