A LAXMAN NAIK

v.

STATE OF ORISSA

FEBRUARY 22, 1994

B [DR. A.S. ANAND AND FAIZAN UDDIN, JJ.]

Indian Penal Code, 1860: Sections 302 and 376—Rape—Murder—Conviction based on circumstantial evidence—Validity of.

C *Death Penalty—Pre-planned rape and murder of niece, a minor girl—Held diabilical in conception and brutal in execution attracting death penalty.*

Indian Evidence Act, 1872: Section 3—Circumstantial evidence—Rape—Murder—Evidence of last seen—Accused absconding after the crime—
D *Misrepresentations of accused as to whereabouts of deceased—Evasive replies to questions during examination—Medical evidence relating to injuries on the deceased—Recovery and seizure of incriminating articles—Held circumstances relied on form a complete chain of evidence against the accused leading to irresistible conclusion that he was the perpetrator of crime.*

E **The appellant was prosecuted under sections 376 and 302 of the Indian Penal Code, 1860 for committing rape and murder of his niece, a minor girl aged about 7 years. The prosecution case, based entirely on circumstantial evidence, was that on 16.2.90, the appellant along with his mother, PW-3 and deceased had gone to the house of his relative, PW-2,**
F **to attend obsequies ceremony. During the observance of the ceremony on 17.2.90, PW-8, father-in-law of PW-2, not only heard the appellant commanding the deceased to accompany him back to their village but also shortly thereafter witnessed him proceeding towards his village with the deceased and thereafter conspicuously noticed the absence of**
G **the appellant and deceased from the function. PW-1 had last seen the appellant and the deceased together in the jungle both proceeding towards their village. In the evening of 17.2.90, the appellant went back to his village and falsely told his brother, PW-4, that the deceased and his mother were at the house of PW-2. In the same evening, he returned**
H **back to the house of PW-2 and on being questioned by his mother as to**

the whereabouts of the deceased, he made a false representation to his mother also that the deceased had reached her village. Next morning when the appellant's mother was heading towards her village she noticed the appellant roaming about near the jungle and on being questioned by her mother, the accused again misrepresented her that the deceased had reached home. But when PW-3 reached her village she did not find the deceased in the house. Thereafter when search of the deceased was made, her dead body was found lying in jungle with a serious bleeding injury in her private part. A blood stained underwear belonging to the appellant was also found near the dead body which was emphatically identified by the appellant's mother and brother as on belonging to the appellant. Chemical and Serological examination established the presence of blood on the frock and underwear of the deceased as well as that of accused. PW-5 who had gone to the jungle with the search party reported the indicdent to his son, PW-6, who gave a written report of the recovery of the dead body. PW-6 deposed that he guarded the body in the jungle after its recovery till arrival of the police and that in his presence the police prepared the seizure memo. The appellant absconded after occurrence and was apprehended after about 14 month. During his examination under section 313 Cr.P.C. he gave evasive replies to some of the questions. The autopsy report confirmed forcible sexual assault having been made on the deceased just before death and the time of death given by the doctor was also corresponding to, at or about the time of occurrence.

Relying on the circumstantial evidence *viz.*. (i) the evidence of the last seen of accused with deceased; (ii) misrepresentation and intentional false statement of the appellant as to the whereabouts of the deceased; (iii) medical evidence relating to the injuries on the deceased; (iv) discovery and seizure of incriminating articles; (v) absconding of accused after the occurrence and his evasive replies to question during his examination under section 313 Cr.P.C., the trial court held that the guilt of the appellant was established and accordingly sentenced him to death. On appeal, the High Court confirmed the death sentence.

In appeal to this Court, it was contended on behalf of the appellant that (i) the circumstantial evidence relied on by the prosecution do not

A provide a complete chain to bring home the guilt against the appellant; (ii) PW-1 who had last seen the appellant and the deceased together did not disclose this fact to any one and that his case diary statement was recorded after about a month and as such his evidence was not reliable; and (iii) the evidence of PW-8 cannot be relied on because on the day B of occurrence, he being under the influence of liquor could have hardly taken notice of the alleged call said to have been given by the appellant to the deceased to follow him to the village or to see that both of them actually proceeded towards their village.

Dismissing the appeal, this Court

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HELD: 1. The standard of proof required to convict a person on circumstantial evidence is 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 D 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 E 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 irresistable conclusion that the accused alone is the perpetrator of the crime. [102-G-H, 103-A]

F *Sharad* v. *State of Maharashtra*, A.I.R. (1984) S.C. 1622 and *Dhananjay Chatterjee* v. *State of West Bengal*, (1994) 1 J.T. 33 S.C., referred to.

2. From the evidence discussed it is satisfactorily and conclusively proved that all the links in the chain are complete and do not suffer from any infirmity. The circumstances found to be established against G the appellant form a complete chain of evidence as not to leave any reasonable ground for a conclusion consistent with the hypethesis of the innocence of the appellnt but on the contrary the same are of exclusive nature consistent only with the hypothesis of the guilt of the appellant and conclusively lead to irresistable conclusion that it was the appellant H and he alone who had committed murder of the girl after subjecting her

to forcible sexual intercourse. [111-C-D] A

3. The witnesses PW-1, PW-2 and PW-8 are all independent witnesses having no axe to grind against the appellant as to make false statement to implicate the appellant. Their version is truthful and reliable. [105-D] B

4. On scrutiny of the evidence of PW-8 it is evident that he emphatically asserted that the appellant and the deceased were seen moving towards their village which he had seen from his own eyes and that there were many other persons present when the accused had given the call the deceased to accompany him to the village. Therefore, there C is nothing in the statement of this witness to suggest that he had lost all senses and was not capable of witnessing what was going on or happening around him [104-A, B]

5. PW-8 was not confronted with his case diary statement at all D nor there is any material before this Court to accept the contention that he did not disclose to police that he had seen the appellant and the deceased moving towards their village. [104-D]

6. It is true that PW-1 deposed in crosss-examination that he was E examined by the police one month after the occurrence and till then he had not disclosed this fact. But this statement appears to be due to the failure of his memory as he was examined after about two years from the date of incident. Therefore, he faultered as to the date and time when his statement was recorded by the police. PW-1 is an illiterate person F and an aboriginal belonging to Adivasi tribe and, therefore, is not expected to remember the date and time with that exactitude as is expected from a literate and an average person. [104-H, 105-A, C]

7. Having regard to the principles with regard to the imposition of the extreme penalty it may be noticed that there are absolutely no G mitigating circumstances in the present case. On the contrary the facts of the case disclose only aggravating circumstances against the appellant. The evidence on record is indicative of the fact as to how diabolically he had conceived of his plan and brutally executed it. Such a calculated, cold blooded and brutal murder of a girl of a very tender H

A **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. [111-H, 112-A, G]**

Bachan Singh v. *State of Punjab,* **[1980] 2 S.C.C. 684, referred to.**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 407 of 1992.

From the Judgment and Order dated 11.5.92 of the Orissa High Court in Death reference No. 1/92 and Jail Crl. A. No.132 of 1992.

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Uma Datta, Rajiv Sharma and Ms. Neelam for the Appellant.

U.R. Lalit and A.K. Panda for the Respondent.

The Judgment of the Court was delivered by

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FAIZAN UDDIN, J. The present case before us reveals a sordid story which took place some times in the afternoon of 17th February, 1990 in which the alleged sexual assault followed by brutal and merciless murder by the destardly and monstrous act of abhorrent nature is said to have E been committed by the appellant herein who is none else but an agnate and paternal uncle of the deceased victim Nitma, a girl of the tender age of 7 years who fell a Pray of his lust which sends shocking waves not only to the judicial conscience but to everyone having slightest sense of human values and particularly to the blood relations and the society at large.

F The appellant Laxman Naik was charged and tried under Sections 376 and 302 of the Penal Code for committing rape and soon after murder of the victim inside the forest known as Chhotsima Jungle, situated on the way between the villages Patkadihi and Tangarjoda. Learned Sessions Judge, Mayurbhanj, Baripada, relying on the circumstantial evidence G found to be established against the appellant, convicted him for offence under Section 376 as well as under Section 302 of the Penal Code and having regard to the peculiar facts and circumstances of the present case found it to be rarest of the rare cases and, therefore sentenced him to death. However, no separate sentence for the offence under Sction 376 H of the Penal Code has been awarded. The learned Sessions Judge made

a reference to the High Court of Orissa for confirmation of the death Sentence. The appellant Laxman Naik also preferred an appeal in the High Court of Orissa challenging his conviction and sentence as aforesaid. After a careful and close scrutiny of the evidence on record the High Court dismissed the appellant's appeal and confirmed the death sentence awarded to him. This appeal, therefore, has been filed before this Court on being granted special leave.

Briefly stated the prosecution case as it turns out from the evidence on record was that Rema Naik PW-2 resident of village Patkadihi had performed funeral rites at his house on 16.2.90 in which he had invited his relatives and other villagers. Smt. Nitma Naik, PW-3, the mother of the present appellant is the sister of the father of Rema Naik, PW-2. Smt. Nitma Naik, PW-3 her son the appellant Laxman and the deceased Nitma daughter of elder brother of the appellant, being close relatives of Rema Naik, also went from their village Tangarjoda to the house of Rema Naik at village Patkadihi to attend the said ceremony. It is said that in the afternoon of 17.2.90 when all the relatives assembled in the ceremony including Rema Naik, PW-2 were busy in the observance of the ceremony, the appellant commanded the deceased to accompany him back to their village and the deceased followed him in obedience of his command. Around 4 PM the appellant and the deceased were found to be absent from function. Shortly thereafter Genada alias Ganga Ram, PW-1, resident of village Patkadihi saw the appellant and the deceased near Chhotsima jungle, going towards their village Tangarjoda. Sometimes later the appellant alone reached his house in village Tangarjoda where on being asked about the deceased by this elder brother Hindu Naik, PW-4, the father of the deceased, the appellant is said to have told him that the mother and the deceased Nitma were at the house of Rema Naik in village Patkadihi. In the same evening the appellant returned back to village Patkadihi and on being questioned by his mother Nitma Naik, PW-3 as to the whereabouts of the deceased, the appellant told her that she had safely reached to her village Tangarjoda. The next morning when the appellant's mother Nitma Naik was heading towards her village Tangarjoda, she noticed the appellant roaming about near Chhotsima jungle. On being asked again as to the whereabouts of the deceased, the

A appellant told to his mother that she was there in village Tangarjoda. But to her utter surprise when Nitma Naik, PW 3, the mother of the appellant reached her village, Tangarjoda she did not find the deceased there and, therefore, she rushed back to village Patkadihi where she told to Rema Naik, PW 2 and other villagers that the deceased was missing. They B therefore including Hindu Naik, PW 4, the father of the deceased proceeded towards Chhotsima jungle in search of the deceased. The searching party found the deceased lying in a lonely place in Chhotsima jungle in revealing circumstances. The said party found the torn wearing apparel (under wear) of the appellant near the dead body of the victim. C There were marks of violence over the dead body of the victim and bleeding injury in her private part. A ribbon belonging to the deceased and some tamarinds were also found lying near her dead body.

A ward member of village Patkadihi, Bhagala Majhi, PW 5 who had also gone to the jungle with the search party, dictated a report Exhibit D 1 to his son Apna Majhi, PW 7 which was handed over to Rasananda Rout, PW 9, Sub-Inspector of Police, Jharadihi Out-Post under Tirang Police Station. He entered the said report in the station diary and sent the report to the Officer Incharge of the Police Station with his endorsement and took up the investigation. The A.S.I. reached the spot at about E 1.30 PM same day and prepared inquest report Exh. 3. He seized the frock, under wear and ribbon belonging to the deceased and some tamarinds under Exh. 2 He also seized a sample of blood smeared earth from the place of occurrence Exh. 6. He also recorded the statement of some of the witnesses.

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Dr. Pushp Lata, PW 11 performed an autopsy over the dead body of the deceased on 20.2.90 who as per her post-mortem report Exh. 11 found the following injuries on her :-

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1. Abrasion over the middle of back and over fifth lumber vertebra.

2. Abrasions were noticed on the left index finger, back of forearm and right middle finger of right hand.

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3. Lacerated wound 1⅓" in the vagina extending towards rectum.

4. Bruises over nack 2 C.M. x 1 C.M. over sternomestoid muscles on right and left side, 2" below the angle of the mandible. A

On dissecting the underlines tissues of the neck, the doctor noticed extravasation of blood into the subseutaneous tissues as well as in the underlying stenomastoid muscles. The larynx and trachea were found to be congested containing frothy mucous. Bloody froths were coming out from the mouth and nostrils. B

All the injuries detailed above, in the opinion of the doctor were homicidal and anti-mortem in nature and the cause of death was due to asphyxia by throttling. 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. The time of death as given out by the doctor was also corresponding to, at or about the time of occurrence. Further the doctor gave her firm opinion about the forcible sexual assault having been made on the deceased just before her death. Veginal smear of the deceased was lifted which indicated presence of red blood corpuscles. C D

The frock and under-wear of the deceased as well as under-wear belonging to the appellant seized from near the place of occurrence were sent to the Chemical Examiner who as per his report found blood on the underwear belonging to the appellant and human blood on the frock and under-wear belonging to the deceased. After the occurrence the appellant had absconded and could be apprehended only on 5.4.91 after about 14 months. The appellant in his examination under Section 313 of the Code of Criminial Procedure denied the allegations and gave evasive replies to some of the questions, while some of the facts were admitted by him which shall be discussed by us some times later in this judgment. The appellant, however, adduced no evidence in his defence. E F

There is no ocular version of the incident and the prosecution entirely based its case on circumstantial evidence. Learned counsel for the appellant vigorously urged before us that the circumstances relied on by the prosecution have not been satisfactorily established and that in any event the circumstances said to be established against the appellant do not provide a complete chain to bring home the guilt against the G H

A applellant. He vehemently submitted that Ganga Naik, PW 1 who is said to have last seen the appellant and the deceased together did not disclose this fact to any one and that his case diary statement was recorded after about a month and as such the evidence of this witness should not be accepted as credible and that though he is also witness to B the inquest report but this fact is conspicuously missing in the inquset report that he had last seen the deceased and the appellant together. It was, therefore, submitted that no value can be attached to the evidence of Ganga Naik, PW 1. Learned counsel for the appellant further assailed the evidence of Jagan Nath Naik, PW 8, by contending that he along with C others had consumed liquor right from the morning and was badly under the influence of liquor and, therefore, he could have hardly taken any notice of the alleged call said to have been given by the appellant to the deceased to follow him to the village or to see that both of them actually proceeded towards their village. He also submitted that this fact was not D disclosed by the witness to the police in his case diary statement. Learned counsel for the appellant further submitted that the mere fact that the appellant was out from his house for a few days as usual cannot be used as a link to the circumstances leading to his guilt and that in any case the said fact cannot be used as a circumstance against the appellant as no question in this behalf was put to the appellant during the course of E his examination under Section 313 of the Code of Criminal Procedure.

Learned counsel for the appellant also submitted that since the appellant used to leave the house very often for days together and therefore, his mother PW 3 and brother PW 4 were annoyed with him F and it was for this reason that both of them gave false statement against the appellant.

The standard of proof required to convict a person on circumstantial evidence is now well established by a series of decisions of this Court. G According to that standard 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 consistant with the innocence of the accused. The circumstances from which the conclusion of the guilt is H 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, exept the guilt of the accused and when all the circumstances cumulatively taken together should lead to the only irresistable conclusion that the accused alone is the perpetrator of the crime. To quote a few decisions of this Court in this regard a reference may be readily made to the case of *Sharad* v. *State of Maharashtra,* AIR (1984) SC 1622 and *Dhananjay Chatterjee* v. *State of West Bengal,* (1994) 1 JT 33 SC.

Having regard to these principles enunciated with regard to the proof of guilt by circumstantial evidence we shall now examine the various circumstances said to the appearing against the appellant and at the same time examine the contentions advanced by the learned counsel for the appellant referred to above.

Evidence of last Seen

It is an admitted fact that Rema Naik, PW 2 had celebrated obsequises ceremony at his House in village Patkadihi on 16.2.90 in which amongst other relatives, the appellant himself along with his mother Smt. Nitma Naik, PW 3 and her grand-daughter, the deceased Nitma *i.e.* the niece of the appellant had also gone to the house of Rema Naik from their village for participation in the said ceremony. Jagannath Naik, PW 8 who is father-in-law of Rema Naik, PW 2 and resident of the same village Patkadihi had also attended the said ceremony. Jagannath Naik deposed that in the afternoon of Saturday - the day of occurence, while he was sitting in the varandah of the house of Rema Naik he heard the appellant laying to the deceased to accompany him to their village and shortly thereafter he witnessed the appellant proceeding towards his village with the deceased. The witness, Jagannath admitted in cross-examination that on Saturaday, the day of occurence, he had also taken Handia (Liquor) right from the morning and that he was badly influenced by that intoxicant. His evidence was, therefore, sought to be assailed on the ground that being under the influence of liquor he would have hardly taken any notice of the alleged call having been made by the appellant to the deceased or would have in fact remembered that he had seen the

A appellant and the deceased actually going towards their village. But on scrutiny of the evidence of Jagannath Naik we find that there is no merit in the aforesaid submission for the reason that he emphatically asserted that he can definitely say that the appellant Laxman and the deceased Nitma were seen moving towards their village which he had seen from B his own eyes. He also submitted that there were many other persons present when the accused had given the call to deceased Nitma to accompany him to the village. We do not find any thing in the statement of this witness to suggest that he had lost all senses and was not capable of witnessing what was going on or happening around him. Learned C counsel for the appellant further challenged the evidence of this witness Jagannath by contending that he had not disclosed to the police in his case diary statememt that he had seen the appellant Laxman proceeding towards his village with the deceased. But this argument is liable to be dismissed for the simple reason that the witness was not confronted with his case diary statement at all nor there is any material before us to D accept the contention that the witness had not disclosed this fact to the police particularly when the witness with an emphatic denial stated it is not a fact that he did not disclose to the police that he had seen the appellant and the deceased moving towards their village.

E Apart from the evidence of Jagannath Naik, PW 8 there is yet evidence of Rema Naik, PW 2 deposed that the appellant, his mother and niece (the deceased) had also attended the ceremony and that the appellant Laxman and the deceased were found to be absent from the function. From the evidence discussed above it clearly turns out that the F appellant had left the village Patkadihi along with the deceased. Further Geneda alias Ganga Ram Naik, PW 1 resident of village Patkadihi deposed that on the date of occurence while he was returning to his village at about 4.00 P.M. he saw the appellant and the deceased near Chhotsima jungle and both were heading towards their village. Learned G cousel for the appellant sought to discard the evidence of this witness by contending that he did not disclose this fact to anyone till his case diary statement was recorded by the police after about a month. We are unable to persuade ourselves to concede to the submission. It is true that the witness Ganga Ram Naik deposed in cross-examination that he was

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examined by the police one month after the occurence and till then he had not disclosed this fact. But this statement appears to be due to the failure of his memory as the incident had occurred on 17.2.90 while he was examined on 26.11.91 after about two years, therefore, he faultered as to the date and time when his statement was recorded by the police. The view that we are taking of the evidence of this witness is supported by the evidence of the Investigating Officer, Niranjan Parede, PW 10 who deposed that he had examined the witness on 21.2.90 after the dead body of the deceased was recovered from the forest. It may also be pointed out that the witness Ganga Naik, PW 1 is an illiterate person and an aboriginal belonging to Adivasi tribe ans, therefore, is not expected to remember the date and time with that exactitude as is expected from a literate and an average person. In this view of the matter it cannot be accepted that the police recorded the statement of PW 1 after about a month from the date of occurence. The witnesses Ganga Ram Naik, PW 1, Rema Naik, PW 2 and Jagannath Naik, PW 8 are all independent witnesses having no axe to grind against the appellant so as to make false statement to implicate the appellant. We accept their version to be truthful and reliable. It is thus established that on the day of occurrence the appellant had commanded the deceased to accompany him to the village and the appellant and the deceased had actually both proceeded towards their village and while on their way the appellant and the deceased both were last seen together in the Chhotsima jungle.

Misrepresentation and intentional false statement of the appellant as to the whereabout of the deceased Nitma :

Hindu Niak, PW 4 is the real elder brother of the appellant and father of the deceased Nitma who did not go to attend the ceremony but had stayed back in the house at village Tangarjoda. Hindu Naik deposed that the deceased along with the appellant and his mother had gone to village Patkadihi to the house of Rema Naik to attend the 'Sudhi' ceremony on Friday and stayed there for the night. On the following day *i.e.* on Saturady evening the appellant came back to the house at village Tangarjoda. Hindu Naik enquired from the appellant about the deceased and the mother Smt. Nitma Naik and the appellant told him that they were staying at Patkadihi in the house of Rema Naik. Hindu Naik father

of the deceased deposed that the next morning, that is, on Sunday he did not find the appellant in the house and at about 5.00 P.M. that day his mother Nitma also came to the house from whom he enquired about his deceased daughter. His mother told him that the appellant had reported to her that the deceased had already returned to the house. But Hindu Naik informed his mother that the deceased had not come to the house at all. After this dialogue Hindu Naik along with his mother Nitma Naik, PW 3 set out in search of the deceased but she could not be traced out. Next day *i.e.* on Monday they again went out in search of the deceased and reached the village Patkadihi where his mother told him that his daughter has been killed in Sima Dungri forest. If we look to the evidence of Nitma, PW 3, the mother of the appellant, we find that she deposed that in the afternoon of the date of occurrence she searched for the accused and the deceased in the house of Rema Naik but they could not be found there. In the morning of Sunday she left village Patkadihi for her village Tangarjoda and while she was heading towards her village she noticed the presence of appellant in the Chhotsima Jungle. Nitma Naik, PW 3, the mother of the appellant questioned the appellant about the whereabouts of the deceased to which the appellant replied that the deceased had already reached to her village Tangarjoda long before. On being so informed Smt. Nitma Naik rushed back to Patkadihi again and the appellant preferred to remain near about the place of occurence. But very soon thereafter the appellant also returned back to Patkadihi. The presence of the appellant near about the place of occurence and absence of the deceased in the house in village Tangarjoda roused suspicion in the mind of the lady and, therefore, she again proceeded to her village Tangarjoda where she did not find the deceased. She went back to village Patkadihi along with her elder son Hindu Naik, PW 4 and as she entertained serious suspicion on account of misrepresentation made by the appellant about the whereabouts of the deceased, she along with several villagers of village Patkadihi set out in search of the deceased and found the dead body lying in the Chhotsima jungle.

Evidence relating to injuries on the deceased :

The search party which discovered the dead body of the deceased in jungle, noticed that her clothes were soaked with blood and there were

multiple injuries on the person of the deceased as are described by Dr. Pushp Lata PW 11 in her post-mortem report Ext. 11 as well as in her statement made in the Court. There was abrasion on back and fifth lumber vertebra, as well as on left index finger, back of fore-arm, right middle finger. There was lacerated wound in the vagina extending towards rectum and bruises over nack, right and left sternomestoid muscles. On dissecting the underlined tissues of the neck, the doctor noticed extravasation of blood into subseutaneous tissues as well as in the underlying sternomastoid muscles. The larynx and trachea were congested containing frothy mucous. The bloody froths were coming out from the mouth and nostrils. This evidence eloqintly speaks that the innocent, helpless soul was first subjected to brutal and forcible sexual intercourse and then mercilessly done to death by throatting so that there remains no direct evidence against the culprit.

Discovery and Seizure of incriminating articles:

Smt. Nitma PW 3, the mother of the appellant as well as Hindu Naik, PW 4, the brother of the appellant who were amongst those who searched out the dead body in the jungle, have stated that one underwear stained with blood belonging to the appellant was lying near the dead body. A ribbon belonging to the deceased and some tamarinds were also found lying by the side of the dead body. They also deposed that the wearing apparels of the deceased were completely smeared with blood.

This brings us to the evidence regarding seizure of the aforesaid articles found near the dead body and the clothes of the deceased. Karu Majhi, PW 6, is the son of Bhagala Majhi, PW 5, a ward member, who had given the written report of the recovery of the dead body. Karu Majhi, PW 6, deposed that he was guarding the dead body in the jungle after its recovery till the arrival of police at about 4.00 P.M. He deposed that in his presence the police had seized one under-wear, stained with blood, a piece of ribbon and some tamarinds which were lying by the side of dead body. Seizure Memo was read over and contents thereof were explained to him and then he put his thumb impression on the seizure memo as a witness. The underwear belonging to the appellant and the wearing apparels of the deceased seized from the place of

A occurence were sent for the chemical examination and also to the serologist and the experts as per their reports Ext. 9 and 10 found that they were stained with blood. Though the appellant disowned the blood stained underwear found near the dead body at the place of occurence but the same has been identified by none else but by the mother of the B appellant, Smt. Nitma Naik, PW 3 as well as by Hindu Baik, PW 4, the elder brother of the appellant. Both of them categorically stated that the said underwear belonged to the appellant.

Learned counsel for the appellant, however, urged that mother and C brother of the appellant (PW 3 and PW 4) were not happy with the appellant because most often he used to disappear from the house for days together and it was for this reason that they made the statement against the appellant and as such no weight should be attached to their testimony. Be that as it may, it is beyond comprehension to think that a real mother and real brother would ever think of falsely implicating the D appellant in a heinous crime like this before us only because the appellant was in habit of disappearing from the town very frequently. The argument simply deserves to be rejected as without any merit.

Here, we may also refer to the examination of the accused under E Section 313 of the Code of Crimnal Procedure, wherein he denied the allegations but at the same time admitted some of the facts and gave evasive replies to some of the questions. The relevant questions put to the appellant and answers given thereto by him may be reproduced with advantage as follows :-

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Que.2.: It transpires from the evidence of the PWs that you, your mother, deceased Nitma had gone to the house of Rema Naik of village Patkadihi on 16.2.90 to attend the obsequies ceremony observed by him in his house. What have you got to say?

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Ans. Yes.

Que.4 It transpires from the evidence of PW 2 and others that on 17.2.90 at 4.00 P.M. you and deceased Nitma were found absent from the house of PW 2 at Patkadihi and on search they could not H trace you or Nitma. What have you got to say?

Ans. I had gone to my house, Nitma did not go with me. A

Que.5. It transpires from the evidence of PW 1 that he had seen you proceeding towards your village with deceased at Chhotsima Pahada (Dungri).

What have you got to say? B

Ans. I do not know

Que.6 It transpires from the evidence of your mother that on the occurrence day evening came alone to the house of PW 2 and when she asked about the whereabout of Nitma, you falsely told C her that Nitma is at your house. What have you got to say?

Ans. I do not remember. I cannot say.

Que.19. The cumulative effect of all the evidence adduced in the case suggests that you intentionally committed the murder of the D deceased by strabgulation after committing sexual intercourse with her and intentionally gave false information to your mother and brother by giving them to understand that Nitma had gone to village Tangarjoda and stays back at Patkadihi respectively on the date of occurrence. What have you got to say? E

Ans. Yes, I have told lie to my mother. I do not remember, what I have told to my brother.

A plain reading of question No. 5 with regard to the evidence of Ganga Ram Naik, PW 1 that he had seen him in Chhotsima Dungri F along with the deceased proccding towards his village, will go to show that the appellant while answering the same had no courage to squarely deny it but gave an evasive reply that "I do not know". Similarly, in reply to question No. 6 with reference to the evidence of his mother than when she asked him about the whereabout of Nitma, the appellant falsely told G to her mother that Nitma was at the house, the appellant again did not deny the same but gave an evasive reply by saying that 'I donot remember'. 'I cannot say'. But it can be significantly pointed out that in answer to question No. 19 to the fact that he had intentionally committed the murder of the deceased after subjecting her to sexual intercourse, he H

gave false information to his mother and brother, the appellant admitted by saying "Yes I have tolds lie to my mother. I do not remember, what I have told to my brother".

The discovery of appellant's underwear stained with blood lying near the dead body and a false representation made by the appellant provides a link and may be called in aid to lend assurance to the Court. These circumstances directly and substantially point the finger at the accused - appellant to be the perpetrator of the crime because it is unthinkable that the real mother of the appellant and his real brother would endeavour to falsely implicating the appellant in such a heinous crime.

Thus, on a close and critical examination of the evidence on record, the circumstances which are fully established against the appellant are that in the afternoon on 17th February, 1990, Jagannath Naik, PW 8 heard the appellant commanding the deceased to accompany him to their village Tangarjoda, and that on 17th Feburary, 1990, itself at about 4.00 P.M. Rema Naik, PW 2 noticed the conspicuous absence of the appellant and the deceased from the function at his house. Immediately before the occurrence on 17.2.90 at about 4.00 P.M. Ganga Ram Naik, PW 1 had last seen the appellant and the deceased together in Chhotsima jungle both proceeding towards their village. In the evening of 17.2.90 the appellant went back to his village Tangarjoda and falsely told to his brother Hindu Naik, PW 4 that the deceased and his mother Nitma Naik, PW 3 were at Patkadihi at the house of Rema Naik. The appellant made a false representation to his mother, Nitma Naik also that the deceased had reached back to her village Tangarjoda which the appellant himself admitted in his statement under Section 313, Criminal Procedure Code that he had given false information to his mother. In the morning of Saturday the appellant was found by his mother Nitma Naik, PW 3 moving about near the said forest and again gave a false information to her that deceased had already arrived at her village Tangarjoda. But when Smt. Nitma Naik, PW 3 the mother of the appellant reached her village Tangarjoda she did not find the deceased in the house and the appellant also escaped from the house soon thereafter. Thereafter on Monday when a searching of the deceased was made, her dead body was found lying

in Chhotsima jungle. The searching party found a serious bleeding injury in her private part and her clothes were found smeared with blood, eloquently speaking about the monstrous sexual assault made on her and lastly the presence of blood stained underwear blonging to the appellant near the dead body which was seize and identified as one belonging to the appellant and the chemical and serological examination established the presence of blood on the same.

Form the evidence discussed above it is satisfactorily and conclusively proved that all the links in the chain are complete and do not suffer from any infirmity.

The afore-mentioned circumstances found to be established against the appellant form a complete chain of evidence as not to leave any reasonable ground for a conclusion consistent with the hypothesis of the innocence of the appellant but on the contrary the same are of exclusive nature consistent only with the hypothesis of the guilt of the appellant and conclusively lead to irresistable conclusion that it was the appellant and he alone who had committed murder of the girl Nitma after subjecting her to forcible sexual intercourse.

This brings us to the question of sentence to be imposed upon the appellant for the offences for which he has been found guilty by the two Courts below as well as by us discussed above. In this connection it may be pointed out that this Court in the case of *Bachan Singh* v. *State of Punjab,* [1980] 2 SCC 84 while discussing the sentencing policy, also laid down norms indicating the area of imposition of death penalty taking into consideration the aggravating and mitigating circumstances of the case and affirmed the view that the sentencing discretion is to be exercised judicially on well recognised principles, after balancing all the aggravating and mitigating circumstances of the crime guided by the Legislative Policy discernible from the provision contained in Sections 253(2) and 354(3) of the Code of Criminal Procedure. In other words, the extreme penalty can be inflicted only in gravest cases of the extreme culpability and in making choice of the sentence, in addition to the circumstanmces of the offender also. Having regard to these principles with regard to the imposition of the extreme penalty it may be noticed that there are absolutely no

A mitigating circumstances in the present case. On the contrary the facts of the case disclose only aggravating circumstances against the appellant which we have to some extent discussed above and at the risk of repetition shall deal with that again briefly.

B 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 guardian. Consequently the victim who was aged about 7 years must have reposed complete confidence in the appellant must have believed in his *bona fide* also and it was on account of such a faith and C belief that she acted upn the command of the appellant in accompanying him under the impression that she was being taken to her village unmindful of the pre-planned unholy designs of the appellant. The victim was totally a helpless child there being no one to protect her in the desert where she was taken by the appellant misusing his confidence to fulfil his just. It appears that the appellant had pre-planned to commit the D crime by resorting to diabolical methods and it was with that object that he took the girl to a lonely place to execute his destardly act.

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 E several external and internal injuries on her person including a serious injury in her private parts showing the brutality with which she was subjected to while committing rape on her. The victim of the age of Nitma could not have ever resisted the act with which she was subjected to. The appellant seems to have acted in a beastly manner as after satisfying his F 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 other, 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 G 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 case attracting no punishment other than the capital punishment and consequently we confirm the sentence of death imposed H 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. A

In the result the appeal preferred by the appellant fails and is hereby dismissed. B

T.N.A. Appeal dismissed.