
(1999) 06 PAT CK 0051

In the Patna High Court

Case No : Death Reference No. 7/98 and Criminal Appeal No. 387/98

State of Bihar

APPELLANT

Vs

Raj Kumar Choudhary
 Raj Kumar Choudhary Vs State
of Bihar

RESPONDENT

Date of Decision : 25-06-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 302, 364

Citation : (1999) 3 BLJR 1702 : (1999) 3 PLJR 24

Hon'ble Judges : S.K. Katriar, J;B.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Singh, J.—This appeal has been preferred by the sole appellant-Raj Kumar Choudhary who has been found guilty of the offences under Sections 364, 302 and 201 of the Indian Penal Code by the 2nd Addl. Sessions Judge, Gopalganj, in S.T. No. 348 of 1997. The learned Addl. Sessions Judge while sentencing the appellant to death u/s 302 of the Indian Penal Code has not passed separate sentences for the offences under Sections 364 and 201 of the Indian Penal Code. The judgment and order of the Addl. Sessions Judge, Gopalganj, dated 24-7-98/27-7-98 has been impugned in the appeal. We have also before us death Reference No. 7 of 1998 which has been made by the trial Court for the confirmation of the Death Sentence imposed upon the appellant.

2. The occurrence giving rise to the instant appeal is said to have occurred at about 12 in the night of 18th May, 1997 in which, according to the prosecution, the appellant snatched away the minor child of the informant while she was sleeping outside her house and later killed the child. Though the appellant was chased by the villagers, he made good his escape, and on the following morning when confronted by the villagers, while promising to bring back the child, he again escaped. The fardbeyan was lodged by the informant at 8.20 a.m. on 19-5-1997 at police station Thawe, complaining against the appellant that he had

snatched away the minor child of the informant, who suspected that the child may be killed by him. The cause for the occurrence was the rejection by the informant, a widow, of the amorous advances made by the appellant. In the afternoon of 19th May 1997, the cowherds grazing their herds of cattle saw blood stains near the Satnaria Nala, and from place where newly-dug earth was noticed, the body of the victim child was exhumed in the presence of the witnesses including P.W. 15, the Deputy Collector, Land Reforms, who was deputed for the said purpose and under whose supervision the dead body was exhumed. After the investigation, the appellant was charged of the offences under Sections 302, 364 and 201 of the Indian Penal Code and put up for trial before the second Additional Sessions Judge, Gopalganj.

3. At the trial, the prosecution examined as many as 21 witnesses. Out of them four are eye-witnesses, namely, P.Ws. 2, 3, 4 and 7. The evidence of three other witnesses is of corroborative nature since they had heard of the kidnapping on the following morning. These witnesses are P.Ws. 8, 14 and 19. The prosecution has also tendered for cross-examination seven witnesses, namely, P.Ws. 9, 10, 11, 12, 17, 18 and 20. Apart from P.W. 15, D.C.L.R. several other witnesses also witnessed the recovery of the body from a ditch at the Satnaria Nala. Those witnesses are P.Ws. 1, 17, 13, 15, 16 and the Investigating Officer (P.W. 21). P.W. 5 is the doctor who performed the post-mortem examination on the dead body of the deceased, while P.W. 6 is another doctor who was the observer when the post-mortem examination was conducted.

4. As noticed earlier the minor son of the informant, namely, Bhola alias Ranjit aged about 5 to 7 years, was forcibly taken away at about 12 in the night, and though the appellant was chased by several villagers he made good his escape. The whereabouts of the child were not known till the morning when the informant Suganti Devi (P.W. 3) lodged her fardbeyan at the Thawe police station at 8.20 a.m. In her fardbeyan, the informant stated as follows:

On the earlier evening between 7 and 8 p.m. the appellant had come to the darwaja of the informant and was talking to her gotni, Tetari Devi (P.W.2), wife of the brother of the informant's husband. At that time, the informant was cooking food, but seeing him, she went to the house of her neighbour Daroga Singh. The appellant gave to her son, Bhola alias Ranjit, two sweets (Pedukia), and after a little while went away. The informant frequently visited the house of the informant and used to talk to Ramesh Singh, son of her agnate. At about 12"O clock in the night, while the informant was sleeping with her child, the appellant came and forcibly took away her minor son who was sleeping with her. The informant raised an alarm which attracted the notice of the villagers " and many of them immediately came to her darwaja including Raj Roshan Sah P.W. 10), Prem Singh (P.W. 11), Daroga Singh (P.W. 19), Hira Singh (P.W. 14), Ragho Singh (P.W. 20), Kashi Shah (P.W. 17) and Lalmati Devi (P.W. 1), They chased the appellant, but he managed to escape taking away her son. The appellant entertained an evil design of having an extra-marital affair with the informant,

He worked somewhere in Punjab, but about four or five months back he had come to the village. He had lost his wife. The informant apprehended that he may kill her son of whom there was no trace.

5. This fardbeyan was recorded by P.W. 21 (Deena Prasad), at the Thawe police station where the informant had come in the company of co-villager Lalmati Devi. On the basis of the fardbeyan, which was sent to Majha police station, a formal first information report was drawn up and the case was registered as Majha P.S. Case No. 97 of 1997. P.W. 21 took up investigation of the case and ultimately filed charge-sheet against the appellant.

6. We shall first take up for consideration the evidence of the four eyewitnesses. The informant, P.W. 3, deposed that she is a widow and her son, Bhola alias Ranjit, was aged about 6-7 years at the time of occurrence. Appellant Raj Kumar Chaudhary used to go to her darwaja since 3-4 days prior to the occurrence and wanted to talk to her. She did not want to talk to him and used to avoid him. Since her husband was dead she did not wish to talk to any other male, This caused annoyance to the appellant, but the informant insisted that since her husband was dead and she had a son she wanted to live with him and did not wish to befriend the appellant. In the evening of the night of occurrence, while she was cooking meals, the appellant came to her darwaja and seeing him, she went to the house of Daroga Singh. The appellant gave sweets to her son and thereafter, went away.

At about 12"O clock in the night, she was sleeping at her darwaja along with her son. Her Gotni Tetari Devi (P.W. 2) and Lalmati Devi (P.W.1), were sleeping nearby. When the appellant pulled her child, she woke up and raised an alarm. The appellant threatened to stab her. He snatched her child, lifted him and ran away. She raised an alarm which woke up her Gotni and also co-villagers. Many persons came rushing including Raj Roshan Sah (P.W. 10), Prem Singh (P.W. 11), Hira Singh (P.W. 14), Kashi Shah (P.W. 17) and Ramanand Singh (P.W. 4). The persons who had come, searched for the appellant but he was not found. In the morning, she went to the police station. The Sub-Inspector raided the house of the appellant in the morning but he could not be found, though blood stained-cloth was found in his house. A search was made for the dead body and it was ultimately exhumed from Satnaria Nala. The dead body was brought to her darwaja and she identified the body as that of her son. This witness could not exactly state within how many hours of her child being taken away by the appellant, her report was lodged. She had raised an alarm which had attracted many villagers and she had in particular woken up Raj Roshan Sah (P.W. 10), and Prem Singh (P.W. 11), who were sleeping in their houses. The house of Raj Roshan Sah (P.W. 10) was towards the south of her darwaja and the house of Prem Singh (P.W. 11), was contiguous west. The house of Kashi Shah (P.W. 17) was contiguous east of her house. Her statement was recorded at the police station after sun- rise. Till then, it was not known whether the dead body had been found. Satnaria Nala was to the north of her village. She could not state the

time when the dead body was recovered. She had returned from the police station in the vehicle of the Sub-Inspector of Police who had further examined her at the village. After the recovery of the dead body of her son, it was shown to her at her darwaja in the evening after sun-set.

7. There is hardly anything in the cross-examination of this witness which may discredit her testimony. She denied the suggestion that she had falsely implicated the appellant and that at the time of occurrence, she was at the house of Daroga Singh.

8. Tetari Devi (P.W. 2) is the wife of the brother of the informant's husband. In course of her deposition, she stated that in the night of occurrence, she was sleeping at her darwaja, and the informant Suganti Devi was sleeping at that very place at a short distance from her. Suganti's son, Bhola, aged about 7 years, was also sleeping with Suganti. In the night, the appellant came, lifted the child of Suganti and ran away. Suganti Devi screamed as a result of which she woke up and she was told by Suganti Devi that Raj Kumar Chaudhary was fleeing with her child. The witness recognised the appellant, Raj Kumar Chaudhary, in the moonlit night and saw him fleeing with the child. On alarm being raised, many persons came who went in search of the appellant, who had taken the child towards Satnaria Nala in the northern direction. Next morning, the cowherds noticed that some blood had fallen at Satnaria Nala. She came to know later that the dead body of Bhola had been found in the ditch at Satnaria Nala.

On the earlier evening also, the appellant had come to her darwaja and had offered sweets to Bhola. Seeing the appellant, Suganti Devi stopped cooking meals and went to the darwaja of another person. The appellant asked the witness to call Suganti but she refused to do so. In the past also, the appellant used to make amorous advances towards Suganti, but Suganti used to avoid him.0 Suganti was a widow and she had a son and a daughter. This witness stated in cross-examination that she was interrogated by the police one day after the occurrence. Many people had assembled within a minute on alarm being raised by Suganti. This witness has stated about the location of the houses of several persons living nearby. She denied the suggestion that she had falsely implicated the appellant. There is nothing of any significance in the cryptic cross-examination of this witness.

9. Ramanand Singh (P.W. 4) claims to be an eye-witness. On the night of occurrence, while he was sleeping at his darwaja, he was woken up by the alarm raised by Suganti at about 12"O clock in the night. While proceeding towards her house, he noticed the appellant fleeing, while carrying the son of the informant on his shoulder. He recognised him in the moonlit night. This witness claims that he along with other villagers chased the appellant, but he could not be apprehended. They then went to the house of the appellant but he was not found at his house. The appellant, however, returned later to his house at about 3 a.m. when the villagers pounced upon him. He promised to bring the child but on that pretext, he fled away. In cross-examination, this witness has stated that when

the appellant was accosted by the villagers in the morning at 3 a.m., he had promised to bring the child. He was taken to the darwaja of Prem Babu and the appellant promising to bring the boy went away and ultimately fled.

In the morning, the cowherds noticed the presence of blood near Satnaria Nala. Following the trail of blood, they found a place where the earth had been freshly dug up. When the police came the dead body of Bhola was recovered from that place. The appellant wanted Suganti to live with him but she did not agree, and that is why he had killed her child. He used to roam about near the house of Suganti. In cross-examination, this witness stated that his house was to the south of the house of Suganti. First of all, he saw Suganti and then he noticed the appellant from a distance of about 10-12 steps about 10 or 12 persons had assembled and they chased the appellant who was fleeing towards the north. They chased him up to the river whereafter the appellant fled towards the Chawar. They then returned. Amongst the persons who chased the appellant were Daroga Singh (P.W. 19), Hira Singh (P.W. 14), Raj Roshan Sah (P.W. 10), Jawahar, Ragho Singh (P.W. 20) and his son Upendra Singh (P.W. 7). After arrival of the Sub-Inspector of police, two Choukidars and two villagers dug up the place where newly-dug earth was found. After a ditch was dug waist-deep, the dead body was recovered which was soiled with earth. Suganti had not come to the place from where the dead body was recovered because she often became unconscious with clenched teeth.

Upendra Singh (P.W. 7), the son of P.W. 4, stated that he was sleeping on his terrace and woke up at about 12 in the night on hearing the alarm raised by Suganti who was crying that appellant Raj Kumar Choudhary was fleeing and taking away her son. It was a moonlit night and this witness could identify Raj Kumar Choudhary as the person fleeing with the child of Suganti. The villagers chased the appellant but he made good his escape. The villagers then went to the house of the appellant but he was not found there. In the morning, the cowherds noticed blood near the Satnaria Nala, The police and the Magistrate came and the dead body was recovered from the ditch. In cross-examination, this witness has admitted that the deceased Bhola was his cousin. He came down from his terrace and was at his darwaja when he saw the appellant running away. He was seen carrying away the child of Suganti on his shoulder. There is hardly anything worth noticing in his cross-examination.

10. Rajendra Mahto (P.W. 8) has deposed to the effect that he had come to know in the morning that the appellant had run away with the child of the informant. This witness claimed that he was present when the dead body was recovered and he identified the dead body.

P.W. 14 (Hira Singh) has deposed that on the night of occurrence, he was woken up by the informant Suganti, who told him that the appellant Raj Kumar Choudhary had run away with his child. A search was made for the appellant, Raj Kumar Choudhary, but he could not be found.

P.W. 19 (Daroga Singh) has also deposed to the effect that he woke up on hearing the alarm raised by the informant and though an attempt was made to search out the appellant he could not be found.

These three witnesses have only corroborated the fact that on the night of occurrence an alarm was raised by the informant who stated that her child had been taken away by the appellant.

11. P.W. 1 (Lalmati Devi) had accompanied the informant to the police station and was present when the fardbeyan was lodged. On the night of the occurrence, she was sleeping inside her house and was woken up by the alarm raised by Suganti. On coming out, she saw that Suganti was crying that appellant Raj Kumar Choudhary had forcibly taken away her son Bhola. According to this witness, P.Ws. 4, 10, 17, 19 and 20 tried to search for the boy but could not find him. She claimed to be present when the dead body was recovered after digging a ditch at Satnaria Nala. This witness has also deposed that the appellant wanted to have illicit relationship with Suganti and that is why he had taken away her only son, so that she may follow him and he could satisfy his lust. This witness has further deposed that the appellant used to roam about near the house of Suganti. This witness has also stated about the location of the houses of other witnesses.

P.Ws. 9, 10, 11, 12, 17 and 20 were tendered for cross-examination. There is nothing in their statement worth noticing. None of them claims to be an eye-witness.

12. Chandeshwar Prasad (P.W. 13) deposed that the dead body of the child, Bhola alias Ranjit, was recovered from Satnaria Nala in his presence. The Sub-Inspector of Police prepared the inquest report in his presence on which he put his signature (Ext. 2). This witness did not see any other mark of injury on the dead body, but he saw that the neck was cut. No foul smell was emanating from the dead body as it was not in a decomposed condition.

13. Kashi Nath Dubey (P.W. 15) has deposed that he was posted as Deputy Collector, Land Reforms, at Gopalganj on 19-5-1997. Under the order of the S.D.O., he went to Satnaria Nala at about 2 p.m. with police force. From the police station, he went to Chanawe village along with the armed force. There he came to know that the dead body had been buried in the Satnaria Nala towards the north. They then went to Satnaria Nala and the dead body was got exhumed with the help of local Choukidar Jitu Manji and Prabhu Chowdhary, The body had been buried 3" (three feet) deep in the Satnaria Nala. The villagers of Chanawe present there identified the dead body as that of Bhola alias Ranjit. The neck of the dead body was cut and only a portion of the neck was connected with the body. The inquest report was prepared by the police. He put his signature on the inquest report (Ext.3),

14. Baidyanath Sah (P.W. 16) is another witness to the inquest report. He was also present when the dead body was exhumed from Satnaria Nala. The dead

body was not decomposed. He did not see any blood coming from the mouth and nose of the deceased.

15. P.W. 21 (Deena Prasad) is the Investigating Officer. He was posted as the officer-in-charge, Thawe police station, on 19-5-97. The informant Suganti Devi (P.W. 3) came to the police station at 8.20 a.m. and gave her statement which was recorded by him. The fardbeyan was forwarded to the officer-in-charge, Majhagarh police station, where the case was instituted. The first information report drawn up on the basis of the fardbeyan was prepared by Sri Yogendra Singh, officer-in-charge, Majhagarh police station (Ext. 6). He came to village Chanawe at about 8.35 a.m., and inspected the place of occurrence. He recorded the statement of the witnesses and he received information that the body of the deceased had been buried in Satnaria Nala. He informed the senior officers and prayed for the deputation of a Magistrate. Sri Kashi Nath Dubey, D.C.L.R., was deputed for this purpose and after his arrival the dead body was exhumed from Satnaria Nala. He prepared the inquest report which was witnessed by the Magistrate on deputation and two witnesses, Baidyanath Sah (P.W. 16), and Chandeshwar Prasad (P.W. 13). He made an attempt to arrest the appellant but he was found absconding. Later he surrendered in Court.

16. Dr. Uday Shankar Prasad (P.Ws 5) conducted the post-mortem examination on the dead body of Bhola alias Ranjit at 5 p.m. on 19-5-97. According to him, the deceased Bhola alias Ranjit was aged about five years. The body had been exhumed. He found the following injury on the body of he deceased:

One incised wound at upper part of neck just below chin at the level of about 2nd cervical vertebra. Trachea, great vessels muscles vertebral column oesphagus (food pipe), nerves and all other structures except nearly one inch wide skin was connecting head and body

On internal examination, no other injury was found. The post-mortem examination was conducted in presence of Dr. Sanjay Kr. Singh (P.W. 6), who was an observer. In their opinion, the death had been caused due to shock and haemorrhage caused by the above injury which could have been caused by sharp weapon. Time lapsed since death was within 24 hours. He proved the post-mortem report which also bore the signature of Dr. Sanjay Kr. Singh, Ext. 1 Dr. Sanjay Kumar Singh was also examined as P.W. 6 and he fully corroborated the finding of P.W. 5. He was present as an observer when the post-mortem examination was conducted and he deposed that their concurrent finding was that the death was caused due to shock and haemorrhage caused by the aforesaid injury which had been caused by sharp weapon. In cross-examination he stated that rigor mortis was partially present which meant that the death took place about 24 hours and within 36 hours. Mud was present on the body of the deceased.

17. This is all the evidence on record. We have carefully considered the evidence of the eye-witnesses. The have consistently supported the prosecution case that

on the night of occurrence, the appellant forcibly lifted the child of the informant and ran away. Though chased by the villagers, he managed to make good his escape. He was later apprehended by the villagers at about 3 a.m. when he returned to his house, but again managed to escape on the pretext of bringing the child. The evidence on record also establishes beyond doubt that the body of the deceased child was exhumed from a place where blood was noticed by the cowherds at a place described as Satnaria Nala. The dead body was exhumed in presence of a Magistrate (P.W. 15), apart from many villagers. If these facts are established, there can be no doubt that the appellant committed the murder of Bhola alias Ranjit, the minor son of the informant (P.W. 3).

18. P.W. 3 is the informant herself who was sleeping with her child on the fateful night outside her darwaja. There is no doubt about the fact that the night was a moonlit night. The appellant was known to the witnesses and many of them had deposed that he entertained evil designs and wanted to have a liaison with the informant (P.W. 3). He had been seen roaming about near the house of the informant and had made amorous advances which were repelled by the informant. This had caused him annoyance and as a revengeful action, he committed the murder of the only son of the informant. P.W. 3, informant, is the best witness to depose about what happened on the fateful night. Her deposition is straightforward as is expected of an innocent villager. There is no exaggeration and no attempted embellishment. At the time, she lodged her fardbeyan, the whereabouts of the child was not known, and as it appears from the evidence on record attempts were being made by the villagers to recover the child. In fact, at about 3 a.m., the appellant had promised to bring the child. Ultimately, when the child was not recovered, she was compelled to go to the police station and lodge a report. In these circumstances, it cannot be said that the report made by her at the police station was belated. She is a natural witness and her presence cannot be disputed. There is nothing inherently incredible in her deposition nor has anything been elicited in her cross-examination which may discredit her testimony which finds corroboration from the testimony of several other witnesses including eye-witnesses.

19. Tetari Devi (P.W. 2), is the Gotni (wife of husband's brother), and she was sleeping outside the house just near the informant. Her presence is, therefore, natural. Both the Gotnis were sleeping just in front of their darwaja. When the informant raised an alarm, she woke up and saw the appellant running with the child of the informant, whom he was carrying on his shoulder. The night being a moonlit night, and the appellant being a person known to her, she had no difficulty in identifying him. There is nothing in the cross-examination of this witness which may create even shadow of doubt upon her testimony. Her veracity has remained unchallenged in cross-examination. Nothing has been elicited in her cross-examination to suspect that she was not present, and that she had falsely implicated the appellant.

20. Similarly, P.W. 4 is a natural witness whose house was just adjacent south to

the house of the informant. He was also sleeping at his darwaja when he heard the alarm raised by the informant. While proceeding to her house, he noticed the appellant carrying the child of the informant on his shoulder. He was one of the persons who chased the appellant but failed to apprehend him. Thereafter, he along with others went to the house of the appellant and waited there till he returned at about 3 a.m. The appellant was then taken to the house of Prem Babu from where he made good his escape on the pretext of going to bring the child. There is nothing in his cross-examination to doubt his presence at the time of occurrence.

21. Similarly, P.W. 7 who is the son of P.W. 4 has given the same version of the occurrence. He had also seen the appellant carrying the child of the informant when he was at his darwaja.

22. The eye-witness account given by the aforesaid four witnesses does not suffer from any infirmity, nor could Counsel for the appellant suggest any good reason why their testimony should not be accepted. There was no enmity between these witnesses and the deceased and, therefore, the possibility of false implication is ruled out. The appellant was known to these witnesses from before and, therefore, the chance of mistaken identity has also to be ruled out. Their presence at the time of occurrence appears to be natural. There is a ring of truth in what they say and their testimony is completely devoid of any exaggeration or embellishment. There is nothing in their cross-examination which may reflect on their veracity. We are, therefore, convinced that the eye-witnesses can be implicitly relied upon.

23. There is then the evidence of several witnesses to whom the matter was reported soon after the occurrence. Though they did not claim to be eye-witnesses, inasmuch as they had not seen the appellant running away with the child, their testimony does establish conclusively the time and place of occurrence. The dead body of the child was exhumed on the following day at about 2 p.m. and this was done under the supervision of the Deputy Collector, Land Reforms (P.W. 14), who was deputed for the purpose by the S.D.O. The medical evidence on record establishes that the minor boy, Bhola alias Ranjit, suffered a homicidal death with his neck cut by a sharp-cutting weapon. In our considered opinion, the evidence on record conclusively proves the charge against the appellant.

24. We may, however, notice the submission urged on behalf of the appellant that according to the medical evidence on record, the time that elapsed between the death and post-mortem examination was within 36 hours, according to P.W. 5, and between 24 and 36 hours, according to P.W. 6. The opinion of P.W. 6 is based on the fact that rigor mortis was partially present at the time of post-mortem examination. It was, therefore, submitted that if the murder had taken place after 12"O clock/in the night, the time that elapsed between the death and post-mortem examination was not more than 17 hours and, therefore, the medical evidence is not consistent with the prosecution evidence which is to the

effect that the murder had taken place some time after 12"O clock in the night.

We cannot lose sight of the fact that the doctors have expressed their opinion based upon their observation as to the time that elapsed between the death and the post-mortem examination, Such assessment cannot be made with arithmetical accuracy and is at best an estimate. The presence or absence of rigor mortis is also dependent on various factors such as climatic conditions. In the instant case, we cannot also lose sight of the fact that the dead body had been buried three feet deep under the earth and remained there for almost 14 hours. The ocular account given by the witnesses is of such quality that this minor discrepancy must be ignored. We would rather prefer to rely upon the testimony of the witnesses about the probable time of death than upon the assessment made by the doctors which is at best an opinion. We, therefore, find no merit in this submission.

25. Counsel for the appellant, however, strenuously urged that the sentence of death was not justified in the facts and circumstances of the case. The appellant has no criminal antecedent. There is nothing to show that he was involved in any other case or that his behaviour, apart from his attempt to become friendly with the informant, caused any disturbance or annoyance to any one. He referred to a large number of decisions of the Supreme Court and submitted that if one were to go by merely the heinousness of the crime, the crime committed by the appellant was not as heinous as the crime committed by the accused in those cases before the Supreme Court in which the Supreme Court declined to confirm the death sentence and imposed a sentence of life imprisonment even in case of multiple murders. He referred to the decisions in Rajendra Prasad Vs. State of Uttar Pradesh, ; Bachan Singh Vs. State of Punjab, , Krishan Vs. State of Haryana, ; Mukund alias Kundu Mishra and another Vs. State of Madhya Pradesh, , State of T.N. Vs. Suresh and Another, ; Panchhi and others Vs. State of UP, ; Brijlala Pd. Sinha Vs. State of Bihar, , Shaikh Ayub Vs. State of Maharashtra, . He submitted that having regard to the facts of this case and the propositions laid down in the aforesaid decisions, it cannot be said that this was a rarest of rare cases where the alternative option was unquestionably foreclosed.

On the other hand, Counsel for the State relied upon a decision of the Supreme Court, reported in AIR 1996 S.C. 2802, and submitted the having regard to the heinousness of the offence and the brutal manner in which it was committed, the death sentence should be upheld. That was a case in which the accused had committed rape on a girl seven years old, killed her thereafter and had thrown her body into a well to avoid detection.

26. While one cannot overlook the heinousness of the crime committed by the appellant and its shocking consequences on the mother of the deceased, a widow for whom her son was the only hope, the question still remains whether it can be said in the facts and circumstances of the case that the appellant forfeited his right to live. Cruelty and depravity is always visible in cases of murder and other serious offences, but the real test is whether the facts of the case and the

conduct of the appellant establishes a degree of depravity such that it is irreparable. Chronic propensity of the accused is always a relevant factor to be kept in mind with a view to Judge whether the accused is a social security risk beyond salvation.

27. In the instant case, as we have observed earlier the appellant has no criminal antecedent. He a widower and for some reason felt attracted to the informant. He made advances to the informant which she repelled and rightly. The appellant had no business to pester her in the way he did, but it appears that her refusal resulted in causing mental disturbance. He was obsessed with the desire to establish relationship with the informant, who was a widow, and he felt annoyed when she gave no encouragement. The action of the appellant cannot be justified nor can one suggest reasons to mitigate such depravity and lust. But after all is said, it must be remembered that he did what he did on account of a reason personal to him for which he must be punished. His depravity is reparable and the alternative punishment provided in the statute is sufficient to achieve this objective. He cannot be said to be a social security risk beyond salvation nor is there any evidence suggesting chronic propensity. In our opinion, he has not forfeited his right to live but he certainly deserves punishment which in all probability will have the effect of correcting him in his future behaviour. It is no doubt true that one life has been lost but that is not enough justification for the loss of a second life. The decisions of the Supreme Court have suggested this approach and the criminal jurisprudence particularly on the sentencing aspect leans against capital punishment unless it becomes absolutely unavoidable. In the facts and circumstances of the case, we are satisfied that the sentence of death is not justified.

28. We, therefore, decline the Death Reference made by the Additional Sessions Judge, Gopalganj, and while dismissing the appeal preferred by the appellant, we sentence him to undergo rigorous imprisonment for life u/s 302 of the Indian Penal Code. The sentence of death awarded by the Additional Sessions Judge is set aside.

S.K. Katriar, J.

29. I agree.