

(2012) 03 MP CK 0079

In the Madhya Pradesh High Court

Case No : Criminal Reference No. 2 of 2011 and Criminal Appeal No. 851 of 2011

State of Madhya Pradesh

APPELLANT

Vs

Parshuram
 Parshuram Vs State of Madhya Pradesh

RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157(2), 164, 164A, 174, 313

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 228A, 302, 376

Citation : (2012) 3 JLI 227

Hon'ble Judges : S.K. Gangele, J; Giriraj Das Saxena, J

Bench : Division Bench

Judgement

G.D. Saxena, J.—The aforesaid Criminal Appeal and Capital Sentence Reference arise out of the impugned judgment and order of conviction and sentence dated 12th September, 2011 rendered in Sessions Trial No. 79/11 by the Third Additional Sessions Judge, Bhind (M.P.). Since the judgment and order challenged in the appeal is one and the same which is the subject matter of the Capital Sentence Reference made by the learned trial Judge, the appeal and the reference are herewith, taken up together for disposal. The appellant-accused stood his trial on the charges for the offences punishable under Sections 376 and 302 of I.P.C. before the Additional Sessions Judge and he was convicted and sentenced as following :

(a) for committing rape on the prosecutrix aged 7 years old, which is an offence punishable u/s 376 of I.P.C., appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs. 200/-, in default of payment of which he was directed to undergo imprisonment of one month;

(b) for committing murder of the prosecutrix, aged 7 years, which is an offence punishable u/s 302 of I.P.C., appellant was sentenced to death.

2. Facts in short are that on 6th February 2011, during timings of 10-30 a.m. to 1 p.m. (in the noon), mother of victim, (name and identity of the prosecutrix as

per restrictions imposed by law contained in Section 228-A of I.P.C. is not disclosed), Smt. Maya was fetching water from village well. Accused Parshuram, a resident of the village went there and expressed his desire to send her daughter (the victim) with him for eating plum-fruits from the tree, situated in the outskirt of the agricultural field of the village. When after a considerable period, the accused and her daughter (prosecutrix) did not come back, her mother left for in search of her daughter near the plum-tree, situated in the field of Kanchedi of village. After getting exhausted she came back to the house and narrated the incident to her mother-in-law and the villagers then she came to know from the persons of the locality namely, Manoj, Rambahadur and Narayan that they had seen her daughter with accused going towards the field of Shri Ram Rathore. On reaching the place, she found that her daughter was lying dead with injuries on her private parts and bleedings. On day of incident at about 5 p.m., in the evening, at her behest a Dehati-Nalish on the spot itself was recorded by the In-charge/Inspector of the Police Station Roan, district Bhind, which was later on forwarded to the Police Station for registration of the F.I.R. and the crime against culprit of the incident. After inquiry into Marg and investigation, a spot-map (Ex. P/5) was prepared. By issuing Safina Form (Ex. P/6), the witnesses were summoned and in the presence of the witnesses, memo of dead body (Ex. P/7) was prepared. The dead body of the deceased (victim) was sent by a Constable Munnalal of the Police Station Roan, to the District Hospital, Bhind for conducting postmortem. Case-diary statements of the witnesses were recorded. Next day, accused was arrested and the charge-sheet was submitted.

3. On the materials submitted alongwith the charge-sheet, the learned Magistrate committed the case to the Court of Session as the offences punishable under Sections 376 and 302 of I.P.C. were exclusively triable by the Court of Sessions.

4. The accused/appellant was charged on the aforesaid counts by the trial Court. He pleaded not guilty to those charges and claimed for his trial.

5. The learned trial Judge after hearing the parties and on consideration of the material available found all the charges against the appellant as proved to the hilt and hence recorded the judgment of conviction and passed the sentences against him vide impugned as detailed above.

6. The learned Additional Advocate General assisted by learned Dy. Advocate General appearing for the State while supporting the death sentence awarded by the learned trial Judge to accused Parshuram contended that at about 10-30 a.m. to 1 p.m. in the noon, the accused came to the mother of the prosecutrix and asked her to send her daughter with him for eating plum-fruits from the tree of the village. When her daughter did not come back after considerable time, she went in search of her daughter near the plum tree situated in the field of Kanchedi, but could not trace her out and so she came to her home back. At reaching, she was informed by the villagers the place where her daughter was

seen by them. When she alongwith villagers went to that place, she was shocked to see the dead body of her daughter which was lying in the field of Shri Ram in a naked position which indicated in itself commission of the act with an innocent minor girl by the accused in a barbaric and brutal manner. It is contended that there is no specific defence of the accused regarding the crime. No enmity appears with the mother and other material witnesses. The version of incident is fully supported by the ocular and the medical evidence. The victim was sexually assaulted and thereafter in a barbaric manner was brutally killed. Hence, in such specific circumstances, the learned trial court has committed no wrong in awarding to the accused a death sentence. It is submitted that the accused does not deserve any kind of sympathy. Arguing aforesaid, it is prayed that capital punishment passed by the trial Judge be confirmed and the appeal submitted from jail by the accused/appellant be dismissed. In support of the said submissions, reliance is placed by them on the decisions in the case of Bachan Singh Vs. State of Punjab, Machhi Singh and Others Vs. State of Punjab, , Molai and Another Vs. State of Madhya Pradesh, and Md. Mannan @ Abdul Mannan Vs. State of Bihar,

7. The Learned Counsel appearing for the accused/appellant contended that the present incident is a black blot on civilized society and no one involved in the incident should be spared with. He submitted that on perusal of the postmortem report of the prosecutrix it clearly appears that there was no incident of rape on the prosecutrix, aged 7 years. It is clear that genitals of the minor girl were torn by other means and not by committing intercourse on her. The lady doctor who was one of the members of the Panel of doctors and conducted the autopsy on her body was not examined. Dr. R.S Rajoria (PW-2) a member of Panel of doctors was not a Gynaecologist and he did not examine the sex organs of the deceased. No opinion regarding rape with the prosecutrix was mentioned in the postmortem report (Ex. P/2). As regards the murder of the prosecutrix, there are major contradictions and omissions in the statements of the eye-witnesses on material particulars which makes the prosecution story doubtful. It is submitted that the accused is teen aged boy, having no past criminal history and is a student of graduation in Science Faculty. No cogent reasons are shown why the student of graduation of Science Faculty will commit such a heinous crime. It is submitted that there is every possibility that some unknown miscreant had committed the crime and accused had been made scapegoat for the unfortunate incident. On the basis of the above, it is prayed that by allowing jail appeal, the accused-appellant be acquitted of the charges leveled against him. In support of submissions, Learned Counsel placed reliance on the decisions in the cases of Rahul @ Rao Sahib Vs. State of Maharashtra (2005) 10 SCC 322 , Bishnu Prasad Sinha and Another Vs. State of Assam, , Gambhir Vs. State of Maharashtra, State of Maharashtra Vs. Gorkcha Ambaji Adsul (2011) 7 SCC 1157, Bashir Shah & others Vs. State of Rajasthan (1994 CLR 2526.

8. Heard the Learned Counsel for the parties at length. Also perused the record containing impugned judgment and consider the law on the points agitated

before the court.

9. Now, we proceed to examine argument advanced on behalf of the accused appellant to the effect that in the instant case vital links in the chain of circumstances are conspicuously missing and the circumstantial evidence relied upon by the learned Sessions Judge is incomplete, vague and, therefore, on such weak and unreliable evidence the accused appellant cannot be convicted under Sections 302 and 376 of I.P.C.

10. The word "proof has been defined u/s 3 of the Indian Evidence Act according to which a fact is said to be proved when after considering the matters before it the Court either believes or considers its existence so probable that a prudent man ought under the circumstances, of a particular case to act upon the supposition that it exists. It is also worthy of remembrance that Court may, presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events and of human conduct.

11. Turning to the evidence resting conviction of the accused, it may be seen that Maya (PW-4), mother of the prosecutrix (deceased) deposed in her evidence that near about four months ago, at about 10 a.m., when she was fetching water from the well, her daughter (victim) was playing there. At that juncture, accused Parshuram, who was previously known to her came there. He expressed his desire to carry her daughter (prosecutrix) with him to eat plum-fruits from plum-tree situated in the outskirts of the village. Near about an hour, when her daughter did not come back, she went in search of her at the respective place, situated at the agricultural field of Kanchedi but she could not find her. She returned back to her house and informed her mother-in-law. She again went with her mother-in-law in search of her daughter at the place. Manoj of her village who was carrying fodder for his cattle met them. He told that near about 1 p.m., accused Parshuram was seen with her daughter. Thereafter, she informed to other villagers, namely, Rambabu, Baburam, Rambahadur. In turn, all the above named persons with Manoj went in search of her daughter. They saw that her daughter (victim) was lying dead in a naked condition and bleeding was coming from her genitals. Photographs (Articles-A to D) were taken of the deceased. Thereafter, the police party reached the spot. Witness lodged the report to police on the spot. On spot the police prepared spot-map (Ex. P/5), Safina Form (Ex. P/6) and memo of dead body vide Ex. P/7. The witness in her cross-examination deposed that on the day of incident, during about 10 to 11 a.m., his brother-in-law Rambhadur went to village Machchand on motorcycle, which was 12 k.m. away and after incident on her information on phone, just before 2 p.m., he returned back on the spot before arrival of the police on the spot. In cross-examination, she and other prosecution witnesses admitted that the age of the accused was 22 years and at the time of incident, he was a student of B.Sc. and was imparting tuition in Lahar town. He had no past criminal History.

12. Rambhadur (PW-6) uncle of the victim and material ocular witness of the incident deposed that at about 10-30 a.m., his sister-in-law (wife of his brother)

and his mother were fetching water from the village well when accused Parshuram, a resident of his village reached there and told his Bhabhi (sister-in-law) to take his niece (the victim) for eating plum-fruits from the plum-tree of the vicinity. Thereafter after taking bath, he left on the motorcycle for village Machchand to meet his relations and he returned back at about 2 p.m. in the village. The distance in between two villages is 12-13 k.m. and the journey on motorcycle at least covers one hour. He saw the accused with the victim going towards the agricultural field of Shri Ram, which is 1 k.m. away from his house, at the time of going to village Machchand. On receiving the information on phone from his village, he immediately rushed to his house. He saw his Bhabhi, mother, Laxman and Manoj going towards the field to see his niece (the victim). In para 4 of his statement, he deposed that the dead body of the victim was lying in a naked condition at the place. The mouth was covered with clothe and the stems of mustered plants were intruded into nose. The bleeding was coming from the genitals. Thereafter the police reached the spot. Police prepared the memos such as Safina Form (Ex. P/6), memo of dead-body (Ex. P/7) spot-map, seizure memo (Ex. P/12) of blood soaked soil and simple soil from the spot. Sample of stems of mustered plants was also collected from the spot. Chappales of victim and 5-6 plum-fruits scattered at the nearby place of dead-body were also seized.

13. Laxman (PW-7) deposed that on the day of incident at about 12 p.m., he went to the agricultural fields of village for collection of fodders for the cattle. When he was carrying fodder near from the place of plum-tree of Kanchade or from boundary (med) of agriculture field of Layak Singh, he saw that accused Parshuram was providing plum-fruits to the victim, daughter of Mayabai. After sometime, accused carried the victim anterior to the field of mustered crop belonging to Shri Ram. Just few minutes thereafter, he heard the cries of victim and also saw that accused was fleeing away from the spot. Thereafter Mayabai, Khayaliram, Manoj, Rambahadur and Rambeti came to him as they were in search of victim. He told them that he heard the cries of victim from inside the field of mustered crops belonging to Shriram. Then all persons named above including he himself entered the field of standing mustered crop. They all saw that the dead-body of victim was lying naked and Salwar was tied around her neck and mouth. Stems of mustered plants were intruded in her both nostrils and fecal material was coming out. Bleeding was coming from the genitals. Thereafter the police reached the spot and prepared all memos. In cross-examination, he admitted that uncle of deceased-victim, namely, Rambahadur is his cousin. He also admitted that after hearing cry of the victim, he did not go to the spot because he was not thinking of such kind of happening with the victim nor did he go to village to inform Maya, Khayaliram or other about hearing of cry of victim by him. Police reached the spot because of regular Gast duty or it may be possible that someone informed the police about the incident.

14. Manoj (PW-9) deposed that on 06th February 2011 at about 1 p.m. in noon he went to agricultural field of village for collection of fodder for his cattle. By that time he saw the accused Parshuram alongwith victim at the nearby place of

plum-tree, situated in the field of Kanchedi. Thereafter he returned back to his home. There Maya, mother of victim informed that victim was carried by accused Parshuram and thereafter she did not return back. He accompanied with Maya, mother of victim and other villagers went in search of the prosecutrix to the agricultural fields, situated in the outskirts of the village. All persons above named saw the dead body of deceased at agricultural field of Shri Ram in a naked condition, as per photographs marked as Article-A to Article-D. He deposed that the police prepared all memos on spot in his presence.

15. Constable Jadgish (PW-8) posted in the police station Raun, district Bhind deposed that on the date of incident someone informed that dead body of girl was lying in the agricultural field of village Madi Jaitpura. On information the In-charge/Inspector of the Police Station Raun alongwith he and other police force reached the spot and saw that dead body of a girl was lying on the spot. The accused was caught hold of by some villagers on the spot. The In-charge Inspector recorded the Dehati Nalish (Ex. P/4) on the spot on the instruction of Maya, mother of deceased. Thereafter, he forwarded the same to Police Station for registration of F.I.R. On the basis of Dehati Nalish (Ex. P/4), an F.I.R. (Ex. P/8) was written and Marg report (Ex. P/9) was also lodged. On 7th February 2011, a sealed packet containing the clothes of the accused with two bottles filled with pubic hair and semen slide of the accused received in a sealed state from the Government Hospital was seized and seizure memo of the same was prepared by the Head Constable Ravindra Singh. On that day, another sealed packet containing the clothes of deceased with viscera and two slides received from the hospital was seized as per seizure-memo (Ex. P/11) by the Head Constable Ravindra Singh. In his cross-examination, the witness confirms his version of chief examination. It is pertinent to mention that his version as mentioned in his statement is totally against the statement of Investigating Officer, namely, B.K. Mahore (PW-10).

16. B.K. Mahore (PW-10) In-charge/Inspector of the Police Station Raun, deposed that on 6th February 2011 he was on his regular Ghat duty. As he reached village Madi Jaitpura, Maya, wife of Natu Singh Kushwah informed that her minor daughter (victim) was carried by accused Parshuram on the pretext to provide her plum-fruits and she did not return back till 1.30 p.m. She herself went in search of her daughter to the plum tree situated in the field of Kanchedi but did not find her there. Thereafter she and other persons saw her daughter dead in the field of mustered crops owned by Shri Ram. He wrote the Dehati Nalish as per the instruction of the mother of the victim vide Ex. P/4 for commission of offence punishable under Sections 376 and 302 of I.P.C. which was forwarded for registration of the Crime by a Constable Jahdish Singh to Police Station Raun. Thereafter he inspected the spot and prepared spot map (Ex. P/5). He issued the Safina Form (Ex. P/6) to witnesses for preparation of memo of dead body. Then he prepared the memo of dead body vide Ex. P/7 in the presence of witnesses mentioned therein. During preparation of memo of dead body, prima facie it was apparent to the witnesses that victim was killed

after committing rape, which they have deposed. After preparation of memo, the dead body was sent to the District Hospital Bhind for postmortem. During investigation, he recorded the statements of eye-witnesses and material witnesses without causing delay. Accused Parshuram was arrested on 7th February 2011 and after arrest he was examined in the District Hospital Bhind. On his request, F.S.L. Officer Shri A.K. Khan visited the spot and prepared the sketch map of the spot. He sent all the seized articles for chemical examination to the State Forensic Laboratory. In his cross-examination, he categorically denied that he got the information on phone in Police Station as stated by his constable Jagdish (PW-8). He also categorically denied that accused was arrested on the day of incident by him as stated by his Constable Jagdish (PW-8). It also appears from record of the trial Judge that the Superintendent of Police Bhind vide letter No. SP/Bhind/FSL/100/11 dated 19th February 2011, the articles related to the crime, which were seized from the spot and the District Hospital Bhind sent to the State Forensic Laboratory, Sagar for chemical and other examination.

17. On 7th February 2011 at about 3-30 p.m, in the forest of Khurdua, accused Pashuram was arrested vide Ex. P/13 by B.K. Mahore (PW-10), thereafter, on same day he was sent for medical examination to Community Health Centre Raun, district Bhind. There he was medically examined by Dr. R.L. Sharma (PW-1) who after examination of the accused and his physique and genitals opined that the accused was competent to perform sexual intercourse. He prepared the semen slide and preserved that slide with pubic hair and under garment of the accused in a sealed packet which was handed over to the concerned constable for their chemical examination.

18. All witnesses admitted in their depositions that the accused is a teen aged boy, who was a student of B.Sc. Final year and was imparting tuition to students in Lahar Town and in village where he used to live. The accused had no bad character antecedents. Though the presence of accused on the day of incident is not admitted by the accused in his statement recorded u/s 313 of Cr.P.C., by the trial Judge but in the statement of his father Nathuram (DW-1), the presence on the day and time of incident in the village was admitted by the said witness. The accused was not able to defend himself by showing cogent reasons that if he was not involved in the incident, then who was responsible for it, as suggested by the defence counsel to the material prosecution witnesses. No plausible defence has come out in accused's statement or in the statements of defence witnesses, except his previous character mentioned above.

19. Dr. R.N. Rajoria (PW-2) deposed that on 7th February 2011, while he was posted as a Medical Officer in the District Hospital Bhind, a Panel of Doctors including Dr. C.R. Raje, Dr. Chitra Maheshwari and he himself conducted postmortem on the dead body of victim, aged 7 years, daughter of Nathuram Kushwah, r/o village Madi Jaitpur, P.S. Raun, which was brought by a constable Munna Lal Dubey No. 981 of P.S. Raun, after getting identification by one Ram

Bahadur, uncle of the deceased (victim) and Pahalwan, son of Patiram. The postmortem started at 11-20 a.m. The Panel of ODF doctors above found that a body was wearing a blue coloured Kurta, the mouth was packed by brown coloured Penty, nostrils were packed by stems of mustered plants. One blue coloured Salwar was tied around the neck. A Knot was fixed on the right side of neck. A ligature mark admeasuring 3.5 cm. in width, just front over thyroid cartilage encircling whole area of neck in transverse was placed. Knot mount was present on right side of neck, ligature marks were in leathery colour. Following injuries were found during postmortem examination of the body :

- (1) Contusion admeasuring 3 cm. x 2 cm. inside on upper part of sternum and on dissection blood clot was present;
- (2) Two contusions each 1 cm. x 1/2 cm. inside on left side cheek on dissection blood clot was present;
- (3) Contusion admeasuring 3 cm. x 1 1/2 cm. inside over right side body to sternum obliquely. On dissection blood clot was present.

On dissection of body, the said Panel of doctors observed:

Clotted blood on private part is present. IIIrd degree perinea tear present. 2 cm. x 2 cm. tear is present in over posterior for nix in vagina. Hymen badly torn and 2 cm. x 2 cm. tear present over posterior wall of uterus. Blood stained mud present inside the uterus and some in pelvic cavity.

20. The Panel of doctors above opined that the cause of death was asphyxia. Duration of death was 6 to 24 hours from postmortem. The mode of death was homicidal in nature. Said postmortem report is Ex. P/2, written and signed by the doctors. The viscera, namely, blood stained mud in uterus, two slides of vaginal swab, blue coloured Salwar causing ligature mark in the neck, brown coloured Penty (Chhaddi) used for packing mouth, two stems of mustard plants intruded in both the cavities of nostril each 7 cm. long, were sealed and for further examination were handed over to the concerned constable.

21. On minute perusal of the postmortem report (Ex. P/2) and the deposition of the witnesses, we find that there is nothing mentioned about the carnal intercourse with the child victim. However, the report (Ex. P/2) and deposition of the witnesses clearly are suggestive of the fact about killing of a minor child in a gruesome manner. It is unfortunate on the part of the Panel of the doctors conducting postmortem examination of the unfortunate victim, aged 7 years that they remained silent even after seeing the serious injuries on the genitals of healthy minor girl, during examination. They could not make any endeavour to mention the genesis and nature of the unnatural injuries inflicted on the sex organs of the victim to show possibility of her death.

22. To know the origin and result of the serious unnatural injuries caused to the victim in an incident, let us consult with the Book "Modi's Medical Jurisprudence and Toxicology "Twenty -third Edition 2005 by Editors Dr. K. Mathiharan and Prof.

Dr. Amit K. Patnaik. At page 843, the Authors opined:

The vagina may be lacerated by the introduction of the forcible thrusting of a foreign body such as blunt object. Laceration caused by thrusting a foreign body into the vagina are sometimes multiple, involving the pelvic organs and cause of death. The vagina may be injured by violent sexual intercourse especially by a strong healthy adult with a small girl.

23. In such a scenario, we find that the mud of blood in vagina and pelvic cavity might have come on account of forcible insertion of the foreign body like stems of mustered plants, which were also recovered from the scene of occurrence. The aforesaid view does further find substance by the postmortem report of the victim written by the Panel of doctors, which by itself is speaking the truthfulness of the incident. Considering the same, we are of the view that present was a fit case where an opinion from the Specialist of the State Forensic Department of the Medical College at Gwalior or from the State Institute of Forensic Science in Gandhi Medical College Bhopal should have been sought for, but unfortunately this step could not be taken either by the Investigating Agency or Supervisory Authority or by the Medical Team, conducting the postmortem of the deceased/victim. It is also surprising to note that during investigation or trial, the report of the Chemical Examiner of the State Forensic Laboratory could not be obtained nor produced or proved. At this juncture, it would be relevant to refer the decision of the Apex court in the case of Sheo Shankar Singh Vs. State of Jharkhand and Another, wherein it has been held:

The question, however, is whether the failure of the investigating agency to make a reference would in the circumstances of the case discredit either the version of the witnesses that the T-shirt was bloodstained when it was seized or constitute a deficiency of the kind that would affect the prosecution version. Our answer is in the negative. Failure to make a reference to forensic science laboratory is in the circumstances of the case no more than a deficiency in the investigation of the case. Any such deficiency does not necessarily lead to the conclusion that the prosecution case is totally unworthy of credit. Deficiencies in investigation by way of omissions and lapses on the part of investigating agency cannot in themselves justify a total rejection of the prosecution case. In Ram Bihari Yadav Vs. State of Bihar and Others, this Court while dealing with the effect of shoddy investigation of cases held that if primacy was given to such negligent investigation or to the omissions and lapses committed in the course of investigation, it will shake the confidence of the people not only in the law enforcing agency but also in the administration of justice. The same view was expressed by this Court in Surendra Paswan Vs. State of Jharkhand, . In that case the investigating officer had not sent the blood samples collected from the spot for chemical examination. this Court held that merely because the sample was not so sent may constitute a deficiency in the investigation but the same did not corrode the evidentiary value of the eye-witnesses. (Para 42)

24. It is no doubt true that on perusal of the postmortem report (Ex. P/2), it

prima-facie transpires that the cause of death of the minor victim was throttling but the factum of inflicting serious and grave injuries on the genitals of the infant victim and likelihood of their being played vital role in causing her death remained unanswered. We are surprised that the Panel of the experienced doctors could not ascertain the nature of injuries caused to the genitals. They were also not appeared to make sincere efforts on their parts to gather as up to what extent the injuries could be held responsible for causing death of the victim. As per ocular evidence, as discussed above, it is apparent that grave and serious injuries were caused on the genitals of the victim. In our view, in such cases where the medical evidence discloses the nature of crime committed by the accused in an extremely brutal, gruesome and dastardly manner about which normal people can not imagine even in thoughts, the lacuna on the part of the prosecution will not render any sort of help to the accused.

25. On detailed discussions of the above, it is proved beyond doubts that the eye witnesses though related to the deceased victim but not hostile with the accused are reliable and their evidence also finds support from prompt lodging of the FIR lodged by Mayabai, mother of the victim and the medical evidence. The accused could not be able to prove that he is scapegoat in this case. Consequently, the guilt of the accused is proved beyond all reasonable doubts.

26. Looking to the entire evidence as produced before the trial Judge, we are of the firm view that learned Trial Judge rightly convicted the accused/appellant for the alleged u/s 302 of I.P.C.

27. Now, we are concerned with the issue as to whether the death sentence imposed on the appellant is liable to be affirmed or not. In *Amit @ Ammu Vs. State of Maharashtra*, , the Apex court held :

Though the offence committed by the appellant deserves severe condemnation and is a most heinous crime, but on cumulative facts and circumstances of the case, we do not think that the case falls in the category of rarest of the rare case. We hope that the appellant will learn a lesson and have opportunity to ponder over what he did during the period he undergoes the life sentence. Having regard to the totality of the circumstances, we modify the impugned judgment and instead of death penalty, award life imprisonment to the appellant for offence u/s 302, IPC. In all other respect, the impugned judgment is maintained. The appeal is allowed to this limited extent.(Para 10)

28. In the case of *Swamy Sharaddananda @ Murali Manohar Mishra Vs. State of Karnataka*, and in *Rameshbhai Chandubhai Rathod Vs. State of Gujarat* AIR 2009 SCW 3391, the Division bench of Hon. Apex court were agreed that conviction is to be maintained but one of them (Hon. Member of the Bench) had confirmed the death sentence while other opined that life sentence be imposed. Under the circumstances, the matter was proposed to be referred to a larger bench only on the question of sentence and was placed before Hon"ble the Chief Justice of India for necessary orders. Thus, sentence in both cases were sub-juiced.

29. On the other side, in Kamta Tiwari Vs. State of M.P., the Hon. Apex Court held:-

6. That brings us to the question whether the sentence of death imposed upon the appellant by the trial Court for his conviction u/s 302 I.P.C and confirmed by the High Court should be maintained or not. In Bachan Singh Vs. State of Punjab, , this Court indicated, while discussing the sentencing policy, the guidelines to be followed for imposing the extreme penalty of death. From the guidelines so indicated, the Court in its later judgment in Machhi Singh and Others Vs. State of Punjab, , formulated the following propositions, which are to be applied when the question of awarding death sentence arises;

(i) The extreme penalty of death need not be inflicted except in gravest cases of extreme culpability;

(ii) Before opting for the death penalty the circumstances of the offender" also require to be taken into consideration along with the circumstances of the crime;

(iii) Life imprisonment is the rule and death sentence is an exception. In other words death sentence must be imposed only when life imprisonment appears to be an altogether inadequate punishment having regard to the relevant circumstances of the crime, and provided, and only provided, the option to impose sentence of imprisonment of life cannot be conscientiously exercised having regard to the nature and circumstances of the crime and all the relevant circumstances;

(iv) A balance sheet of aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and mitigating circumstances before the option is exercised.

7. Taking an overall view of all the facts and circumstances of the instant case in the light of the above propositions, we are of the firm opinion that the sentence of death should be maintained. In vain, we have searched for mitigating circumstances but found aggravating circumstances a plenty. The evidence on record clearly establishes that the appellant was close to the family of Parmeshwar and the deceased and her siblings used to call her Tiwari uncle. Obviously her closeness with the appellant encouraged her to go to his shop, which was near the saloon where she had gone for a haircut with her father and brother, and ask for some biscuits. The appellant readily responded to the request by taking her to the nearby grocery shop of Budhsen and handing over a packet of biscuits apparently as a prelude to his sinister design which unfolded in her kidnapping, brutal rape and gruesome murder -as the numerous injuries on her person testify; and the finale was the dumping of her dead body in a well. When an innocent hapless girl of 7 years was subjected to such barbaric treatment by a person who was in a position of her trust his culpability assumes the proportion of extreme depravity and arouses a sense of revulsion in the mind of the common man. In fine, the motivation of the perpetrator, the vulnerability

of the victim, the enormity of the crime, the execution thereof persuade us to hold that this is a "rarest of rare" cases where the sentence of death is eminently desirable not only to deter others from committing such atrocious crimes but also to give emphatic expression to society's abhorrence of such crimes.

30. In *Bantu v. State of U.P.* (AIR 2009 SC 1367), the Apex Court held:-

28. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime, e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order, and public interest, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meager sentences or taking too sympathetic view merely on account of lapse of time in respect of such offences will be result-wise counter-productive in the long run and against societal interest which needs to be cared for and strengthened by string of deterrence inbuilt in the sentencing system.

31. In *Dhananjay Chatterjee alias Dhana Vs. State of W.B.*, , it has been observed as under:-

29. Shockingly large number of criminals go unpunished thereby increasingly, encouraging the criminals and in the ultimate making justice suffer by weakening the system's creditability. The imposition of appropriate punishment is the manner in which the Court responds to the society's cry for justice against the criminal. Justice demands that Courts should impose punishment befitting the crime so that the Courts reflect public abhorrence of the crime. The Court must not only keep in view the rights of the criminal but also the rights of the victim of the crime and the society at large while considering the imposition of appropriate punishment.

32. Similar view has also been expressed in *Ravji alias Ram Chandra Vs. State of Rajasthan*, . It has been held as under:

30. It is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The Court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should "respond to the society's cry for justice against the criminal". If for extremely heinous crime of murder perpetrated in a very brutal manner without any provocation, most deterrent punishment is not given, the case of deterrent punishment will lose its relevance.

33. Recently, in *Md. Mannan @ Abdul Mannan Vs. State of Bihar*, the Apex court held:-

23. It is trite that death sentence can be inflicted only in a case which comes within the category of the rarest of rare cases but there is no hard-and-fast rule and parameter to decide this vexed issue. This Court had the occasion to consider the cases which can be termed as the rarest of rare cases and although certain comprehensive guidelines have been laid to adjudge this issue but no hard-and-fast formula of universal application has been laid down in this regard. Crimes are committed in so different and distinct circumstances that it is impossible to lay down comprehensive guidelines to decide this issue. Nevertheless it is widely accepted that in deciding this question the number of persons killed is not decisive.

24. Further, crime being brutal and heinous itself does not turn the scale towards the death sentence. When the crime is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community and when collective conscience of the community is petrified, one has to lean towards the death sentence. But this is not the end. If these factors are present the court has to see as to whether the accused is a menace to the society and would continue to be so, threatening its peaceful and harmonious coexistence. The court has to further enquire and believe that the accused condemned cannot be reformed or rehabilitated and shall continue with the criminal acts. In this way a balance sheet is to be prepared while considering the imposition of penalty of death of aggravating and mitigating circumstances and a just balance is to be struck. So long the death sentence is provided in the statute and when collective conscience of the community is petrified, it is expected that the holders of judicial power do not stammer de hors their personal opinion and inflict death penalty. These are the broad guidelines which this Court has laid down for imposition of the death penalty.

26. The post-mortem report shows various injuries on the face, nails and body of the child. These injuries show the gruesome manner in which she was subjected to rape. The victim of crime is an innocent child who did not provide even an excuse, much less a provocation for murder. Such cruelty towards a young child is appalling. The appellant had stooped so low as to unleash his monstrous self on the innocent, helpless and defenceless child. This act no doubt had invited extreme indignation of the community and shocked the collective conscience of the society. Their expectation from the authority conferred with the power to adjudicate is to inflict the death sentence which is natural and logical. We are of the opinion that the appellant is a menace to the society and shall continue to be so and he cannot be reformed. We have no manner of doubt that the case in hand falls in the category of the rarest of rare cases and the trial court had correctly inflicted the death sentence which had rightly been confirmed by the High Court.

34. A trend for lust of sex on minor helpless girls by teenagers males in metropolitan cities and in the areas far away from cities has developed gradually. The victims are the minor school girls. After sexual assaults, the culprits to save themselves from the crimes, put these victims on death mercilessly. In the present case, the accused was a student of Science graduation with no past criminal history. For sex enjoyment and lust, he used the minor victim aged 7 years and after fulfillment of his desire, eliminated the helpless girl. In this view of the matter, in the opinion of this Court, the present case can be termed as the rarest of rare cases and in this manner, the trial court has perfectly and correctly inflicted the death sentence to the accused.

35. Hence, after closely scrutinizing the evidence, our such exercise persuades us to unhesitatingly hold that the findings entered by the learned trial court are unexceptionable. It is of course true that the entire case is based on circumstantial evidence but the tell-tale circumstances all of which stand firmly established are not compatible with any other reasonable hypothesis except that the appellant kidnapped the minor girl, committed rape on her and then strangled her to death. Under the circumstances, the convictions of the appellant for the offences under Sections 376 and 302 of I.P.C. and sentences thereon must, therefore, be and are hereby upheld. The reference is answered in the aforesaid manner. Eventually, the appeal preferred by the appellant goes and stand hereby dismissed.

36. Before parting, we feel that in the present case, looking to the gravity and seriousness of the offence in which the crime was committed in a gruesome manner on the helpless innocent girl aged 7 years, the way of conduction of postmortem by the Panel of doctors in a routine and casual manner, the way of hasty and handy investigation causing hurts from the core of heart, it would be expedient to issue the following directions to Investigating Agency all over in the State of Madhya Pradesh with regard to fair and speedy investigation in cases of violent attack on minor female/child such as rape/unnatural offences and thereafter committing brutal murder of the innocent human creature:

(i) In all criminal incidents, the First Information report be lodged without delay with mandatory compliance of the provisions of Section 157(2) of Cr.P.C. for fair investigation. In such cases, a copy of the FIR be sent without delay to the Superintendent of Police of the District for his information so that the matter can be monitored by him in a regular meeting to be held on an administrative side.

(ii) It is directed that the copy of FIR/Marg Report/information reduced in writing shall be sent well in time alongwith a requisition-memo for medical examination of the victim/postmortem to the Chief Medical Officer/Concerning Medical Officer.

(iii) In cases of rape on female child, under age of 10-15 years, they be minutely examined by the Team consisted of two Senior Female Gynecologists of the District Hospital and in case of rape and murder of infant female child in rare cases and in brutal crime relating to female, the postmortem shall be conducted

by the Team of Doctors including the Senior efficient Specialist in Forensic Science/general surgery, Senior Female Gynecologist having an experience in the field and other Senior Doctors, list of whom shall be prepared after consultation with the Medical and Health Officer of the District by the District Collector. The list of such Panel shall be examined regularly by the District Medical and Health Officer and put up in a regular Monitor Cell Committee presided over by the District Collector. The list of such panel shall also be affixed on the Notice Board of the District Hospital of the concerned District.

(iv) In case the efficient Doctors are not available, in that eventuality, such examination shall be conducted by Private Medical Practitioners with their consent and further with the consent of the victim or of a person competent to give such consent on her behalf, as envisaged under the provisions of Section 164-A of Cr.P.C. For the services so rendered, the Private Medical Practitioners shall be paid some honorarium fixed by the District Collector from the funds available to the District Hospital. It is also directed that the State Govt. after consultation with other concerned departments under its territory shall formulate the rules in regard to compliance of the provisions of Section 164-A of Cr.P.C. within a period of three months from the date of communication of the directions of this Court and the concerned departments of the district shall formulate the Panel of Senior Doctors, within a period of six months thereafter.

(v) The Postmortem in case of rape with murder of infant female child shall be conducted by the aforesaid Panel and the videography of the postmortem shall be done. If looking to the severity of the crime and complexity of the matter and if the circumstances so warrant, the Chief Medical and Health Officer shall send within the course of three days from the date of Postmortem, the videography alongwith postmortem report to the Senior Forensic Experts appointed in nearest Medical College or Department of State Forensic Science for seeking their opinion and the opinion alongwith the such videography shall be sent back within the course of seven days on priority basis to the concerned Chief Medical and Health Officer of the concerned District. The CMO in his turn shall also forward the copy of the opinion of the Experts to the concerned Investigating Officer and the S.P. of the District so that said videography alongwith Expert's report can be placed at the time of submission of charge-sheet in criminal courts for their utilization during trial of such cases.

(vi) Criminal cases involving sexual brutality (rape/sexual assault with murder on infant female child) shall be investigated by the Gazetted Officers not below the rank of SDO(P)/Dy SP/CSP of the area or/Sub Division and they will attend the spot immediately soon after getting information and take over the investigation. The inquiry u/s 174 of Cr.P.C. shall be conducted in the presence of the Executive Magistrate not below the rank of Tahsildar of the area/tahsil. The concerned Investigating Officer/Executive Magistrate shall after preliminary inquiry on spot send the dead-body after taking all safety measurements of seasonal effects such as deterioration etc. to the nearest District Hospital for the postmortem to be

conducted by the Panel of the Specialist Doctors, as suggested earlier.

(vii) It is also directed that such criminal cases of sexual brutality (rape/sexual assault with murder on infant female child) officers of higher rank in cadre and the supervising police authorities shall take all measurements regarding the fair and speedy investigation within the period of limitation as mentioned in law.

(viii) In above mentioned cases, Investigating Officers for just and fair investigation shall adopt all measurements of modern scientific technology such as audio-video electronic means by taking videography of the spot and in recording statements of material witnesses, after complying with mandatory provisions of Section 164 Cr.P.C.

(ix) In all above mentioned cases and of sensitive nature of the area, all the articles/weapons of crime be kept in a sealed condition under safe-custody and be sent for scientific examination without delay on the part of investigation. The Senior Officer will insist the State Forensic Laboratories to examine the articles/weapons without unnecessary delay and the reports from the Experts must be filed alongwith the charge-sheet, by taking all measurements to produce the properties of crime before the criminal court.

(x) For fair and speedy trial before the courts, the Investigating Officers and Senior Police Officers of the District and of the area shall remain in constant touch with the prosecuting agencies and shall avoid undue delay in recording the statements of material witnesses. The concerned police officers on the request of the witnesses, advice of the prosecution agencies and on directions of the criminal court shall provide the protection against the pressure/threat made by the accused or any persons acting on his behalf.

(xi) The Senior Police Officers shall keep the vigil eye over the investigations of the crime of his area and issue the necessary directions to the Investigating Officers and also watch that their directions be complied with effectively in time.

It is directed that the Law and Legislation Department/Home shall take all measurements as suggested above and the directions shall be complied in a letter and spirit.