

(2018) 01 UK CK 0037
In the Uttarakhand High Court
Case No : 01 of 2017

State of Uttarakhand

APPELLANT

Vs

Karandeep Sharma @ Razia @ Raju

RESPONDENT

Date of Decision : 05-01-2018

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 313](#), [Section 164](#) - Power to examine the accused - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 176](#)

Citation : (2018) 01 UK CK 0037

Hon'ble Judges : Rajiv Sharma, Alok Singh

Bench : Division Bench

Advocate : Amit Bhatt, B.N. Molakhi

Final Decision : Dismissed

Judgement

1. The criminal appeal No.156 of 2017 is instituted against the judgment and order dated 05.04.2017 and 06.04.2017 rendered by learned

Additional Sessions Judge/FTC/Special POCSO Judge, Rudrapur, District Udham Singh Nagar in Special Sessions Trial No. 159 of 2016

whereby the appellant was charged with and tried for the offences under Section 302/201/363/366/376(A) of IPC and Section 6 of Protection of

Children from Sexual Offences Act (hereinafter referred to as ""POCSO Act""). The appellant was convicted under Sections 376(A), 302, 201,

363, 366 of IPC and Section 6 of POCSO Act and in light of Section 42 of the POCSO Act, the appellant was sentenced under Sections 376(A)

of IPC. The appellant was sentenced with Death Penalty under Section 376(A) IPC as well as under Section 302 IPC. Under Section 366 IPC,

the appellant was sentenced to undergo rigorous imprisonment for a period of

ten years and to pay fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for a period of three months. For the offence under Section 363 IPC, the appellant was sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.10,000/- and in default of payment of fine, to undergo simple imprisonment for three months. He was further sentenced to undergo rigorous imprisonment for a period of three years and to pay fine of Rs.10,000/- under Section 201 of IPC and in default of payment of fine, to undergo simple imprisonment for three months.

2. Learned Additional Sessions Judge/Special Judge POCSO/FTC, Rudrapur, District Udham Singh Nagar has also made a reference to this

Court bearing Criminal Reference No.01 of 2017 for confirmation of Death Sentence imposed upon the appellant/convict vide judgment dated

5.4.2017 and order dated 6.4.2017.

3. The case of the prosecution, in a nutshell, is that PW-1 (father of victim) has lodged a first information report on 26.06.2016 to the effect that he

alongwith his family had gone to attend a Jagran function (religious congregation) nearby his residence on 25-26.06.2016. He came back to his

house at around 11.00 p.m. and went to sleep. In the morning at about 05.00 a.m., his wife informed him that their daughter has not come back

home and she was missing. They tried their level best to trace her. When they were searching their daughter near Dhakiya-Gulabo, someone told

him that the body of a child was lying in the nearby field. He identified the body of his daughter. It seemed that the child was raped before killed.

4. The dead body was sent for conducting the post mortem examination. The first information report was registered. The matter was investigated.

The police conducted the medical examination of the accused. The samples were collected from the spot and they were sent for FSL examination.

The appellant has also made confessional statement before the Magistrate under Section 164 Cr.P.C. Challan was put up before the Court after

completing all the codal formalities.

5. The prosecution has examined as many as fifteen witnesses in order to prove its case.

6. The statement of appellant was also recorded under section 313 Cr.P.C. He has denied the case of the prosecution and claimed to be tried.

According to him, he was falsely implicated. After conclusion of the trial, the appellant was convicted and sentenced as noticed hereinabove.

7. Mr. B.N. Molakhi, Advocate appearing on behalf of the appellant, has vehemently argued that the prosecution has failed to prove its case against the appellant.

8. Mr. Amit Bhatt, Dy. Advocate General appearing on behalf of the State has supported the impugned judgment and order dated 05.04.2017 &

06.04.2017. Learned Deputy Advocate General has also vehemently argued that death sentence imposed upon the appellant be confirmed in

Criminal Reference No.01 of 2017.

9. We have heard learned counsel for the parties in the appeal filed by the appellant as well as in Criminal Reference filed by the State. We have also gone through the impugned judgment and order, lower court record.

10. PW-1 is the father of deceased. According to him, there was a Jagran function on 25.06.2016 nearby his rented house. He was on duty from

02.00 p.m to 10.30 p.m. He came back at around 10.30 p.m. The children had the dinner. Thereafter, he alongwith his wife, children and his niece

had gone to attend the Jagran function. His wife and son came back at about 01.30 a.m.(night). His daughter, niece, neighbour's daughter namely

Chunmun and many children from neighbourhood were present in the function. In the morning at about 05.00 a.m. his wife told him that their

daughter has not come back from the Jagran. Then, he went to the site of Jagran to look for his daughter but he could not trace her. When he was

searching for his daughter near Dhokya Gulabo, some person told him that the dead body of a child was lying in a field near the petrol pump. He

went there. He identified the body of his daughter. The dead body was lying in the gourd field. He saw blood on his daughter's salwar. The

condition of the body was indicating that someone has committed rape upon her and thereafter killed her. Police was also present. Senior Police

Officials also reached at the spot. His daughter was eight years old. Her date of birth was 07.01.2008. He was cross examined by learned counsel

for the appellant. In his cross examination, he deposed that he has studied upto 12th Standard. He did not know the appellant before the incident.

11. PW-2 Jasweer Singh testified that he had come to Dhakiya Gulabo. He also went to attend the Jagran. In the morning at about 06.15 - 06.30,

he came to know that the dead body of a minor girl was lying in the field. He went to spot. On seeing the body, he recognized the dead body of

minor girl whom he had seen last night leaving the Jagran with one person who was working with the Jagran group and was wearing thick lens

glasses. He was called as Raju @ Razia. The girl was the same whom he had seen with the appellant. In his cross examination, he deposed that he

had come to see his brother-in-law at Dhakiya Gulabo.

12. PW-3 Anandpal Singh has corroborated the statement of PW-2 Jasweer Singh. He deposed that he had also gone to attend the Jagran. In the

morning at about 06.15 - 06.30, he received information that the dead body of a minor girl was lying in the field. He went to the spot. He saw that

the dead body of minor girl whom he had seen last night leaving the Jagran with one person wearing thick lens glasses who was working in the

Jagran. He was called as Raju @ Razia. He had seen her going with the appellant in the midnight towards Dhakiya Gulabo. Police reached the

spot. His statement was recorded by the police. He signed on the Panchayatnama. In his cross examination, he deposed that there were 100-125

people in the Jagran. He remained in the Jagran between 10.30 p.m. (night) till 05.30 a.m. (morning). Thereafter, he came back to his house.

13. PW-4 Sheespal deposed that the information was received on 26.06.2016 in the morning that the dead body of his niece was recovered. He

has seen that blood was oozing out from the private part of the victim. He also put his signature on panchayatnama. He also noticed blue marks

near the deceased's eye. It was apparent that deceased was raped and thereafter killed by smothering.

14. PW-5 Smt. Rashmi Devi has deposed that at about 03.30 a.m. she had seen a person, who was wearing a cap, talking with the deceased.

Thereafter, they went towards Dhakiya Gulabo Shed. In the morning, dead body of a minor girl was recovered. She was of the view that the girl

was killed by the person who was wearing the cap and spectacles. She knew the deceased.

15. PW-6 Munesh Singh testified that on 25- 26/06/2016, the Jagran was organized by the locality. He also attended the Jagran. He was coming

from Dhakiya Gulabo to attend the Jagran. He saw that one person was with one girl near Dhakiya-Gulabo. The person turned back and went

towards the petrol pump road. The girl was about 7-8 years old. He was of the view that the person, who was wearing spectacles and was fixing

the sound and light in the Jagran, was responsible for the death of girl.

16. PW-7 Dr. Madan Mohan has conducted the post mortem examination. He has also prepared the slides. He has also noticed the following

injuries on the body of the deceased:-

That on 26.06.2016 the dead body of the victim child was brought before him. ? He along with his panel Doctor Megha Joshi had

done the postmortem of the dead body ? On examination of the Dead body of the victim child they found that her lips and nails had

turned blue in color. Victim's head, hairs, back and bum had mud on it and there was grass inside her bum line. Clotted blood was

present in the victim's vaginal and anal parts and some hairs of an adult man were also present there. They saw ante-mortem injuries

on her body-

(1) Abrasion marks each 3mmx2m sized were present on her face below and lateral to right eye.

(2) Injuries were found on vulva, Lacerated starting at vaginal opening post, anal region causing tear at 6'0 clock position towards

anal region and inside depth of vagina canal size around 3 x 3 cm deep into upto 7cm into the vagina. The vaginal canal was torn.

Mucous and muscle membrane upto post were torned. There is abraded and unlushed mark of both lateral wall and anti wall vagina

below the clitoris. Muscles are also lacerated beneath the post. ? her trachea was swallow and her both lungs, spleen and both kidneys

found congested. ? we collected samples from her body. Swab from vagina for examination of spermatozoa and smegma bacilli, 5ml

blood taken from deceased, hairs found from vulva wound, garments of deceased all were collected for examination and handed over

to the police constable who came along with the dead body. ? froth was coming out from her nose and reason of death in this case is

not ascertained so we preserved visra of this body and sent this for chemical analysis to check for any possibility of poisoning her.

17. A specific question was put to PW-7 Dr. Madan Mohan by the Trial Court whether the victim has died due to commission of rape on her

leading to asphyxia. The doctor has answered in affirmative and has testified that the victim died due to asphyxia as a result of commission of rape,

since the victim, as a result of commission of rape, has undergone acute pain and shock and due to exertion of pressure, she was suffocated. The

internal organs of the victim i.e. brain, liver, spleen and kidneys were congested.

18. The Court has put a question to PW-7 Dr. Madan Mohan about the injuries found on the penis of the appellant. PW-7 replied that the injuries

found on the penis of the appellant were due to forceful penetrative sexual assault. He has also noticed injuries on the private part of the victim i.e.

vulva, vagina etc. It is duly proved that the victim died due to rape.

19. PW-8 Brijesh Kumar also deposed that he also attended the Jagran. He has also seen the appellant with the victim. He has organized the

Jagran. He identified the appellant as Raju @ Razia. According to him, the appellant brought two young girls late at night in Jagran. He requested

them to make them ""Mataji"". However, they refused politely. He took both of them from there. He noticed the dead body of a girl in the field. It

was looking as a case of rape and murder.

20. PW-9 S.I. Saroj Kamboj deposed that she received a call from SHO that the dead body of a minor girl was lying in the field near Dhakiya

Gulabo. She went to the spot. The dead body was sent for post mortem examination. Blood was oozing out from private part of the deceased.

She also noticed the injury near the right eye of the deceased. The dead body of the minor girl was suggesting the symptoms of rape and murder.

She also prepared the Panchayatnama.

21. PW-10 CCR Neelam Kanta deposed that she also went to the spot. She saw that the dead body of the minor girl. She noticed that blood was

oozing out from the private part of the deceased. She also saw mark of injury near the right eye of the deceased. The body of the minor girl was

suggesting the symptoms case of rape and murder after suffocating.

22. PW-11 Shiva Asthana deposed that he was present in the Jagran. He was also one of organizers of the Jagran. He identified the appellant who

was working in the Jagran as Electrician. According to him, the appellant brought two minor girls before them and requested them to make the girls

as ""Mata"" but they refused to do so. He took them away. Next day, they went to the field and found a dead body of the minor girl.

23. PW-12 Prahlad Singh testified that he received information from some informant on 28.06.2016 that appellant was present near Aliganj Petrol

Pump carrying a black bag. He was apprehended and arrested. The appellant confessed his crime. The arrest memo was prepared and signed.

During the investigation, convict told that he has two wives. First wife has left him. Thereafter, he has contracted second marriage.

24. PW-13 Cons. 825 Anuj Tyagi is the formal witness.

25. PW-14 Omprakash Sharma was the Investigating Officer of the case. He has prepared the site map. He proved FSL reports as Ex.Ka 18 and

Chick FIR as Ex.Ka.20. He collected samples from the appellant and of the victim for DNA report. These were sent for FSL, Dehradun. He lifted

samples from the spot. He recovered the clothes of appellant and victim. The convict has contracted first marriage in the year 2010 and second

marriage on 24.06.2015. The wives left him and they started living with their brothers.

26. PW-15 Jagdeesh Singh has simply registered the FIR.

27. What emerges from the evidence of the witnesses, enumerated hereinabove, is that the appellant was seen by the independent witnesses in the

Jagran. PW-2 Jasweer Singh and PW-4 Sheespal have seen the appellant leaving with the deceased. Similarly, PW-3 Anand Pal Singh has also

seen that the appellant was going with the deceased in the midnight towards Dhakiya Gulabo. PW-5 Smt. Rashmi Devi has also seen the minor girl

in the company of the appellant. According to her, the appellant was wearing a cap and he was talking with the deceased. PW-6 Munesh Singh

has also seen the appellant going with the minor girl. The person turned back and thereafter, the appellant went towards petrol pump road with the

minor girl. PW-8 Brijesh Kumar deposed that the appellant has come to them and asked them that two girls be given the role of ""Matas"". They

refused. Thereafter, the appellant left with two girls. Thereafter, he saw the dead body of a minor girl in the field. PW-11 Shiva Asthana was

present in the Jagran. According to him, appellant was working as Electrician in the Jagran. The appellant has brought two girls and requested them

to give them role of ""Matas"" but they refused them. Thereafter, the appellant was seen leaving with those two girls. In the morning, the dead body

of the minor girl was found. The date of birth of the deceased was 07.01.2008.

28. PW-7 Dr. Madan Mohan has categorically deposed that the victim died due to asphyxia as a result of commission of rape. The doctor has

further opined that as a result of commission of rape, the victim has undergone acute pain and shock and due to exertion of pressure, she was

suffocated. The internal organs of the victim i.e. brain, liver, spleen and kidneys were congested. He has noticed the injuries on the body of the

victim, as noticed hereinabove. PW-7 Dr. Madan Mohan has proved the post mortem report. According to the Forensic Science Laboratory

report Ex.Ka-18, the soil sticking with the clothes of the deceased matched with the soil lifted from the spot. The Police also sent the samples for

DNA. The report reads as under: -

The DNA test performed on the exhibits provided is sufficient to conclude that,

(1) The DNA obtained from Exhibit -15 (T-shirt of accused) is from a single female human source and matching with the DNA obtained from the

Exhibit-1 (blood sample of deceased).

(2) The DNA obtained from the Exhibits-2,3,4 and 6 (hair of suspected, vaginal smear slide of the deceased, paizami of deceased and underwear

of deceased) are matching with the DNA obtained from the Exhibits -1 and 10 (blood sample of deceased and blood sample of accused)".

29. According to the FSL report, Human Semen was detected on Exhibits-2 and 6. Human blood was detected on Exhibits? 2,3,4,6 and 15. The

statements of the independent witnesses are duly corroborated by the medical evidence as well as Forensic reports. The age of the victim was

merely 08 years.

30. Now, the Court will advert to the Reference No.01 of 2017.

31. The appellant has taken advantage of her young age and he committed rape upon the victim causing her death. Recoveries were effected from

the convict. The act of the convict falls within the category of "rarest of rare" cases. The convict was a married person. According to PW7 Dr.

Madan Mohan, the victim died due to asphyxia as a result of commission of rape. The doctor has further opined that as a result of commission of

rape, the victim has undergone acute pain and shock and due to exertion of pressure, she was suffocated. The internal organs of the victim i.e.

brain, liver, spleen and kidneys were congested.

32. Their Lordships of Hon"ble Supreme Court in (1979) 3 SCC 366 in the case of Nathu Garam Vs. State of U.P., have upheld that death

sentence imposed upon the convict for causing death of 14 years girl after luring her into the house for committing criminal assault. Their Lordships

have also held as under :-

14. As regards the sentence, counsel for the appellant urged that the lesser punishment should have been awarded but we do not find any

extenuating or mitigating circumstances justifying the lesser punishment. The question of sentence has been elaborately discussed by the Sessions

Judge and the High Court has confirmed his view and we see no reason to take a different view on the question of sentence.

33. Their Lordships of Hon"ble Supreme Court in (1991) 1 SCC 752 in the case of Jumman Khan Vs. State of U.P. and another, have declared

the death sentence ""constitutional"" and reaffirmed the majority view in Bachan Singh's case. Their Lordships have held as under :-

14. We are in full agreement with the view chronologically expressed in Sher Singh case, Bachan Singh case and Allauddin case holding that the

death sentence is constitutionally valid. In that view, we are of the firm opinion that the decision of the majority in Bachan Singh case needs no

reconsideration. The submission made by Mr Jain is unpersuasive. In fact, a similar question urged in Allauddin case did not find favour and it was

rejected.

34. Their Lordships of Hon"ble Supreme Court in (1994) 3 SCC 381 in the case of Laxman Naik Vs. State of Orissa, have upheld the death

sentence by treating the case falling under the category of "Rarest of rare cases", as it was a case of calculated, cold-blooded and brutal murder of

a seven years" old girl by her own uncle after committing rape on her. Their Lordships have also held as under: -

27. The hard facts of the present case are that the appellant Laxman is the uncle of the deceased and almost occupied the status and

position that of a guardian. Consequently the victim who was aged about 7 years must have reposed complete confidence in the

appellant and while reposing such faith and confidence in the appellant must have believed in his bona fides and it was on account of

such a faith and belief that she acted upon the command of the appellant in

accompanying him under the impression that she was being taken to her village unmindful of the preplanned unholy designs of the appellant. The victim was a totally helpless child there being no one to protect her in the desert where she was taken by the appellant misusing her confidence to fulfill his lust. It appears that the appellant had preplanned to commit the crime by resorting to diabolical methods and it was with that object that he took the girl to a lonely place to execute his dastardly act.

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 under Section 302 of the Penal Code. As regards the punishment under Section 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 under Section 376.

35. In the present case, the convict has took the victim along with him. He committed rape upon her. She died during the intercourse. Thus, it was

a calculated, cold-blooded and the brutal murder of an eight years" old girl by the appellant after committing rape on her. Thus, no lenient view can be taken.

36. Their Lordships of Hon"ble Supreme Court in (1999) 9 SCC 581 in the case of Molai and another Vs. State of M.P., have held the death

sentence "justified". Their Lordships have also held as under: -

36. 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.

37. Their Lordships of Hon"ble Supreme Court in (2005) 3 SCC 114 in the case of State of U.P. Vs. Satish, have held that the rape is one of the

most depraved acts. Such iniquitous, flagitious act becomes abominable when the victim is a child. The diabolic act reaches the lowest level of

humanity when the rape is followed by brutal murder. Their Lordships have held that present case falls in the rarest of rate category and death

sentence awarded by the trial court was appropriate. Their Lordships have also held as under :-

2. One Vishakha @ Akansha (hereinafter referred to as ""the victim"") who had not even seen six summers in her life lost her life on

account of bestial acts of the respondent Satish (hereinafter referred to as ""the accused"") who allegedly raped her and thereafter

murdered her. When the victim went out to school on 16-8-2001, her parents would have never thought in their wildest dreams that

she would not come back home and would fall victim to the barbaric and inhuman acts of the respondent. Rape is one of the most

depraved acts. The iniquitous, flagitious act becomes abominable when the victim is a child. The diabolic act reaches the lowest level

of humanity when the rape is followed by brutal murder.

24. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the

order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by

acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible

on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is

favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is

prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a

case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence where the accused

has been acquitted, for the purpose of ascertaining as to whether any of the accused really committed any offence or not. (See

Bhagwan Singh v. State of M.P.) The principle to be followed by the appellate court considering the appeal against the judgment of

acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly

unreasonable and relevant and convincing materials have been unjustifiably eliminated in the process, it is a compelling reason for

interference. These aspects were highlighted by this Court in Shivaji Sahabao Bobade v. State of Maharashtra, Ramesh Babulal

Doshi v. State of Gujarat, Jaswant Singh v. State of Haryana, Raj Kishore Jha v. State of Bihar, State of Punjab v. Karnail Singh and

State of Punjab v. Phola Singh.

26. In Machhi Singh case it was observed: (SCC pp. 471-72)

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?

The following guidelines which emerge from Bachan Singh case will have to be applied to the facts of each individual case where the

question of imposition of death sentence arises: (Machhi Singh case, SCC p. 489, para 38)

(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. 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 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. In rarest of rare cases when the collective conscience of the community 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 of

retaining death penalty, death sentence can be awarded. The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense

and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money

or reward; or cold-blooded murder for gains of a person vis-?-vis whom the murderer is in a dominating position or in a position of

trust, or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community etc., is committed not for personal reasons but in

circumstances which arouse social wrath; or in cases of "bride burning" or "dowry deaths" or when murder is committed in order to

remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or

a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-?-vis whom the

murderer is in a dominating position, or a public figure generally loved and respected by the community.

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the

answers to the questions posed by way of the test for the rarest of rare case, the circumstances of the case are such that death

sentence is warranted, the court would proceed to do so.

31. Considering the view expressed by this Court in Bachan Singh case and

Machhi Singh case we have no hesitation in holding that the case at hand falls in the rarest of rare category and death sentence awarded by the trial court was appropriate. The acquittal of the respondent accused is clearly unsustainable and is set aside. In the ultimate result, the judgment of the High Court is set aside and that of the trial court is restored. The appeals are allowed.

38. In the instant case, the convict was depraved. He took away the girl from the religious construction. The convict stifled the victim by placing his

hand on her mouth when she was forcibly raped. The cause of the death of victim is excessive pain leading to shock.

39. Their Lordships of Hon'ble Supreme Court in (2008) 15 SCC 269 in the case of Shivaji @ Dadya Shankar Alhat Vs. State of Maharashtra,

have explained the principles of proportionality, its object and consideration. Their Lordships have also held as under: -

25. "9. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is

an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural

conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet

the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out

criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a

cornerstone of the edifice of "order" should meet the challenges confronting the society. Friedman in his Law in Changing Society

stated that: "State of criminal law continues to be as it should be a decisive reflection of social consciousness of society." Therefore,

in operating the sentencing system, law should adopt the corrective machinery or the deterrence based on factual matrix. By deft

modulation sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given

circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of

the crime, the conduct of the accused, the nature of weapons used and all other

attending circumstances are relevant facts which would enter into the area of consideration. For instance a murder committed due to deepseated mutual and personal rivalry may not call for penalty of death. But an organised crime or mass murders of innocent people would call for imposition of death sentence as deterrence. In *Mahesh v. State of M.P.*, this Court while refusing to reduce the death sentence observed thus: (SCC p. 82, para 6)

"[I]t will be a mockery of justice to permit these appellants [the accused] to escape the extreme penalty of law when faced with such evidence and such cruel acts. To give the lesser punishment for the accused would be to render the justicing system of this country suspect. The common man will lose faith in courts. In such cases, he understands and appreciates the language of deterrence more than the reformative jargon."

10. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public

confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court

to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This

position was illuminatingly stated by this Court in *Sevaka Perumal v. State of T.N.*

11. 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

desert as the basis of punishment and create cases of apparent injustice that are serious and widespread.

12. 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. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then 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.

13. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle McGautha v. State of California*: that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case, is the only way in which such judgment may be equitably distinguished.

14. In *Jashubha Bharatsinh Gohil v. State of Gujarat* it has been held by this Court that in the matter of death sentence, the courts are required to answer new challenges and mould the sentencing system to meet these challenges. The object should be to protect the society and to deter the criminal in achieving the avowed object of law by imposing appropriate sentence. It is expected that the

courts would operate the sentencing system so as to impose such sentence which reflects the conscience of the society and the

sentencing process has to be stern where it should be. Even though the principles were indicated in the background of death sentence

and life sentence, the logic applies to all cases where appropriate sentence is the issue.

15. 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 meagre sentences or taking

too sympathetic view merely on account of lapse of time in respect of such offences will be resultwise counterproductive 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.

16. In *Dhananjay Chatterjee v. State of W.B.* this Court has observed that a 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.

17. Similar view has also been expressed in *Ravji v. State of Rajasthan*. It has been held in the said case that 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.

These aspects have been elaborated in *State of M.P. v. Munna Choubey*, SCC pp. 714-17, paras 9-17.

26. "5. In *Bachan Singh v. State of Punjab* a Constitution Bench of this Court at para 132 summed up the position as follows: (SCC

p. 729)

"132. To sum up, the question whether or not death penalty serves any penological purpose is a difficult, complex and intractable

issue. It has evoked strong, divergent views. For the purpose of testing the constitutionality of the impugned provision as to death

penalty in Section 302, Penal Code on the ground of reasonableness in the light of Articles 19 and 21 of the Constitution, it is not

necessary for us to express any categorical opinion, one way or the other, as to which of these two antithetical views, held by the

Abolitionists and Retentionists, is correct. It is sufficient to say that the very fact that persons of reason, learning and light are rationally

and deeply divided in their opinion on this issue, is a ground among others, for rejecting the petitioners' argument that retention of

death penalty in the impugned provision, is totally devoid of reason and purpose. If, notwithstanding the view of the Abolitionists to

the contrary, a very large segment of people, the world over, including sociologists, legislators, jurists, judges and administrators still

firmly believe in the worth and necessity of capital punishment for the protection of society, if in the perspective of prevailing crime

conditions in India, contemporary public opinion channelised through the people's representatives in Parliament, has repeatedly in the

last three decades, rejected all attempts, including the one made recently, to

abolish or specifically restrict the area of death penalty, if death penalty is still a recognised legal sanction for murder or some types of murder in most of the civilised countries in the world, if the framers of the Indian Constitution were fully aware?as we shall presently show they were?of the existence of death penalty as punishment for murder, under the Penal Code, if the thirty-fifth Report and subsequent reports of the Law Commission suggesting retention of death penalty, and recommending revision of the Criminal Procedure Code and the insertion of the new Sections 235(2) and 354(3) in that Code providing for pre-sentence hearing and sentencing procedure on conviction for murder and other capital offences were before Parliament and presumably considered by it when in 1972-1973 it took up revision of the Code of 1898 and replaced it by the Code of Criminal Procedure, 1973, it is not possible to hold that the provision of death penalty as an alternative punishment for murder, in Section 302, Penal Code is unreasonable and not in the public interest. We would, therefore, conclude that the impugned provision in Section 302, violates neither the letter nor the ethos of Article 19.

6. Similarly, in *Machhi Singh v. State of Punjab*³⁰ in para 38 the position was summed up as follows: (SCC p. 489)

"38. In this background the guidelines indicated in *Bachan Singh* case will have to be culled out and applied to the facts of each

individual case where the question of imposing of death sentence arises. The following propositions emerge from *Bachan Singh* case:

(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 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."

7. The position was again reiterated in *Devender Pal Singh v. State of NCT of Delhi*:

(SCC p. 271, para 58)

"58. From *Bachan Singh* case and *Machhi Singh* case the principle culled out is that when the collective conscience of the community

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 of retaining death penalty, the same can be awarded. It was observed:

The community may entertain such sentiment in the following circumstances:

(1) When the murder is committed in an extremely brutal, grotesque, diabolical, revolting, or dastardly manner so as to arouse intense

and extreme indignation of the community.

(2) When the murder is committed for a motive which evinces total depravity and meanness; e.g. murder by hired assassin for money

or reward; or cold-blooded murder for gains of a person vis-?-vis whom the murderer is in a dominating position or in a position of

trust; or murder is committed in the course for betrayal of the motherland.

(3) When murder of a member of a Scheduled Caste or minority community, etc. is committed not for personal reasons but in

circumstances which arouse social wrath; or in cases of ""bride burning"" or ""dowry deaths"" or when murder is committed in order to

remarry for the sake of extracting dowry once again or to marry another woman on account of infatuation.

(4) When the crime is enormous in proportion. For instance when multiple murders, say of all or almost all the members of a family or

a large number of persons of a particular caste, community, or locality, are committed.

(5) When the victim of murder is an innocent child, or a helpless woman or old or infirm person or a person vis-a-vis whom the

murderer is in a dominating position, or a public figure generally loved and respected by the community."

If upon taking an overall global view of all the circumstances in the light of the aforesaid propositions and taking into account the

answers to the questions posed by way of the test for the rarest of rare cases, the circumstances of the case are such that death

sentence is warranted, the court would proceed to do so.

8. What is culled out from the decisions noted above is that while deciding the question as to whether the extreme penalty of death

sentence is to be awarded, a balance sheet of aggravating and mitigating circumstances has to be drawn up."**

27. The plea that in a case of circumstantial evidence death should not be awarded is without any logic. If the circumstantial evidence

is found to be of unimpeachable character in establishing the guilt of the accused, that forms the foundation for conviction. That has

nothing to do with the question of sentence as has been observed by this Court in various cases while awarding death sentence. The

mitigating circumstances and the aggravating circumstances have to be balanced. In the balance sheet of such circumstances, the fact

that the case rests on circumstantial evidence has no role to play. In fact in most of the cases where death sentences are awarded for

rape and murder and the like, there is practically no scope for having an eyewitness. They are not committed in the public view. But

the very nature of things in such cases, the available evidence is circumstantial evidence. If the said evidence has been found to be

credible, cogent and trustworthy for the purpose of recording conviction, to treat that evidence as a mitigating circumstance, would

amount to consideration of an irrelevant aspect. The plea of the learned amicus curiae that the conviction is based on circumstantial

evidence and, therefore, the death sentence should not be awarded is clearly unsustainable.

28. The case at hand falls in the rarest of the rare category. The circumstances highlighted above establish the depraved acts of the

accused, and they call for only one sentence, that is, death sentence.

29. Looked at from any angle, the judgment of the High Court, confirming the conviction and sentence imposed by the trial court,

does not warrant any interference.

40. Their Lordships of Hon^{ble} Supreme Court in (2010) 9 SCC 567 in the case of C. Muniappan and others Vs. State of Tamil Nadu along with

connected appeal, have laid down the social effect of punishment and proportional considerations, when the principle of rarest of rare rule is to be

applied. Their Lordships have further held that death sentence can be given in rarest of rare cases if the "collective conscience" of a community is

so shocked that death penalty is the only alternative. The "rarest of the rare case" comes when the convict would be a menace and threat to the

harmonious and peaceful coexistence of the society. Their Lordships have also held as under :-

87. In Machhi Singh v. State of Punjab this Court expanded the "rarest of rare" formulation beyond the aggravating factors listed in

Bachan Singh to cases where the "collective conscience" of a community is so shocked that it will expect the holders of the judicial

powers to inflict the death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining the death

penalty, and stated that in these cases such a penalty should be inflicted. But the Bench in this case underlined that full weightage must

be accorded to the mitigating circumstances in a case and a just balance had to be struck between aggravating and mitigating

circumstances. The Court further held that the relevant factors to be taken into consideration may be motive for, or the manner of

commission of the crime, or the anti-social or abhorrent nature of the crime, such as:

(i) Murder is in extremely brutal manner so as to arouse intense and extreme indignation of the community.

(ii) Murder of a large number of persons of a particular caste, community, or locality, is committed.

(iii) Murder of an innocent child; a helpless woman, is committed.

91. Thus, it is evident that criminal law requires strict adherence to the rule of proportionality in providing punishment according to the

culpability of each kind of criminal conduct keeping in mind the effect of not awarding just punishment on the society. The "rarest of

the rare case" comes when a convict would be a menace and threat to the harmonious and peaceful coexistence of the society.

Where an accused does not act on any spur of the moment provocation and he indulged himself in a deliberately planned crime and

meticulously executed it, the death sentence may be the most appropriate punishment for such a ghastly crime.

92. Life imprisonment is the rule and death penalty an exception. Therefore, the court must satisfy itself that death penalty would be

the only punishment which can be meted out to a convict. The court has to consider whether any other punishment would be

completely inadequate and what would be the mitigating and aggravating circumstances in the case. Murder is always foul, however,

the degree of brutality, depravity and diabolic nature differ in each case. Circumstances under which murders take place also differ

from case to case and there cannot be a straitjacket formula for deciding upon circumstances under which death penalty must be

awarded. In such matters, it is not only the nature of crime, but the background of criminal, his psychology, his social conditions, his

mindset for committing offence and effect of imposing alternative punishment on the society are also relevant factors.

41. Their Lordships of Hon^{ble} Supreme Court in (2011) 2 SCC 490 in the case of Rabindra Kumar Pal @ Dara Singh Vs. Republic of India,

have explained the principles for imposition of death sentence, broadly restated. Their Lordships have also held as under :-

90. Though the trial court awarded death sentence for Dara Singh, the High Court after considering the entire materials and finding

that it is not a rarest of the rare case, commuted the death sentence into life imprisonment. The principles with regard to awarding

punishment of death have been well settled by judgments of this Court in Bachan Singh v. State of Punjab, Machhi Singh v. State of

Punjab and Kehar Singh v. State (Delhi Admn.). It is clear from the above decisions that on conviction under Section 302 IPC, the

normal rule is to award punishment of life imprisonment and the punishment of death should be resorted to only for the rarest of rare cases.

91***. Whether a case falls within the rarest of the rare case or not, has to be examined with reference to the facts and

circumstances of each case and the court has to take note of the aggravating as well as mitigating circumstances and conclude

whether there was something uncommon about the crime which renders the sentence of imprisonment for life inadequate and calls for

death sentence. However, more than 12 years have elapsed since the act was committed, we are of the opinion that the life sentence

awarded by the High Court need not be enhanced in view of the factual position discussed in the earlier paras.

42. Their Lordships of Hon"ble Supreme Court in (2011) 5 SCC 317 in the case of Mohd. Mannan @ Abdul Mannan Vs. State of Bihar, have

discussed the broad guidelines for imposition of death penalty. Their Lordships have also held as under :-

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.

25. When we test the present case bearing in mind what has been observed, we are of the opinion that the case in hand falls in the category of the rarest of rare cases. The appellant is a matured man aged about 43 years. He held a position of trust and misused the same in a calculated and pre-planned manner. He sent the girl aged about 7 years to buy betel and few minutes thereafter in order to execute his diabolical and grotesque desire proceeded towards the shop where she was sent. The girl was aged about 7 years of thin built and 4 ft of height and such a child was incapable of arousing lust in normal situation. The appellant had won the trust of the child and she did not understand the desire of the appellant which would be evident from the fact that while she was being taken away by the appellant no protest was made and the innocent child was made prey of the appellant's lust.

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.

43. In the instant case, the convict is a menace to the society and he shall continue to be so and he cannot be reformed. The convict had stooped

so low as to unleash his monstrous self on the innocent, helpless and defenceless child.

44. Their Lordships of Hon"ble Supreme Court in (2015) 1 SCC 253 in the case of Vasanta Sampat Dupare Vs. State of Maharashtra, have

upheld the death sentence imposed upon the appellant. It was the case of rape and murder of four years girl. Their Lordships have also held as

under :-

57. Keeping in view the aforesaid authorities, we shall proceed to adumbrate what is the duty of the Court when the collective

conscience is shocked because of the crime committed. When the crime is diabolical in nature and invites abhorrence of the

collective, it shocks the judicial conscience and impels it to react keeping in view the collective conscience, cry of the community for

justice and the intense indignation at the manner in which the brutal crime is committed. We are absolutely conscious that Judges while

imposing sentence, should never be swayed away by any kind of individual philosophy and predilections. It should never have the

flavour of Judge-centric attitude or perception. It has to satisfy the test laid down in various precedents relating to the rarest of the

rare case. We are also required to pose two questions that have been stated in Machhi Singh case.

58. Presently, we shall proceed to dwell upon the manner in which the crime was committed. Materials on record clearly reveal that

the appellant was well acquainted with the inhabitants of the locality and as is demonstrable he had access to the house of the father

of the deceased and the children used to call him "uncle". He had lured the deceased to go with him to have chocolates. It is an act of taking advantage of absolute innocence. He had taken the deceased from place to place by his bicycle and eventually raped her in a brutal manner, as if he had an insatiable and ravenous appetite. The injuries caused on the minor girl are likely to send a chill in the spine of the society and shiver in the marrows of human conscience. He had battered her to death by assaulting her with two heavy stones. The injured minor girl could not have shown any kind of resistance. It is not a case where the accused had a momentary lapse. It is also not a case where the minor child had died because of profuse bleeding due to rape but because of the deliberate cruel assault by the appellant. After the savage act was over, the coolness of the appellant is evident, for he washed the clothes on the tap and took proper care to hide things. As is manifest, he even did not think for a moment the trauma and torture that was caused to the deceased. The gullibility and vulnerability of the four year girl, who could not have nurtured any idea about the maladroitley designed biological desires of this nature, went with the uncle who extinguished her life-spark. The barbaric act of the appellant does not remotely show any concern for the precious life of a young minor child who had really not seen life. The criminality of the conduct of the appellant is not only depraved and debased, but can have a menacing effect on the society. It is calamitous.

60. In the case at hand, as we find, not only was the rape committed in a brutal manner but murder was also committed in a barbaric manner. The rape of a minor girl child is nothing but a monstrous burial of her dignity in the darkness. It is a crime against the holy body of a girl child and the soul of society and such a crime is aggravated by the manner in which it has been committed. The nature of the crime and the manner in which it has been committed speaks about its uncommonness. The crime speaks of depravity, degradation and uncommonality. It is diabolical and barbaric. The crime was committed in an inhuman manner. Indubitably, these go a long way to establish the aggravating circumstances.

62. As we perceive, this case deserves to fall in the category of the rarest of rare cases. It is inconceivable from the perspective of the

society that a married man aged about two scores and seven makes a four-year minor innocent girl child the prey of his lust and

deliberately causes her death. A helpless and defenceless child gets raped and murdered because of the acquaintance of the appellant

with the people of the society. This is not only betrayal of an individual trust but destruction and devastation of social trust. It is

perversity in its enormity. It irrefragably invites the extreme abhorrence and indignation of the collective. It is an anathema to the social

balance. In our view, it meets the test of the rarest of the rare case and we unhesitatingly so hold.

63. Consequently, we dismiss the criminal appeals preferred by the appellant and affirm the death sentence.

45. Consequently, in view of the observations and discussion made hereinabove, this Court finds that prosecution has proved its case against the

appellant beyond any reasonable doubt. Learned Trial Court has correctly appreciated the evidence. There is no occasion for us to interfere with

the well reasoned judgment and order dated 05.04.2016 and 06.04.2016 rendered by learned Additional Sessions Judge/FTC/Special POCSO

Judge, Rudrapur, District Udham Singh Nagar in Special Sessions Trial No. 159 of 2016.

46. Accordingly, the Criminal Appeal No.No.156 of 2017 is dismissed being devoid of merits.

47. Consequently, the death sentenced imposed upon the convict is confirmed. Criminal Reference No.01 of 2017 is answered accordingly.

48. However, before parting with the judgment, it would be pertinent to take note of ever increasing crime against the children in the State of

Uttarakhand.

49. According to the report of National Crime Records Bureau under the caption ""Crime Against Children (States & UTs)"" for the year 2016,

489 cases were registered in the year 2014, 635 cases were registered in the year 2015 and 676 cases were registered in the year 2016. Thus,

there is an increase in the crime against children.

50. There were 436 cases of kidnapping and abduction in the year 2016. 218

cases were registered in the year 2016 under Protection of Children from Sexual Offences Act. 91 cases of child rape under Sections 4 and 6 of POCSO Act/Section 379 IPC were registered in the year 2016 and 35 cases of sexual assault of children under Sections 8 & 10 of POCSO Act/Section 354 IPC were registered. 3 cases of Sexual Harassment under Section 12 of POCSO Act/ Section 509 of IPC were registered. The ratio of cases registered under Sections 4 and 6 of POCSO Act/Section 376 IPC is disproportionate large vis-a-vis the population of State of Uttarakhand.

51. The Court is coming across a number of cases where the victims, aged 15 years or below, are being raped and murdered. There should be deterrence. Though, it is for the State Government to bring an appropriate legislation to impose death sentence upon the convicts who are found guilty in cases of rape, however, the Court can always make suggestions/recommendations to the State Government to bring a suitable Legislation to impose a stringent sentence upon the persons who are found guilty in the cases of committing rape on the victims aged 15 years or below. Accordingly, we recommend/suggest to the State Government to enact suitable legislation for awarding death sentence to those found guilty of raping girls aged 15 years or below within three months.

52. Let a certified copy of this judgment with lower court record be sent to the learned trial court forthwith to proceed with the matter in accordance with law.

53. The Court places on record its appreciation for the valuable assistance rendered by Mr. Amit Bhatt, Deputy Advocate General and Mr. B.N.

Molakhi, Advocate.

54. Copy of this order shall be sent to the Chief Secretary and concerned Principal Secretary, Home, Government of Uttarakhand for compliance.