

(2008) 01 BOM CK 0040

In the Bombay High Court

Case No : Criminal Appeal No's. 1020 of 2001 and 401 of 2002

State of Maharashtra

APPELLANT

Vs

Haresh Mohandas Rajput
 Haresh Mohandas Rajput Vs
State of Maharashtra

RESPONDENT

Date of Decision : 11-01-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 302, 376

Citation : (2008) 110 BOMLR 373

Hon'ble Judges : S. Radhakrishnan, J;R.S. Dalvi, J

Bench : Division Bench

Advocate : Sharmila Kaushik, for the Appellant; A.R. Patil, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

S. Radhakrishnan, J.—By filing the above Appeal No.1020 of 2001 the Appellant-State is seeking the enhancement of sentence awarded to the Respondent-original accused by the Additional Sessions Judge, Pune. Whereas, by filing the Appeal No. 401 of 2002, the original-accused is challenging the judgment and order of conviction and the punishment of Life Imprisonment awarded for the offences punishable u/s 376 and 302 of the Indian Penal Code by the learned Additional Sessions Judge, Pune.

2. The facts of the case in a nutshell are, as under:

he family of original Complainant was doing small business of selling of edibles and handkerchiefs & socks on the streets in Pune. Complainant (P.W. No. 1) is the mother of victim girl, P.W. No. 2 Ashok Kriplani is the husband of Complainant and P.W.3 Nitesh and Madhuri are their children. The accused Haresh Rajput is the neighbour of complainant and he was residing with his son Khushal and his old mother and he was working in a liquor shop and was alleged to be addicted to liquor.

3. On 24th October, 1999, Sunday and being a day of "Kojagiri Pournima", the Complainant and her husband had been to Shagun Chowk for their routine business of selling small items and they were also accompanied by their children. However due to irritation caused by the children, the Complainant sent her children back to their home. Accordingly at about 4.00 pm. Nitesh with his two sisters had returned to their home. After returning home, the children were playing in front of their house, and at that point of time, the Respondent-original accused was also there in front of his house which was opposite to the house of the Complainant. The Appellants mother and son Khushal had been to Kalyan to bring some medicines to control the alcoholic problem of the Appellant, hence Appellant was alone. After some time Nitesh and his sister Madhuri had realised that their victim sister was not seen around, they searched for some time and thereafter they rushed to their mother and informed about it, accordingly their mother Tara took search of the victim girl and had enquired about her with her relatives and due to failure in search, finally at about 9.30 p.m. on the same day, she had lodged a complaint with the Pimpri Police Station.

4. It is the case of the prosecution that when Khushal and his grand mother returned to their house, the accused was in the house and that the lights were off. After their arrival Khushal had put on the lights, however, accused scolded him and he put off the lights. At that time Khushal saw a hand below the cot and went in the kitchen room for tea. Thereafter the accused followed Khushal in the kitchen and had confessed that he had committed murder of victim girl and had also threatened Khushal not to go out. However Khushal ran out and had directly been to the Police Station and had narrated about the incident to the Police, while the Police were recording the missing complaint of Tara i.e. mother of victim girl. Immediately, thereafter the Police rushed to the house of accused and took search and found the dead body of victim girl below the cot at the house of the accused. The dead body of victim girl was taken out on a hand-cart, her clothes were blood stained and immediately the accused was taken into custody, who was present there.

5. Thereafter the Police Sub-Inspector Ravindra Pawar had visited the spot and conducted spot panchanama, seized the blood stained bed-sheet and cloth pieces, took samples of blood stains on the floor and also had recorded statements of witnesses. One Dr.P.D.Rokade (P.W. No. 7) attached to Y.C.M.Hospital had conducted the post mortem of the body of the victim girl on 25th October, 1999 and had opined that the death was caused by asphyxia due to strangulation associated with sexual assault and accordingly Post Mortem report was prepared. P.W. No. 12 Dattatraya Indulkar Assistant Police Inspector had registered the offence and further investigated the offence. The clothes of the accused were seized and accordingly prepared a panchanama and thereafter the accused was referred to Sasoon Hospital for a medical examination. On 28th October, 1999, the accused while he was in Police Custody made a statement that he will produce a small rope from his house which was kept in between a space of tin-roof and the wall. Accordingly, the said rope had been seized by the Police

and thereafter all articles were sent for Chemical Analysis and after completion of investigation, a charge sheet came to be filed against the accused in the Court of Judicial Magistrate, First Class, Pimpri, thereafter the trial was conducted in the court of Additional Sessions Judge, Pune.

6. It appears that to establish the guilt of the accused, the Prosecution had examined P.W.1 Tara mother of victim, P.W.2 Ashok father of victim, P.W.3 Nitesh brother of victim, P.W.4 P.H.C. Gautam More, P.W.5 and P.W.9 Panch witnesses, P.W.6 Police Constable Warpe, P.W.7 Dr. Rokade Medical Officer, P.W.8 Deepak Agarwal relative of victim, P.W.10 Khushal son of accused, P.W.11 and P.W.12 Investigating Officers.

7. Perused the evidence on record and heard Mr. A.R. Patil, the learned A.P.P. for the Appellant-State and Smt. Sharmila Kaushik, the learned Counsel for the accused.

8. To support the case of prosecution the learned A.P.P. for the State pointed out from the evidence certain incriminating and proved circumstances against the accused such as the incident had occurred in the house of accused and the accused was present in front of his house when the rape victim and her sister and brother were playing in front of their house and at that point of time the accused offered chocolates to them and the rape victim also took the chocolate. During the said period the accused had an opportunity to take the victim inside his house. The accused was present in the house when Police had been to the house of accused, and recovered the victims body from underneath the cot of the Appellant. There was absolutely no explanation from the Appellant about the dead body of victim girl found under his cot as well as no explanation about the blood stains on the bed-sheet and below on the floor. The medical evidence also fully corroborates the prosecutions case.

9. It is also further contended by the learned A.P.P. that in the instant case there is no eye-witness and the prosecution case is solely based on circumstantial evidence. It is also contended that presence of the accused after committing the crime in his house, recovery of dead body of victim in the house of accused and production of a rope from the gap between the tin and the wall by the accused himself, which was used for strangulating the victim girl, all the aforesaid circumstances clearly support the case of prosecution to establish the guilt of the accused.

10. The present Appeal for enhancement is filed by the Appellant-State mainly on the ground that in view of the aggravating circumstances prior to commission of offence, at the time of commission of offence and subsequent conduct of the accused, after commission of murder of victim girl who was hardly of 10 years old and subsequent concealing the dead body of the deceased with a view to destroy the evidence, and the manner in which the accused had committed rape on the victim girl who was hardly ten years old, the learned Additional Sessions Judge, Pune ought to have imposed the extreme sentence of death upon the

accused, especially when the accused would be a serious menace to the society.

11. The learned A.P.P. Mr. Patil for the State pointed out certain aggravating circumstances to support the case of the prosecution for enhancement of sentence to death sentence. It is contended by Mr. Patil that it is very much relevant to appreciate the injuries sustained by the deceased victim girl to know the gravity of physical and sexual assault on the person of deceased victim girl. P.W. No. 7 Dr. Rokade had conducted an autopsy on the dead body of the victim girl on 25th October, 1999 and found following injuries on the private part of the deceased:

- a) Contused abrasions over the labia majora from the junction behind and backward size 1 x 0.24 cms/oblique.
- b) Crescent mark on the labia majora near the clitoris size 0.24 cms.
- c) Abrasions with radial from the labia minora behind and backward noted.
- d) Fourchette torn radially and bruised.
- e) Posterior commissure torn.
- f) Hymen lacerated along 3 and 9 o clock position with bruised vaginal vault behind it.
- g) Multiple contused abrasions seen over the left thigh 2 cms. away from perineum of 12 to 0.2 cms.
- h) Vaginal vault with irregular tear upto 2.5cms.

12. The Doctor found following external injuries on the dead body of victim girl:

- a) Contused abrasion Lt. frontal eminence size 0.24 x 0.24 cms. single.
- b) Crescent abrasion right upper lip lateral aspect size 0.5 x 0.25 cms. horizontal.
- c) Contusion Rt. ala of nose 0.5 x 0.5 cms.
- d) Contusion Rt. orbital place 2 cms below the outer canthus, size 1 x 0.25 cms. oblique.
- e) Crescent contused abrasion Rt. angle of mouth 0.25 x 0.25 cm.
- f) Contused abrasion Rt. cheek 4 in 1 below another with 1 cm apart oblique in direction of size 1.5 x 0.5 cm.
- g) Ligature mark around the neck over the thyroid cartilage extending from Lt. Sternocleidomastoid upto the Rt. posterior triangle of neck size 15 cm. x 1.5 cm. on Lt. and 1 cm. on Rt. side.
- h) Ligature mark is 7 cm. below Lt. ear 6.5 cm. below chin and 8 cm. below Rt. Ear and is more prominent on Lt. side.
- i) Contusion Rt. anterior triangle of neck 2 cm. x 0.5 cm. irregular.

j) Crescent abrasion over Rt. forearm and wrist 7 in No. of 0.1 to 0.25 cm. and 1/2 cm. apart.

k) Old unhealed seen over the Lt.knee with recent scab removal (granulation tissue seen size 2 x 1 cm and 3 x 2 cm)

13. The Doctor also found the following corresponding internal injuries on the dead body of the victim girl:

a) The brain was soft. Edematous with pretecheal hemorrhage noted. C/s. congested.

b) Contusion over the Lt.side of trachea below the cornea of hyoid, thyroid membrane contused internally, larynx and epiglottis congested and hemorrhagic.

c) Both lungs were partially collapsed purple, sub-petecheal hemorrhage noted. Out section congested with edematous froth seen.

d) Heart was externally normal. Out section of Rt.side was filled with dark blood. Lt. side empty.

e) bruised. Tongue was in between the teeth, anteriorly

f) All other organs were congested. Organs of generation were contused and hemorrhagic.

g) Vaginal vault with irregular tear up to 2.5cm.

14. After having found all the above injuries, the Doctor came to a firm conclusion that the injuries were homicidal and anti-mortem in nature and cause of death was due to asphyxia by strangulation, associated with sexual assault. The external and corresponding internal injuries caused to the neck by strangulation were found to be sufficient in the ordinary course of nature to cause the death of the victim girl. Doctor also gave his firm opinion about the forcible sexual assault having been made on the deceased.

15. The learned A.P.P. appearing on behalf of the Appellant-State submitted that since all the above injuries have been proved by the medical evidence, and as all the necessary circumstances were clearly established, it is sufficient to prove the guilt of the accused and accordingly, the prosecution has proved its case beyond reasonable doubt and therefore contended that considering the act of accused i.e. the accused had in a pre-planned manner committed the crime by resorting to a diabolical method of enticing a young and tender girl hardly ten years old, with chocolates and it was with the clear object to take the victim at a lonely place in the house of accused to execute his dastardly act. It is further submitted by the learned A.P.P. for the State that the accused seems to have acted in a beastly manner since after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape on her to the family members and others and also with a view to destroy the evidence of his crime the accused had put an end to the life of an innocent victim girl who had

seen only ten summers.

16. Mr. A.R. Patil, the learned A.P.P. appearing on behalf of the State strongly contended that the evidence on record clearly shows the fact as to how diabolically the accused had conceived of his plan and brutally executed it and such a calculated, cold-blooded and brutal murder of a girl of a very tender age i.e. 10 years old after committing rape in a very brutal manner, (Eight injuries were seen on the private part of the victim girl) and killing her brutally would undoubtedly fall in the category of rarest of the rare case and therefore it would attract no punishment other than the capital punishment and therefore it is submitted that the sentence of life imprisonment is inadequate in such a case. Mr.Patil also submitted that the accused would be a serious menace to the society also.

17. Mr. Patil, the learned A.P.P. further submitted that in view of the medical evidence and the state in which the dead body of deceased was found, undoubtedly, it is clear that a most heinous type of barbaric rape and murder was committed on a helpless, defenseless and a tender girl of 10 years old. It is further submitted by learned A.P.P. that the offence committed by the accused is not only inhuman and barbaric but it is a ruthless crime of rape followed by cold-blooded murder is an affront to the human dignity of the society and also there are no mitigating circumstances in favour of accused in the present case.

18. Mr. A.R. Patil, the learned A.P.P. for the State referring to the observations made in paragraph No. 18 of the judgment of the learned Additional Sessions Judge, Pune vehemently contended that there is no dispute about the occurrence of the incident and the dead body of the victim girl was found in the house of accused. He further contended that taking into account the nature of offence and the act of the accused, this is a fit case where a Death Sentence ought to be imposed.

19. In that behalf, the learned A.P.P. has relied upon a decision of the Hon''ble Supreme Court in the case of State of U.P. Vs. Satish, , wherein the Hon''ble Supreme Court had referred to the following guidelines laid down in Bachan Singh Vs. State of Punjab, , will have to be applied to the facts of each individual case where the question of 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 are required to be taken into consideration along with the circumstances of the "crime".
- iii) Life imprisonment is the rule and death sentence is an exception. 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, the option to impose sentence of imprisonment for

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 have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

20. Mr. Patil further relied upon a decision of the Hon'ble Supreme Court in the case of Kamta Tiwari Vs. State of M.P., wherein the Appellant had kidnapped the deceased and after committing rape on her, had strangled her to death and thrown the dead body in a well. The Hon'ble Supreme Court in the said case had followed the guidelines framed in the case of Bachan Singh(Supra) and had dismissed the appeal filed by the Appellant, who was awarded death penalty.

21. The learned A.P.P. for the State also referred to and relied upon a decision of the Hon'ble Supreme Court in the case of Dhananjay Chatterjee Alias Dhana v. State of West Bengal 1994 SCC (Cri) 358, wherein in paragraph Nos.14 & 15 it is observed that;

14. In recent years, the rising crime rate -particularly violent crime against women has made the criminal sentencing by the courts a subject of concern. Today there are admitted disparities. Some criminals get very harsh sentences while many receive grossly different sentence for an essentially equivalent crime and a shockingly large number even go unpunished thereby encouraging the criminal and in the ultimate making justice suffer by weakening the systems credibility. Of course, it is not possible to lay down any cut and dry formula relating to imposition of sentence but the object of sentencing should be to see that the crime does not go unpunished and the victim of crime as also the society has the satisfaction that justice has been done to it. In imposing sentences in the absence of specific legislation, Judges must consider variety of factors and after considering all those factors and taking an overall view of the situation, impose sentence which they consider to be an appropriate one. Aggravating factors cannot be ignored and similarly mitigating circumstances have also to be taken into consideration.

15. In our opinion, the measure of punishment in a given case must depend upon the atrocity of the crime; the conduct of the criminal and the defenseless and unprotected state of the victim. Imposition of appropriate punishment is the manner in which the courts respond to the societys cry for justice against the criminals. Justice demands that courts should impose punishment befitting the crime so that the courts reflect public abhorrence of the crime. The courts must not only keep in view the rights of the criminal but also the rights of the victim of crime and the society at large while considering imposition of appropriate punishment.

22. The learned A.P.P. also referred to and relied upon a decision of the Hon'ble Supreme Court in the case of Molai and Another Vs. State of Madhya Pradesh, ,

wherein the Hon''ble Supreme Court has observed that;

37. We have very carefully considered the contentions raised on behalf of the parties. We have also gone through various decisions of this Court relied upon by the parties in the courts below as well as before us and in our opinion the present case squarely falls in the category of one of the rarest of rare cases, and if this be so, the courts below have committed no error in awarding capital punishment to each of the accused. It cannot be overlooked that Naveen, a 16 year old girl, was preparing for her Class 10th examination at her house and suddenly both the accused took advantage of she being alone in the house and committed a most shameful act of rape. The accused did not stop there but they strangled her by using her undergarment and thereafter took her to the septic tank along with the cycle and caused injuries with a sharp-edged weapon. The accused did not even stop there but they exhibited the criminality in their conduct by throwing the dead body into the septic tank totally disregarding the respect for a human dead body. Learned Counsel for the accused (appellants) could not point any mitigating circumstance from the record of the case to justify the reduction of sentence of either of the accused. In a case of this nature, in our considered view, the capital punishment to both the accused is the only proper punishment and we see no reason to take a different view than the one taken by the courts below.

23. The learned A.P.P. has also relied upon a decision of the Hon''ble Supreme Court in the case of Laxman Naik Vs. State of Orissa, , wherein it is held that;

28. The evidence of Dr. Pushp Lata, PW 12, who conducted the post-mortem over the dead body of the victim goes to show that she had several external and internal injuries on her person including a serious injury in her private parts showing the brutality which she was subjected to while committing rape on her. The victim of the age of Nitma could not have even ever resisted the act with which she was subjected to. The Appellant seems to have acted in a beastly manner as after satisfying his lust he thought that the victim might expose him for the commission of the offence of forcible rape on her to the family members and others, the Appellant with a view to screen the evidence of his crime also put an end to the life of innocent girl who had seen only seven summers. The evidence on record is indicative of the fact as to how diabolically the appellant had conceived of his plan and brutally executed it and such a calculated, cold-blooded and brutal murder of a girl of a very tender age after committing rape on her would undoubtedly fall in the category of rarest of the rare cases attracting no punishment other than the capital punishment and consequently we confirm the sentence of death imposed upon the Appellant for the offence u/s 302 of the Penal Code. As regards the punishment u/s 376, neither the learned trial Judge nor the High Court have awarded any separate and additional substantive sentence and in view of the fact that the sentence of death awarded to the Appellant has been confirmed we also do not deem it necessary to impose any sentence on the Appellant u/s 376.

24. Mr. A.R. Patil, the learned A.P.P. appearing on behalf of the State also relied upon a decision of the Hon"ble Supreme Court in the case of State of U.P. Vs. Satish, , wherein it is observed that;

29. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence. Sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

30. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

25. The learned A.P.P. also relied on the decision of the Hon"ble Supreme Court in the case of Shivu and Another Vs. R.G. High Court of Karnataka and Another, , wherein it is held that:

24. The principle of proportion between crime and punishment is a principle of just deserts that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just deserts, is dictated by the same principle that does not allow punishment of the innocent, for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt.

25. The criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even

the tragic results of his crime. Inevitably these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and widespread.

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26. To support the case of the prosecution, which is solely based on circumstantial evidence, the learned A.P.P. for the state referred to and relied upon a decision of the Hon''ble Supreme Court in the case of Dhananjay Chatterjee Alias Dhana v. State of West Bengal 1994 SCC (Cri) 358, wherein in paragraph No. 7 it is observed that;

7. "It is settled law that in a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused.

27. The learned A.P.P. has also relied upon a decision of the Hon''ble Supreme Court in the case of Laxman Naik Vs. State of Orissa, , wherein it is held that;

The circumstances relied upon in support of the conviction must be fully established and the chain of evidence furnished by those circumstances must be so complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused. The circumstances from which the conclusion of the guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused and should not be capable of being explained by any other hypothesis, except the guilt of the accused and all the circumstances cumulatively taken together should lead to the only irresistible conclusion that the accused alone is the perpetrator of the crime.

28. Mr. A.R. Patil, the learned A.P.P. appearing on behalf of the State also relied upon a decision of the Hon''ble Supreme Court in the case of State of U.P. Vs. Satish, , wherein it is observed that;

14. There is no doubt that conviction can be based solely on circumstantial evidence but it should be tested on the touchstone of law relating to circumstantial evidence laid down by this Court as far back as in 1952.

15. In Hanumant Vs. The State of Madhya Pradesh, , it was observed thus:

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

29. Smt. Kaushik the learned Counsel appearing on behalf of the accused strongly opposed the submissions made by the learned A.P.P. for the Appellant-State and pointed out certain omissions and contradictions in the evidence of P.W.Nos.1, 2 and 3 and the Complaint Exhibit-14. The learned Counsel for the accused further contended that the present case is solely based on the circumstantial evidence and the burden lies upon the prosecution to prove each and every link in the chain of circumstances beyond all reasonable doubt to point out only to the guilt of the accused, and also the prosecution has not established motive in the commission of the instant crime. It is further contended by the learned Counsel for the accused that as in the present case no weapons have been used and also the cause of death is asphyxia due to strangulation, it can be said that the accused did not intend to commit the murder of the deceased and only because of the sexual assault the victim died. She further contended that though the assault on the victim can be termed as brutal, it is not a case which would come under the category of rarest of rare case.

30. To oppose the submission of the learned A.P.P. to award the death sentence to the accused, the learned Counsel for the accused pointed out that the accused was a drunkard and was living a life without his wife who had abandoned him and he was deprived of his matrimonial comforts and also the mother of accused and his son are depend on him and there is no criminal antecedents of the accused. In such a situation imposing a death sentence on the accused would render the mother and a son of accused helpless and in fact orphan. The learned Counsel appearing on behalf of the accused also pointed out that this is not a case which would fall under the category "rarest of rare case" and therefore death sentence cannot be awarded in the present case.

31. In support of her contention, the learned Counsel for the accused has referred to and relied upon the decision of the Hon"ble Supreme Court in the case of Raju Vs. State of Haryana, , wherein the Hon"ble Supreme Court has held that:

8. In this view of the matter, in our view, the High Court after appreciating the entire evidence has rightly confirmed the conviction order passed by the Sessions

Court. However, the next question is whether this would be a rarest of rare cases where extreme punishment of death is required to be imposed. In the present case, from the confessional statement made by the accused, it would appear that there was no intention on the part of the accused to commit the murder of the deceased child. He caused injury to the deceased by giving two brick blows as she stated that she would disclose the incident at her house. It is true that learned Sessions Judge committed error in recording the evidence of SI Shakuntala. P.W.15 with regard to the confessional statement made to her, but in any set of circumstances, evidence, on record discloses that accused was not having intention to commit the murder of the girl who accompanied him. On the spur of the moment without there being any premeditation, he gave two bricks which caused her death. There is nothing on record to indicate that the Appellant was having any criminal record nor he can be said to be a grave danger to the society and at large. In these circumstances, it would be difficult to hold that the case of the Appellant would be rarest of rare case justifying imposition of death penalty.

32. Mrs. Kaushik, the learned Counsel for the accused also referred to and relied upon a decision of the Hon'ble Supreme Court in the case of Bantu @ Naresh Giri Vs. State of M.P., wherein it is held that:

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

33. Mr. Kaushik also relied on the decision of the Hon'ble Supreme Court in the case of Ramesh Kumar Vs. State of Chhattisgarh, wherein it is observed that;

The Appellant was aged 36 years at the time of the occurrence and there is no evidence that the Appellant had involved in any other criminal case previously and the Appellant was a migrant labour from U.P. and was living in impecunious circumstances and it cannot be said that he would be a menace to the society in future and no materials are placed before us to draw such a conclusion. We do not think that the death penalty was warranted in this case. We confirm conviction of the appellant on all the counts, but the sentence of death penalty imposed on him for the offence u/s 302 IPC is commuted to life imprisonment.

34. The learned Counsel for the accused also relied on Amrit Singh Vs. State of Punjab, wherein it is observed that;

22. Imposition of death penalty in a case of this nature, in our opinion, was, thus, improper. Even otherwise, it cannot be said to be a rarest of rare cases. The manner in which the deceased was raped may be brutal but it could have been a momentary lapse on the part of the Appellant, seeing a lonely girl at a secluded place. He had no pre-meditation for commission of the offence. The

offence may look a heinous, but under no circumstances, it can be said to be rarest of rare cases.

35. In the case of Bishnu Prasad Sinha and Another Vs. State of Assam, , relied upon by the learned Counsel for the accused, the Hon"ble Supreme Court has observed that;

57. There are authorities for the proposition that if the evidence is proved by circumstantial evidence, ordinarily, death penalty would not be awarded. Moreover, the Appellant No. 1 showed his remorse and repentance even in his statement u/s 313 of the Code of Criminal Procedure. He accepted his guilt.

58. In Machhi Singh v. State of Punjab (1993) 3 SCC 470, it was observed:

The following questions may be asked and answered as a test to determine the rarest of the rare case in which death sentence can be inflicted:

a) Is there something uncommon about the crime which renders sentence of imprisonment for life inadequate and calls for a death sentence?

b) Are the circumstances of the crime such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances which speak in favour of the offender?

36. The learned Counsel for the accused has also relied on Shankarlal Gyarasilal Dixit v. State of Maharashtra 1981 SCC (Cri.) 315, it is held that;

In a case of circumstantial evidence, the circumstances on which the prosecution relies must be consistent with the sole hypothesis of the guilt of the accused. In the test as to whether the cumulative effect of the circumstances establishes the guilt of the accused beyond the shadow of doubt, the shadow of doubt, even in cases which depend on direct evidence, is shadow of reasonable doubt. Secondly, in its practical application, the test which requires the exclusion of other alternative hypotheses is far more rigorous than the test of proof beyond reasonable doubt.

37. Jashubha Bharatsinh Gohil and Others Vs. State of Gujarat, , wherein, it is observed that;

18. In view of the legislative amendment noticed above, the present case stands on a better footing than Dalip Singh and Others Vs. State of Punjab, . Keeping in view the guideline in Dalip Singh (Supra) we are of the opinion that in the peculiar facts and circumstances of this case, when the occurrence took place almost 10 years ago and for the last more than 6 years the spectre of death has been hanging over the head of A-11, Jashubha, the High court should not have enhanced the sentence from life imprisonment to death because for exercising its discretion in choosing the sentence the trial Court had given elaborate reasons which it cannot be said no judicial mind could advance. Only because the High Court looked at those reasons differently, in our opinion, it did not justify the enhancement of sentence to death sentence. We, therefore, commute the

sentence of death imposed upon A-11 by the High Court to that of imprisonment for life and restore the sentence as was imposed by the Sessions Judge.

38. Mohd. Chaman Vs. State (N.C.T. of Delhi), , wherein in paragraph Nos.19 and 24, the Hon'ble Supreme Court has held that;

19. Discussing the question of application of the rarest of rare case rule to the facts of individual cases in the context of the relevant guidelines this Court observed (at P.487-88) (of SCC):

The reasons why the community as a whole does not endorse the humanistic approach reflected in death sentence in no case doctrine are not far to seek. In the first place the very humanistic edifice is constructed on the foundation of reverence for life principle. When a member of the community violates this very principle by killing another member, the society may not feel itself bound by the shackles of this doctrine. Secondly, it has to be realized that every member of the community is able to live with safety without his or her own life being endangered because of the protective arm of the community and on account of the rule of law enforced by it. The very existence of the rule of law and the fear of being brought to book operates as a deterrent of those who have no scruples in killing others if it suits their ends. Every member of the community owes a debt to the community for this protection. When ingratitude is shown instead of gratitude by killing a member of the community which protects the murderer himself from being killed or when the community feels that for the sake of self-preservation the killer has to be killed, the community may well withdraw the protection by sanctioning the death penalty. But the community will not do so in every case. It do so in rarest of rare cases when its collective conscience is so shocked that it will expect the holders of the judicial power centre to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise or retaining death penalty....

24. Coming to the case in hand, the crime committed is undoubtedly serious and heinous and the conduct of the appellant is reprehensible. It reveals a dirty and perverted mind of a human being who has no control over his carnal desires. Then the question is whether the case can be classified as of a rarest of rare category justifying the severest punishment of death. Testing the case on the touchstone of the guidelines laid down in Bachan Singh (Supra) and other decisions and balancing the aggravating and mitigating circumstances emerging from the evidence on record, we are not persuaded to accept that the case can be appropriately called one of the rarest of rare cases deserving death penalty. We find it difficult to hold that the appellant is such a dangerous person that to spare his life will endanger the community. We are also not satisfied that the circumstances of the crime are such that there is no alternative but to impose death sentence even after according maximum weightage to the mitigating circumstances in favour of the offender. It is our considered view that the case is one in which a humanist approach should be taken in the matter of awarding punishment.

39. In *Shri Bhagwan v. State of Rajasthan* 2001 SCC (Cri) 1095, in paragraph No. 15, it is held that;

In dealing with criminal matters where death sentence is prescribed in law as the punishment for the crime, the Courts are required to answer new challenges as the object has to be not only to protect the society at large, but impose appropriate sentence lest there should be tendency to undermine the public confidence in the criminal justice delivery system.

40. Lastly, the learned Counsel for the accused placed her reliance on the decision of the Hon"ble Supreme Court in the case of *Subash Chander Vs. Krishan Lal and Others etc. etc.*, wherein it paragraph 17, it is observed that;

17. xxx xxx xxx

..... When two views are possible about the quantum of sentence, a view which favours the grant of life in comparison of death is generally accepted.

41. Perusal of the evidence of mother Tara (P.W.1) and brother Nitesh (P.W.3), clearly establishes that the Appellant was sitting in front of his house and that he was alone. Nitesh and both his sisters were playing in front of their house, which was in front of the Appellants house. It has come on record that the victim girl was given chocolate by the Appellant. After some time victim girl went missing. The above evidence is not even challenged by the Appellant.

42. Appellant has also not challenged the evidence that the body of the victim girl was found inside his house with blood stains under the cot. The Appellant has offered no explanation whatsoever as how the body of the victim girl was found under the cot. Even the evidence of blood stains on the bed sheet and on the ground underneath are not challenged. Even the evidence of the Doctor who conducted the post-mortem are not challenged, who has clearly deposed to forcible sexual assault and killing by strangulation and ligature marks were found on the neck of the victim girl.

43. The Appellant has offered absolutely no explanation as to how the victim girls body was found in his house under the cot with blood stains. There was no explanation about the blood stains on the bed-sheet and on the floor.

44. In this case, there are no direct eye witnesses and the case is based on the circumstantial evidence. In this case the following circumstances will have to be proved to establish the guilt of the accused.

- i) The Appellant had an opportunity to take the victim girl inside his house,
- ii) The victim girl went missing while playing in front of the Appellants house,
- iii) The Appellant alone was sitting in front of his house when the children including the victim girl were playing,
- iv) The act of rape and strangulation had taken place within the house of the Appellant,

- v) The dead body of the victim girl was found under the cot in the Appellants house with blood-stains,
- vi) Blood stains were found on the bed-sheet on the cot and also below the cot,
- vii) Appellant was found in front of the house when the police went to his place, and the police took him into custody.
- viii) Recovery of rope used for strangulation was recovered from the Appellants house at the instance of the Appellant,
- ix) No other person other than the Appellant had an opportunity to commit the crime,
- x) Appellant offered absolutely no explanation as to how the dead body of the victim girl was found under the cot inside his house,
- xi) The medical evidence categorically establishes that the death of the victim girl was caused by strangulation by use of a rope, as ligature mark was clearly visible on the neck.
- xii) The medical evidence also clearly establishes the serious sexual assault of rape on the victim girl,

45. The learned Counsel Mrs. Kaushik sought to contend that there are major discrepancies in the evidence of Tara, mother of the victim girl (P.W.1) and Nitesh, brother of the victim girl (P.W.3), in the sense, the Nitesh had stated that his mother went and searched the house where the accused was staying, on the contrary Tara has stated that she did not search the house of the accused as he used to be drunken and he used to be sitting in front of his house, therefore she did not dare to enter his house. Whereas, a perusal of the evidence of Nitesh, does not at all mention that he found his mother searching the house of the accused. There is no major inconsistency or omission to dis-believe both the aforesaid witnesses.

46. Mrs. Kaushik also tried to contend that the presence of the accused at the house of the accused is not established. An independent witness Police Head Constable G.R.More (P.W.4) has categorically stated in his Examination-in-chief that accused was sitting at the door of the house and he took him into custody. Similarly, he has repeated the same twice in his cross-examination. There is no substance in the contention of Mrs.Kaushik that the Appellant/Accused was found on the step of his house when the Police went to his residence. It is also pertinent to note that the Appellant/Accused in his answers to Question Nos.27,28 and 29 and his statement u/s 313 of the Code of Criminal Procedure had virtually admitted the presence of the dead body in his house and he had also offered no explanation as to how the dead body of the victim girl was found in his house under the cot.

47. Under these circumstances, we find that all the aforesaid circumstances have been very clearly established.

48. Let us now analyse the evidence adduced on behalf of the prosecution in this case for establishing and proving the above circumstances.

49. With regard to the first circumstance that the Appellant had an opportunity to take the victim girl inside his house, the evidence of the victim girls brother Nitesh-PW No. 3 clearly establishes that on the date of incident, Nitesh alongwith his sister Madhuri and another sister being the victim girl were playing in front of his house just opposite to the house of the Appellant. His evidence clearly shows that the Appellant had called them including the victim girl and had given them chocolates, and thereafter they had continued to be playing, and after sometime, the victim girl was not there and he went searching for her. With regard to the aforesaid circumstance that the Appellant had an opportunity to take the victim girl inside his house, and the evidence of Nitesh-PW No. 3 was quite reliable. Hence, the aforesaid circumstance is clearly established.

50. With regard to the second circumstance viz. the victim girl went missing while playing in front of the Appellants house, the evidence deposed by Nitesh-PW No. 3 being the brother of the victim girl clearly shows that after searching for his missing sister, Nitesh went and informed his mother & father. Even the evidence of his mother Tara-PW No. 1 and the father Ashok-PW No. 2 corroborates that Nitesh-PW No. 3 had come and informed them that the victim girl was missing while they were playing in front of the Appellants house. Even the evidence of Tara-PW No. 1 (mother of the victim girl) and Ashok-PW No. 2 (father of the victim girl) clearly establishes the aforesaid circumstance and their evidence is trustworthy and reliable.

51. The third circumstance viz. the Appellant alone was sitting in front of his house when the children including the victim girl were playing, is established by the evidence of Nitesh-PW No. 3, being the brother of the victim girl. Even the evidence of mother Tara-PW No. 1 in paragraph No. 4 of the evidence shows that the Appellant used to be drunk and used to be sitting near the door of his house and in view thereof, she did not dare to search for the victim girl in his house. Hence the aforesaid circumstance is established by the evidence of Nitesh-PW No. 3 and Tara-PW No. 1.

52. The fourth, fifth and sixth circumstances viz. the act of rape and strangulation had taken place within the house of the Appellant; that the dead body of the victim girl was found under the cot in the Appellants house with blood-stains, and that the Blood stains were found on the bed-sheet on the cot and also below the cot, have been clearly established by the evidence of Tara-PW No. 1 (mother of the victim girl) and the evidence of Ashok-PW No. 2 (father of the victim girl) and the evidence of Police Constable Shri.G.R.More-PW No. 4 who has clearly deposed that when they reached the house of the Appellant the body of the victim girl was found under the cot inside the house of the Appellant. Similarly, PW No. 5-Mahammed S. Momin has clearly deposed that on 25th October, 1999 i.e. the day after incident in the morning, he acted as a panch and saw blood stains on the floor, on the bed-sheet as well as on the cot. He has also

deposed that the samples were taken of the blood stains and the bed-sheet was also seized. The aforesaid evidence is substantiated by the medical evidence of PW No. 7 -Dr. Prakash D. Rokade, who conducted the post mortem. He has given in detail various serious injuries which were found on the private part of the victim as well as the ligature marks on the neck. PW 7-Dr.Prakash D. Rokade has clearly observed ligature marks around the neck over thyroid cartilage extending from left sternocleidomastoid upto the right posterior triangle of neck. He has also observed that there were ligature marks below left ear, below the chin, below right ear etc., and that there was contusion over right anterior triangle of the neck. The evidence deposed by Tara-PW No. 1 (mother of the victim girl), Ashok-PW No. 2 (father of the victim girl), Police Constable Shri.More-PW No. 4 and Dr. Prakash D. Rokade-PW No. 7 clearly establishes all the aforesaid three circumstances.

53. With regard to the 7th circumstance viz. that the Appellant was found in front of his house when the police went to his place, the evidence of PW No. 4 Shri. G.R. More (police constable) clearly shows that when the police went to the house of the Appellant they found the Appellant near the door of his house. The aforesaid fact is corroborated by the evidence of Deepak Agarwal -PW 8, being the uncle of the victim girl, who has categorically deposed that the Appellant was standing in front of his house. This circumstance is corroborated by the evidence of mother Tara-PW No. 1 who has stated that as the Appellant used to be drunk and used to be sitting in front of his house and hence she did not dare to search for the victim girl inside his house. The evidence of Ashok-PW No. 2 being the father of the victim girl also mentions the fact that the Appellant was seated in front of the house when he and the police went to the house of the Appellant. However the prosecution witness Ashok-PW No. 2 concedes that the said statement has not been recorded in the police statement. The aforesaid evidence of PW No. 4 Police Constable Shri. More and the evidence of PW No. 1-Tara, mother of the victim girl clearly establishes the fact, and the evidence of Deepak Agarwal-PW No. 8 clearly substantiates the fact that the Appellant was found sitting in front of his house when the police had went to his house. The Accused was immediately taken into police custody.

54. The eighth circumstance viz. the rope used for strangulation was recovered from the Appellants house at the instance of the Appellant, is established by the evidence of Ramesh Sadhu Shinde -PW No. 9. He has clearly deposed in his evidence that the Appellant took him and the police to his house and tried to take out a rope which was between the wall and the tin roof, and as the Appellant could not reach the stool was called for and then the Appellant stood on the stool and took out the rope. The said witness Shinde has described the rope to be of white colour and admeasuring about 56 inches. He has identified the said rope before the Court also.

55. The ninth circumstance that no other person other than the Appellant had an opportunity to commit the crime, has also been established by the fact from the

evidence led on behalf of the prosecution that the Appellant was last seen with the victim girl and thereafter the victim girl was missing and the crime had taken place on the cot within the house of the Appellant and that the Appellant was found sitting in front of the house when the police had went there. The evidence led by the prosecution, clearly establishes the aforesaid circumstance.

56. The tenth circumstance that the Appellant offered absolutely no explanation as to how the dead body of the victim girl was found under the cot inside his house, excepting his statement u/s 313 of the Code of Criminal Procedure stating therein that he had gone out to drink and at that time he had kept his house open. In his statement u/s 313 of the Code of Criminal Procedure, he has admitted that his mother & son had already left in the morning to go to Bombay to fetch some medicines to cure his alcoholism. It is unbelievable that the Appellant would leave his house open and go out for a drink. He does not even say in his statement u/s 313 of the Code of Criminal Procedure that some body else must have committed the crime on the victim girl and then brought the body inside and kept under the cot. The Accused does not explain the blood stains on the bed sheet and under the cot.

57. The eleventh and twelfth circumstances viz. that the medical evidence categorically establishes that the death of the victim girl was caused by strangulation by use of a rope, as ligature marks were visible on the neck and that the medical evidence also clearly establishes the serious sexual assault of rape on the victim girl, have been clearly established by the post mortem report as well as the evidence of PW No. 7 Dr. Prakash Rokade.

58. From the above it is apparent that the prosecution has established all the vital circumstances clearly linking the Appellant to the aforesaid crime. There is no other hypothesis, and all the circumstances clearly point to the guilt of the accused.

59. The following circumstances have been clinchingly established by the Prosecution to prove the guilt of the Appellant beyond reasonable doubt:

- i. The act of rape and killing had taken place within the house of the Appellant.
- ii. The dead body of the victim girl was found under a cot in the Appellants house, with blood stains.
- iii. Blood stains found on the bed sheet on the cot and blood stains below the cot.
- iv. The Appellant had an opportunity to take the victim girl inside his house.
- v. Victim girl went missing while playing in front of the Appellants house.
- vi. Appellant was alone sitting in front of his house, when the children including the victim girl were playing.
- vii. Appellant was present in the house when the Police went to his place, and he was immediately taken into police custody.

viii. Recovery of rope at the instance of the Appellant.

ix. No other person, other than the Appellant had an opportunity to commit the crime.

x. The Appellant offered no explanation as to how the dead body of the victim girl was found under the cot in his house, as well as there was no explanation for blood stains on the bed-sheet and under the cot.

xi. Medical evidence categorically establishes death caused by strangulation and a serious sexual assault of rape.

60. It may be noted that the Appellant had not challenged any of the above circumstances in cross-examination. The Appellant had not propounded any other plausible hypothesis pointing to his innocence.

61. The evidence led by the Prosecution is truthful, trustworthy and reliable. All the circumstances established above clearly points to the guilt of accused and there is no possibility of his innocence. All the above chain of circumstances point to the guilt of the Appellant and the same is not consistent with his innocence.

62. Hence we find the Accused guilty of offences punishable u/s 302 and 376 of the Indian Penal Code.

63. Now, we come to the issue of imposition of punishment, whether to enhance the punishment to death penalty or not.

64. Applying the principles as laid down in Bachan Singh Vs. State of Punjab, , as under:

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 are required to be taken into consideration along with the circumstances of the "crime".

iii) Life imprisonment is the rule and death sentence is an exception. 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, the option to impose sentence of imprisonment for 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 have to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised.

65. Now, let us have the aggravating circumstances:

- a) Brutal rape on an innocent girl of ten years.
- b) Lured her with chocolates.
- c) Eight serious injuries on the private part of the victim girl shows the extreme brutality and depravity.
- d) After such a brutal rape, again in a cruel manner used a rope to throttle and extinguish the life of a small girl.
- e) Thereafter threw the dead-body of the little girl under the cot.
- f) Even thereafter, continued to sit in front of his house without any compunction or remorse.
- g) Addicted to liquor, hence again likely to commit a similar crime against other small girls.
- h) A serious threat and menace to society, if allowed to live.
- i) Tried to destroy the evidence after the brutal acts of rape and murder.

66. The mitigating circumstances in the above are:

- a) No past criminal antecedents.
- b) Has a minor son and an old mother.

67. In this context, we should not forget the observations of the Hon'ble Supreme Court in Madan Gopal Kakkad Vs. Naval Dubey and Another, , that "offences of sexual assault who are menace to the civil society should be mercilessly and inexorably punished in the severest terms". Again the Court emphasised as under:

We feel that Judges who bear the sword of Justice, should not hesitate to use that sword with utmost severity, to the full and to the end if the gravity of the offences so demand.

68. We are clearly of the view, that in the facts and circumstances of this case, even after taking into account the mitigating circumstances, the accused who committed the sexual assault and murder on an innocent girl of ten years, is a serious menace to the civil society and should be mercilessly and inexorably punished in the severest terms.

69. In the justice delivery system, sentencing is indeed a difficult and complex question. Every Court must be conscious and mindful of proportion between an offence committed and penalty imposed as also its impact on society in general and the victim of the crime in particular.

70. The object of punishment has been succinctly stated in Halsburys Laws of Englad (4th Edition; Vol.II; para 482) thus;

The aims of punishment are now considered to be retribution, justice,

deterrence, reformation and protection and modern sentencing policy reflects a combination of several or all of these aims. The retributive element is intended to show public revulsion to the offence and to punish the offender for his wrong conduct. The concept of justice as an aim of punishment means both that the punishment should fit the offence and also that like offences should receive similar punishments. An increasingly important aspect of punishment is deterrence and sentences are aimed at deterring not only the actual offender from further offences but also potential offenders from breaking the law. The importance of reformation of the offender is shown by the growing emphasis laid upon it by much modern legislation, but judicial opinion towards this particular aim is varied and rehabilitation will not usually be accorded precedence over deterrence. The main aim of punishment in judicial thought, however, is still the protection of society and the other objects frequently receive only secondary consideration when sentences are being decided.

71. Moreover, social impact of the crime, particularly where it relates to offences against women, cannot be lost sight of and per se require exemplary treatment. Any liberal attitude of imposition of meagre sentence or too sympathetic view may be counter productive in the long run and against social interest which needs to be cared for, protected and strengthened by string of deterrence inbuilt in the sentencing system.

72. Sexual violence apart from being a dehumanizing act is also an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and leaves behind a traumatic experience. It has been rightly said that whereas a murderer destroys the physical frame of a victim, a rapist degrades and defiles the soul of a helpless female. The courts are, therefore, expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and complicated provisos.

73. Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging potential criminals. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court (Dinesh @ Buddha Vs. State of Rajasthan,).

74. In the facts and circumstances of this case, the following judgments of the Hon"ble Supreme Court would aptly apply for award of death penalty;

a) Kamta Tiwari Vs. State of M.P.,

b) Dhananjay Chatterjee v. State of West Bengal 1994 SCC (Cri.) 358

c) Molai and Another Vs. State of Madhya Pradesh, .

d) Laxman Naik Vs. State of Orissa,

75. After giving a deep consideration to all facts and circumstances, we are clearly of the view that this is a fit case for enhancement of life imprisonment into Death Penalty.

76. Accordingly, we allow the Appeal No. 1020 of 2001, filed by the State, thereby enhance the punishment to Death Penalty from that of Life Imprisonment for the offence punishable u/s 302 of the Indian Penal Code accordingly, we award Death Penalty to the Accused, and he be hanged untill death. We maintain the punishment of 10 years R.I. awarded by the Trial Court for the offence punishable u/s 376 of the Indian Penal Code. Accordingly, we dismiss the Appeal No. 401 of 2002 filed by the Accused.