

(2023) 04 CHH CK 0052

In the Chhattisgarh High Court

Case No : CRREF No. 1 Of 2019, Criminal Appeal No. 489 of 2019

In Reference Of State Of Chhattisgarh

APPELLANT

Vs

Jhaggar Singh Yadav

RESPONDENT

Date of Decision : 27-04-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 173(2), 175, 313, 354(3), 366, 371
Indian Penal Code, 1860 — Section 120B, 201, 302, 363, 364, 376, 376(2)(I)(n)
Protection of Children from Sexual Offences Act, 2012 — Section 4, 5(I), 5(m), 6
Evidence Act, 1872 — Section 27, 106

Citation : (2023) 04 CHH CK 0052

Hon'ble Judges : Ramesh Sinha, CJ; Sanjay K. Agrawal, J

Bench : Division Bench

Advocate : Raghavendra Pradhan, Sangharsh Pandey

Final Decision : Partly Allowed

Judgement

1. Criminal Appeal No. 489 of 2019 is preferred by the convict/appellant against the judgment of conviction and order of sentence dated 18.02.2019 passed by the Sessions Judge (Incharge-F.T.C.) District Balod, Chhattisgarh, in Sessions Trial No. 80/2017 awarding the following sentences to the appellant, which were to run concurrently and the fine amount to be realised separately:

Conviction U/s.

Sentence

Section 302 of the Indian Penal Code

:

Death sentence and fine of Rs. 3000/-. In default of payment of fine, additional rigorous imprisonment for six months.

Section 363 of the Indian Penal Code

:

Five years rigorous imprisonment and fine of Rs. 1000/-. In default of payment of fine, additional rigorous imprisonment for two months.

Section 376(2)(i)(n) of the Indian Penal Code

:

Imprisonment for life and fine of Rs. 3000/-. In default of payment of fine, additional rigorous imprisonment for six months.

Section 201 of the Indian Penal Code

:

Seven years rigorous imprisonment and fine of Rs. 1000/-. In default of payment of fine, additional rigorous imprisonment rigorous imprisonment for three months.

Section 5(1)(m) of the Protection of Children from Sexual Offences Act, 2012

:

Imprisonment for life and fine of Rs. 2000/-. In default of payment of fine, additional rigorous imprisonment for six months.

2. The learned Sessions Judge (Incharge-Fast Track Court), Balod, District Balod, in exercise of power conferred under Rule 273(b) of the Rules and Orders (Criminal) and Section 366 of the Code of Criminal Procedure, 1973, (for short, the Cr.P.C) after passing the sentence of death submitted the proceedings to this Court for confirmation and this is how this death reference is before us for consideration along with the appeal preferred by the convict/ appellant, being Cr.A. No. 489/2019.

3. The prosecution story, in nutshell, is that on 05.06.2017, the convict/appellant is alleged to have taken away a minor girl aged 12 years away from the lawful guardianship of her parents from Ward No. 7, Teachers Colony, Dallirajhara, towards the Kharritola Murum Khadan-Jungle of Chilklakasa and thereafter committed rape and aggravated penetrative sexual assault upon her more than once and committed murder of the minor girl and thereafter caused murder by using stone and also caused disappearance of evidence.

4. The First Information Report (FIR) (Exhibit P/1), bearing Crime No. 139/2017 was lodged on 06.06.2017 at about 16:45 hours, by Renuka Sahu (PW-1), mother of the deceased, at Police Station, Rajhara, District Balod, regarding missing of her minor daughter, stating that she works as a labourer. On 06.06.2017 at about 8:00 a.m., her mother-Jamuna Sahu (maternal grandmother of the prosecutrix/deceased) came to her house and asked about the deceased upon which PW-1 stated that when the deceased resides with her,

she must be knowing where she was. Upon hearing this, Jamuna Sahu told PW-1 that since yesterday i.e. 05.06.2017 at about 3:00 pm, the deceased had gone out of the house and thereafter she did not come back. She went out in search of her when she met Savitri Kunjam (PW-4), wife of Chamar Singh, who told her that the deceased was sitting in her house. At that time, the appellant came who was in a drunken condition and asked the deceased to sit on his bicycle. Wife of Chamar Singh restrained the convict/appellant from taking the deceased with her stating that he was in a drunken condition but till that time, the deceased went towards Arjun Cycle Stores. When she went towards the cycle stores and asked about the deceased, the owner of the cycle stores told that he was unaware about the deceased. Later on, while searching the deceased, Sonu Yadav (PW-2) informed her that yesterday, at about 4:45 p.m, he had seen the convict/appellant taking the deceased on his bicycle towards Chikhlakasa. PW-1 described the identification marks and physique of the deceased in the said FIR further stating that her brother Kailash Sahu, Sonu Yadav (PW-2) and the wife of Chamar Singh are aware of the incident and suspected that Jhaggar Yadav had abducted her daughter.

5. An offence under Section 363 of the IPC was registered against the convict/appellant and started searching the minor girl. While searching near Kharritola Mining area near Chikhlakasa, the dead body of the minor girl was noticed by the family members and villagers. The police registered as 'Dehati Merg Intimation' being 0/2017 (Exhibit P/2) on 06.06.2017 at 23:35 hours and started investigating the matter. Thereafter, Merg No. 22/2017 was registered on 07.06.2017 at 6:25 hours. Dead body identification panchnama (Exhibit P-3) was conducted wherein the dead body was identified to be of the daughter of Renuka Sahu (PW-1). Inquest report (Exhibit P/20) was also prepared.

6. On 07.06.2017, at 6:45 hours, from the place of incident, blood stained soil and plain soil were obtained in a plastic container, blood stained leaves and blood found at the place of incident were also seized and a memo (Exhibit P-4) was prepared by the Investigating Officer.

7. On 07.06.2017 at 10:15 hours, a panel of three Doctors namely Dr. Sonam Deshmukh, Dr. R.R.Singh and Dr. K.K.Ramteke (PW-6) conducted the postmortem on the body of the deceased. In the postmortem report (Exhibit P-13), the following injuries were found:

"Dead body of a thin built young aged female child. Rigor mortis present all over the body. Eyes closed, face is stained with dried blood stains. Face swollen. 4 No. of L.W 6X2 cm each in size bone deep. One is over sub mandibulae region and rest three are over Lt. Parietal region of skull and one LW over occipital bone vertical in nature bone deep with # of occipital and Lt. Parietal bone, abrasion and contusion marks present over whole of back and buttocks. Blackish red in colour. Face also contains contusion mark. Brain covered with clotted blood causing sub dural haemorrhage. Anal orifice having tear marks over 6 O'Clock position. Vagina open. Hymen ruptured. Multiple abrasion over perineal.

Secondary sexual character not well developed. Both thighs contained dried blood stains. Both palms having dried blood."

The Doctors opined that all the injuries were ante mortem in nature caused by hard, blunt and heavy object. The injuries on back and buttock were caused because of rough surface. On examinig the internal and extenal genitals of the deceased, the vagina was found open, hymen ruptured with multiple abrasions over perineal region.

8. The cause of death was opined to be shock due to extensive haemorrhage from the injury of skull. It was further opined that the deceased was assaulted with forced sexual intercourse which damaged her genitals and the approximate time elapsed since death was 12 to 13 hours from the time of conducting autopsy. Three number of vaginal slides were prepared and handed over to the police for examination of sperm at Forensic Science Laboratory.

9. A Spot Panchnama (Exhibit P/9) and Spot Map (Exhibit P/10) was prepared by the Ms. Padma Jagat, Sub Inspector (PW-9).

10. The convict/appellant was physically examined for which a memo was sent by the Station House Officer, Police Station Dallirajhara, District Balod, on 09.06.2017 upon which Dr. K.K.Singha, Medical Officer, PHC, Chikhlakasa, District Balod gave its report that the convict/appellant was both physically and mentally fit with no signs of external injury on the body. On the same day, another request was made by the Station House Officer for examination of the genitals of the convict/accused to ascertain as to whether he was capable of performing sexual intercourse or not. Dr. K.K.Singha (PW-7) gave its report (Annexure P/15) stating that the person was fully developed male capable of performing sexual act.

11. The appellant was arrested on 09.06.2017 at 13:30 hours (Exhibit P/11) by the Investigating Officer, Mr. Manish Singh Parihar (PW-10) and the intimation regarding his arrest was also duly given to his son. The memorandum statement (Exhibit P/5) of the convict/appellant was recorded where he narrated the entire story and at his instance, the weapon used for commission of the crime, i.e. the stone having blood stains weighing about 3.310 KG was recovered from the place of incident.

12. On the same date, at 15:45 hours, one blue coloured underwear worn by the convict/appellant and his pubic hair were seized vide Exhibit P/23 by the Investigating Officer (PW-10). Similarly, a purpule coloured frock, a brown coloured panty and three numbes of vaginal slides of the deceased were seized vide Exhibit P/30 by the Investigating Officer (PW-10).

13. On 09.06.2017, a query was made by the Station House Officer with regard to presence of semen in the underwear of the convict/appellant which was replied to by the Medical Officer, PHC, Chikhlakasa (Exhibit P-16) stating that the said underwear be sent to the FSL, Raipur for chemical analysis of dried spots.

Another query was made with regard to the seized stone as to whether it could be used for commission of the offence. The said query was replied by Dr. K.K.Ramteke (PW-6) stating that the injuries sustained by the deceased on her forehead could have been caused by the said stone.

14. On 10.07.2017 at 11:20 hours, certified copy of the admission register (Exhibit P/12) in respect of the deceased was seized from the possession of the Head Mistress of Government Girls Middle School, Chikhlakasa, District Balod, wherein, the date of birth of the deceased was mentioned as 18.02.2006. On the same day, at 19:00 hours, the birth certificate of the deceased in which the date of birth was mentioned as 18.02.2006, was seized vide Exhibit P/26.

15. Bharat Bhushan Tiwari, the Patwari of Patwari Halka No. 9, Armurkasa, Dallirajhara, District Balod, prepared the spot map (Exhibit P/17).

16. Eight sealed packets containing the articles which were seized during the course of investigation were sent for examination to the Forensic Science Laboratory, Raipur on 13.06.2017 (Exhibit P/27) . On the said date, another two sealed packets containing the undergarment of the deceased and the vaginal slide, received from the Hospital, were also sent to the Forensic Science Laboratory, Raipur for examination. The FSL report is Exhibit P/29.

17. The police investigated the case and submitted its report under Section 173(2) of the CrPC on 27.08.2017 before the Sessions Judge, Balod, alongwith charge-sheet under sections 363, 376, 302 and 201 of the IPC as well as Section 4 and 6 of the Prevention of Children from Sexual Offences Act, 2012. The case was registered as Sessions TrialNo. 80/2017.

18. The learned Sessions Judge framed charges on 27.09.2017 charging the convict/appellant under Sections 363, 376(2)(I)(n), 302, 201 of the IPC as well as Section 5(l)(m)/6 of the Act of 2012.

19. Among others, the prosecution filed the following documents:

- First Information Report(Exhibit P-1);
- Dehati Marg Intimation (Exhibit P-2)
- Dead Body Identification (Exhibit P-4);
- Property seizure memo (Exhibit P-6 to Exhibit P-8)
- Spot Panchnama (Exhibit P-9);
- Spot map (Exhibit P-10);
- Arrest memo (Exhibit P-11);
- Property seizure memo (Exhibit P-12);
- Application for postmortem and postmortem report (Exhibit P-13);

- Application for MLC and MLC report of the appellant/convict (Exhibit P-14 and P/15);
- Memo for query and query report (Exhibit P-16);
- Covering memo for spot map and spot map (Exhibit P-17);
- Crime details form (Exhibit P-18)
- Summons under Section 175 CrPC (Exhibit P/19);
- Inquest report (Exhibit P-20);
- Duty Certificate (Exhibit P-21);
- Dead body supurdnama (Exhibit P-22);
- Property seizure memo (Exhibit P-23);
- Memo for query and query report (Exhibit P-24);
- Memo for spot map (Exhibit P-25);
- Property seizure memo (Exhibit P-26);
- Memo for FSL report (Exhibit P-27);
- Exhibit Receipts (Exhibit P-28);
- FSL Report (Exhibit P-29);
- Property seizure memo (Exhibit P-30).

20. In order to prove its case, the prosecution examined the following witnesses:

Smt. Renuka Sahu (PW-1) (The Informant): She is the mother of the deceased who lodged the FIR regarding missing of the minor girl.

Nirmal @ Sonu Yadav (PW-2): He is the neighbour of PW-1 who saw the deceased last alongwith the convict/appellant. He deposed that he had seen the convict/appellant taking the deceased on his bi-cycle towards the Murum Khadan, Kharritola, Chikhlakasa.

Smt. Shashikala Deshmukh (PW-3): She is the Head Mistress

of Government Girls Middle School, Chikhlakasa who deposed that a copy of the admission register which starts from the year 2014, was seized by the police from the former Head Mistress Smt. Pushpa Meshram. The said document bears the date of birth of the deceased.

Smt. Savitri Kunjam (PW-4): She is the neighbour of Smt. Renuka Sahu (PW-1). She deposed that the deceased had come to her house where the convict/appellant came in a drunken condition who followed the deceased when she left her house and went towards a cycle store.

Lochan Singh (PW-5): He deposed that he is among one who had gone for search of the deceased when she went missing. He is the witness to the dead body Panchnama (Exhibit P-3), property seizure memorandum (Exhibit P-4, P-6, P-7, P-8), memorandum statement of the convict/appellant (Exhibit P-5), and the spot panchnama (Exhibit P-9), spot map (Exhibit P-10) and the arrest memorandum (Exhibit P-11).

Dr. K.K.Ramteke (PW-6): He is one among the panel of three Doctors who conducted the post-mortem of the deceased. He deposed that he, alongwith Dr. Sonam Deshmukh and Dr. R.R.Singh had conducted the postmortem. He has described about the injuries and cause of death as stated in para 7 above.

Dr. K.K.Singha (PW-7): He is the Medical Officer who was posted at Primary Health Centre, Chikhlakasa. His evidence was taken through video-conference. He deposed that he had conducted the MLC (Exhibit P-14) of the convict/accused and found him to be mentally and physically fit. He also examined his genitals which were found to be capable of performing sexual intercourse (Exhibit P-15). He had also examined the underwear of the convict/accused and suggested that the same be sent to the FSL, Raipur for chemical examination (Exhibit P-16).

Bharat Bhushan Tiwari (PW-8): He is the Patwari of Halka No. 9, Armurkasa. He had prepared the spot map (Exhibit P-17).

Ms. Padma Jagat (PW-9): She is the Sub Inspector who had prepared the Dead Body Identification (Exhibit P-3). She had also seized plain soil and blood stained soil from the place of incident (Exhibit P-4) and also had prepared the spot map enclosed with the crime details form (Exhibit P-18). She had also sent the summons under Section 175 CrPC (Exhibit P-19) to the witnesses for preparation of inquest (Exhibit P-20). She had also sent a memo (Exhibit P-13) for conducting postmortem and had also issued duty certificate (Exhibit P-21) to Constable Devendra Sahu. She had also prepared the dead body Supurdnama (Exhibit P-22).

Manish Singh Parihar (PW-10): He is the Investigating Officer who investigated the entire case.

21. The statement of the convict/appellant under section 313 CrPC was recorded in which he was asked as many as 87 questions to which either he replied expressing his ignorance or that it was false. He also expressed his unwillingness to say anything in his defence and merely stated that he has been falsely implicated in this case.

22. The learned Sessions Judge, after considering the evidence on record, convicted the appellant and awarded punishment on 18.02.2019 as detailed in the opening paragraph of the judgement. Hence, the present appeal by the convict/appellant.

23. Mr. Sangharsh Pandey, learned counsel appearing for the convict/appellant would submit that the judgment of conviction is based on circumstantial evidence

but the chain of circumstances are not connected with each other. The conviction of the convict/appellant is based mainly on the evidence of Nirmal @ Sonu Yadav (PW-2) and Savitri Kunjam (PW-4) which do not inspire confidence. Even the last seen theory could not be proved substantially and there is a big gap between last seen and the recovery of the body. As per the statement of Savitri Kunjam (PW-4), there was no conversation between the accused and the deceased and they left her house one by one and not together. The witnesses are also not independent witness being the relatives and neighbour of the deceased. The contents of memorandum recorded under Section 27 of the Evidence Act are confined only to seizure of articles at the instance of the person giving memorandum statement. Culpable statement recorded in the memorandum is not admissible as per provisions of Section 27 of the Evidence Act. Further more, the dead body of the deceased was discovered by the relatives and villagers and not at the instance of the convict/appellant. He would further argue that as per the memorandum of the convict/appellant, he dragged the dead body in order to conceal it but no clothes of the convict/appellant were seized to find out any traces of blood of the deceased. There is also no sign of any injury over the body of the accused which would have been caused while commission of sexual intercourse on a rough surface. Santosh Yadav, on whose information the dead body was recovered has not been examined in this case. The ownership of the bicycle on which the deceased was said to have been taken by the accused is also not proved. Further, no questions were put to the accused in his examination under Section 313 of the CrPC with regard to findings of the FSL report, DNA report and ownership of the bicycle. Even in the statement of Lochan Singh (PW-5), he has deposed that chocolate and slipper of the deceased was seized vide Exhibit P-4, property seizure memo, however, the same is not reflected in the said exhibit which makes the property seizure memorandum doubtful. The medical evidence like the FSL report and the DNA report is not pointing towards the guilt of the convict/appellant. Lastly, the alleged crime was not a premeditated one. The sentence awarded to the convict/appellant is disproportionate and the capital punishment awarded by the learned Trial Court is not at all justified. Accordingly, he would pray that the appeal filed by him may be allowed and the reference application may be dismissed.

24. Mr. Raghavendra Pradhan, learned Additional Advocate General, appearing for the State/prosecution would submit that there is ample evidence on record and the prosecution has been successful in proving its case beyond all reasonable doubts. The convict/appellant was last seen with the deceased and he has no explanation to offer with regard to the same. Even the FSL report clearly indicates involvement of the convict/appellant in the crime in question. The judgment of conviction and order of sentence passed by the learned Sessions Court needs no interference and looking to the heinous nature of crime committed by the convict/appellant, the capital punishment awarded needs no interference and accordingly, the reference application may be allowed and the appeal of the convict/appellant may be dismissed.

25. We have heard counsel for the parties, considered their rival submissions and have gone through the materials available on record with utmost circumspection.

26. There is no eye witness to the incident and the conviction is mainly based on circumstantial evidence and the last seen theory.

27. The deceased was a minor girl aged about 11 years and 3 months and 7 days on the date of incident which is well established by the Birth Certificate (Exhibit P-26), admission register (Exhibit P-12) seized from the then Head Mistress Smt. Pushpa Meshra, regarding which Smt. Shashikala Deshmukh (PW-3) has stated that the date of birth of the deceased was 18.02.2006. Hence, there is no dispute that the deceased was a minor on the date of incident.

28. Renuka Sahu (PW-1) who is the mother of the deceased has stated in her deposition that on 06.06.2017, when she was about to leave for her work, her mother Jamuna Bai came asking about the deceased and stated that she was not with her in the night. When she enquired from her neighbour while searching the deceased and was about to go to the police station, Chamar Singh, husband of Savitri Kunjam (PW-3) came that the deceased was in their house on the previous day and the accused/convict was also sitting there. The accused asked the deceased to sit in his bi-cycle but she refused. Savitri Kunjam also asked the convict/appellant that you are in a drunken condition and where he intended to take the deceased. The deceased left the place and went to a cycle store. The informant has clearly deposed that she had lodged the FIR naming the convict/appellant as the prime suspect. In her cross examination, PW-1 has stated that convict/appellant happens to be her uncle (Chacha). PW-1 further deposed that neither she nor her mother had seen the deceased going with the convict/appellant.

29. Nirmal @ Sonu Yadav (PW-2) is the neighbour of the deceased. He used to work under the contractor Kailash, who is the uncle (Mama) of the deceased. He had deposed that while he was working behind Nirmala School on 05.06.2017, at about 4:45 pm, he had seen the convict/appellant taking the deceased on his bi-cycle. On the next day, when he had returned to his home for taking lunch, he came to know that all the people around there were searching for the deceased upon which he informed Kailash that he had seen the convict/appellant taking the deceased on his bi-cycle towards Chikhlakasa. Thereafter, he alongwith others went to the police station for lodging of the FIR and also went towards the Putarwahi forest in search of the deceased but they could not find her. He also deposed that while they were returning from village Putarahi, Santosh Yadav of village Barsatola who was standing in front of his house, told him that the convict/appellant had come to his house in the morning at 4 am. After taking rest for some time, the convict/appellant went towards the Kharritola Murum Mines on his bi-cycle. Santosh also informed him that when he had gone towards Kharritola Murum Mines, for picking glass-bottles, he had seen the appellant/accused there. PW-2 alongwith police personnel and other persons went towards

the Murrum Mines in search of the deceased where they found the body of the deceased covered with leaves. He is the witness to Dehati Merg Intimation (Exhibit P-2) and Dead Body Identification Panchnama (PW-3). He also stated that the memorandum statement of the convict/appellant was also taken in his presence in which the convict/appellant had stated that he had thrown the stone near the place of incident and thereafter, the said stone was also seized. He is also the witness to the property seizure memo (Exhibit P-6) and the bi-cycle recovered from the house of relative (Samdhi) of the convict/appellant (Exhibit P-7). He also deposed the the spot panchnama (Exhibit P-9) and spotmap panchnama (Exhibit P-10) was prepared by the police as stated by the convict/appellant and he is also a witness to the arrest panchnama (Exhibit P-11). In his cross examination, he has specifically stated that it was incorrect to state that as his family and the family of the convict/appellant were not in talking terms, therefore he has is making false statements against the convict/appellant.

30. Smt. Shashikala Deshmukh (PW-3) is the Headmistress of Middle School Chikhlakasa and has deposed that the former Headmistress namely Smt. Pushpa Meshram got the photocopy of the admission register seized by the police in which the date of birth of the deceased is mentioned as 18.02.2006.

31. Savitri Kunjam (PW-4) is the wife of Chamar Singh who had informed PW-1 that on 05.06.2017, the deceased was at her home at around 5 p.m. and the convict/appellant also stayed at her home for about half an hour. The deceased said to her that she was going to the cycle store for repair of her bi-cycle upon which PW-4 stated that since it was late in the evening, she should not go. At that time, the convict/appellant followed the deceased. Except this, she knows nothing. On the next day, when the mother of the deceased came to her house in search of the deceased, PW-4 informed that when the deceased left her house, the convict/appellant had followed her. Later, she came to know that the deceased died in the forest/hill away from the village. In the cross-examination, she has deposed that convict/appellant was sitting in her house for about half an hour. The deceased came there and asked about her childrens and after few minutes, she left her house stating that she has to get her bi-cycle repaired. At that time, it had become dark. She also stated that there was no talks between the deceased and the convict/appellant and they left her house one after another.

32. Lochan Singh (PW-5) is the person who resides near the house of convict/appellant. He knew the deceased. When the dead body was found, he had also gone there and is a witness to the Dead Body Identification Panchnama (PW-3). He deposed that from the place of incident, the slippers, choclote, blood stained soil, blood stained leaves were seized by the police and the property seizure memorandum was prepared which is Exhibit P-4. Memorandum statement of the convict/appellant (Exhibit P-5) was also taken in his presence and the stone used in commission of the crime was also seized at the instance of the convict/appellant and property seizure memorandum (Exhibit P-6) was prepared. At the instance of the convict/appellant, one old bi-cycle was also seized which is

Exhibit P-7. The underwear of the convict/appellant was also seized in his presence which is Exhibit P-8. Spot Panchnama (Exhibit P-9) and Spot Map (Exhibit P-10) were also prepared in his presence. In his cross examination, he states that when he alongwith others reached the Police Station, the convict/appellant was sitting there and he cannot say since what time the police had kept him there. He further states that he cannot say as to whether the police had assaulted the convict/appellant. Lastly, he deposed that it was incorrect to say that since he had good relations with the family of the deceased, he was making incorrect statements against the convict/appellant.

33. Dr. K.K.Ramteke (PW-6) is the Doctor who was posted as Medical Officer at District Hospital, Balod since 02.02.2015. He deposed that on 06.06.2017, he was on his duty when the Constable, Devendra Kumar Sahu, No.353 brought the dead body of the deceased. Postmortem was conducted by him and two other associates namely Dr. Sonam Deshmukh and Dr. Smt. R.R.Singh. On examination of the body, the body was found to be of a weak stature, there was stiffness in the body, eyes were closed, face was covered with dried blood and swelling on the face. There were four wounds on the body. First one being a lacerated wound which was 6X2 cm bone deep, second wound was on the left parital region which was 6X2 cm as above, third was on the occipital region the size of which was as above, the bone behind the skull was fractured and the left parital bone was also fractured. The abrasion and contusion were found on the buttock and back. There were contusion on the face also. Some portion of the brain had spilled out because of the injury on the head which had blood clots in it because of which there was brain haemorrhage. There were tear marks on the anus, hymen was also torn and multiple abrasions nearby the genital part. The secondary sexual characteristics of the deceased were not developed. Both the thighs and palms had the stains of dried blood. The Doctor deposed that three vaginal slides were prepared, sealed and handed over to the concerned constable. One underwear which had white stains were also sealed and handed over to the said constable. One white frock (Kurti) which had some stains were also handed over and suggested for chemical examination. He opined that the cause of death was due to excessive bleeding and the brain was also damaged. Death had occurred between 12 to 18 hours before the postmortem and the death was homicidal in nature and there were also symptoms of sexual intercourse. In the cross examination, he states that if a stone weighing 3 KG is slammed on the head of deceased, the injuries as stated above, could be sustained. He also stated that he had responded to the query made by the police in regard to the said stone.

34. Dr. K.K.Singha (PW-7) is the Medical Officer posted at Primary Health Centre, Chikhlakasa. On 09.06.2017 at about 1:50 pm, Constable Vinod Kumar No. 3849, produced the convict/appellant Jhaggar Yadav and upon conducting the MLC (Exhibit P-14) he was found to be of sound mind and health. His genitals were also examined in which he was found to be fully capable of performing sexual activities. Accordingly, he had prepared the report (Exhibit P-15). On the

said date, the said Constable had brought a sealed packet containing Blue Colour underwear in whose front part, three stains were found which were marked by him and for definite opinion, he advised for chemical analysis. The said witness also states that he took a pubic hair of the convict/appellant and sealed it and handed over to the said Constable and prepared a report (Exhibit P-16). In the cross-examination, the said Doctor states that there were no marks of any injury on the body of the convict/appellant and no smegma. He further stated that absence of smegma can be because of various reasons.

35. Bharat Bhushan Tiwari (PW-8) is the Patwari who had prepared the spot map (Exhibit P-17). He has described the details with regard to the location of the incident.

36. Ms. Padma Jagat (PW-9) is the Sub Inspector. She states that on 07.06.2017, while investigating the Merg No. 22/2017, she had prepared the Dead Body Identification Panchnama (Exhibit P-3), Spot Map (Exhibit P-18), Panchnama Notice (Exhibit P-19), Inquest (Exhibit P-20), application for postmortem (Exhibit P-13), duty certificate (Exhibit P-21) and Dead Body Supurdnama (Exhibit P-22). She had also seized blood stained soil and plain soil from the place of incident, blood stained leaves (Exhibit P-4) and handed over to the Station House Officer for further action.

37. Manish Singh Parihar (PW-10) is the Investigating Officer who investigated the entire case. On 09.06.2017 at about 5.15 p.m., the convict/appellant was taken into custody and his memorandum statement (Exhibit P-5) was prepared. At the instance of the convict/appellant, the stone used in commission of the crime (Exhibit P-6) and the bi-cycle (Exhibit P-7) were seized. On the said date, the underwear of the convict/appellant was also seized in the presence of the witnesses (Exhibit P-8). Spot panchnama was prepared as narrated by the convict/appellant (Exhibit P-9) and the spot map was also prepared at his instance (Exhibit P-10). Memo for MLC of the convict/appellant was also prepared by him which is Exhibit P-15 and the memo for examination of the seized underwear was also prepared which is Exhibit P-16. After examination, the said underwear was again sealed and seized in presence of the witnesses which is Exhibit P 23. After arresting the convict/appellant (Exhibit P-11), intimation was given to his relatives (Exhibit P-11A). He states that during the course of investigation, on 06.06.2017, he had recorded the statement of the mother of the deceased, and on 08.06.2017, he had recorded the statement of the father of the deceased, the witnesses Nirmal @ Sonu, Jamuna Bai, Savitri Kunjam, Sukhram Yadav, Lochan Sahu, Pushpa Meshra, Pratp, Vishnu Yadav, Kailash Sahu, as stated by them. On 10.07.2017, he had seized the birth certificate (Exhibit P-26) of the deceased, which was produced by his the father of the deceased. On the said date, he had also seized a photocopy of the admission register (Exhibit P-12). He had also sent the seized articles to the Forensic Science Laboratory for examination/analysis vide memo Exhibit P-27, the receipt of which is Exhibit P-28 and its report is Exhibit P-29.

38. From perusal of the entire records and the deposition made by the witnesses before the Court as it is apparent that the convict/appellant was last seen together with the deceased. In the statement made by the convict/appellant under Section 313 Cr.P.C., in response to almost all the questions, either he has answered it to be incorrect or that he does not know. In response to the question that Nirmal @ Sonu had seen him taking the deceased on his bi-cycle towards Chikhlakasa, he simply stated that it was incorrect. He has neither tried to clarify the situation as to on that date, whether he was at some other place or was with some one else. Even the questions put with regard to seizure of bi-cycle and stone at his instance, the convict/appellant simply states that he is unaware.

39. The cross-examination conducted by the counsel for the convict/appellant before the Court below is also of no help as the statement of the witnesses have remained unshaken. It is amply clear from the statements of Nirmal @ Sonu Yadav (PW-2) who had seen the deceased last with the convict/appellant. Even one of his friend Santosh, though he has not been examined as a witness, had seen the accused/appellant going towards Kharritola Murum Khadan. Savitri Kunjam (PW-3) had also deposed that after the deceased left her house, the convict/appellant followed her, after which the deceased went missing. Even the memorandum statement of the convict/appellant speaks volumes regarding commission of the crime by him. The statement made in the memorandum is corroborated by the seizure of various articles at his instance.

40. The law with regard to circumstantial evidence is well settled. In a case where the prosecution relies upon the circumstantial evidence, it must not only prove the circumstances but should link them in such a fashion so as to form an unending chain i.e. the guilt of the accused. But if there is any chance of the accused being innocent or the crime has been committed by some other person, then the accused has to be given the benefit of doubt and on the basis of circumstantial evidence, he cannot be convicted.

41. The law laid down by Their Lordships of the Supreme Court in the matter of Sharad Birdhichand Sarda v. State of Maharashtra (1984) 4 SCC 116 is that the conditions which must be fulfilled before a case against an accused can be said to be fully established on circumstantial evidence are as under:-

(1) the circumstances from which the conclusion of guilt is to be drawn must or should be and not merely 'may be' fully established.

(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.”

42. The Supreme Court in the matter of Shivu and Anr. v. R.G., High Court of Karnataka & Anr. 2007 Cr.L.J. 1806 has reiterated that the condition precedent necessary before conviction could be based on circumstantial evidence must be established as laid down in the matter of Sharad Birdhichand Sarda (supra).

43. The theory of last seen together has been found proved by the trial Court. In the matter of Veerendra v. State of Madhya Pradesh (2016) 1 SCC 550, their Lordships of the Supreme Court relying upon the decision in the matter of Nizam and another v. State of Rajasthan Criminal Appeal Nos.5 & 6 of 2018 has held that it would not be prudent to base conviction solely on ‘last seen theory’. It was further held that where time gap between ‘last seen’ and ‘time of occurrence’ is long it would be unsafe to base the conviction solely on the ‘last seen theory’ and held that in such circumstances, it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution. It has been held in paragraphs 32.1 to 32.4 of the report as under: -

“32.1 In the decision in Nizam and Anr. Vs. State of Rajasthan [(2016) 1 SCC 550] this Court held that it would not be prudent to base conviction solely on ‘last seen theory’. This Court, obviously, sounded a caution that where time gap between ‘last seen’ and ‘time of occurrence’ is long it would be unsafe to base the conviction solely on the ‘last seen theory’ and held that in such circumstances, it is safer to look for corroboration from other circumstances and evidence adduced by the prosecution.

32.2 In State of Rajasthan Vs. Kashi Ram reported in (2006) 12 SCC 254, at paragraph 23 this Court held :

“23. It is not necessary to multiply with authorities. The principle is well settled. The provisions of Section 106 of the Evidence Act itself are unambiguous and categorical in laying down that when any fact is especially within the knowledge of a person, the burden of proving that fact is upon him. Thus, if a person is last seen with the deceased, he must offer an explanation as to how and when he parted company. He must furnish an explanation which appears to the court to be probable and satisfactory. If he does so he must be held to have discharged his burden. If he fails to offer an explanation on the basis of facts within his special knowledge, he fails to discharge the burden cast upon him by Section 106 of the Evidence Act. In a case resting on circumstantial evidence if the accused fails to offer a reasonable explanation in discharge of the burden placed on him, that itself provides an additional link in the chain of circumstances proved against him. Section 106 does not shift the burden of proof in a criminal trial, which is always upon the prosecution. It lays down the rule that when the accused does not throw any light upon facts which are specially within his knowledge and which could not support any theory or hypothesis compatible with his innocence,

the court can consider his failure to adduce any explanation, as an additional link which completes the chain. The principle has been succinctly stated in Naina Mohd., AIR 1960 Mad 218 : 1960 CrL LJ 620."

32.3 In Arabindra Mukherjee Vs. State of West Bengal [(2011) 14 SCC 352], while dismissing the appeal by the convict who stood sentenced for offences punishable under Section 302, 364, 120B and 201 of IPC, this Court held: "once the appellant was last seen with the deceased, the onus is upon him to show that either he was not involved in the occurrence at all or that he had left the deceased at her home or at any other reasonable place. To rebut the evidence of last seen and its consequence in law, the onus was upon the accused to lead evidence in order to prove his innocence."

32.4 In Pattu Rajan Vs. State of Tamil Nadu [(2019) 4 SCC 771] this Court held in paragraph 63 thus :-

"It is needless to observe that it has been established through a catena of judgment of this court that the doctrine of last seen, if proved, shifts the burden of proof on to the accused, placing on him the onus to explain how the incident occurred and what happened to the victim who was last seen with him. Failure on the part of the accused to furnish any explanation in this regard, as in the case on hand, or furnishing false explanation would give rise to strong presumption against him, and in favour of his guilt, and would provide an additional link in the chain of circumstances."

(Emphasis supplied)

44. Similarly, in the matter of Satpal v. State of Haryana (2018) 6 SCC 610, last seen theory has been held to be a weak piece of evidence by itself to found conviction upon the same singularly, unless it is coupled with other circumstances, and observed as under: -

"6. We have considered the respective submissions and the evidence on record. There is no eye witness to the occurrence but only circumstances coupled with the fact of the deceased having been last seen with the appellant. Criminal jurisprudence and the plethora of judicial precedents leave little room for reconsideration of the basic principles for invocation of the last seen theory as a facet of circumstantial evidence. Succinctly stated, it may be a weak kind of evidence by itself to found conviction upon the same singularly. But when it is coupled with other circumstances such as the time when the deceased was last seen with the accused, and the recovery of the corpse being in very close proximity of time, the accused owes an explanation under Section 106 of the Evidence Act with regard to the circumstances under which death may have taken place. If the accused offers no explanation, or furnishes a wrong explanation, absconds, motive is established, and there is corroborative evidence available inter alia in the form of recovery or otherwise forming a chain of circumstances leading to the only inference for guilt of the accused, incompatible with any possible hypothesis of innocence, conviction can be based on the same.

If there be any doubt or break in the link of chain of circumstances, the benefit of doubt must go to the accused. Each case will therefore have to be examined on its own facts for invocation of the doctrine.”

45. Coming to the facts of the present case, the victim was found missing at around 3 p.m. on 05.06.2017 and dead body was recovered from a forest which was at a distance of about 3 to 5 Kms from the police station on 06.06.2017 at about 23:35 hours. The statements of the witnesses Sonu @ Nirmal (PW-2) and Savitri Kunjam (PW-4) are sufficient enough to prove the theory of last seen together. The convict/appellant in his defence has not produced any witness or evidence to prove his innocence or any probable reason which may suggest that he was not involved in the crime in question. As such, the theory of last seen together is clearly established.

46. The postmortem report clearly states that the deceased was subjected to forceful sexual intercourse. The MLC of the convict/appellant also shows that he was physically and mentally of sound health and was also capable of performing sexual activities. Even in his memorandum statement, he has stated that he had ill intentions towards the deceased therefore he forcibly took the deceased on his bi-cycle and then took her to a deserted place where he committed sexual intercourse with her. Later on realising that the deceased may complain to her parents, he killed the deceased on 05.06.2017. On the next date, at about 3 a.m. he went to the house of Santosh Yadav and after having tea, he again went back to the place of the incident and tried to conceal the dead body with the leaves. The statement made by the convict/appellant is corroborated by the statements given by the witnesses and the seizures made in this case.

47. The properties seized i.e. (A) and (B) soil, (C) leaves, (D) cotton, (E) stone, (F) frock of the deceased, (G) underwear and (H) pubic hair of the convict/appellant were sent for chemical analysis/examination. The report (Exhibit P-29) states that the articles A, C, D, E, and F contained blood. Articles D and F contained human blood. Since the stains on Articles A, C and E were disintegrated, the same could not be ascertained as to whose blood it was. Further, since control sample was not received, the blood group on Articles D and F could not be ascertained. So far as examination of semen is concerned, on Article G, human semen and human sperms were found but on Article H, no semen or sperms were found. There is a note in the FSL report that Article F i.e. the frock of the deceased was completely blood smeared, wet and stinking therefore it was not possible to conduct the semen test on it and the semen stains found on Article G were not enough to conduct the serum examination.

48. From perusal of the records, it appears that the panty and the vaginal slides of the deceased were sent to the FSL, Raipur, on 13.06.2017, for DNA analysis, but it appears the report of the same is not on record.

49. The deceased was a minor girl who was below the age of 12 years. She was taken away by the convict/appellant forcefully without the wishes of the minor

girl from the lawful guardianship of her parents. She was subjected to the most possible heinous crime of sexual intercourse against the deceased and thereafter, she was murdered in a brutal way by smashing her head with a heavy stone. Thus, after appreciating the entire ocular and medical evidence on record, we do not find any illegality in appreciation of oral, medical and circumstantial evidence or arriving at a conclusion as to the guilt of the convict/appellant by the trial Court warranting interference by this Court and we accordingly hereby confirm the conviction of the convict/appellant. We hereby affirm that the findings recorded by the learned Trial Court as there is sufficient evidence available on record. However, the question that remains for our consideration would be whether the death sentence awarded by the learned Sessions Judge to the convict/appellant herein directing that he should be hanged to death till his death is proper for which it has been sent to us for confirmation in accordance with Section 366 of the CrPC.

50. The charges framed under Sections 363, 376(i)(n) and 201 of the Indian Penal Code as well as Section 5(1)(m) of the Protection of Children from Sexual Offences Act, 2012 are well founded and needs no interference by this Court.

51. This Court has to consider whether this case falls under the category of rarest of rare case justifying capital punishment. Their Lordships of the Supreme Court in umpteen number of judgments have laid down principles for awarding capital punishment for which the balance between aggravating circumstances and mitigating circumstances has to be struck. Seven other factors like, age of the accused, possibility of reformation and lack of intention of murder have also to be gone into the judicial mind.

52. Death penalty or imprisonment for life for the commission of murder under Section 302 of the IPC has been provided. In case of conviction under Section 302 of the IPC or any conviction for an offence punishable with death or in the alternative imprisonment for life, the Court is required to assign special reasons for awarding such penalty and the special reason for awarding death sentence in accordance with sub-section (3) of Section 354 of the CrPC. Sub-section (3) of Section 354 of the CrPC reads as under:-

"S. 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."

53. The language of Section 354(3) of the CrPC demonstrates the legislative concern and the conditions which need to be satisfied prior to imposition of death penalty. The words, 'in the case of sentence of death, the special reasons for such sentence' unambiguously demonstrate the command of the legislature that such reasons have to be recorded for imposing the punishment of death sentence i.e. the Court is required to hold that it is a case of rarest of rare warranting imposition of only death sentence.

54. Very recently, the Supreme Court in the matter of Manoj and others v. State of Madhya Pradesh Criminal Appeal Nos.248-250 of 2015, decided on 20-5-2022 reviewing the entire case laws on the point beginning from Bachan Singh (supra) held in paragraph 204 as under: -

"204. Mitigating factors in general, rather than excuse or validate the crime committed, seek to explain the surrounding circumstances of the criminal to enable the judge to decide between the death penalty or life imprisonment. An illustrative list of indicators first recognised in Bachan Singh¹¹ itself:

"Mitigating circumstances.—In the exercise of its discretion in the above cases, the court shall take into account the following circumstances:

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

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

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

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

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

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

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

These are hardly exhaustive; subsequently, this court in several judgments has recognised, and considered commutation to life imprisonment, on grounds such as young age [Mahesh Dhanaji Shinde v. State of Maharashtra (2014) 4 SCC 292, Gurvail Singh v. State of Punjab (2013) 2 SCC 713, etc.], socio-economic conditions [Mulla and another v. State of U.P. (2010) 3 SCC 508; Kamleshwar Paswan v. U.T. Chandigarh (2011) 11 SCC 564; Sunil Gaikwad v. State of Maharashtra (2014) 1 SCC 129], mental illness [Shatrughan Chauhan v. Union of India (2014) 3 SCC 1], criminal antecedents [Dilip Premnarayan Tiwari v. State of Maharashtra, (2010) 1 SCC 775], as relevant indicators on the questions of sentence. Many of these factors reflect demonstrable ability or merely the possibility even, of the accused to reform (i.e. (3) and (4) of the Bachan Singh list), which make them important indicators when it comes to sentencing."

Their Lordships further emphasised the need for pre-sentence hearing – opportunity and obligation to provide material on the accused and in paragraphs

211 and 212 held as under: -

"211. However, this too, is too little, too late and only offers a peek into the circumstances of the accused after conviction. The unfortunate reality is that in the absence of well-documented mitigating circumstances at the trial level, the aggravating circumstances seem far more compelling, or overwhelming, rendering the sentencing court prone to imposing the death penalty, on the basis of an incomplete, and hence, incorrect application of the Bachan Singh test.

212. The goal of reformation is ideal, and what society must strive towards – there are many references to it peppered in this court's jurisprudence across the decades – but what is lacking is a concrete framework that can measure and evaluate it. Unfortunately, this is mirrored by the failure to implement prison reforms of a meaningful kind, which has left the process of incarceration and prisons in general, to be a space of limited potential for systemic reformation. The goal of reformative punishment requires systems that actively enable reformation and rehabilitation, as a result of nuanced policy making. As a small step to correct these skewed results and facilitate better evaluation of whether there is a possibility for the accused to be reformed (beyond vague references to conduct, family background, etc.), this court deems it necessary to frame practical guidelines for the courts to adopt and implement, till the legislature and executive, formulate a coherent framework through legislation. These guidelines may also offer guidance or ideas, that such a legislative framework could benefit from, to systematically collect and evaluate information on mitigating circumstances."

Thereafter, their Lordships issued practical guidelines to collect mitigating circumstances and observed in paragraphs 213 to 217 as under: -

"213. There is urgent need to ensure that mitigating circumstances are considered at the trial stage, to avoid slipping into a retributive response to the brutality of the crime, as is noticeably the situation in a majority of cases reaching the appellate stage.

214. To do this, the trial court must elicit information from the accused and the state, both. The state, must – for an offence carrying capital punishment – at the appropriate stage, produce material which is preferably collected beforehand, before the Sessions Court disclosing psychiatric and psychological evaluation of the accused. This will help establish proximity (in terms of timeline), to the accused person's frame of mind (or mental illness, if any) at the time of committing the crime and offer guidance on mitigating factors (1), (5), (6) and (7) spelled out in Bachan Singh. Even for the other factors of (3) and (4) – an onus placed squarely on the state – conducting this form of psychiatric and psychological evaluation close on the heels of commission of the offence, will provide a baseline for the appellate courts to use for comparison, i.e., to evaluate the progress of the accused towards reformation, achieved during the incarceration period.

215. Next, the State, must in a time-bound manner, collect additional information pertaining to the accused. An illustrative, but not exhaustive list is as follows:

- a) Age
- b) Early family background (siblings, protection of parents, any history of violence or neglect)
- c) Present family background (surviving family members, whether married, has children, etc.)
- d) Type and level of education
- e) Socio-economic background (including conditions of poverty or deprivation, if any)
- f) Criminal antecedents (details of offence and whether convicted, sentence served, if any)
- g) Income and the kind of employment (whether none, or temporary or permanent etc);
- h) Other factors such as history of unstable social behaviour, or mental or psychological ailment(s), alienation of the individual (with reasons, if any) etc.

This information should mandatorily be available to the trial court, at the sentencing stage. The accused too, should be given the same opportunity to produce evidence in rebuttal, towards establishing all mitigating circumstances.

216. Lastly, information regarding the accused's jail conduct and behaviour, work done (if any), activities the accused has involved themselves in, and other related details should be called for in the form of a report from the relevant jail authorities (i.e., probation and welfare officer, superintendent of jail, etc.). If the appeal is heard after a long hiatus from the trial court's conviction, or High Court's confirmation, as the case may be – a fresh report (rather than the one used by the previous court) from the jail authorities is recommended, for a more exact and complete understanding of the contemporaneous progress made by the accused, in the time elapsed. The jail authorities must also include a fresh psychiatric and psychological report which will further evidence the reformatory progress, and reveal post-conviction mental illness, if any.

217. It is pertinent to point out that this court, in *Anil v. State of Maharashtra* (2014) 4 SCC 69 has in fact directed criminal courts, to call for additional material:

"Many a times, while determining the sentence, the courts take it for granted, looking into the facts of a particular case, that the accused would be a menace to the society and there is no possibility of reformation and rehabilitation, while it is the duty of the court to ascertain those factors, and the State is obliged to furnish materials for and against the possibility of reformation and rehabilitation

of the accused. The facts, which the courts deal with, in a given case, cannot be the foundation for reaching such a conclusion, which, as already stated, calls for additional materials. We, therefore, direct that the criminal courts, while dealing with the offences like Section 302 IPC, after conviction, may, in appropriate cases, call for a report to determine, whether the accused could be reformed or rehabilitated, which depends upon the facts and circumstances of each case.”

(emphasis supplied)

We hereby fully endorse and direct that this should be implemented uniformly, as further elaborated above, for conviction of offences that carry the possibility of death sentence.”

55. Reverting to the facts of the case in the light of the aforesaid practical guidelines issued by the Supreme Court in Manoj (supra), it is quite vivid that the trial Court has convicted the convict/appellant and sentenced him to death. The trial Court has not taken into consideration the probability of the convict/appellant to be reformed and rehabilitated and has only taken into consideration the crime and the manner in which it was committed and has not given effective opportunity of hearing on the question of sentence to the appellant. No evidence was brought on record on behalf of the prosecution to prove to the court that the convict/appellant cannot be reformed or rehabilitated, by producing material about his conduct in jail and no opportunity of hearing was given to the convict/appellant to produce evidence in that respect. No jail offence(s) has been said to have been committed by the accused/appellant, though the appellant has committed the offence of kidnapping minor victim girl from the guardianship of her father and subjecting her to sexual intercourse by which she severe injuries on her private part which is barbaric, inhuman, heinous and extremely brutal and thereafter also murdered by smashing her head with a stone. These are the incriminating circumstances, but there is no evidence on record that the convict/appellant cannot be reformed or rehabilitated. No criminal antecedents have been shown against him. Though it shocks the conscious of the society at large, but, yet, in the facts and circumstances of the case, upon thoughtful consideration, we are of the view that extreme sentence of death penalty is not warranted in the facts and circumstances of the case. We are of the opinion that this is not the rarest of rare case in which major penalty of sentence of death awarded has to be confirmed. In our view, imprisonment for life would be completely adequate and would meet the ends of justice. Accordingly, we direct commutation of death sentence into imprisonment for life. We further direct that the life sentence must extend to the imprisonment for remainder of natural life of the appellant herein – Jhaggar Singh Yadav.

56. Consequently, Cr.Ref.No.1/2019 made by the Sessions Judge (Fast Track Special Court) Balod, District Balod, to the extent of confirmation of imposition of death sentence to convict/appellant Jhaggar Singh Yadav, is rejected accordingly.

57. However, Cr.A.No. 489/2019 filed on behalf of convict/appellant Jhaggar

Singh Yadav is partly allowed. Conviction of the appellant under Sections 302, 363, 376(2)(i)(n), 201 of the Indian Penal Code and Section 5(1)(m) of the Protection of Children from Sexual Offences Act, 2012 are maintained, but, sentence of death is commuted to life imprisonment by maintaining the fine amount. We further direct that life sentence must extend to the imprisonment for remainder of natural life of the appellant herein–Jhaggar Singh Yadav.

58. The Registrar (Judicial) is directed to send a duly attested copy of this judgment to the concerned Court of Session as mandated under Section 371 of the CrPC for needful.